

# BUSINESS SUCCESS, COPYRIGHT AND THE DIGITAL ENVIRONMENT

The Internet offers the fastest means ever of reproduction and distribution of information. This new environment has created new business models that have presented fundamental challenges to the copyright industries and, in fact, to the copyright system itself. The digital era, the convergence of telecommunication and computer technology, and the emergence of the Internet have brought into question the very definition of terms used in the copyright arena, such as reproduction/copying, publishing, public performance, distribution, broadcasting and communica-



tion to the public. The online world – service providers, gateways and networks, content providers and database developers – is facing multiple and complex challenges in applying national copyright legal systems to a borderless and seamless cyberspace.

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) – known together as the WIPO Internet treaties – are seminal initial steps in modernizing international copyright law to take into account the new digital environment. These two treaties set out the legal framework for safeguarding the interests of creators in cyberspace and open new horizons for composers, artists, writers and others to use the Internet with confidence to create, distribute and control the use of their works within the digital environment. The two treaties entered into force in the first half of 2002 after 30 countries joined each of the treaties. A significant number of additional countries are likely to accede to the treaties in the foreseeable future.

## *Implications for Businesses Using the Web*

Copyright also has significant implications for any business that uses standard or customized software products or depends on e-commerce, uses e-mail, or has a website for advertising purposes only. For example, placing a photograph or digital image on a website without the permission of the copyright owner amounts to copyright infringement. Similarly, website owners and website hosting businesses may run into copyright (and trademark problems) with unauthorized framing, hyperlinks and deep links. The source of all text and images to be put up

on a website should be reviewed to determine whether the company has the right to put them on its site.

## *Copyright Implications for Other Businesses*

Some countries have responded to the challenge of protecting copyright by introducing a levy or fee on photocopiers, scanners, tape recorders, video cassette recorders, blank audio and video tapes, recordable CDs and other recording media, and on equipment such as tape recorders and CD-writers, which may be used for copying or storage of copyrighted content. The income from such fee systems is distributed to rightsowners, to the extent possible, in accordance with the use of their works, performances and sound recordings on such recording media. In some of these countries, businesses that use recording media for purposes other than reproducing protected works, for example for network back up purposes, are refunded these fees.

Companies should also ensure that the business-related activities of their staff comply with copyright law. For example, it is necessary to establish and strictly monitor a policy against the installation and use of any unlicensed computer programs on the computers of the business. Apart from other potential risks associated with such installation, such as viruses, or the potential for unknowingly installing “spyware” that would

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jeopardize a company's trade secrets, following such a policy also makes sense from the copyright angle. Businesses may be legally liable for contributing to copyright violations or abetting piracy if they allow, or do not prevent, sharing of copyrighted materials such as MP3 music files on their computer systems or servers.

### ***What does the future hold?***

Scanning and photocopying have made replication easy, fast, cheap and difficult to detect. The digital environment and the Internet have made the control of copyrighted content by its creators, publishers, distributors and retailers much more difficult than in the past. There is little or no degradation in quality and copies can be transferred from one medium to another with ease. Opportunities for unparalleled distribution have become available to both the copyright owners and the illegal copiers. On the whole, the Internet has not altered the basic concepts of copyright. It has changed the balance between copyright holders and users of copyrighted material, and thereby raised concerns in some circles about the future of copyright law itself.

In response to these challenges, new legal rules, such as those enshrined in the WCT and WPPT, are being translated into national copyright laws, and new technological measures of protection, such as access control mechanisms and copy pro-

tection systems, are being created. These systems seek to help businesses regain control by preventing or effectively dealing with theft of valuable content, while at the same time spurring growth of creative expression.

In addition, many businesses have stepped up their vigilance so that they can track copyrighted and protected digital assets anywhere on the Internet to detect misuse, unlicensed usage and unauthorized modification of protected content. Many businesses are proactively building intellectual property strategy into their long-term business plans. They are taking action to enforce their rights, based on stiffer civil and criminal penalties for infringement of copyright, as provided for in national copyright laws. Businesses are also taking measures, such as those prohibiting the circumvention of technological protection used by copyright owners, to control access to their works. They do this by taking legal action to prevent or stop the deletion or tampering with rights management information embedded in or linked to digital works.

Though digital watermarking and technological measures that prevent copying have gained in importance, some problems remain. The privacy of law-abiding copyright users needs to be assured and the possible technological exclusion of acts which have long been considered 'fair use or dealing' or otherwise exempt from the necessity to obtain authorization

of the copyrighted owner may distort the balance between the interests of the copyright owners and the users of copyrighted content.

No doubt, technological measures and copyright law will continue to evolve together to maintain an appropriate balance between the needs of businesses relying on copyrighted works and those of the public as consumers or users of such works. At the same time, the acquisition and licensing of protected contents will be facilitated through automated rights management technologies that can give access to, license, monitor and track the exchange of protected works in the digital environment. In this rapidly evolving scenario, having a working knowledge of the basic principles of copyright law before taking expert advice on copyright matters is essential for a growing number of business owners and managers, both as owners and users of copyright material.



The next article in the IP and Business series will discuss "Licensing Intellectual Property - Advantages and Disadvantages".