

Chapter 52

Intellectual Property Issues for Digital Libraries at the Intersection of Law, Technology, and the Public Interest

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ABSTRACT

The development of Digital libraries and repositories, a worldwide vision with enormous political and ideological importance for humanity, in an effort to approach cultures and preserve plurality and diversity, is directly affected by the provisions of Intellectual Property Law and is subject to the consideration of innovation through legislation. Legal issues such as these related to software use, database protection, the collection, digitization, archiving, and distribution of protected works are of outmost importance for the operation and viability of Digital libraries and repositories. In this chapter, the authors focus upon some of these legal issues and consider an alternative proposal in respect of Intellectual Property law for open access to creative works furnished to the public through Digital libraries and repositories. The alternative proposal pertains to the use of the Creative Commons licenses as a legal means to enhance Openness for Digital libraries.

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INTRODUCTION

Information technology enables the reproduction, saving, and distribution of culture, arts, and sciences as well as the recording of the collective memory of humanity. Not only does information technology make almost all kinds of human creativity available in the Internet networked public sphere, but also it enables the creation of new forms of art, creative expression, and distribution of knowledge. More often than not, the rapid pace in the evolution of information technology causes friction with Law in as much as Regulators' foresightedness could not have ruled to cope with new social trends, socio-political and economic phenomena in the market. Thus, the evolution of information technology is frequently seen as a factor that sets at stake the legal rights of creators and right-holders, as a cause for stricter Intellectual Property Law and legal protection for the initial and subsequent right-holders.

The instantaneous reaction towards making the Law stricter regarding the availability, use, and distribution of creative works via the Internet networked public sphere is—in most cases—a hazard to the evolution of digital libraries and repositories, i.e. organizations which leverage upon the radical changes caused by information technology and the tremendous capabilities that it has inferred upon the availability, use, and distribution of culture, arts, and sciences to the people. Making the Intellectual Property Law stricter in consideration of the rights of creators and right-holders, and most commonly the financial interests of them associated with the exploitation of their works in the markets, is not an option that satisfies at least to the point that it does not sufficiently cater for the interest of people and/or digital libraries and repositories in having access to and making use of creative works leveraging upon the dynamic of new Internet networked media. We have reached a point at which the challenge to amend the Intellectual Property Law with the aim to consider favourably the changes in society

caused by information technology, and to balance the conflicting interests of all the involved parties, i.e. creators, right-holders, and the people, in the creation, use of, distribution, and re-creation (remix) of protected works, is bigger than ever, at least in the history of Intellectual Property Law.

The development of digital libraries and repositories, a worldwide vision with enormous political and ideological importance for humanity, in an effort to approach cultures and preserve plurality and diversity, is directly affected by the provisions of Intellectual Property Law and is subject to the consideration of innovation through legislation. Legal issues such as these related to software use, database protection, the collection, digitization, archiving, and distribution of protected works are of outmost importance for the operation and viability of digital libraries and repositories.

In this chapter, we will focus upon some of these legal issues and consider an alternative proposal in respect of Intellectual Property law for open access to creative works furnished to the public through digital libraries and repositories. Open access for digital libraries is a sine-qua-non prerequisite for their viable operation. It's like oxygen for human beings.

Digital Libraries and Ethics

Digital libraries acquire, organize, and secure life-long access to creative works which are the building blocks of our civilization. Libraries are the repositories of human knowledge; they are our past, our present and our future (Mason, 2009).¹ Aside from the focus, the special collections and the added-value services which a digital library may encompass, the main reason for the existence and development of any digital libraries is the need to serve people in their quest to access knowledge.

Digital libraries have always been gates through which people could access knowledge hosted in the premises of these organizations. Libraries have adopted internal regulations, abide by national laws and international practices with

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