

Topic: Intellectual Property Rights

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Intellectual Property Rights

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Introduction

Intellectual property is an engine of progress. Intellectual property is the guardian of one of our most precious gifts, imagination. The ability to imagine is what triggers ideas and feelings, which can then be transformed in painting, novel, music or song ... Intellectual property and copyright protects the expression of ideas: it allows people to create. In everyday life, we are facing with intellectual property because everything was invented by someone. With intellectual property, the fact that it is possible to control the expression of his ideas simply means that you can make a living.

Imagine someone paint a beautiful picture and someone again in thousands of copies for sale. Is it normal that this could be done without the permission of the author of the original piece, and we did not pay him any compensation? Intellectual property is just that. Whether you're a painter, photographer, writer or journalist, composer and song writer, you must have control of the use made of our work.

Copyright protects authors of the songs that are stored on a disk, performed in concert, on a printed score (Patterson, 1968), reproduced or distributed on the Internet. Besides the authors, intellectual property also protects the chain of creation, i.e. the musicians, artists and producers. Thus, when a song is played on the radio, everyone receives a small fraction of the revenue that radio generates with the music it broadcasts. These intellectual property rights have only one objective, to allow rights holders to control the use of their creativity and to be paid for any use of their work.

With the advent of Internet, it has become extremely easy to reproduce and circulate data on the Internet. Laws may differ from one country to another at different points, however, around

the world; the availability of music on the Internet involves having permission from all rights holders. Thus, it is not because the technology now allows to copy and transfer music easily necessarily need to. The intellectual property rights are precisely to allow all creators to exercise their right: control what is made of the work to which they participated, and to be paid if it is used in one way or another (Alikhan & Mashelkar, 2004).

Copyright and Related Rights

The *Copyright and Related Rights Regulation 2003* has amended and modified the *Copyright, Designs and Patent Act, 1988*. The emphasis of modification is to provide the copyright protection in the era of Internet. This regulation provides copyright protection and security to the owner of the content so the content cannot be freely used over Internet.

The modern notion of copyright appears in the 20th century with two essential components: a moral right and a property right. The first, the moral law, is perpetual, inalienable, inalienable and exercised by the owner himself or his assigns. The property right has meanwhile reproduction rights and representation. Under these rights, the owner may receive direct compensation paid by consumers or indirect remuneration as compensation from the levy on blank media to compensate for the right to private copying (Dowd, 2006).

In 1985, neighbouring rights were added (Lang Law) for performers, publishers and producers. There are exceptions to this system to avoid having to submit any use of a sound recording to the authorization of the performer or producer. This is the system known as "equitable remuneration" under which to broadcast sound recordings in public, it must pay a sum essentially sitting on operating revenues (1.65% of revenue for clubs, 5% for radios, and 2% for television). Finally, the authors and performers cannot oppose, once disclosed work, their copy

for private use. The right to private copying is offset by a tax levied on blank recording media in which the product is shared between having rights and help to create tax funds.

The Copyright and Related Rights Regulation 2003 has presented a new definition of broadcast, *an electronic transmission of visual images, sounds or other information which—*

(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or

(b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public (The Copyright and Related Rights Regulations 2003)

The usual Internet transmissions are not considered as broadcast until it has been transmitted simultaneously through different other mediums also. Thus, according to this definition, copyright and performer's rights are not violated by simply transferring files over Internet (except software and database) or copying the data from the Internet.

The digital revolution has caused changes in both technologies (production, storage, reproduction and distribution of works) and habits of the public and consumers. The development of broadband internet for transferring large files between Internet users not only paved the way for the legal acquisition of works on the internet but mostly allowed the exchange between users of music or films files. These exchanges (peer-to-peer or P2P) made possible by freely available software and have a significant impact on the economy sectors.

The film industry which has long been spared because of the heavy video files begins to be confronted with the same problems as the music industry due to the development of compression techniques. A study by the National Film Centre published in 2004 found that 19% of Internet users with a broadband connection have downloaded movies at home and 31% had watched it for free. In addition, 55% of downloaders thought these downloads are perfectly legal.

