

Committee: Economic and Social Council (ECOSOC)

Issue: Social media contribution to copyright infringement

Student Officer: Melina Giolma

Position: Deputy President

INTRODUCTION

In recent years, social media play a role of great importance within our society and thus copyright protection has become more difficult. These new technological advances that have been introduced, have made content sharing extremely easy and inexpensive and for that reason the issue of copyright infringement has proliferated. Nowadays, websites allow their users to post content, such as photos, videos, songs and other digital files, and that fact inevitably results in the distribution of copyrighted material.

At that point, it has to be clear that the issue of copyright infringement has affected the worldwide community, long before social media gained the popularity that they have today. That fact heightens the importance of the problem and the need of finding possible solutions, as social media contribution to copyright infringement is huge and many artists' original work is being copyrighted, meaning that social media users are infringing certain rights granted to them. These rights are of great importance, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works, emphasizing the social aspect of the problem. Furthermore, because of this issue, the music industry has seriously been affected, as mentioned below, as people are discouraged to pursue a career in the industry, stressing the economic aspect of the problem. All in all, it is a problem that has affected many generations, and now with the existence of social media, it poses an even bigger threat.

DEFINITION OF KEY TERMS

Copyright

"The exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film, or record literary, artistic, or musical material."

Infringement

“The action of breaking the terms of a law, agreement, etc.; violation.”

Social Media

“Websites and applications that enable users to create and share content or to participate in social networking.”¹

Fair Use

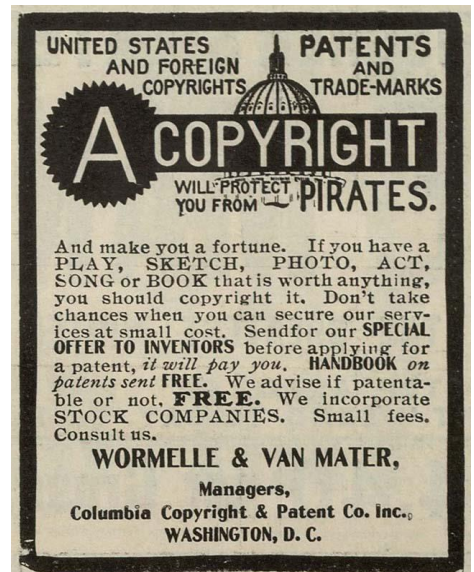
“The conditions under which you can use material that is copyrighted by someone else without paying royalties.”²

Intellectual Property

“Someone’s idea, invention or creation that can be protected by law from being copied from someone else.”³

BACKGROUND INFORMATION

The issue of copyright infringement is one of great importance, but in order to realize that, we need to find the root of it and understand how it affects the economy and the industries that are suffering from this problem, especially the music industry. Additionally, each social media website’s stance differs when it comes to this issue and it is necessary to understand how each one of them deals with copyright infringement. Lastly, we have to be aware that not everything is considered as copyright infringement, as some uses of copyright material are considered as “fair use”.



Motivation

In order to find possible solutions for the issue, we need to understand some of the motives for engaging in copyright infringement. Firstly, the problem occurs because of the pricing of this original work, as a lot of people are not able or are unwilling to pay the price for this work that is requested by the legitimate sellers. Secondly, many people are drawn

¹ Oxford Dictionaries <www.oxforddictionaries.com>

² Mnemonic Dictionary <mnemonicdictionary.com>

³ Cambridge Dictionary <dictionary.cambridge.org>

to copyright infringement, because many products may not be available in their nation and may never be, either because of geographical restrictions on international shipping or online distribution. Thirdly, many copyright infringers are aware that legitimate products are accompanied by many implications, such as region codes or locks, making the unauthorized product more desirable for the user to buy. Fourthly, anonymity is very important for people in social media and unauthorized work does not require identification of the user, when buying something from a copyright holder will, probably, require a valid email address and other credentials, which users will not be that eager to provide, even if the website, and thus the product, is legitimate.

All of the above, can be proven by a 2014 study, published in the “Journal of Behavioral and Experimental Economics”, in which researchers from the University of Portsmouth discussed findings from examining illegal downloading behavioral of Finnish people and the answers varied as to why these people decided to download illegal file, and thus become copyright infringers. The motives behind their actions was money saving, the ability to access material before it was released and assisting artists to avoid involvement with record companies.

