Kluwer Copyright Blog

Copyright 4.0: a global perspective (and many takeaways) – IP Conference held at the University of Geneva on February 22, 2017 – Part 1

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From the Celestial Jukebox to AI. We have now reached the "Celestial Jukebox" predicted by Prof. Goldstein,*[1]* and have even gone well beyond with the rise of Machine Learning and Artificial Intelligence. These key issues were at the heart of the annual IP conference organised by the University of Geneva on February 22, 2017 (programme available here). The approach taken by organisers Jacques de Werra and Yaniv Benhamou was perfectly in line with the spirit characterising Geneva: inviting speakers from all around the globe and representing all sectors (academia, international organisations, industry and private practice) in order to gain a broad picture of the evolution of copyright in today's high tech world.

This is the first of a two-part article summarising the essence of the presentations as we understood them, restructured along the main themes driving copyright law.

1. Copyright is subject to major evolutions everywhere.

- **At the WIPO level**, one of the priorities is still to have more developing countries joining the World Copyright Treaty (WCT). But almost as important is the new Beijing Treaty on Audiovisual Performances which brings up to speed the rights of audiovisual performers (who, up to that point, had benefitted only from the minimum protection granted by the Rome Convention of 1961 and the WIPO Performances and Phonograms Treaty – WPPT). The rights of audiovisual performers are becoming a major topic thanks to new technologies allowing people to easily make available and have access to such performances. The magic number of 30 signing countries, which will allow the Beijing Treaty to enter into force, has not yet been reached however. In the WIPO context, it should be further noted that one of the major next steps may be a diplomatic conference in 2018 on broadcasting rights.
- **In the EU**, there is a stark contrast between the mind-blowing activity of the ECJ (on key issues such as the scope of copyright, exceptions to copyright, exhaustion and punitive damages – see part 2 with respect to these topics) and the not very ambitious position of the Commission in its Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (the "**Proposal for a Directive**").
- **In Asia**, there are multiple developments in copyright. One should note in particular the interesting example of Hong Kong, where the modernisation of copyright law seems at the

moment very difficult. In Mainland China, recent evolutions in copyright law, unlike former ones, were self-initiated in order to fit with the tech development of the country. At the regional level, RCEP negotiations are about to start with the goal, *inter alia*, of reducing impediments to trade and promoting economic integration.

- **North America:** in the US, copyright law evolves through case law (in particular with respect to ISP liability and infringement notices to users).*[2]* By contrast, in 2012 Canada adopted quite a complex Copyright Modernization Act.

- **In Switzerland**, discussions are currently taking place about revising the current Copyright Act. The proposed revisions are detailed here, with the key issues being the liability of Internet Service Providers (ISPs) and Internet Access Providers (IAPs).

2. Finding the right balance between players is getting more complicated.

- **User-generated content is blurring the lines.** Copyright has always been about finding the difficult balance between the interests of authors, users and entrepreneurs. Things are getting more complicated now that users – through user-generated content – are increasingly simultaneously both authors and entrepreneurs.

- **News scraping is killing the press.** Some states have tried to adopt so-called Google Laws in order to regulate linking by Google to news provided online by press agencies and newspapers. As a result, Google has stopped said linking, and the consequence has been even worse for the news companies concerned (i.e. visits to their websites have decreased even more). The question now is whether a system of remuneration should be set up. The Proposal for a Directive provides for this kind of mechanism.

- **Is general interest neglected by the ECJ?** This question can be raised in light of the *National Library of France case* relating to a recent French Act on the digital exploitation of unavailable books of the twentieth century through the creation of a specific compulsory collective management system for out-of-commerce books (the initiative aimed at responding to Google's digitisation strategy). In essence, anyone could ask the National Library of France to register such books in a freely accessible online public database. The ECJ held in particular that the French legislation does not offer a mechanism to ensure that authors are actually and individually informed, and a "*mere lack of opposition on their part cannot be regarded as the expression of their implicit consent to that use*" (para. 43). Thus, one may wonder whether the ECJ did not put too much emphasis on the consent required from the author rather than on the public interest in having broader access to the books in question..

3. Authorship is revisited through AI.

We all know the famous monkey selfie. This was just the prelude to what's coming next: can robots create works and become copyright holders? The question may at first glance make little sense. Well, various analyses show that the way machines create does not differ from human thinking and creativity. The key question may then be: considering that copyright ultimately aims at creating incentives, would recognising authorship by robots increase their incentive to create (or the incentive of humans coding said robots)? In this connection, reference was made to works such as I, Robot by Isaac Asimov, the Next Rembrandt Project, the "*Google swallows 11k novels to improve AI's conversation" debate* in the Guardian and the EU Parliament Report on Civil Rules on Robotics.

The second part of this article, discussing the remaining presentations, will be published next week. *To make sure you do not miss out on posts from the Kluwer Copyright Blog, please subscribe to the blog* ***here.***

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[1] Goldstein P., Copyright's Highway – From Gutenberg to the Celestial Jukebox, Stanford University Press, 2003 (revised edition). The Celestial Jukebox is defined as a digital repository of books, movies and music available on demand.

[2] See in particular Lenz v. Universal Music Corp., 801 F. 3d 1126 (2015, 9th Cir.). With respect to one of the seminal cases, see judgment of the United States Supreme Court decided on January 17, 1984, Sony Corporation of America v. Universal City Studios, Inc (Betamax case). Judgment available here: https://supreme.justia.com/cases/federal/us/464/417/case.html. According to the US Supreme Court, the making of individual copies of complete television shows for purposes of time shifting does not constitute copyright infringement, but is fair use; the manufacturers of home video recording devices, such as Betamax, cannot be liable for infringement.

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