

Why will intellectual property change: the staying power of immaterial assets and malfunctioning of analog institutions

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In modern societies the role of law is changing upon accelerated modifications of quantum, structure and information processing possibilities of knowledge. The functions of copyright law and industrial property law are also experiencing historical challenges, and the changes with which it responds are especially due to digitalization of reality and global networking of previously disparate knowledge quanta. The objective of this write-up is to make accessible the conclusions of a much larger work that attempts delineate the constants and discontinuities in the legal protection of creativity through semiotic analysis of legal language by confronting them to the colloquially used concepts throughout the history (<http://www.scribd.com/doc/62077636/Abundance-of-Sources>). That article explores principally those terms used throughout the past to designate different types of copies and originals and comparison between art history and legal language. Analysis of historical aspects leads also to conclusions on possible trends in copyright law and its role in digitalized societies. In short, these conclusions suggest an uninterrupted but shifted position of the role of copyright law and, at the same time, the appearance of a variety of parallel and simultaneous forms of copyright protection and increased role of automatized technology based protection of usage monitoring and royalties collection. Finally, those conclusions lead to an unexpected and inescapable overarching conclusion that the role of law itself will shift in the future societies.

The past decade saw increased controversy over the role of intellectual property in contemporary societies. On one side, it was

considered that immaterial assets were a guarantee of social progress. On the other side, social currents appeared to be increasingly at

odds with those views, asserting that IP rights might be a barrier to creating immaterial assets. At base, our view is that these controversies

confirm that, after being present in modern societies for over two hundred years in its present form, IP is increasingly viewed as a fact of civilization. Having gradually assumed the role of an underlying element for creating wealth in modern societies and complementing traditional property, it is now being diversified to suit new forms of creativity, which emerge from the digitalized and networked context. This emerging new role of immaterial asset usage and management is the subject of debates and polemics.

The current polemical tone of discussion over IP rights is, in our opinion, a direct consequence of the increased real presence of those rights in modern societies. Perhaps more than ever before, IP debate admits of no easy social consensus. This, in our opinion, is not a result of the fact that IP is more controversial than in other phases of its history, but simply a consequence of the convergence of two moments:

1. IP now stands for the first time at the threshold of general social perception, where the emergence of these rights is noticed by the major part of the social community. Current suspicion as to the possibility of achieving social wealth through use of intangible goods contributes to skepticism towards the importance of protecting those rights. This distrust seems more pronounced in societies with a lower average education level and in transition societies that have not yet achieved post-industrial production levels and lack knowledge and service skill values. Meanwhile, in post-industrial societies there is a need for reexamination of the principles of IP law for other reasons, principally the appearance of driving new business models.
2. Post-industrial societies attain high level of their social wealth through knowledge, creativity and management of immaterial values by means of intellectual property rights. As use of intellectual property rights is still based on industrial society models in the new contexts of social and increasingly of material reality digitalization and networking, the old models show as inadequate and are confronted with many social criticisms. Reform of existing business and IPR exploitation models results inevitable, whereupon reform of legal IP doctrines appear absolutely unavoidable – perhaps for the first time more radically after its first two or three centuries.

We have no doubt that IP law is inevitable to support established models of exploitation of human knowledge-based creativity results and that present controversies will not lead to the abandonment of IP rights. In fact, given that our civilization is actually increasingly oriented toward the use of intangible goods resulting from the use of knowledge, intuition and

creativity, we might expect that IP in some form will enhance its role in future societies. We believe there is a chance for this not to happen through growth of legal protection of immaterial property. This absence of law in the leading role will come as a consequence of general change of the role of law in modern societies.

In our view it is likely that the future role of law might lead towards a more specialized role in those societies than it has had in ours for a long time. We foresee that, as the role of law will be changing and undergoing relative marginalization, the role of technical protection means will increase in the field of immaterial asset protection. Eventually, new ethical and behavioral values will, in our opinion, be established and affirmed by society and become dominant in respect of legal regulations. The changes we face are unprecedented; we must establish for ourselves the behavioral models to follow without relying too much on existing models. The task is not easy but, as there will be no other choice, we propose to get down to work right now. This summary of my full text is only a minor contribution in that direction.

Given the force and inevitability of the processes described above, when seeking to predict the future of social decision-making processes impending in relation to IP rights we must clearly analyze those constants that appear as regularly accompanying IP rights throughout its history. In doing so, it was my approach to research and conclude that civilization's IPR inheritance is an essential reflection of the needs of modern creativity-based societies. Our societies will not deny the fact that, in the achievements of civilization, the results of creativity are regarded as suitable for economic exploitation and for protection by IP rights. I have shown in my early writing that the signs of these needs can be traced back to long before the introduction of defined IP law into the legal system. We have learned to recognize that property over the results of intangible human creativity will not disappear in conditions of a digitally networked environment and upon a migration of reality into the digital sphere. In other words, paraphrasing the title of my article, we are certain that human creativity, including the development of new forms of creation, exploitation and protection of intellectual property rights protected works will in the future to an even greater extent represent a SOURCE OF ABUNDANCE for future societies.

