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Conference Paper

Considering the Innovative Application of Copyright in the Digital World

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Abstract

John Perry Barlow in his article “The Economy of Ideas” refers to the problem of digitized property: “The enigma is this: If our property can be infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even leaving our possession, how can we protect it? How are we going to get paid for the work we do with our minds? And, if we can't get paid, what will assure the continued creation and distribution of such work?¹” This paper questions the application of copyright as to digitised works protected and whether a more innovative application of copyright is required in the context of digital works² and the “information economy”.

What is Digitisation?

According to online information technology encyclopedia and learning centre WhatIs.com <http://whatis.techtarget.com/definition/0,,sid9_gci896692,00.html>:

“Digitization is the process of converting information into a digital format. In this format, information is organized into discrete units of data (called bits) that can be separately addressed (usually in multiple-bit groups called bytes). This is the binary data that computers and many devices with computing capacity (such as digital cameras and digital hearing aids) can process.”

According to a White Paper “The Diverse and Exploding Digital Universe” produced by the technology consultancy IDC and sponsored by the IT firm EMC <<http://documents.scribd.com/docs/1mue2bcovd69fdlji01.pdf>>:

- + the digital universe³ in 2007 — at 2.25 x 10²¹ bits (281 exabytes or 281 billion gigabytes) as a result of faster growth in cameras, digital TV shipments, and better understanding of information replication;
- + by 2011, the digital universe will be 10 times the size it was in 2006; and

- + fast-growing corners of the digital universe include those related to digital TV, surveillance cameras, internet access in emerging countries, sensor-based applications, datacenters supporting “cloud computing,” and social networks.

For the rights holder of intellectual property over digitised information, a review of the results of the survey is actively pursued by the question: What if any impact does the exploding digital universe have on intellectual property frameworks?

Perhaps answering this question 14 years prior to the release of the IDC White Paper, in the March 1994 issue of Wired Magazine, John Perry Barlow, in his article “The Economy of Ideas” announced to the world that everything we know about intellectual property is wrong. Barlow’s article, notwithstanding its revolutionary nature raised questions that remain pertinent as we consider the complexity of the ever expanding digital universe.

Barlow raised the enigma of digitised property:

“The enigma is this: If our property can be infinitely reproduced and instantaneously distributed all over the planet without cost, without our knowledge, without its even leaving our possession, how can we protect it? How are we going to get paid for the work we do with our minds? And, if we can't get paid, what will assure the continued creation and distribution of such work?”

With respect to intellectual property, Barlow observed that digital technology is detaching information from the physical plane, where property law of all sorts has always found definition. Barlow’s view was that the current intellectual property law could not be customised to contain digitised expression. He called for an entirely new set of methods as befits an entirely new set of circumstances.

In an interview 10 years after the publication of the article with Benjamin Walker (Audio Berkman producer), Barlow stated that he thought his article was communicating the obvious.

Barlow's closing remarks surrounded a shift in business strategy to cope with the enigma of digitised property: a shift towards a service provider relationship or a relationship of performance versus the product based business strategy.

This shift heralded a new point of view regarding the information economy – a shift in protectionist intellectual property regimes to collaborative “open” culture brought on by the internet and digitised information, “copyleft”.

Why Copyleft?

A few thoughts from The Next Economy of Ideas
<<http://www.negativland.com/wired.html>>:

“The Grateful Dead, for whom I once wrote songs, learned by accident that if we let fans tape concerts and freely reproduce those tapes -"stealing" our intellectual "property" just like those heinous Napsterians - the tapes would become a marketing virus that would spawn enough Deadheads to fill any stadium in America. Even though Deadheads had free recordings that often were more entertaining than the band's commercial albums, fans still went out and bought records in such quantity that most of them went platinum”

“...during the two years since MP3 music began flooding the Net, CD sales have risen by 20 percent...”

“Finally, after giving up on copy protection, the software industry expected that widespread piracy would surely occur. And it did. Even so, the software industry is booming. Why? Because the more a program is pirated, the more likely it is to become a standard. All these examples point to the same conclusion; Noncommercial distribution of information increases the sale of commercial information. Abundance breeds abundance...”

Defining “Copyleft”

Copyleft is a play on the word copyright and is the practice of using copyright law to remove restrictions on distributing copies and modified versions of a work for others and requiring that the same freedoms be preserved in modified versions <<http://en.wikipedia.org/wiki/Copyleft>>.

More simply put, copyleft refers to licensing options that encourage the expansion of and building upon creative work in accordance with the authorisation of the copyright holder.



The above symbol is the inverse of the copyright symbol representative of copyleft.

The common practice for using copyleft is to codify the copying terms for a work with a license which typically gives each person possessing a copy of the work the same freedoms as the author, including:

- + the freedom to use and study the work;
- + the freedom to copy and share the work with others;
- + the freedom to modify the work;
- + and the freedom to distribute modified and therefore derivative works <<http://en.wikipedia.org/wiki/Copyleft>>.

In order for the work to be truly copyleft, the license has to ensure that the author of a derived work can only distribute such works under the same or equivalent license <<http://en.wikipedia.org/wiki/Copyleft>>.

Computer programs is an example of a work in which the copyright holder usually places restrictions on the reproduction, adaptation or distribution of the work (computer program.) Should a copyright holder of a specific computer program choose to however, she may through a copyleft licensing scheme, give every person who receives a copy of a work

permission to reproduce, adapt or distribute the computer program as long as any resulting copies or adaptations are also bound by the same copyleft licensing scheme.

An example of such license applied to computer programs is the GNU General Public License (GNU GPL).

Another example of a copyleft license is the Share Alike license used by Creative Commons. Creative Commons defines the spectrum of possibilities between full copyright — all rights reserved — and the public domain — no rights reserved <<http://creativecommons.org/about/>> (see image below <<http://creativecommons.org/about/>>).



Creative Commons licenses help you keep your copyright while inviting certain uses of your work — a “some rights reserved” copyright <<http://creativecommons.org/about/>>.

Legal Standing of Copyleft in South African Law

The following works are eligible for copyright protection as per Section 2 of the Copyright Act⁴

literary works; musical works; artistic works; cinematograph films; sound recordings; broadcasts; programme-carrying signals; published editions; and computer programs

Section 22 of the Copyright Act⁵ provides the following in respect of licensing of the above works eligible for copyright:

(1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law.

(4) A non-exclusive license to do an act which is subject to copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time: Provided that such

a license granted by contract shall not be revoked, either by the person who granted the license or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment, license or testamentary disposition may be granted or made in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as movable property.

(7) A license granted in respect of any copyright by the person who, in relation to the matters to which the license relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the license or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the license of the owner of the copyright shall be construed accordingly.

(8) Where the doing of anything is authorized by the grantee of a license or a person deriving title from the grantee, and it is within the terms, including any implied terms, of the license for him to authorize it, it shall for the purpose of this Act be deemed to be done with the license of the grantor and of every person, if any, upon whom the license is binding.

Against the backdrop of Section 22, the Copyright Act offers no objection to copyleft. The tone of the legislation empowers the copyright holder to determine the rights that may be granted to the user of the work in which copyright vests.

So instead of why, ask why not. Consider for a moment the digital universe, the product of your intellect and what if...

¹ JP Barlow, Wired 2.03: The Economy of Ideas
<http://www.wired.com/wired/archive/2.03/economy.ideas_pr.html>

² refers to protected works under the Copyright Act 98 of 1978 expressed, stored and transmitted by digital means

³ information that is either created, captured, or replicated in digital form

⁴ 98 of 1978

⁵ 98 of 1978