

Privacy and IPR

2019-10-10

1 Lecture 4

1.1 Recap

- Modern copyright: exclusive right given to authors is not a reaction to recent technological achievements
- Congress should have the right to give authors an exclusive right for a limited time
- Foundation of the exclusive right: progress of learning, writing -> public interest (main difference with property)
- Modern copyright: based on the authors' right and not the publishers' rights created the public domain
- stationers wanted unlimited exclusive rights to publishers, despite the fact that authors would sell them the right for a limited time
- 1787 , 1790 U.S. Copyright Act -> copy of the statute of Anne

1.2 Extention and globalization of copyright law

- From literary work to other intellectual property
- Copyright: way of regulating intellectual production
- Globalization: copyright -> private law institution legalised worldwide
- The process of reciprocity: copyright granted to a foreign author only through reciprocity
- Next step: creation of an international association
- 1886: First international multilateral treaty
- U.S. was using the EU regulations - they were importing culture
- The first legislation was not protecting foreign authors in the U.S.
- It was possible to make copies without paying anything to foreign authors, unless they lived in the U.S. and were registered with a U.S. publisher
- 1994: Annex 1C to the Marakesh Agreement
- 1996: WIPO Copyright Treaty
- 1998: U.S. became part of the Berne Convention (meaning that the creation of the intellectual work gives the protection , given that specific requirements were covered)
- They became exporters of culture so their views on intellectual property changed

1.3 Compatibility between the scope and the means

- Now copyright lasts for 70 years after the authors' death
- Importance of the limit to the right to exclude
- Limits: extension and duration

1.4 Berne Convention ("Protected works")

- Berne Convention: is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886
- Gave a list of what the protected works were
- Nothing about originality

1.5 Title 17 U.S. Code

- Nature of the intellectual work
- Open to future creation
- The creator can be a machine
- A copy is a copy only if a human can see it without the use of a machine
- Computer programs: the source code, written in high level language can be protected by the copyright law but not the object code
- There is also the case of originality (also in the Italian copyright law)

1.6 U.S. Constitution

- The protection is given to authors
- The output of a computer program is not produced by an author but by a machine, so not protected
- We should also see the case of protection of compilation of non-original facts
- Protection of databases: the ordering of the collected data is original creation, work of authorship
- Sui generis right : protects the creation of databases only if the creation requires money and lasts only for 50 years after its creation

1.7 Expression/ Idea Dichotomy

- Form of expression vs idea
- Copyright protects the expression not the idea

1.8 Limitations on exclusive rights: Fair use

- Purpose of use - profit or not
- Nature of copyrighted work
- Amount and substantiality of the work
- Effect of the use upon the potential market

1.9 Italy (Copyright Law)

- Specific exceptions and not a general clause