Chapter VII

Recent Copyright Protection Schemes: Implications for Sharing Digital Information

Herman T. Tavani
Rivier College, USA

ABSTRACT

This chapter critically examines current copyright protection schemes that apply to digital information. We begin with a brief examination of the way in which copyright law has evolved in the United States, from its Anglo-American origins to the present, and then we examine three traditional philosophical theories of property that have been used to justify the granting of copyright protection. Arguing that each property theory is inadequate, we next consider and reject the view that intellectual property should not be protected at all (and thus should be completely free). We then critically analyze the notion of information, arguing that it should not be viewed as a commodity that deserves exclusive protection but rather as something that should be communicated and shared. Building on this view, we argue for a new presumptive principle for approaching the copyright debate — namely, the principle that information wants to be shared. Finally, we argue that presuming in favor of this
principle would enable us to formulate a copyright policy that can avoid the extremes found in the two main competing contemporary positions, both of which are morally unacceptable: (1) the view that access to all digitized information should be totally free; and (2) the view that overreaching, and arguably oppressive, copyright legislation, such as the Digital Millennium Copyright Act and the Copyright Term Extension Act, is needed to protect digital information.

INTRODUCTION

Whether, and to what extent, information in digital format should come under the realm of copyright protection is an issue that has been hotly contested in recent years. Deciding who should have ownership rights to, and thus control over, the information that resides in digital form will ultimately determine who will and will not have access to that information. Copyright law disputes involving digitized information have ranged from claims pertaining to ownership of proprietary software programs to arguments about whether digitized forms of proprietary information should be allowed to be freely exchanged over the Internet. Perhaps no copyright issue involving information residing in digital media has been more contentious during the past few years than the question of whether Internet users should be able to share proprietary MP3 files. Our principal concern in this chapter is with recent copyright legislation in the United States and its implications for sharing digitized information.

COPYRIGHT LAW IN THE UNITED STATES

To understand the evolution of copyright law in the Anglo-American world, it is helpful to examine issues that emerged from the introduction of the printing press in England in 1476. As Halbert (1999) points out, with printing-press technology, the duplication of published material became easier and more accurate and mass distribution became viable. By the 18th Century, legal measures had been proposed to respond to two different kinds of concerns involving the widespread publishing of pamphlets made possible by the printing press. First, the British monarchy sought to more tightly control the spread of works it perceived to be subversive and heretical. Additionally, authors of literary works were interested in protecting their creative works from being reproduced without their permission. The English Statute of Anne, enacted in 1710, was the first law to give protection to authors for their literary works.
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