

Chapter 17

Newspapers and Digital Libraries

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ABSTRACT

This chapter deals with the new digital environment that embraces newspaper content. The notions of newspapers, news, articles, photographs, cartoons and podcasts are considered. The legal notion of the entitlement of creators' rights in different newspaper contents (journalists, photographers, cartoonists, visual artists), the legal implications due to contractual arrangements and the status of rights in case of an employment contract and in case of a services contract are analyzed from the copyright perspective. The chapter answers the question who owns the electronic rights in the newspapers contents. It considers the exceptions and limitations of copyright, the fair use principle and the three-steps test. Lastly, it deals with the undisputed modern reality of digital libraries with newspaper content and digital libraries of general cultural content and defines the unique characteristics of works included in newspapers. It concludes that, while international and national legislators acknowledge the social request for a more free access to technical and educational materials, copyrights are to be respected.

INTRODUCTION

Intellectual property is the outcome of a revolutionary notion that appeared in sixteenth century during the Renaissance in Europe: the “homo universalis”, i.e. the person who excels in multiple areas, including arts and science. This revolutionary principle greatly induced aesthetic creation

and invention, which have since driven mankind morally and financially. Intellectual Property Law was established in order to keep this Renaissance principle of the “homo universalis” alive. But now, modern technologies have reversed what used to be well standing ideas and practices. Thus, we need to consider if we have reached the time, where people do not feel anymore the great need to award invention and creation.

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Our era is dominated by digital technologies, which assist the dissemination of works and information in seconds through the gentle press of a button or a mouse. The result of the expansion of the usage of modern technologies at an unprecedented level is the conception of a universal right of on-line communication and on-line free movement of knowledge and innovation. In fact some authors advocate that such a right has already been born in flesh and blood and thus people have (or should have) the right to demand free access to information by minimizing the scope and importance of Copyright. A strong drive seems to demand the creation of a new “homo universalis” in this modern high tech era where every user of works of knowledge, technology and art need not be just a passive viewer but may also become a potential creator and active peer.

Indeed, international and national legislators acknowledge this social request for a more free access to technical and educational materials and to this effect they have proposed or are in process of proposing measures capable of facilitating the access of cultural and educational institutions to copyright material online with reasonable terms, having regard of the benefits derived by public access to knowledge and the need of providing adequate remuneration to the creators of copyright material and their investors.

Although contractual practices internationally in the field of copyright are far from being consistent, new legislative tools have been adopted, taking into consideration the introduction of new technologies, while older statutes (such as the Berne Convention and TRIPS) still offer the necessary guidelines to those concerned for the correct implementation of the relevant legal notions. Future can learn from the past, therefore, older models may still inspire new measures, both legal and in the practice of Copyright, and may assist to find the golden mean between the need to protect creators and investors on the one hand and the right of the public to have access to information on the other.

Departing from the idea that digital technology is here to stay and supporting the general idea that technology is by no means devastating, but, to the contrary, beneficiary to mankind, we will examine statutory and practical issues and will attempt to find the balance between technology and copyright in the new economy of intangible goods in relation to digital libraries.

To be more specific, we shall consider copyright issues connected with the reporting of news and the new commercial practice of uploading contents of newspapers, wholly or partially, in digital libraries.

II. BACKGROUND

Printed newspapers have been for centuries the most popular source of information for the public and a feature of democracy itself, connected with the freedom of expression of people, political parties, social and financial groups, scientists and artists.

Even after the introduction of broadcasting technology, newspapers remained very important as the primary source of news, notwithstanding that nowadays people often rely on television newscasts for their daily update of current events. Nevertheless, newspapers still greatly influence the “formulation” or the expression of public opinion by providing the necessary podium for journalists to express their personal views and to analyze political, economical, business, or cultural events.

That being said, due to the sharp influence of technology, which has reshaped the lives of millions of people, the ethics of information have changed and many prefer to read displayed digitized papers on their computer screen rather than buying and perusing an old-fashion printed newspaper. The computer technology avalanche has even changed the news reporting ethics. Digital newspapers are capable of constantly updating their contents and report news almost instantly as

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