The Variable Scope of the Exclusive Economic Rights in Copyright

Sari Depreeuw

Publication: The variable scope of the exclusive economic rights in copyright © Copyright: 2013

The book “The Variable Scope of the Exclusive Economic Rights in Copyright” was recently published in Kluwer’s Information Law Series (published in Kluwer’s Information Law Series). The book offers a comprehensive analysis of the variable scope of the exclusive economic rights in copyright, focusing on the Berne Convention and the European Union. It explores the evolution of copyright law, the development of new technologies, and the impact of these developments on the scope of the exclusive economic rights. The book also examines the relationship between the reproduction right and the right of communication to the public, and the implications of these rights for the protection of computer programs.

Overview of the Book

The starting point of the research was the observation that in a digital society, where technical advancements are rapidly evolving, the scope of the exclusive economic rights in copyright is subject to change. This evolving nature of the rights can be attributed to the rapid development of new technologies and the changing landscape of information dissemination. The book provides a detailed and nuanced analysis of these changes, showing how the scope of the exclusive economic rights in copyright is shaped by technological advancements, international agreements, and national laws.

The book is divided into several parts, each focusing on a specific area of copyright law. The first part explores the reproduction right, examining the evolution of this right and its implications for the protection of works in the digital age. The second part focuses on the right of communication to the public, discussing the implications of this right for the protection of works in the digital environment. The third part examines the protection of computer programs, exploring the challenge of adapting copyright law to the digital age and the implications of new technologies for the protection of computer programs.

The book aims to provide a comprehensive and nuanced analysis of the variable scope of the exclusive economic rights in copyright, offering insights into the evolving nature of copyright law and its implications for the protection of works in the digital age.
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
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 radio-broadcasting (as in Lagardère) or the “direct injection” of a
television programme in the cable network (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 causing excessive protections). The exploitation of the work in a new context is the methodology that is proposed to apply the reproduction right and the right of communication to the public (and to expunge both).

As far as online search engines are concerned, it is shown that national courts have judged the matter differently – which shows that the transmission of the rights of reproduction and communication to the public (and their accumulation) is no more and no less than guidance for the application of these rights in a specific search engine – hence the need for an adequate methodology to articulate appropriate protection. The exploitation of the work in a new context is the methodology that is proposed to apply the reproduction right and the right of communication to the public (and to expunge both).