"Copyright Law is Outdated." An Interview with Till Kreutzer

German copyright law is not equal to the challenges of a digital age, in Till Kreutzer's view at least. A lawyer and one of the people behind the Internet portal iRights.info, Kreutzer is calling for a fundamental revision of the law. He believes that the interests of users should also be taken into consideration.

Mr Kreutzer, in what sort of crisis does copyright law in Germany find itself?

The crisis is the fact that current copyright law in Germany dates back to 1965 – and since that time has only been changed in terms of details. It was not designed for a digital era. These days, however, almost every household uses digital technologies such as the Internet.

Why has this changed the situation?

In the past, copyright was a law for professionals, i.e. for authors and managers of book and record companies or for the film industry. Nowadays, amateurs are being confronted with copyright issues almost every day on the Internet, as Web 2.0 users for example. Consequently, copyright has become a general code of conduct for society. However, it is far too complex to be suitable for this purpose, and is difficult to apply on account of its outdated design.

Downloading music as trivial offence

Can you give an example to illustrate this?

Take the file sharing sites on the Internet, where millions of people share music with other users every day. People either do not realize or consciously ignore the fact that this constitutes a violation of copyright law. Young people in particular have come to regard music downloads as completely normal, something everyone does. The consequence are waves of warnings and lawsuits which pose a not inconsiderable threat to many people.

Another problem is the fact that the law is constantly being tightened and in some cases contains regulations which users do not understand or do not accept. For example, if someone buys a music CD, a film DVD or a video cassette in a shop, they are perfectly entitled to resell it or auction it off on the Internet. However, if one purchases music or films by downloading them from an online shop, these downloaded files cannot be sold on. The reason for this is that the regulation that legalizes the resale of data media is not applicable here, yet it is completely unclear whether it should apply.

Other fundamental principles of copyright law are also being increasingly watered down or jettisoned in order to uphold the interests of rights-holders who want far-reaching protection against "piracy".

Copyright protection often fails to protect

What principles is current copyright law based on?

One of the basic principles of copyright law is to give legal protection to the author or creator of the work in question, i.e. the composer of a piece of music, the film-maker or the software programmer is considered important. First and foremost, it is a question of the author's personal relationship to his own work, but it is also a question of his economic interests when his work is used. Every time a work is used, the author should receive some royalties.

Nowadays, however, copyright law is often of little use to the authors. In many cases, it even runs contrary to their interests, and benefits only the industry that markets the works. This is because many authors sell their rights more or less wholesale to a publishing house, a record company or a film company in return for a fixed one-off fee. Once the author is no longer in possession of these rights, he can no longer profit from longer, tighter or further-reaching laws.

The boundaries between creators and users are becoming blurred

What is going wrong?

Copyright law is moving further and further away from its role of protecting the creators and instead is protecting the economic interests of the industries that market their works. When reforms are implemented at the political level, it is frequently stressed that the aim is to strengthen the rights of the authors. In very many cases, however, it is all about the interests of the users. A good example of this is an initiative of the EU Commission – which for the time being has been halted – which aims to nearly double the duration of protection for audio recordings from 50 to 95 years, claiming that artists, particularly studio musicians, would otherwise be deprived in old age of their well-deserved royalty earnings. In actual fact, studio musicians generally sign all rights over in return for a lump-sum payment and do not profit in any way from such extensions – it is mainly the record companies who benefit.

These days, it is often in the interest of the authors that copyright law does not go too far. After all, they rely on being able to use other works in order to create something new – as is the case with music sampling, for example. In other words, authors are also often users at the same time. The interests of users in having a free flow of information and freedom of artistic or scientific development, however, is regarded as less important than the purely economic interests of the industry, and is given insufficient consideration.

"Copyright law needs to be divided in two"

What solution would you propose?

Thought should be given to copyright law and to the way it protects authors. An essential element of any redefined copyright law must be that the interests in the use of works should be given equal protection and given due consideration when the copyright law is drafted. Copyright law must always have boundaries where there is a preponderance of other interests.

In order to get copyright law back on track, one could think about dividing it into a copyright law for authors and a work protection law for authors and industry, or for just one of these two groups. The latter would be a pragmatic and functional economic law intended to ensure the most effective marketing possible, but without going any further than that. This new approach could be used to try re-establishing a more honest system.

Dr Till Kreutzer is a lawyer with i.e. in Hamburg and an associate member of the media and telecommunications law research unit at the Hans Bredow Institute for Media Research, and of the "Institut für Rechtsfragen der Freien und Open Source Software" (Institute for Legal Questions of Free and Open Source Software, ifrOSS). He took part as an expert in the hearing on the adoption of the "Law on the Regulation of Copyright in the Information Society" in the German Bundestag (i.e. parliament) and was a member of a main working group convened by the Federal Government to draft a second law on the subject.

In addition, he is part of the editorial team at iRights.info, an information portal which explains copyright law in plain language for users and authors. His book *Das Modell des deutschen Urheberrechts und Regelungsalternativen* (i.e. The Model of German Copyright Law and Regulation Alternatives) was published at the end of 2008 by Nomos Verlag.

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