Music Industry

The music industry, as previously mentioned, has been seriously affected by the issue of copyright infringement and the fact that social media users share, music songs and videos uncontrollably, without taking into consideration the copyright owner’s rights proves that. An example of this issue is the US case of Frank Music v. CompuServe, where publishers of copyrighted material sued the provider of a bulletin board service accessible on the Internet for providing a facility where users copied such music. Through that case, we realize that because of this problem, young people that are interested in music are greatly discouraged from pursuing a career in the music industry, as they will not gain the amount of money that their original work, deserves. This problem also affects the government of each nation, and not only the music industry, and that can be proven by the fact that in 2007, it was estimated that music piracy took 12.5 billion dollars from the U.S. economy. The same year, the U.S. government lost 422 million dollars in tax revenue, because of this problem.

Moreover, the International Federation of the Phonographic Industry (IFPI), an organization that represents the interests of the recording industry worldwide, points out that music piracy does not only affect online music sales, but also multiple facets of the

music industry. This phenomenon has become really common, and that is why the United States of America, established the Recording Industry Association of America (RIAA) that aimed to legally pursue people, who illegally shared copyright content.

Taking into consideration everything that is mentioned above, it is clear that because of social media, the public has gotten more comfortable with illegal file sharing. Many people share copyrighted material online because they believe that since this material is online and can be easily downloaded, therefore it must be free. However, these people, who download copyright material from the Internet, are stealing from artists and the music industry. The main argument of the people that are aware that they download copyrighted material, and are thus stealing from companies and artists, is that they cannot afford to pay the full price of the original material.

Overall, illegal file sharing is a crime that is being ignored by too many people, as they do not understand the importance that their actions have on the music industry. Copyright infringement has serious consequences, as there is no recognition for an artist's original work and it proves that because of social media, songs and music videos appear not to be cost efficient anymore, emphasizing the need to find a solution in order to eliminate the illegal file sharing and the copyright infringement of original works, and to increase the profit and popularity of the music industry. Nowadays, almost half of all revenue generated from music comes from digital downloads and that is why many people are beginning to question the impact of copyright infringement on the revenue of the music industry.

Fair Use / Fair Dealing

Understanding the line between fair use and infringement is essential for mitigating copyright infringement risks, but still people are not completely aware as to what is considered as fair dealing, and not infringement. In the United States of America (USA), fair use allows for the limited use of copyright material without the copyright owner's permission. In order to understand whether a copyright has been infringed, or if it is a case of fair use, the purpose and the character of the use must be evaluated, as to whether the use of it has a commercial nature or whether it is for non-profit or educational purposes. Additionally, the nature of the copyrighted material and the amount and substantiality of the portion used in relation to the copyrighted work as a whole, will prove whether there has been copyright infringement or not.

"Fair dealing is a phenomenon that is mostly seen in nations such as Canada and the United Kingdom, member states that do not recognize fair use. Fair dealing is a doctrine of

legal defenses that may be valid against actions of copyright infringement. Each country has a slightly different interpretation when it comes to fair dealing and therefore it is imperative to ensure that a company's online content is protected in the nation that will have jurisdiction over the work."⁴

Facebook

This social network has a serious problem with copyright infringement, and right holders say that the company is doing little to stop it. In its policy terms, Facebook states that "Anyone who uses Facebook owns and controls the content and the information they post".⁵ The company supports that when it comes to possible infringement of Intellectual Property Rights (IPR) in posts made by its users, it is the users' responsibility and not the company's. The existence of this problem can be proven by the fact that Facebook does not offer legal advice to its users, beyond the statement "if you are not sure, do not post it on Facebook" ⁶and that it will act in complaints of copyright infringement. In that way, the website does not protect artists from the problem, but also it does not protect its own users, as it does not take responsibility for any copyright infringement that may occur. These privacy terms need to be changed, as with the existing ones, copyright holders cannot guarantee that their original work will not be stolen.

YouTube

YouTube is a website that is being used by the majority of people and thus there is a large amount of copyright infringement. Nowadays, it is impossible to quantify how much copyrighted material is being shared in social media, and especially viral videos that are exploding in these websites. Many artists are seeing their videos being uploaded on YouTube without their permission and thus those who reproduce these videos are able to create an audience for themselves by directing social media users on their own account. However, the website has some specific terms when it comes to its copyright policy. Within these terms, it is clearly stated that "YouTube operates a clear copyright policy in relation to any content that is alleged to infringe the copyright of a third party". ⁷According to YouTube, infringers are going to be punished, as the website will terminate user access to the service if a user has been determined to be a repeat infringer, which means that this person will have been notified of infringing activity more than twice. Although these terms appear

⁴ Copyright Protection in the Digital Age <<http://www.acc.com/legalresources/quickcounsel/icpituscaeu.cfm>>

⁵ Facebook Terms and Policies <<https://www.facebook.com/policies>>

⁶ Facebook Terms and Policies <<https://www.facebook.com/policies>>

⁷ Terms of Service of YouTube <<https://www.youtube.com/static?template=terms>>

effective in order to protect an original work from being copyrighted, this has not been the case.

