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Legal Protection of Copyright in the Digital Era

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Abstract

Copyright right is a term that denotes the privileges given to creators of various types of works, regardless of their genre, quality or destination. Copyright law recognizes the right of an author based on his personal creation. It consists of a monopoly of exploitation for the author's lifetime and an additional 70 years following their death to his successors. Now that the majority of content is in digital format and is globally accessible, the necessity to protect author's interests has grown over the last decade. However, the development of the Internet has considerably complicated the protection of copyright. Digital technology facilitates infringements (copies, illegal downloading, etc.), which is prompting countries to develop and implement more effectives way to fight against digital piracy. This article will explore the challenges of copyright protection in the Internet and describe some of the mechanisms to used protect copyright in the electronic environment.

Keywords: *Copyright, Counterfeit, Bern Convention, Digital Environment.*

Introduction

The main objective of safeguarding copyright rights is to empower creators to receive financial compensation for their creative work. This protection encourages them to keep producing new work that benefits the creators and society as a whole, both culturally and economically (Huang and Chen, 2025; Khalaf, 2025). Copyright is the property right of the creator of the work. These works are protected, whether they are the individual creations of an author, collective works, composite works, or collaborative works. On the other hand, copyright only protects formal creations and not ideas. (Lipszyc Delia, 1999) . Article 2 of the WIPO Copyright Treaty which incorporates Article 9, paragraph 2 of the TRIPS Agreement confirm that ideas themselves are not subject to copyright protection, as their utilization must be communal in nature.

Conversely, copyright grants two distinct categories of rights:

moral rights, which safeguard the non-financial interests of the creator

economic rights, which enable the rights holder to obtain compensation for the use of their works by external parties. These rights permit the reproduction, translation, publication, and public communication of a work, among other activities.

On the internet as in other environments, any intellectual creation can be protected by copyright. Electronic publishing is currently considered the most widespread and most commonly used method of publishing in the world. Electronic publishing has many advantages. It helps authors publish their works and allows audiences worldwide to access them quickly, the author finds it more convenient to publish his works independently rather than relying on a publishing house and simplified distribution and reduced expenses. (Pamela Samuelson, Robert J. Glushko, 1993) Notwithstanding these benefits, the Internet has played a substantial role in the increase of plagiarism, imitation, and piracy. Therefore, there is a necessity for legislative action to prevent illegal activities on the Internet. (Bernadette A John, 2014).

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In addition to domestic measures, two global internet agreements were established in December 1996 by the World Intellectual Property Organization: the Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Both treaties (WCT) and (WPPT) mandate that member states provide enforcement measures that allow for efficient intervention against different types of violations, encompassing all forms of digital theft.

In Part I of this paper, we discuss Items of Legal Protection of Copyright in the Internet. In Part II, we will examine the Technological Measures for Protection of Digital Content.

Part I: Items of Legal Protection of Copyright in the Internet

Topics and Scope of Copyright

Definition

National copyright legislation and international treaties have not established a specific definition for the term "work." Furthermore, they have not provided a criterion for ascertaining a definitive meaning; they merely state that all literary, scientific, and artistic creations fall under the category of intellectual property.

As stated in the second article of the Berne Convention, each creation in the literary, scientific, and artistic fields, regardless of its manner or format of expression are granted copyright protection including literary, musical, dramatic, artistic, audiovisual works, maps, works of painting, design, sculpture, photography, computer programs, databases and others. It is clear that copyright law provides protection without requiring any formalities. This means that copyright protection is granted automatically upon the creation of a work, and no official steps are necessary to obtain this protection. In most nations and in accordance with the Berne Convention, copyright protection is obtained automatically, without the need for registration or any additional formalities (Eldar Haber, 2014).

Originality

Intellectual creations do not receive automatic copyright protection. Such protection is granted only to works that fulfill specific criteria, including the requirement of originality.

In most jurisdictions, like those found in Europe and the United States, determining copyright eligibility is based on originality. According to Professor Thierry Revet, originality means that a work is "the author's own intellectual creation reflecting his personality. It is the result of its author's own skill and labor." This concept was forged for the protection of copyright, and is the primary and natural domain of copyright legal protection. (Thierry Revet, 1992).Under the Berne Convention, Originality is essential for a creation to gain copyright protection. Article 2 (3), states: "……Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work….". Article L112-4 of the French Code of Intellectual Property states that: "The title of a work of the mind shall be protected in the same way as the work itself, where it is original in character".

