

PRIVACY AND INTELLECTUAL PROPERTY RIGHTS

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The Legal System

A formal definition of the Law is *"a body of rules to regulate the social behavior of a community of people in a given territory"*. In this sentence we can identify 2 main concepts, the first one is that law consists in a body of rules which should be without contradictions or inconsistencies, the second is that these are meant to regulate the social behavior of a community of people. The rules are enforced by authorities or institutions.

Laws can be categorized according to their provenience and their content. The roots of the western legal society can be found in the Latin and Roman legal tradition. In order to manage the empire, they used a form of government based on rules, making the human behavior predictable.

At first rules were informal and derived from the tradition, the first codification of the law by Romans was made in order to make those rules clearer and to make it possible for everyone to have knowledge of those rules. Moreover, the rule creation can be seen as a set of tools for shaping human behavior in an explicit way.

Until the French revolution rule creation was the power given from God to kings and emperors, after that this power was given to the people (representative democracy). This principle brings the division of power in 3 main components: legislative, jurisdictional and executive.

Law can be then categorized in Public (Constitutional, Criminal, Administrative) or Private (Civil, Family, Commercial), International or European etc.

Copyright Law

Historically copyright law is linked to the invention of the printing press, before books were manually written and the cost producing the first copy was believed to be equal to the creation of the following ones.

The first statute dealing with authors exclusive rights is the Statute of Anne (250 years after the invention of the printing press). Copyright was given to the printers (stationers' Company) and not to the authors, in 1556 stationers' were given the power of "ordinances, provisions, and statutes" for the governance of "the art or mystery of stationery," as well as the power to search out illegal presses and books and things with power of "seizing, taking, or burning the aforesaid books or things, or any of them printed or to be printed contrary the form of any statute, act, or proclamation ...". This power was given by the king and the queen to have an easy control over censorship and to protect and promote the printing press.

The statute of Anne, produced during the 18th-century enlightenment, is against the monopoly and political power acquired by the stationers, it uses the idea of authorship to provide authors with an exclusive right (14 years + 14 if the author is still alive)

After the 1790 US copyright act, the copyright was expanded to different expressions of intellectual work such as engraving, sculpting, dramatic works and Fine Arts.

With globalization it is necessary to have international rules to guarantee that copyright is enforced at an international level, at first bilateral treaties between countries which were difficult to manage and inefficient. A basic framework was created during the Berne Convention and every national legislation had to be compatible with it, USA not part of the Berne convention due to the fact that it was an importing country, so it was not convenient for them. After the 2 world wars USA became an exporting country so they changed their attitude towards copyright regulation.

The Berne Convention regulate the definition of protected works without giving a close list. This is later used by judges to protect sw and software houses during the 70s-80s.

1976 US copyright act extends copyright to machine produced works such as object form software as long as they were original works. Controversies over what originality means lead to the creation of specific regulations regarding databases protection. There are limitations to the effect of copyright expressed for example through the dichotomy between expressions and ideas or the fair use(s).

File Sharing

Important distinction between rival and non-rival goods, file sharing is non-rival since the usage is not limited to one person at a time. It started with the invention of floppy disks and became more popular with invention the internet. File sharing might involve copyright infringement when a user transfers a file for which they don't hold the copyright. This is defined as direct infringement, whilst the secondary infringement is done by the platform or service that permits the violation.

File transfer was initially used to share music, initially creating a copy of a vinyl was very slow, but later the use of CDs made it possible to create copies at a faster speed. One of the main methods to avoid this behavior is expressed by in the Digital Millennium Copyright Act (1998) that criminalizes ideation of methods to break measures for protecting copyrighted works. Popular file sharing services that had problems with copyright law are Napster, Pirate Bay and MegaUpload.