In order to predict future development of IP protection systems we must bear in mind a characteristic, which human communities demonstrate in a variety of contexts, whether historical or technological. Researchers often describe the so-called layering concept as the property of simultaneous mutual separation and inseparability of various ideas from different historical periods. We believe that any prediction must take into consideration this characteristic of historical development. In practice, this means that, once a model is created, it may

change its social role but it will hardly be completely abandoned or forgotten. Existing protection system will undoubtedly remain an option and will constitute the primary element of choice between protection alternatives at the author's disposal. Along with a wider change of the role of the legal system in future societies, other two elements will constitute the cornerstone of its future relation towards the immaterial results of creativity. One will be its technological character, which in the context of digitalization and networking, means that we will use computer code-based technologies as elements of intangible assets management. The other is the element upon the creation of which our generation has embarked, of increased responsibility and decision-making based on clearer ethical principles that we anticipate as a result of ongoing changes marking our societies.

In showing the depth of the pressures mounting in modern societies, initially the text raises some questions on the roles of law and questions the concept of sovereignty. In the integrated world, sovereignty is visibly ebbing and becoming ever less meaningful or useful, thus exerting strong pressure on one of the cornerstones of international relations. In addition, modern societies are increasingly showing dissatisfaction with the traditional pillars of democracy, such as political class and legislatures as intermediaries in deciding social change. The text in its central part pursues several terminological groups and combining semiotic analysis with a comparison of the meaning of selected specialized terms in copyright, art and colloquial language, drawing conclusions on the social notion of creativity protection system. Questions are raised as to the historical adequacy of certain inherited solutions, in particular the maintenance of the past notion of the role of copying upon the changes occurring under the strain of digitalization and networking.

A strong upsurge in creativity, copying and use of works of art resulting from the introduction of digital technologies and computer networking has led to uncontrolled and uncontrollable increase of unauthorized copying. Societies must face the fact that, in future, authors will prefer to choose for themselves among very different forms of protection of their works of art, it being desirable for them to have various regimes of protection at their disposal, to protect various modalities of use of their different works. Thus where authors settle for a regime of charging for and controlling the use of their works in the globalized digital economy, it seems unlikely that law is to maintain the primary role of the copyright protection system. The text finally delineates briefly the trends and consequences of technical protection systems development, which along with current trends on a broader IP front, already give rise to the marginalization of the role of law. In other words, although law will remain the structure regulating a specific level of social behavior it will be

pushed back "from above" by an increased role of regulation of ethicality and responsibility, and "from below", consumed by the self-regulation of many social segments and by technical measures resulting as a consequence of entrepreneur and technological efforts.

Whilst the text has no intention of proposing strong conclusions as to possible changes, several theses emerge. Advancements are likely to occur but hard to anticipate, since the scope of social changes is also unprecedented and the nature of digital medium is radically dissimilar to analogue mechanical reproduction means. Changes within the legal system will not involve only copyright and other rights of intangible human creativity results protection, but overall change of the role of law within societies.

Enough time has passed now for us to be fairly certain that in modern societies the role of law is changing upon accelerated modifications of the sheer number of transactions, knowledge structures and information processing possibilities. The functions of copyright law and industrial property law are also experiencing historical changes, especially due to digitalization and global networking processes. This article seeks to delineate the constants and discontinuities in the legal protection of creativity. This is achieved through semiotic analysis of the languages used by the legal community and society at large in their communication over human creativity and the phenomena of authorized and unauthorized copying.

In determining the constants in the historical development of copyright law, the text follows a group of terms, which in the field of sculpture designate concepts related to work-of-art copying. The selected group of terms represents some of the central concepts of copyright law and their comparative analysis with identical terms used in art language is aimed at understanding and pointing out those central meanings appearing under a new light in the digital context. The article studies the semiotic and semantic contents of the terminology used in the field of sculpture, such as the terms: Unique, Replica, Multiple, Series, Version, Variant and Facsimile. Sculpture has been chosen as the field of study because it is one of the most traditional forms of human expression and generally deals with the durable spatial plastic form. As such it well denotes the human capability to create material reality. The term Statue is itself closely related to the word Statute, which lawyers use to denote a set of rules meant to set the relations in a society for a longer period of time. Finally, sculpture is one of the forms of human creativity that has been long protected by copyright law.

The central part analyzes colloquial specialized terminology related to unauthorized copying phenomena characteristic to the entire history of IP protection, which is apparently exploding in the context of digitalization and networking. The conclusion drawn is that these terms, almost entirely, have no statutory, i.e., legal sources.

Here, the terms Author, Work of Art, Copy, Original and Reproduction are analyzed. These are chosen as some of the central notions in copyright terminology. As such they are analyzed with the intention to draw deeper understanding on how the fundamental notions of the immaterial assets created by mankind are understood.

Additionally, terms such as Plagiarism, Piracy, Counterfeits, Falsification, Fake, Imitation, Dummy and Hoax are used throughout the past to designate different types of copies and originals and comparison between art history and legal language. Analysis of historical aspects leads also to conclusions on possible trends in copyright law and its role in digitalized societies.

In short, the conclusions to this research suggest an uninterrupted but shifted position of the role of copyright law and, at the same time, the appearance of a variety of parallel and simultaneous forms of copyright protection. Contrary to many predictions, in our opinion this will likely lead to an increased role of automated, technology based protection of usage monitoring and royalties collection.

The article is dedicated to the study of social flows that are likely to result in certain changes to the copyright law. These changes will be principally caused by technological advancements emerging from the appearance of computer and the Internet: the fact that the human environment is becoming increasingly digitalized and, at the same time, networked has created an environment where creative work is in some aspects proceeding in a way having no precedent. We especially point out that each copy is simultaneously and permanently present in the form identical to its digital original, and remains accessible to many, radically influences the notion of the copyright system. This is going to be exacerbated by the introduction of brain-machine interface (BMI) technologies, whereby the traditional foundations of copyright such as the inability to protect ideas will come under strain.