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BALANCING THE LEGAL INTERESTS OF THE AUTHORS, PUBLISHERS AND THE USERS ONLINE

Annotation: The law in general and intellectual property law in particular, endeavored to foster the innovations under the protection of author's property rights. However, with every innovation which facilitated copying and sharing, the law has never given a full monopoly to the authors based on a social utility, which benefitted the users and the industry, evidenced in radio and cable television. Concerning the internet, while following the same approach in Google Books, the law, however, rejected Peer-to-Peer networks, although the distinguished models of conveying the content. Allegedly, the balance can also be stroked in there with the technology offering a solution to securing the interests of authors, by the model of the YouTube Content ID system.

Keywords: copyrights, property rights of authors, copyright sharing, compulsory license, peer-to-peer networks

Аннотация: Закон в целом, и законодательство об интеллектуальной собственности в частности, направлены на содействие инновациям, при защите имущественных права авторов. Однако с каждым нововведением, которое способствовало копированию, никогда не давало полной монополии авторам, основанным на социальной утилитарности, которая принесла пользу пользователям и индустрии, о чем свидетельствует радио и кабельное телевидение. Что касается Интернета, то, следуя такому же подходу по отношению к Google Книгам, закон, однако, отклонил сети Peer-to-Peer, хотя и выдающиеся модели передачи контента. Как утверждается, баланс также можно установить с помощью технологии, предлагающей решение для защиты интересов авторов, по модели системы YouTube Content ID.

Ключевые слова: авторское право, имущественные права авторов, обмен объектами авторских прав, принудительная лицензия, Peer-to-Peer сети

In contrast with publishing where the author is entitled to the compensation, the law governing recordings gives recording artists less. And thus by Lawrence Lessig, in effect, the law subsidizes the recording industry through a kind of piracy-by giving recording artists a weaker right than it otherwise gives creative authors. Where the beneficiaries of this reduced control are the recording industry and users which gives them broader access that they otherwise could not afford [1, p.57]. The recording industry has supported statutory license for records, and compulsory license was justified by required access of the performers to music resulted in the adoption of 1909 compulsory license as a deliberate antimonopoly instrument. Lessig calls this limitation of the rights of musicians as partially pirating of their creative work in favor of record of producers and the public.

The electronic media are required to pay copyright holders for the music in programming, continuity, and commercials. Cable television pays royalties under the compulsory license to the CRT for the programs it transmits. Broadcasters and cable operators also pay a license fee to the three major music performing-rights organiza-

tions - ASCAP, BMI, and SESAC. Digital music services must pay royalties to Sound Exchange. The Copyright Office also requires Internet broadcasters to pay royalties to record companies for music streamed on the Web [2, p.208].

What Lessig call type C sharing of users from users from the conventional point of law is not a violation and can be associated with taking the book in the library or giving it to read to the friend as a person not having paid for that. However due to the nature of the internet when music is shared and sender retains the copy is competing with the original owner without competing the market enabled through the cooperative sharing [1, p.72]. Expansion of copyright has been made against the fears of authors and content providers for their works on the Internet, although it is questionable whether Internet reduced financial returns of authors as it may be doubtful whether Napster user would buy a hard copy of the music in the absence of p2p network [3, p.258]. Although Lessig notes that it would be good for the author to have something from this trade [1, p.72].

There are some of the examples where this point of ensuring the compensation was enabled in the instrument in use. German authors' collecting society (GEMA) successfully claimed against the producer of the tape recorders reasoning that the right to make private copying is in the competence of authors along with the right to remuneration for the exploitation of their works. Since the invoking duty on users was encountered an opposition of German courts for violation of the user's privacy, the case was ended up with imposition of levies on selling tape-recording equipment by German copyright law [4, p.55]. The technology at the edge of progress can facilitate copyright infringement, may also ensure compensation for creators as it was implemented in YouTube Content ID system, however with inherent methods that differ from the legal as diverting the profit in the case of infringement.

The course taken in tackling unauthorized electronic copying through the technological measures by access restriction in UK Digital Economy Act 2010 (DEA) was criticised as largely disproportionate and against the user's consent [5]. DEA question of user's privacy applying suspension or blocking measures by ISPs was decided in favor of right holders [6]. DEA 2017 enacted in 27 April 2017 have essential communication-related components as 'Universal Service Obligation' providing users the rights to request minimum 10 Mbps effective 2020 with compensation scheme if not met, placing the cap on spending of subscribers of internet telephony and increasing penalties for nuisance calls. DEA is placing much stress on preventing adult content tackled by filtering and blocking websites providing that content through the ISPs and prevention involvement of underage through the age verification. The intellectual property is under concise Part 4, extended public lending rights to lend eBooks remotely, amended CDPA to raise maximum sentence for internet copyright infringement to 10 years imprisonment and amending CDPA, allowing public service broadcasters to charge retransmission fees [7]. Except for the more dense shape, DEA is clearly furthering the position of copyright holders online by legislative provisions. DEA 2010 burdening ISPs for the infringing content (ex-articles 17 and 18) are removed in line with recognition of Ofcom that existing copyright framework proved to be instrumental in tackling the online copyright infringement. DCMS also connote that recent court cases had proven that existing copyright laws

sufficiently enable rights holders to take action against the internet piracy.

