The Variable Scope of the Exclusive Economic Rights in Copyright

This paper is concerned with the exclusive economic rights in copyright, the scope of which is not static but changes over time. The evolution of these rights has been influenced by various factors, including technological advancements, legal developments, and societal changes. The purpose of this paper is to analyze the variable scope of these rights and to discuss their implications.

Overview of the Book

Originally, the starting point of the research was the observation that in a digital age, access to works protected under copyright is no longer limited to physical copies. In fact, the rise of digital technologies has led to new forms of exploitation that were not possible in the past. The paper seeks to explore how these changes have affected the scope of exclusive economic rights in copyright.

The Right of Communication to the Public

The Right of Communication to the Public is a crucial aspect of copyright law. In the context of digital technologies, this right has taken on new dimensions. The paper explores how the communication of works to the public has evolved over time and how it has been affected by technological advancements.

The Reproduction Right

The reproduction right is another fundamental aspect of copyright law. With the advent of digital technologies, the reproduction right has been subject to significant changes. The paper examines how the reproduction right has been interpreted and applied in different legal frameworks, and considers whether these interpretations are still relevant in the current context.

The Legal Uncertainty

The paper also addresses the issue of legal uncertainty, particularly in the context of online services and the use of works protected under copyright. It discusses how legal uncertainty has impacted the use of works in the digital environment and the potential implications for future developments.

Conclusion

In conclusion, the paper argues that the scope of exclusive economic rights in copyright is not static but evolves over time. This evolution is driven by technological advancements and changes in societal norms. The paper concludes with a call for continued research and discussion on this issue to ensure that copyright law remains relevant and effective in the digital age.

References

The paper draws on a range of sources, including academic articles, legal opinions, and reports on the evolution of copyright law. These references are not listed here but are referenced within the paper text.
or a few houses in the same street, the old question whether such retransmission reached a “public” was relevant again in the light of several factors (arguments were developed in the sense that an antenna on the rooftop of a building serving the inhabitants – each in their own right entitled to receive the programmes – was no more than a “collective reception device”; the urbanism policy of the cities prohibited that several antennas be placed; in other cases the owner had a commercial objective, where she let her property to a tenant at a higher price due to the better reception etc.). Questions that sound familiar to copyright enthusiasts who follow abundant copyright rulings of the Court of Justice on this issue (e.g. in Rafael Hoteles, Organismos Sillogikis, PPL and OSA).

The possibility of combining several transmission technologies to bring (protected) programmes to the public gave rise to several uncertainties. Television programmes were commonly broadcast (by radio waves) and retransmitted by cable to the cable subscribers, which gave rise to two separate acts of communication to the public (the broadcast and the retransmission by cable). Other combinations were possible, such as the transmission by satellite and the subsequent retransmission (on Internet) or the “direct injection” of a television programme in the cable networks (as in the case recently lodged before the CJEU).

The Internet led to an overhaul of the models of “content” transmission, at the technical, the commercial and the cultural level. Copyright lawyers are getting headaches over the same questions as before; when does an architecture consisting of several technical transmissions qualify as a “communication to the public” (as in ITV)? How to distinguish primary, secondary and several independent communications to the public; or transmissions that are not communications to the public (as in Svensson, BestWater)? How is the “public” constituted online? These are difficult questions, especially when the legal issues must be decided on the basis of a general right of communication to the public (including the making available right) that gives little guidance as to what is protected. In contrast, the Berne Convention recognises specific rights of communication to the public and offers more guidance to the copyright lawyer – then again the Berne Convention took several decades to develop and to adapt to new forms of exploitation. Finally, the coexistence of the rights of communication to the public and reproduction leaves many unanswered questions, which are sure to cause more copyright concerns for the CJEU (some aspects have been examined in a recently published study for the European Commission).

Conclusion

The book concludes with a suggestion for a more consistent approach to the exclusive economic rights, the rights of reproduction and communication to the public. Unsurprisingly, it suggests aligning both rights to the exploitation of the work, both for the delineation of the rights (existence of a protected act) and for the qualification of the protected acts. Such an economic approach has historically driven the application of the “exploitation rights” and the exceptions to the rights. Although a technical approach seems to have been acquired in the existing copyright framework, it has been demonstrated that this methodology is unnecessarily complicated and sometimes even inadequate to articulate appropriate protection (thus avoiding excessive protection). The exploitation of the work is also central in the methodology that is proposed to apply the reproduction right and the right of communication to the public (and to distinguish both).

As far as online search engines are concerned, it is shown that national courts have judged the matter differently – which shows that the harmonisation of the rights of reproduction and communication to the public (and their accumulation) is necessary and that guidance for the application of these rights is lacking search engines. However, readers in an online environment do not exist as a copyright protected act. It is however suggested that the technical process is considered as a whole and that copyright law should treat as protected acts only those material copies and transmissions that amount to an actual exploitation (rather than considering each and every use separately).