

seguire per l'AIDA il problema e le trattative con la SIAE.

L'AIDA intende muoversi di concerto con le altre associazioni professionali, nell'intento di far emergere però le specifiche esigenze dei centri di documentazione in ordine alla diffusione di materiale cartaceo ed elettronico all'interno delle aziende e dei centri di ricerca.

Abbiamo per questo bisogno del supporto dei soci che sono invitati a comunicare all'indirizzo www.aidaweb.it le loro valutazioni, dubbi e necessità di chiarimenti sulla legge in questione.

All'Estero

In occasione del "Third Unesco Congress on Ethical, Legal and Societal Challenges of Cyberspace. Infoethics 2000" organizzato dall'UNESCO e svoltosi a Parigi nel mese di novembre 2000, è stata presentata da S.Dusollier, M. Buydens e Y. Pouillet una relazione che ci sembrava interessante non solo segnalare, ma pubblicare: "Copyright and access to information in the digital environment". La lunghezza della relazione ne impedisce la pubblicazione integrale, riportiamo in questo numero soltanto l'Introduzione e le Conclusioni. Lo studio si articola in tre capitoli:

1) From intellectual property to investment protection: the case

- of database protection;
- 2) The future of exceptions or exemptions in the information society;
- 3) The use of contracts and technology in the protection of copyright.

Una ricchissima bibliografia conclude la relazione. Il testo completo è disponibile gratuitamente al seguente indirizzo: <http://webworld.unesco.org/infoethic2000/index.html>

Segnaliamo infine un servizio di informazione sugli aspetti inerenti il copyright per il settore dei progetti di ricerca europei all'indirizzo: www.ipr-helpdesk.org

INTRODUCTION

The information and communication society has gone through major and unexpected developments over the past decade, which raise new social, economic and legal issues. The impact of new technology on research, teaching, access to culture and to information, the transmission of knowledge - all key elements of UNESCO's mandate - is unprecedented. One of the essential challenges presented by what has come to be referred to as the information society is that of building a balanced and coherent legal framework that takes account of the change in the economic and sociocultural model while at the same time safeguarding fundamental rights and freedoms in the digital world. Copyright is one of the stones in this edifice, and is

probably one of the foundation stones. Content in the digital age will to a great extent be made up of works claiming copyright protection. However, the digitization and circulation of works over networks such as the Internet means that low-cost, high-quality copies can be made quickly, and these copies can also be sent to many other people around the world, irrespective of borders. Furthermore, digital works are easily altered, or even falsified, which means that there are many potential threats to the moral right of authors. Given these facts, it is not surprising that copyright is one of the first areas to have attracted the attention of the international community. Both national and international legislative and technological initiatives were soon designed to reinforce copyright protection in this new environment. As early as 1996, the international community was presented with two treaties signed under the aegis of WIPO, whose goal was to deal with the primary concerns of authors. National and regional legislators also passed laws to this effect. Nevertheless, this reinforcement of copyright runs the risk of causing an unprecedented break in the balance inherent in all systems of intellectual property. For copyright relies on balancing the interests of protecting created works and their creators and guaranteeing public interest and fundamental freedoms. This balance derives precisely from one of the basic principles of copyright, which is to promote progress in the arts and

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sciences and to spread culture. All copyright systems are generally based on the following foundations and goals, even if the relative importance of a given goal may vary in a given legal system:

- the necessity of remunerating creators: copyright is the indispensable remuneration for the creator's work, allowing her or him rightfully to enjoy the fruits of the labour that created the work;

- encouraging creation: copyright in theory allows the production of works of added intellectual value to be furthered by giving creators the assurance that the goods they create are protected (thus ensuring profitability and therefore providing a stimulus for creative investment). In this way, the supply of this type of goods and their appropriate distribution is enhanced;

- copyright is an instrument of cultural policy that is also designed to support and regulate the spread and movement of ideas and of culture. So considered, authors' rights and the limitations on those rights are the two levers of this policy.