Proposal for Digital Property Trust in Multinational Anti-Counterfeiting Trade Agreement (ACTA) embarked to international standards of enforcement of intellectual property rights negotiated as international trade instrument. ACTA had caused broad discontent due to the fear for fundamental civil rights in the digital environment as freedom of expression and privacy and facilitate censorship. Opponents claim that it has a broader scope and entail increased surveillance over personal online activity through the pervasive searches by encouraging service providers to monitor and provide information. ACTA also promote greater analysis of content by ISPs and higher liability of websites linked to the infringing content. Further criticism related to the exclusion of civil society, developing states and community in its drafting. Among signatories are European Union, Canada, Australia, New Zealand, Japan, South Korea, and formally ratified by Japan, and comes into force after six ratifications.

Regarding the Type-A sharing of users from users, in response to the Napster's claim that it is developed technology blocking 99.4 percent of copyrighted objects, position of the court's was that it was not enough. This gives an idea that the law oppose the peer-to-peer technology rather than the copyright infringements, as no technology can assure 100% of protection. This exemplifies the attempt of the law to fully control technology [1, p.73], in recognition of the law of relevant means to regulate it, neglecting the self-regulation capacity. However, the industry can be skeptical about the point that file sharing is the best way to preserve its benefits while minimizing the wrongful harm to the artists. This question is of a balance that law seeks and that will be found sometime [1, p.73]. Technological platforms can be a solution for the orphan works as authors cannot be found but copyright still lasting and works may become unavailable that ease difficulties of obtaining the work from copyright registries [8, p.61].

By Lessig zero tolerance approach is alien to the tradition in which the content industry has developed, where the role of law is rather in maintaining the balance. This balance was aimed at the response of the law with attention to every new technology, aiming at the protection of creators and ensuring the innovation. This can be seen in balancing the rights of composers and recording artists with the emergence of technologies for mechanical reproduction where authors granted the right to be paid however at the legally defined rate. This, however, has not happened with the radio where the court rejected the claim of compensation referring to indirect benefits. The emergence of cable television has also reinforced the claims of proprietary rights, where the law has also stroked the balance, rendering broadcasters the right to compensation although again at legally defined rates, providing the broadcasters with the rights over the content, as soon as they are compensated. The law through this preserves development of new technologies, with securing the rights of authors to compensation. By not allowing the right of the claim whenever they are broadcasted, the law prevented control of author's collective organization over cable broadcasting, and not allowing free ride does not provide unfair advantages to the cable broadcasters [1, p.73].

Similarly with VCR technology claim of Universal and Disney that Sony is benefiting from technology allowing copyright infringements for users of its VCR. Sony designed technology allowing that and could also design a technology blocking that, or allowing for those acts that

are permitting. While the lower court was supported the idea that technology intervenes to the exclusive right of the others, the Supreme Court reversed decision referring to the competence of the Parliament to strike the balance of the interests with the emergence of the technology, however Parliament did not respond, alleging that creative industry is already benefited [1, at p.76].

The position was raised if there is a place to 'legitimate piracy' as in every case with technological intervention, the law allows technology to benefit over the rightholder's of the creative industry and did not allow authors a complete control over the use of their works? In all such a cases court did not disregard the rights of authors, however never rejected the free-riding, motivating that authors should have a value balancing it with the technology to benefit from the content made before [1, p.76].

In Google books project that was aimed to digitize great a deal of libraries was initially concerned the snippets that turned into class-action for the use without authorization. The case ended up with agreement on non-exclusive license to use it in exchange for the defined level of compensation with opportunity for the copyright holder to opt-out from the agreement [8, p.55]. This again can be considered public agreement under the leading role of law in establishing somewhat a balance between the interests of copyright holders and social utility.

The law has ever granted the right holder the full control over their works. The law was looking for a balance of compensation of authors against the public interest to promote innovation. However, this balancing made when technology has matured, and market forces regulated it as blamed peer-to-peer networks had a successful model of distribution on content [1, p.78]. Nevertheless, copyright warriors disagree about the role of the Parliament in this balance and considering copyright exceptions as violating their property rights. Considering the users' acts with the content as theft, owners find no justification for that neither in public purpose nor in fair use.¹ Although, the proprietary claims have always balanced with exceptions that follow even absolute rights as property.

With a rise of networking platforms, the future will be a shift from the system of the public domain to intermediary access and on who will be able to control, monitor, and charge for every access and use of creative works. Adverse effect is that the public domain is no longer be free [3, p.252]. The law developing in a slower pace and may be late as content providers may hide its work as a services and within the program operation [3, p.256]. With the adoption of digital fences makes it difficult to enable fair use without exposing the product however program can be implemented to give proper regard to the fair use, however, the problem is that it may be at the discretion of the provider [3, p.257]. The electronic players are setting the access controls over the works in the public domain that was best exemplified with Adobes works of Alice in Wonderland by Lewis Carroll that could only be tackled by market mechanisms [3, p.259].

Herewith, one of the essential goals of the law is in promoting the innovations distinguishable in intellectual property law. With the emergence of every innovation, the law strives to balance the interests of authors and the industry with the users or public interest. This has happened with the radio, television and under scrutiny concerning

the internet. However, in all these cases, the law has never rendered a full monopoly on the authors motivating by the public interest that was beneficial to the users and the industry. This has happened with Google books, and allegedly should be tackled in Peer-to-Peer networks, that however stigmatized with the range of cases against Napster and Pirate Bay, although could be a platform for conveying and could be used to furtherance the interested of the authors that are happening in YouTube Content ID system.

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