

Strengthening and balancing Copyright Enforcement on the internet

Dionysia Kallinikou





Contents

1. New technologies, copyright and balance
2. Legislative provisions on the enforcement of the rights
3. The role of intermediaries
4. P2P networks
5. Political level discussions and fundamental rights
6. Graduated response system
7. Alternative models
8. Global fee or remuneration system
9. The future

New technologies, copyright and balance

- Great moment for mankind was the discovery of writing, typography and internet
- Copyright appeared when Gutenberg discovered typography: the law was developed in parallel with the evolution of technology
- The same is true for internet and digital technologies
- Challenge for copyright regulation
- Balance between the creator and society
- Balance in copyright enforcement is linked to the rule of law: regulatory enforcement and fundamental rights
- In case of infringement is very difficult to balance the right of creators and other right holders, the public interest and the fast development of technology

Legislative provisions on the enforcement of the rights

- Legislative provisions on the enforcement of the rights are an important pillar of copyright system
- TRIPS Agreement, Enforcement Directive
- Internet Treaties, Information Society Directive
- Balanced provisions to ensure the enforcement of IP rights
- Imbalances
- Creative commons, open access initiative
- Anti-counterfeiting Trade Agreement (ACTA)

The role of intermediaries

- Temporary reproduction
- Art. 5(1) of the Information Society Directive
- Agreed statement concerning art. 8 of WCT:” It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this treaty or the Berne Convention”
- Digital Millennium Copyright Act
- Directive on Electronic Commerce

P2P networks

- Central server: direct the users to where they could find and download a music recording
- Napster case
- File sharing networks of next generation: without central base that would direct user to the infringing copies that could be downloaded
- Grokster case
- The Pirate Bay



Political discussions and fundamental rights

- Massive copyright infringement/increasing number of authorized services
- The issue is controversial and complex
- IP-addresses
- Assistance from online intermediaries
- Case law of ECJ: balance between fundamental rights
- Promusicae



Graduated response system

- Legal arrangements in a number of jurisdictions (France, New Zealand, Taiwan, South Korea, UK)
- France: Hadopi
- Private arrangements: Ireland
- Notification, sanctions (blocking of access to certain sites, filtering, slowing down of data transfer speed, temporary or permanent refusal of internet connectivity)
- Advantages: fast and gentle system
- Legal and political concerns: privacy, proportionality, costs, little evidence that the graduated response system is either successful or effective to reduce infringement
- Rapport Lescure: Hadopi was not increasing the legitimate market
- New business models based on reasonable access to legitimate content are reducing infringement and increase legitimate market

Alternative models

- General blocking of infringing websites or slowing down of traffic, filtering of certain transmissions
- Injunctions against intermediaries whose service are used by a third party to infringe copyright or related right: art. 8(3) of Information Society Directive, art 11 of Enforcement Directive
- Scarlet v. Sabam
- Telecabel v. Constantin Film and Wega
- First Instance Court of Athens - Decision 4658/2012
- National legislation: Spain, Italy

Global fee or remuneration system

- Global fee on internet use for remunerating the right owners for the downloading of their works: surcharge on internet connections, distribution to right owners, same model as the levies for blank recording media
- Advantage of general solution but this system would legitimize unauthorized downloading, not in conformity with exclusive rights, internet fee very high
- Levies payable for making private copies of a protected work may not take unlawful reproductions into account
- Another system could be to put on intermediaries the obligation to pay a remuneration from their income obtained from advertisers

The future

- In the intangible world law seems not to be the only way to make copyright policy
- Law may provide part of the solution and technology may provide the rest
- Over the top services and applications will play an important role to communication providing the content over the internet
- Net neutrality and open internet
- Proposals establishing new rules: special and faster lanes to send video and other content?
- Protected works may be transmitted from space
- Copyright protected material is one of the main components in digital transactions
- Effective solution is necessary to be developed on international level
- A balanced enforcement strategy should give tasks to all online stakeholders in order to find effective and fair solutions respecting fundamental human rights

We are in Athens the city where the ancient Greeks developed harmony

Classical principles may give us the inspiration to overcome the difficulties and apply the classical principles of justice, respect, fairness and morality to design a balanced enforcement copyright system