As a result, all copyright coverage grants a monopoly to the creator based on a compromise between creators' interests and "the interests of society at large, which demand the free movement of ideas, information and commercial exchange". Inherent therein is the idea of a social contract between

the creator and society. Many copyright principles embody this concern for balance. Thus, both the length and the extent of copyright are limited. More fundamentally, the definition of the concept of a work that may be protected through the criterion of originality is an essential instrument in drawing a line between what is protected and what belongs to the public domain. The doctrine of the dichotomy between the idea and the expression of a work, only the latter being protectable, is also a result of this concern for balance. Finally, users are granted several exemptions which convey the need for preserving such essential values as freedom of expression, the right to privacy, access to information and to culture and the dissemination of knowledge through education, research and access to libraries. This balance is nevertheless threatened by technological and legislative changes that have been enacted by the information society. Copyright is expanding, not only as regards the items protected but also as regards the area of protection. The period covered by copyright has recently been increased in many countries, notably in Europe and in the United States, from 50 to 70 years after the creator's death. Basic information, traditionally outside the scope of copyright, becomes indirectly covered by the *sui generis* right on databases. Exceptions to and limitations on copyright, an essential means of striking the right balance, are liable to decrease, both through the effects of the law and through the

growing use of contracts and of technology in applying copyright. Keeping a balance between copyright and access to information is, and will remain, a major challenge to the Information Society. The threats to the transfer of knowledge and access to informational and cultural content are considerable. UNESCO has a major role to play in this debate. The issue of copyright in the information society is complex and has spawned an over-abundance of legislation at both international and national levels. This study sets out to describe the main current developments in copyright and their implications for access to information in order to provide a tool for understanding what is essentially at stake and in what ways UNESCO might be usefully involved.

Within this framework, the study foregrounds three main principles which, in keeping with the above-mentioned concern for balance, may serve as guidelines for States in adapting copyright to the digital age.

1. Copyright must not be an instrument for widening the gap between industrial and developing countries. Quite the contrary: the information society is an excellent opportunity for the latter, and the legal instruments governing that society, foremost among which is copyright, must take care not to deprive developing countries of the advantages of access to technology and information.

2. Access to information and

knowledge are the two basic principles underlying the creation and development of the Information Society and of electronic networks. The digital age cannot deny its roots and must therefore continue to benefit education, research and the transmission of knowledge.

3. The protection of creators is crucial to the dissemination of knowledge and culture. Insofar as this protection is threatened on digital networks, it must be adequately taken into account. It is, however, right to take into account not only the legitimate interests of creators, artist-performers and producers, but also the interests of users and of society as a whole.

CONCLUSIONS

As early as 1994, the authors of the “A Magna Carta for the Knowledge Age” conceived of two possible models of development: the first, known as the “cyberspace” model, corresponded to the wishes of the protagonists who started the Internet. It was about the free circulation of information and free expression. The second, called the “Information Superhighways” model, envisaged the development of tools to control access to information. Thus, technology fluctuates between two worlds: that of freedom and that of property. Of course, the former model is mainly Utopian and misunderstands the very principle of literary and artistic property. Technical protec-

tions that are added to an unprecedented extension both in the content and in the items protected by intellectual property rights lend credence to the idea that the market has undeniably preferred the latter approach. Our statement, in answer to the aforementioned developments, seeks to (re)establish the balance between, on the one hand, the fair and legitimate claim to protecting the legitimate interests of authors and producers of content and, on the other, the need to safeguard the interests of each individual and of the public in general in benefiting from technological progress which offers a unique opportunity to allow everyone better access to the common heritage of humanity. This is the sense in which we clearly plead for a return to the kind of balance that is the very essence of copyright. “All the copyright, and nothing but the copyright”, as we might put it.

That phrase means:

- That it is *important* that the domain of protection of intellectual property rights be confined to “creations” or to “technological innovations” but exclude the investments made and the technological measures introduced for their protection. Any other solution would be prejudicial to developing countries and to the non-commercial sector, particularly to libraries and institutions of learning;
- That it is *useful* to reassert the principles underlying exceptions

to intellectual property rights, to reconsider the current list using these principles as a yardstick, or even to add new exceptions, and finally to safeguard their compulsory character. It is particularly important for UNESCO that exceptions for scientific, educational and journalistic purposes be maintained;

- That it is *indispensable* to safeguard the universal right to access to the “informational public domain” which brings together the information essential for the citizen of a modern democratic society (statistical, regulatory, environmental and safety-related information) and which each State must control without risk of confiscation of that control by private companies;
- Finally, that, considering the development of technological measures of protection, it is urgent to recall that the intellectual property right is not designed to legitimize measures of control over access; that, if these must be protected by common law, proper protection must be found, independent of copyright, in the regulation of product distribution, i.e. the service of providing conditional access to those products, which will thus no longer be able to jeopardize the desired balance between the interests of the copyright holders and societal or public interests - a balance that is at the very heart of intellectual property rights.