

Chapter XIII

Legal Issues of Electronic Publishing in Virtual Environments

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INTRODUCTION

Electronic publishing is a new concept, aiming at replacing traditional publishing media and making available the electronic delivery of digital content. Initially, e-publishing did not yield expected economic outcomes (Zahrt, 2003). The increase in the use of information and communication technologies, however, and the development of fast network connections, has provided electronic publishing new opportunities. Furthermore, e-publishing changed from text-based applications into multimedia presentations, which can be disseminated in various forms over network environments such as the Internet (Ramaiah, Foo, & Choo, 2003).

In more particular, e-publishing is the application of computing software by a publisher to information content and packaged for a specific audience, and the distribution of the final product through electronic means (Ramaiah et al., 2003). While the earliest applications of e-publishing were stand alone off-line applications, distributed

through CD-ROMs and other storage media, today e-publications are far more than that. They include multiple information resources and their distribution takes place over networks, so that the information is able to reach a wider circle of users. It is also notable that file-sharing (peer-to-peer) technologies can be used for the distribution of information, independent from centralized Web servers. Individual authors can benefit from such technologies; however, due to copyright infringement committed by users of P2P systems, the future of such systems remains unclear.

With these appealing characteristics, it is not a coincidence that applications of e-publishing are increasing. It should also be mentioned that major advantages of e-publishing compared to paper publishing are the reduction of cost and the great amount of information that can be put together into such products. On the other hand, commercial publishers have to invent appropriate business models for e-publishing, which may be proven to be complicated.

The applications of e-publishing include the publishing of digital text, electronic versions of books, online newspapers, electronic magazines, electronic journals, electronic newsletters via e-mail, database publishing and courseware publishing (Vitiello, 2001). The distribution of electronic content may take different forms, including Internet bookshops, digital publishing on print-on-demand basis, direct publishing on the Web and wireless Internet publishing on wireless and mobile handheld devices.

E-publishing raises also legal issues referring to the reinforcement of copyright provisions. In particular, publishing of copyright protected material should be authorized by right holders or permitted under a legal exception such as those exceptions concerning teaching or research, and so forth. Other issues concern the protection of content electronically published and licensing agreements between the copyright owner and the organization that is about to exploit the material. The aforementioned issues will be dealt with in this section.

COPYRIGHT PROTECTION OF CONTENTS IN E-PUBLICATIONS

General Requirements

Like print publications, electronic publications also consist primarily of text, photographs and illustrations, but also of animations or musical compositions, which are being digitized and consequently undergo electronic processing. The question which arises is whether such content can be protected by copyright law.

According to the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention"), protection of authors refers to literary and artistic works (article 1), and this protection extends to every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression,

such as books, pamphlets and other writings, lectures, dramatic works, musical compositions with or without words, cinematographic works, works of drawing, painting, architecture, sculpture, engraving and lithography, photographic works, illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

It is beyond any doubt that works included in e-publications fall within the realm of literary and artistic works, which deserve protection from copyright legislation (Zahrt, 2003). It should be noted that copyright protection does not exclude works of a more practical character, which are protected similarly to fiction (Loewenheim, 1999).

The criterion for eligibility of copyright protection is that the said works are original. The legal term of originality is difficult to define; nevertheless, it can be said that a work is original if it is not commonplace, or in other words, if the bringing together and the arrangement of the material in question is original. According to the theory of statistical uniqueness of *Kummer*, a work is original if it is highly unlikely that another person could create the same or similar work. In common law countries like the UK there is a lower level of originality, since it is required that the author has afforded "skill and labour."

In particular, texts from books, segments of texts and articles underlie copyright protection as literary works. There are no stringent requirements of protection, while also works with lower originality deserve protection ("small coins"). On the contrary, simple information or news do not deserve any protection; also, scientific and technical texts are only protected if they present a high level of originality (Zahrt, 2003).

Collections of texts are protected as collections of literary works in the sense of article 2 para. 5 of the Berne Convention, that is, if, by reason of the selection and arrangement of their contents, they constitute intellectual creations. This is without prejudice to the copyright in each of the works forming part of such collections.

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