

## Chapter 73

# Information Agents, Social Web and Intellectual Property

**Áurea Anguera de Sojo**

*Escuela Universitaria de Informática, Spain*

**Francisco Serradilla**

*Escuela Universitaria de Informática, Spain*

### ABSTRACT

*In recent years, due to the development of the information society, there has been a substantial change in regulating certain legal aspects in the field of intellectual property. Focusing on the Internet, legally it is trying to protect, on the one hand, user interests in use and private access to information in order to ensure security and protection of the data exchanged on the Web and, on the other hand, to ensure respect and protection of copyright of the work as well as the sui generis right of database makers. The picture is extremely complicated as interests and rights that may collide with each other must be combined. In the case of Internet access to different content that is offered on the Web, there is also another problem. In many cases we are not only faced with the problem of determining who owns the rights or who is the author, but a new way of creating content through collaboration or automated software agents is spreading that is radically different from the traditional model which makes it even more complicated to establish the intellectual property regime and the rights derived thereof.*

### 1. INTRODUCTION

In recent years we have witnessed a tremendous development of technologies that enable user groups to disseminate, share and reuse information on the Web. Moreover, we are also witnessing the

increasingly significant expansion of automated techniques for capturing and reusing the information that is currently on the Web to develop new tasks for which the original information was probably not conceived.

An everyday example of these types of systems is search engines, currently led by the Google search engine, which captures infor-

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mation presently on the internet to carry out a “simple” task: making this information accessible to users. For this task, Google software downloads, stores and processes the contents of sites and shows part of this in the search results; it has even made this into a business through receiving large amounts of advertising revenue by showing information for which it does not own the intellectual property.

The development of the information society has also brought a substantial change in regulating certain legal aspects in the field of intellectual property and especially copyright and the *sui generis* right derived thereof. The European Union has been making a great effort since the ‘90s to try to harmonise Member State legislation relating to intellectual property and the information society in general. This has been done in such a way to ensure both the development and growth of the information society as well as the free movement of goods and services by respecting in all cases both the economic as well as personal rights that may arise in favour of the owners or authors of the data or information. Since the European Council summit in Corfu in June 1994, the need to harmonise the laws of different States in order to ensure free movement of goods and services has been stressed. This harmonisation should be based on establishing a general and flexible legal framework to encourage the development of the information society and in turn ensure the protection of rights of the authors and owners of the work and content. This is due to the fact that protecting these rights is considered to be the basis for stimulating development and marketing new products and services as well as creative activity. Within this effort being made in Europe to harmonise legislation, Directives 96/9/EC on the legal protection of databases and 2001/29/EC relating to harmonising certain aspects of copyright and related rights in the information society are worth noting, among others.

The European Commission has been tracking how the different E.U. Member States have been transposing the Directives into their legal systems as well as how these have been applied by the courts in the different States. (Report on the application of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society [2001/29/EC]).

Focusing on the Internet, we can say that legally it is trying to protect, on the one hand, user interests in use and private access to information in order to ensure security and protection of the data exchanged on the Web and, on the other hand, to ensure respect and protection of copyright of the work as well as the *sui generis* right of database makers. The picture, as can be seen, is extremely complicated as interests and rights that may collide with each other must be combined and the regulation that exists in relation to these poses unclear boundaries which are often difficult to regulate.

In the case of Internet access to different content that is offered on the Web, there is also another problem. This is because in many cases we are not only faced with the problem of determining who owns the rights or who is the author, but a new way of creating content through collaboration is spreading that is radically different from the traditional model (the best known example is Wikipedia) which makes it even more complicated to establish the intellectual property regime and the rights derived thereof.

Taking these two fields into account (technology and legal), in this chapter we will analyse a number of actual cases in which the boundary is unclear, as well as the technical and strategic measures that are used to prevent agents accessing the information, in addition to the technical and strategic measures to access the information in spite of everything. This will be done from the perspective of applicable rules and interpretations that may shed some light on situations in which our laws are simply increasingly outdated.

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