Libraries
- Expert Discussion
- Conservation
- Copyright Law
- German Libraries
- Digital Libraries
- Model Projects
- Background
- Links

Media

Science and Education

"The Debate On Copyright Law Is A Very Limited One" – An Interview With Reto Hilty

There are those who want to see more stringency, others who want to see less – interests are greatly divided indeed in the debate on copyright law. What are the key factors in the debate on remuneration? Here are a few answers from Reto Hilty, Director of the Max Planck Institute for Intellectual Property.

Professor Hilty, what is in fact the main bone of contention in this debate on copyright law?

The situation is so complex that it is hard to put it into simple words. On top of that people's perception is limited. That is the basic problem in the current debate on copyright law. The focus is namely on two parties – the authors and the users. There is however a fundamental clash of interests between these two groups. The truth of the matter is however that the right holders or authors' group is made up of several players who in some cases have conflicting interests. It is misleading to put them all under the heading "authors".

What we are actually dealing with is a long value chain. When it comes to copyright law the first thing needed is a creative person who creates the product or work. In most cases however it is often the case that the creator cannot hold the rights to his work because he is not in a position to market it alone. He needs specialists to put it on the market for him and to make money for him. The marketers however will only do this if the creator renounces the rights to the product. In this situation however the creator is in the weaker position compared to the marketing industry. He is often just fobbed off with peanuts and does not get an adequate share of the profits made by the publishers and film/music producers.

What would then be a more accurate perception of the debate on copyright law?

The discrepancies to be found along the value chain should not be ignored – especially when discussing illegal user behaviour. The creator in fact only suffers from illegal use if he is benefiting in a substantial way from the profits stemming from the value chain. This is why it is so misleading to generally demand that the rights of the authors(creators) be strengthened. Any unreflected extension of copyright protection laws would not necessarily improve the situation of the creators. The legal protection should be structured in such a way that it would give those being protected more incentives, either to be creative – as a creator – or to make more investments – as a marketer.

The mechanisms of competition are impeded as soon as the protection goes beyond what is necessary. Where competition is impeded, prices go up and then it is the consumer that has to foot the bill.

"Limit the protection"

Is there any solution in sight?

Protection has to be limited in two ways. First, the period of protection has to be shortened. It is simply ridiculous that copyright protection remains in effect for up to 70 years after the death of the author/creator. Seen from the point of view of people living today, hits that, for example, were heard for a mere one or two years on the radio are protected forever. This means that downstream providers like online music portals, for example, can still only work on a licence basis. This however is so firmly embedded in European law that it will not be an easy task to change it.

Secondly, the exclusive rights to a product have to be limited. Certain uses or exploitation by third parties should be allowed, if they are thought to be pro-competitive, within the shortened period of protection. In such cases the holder of the intellectual property rights should not be allowed to take action against certain forms of exploitation, but he ought to, on the other hand, receive a reasonable share of the revenue from such exploitation.

And who is in a position to make such changes?

In principle it is the job of the legislators. That however is the crux of the matter. The legislators are bound by international law and that cannot be changed so easily – because the countries involved all have differing interests. USA, for example, is very difficult to convince that a change in music copyright law would be a good thing, because the American music industry is number one in the world and wants to go on exporting its product.

German legislators are also bound by European law. European law obliges member states to achieve a minimum level of harmonisation to the effect that a minimal form of protection has to be guaranteed. As long as European law provides this minimum form of protection in favour of the holders of intellectual property rights, national legislators cannot make any changes off their own bat. European law would also have to undergo a sea change and this is really quite unrealistic, as in practice this could only be brought about by an initiative launched by the European Commission – and the Commission is driven by the interests of industry.

"A topic fit for the masses"

It sounds as if the conflict cannot be solved.

Not in any fast way, at least. That is why we should be more or less grateful that the masses have picked up on the topic. When politicians realise that the masses have got hold of something, that is when they start to think whether they can afford to ignore these people if they want to be re-elected. Tens of thousands of people took to the streets in incredibly cold weather to demonstrate against the controversial ACTA Agreement. The feared tightening of copyright law did not come about - the European Parliament rejected ACTA.

We should also be equally grateful that there is a *Piratenpartei* (the Pirates' Party – a new party in Germany that focuses, among other things, on Internet issues) that maybe makes unrealistic demands, but has put one issue on the agenda that just cannot be ignored – the fact that copyright law generates enormously high amounts of added value. It is in fact one of today's major business sectors. This is why, for this reason alone, politicians should have a real interest in finding solutions.

Reto Hilty was born in Zurich in 1958 and studied mechanical engineering there at ETH (Swiss Federal Institute of Technology), as well as law at the university. He qualified as a professor in Zurich in 2000 and first lectured in law at ETH. Later in 2002 he was appointed Director of the Max Planck Institute for Intellectual Property and Competition Law in Munich.

Dominik Reinle conducted the interview. He has a German "Diplom" degree in sociology and works as a free-lance journalist in Cologne, among other things he is also on the Internet editorial staff of the radio and TV station – Westdeutscher Rundfunk.

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