Other Social Media

Facebook and YouTube are probably the most important social media websites when it comes to copyright infringement, but that does not mean that other websites do not have to deal with the same problem. In any social media website, whether that is Facebook, YouTube, Pinterest, Tumblr or Spotify, users are sharing, linking and embedding continuously. When it comes to Twitter and LinkedIn, the author of each post on the website, is the copyright owner of the specific post. However, similarly to Facebook, their policy terms are very broad, as this original post can be used in a generally unlimited way. In 2014, LinkedIn changed its terms and conditions and introduced a new term that supported that the website will not include a user's content in third party advertisements without their own consent. This new term may have been inspired by a dispute between Facebook and five of its users, who alleged that the website had used their personal information for certain advertisements, without their consent. From that example, we can see that there is not only copyright infringement amongst the users, but also the social media websites themselves may become copyright infringers of their users' content.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

The United States of America (USA)

The federal government, under the U.S. Constitution, has the authority to protect an author's original work and the federal law protects the unauthorized commercialization of a



copyright holder's material. In 1995, the Information Infrastructure Task Force issued a paper on "Intellectual Property and the National Information Infrastructure", and through that the USA claimed that digital technology was a threat to the future of the publishing industry and that the issue of copyright infringement would become more

apparent. That is the reason why, in 1998, the United States Senate passed the Digital Millennium Copyright Act (DMCA), and because of it, copyright owners can protect their online content. DMCA's efficiency can be proven by the 2010 case, *Viacom Int'l v. YouTube*, when Viacom sued YouTube, because users had uploaded, on the site, without Viacom's authorization, more than 10.000 copyrighted video clips. Because of this notice to remove

infringing material, supported by this Act, YouTube complied with Viacom’s request and removed virtually all videos.

The United Kingdom (UK)

In 2010, the UK established a Digital Economy Act (DEA), in order for the government to limit, suspend, or terminate Internet service to copyright infringers. Moreover, because of the UK DEA, copyright owners are being notified when there is potential infringement of their original works, contrary to the USA, where the copyright holder must notify the government of alleged infringement.

Canada

Canada is a party to the Berne Convention for the Protection of Literary and Artistic Works and has signed, but not yet ratified, the WIPO Copyright Treaty of 1996. There is no equivalent to the U.S. DMCA, as the Canadian Copyright Act governs the copyright law in the nation, and is now in the process of updating its copyright laws. The problem with Canada’s intellectual property law is the fact that it does not address the unique challenges of the Internet and the Social Media. However, in 2010, The Copyright Modernization Act was proposed in order to modernize the federal law to confront Canadian electronic content providers and users, but as it failed, the nation still does not have laws in order to solve the issue of copyright infringement through the media.

World Intellectual Property Organization (WIPO)

WIPO is a specialized agency of the United Nations, which was created in 1967 in order to encourage creative activity and to promote the protection of intellectual property throughout the world⁸. The 188 member states of this organization are trying to solve the issue of copyright infringement, through international cooperation and WIPO encourages this unity of the members in order to improve, and potentially solve this issue in a worldwide scale.



TIMELINE OF EVENTS

Date	Description of Event
1886	Berne Convention for the Protection of Literary and Artistic Works

⁸ “Convention Establishing the World Intellectual Property Organization” <http://www.wipo.int/treaties/en/convention/trtdocs_wo029.html>

1910	Buenos Aires Convention
1952	Universal Copyright Convention, which was again revised in Paris on 1971.
1961	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting organizations
1996	WIPO Copyright Treaty
1996	WIPO Performances and Phonograms Treaty
2000	The UN sub-commission on the Protection and Promotion of Human Rights adopted a resolution that for the first time addressed the relationship between the Intellectual Property rights of a person and the fundamental human rights that he has. ⁹
2001	The Committee on Economic, Social and Cultural Rights provided a preliminary analysis, on their report, of the relationship between human rights and intellectual property.
2010	The Legal Committee adopted a Legislative Guide on Secured Transactions, in order to supplement on security rights in Intellectual Property, which was proposed by the UNCITRAL Commission.
2012	The UN Human Rights Council (HRC) adopted a resolution to protect the free speech of individuals on the Internet. ¹⁰
2012	The UN Human Rights Council (HRC) adopted another resolution in order to protect all human rights on the Internet and not only the free speech of individuals.

UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

As previously mentioned, the World Intellectual Property Organization (WIPO), a specialized UN agency, is responsible for the protection of intellectual property in a worldwide scale, and has in the past taken action against the issue of copyright infringement. Two international treaties have been adopted by the WIPO, in 1966, in order to protect everything from software to movies and music available online and protect

⁹ Resolution 2000/7 on Intellectual Property Rights and Human Rights

¹⁰ A_HRC_L13.

copyright on the Internet. In 2012, the UN Human Rights Council adopted a resolution on Internet rights and it was the first time that human rights were addressed on social media and the Internet. The resolution calls upon all states “to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries”¹¹. This resolution is the first step in protecting copyright owners and their rights on social media.

World Intellectual Property Day

The United Nations has created a “World Intellectual Property Day” that is celebrated in the 26th of April, in order to promote the issue of copyright infringement and inform about the difficulties that copyright owners have, because of the issue. This year, the WIPO Director General Francis Gurry made the statement that “On this day, as we celebrate digital creativity across the world, we should also think about how to find the right balance – one which recognizes the importance of creators and innovators to all the progress that we see ... as a consequence of digital technology.”

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Despite the fact that this is a problem that has just recently occurred, there have been efforts, in a worldwide scale, in order to stop copyright infringement. The European Union (EU) has taken into consideration the existence of this issue and in 1995, a European Commission Green Paper on Copyright and Related Rights in the Information Society was issued. There, it was proposed that the national laws of each country should be aligned, in order to respond to the new requirements that may appear and to protect copyright on the Internet, and later on, on social media. But, prior to that and the existence of social media, European countries had tried to solve the issue of copyright infringement through the Berne Convention for the Protection of Literary and Artistic Works. This convention requires its signatories to recognize original works from other signatory states in the same way it protects the copyrights of its own citizens. The Council of the European Union, also, tried to harmonize the national laws of the EU, with its resolution on increased protection for copyright and neighboring rights, in 1992.¹²

Anti-Counterfeiting Trade Agreement (ACTA)

¹¹ “HRC Affirms that Human Rights Must Also Be Protected on the Internet”, USA Mission <www.geneva.usmission.gov/2012/07/05/internet-resolution/>

¹² Resolution 92/C/138/01/EC

Additionally, the Anti-Counterfeiting Trade Agreement (ACTA) aims to increase intellectual property protection, and thus establish international standards for enforcing copyright ownership in order to fight more efficiently the growing problem of copyright infringement. But it has not managed to make significant changes, as it has been argued by many member-states that ACTA could infringe fundamental rights, including the freedom of expression and privacy. The ineffectiveness of this treaty is proven by the fact that it did not manage to create and implement a powerful intellectual property law, which would be binding on those countries that ratified ACTA.

POSSIBLE SOLUTIONS

The increased utilization of social media has created the need for new solutions in order to protect intellectual property. The policies that each nation has on the matter and the issues that have occurred heighten the importance of the problem and the ineffectiveness of previous attempts in order to solve the issue. So new solutions should be



proposed from all member states in order to eliminate copyright infringement and protect a copyright owner's rights in a global scale.

Firstly, all member states should encourage the creation of an international copyright law, as there is not something similar, but only treaties and agreements that provide measures of protection in a worldwide scale. As previously mentioned, these treaties have been ineffective, as they establish minimum required standards, require protection for foreign copyright owners and provide for enforcement under the federal law of each nation. With the existence of an international law on the matter, more nations will be encouraged to change their national laws, inspired by the one that exists worldwide.

Secondly, each government should communicate with the social media platforms that exist in their nation and cooperate with them in order to eradicate the problem, because as previously mentioned, copyright infringement does not only affect individual people or industries, but also the social media websites, as it affects their popularity. So, each member state should encourage these websites to change their policy terms, in order

to eliminate the issue and satisfy each nation's individuals but also the music industry as a whole.

Thirdly, social media websites should cooperate with each other in order to find policy terms that will not violate the copyright owners' rights and will not encourage infringement of original work. The fact that most of the times copyright infringers do not face consequences, is the reason why the issue continues to exist and thus another suggestion would be that all member states should establish new laws, that are harmonized between them, in order to decide the charges that a person will have to deal with, in case he becomes a copyright infringement.

Taking into consideration all of the above, we understand that the issue of copyright infringement is one of great importance, and as social media become more popular, the problem becomes more obvious. The United Nations, the European Union and certain governments have yet to find solutions in order to eliminate the problem and that is why now, more than ever, copyright infringement should be eradicated.

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