

INTERNET AND COPYRIGHT OF PICTURES - AN INTERNATIONAL OVERVIEW*

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Introduction

Right now my son is sitting in an international birdwatcher station in Israel and earlier this year he was in India. When he is not counting birds, he is making reports, which are sent via the Internet to the USA or the UK. It made me think that it is interesting to imagine how pictures are received by persons in the different countries they may be travelling. The Internet signal does not always take the shortest route around the world, it takes the route, which is open at the exact moment of passing through, therefore you never know which laws it passes, when it changes nets or direction.

Most countries have long since recognized that to protect the balance in society¹ it is necessary to protect art and literature. On the one hand it is important to protect artists` right to earn their living, on the other hand it is important not to provide protection to the extent, that it is difficult to get information. Of course drum- and smoke signals were not protected, but the frescos in the old churches (made about the years 1100-1200) in a way were protected, and maybe already the cave-painters were, because even if they had several students, the students were not allowed to be painters themselves until they had developed their own style approved by the master.

International protection

The protection of literature² was not really necessary until Gutenberg in about 1440 started the printing process, which made copying easier, and the copperplate was developed about the same time. At first the problem was solved by granting a special privilege, but already in about 1720 the first laws were introduced to

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1. Ophavsretsloven med kommentarer, Peter Schønning, København 1995.
2. Copyright Theft, John Gurnsey, London 1995, p.7.

protect against copying. Not until one hundred years later did the first laws to protect the artists emerge.

The first laws showed due regard to the different traditions in different countries, and the first international protection was given in the Berner Convention in 1886. The convention was drawn up because³ there are no borders for artistic works, literature and music. It is the protection of the artist, which is in focus, and the countries who have signed the convention are obliged to behave to artists from other countries in the same way as they do to their own countrymen. There is no demand for registration in the convention, it is the artistic work in itself created by a persons mind, which is under protection. 111 countries have signed the convention.

Because the Anglo-American countries had a demand for registration, these countries did not sign the Berner Convention, and so the UCC (world convention) was drawn up in 1952. The protection of the artist is less comprehensive here, as the rights are often owned by the companies, where the artists were employed. The convention were signed by about 50 countries.

The Berner Convention, which is the most important, has WIPO (World Intellectual Property Organization) as a special agency under the United Nations. Last autumn WIPO put forward a number of proposals to renew the Berner Convention.

As the problems regarding pictures and literature are problems which concern the libraries, EBLIDA, the European Federation of Library Associations, is very interested in the issues and is working out a standard for license contracts for the use by academic libraries in Europe. This EU-funded work is known as the European Copyright User Platform, ECUP.⁴ EBLIDA also paid a great deal of attention to the suggestions from WIPO last autumn.

General contents of copyright

Although the contents of copyright depend on traditions in the different countries, some main features can be mentioned. It is usual all over the world for copyright to include the exclusive right of the owner to exploit the work in whichever way he wants. Usually he has the right of reproduction, publication and public performance. Most countries agree that artistic works have their own rules, which for some of them are the same as for literature.

3. Copyright, Svensk och internationell upphovsrätt, Henry Olsson, Göteborg 1994, p. 195 .

4. The Legal and Regulatory Environment for Electronic Information, Charles Oppenheim, England 1995, p. 50.

Most countries have statutory rules for⁵

- copying for personal use
- copying for scientific, educational or other private use (read personal use)
- library privileges
- educational exemptions.

However, as far as the Internet and other electronic nets are concerned, the problem is the limitation of reproduction.

The storage on hard disk, diskette, optical or other media is considered a restricted act in all EU and most other European countries, but temporary electronic storage during acts of loading, transmission or screen display, is less clearly defined. Network distribution does not for the time being qualify as a restricted act under the Berner Convention. This issue is currently being discussed in many countries.

Pictures received in different countries

Nordic countries

If we imagine that some pictures are received in Denmark, we will very quickly find out that the law in Denmark looks like the laws in the other Nordic countries. Actually the laws are prepared in close co-operation⁶.

The laws were originally introduced in the early 1960s⁷ The Danish law was changed in 1995, but it still has the same pattern as the others. Sweden, Norway and Finland still have the original laws, and Greenland and the Faroes still use the old Danish law (because of the national affinity with Denmark) until they find the time or think it necessary to draft their own laws. In Iceland they introduced a law in 1972.

When a picture comes to one of the Nordic countries or travels between the countries via the Internet, the recipient is allowed to use the picture by looking at it on the screen and describe it, as if you were using a picture in a book or in an exhibition. He is also allowed to take a private paper copy and use it personally and in his job, but he must use the copy in that way only. He is not allowed to give it to any persons, colleagues, except for his closest family. If the admission to the

5. Copyright, document delivery and the information highway, P. Bernt Hugenholz, Nordic Conference on Copyright Issues, 1994.

6. See number 1.

7. Nordens upphovsrättslagar, Upphovsrättsliga Föreningen rf, Nordiska ministerrådet, 1996

picture demands a downloading to get that private paper copy, it is being debated whether you are allowed to do so. The main opinion for the time being is that you are not allowed to do that and you will not get the paper copy. The conclusion is based on the fact that you are not allowed to make a digital copy of a digital message, and if you download, you will make this digital copy before you make the paper copy. In Denmark we have opened up a little bit for digital copying, but only when it is meant for blind people and people who have great difficulties with reading or hearing e.g.