"Sweat Of the Brow" is a widely recognized principle in Copyright Law. According to the sweat of the brow doctrine, copyright work enables the safeguarding of compilations only when there is a significant "creative" or "original" element. This doctrine was established in the U.S. Supreme Court case of Feist Publications, Inc. v. Rural Telephone Service, in 1991. The Court clarified that the originality requirement is not overly rigorous and consists of two parts: the work must be independently created by the author (rather than being copied from other sources), and it must exhibit at least a minimal level of creativity. (Jane C. Ginsburg, 1992)

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In the matter of Bridgeman Art Library v. Corel Corp. (1999), the U.S. District Court of the Southern District of New York determined on November 13, 1998, that "photographic reproductions of public domain artworks lacked the originality required for copyright protection". (Caitlin A. Buxton,2015). The French Aix-en-Provence Court of Appeal indicates that "a photograph can be recognized as an original work if it reflects the personality of its author, in particular by the choice of light, contrasts or relief, by the presentation of objects and the sense of aesthetics". (Vivian Michael, 2009). On the other hand, a work can be original without being new; thus, it will benefit from copyright protection even if it takes up in its own way an already explored theme (Hassan et al 2021).

The French Professor H. Desbois takes the famous example of two painters to distinguish between the two meanings: "When an artist paints a picture that no one has done before him, it is called a new work. However, if another artist draws the same picture, but expressed in a way that shows his character and personality, there is a second painting categorized as original work." We can notice that the first case, the work is original and new, while in the second case, the work is only original (ALSAMARA and GHAZI, 2024). The distinction between originality and novelty was defined by French jurisprudence in a ruling by the first civil division of the Court of Cassation on February 11, 1997. The decision indicated that a work is protected "solely on the condition that it possesses an original character, regardless of the concept of ineffective prior works in the context of literary and artistic property law"

(COLOMBET Claude, 1999).

Restrictions and Exemptions to Copyright Concerning Digital Content

The primary aim of copyright law is to safeguard the rights of creators by granting them exclusive control over their creations. However, to find a compromise among the rights of creators and the public's interests, the law also establishes specific restrictions and exceptions.The Trips Agreement entitled "Limitations and Exceptions", provides under the article 13 that: "Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder".

According to the WCT convention , signatory countries are permitted to grant exceptions in the digital landscape. Article 10 Article in this convention provides that: "It is understood that the provisions of Article 10 permit contracting parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws, which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit contracting parties to device new exceptions and limitations that are appropriate in the digital network environment"

Public Domain "Free" Works on Digital Content

Digital creations that belong to the public domain lack copyright protection. Public domain is referred to creative materials that everyone is free to enjoy, share, and can be utilized without needing permission from the original author (Séverine Dusollier, 2011).

These materials include:

- Ideas and facts
- Laws and judicial decision
- Journalism
- Government work

The legacy of Martin Luther King initiated a copyright infringement lawsuit against CBS, Inc. after the network created a documentary that included, without permission, segments of civil rights icon Dr. Martin

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Luther King's renowned "I Have a Dream" speech from the March on Washington on August 28, 1963. Northern District of Georgia (11th Cir.) held on Nov. 5, 1999 that judgment was awarded to CBS because Dr. King had participated in a general dissemination of the speech, thereby putting it into the public domain. The court states that a public publication takes place "when a work was made available to members of the public at large without regard to their identity or what they intended to do with the work," and is compared to a restricted publication that "communicated the contents of a work to a select group and for a limited purpose, and without the right of diffusion, reproduction, distribution or sale" (Neil Netanel, 2000). On the other hand, a limited publication could be protected by the copyright if the publication involves distributing copies to a specifically chosen group for a particular purpose, without granting the right to diffusion (Albakjaji & Kasabi, 2021). The Court of Appeals for the Ninth Circuit in the US indicated that a restricted publication is one which "Communicates the contents of a [work] to a definitely selected group and for a limited purpose, and without the right of diffusion, reproduction, distribution or sale … [and is] restricted both as to persons and purpose" (Suyash Bajpai, 2021)

Fair Use

Fair use is a provision that allows exceptions to copyright regarding digital content. It allows you to copy protected content without authorization from the author for purposes such as criticism, teaching, parody, academic, scientific research or private coping for non-commercial purpose. The doctrine of "fair use" emerged from common law during the 18th and 19th centuries (Oren Bracha,2020). The concept of fair use dates back to 1741 and the case of Gyles v Wilcox. The English Court of Chancery established the concept of "fair abridgement," permitting the unauthorized shortening of copyrighted works under specific conditions (Sadhika Gupta,2023). Throughout the years, this principle developed into today's concept of "fair use."
The US Copyright Act of 1976 evaluates four elements when determining fair use. These four elements are detailed in Section 107, which states:

The intention and nature of the usage, including if it is for commercial reasons or for educational purposes in a non-profit context

The characteristics of the protected work

The proportion of the copyrighted material utilized compared to the entire copyrighted work, and

The impact of the usage on the possible market for or worth of the copyrighted material.

