Week 11 Paper

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Abstract

This paper is written to answer the questions posed in the week 11 intellectual properties paper assignment. Among these, the paper examines how DRM protects movies from piracy and other IP infringement, the complex world of music copyright law, and the politics of international intellectual property piracy. The paper concludes by posing a suggestion to improve the current pandemonium that is current copyright law. While certainly a band-aid solution to a bullet wound, it is better than nothing.

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This paper will take a critical look at several aspects of modern intellectual property (IP) laws both domestically and internationally. Specifically, it will examine the effectiveness of digital rights management (DRM) solutions. It will then discuss copyright as it pertains to music. As a part of this, the discussion of ownership of an artist’s catalog is considered as a case study. Then, it will explore corporate and international intellectual property privacy, looking closely at two examples. To conclude, it summarizes three findings of the above research, then provides a suggestion about how to promote ethical behavior as it relates to IP.

DRM and Movie Piracy

Digital Rights Management (DRM) technology is often included in digital projects to limit the amount of control a consumer has over their product to match the creator’s desire. For example, Apple’s iTunes service implements a DRM layer to prevent users from getting a one-month subscription, downloading all their music, then cancelling their subscription (Freemake, 2015). This “DRM layer” can take many forms, including the adding of extraneous bits to confuse any non-proprietary decoders or playback machines. Essentially, the DRM layer locks the user into using “official” software or hardware to access content. These official implementations are often limited in functionality on purpose to prevent unauthorized access or republication or otherwise exploitative actions.

As it pertains to movies, the DVD format launched with its “Content Scrambling System”, which locks all copyrighted content on the disk behind a 40-bit cypher (Kesden, 2006).

This system predates more modern 128 and 256-bit AES based encryption methods on more modern HD DVDs and Blu-Rays (Henry et al., 2007). This key intends to prevent the unauthorized burning and viewing of protected works, thereby protecting movies from piracy. However, as older technology tends to be, the 40-bit Content Scrambling System has been reverse engineered and effectively rendered obsolete. The first workaround, DeCSS, was made publicly available in 1999 (Informal DeCSS History Timeline, 2000).

Copyrights and Music

Music is quite possibly the most complicated intellectual work to protect with copyright. By its very nature, music is a very mutable thing. As a result of this, people have a history of making covers of songs, remixes of songs, remastered versions of songs, and every other number of modifications to songs. This invariably makes the modern application of copyright law a mess as it relates to music. How much control should an artist reasonably expect of their song if it blows up and becomes part of public conversation? Where is the line drawn when it comes to covers of songs? Cover bands?

As it stands, digital music files uploaded online are comprised of “two separately copyrightable works: the sound recording and the underlying musical composition” (Priest, 2021, pg. 6). This addresses some questions posed above. So long as an individual is licensed appropriate rights from the owner of the intellectual property, they can make their own version of an existing song. This new version has the licensed copyright of the original song’s underlying musical composition, while also having a completely new copyright unique to the remix for the new sound recording.

Licensing is an action copyright holders can take to lease the rights of their IP to others to use according to their outlined stipulations.

Specifically in music, artists have a few different avenues to license their music. Artists can group together and collectively license their works to an intermediary group, who then handles the distribution of authorized copies of the artist’s work (Priest, 2021). Artists can choose to directly license their products to the consumer, skipping the middleman (Priest, 2021). Compulsory licensing allows users to use copyrighted material without obtaining explicit permission, so long as certain stipulations are followed (whether defined by the artist or by fair use policies). Blanket licenses allow for an individual to use a copyrighted work an unlimited number of times within the scope of the license. All of these different types of licenses (attempt to) allow the creator of any given work to control access to their projects as they see fit.

As it relates to music, a catalog is the collection of songs that any one person owns, or has a partial stake in. For example, Rihanna is an artist that owns the rights to the master copies of all her songs, so every song that she has ever released is part of her catalog (Sam, 2015). Typically, artists signed to record labels hand over their rights to the master copies to the record label as part of their contract. However, artists like Rihanna that maintain control over their own masters can accrue significantly more income through royalties that are not split 101 different ways. Rihanna’s works will remain protected under copyright law for 70 years after she dies, at which point the works are put into the public domain (University of California, n.d.). For corporate works, this period is “the shorter of 95 years from publication, or 120 years from creation” (University of California, n.d., table 1).

