Chapter 13
Digital Rights Management and Corporate Hegemony: Avenues for Reform

Nikhil Moro
University of North Texas, USA

ABSTRACT

To the extent that data constitutes creative work in a tangible form, it represents intellectual property and implicates copyright. Understanding data mining, thus, invokes an appreciation of the principle and law of copyright. With the advent of digital rights management (DRM), the discourse of the U.S. law of copyright has shifted from fair use to circumventions of copyright-protecting software by hackers. In light of the ever-rising market power of transnational media corporations, this essay engages the political philosophy of Antonio Gramsci to address a normative question of who ought to control protected content and to what extent. It identifies six inflection points for any effort to divest copyright law of the disproportionate influence of corporate lobbying. Underlying the discussion is a presumption that reform of the law of copyright through dialogue among key stakeholders – creative individuals, technology innovators, legislators, policy makers, international mediators, data miners and other scholars, and transnational corporations – would help preempt any Gramsci-prescribed socialist reaction to the exclusive copyright regime enabled by DRM.

INTRODUCTION

The money power has grown so great that the issue of all issues is whether the corporations shall rule this country or the country shall again rule the corporations.
– Joseph Pulitzer, editorial titled "The Great Issue," St. Louis Post and Dispatch, 10 January 1879

DOI: 10.4018/978-1-4666-4078-8.ch013

Few studies have examined data mining in a context of the principle of copyright and antecedent United States law. This essay does so by illumining pitfalls on the path of intellectual property protections in general and copyright in particular.[1] It discusses astute practices for digital content pioneers and simultaneously begins a re-conceptualization of the principle of copyright.

As content and its creation have steadily migrated online, data mining has lived up to its

early prediction of making "a key contribution to e-business" (Melab, 2001, p. 309). When defined as "a process of inductively analyzing data to assess known relationships as well as to find interesting patterns and unknown relationships" (Murray, 2009, p. 160), data mining helps identify business problems in the content industries, gain knowledge of industry issues, predict consumption behavior, and spotlight best and innovative practices. In all of those applications, it uses analytics and techniques that, in turn, enable fresh insights into large datasets. Data mining typically engages both computational and human resources to extract knowledge from voluminous data (Schime & Murray, 2007). It thus enables decision-making in an environment of optimum awareness. Regardless of industry, it can help optimize production efficiencies.

In the information society, which is defined by progressively increasing proportions of product cost going into content creation and out of content distribution, and into message and out of medium (Boyle, 1997), data mining offers a method to check costs of innovation as well as enable new forms of content that were uneconomical in the past.

The essay explores primary evidence of the law of copyright to identify policy opportunities to diverge from the status quo, with a view to divesting the law of a disproportionate influence of transnational corporations. Along the way, it offers suggestions to the World Intellectual Property Organization, located in Geneva, to restore a balance between various stakeholders of the law of copyright.

LEGAL ASPECTS OF DATA MINING

Law, a building block of modern society, is defined in codes of conduct that are established and enforced (via threat of sanctions) by duly constituted authority in society as a whole, as opposed to ethics, which involves culture-specific conduct prescriptions that in themselves are unenforceable by courts.

Data mining invokes copyright more than any other area of law except perhaps privacy. Reflections from a legal analysis of primary texts of the U.S. law of copyright, including Article I of the U.S. constitution, Title 17 of the U.S. Code, the Digital Millennium Copyright Act (DMCA) of 1998, and more briefly, The Audio Home Recording Act (AHRA) of 1992, can enable a critique of the legal legitimacy of "digital rights management" in light of the well-known influence of corporate lobbying on copyright law. The writer's objective is to identify any inflection points from which the discourse on copyright reform may take off in directions that would produce meaningful reform. Such reform, while including various stakeholders, would restore congruity and balance among exclusive copyright, practices of technological innovation, and fair use.

Evolving Priorities in Copyright Law

To the extent that it constitutes creative work in a tangible form, data represents intellectual property and, therefore, automatically implicates copyright law in order for its author to be able to exclusively reproduce, alter or distribute it for money. Understanding data mining, thus, invokes an appreciation of the principle and law of copyright, both of which guarantee creative endeavors a monetary incentive "by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (U.S. Constitution, Article I, 8:8).

Copyright, in principle and law, is equally central to defining the information society. From initially benefiting a clique of printers friendly to Queen Mary I in the middle of the 16th century, the law of copyright steadily transformed over the centuries (Bowker & Solberg, 2009). By close of the 19th century, it had come to protect commercial interest of authors across international borders,[2] and by the end of the 20th, it veritably turned into a