Part II: Technological Measures for Protection Digital Content

Measures For the Administrative Protection of Digital Content

Article 11 of the WTC provides; "Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law." In other terms, the WTC Agreement mandates that nations implement a legal enforcement mechanism that acts as an effective deterrent to digital content violations. In the case of A&M Recording v. Napster Inc. (2001), a US Appeals Court determined that Napster was responsible for contributory or vicarious copyright infringements since it was permitting millions of users to obtain music at no cost (Liza Zepda,2002).

The Digital Millennium Copyright Act (DMCA) of 1998, approved on October 12, 1998, modified Title 17 of the United States Code to broaden copyright protections, while reducing the liability of online service providers for copyright violations committed by their users. The users will receive a copyright infringement notification from the Internet Service Provider (ISP). This DMCA notice from the ISP will include details regarding the copyright that is purportedly violated. (Hunter McGhee,2023). DMCA violations can result in significant civil and criminal sanctions. Civil penalties may encompass damages and legal costs. In terms

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of criminal penalties, offenders may face a fine of $250.000, along with a potential prison sentence of up to five years (Yasuhiro Arai,2011). However, 17 U.S. Code § 512 provides a limitation on liability relating to material online. The article states that service providers cannot be held financially responsible if they are not consciously aware that the material or any activities involving that material on the system or network are infringing someone else's copyright (Albakjaji & Almarzouqi, 2024). At the same time, article 97A of UK Copyright, Designs and Patent Act 1988, provides that:

"The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright."

The French law known as "HADOPI" or "internet law" may serve as a potential solution for safeguarding copyright and combating online piracy of creative works. This legislation establishes an Independent Administrative Authority known as the High Authority for the Distribution of Works and the Safeguarding of Rights on the Internet (HADOPI), responsible for preventing and sanctioning piracy on the Internet. On the other hand, Article 17 of European Directive 2019/790 of April 17, 2019 on copyright and related rights, known as the DAMUN directive, suggests a novel legal responsibility framework for platforms that share content online.

According to Article 17, content-sharing platforms must get permission from rights holders to prevent legal consequences for providing copyright-violating content to the public, even if that content was uploaded by its users. (Christophe Geiger, Bernd Justin Jütte,2021)

Collective Management System of Copyright in the Digital Era

Today, it is practically impossible for an author to manage the rights that he can claim to his works on the internet. Simply monitoring the numerous uses, users, languages, time zones, and distribution channels via which one's works are exploited is a task beyond the capacity of a single person. Therefore, the only appropriate method available to creators is to combine in the form of corporations and collectively manage their rights.

Collective Management Organizations (CMO) are entities that work collaboratively for the benefit of the rights holders they serve**.** Collecting societies are classified as civil entities, and the contracts they establish with users regarding all or portions of their repertoire to fulfill their objectives are regarded as civil actions.

Their members are artists, authors, musicians, or other copyright material. The primary function of CMO is to manage the authorization of rights , the collecting of royalties, and the enforcement of rights on behalf of the rights holders.

The first collective management societies were created in France, with SACD being the initial one established in 1777 by Beaumarchais. The organization Gens de Lettres, founded by Balzac and Victor Hugo in 1837, was later followed by the establishment of SACEM in 1850. Next, enterprises were established in Germany, the United Kingdom, Italy, the US, and subsequently in other countries worldwide. Currently, over 227 collective management societies are part of CISAC.(Philippe Gilliéron, 2006)According to the status of CISAC under article 8, a society managing authors' rights is an organization which:

has as its aim, and effectively ensures, the advancement of the moral interests of authors and the defense of their material interests; and

has at its disposal effective machinery for the collection and distribution of copyright royalties and assumes full responsibility for the operations attaching to the administration of the rights entrusted to it; and

does not, except as an ancillary activity, administer also the rights of performers, phonogram producers, broadcasting organizations or other holders of rights."

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Conclusion

In the age of information technology, the internet has made it easier to publish protected works, whether legally or illegally, and so contributing significantly to author rights violations. In light of this technological advancement, the need to safeguard copyright appears to be more vital than ever, and strictness in intellectual property protection appears to have become a significant concern for most countries.

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Competing Interests

The authors declare no competing interests.

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