The conclusion is that the recipient can look at a picture for as long as he wants, but the picture must disappear when logging out, and he will then have to find or get the picture from the mail again later.

In the Nordic countries we have special rules for libraries and archives and we hope soon to get a new law for legal deposit of both printed and non-printed publications in Denmark. In Norway and Sweden they have introduced new laws during the past few years. But the rules for the libraries and archives are almost the same in the Nordic countries, and you are allowed to make copies if it is necessary to ensure that old or damaged material is available in the library.

The UK and the USA

The laws of these countries have many things in common, because they are built on the same tradition.

In the UK Copyright Designs and Patents Act of 1988⁸ it is said, that „copying in relation to any description in works includes the making of copies which are transient or are incidental to some other use of work“ and „the permanent and temporary reproduction of the computer program by any means and in any form.....shall be subject to authorization of the right holder“. For computer programs it is clear that you are not allowed to make copies without permission from the right holder, and the conclusion seems to be that you must have permission from the right holder to take a copy of anything you receive from the Internet.

In the USA they have a rule in the Copyright Act, Public Law⁹ about what is called „Fair use“. By this is meant that you are allowed to use pictures, literature and other material subject to copyright in a fair way. In this discussion it would be nice if we could say that fair use would be used as e.g. we know from the Nordic countries, but „fair use“ is only interpreted as being a right to use the

8. See number 5.

9. Copyright, Svensk och internationell upphovsrätt, Henry Olsson, Stockholm 1994.

material for criticizing or commenting, e.g. in news or for use in education and science.

The conclusion, I am sorry to say, must be that if you receive a picture in the US you can only use it for looking at and making comments.

Russia

In Russia¹⁰ it is said that they use some regulations from the former Soviet Republics called the „Foundation of Civil Legislation of the Union of Soviet Republics and Union Republics“. These laws were federal laws. Some republics had their own laws, but as the federal law always was a main law, according to the constitution, it was easy to decide that the old law should stay. The federal law was about to be changed right before the breakdown of the union, but the law is still divided into two, one section for ideal rights and one for economic rights. When a picture is received in Russia via the Internet the recipient can look at it, and take a copy and use it, but he must never use it against the normal use of it and he must not destroy the legal interest of the owner of the copyright (the artist). It is difficult to see how the owner can exercise any control. The rules were made before the problem with digital copying arose, and nothing is said about paper copies.

China

In China¹¹ the legal interest in copyright is rather new. In 1990 a law was introduced. The country did have some kind of rules before, but they disappeared during the Cultural Revolution. The new law specifies certain rules for copying, especially copying for use in education and science, but copies are not meant for private use. Therefore the owner of the copyright must give permission to take private copies both in paper and in digital form and the recipient of a picture via the Internet can only have a look at the transmission and a common use of the picture e.g. describing it.

Japan

In Japan¹² they have changed the law several times since the first law was introduced in 1970. The changes are quite obviously, one might say, due to the technical and electronic developments. The characteristics of the rules in Japanese law are, that besides the general permission to make copies for use in education and science, everyone is permitted to take a copy of pictures for private use, at

10. See number 9.

11. See number 9.

12. See number 9

least in paper form. You are not allowed to use a public machine for copying, but you can do it any other way. If you want to take a digital copy, you must ask permission from the copyright owner, who would often be the person, who made the picture.

Other traditions in different countries

If the picture travels to the former Eastern European countries e.g. Poland¹³, the impression is that you can use it for whatever you want. Poland has for many years been a country with big economic problems, and therefore the country has had neither the strength to nor the interest in introducing a law to protect copyright. Most countries are making an excuse for countries like Poland and hope, that they will soon devote some time to this important issue.

Another country in a state of economic development is Pakistan. It is rumored that a few years ago the population was encouraged to make copies of whatever they could get and sell it, in foreign countries too. A copyright was said to be a protection for artists in Pakistan, but not for people in other countries, especially not for people in the rich countries.

The last tradition I will tell you about is the Islamic. Many of the countries in the Middle East are very rich countries, although we know, too, that many poor people live there. In the Islamic countries there is no tradition of protecting copyrights. In Saudi Arabia the government has issued an official so-called promulgation, banning the sale of illicit material. The United Arab Emirates and Egypt have introduced copyright laws, but they are not enforced as they are in other countries.

Conclusion

As you can see pictures are treated in many different ways around the world and because of the development of the Internet it is important to find means to protect the rights of the copyright owners. I hope in this paper to have been able to highlight some of the difficulties, which the copyright owners face today. To keep the balance in the society of the world it is important to find ways whereby all right owners find acceptance of their work and a way of making a living. On the other hand the importance of free information cannot be stressed enough. Free information creates better understanding around the world.

13. Copyright Theft, John Gurnsey, London 1995.

All the countries mentioned in this paper have signed at least one of the international conventions, and I think that in the near future this will result in more open discussion. In fact it has already been apparent at the latest conferences on the issue.

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