Given these changes in the distribution of cultural products, two types of responses have emerged. One, supported in particular by producers and music publishers, tends to tighten controls on the circulation of works and hinder their reproduction by the development of anti-copying devices. An alternative, known as the global license, has been proposed by some consumer groups and artists and performers: a tax would be paid by users wishing to download (optional fee) or, as another scheme by "broadband" all subscribers. Opponents of the global license believe that the pay system after a global license does not cover investment and therefore consider the system threatening to create.

Types of Material Protected in Copyright and Related Rights Regulation 2003

The first step of the contractual issues of intellectual property in a service control means includes initial diagnosis in two stages:

- Identification of "objects" embedded in the order and may take a protection under the law of intellectual property;
- Verification that the subject did not meet legal criteria for protection and therefore are attached (or not) of intellectual property rights

The first phase of this analysis is to identify accurately and thoroughly differentiated "objects" involved in the production of the order which can be attached to intellectual property rights. The term "differentiated" is necessary because in right to intellectual property, every "variation" on the same design will be the most often seen as a distinct "object". This multiplicity of objects of intellectual property induced by different "Concretization" of the same creation must be emphasized, but it raises little difficulties if the "object" intellectual property is characterized not only by its intrinsic creative content, but also by its support, its modes of diffusion, language,

etc. Another difficulty is the variety and the growing number of "objects" or creations which are gradually recognized as belonging to intellectual and financial investments of the law of intellectual property, which sometimes makes the "Objects" identification task delicate.

Materials which are protected under copyright law are:

- Literary Work;
- Dramatic Work;
- Musical Work;
- Artistic Work;
- Recorded Sound;
- Film;
- Broadcast

The musical work or recorded sound is broken down into melody, harmony and rhythm. Improvised works are copyrightable (Rosen, 2008). On transmitting Cinematograph films, dramatic works etc., and the criterion is the originality of the captured work is protectable. Works of visual art like drawings, paintings, lithographs, sculptures, typographical works, signs, symbols etc. are also protected under copyright and related rights regulation 2003.

The software is distinguished less by its definition as a work by its legal regime that departs widely from the rules of common copyright law. Advertising works are different not because of the specificity of such creations but because of its particular destination justifies special treatment. The law defines a database as "a collection of works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means." It must be distinguished from the software that makes it work.

Role of ISPs under Copyright and Related Rights Regulation 2003

Technical service providers providing services on the Internet (or "ISPs") are organizations involved in the performance of a task carried out between the point of shipping document transmission and end point of receipt. These technical service may include single carrier technology documents which provides the services of a communication network for transmitting exclusively technological documentation or the service provider, or services, or the Internet connectivity provider (hereinafter the "transmitter").

The amount of information circulating on the Internet causes a lot of documents or information may have an illegal character, or assign the copyrights of others, defamatory of individuals or affect other third parties. Initially, ISPs, whether transmitters, providers of caching or hosts, may be liable towards third parties for the unlawful nature of the information or material they broadcast (Gercke, 2006). These ISPs are the messengers of the document or intermediaries play a role in the transmission of information or documents may have inappropriate content.

ISPs are often the first targets in the transmission of information or documents damaging broadcast for several reasons: (i) these technical service providers are often present as a result of illegal activity and are sometimes easily identified as the author of the document or information that is unlawful, (ii) even in the event that the author of the malicious document or information is identifiable, it may be located in a country with a functioning judicial system, and (iii) the author of information may be insolvent while the ISP is referred that may be creditworthy and financially healthy.

ISPs that offer certain services to individuals must necessarily collect their personal information being able to provide the services requested for managing the client's account or

billing purposes. Some ISPs also have access to some other types of electronic data such as the connection data of the client. Second, ISPs have access to personal information of some of their clients or users on the Internet have certain obligations relating to the protection of this information. Their obligations of confidentiality may arise either from the promise made to these individuals (or under such a policy adopted to protect personal information or the contract between the provider and client) or yet their obligations imposed by the laws concerning the protection of personal information (O'Hare, 2003). Finally, ISPs may in some circumstances be held liable for having sent unsolicited email advertisements to their customers making much attention and being a problem so growing it forces the authorities to focus on the regulation of sending unsolicited email.