Corporate/International IP Piracy

Corporate and international IP piracy refers to a much larger scale of piracy between either corporations or entities operating in separate countries. A well-timed steal of a protected trade secret or something of that scale is enough to significantly cripple businesses.

This section will examine two instances of IP piracy as case studies. Namely, it will look at the theft of DuPont’s production method for its proprietary chemical titanium white, as well as the recent controversy surrounding Pocket Pair’s 2024 video game, “Palworld”.

Titanium white is a chemical compound used to whiten everything from car paint, to sunscreen, to paper, to toothpaste, to the Saturn V rocket (The National Bureau of Asian Research, 2013). As it pertains to copyright law, the process to develop titanium white was copyrighted by DuPont. Seeing as the worldwide value of the compound was estimated to be worth $17 billion, with DuPont controlling 20% of its market, it would make sense that outside actors would want to create this product for themselves (The National Bureau of Asian Research, 2013). The FBI believes that in the 90’s, a California resident gathered former DuPont employees to recreate the process outside of a DuPont factory. This information was then sold to Pangang Group Co. Ltd., an entity owned by the People’s Republic of China (The National Bureau of Asian Research, 2013). While DuPont as a company is still around to this day, it should be obvious that the theft of their secret recipe significantly impacted their bottom line, as now they must compete with hundreds of imitators across the globe.

“Palworld” is an action-adventure survival video game that takes heavy inspiration from Pokémon. Released in January 2024 by Pocket Pair, the game sees players capturing wild monsters, giving them guns, and having them battle other wild monsters, or put to work in a slave camp. For all intents and purposes, this game is leveraging Pokémon’s image in a way that simultaneously jeopardizes the family-friendliness that gives Pokémon as much selling power as it has. As the game was released, it became a major talking point on social media, where individuals noted that game assets looked AI-generated, and that some pals were essentially recolored clones of existing Pokémon.

This is important because Nintendo, the company behind The Pokémon Company, is notorious for bullishly defending their IP at all costs. The Pokémon company is cited as saying “We intend to investigate and take appropriate measures to address any acts that infringe on intellectual property rights related to the Pokémon” regarding the matter (Bankhurst, 2024, para 3). Since this issue is only a few months old, there are not any relevant legal updates on the matter yet, but any judicial rulings on the matter could set precedence for many similar cases in the future. Specifically, a potential case could help clarify the extent to which the IP’s of big companies like The Pokémon Company reach, and what constitutes fair use in the first place.

Summary and a Brief Suggestion

This paper has examined the current state of intellectual property laws in the United States and abroad. It first looked at various DRM technologies used to protect movies on DVDs and Blu-Ray from piracy. Then, it researched the current state of copyright in the music industry, looking at Rihanna and her ownership of her master recordings as a case study. Finally, it looks at IP piracy on the international scale, taking DuPont’s titanium white and Palworld as case studies.

These three sections were meant to shed light on the current state of IP protection ethics in the world. The common theme among all topics discussed is that current implementations of copyright law are nuanced to the point of aggravating the consumer and exploiting the producer. It is my belief that these consequences can (at least in some capacity) be alleviated by a revamping of the public domain to make IP enter much faster.

As it stands, the only reason that IP must wait as long as it does before becoming part of the public domain is to protect the financial interests of its creator’s descendants.

Characters like Snow White (from 1937), are about as well known as characters from folklore, like Bigfoot or the Loch Ness Monster. The only reason independent creators cannot do anything with the character is that Disney is preserving their copyright by doing the bare minimum to exploit loopholes in the current copyright renewal process. By eliminating these loopholes and putting famous characters in the public domain, creative, previously illegal projects can be made and shared with the world.

Another benefit of a more liberal public domain is that it encourages the preservation of media for future generations to enjoy. With the current system, copyright holders are the only parties legally allowed to authorize the sale and production of their IP. If they do not do their due diligence to preserve their products, then they are at risk of being lost forever.

Finally, as it pertains to businesses, more information in the public domain allows for more competition in virtually every market. With trade secrets being secret for less time, the advancement of technology can be pushed by more people faster (and with a larger economic incentive). The only downside is that by changing the public domain in this way, one is effectively reducing the incentives for the first innovator of a product, as they have less time to capitalize on their inventions. However, the advantage will still exist, and reward the inventor with a head-start above everyone else should they decide to commercialize their product.

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