ISPs have to be careful and make sure they have the required consent of the subscriber before performing this type of promotional item. In general, ISPs assume no liability protected by copyright that are transmitted on their networks when they have no control over the content works. They may become liable if they have some control over the disclosure of such works.

Currently, most ISPs voluntarily adhere to a "notice and notice" regime to help prevent violations of copyright rights on their networks. Under this scheme, when the holder of a copyright informs that an ISP subscriber has violated the law, the ISP sends a notice to the subscriber. Often, the subscriber is identified by an IP address. Thanks to its records, the ISP itself can notify the subscriber without revealing anything to the owner of copyright. Depending on the nature of the agreement with the customer and in the absence of a court order, ISPs do not reveal the identity of their subscribers to the holder of the copyright.

How to protect copyright and other related rights on Internet?

The debate on the draft law on copyright and related rights in Parliament has had several twists. The legislation had been prepared in the Supreme Council of the literary and artistic property; an advisory body of the Ministry of Culture brings together authors, performers, producers, publishers including software, distributors, consumers and qualified individuals. Governments, all over the globe, try to limit and legalize private copying of technical protection measures "to prevent or limit the uses [works] not authorized by the holder of a law" (Solove, 2007).

Downloading and provision of files submitted to copyright are indeed considered by the bill as contraventions. As a result, software such as peer to peer will be banned and punished. Users who are involved in illegally downloading music or movies on the Internet for personal use are warned. The principle of the private copying exception is recognized, but there are penalties for circumvention of anti-copying devices.

Supporters of the global license continue to assert the viability of their proposals, they said, it would reconcile the expectations of the public (freedom to communicate and exchange) and the interests of creators of cultural goods. The provisions of the bill would be primarily intended to protect the dominant position of the "major players" (Sony, Warner, EMI) of the recording industry, which would not necessarily be a sign of creativity.

The same opportunity to implement the provisions of the bill is in doubt. The systematic monitoring of users to detect those offering illegal files is difficult to implement all the communication of their identity can only be made by internet service providers as a result of an expensive procedure. File exchanges may also take other forms for example using instant

messaging or e-mails without being able to monitor, under the secrecy of correspondence.

Encrypted and anonymous networks already exist and make it very difficult to identify. It also seems hard to punish peer-to-peer networks software that is often foreign companies distributing their products accessible to all foreign websites (Harmon & Schwartz, 2003). Several consumer groups consider only legal online offer proposed at moderate prices and guaranteeing the quality of the downloaded files may limit the practices of "piracy."

Example of Case Law

EMI v UPC is a typical example of ISP infringement under copyright and related rights regulations 2003. In this case, the Irish court in October 2010 accused the Irish telecom company and ISP UPC of violating its liability for infringement to protect the copyright and related rights of EMI Music Company (Hinfey, 2011).

The court has discussed many solutions to detect the online piracy and detection of online copyright theft including the technology which was used by UPC. The court in their judgment said that UPC has not taken proper and appropriate measures to protect the copyright of EMI Music company.

Conclusion

According to Fuller, the morality of law depends that, besides other principles, laws should neither expect from the subject to perform the impossible nor should laws be contradictory (Fuller, 1969). If the technical and legal measures proposed could eventually allow effective protection of copyright, they do nothing to solve the underlying problem, i.e. the users themselves. Indeed, the development of Internet not only constitute a threat to the copyright if the users do not have adapted the bad habit of easy access, and most importantly, free, digital

works. It would be futile to think that users easily give up their new rights they take for granted, although illegal in most cases. Also, it seems that the most equitable solution is that the pay per view, where the system purchase is abandoned in favour of a compensation system based on the license, which still requires the abandonment of the exclusive nature of copyright.

Undoubtedly, Internet is one of the most revolutionary tools of disseminating information to the whole world within an eye wink but at the same time it has made the human race realize the fact that freedom comes with responsibility, and a compulsion to protect those who are under the influence of our guidance. Where on one hand we enjoy the infinite wealth of knowledge, games, resources and entertainment it provides at our disposal, on the other hand we must be diligent about the dangers that creep around with this unlimited and unregulated network of communication.

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