



The new trend of network distribution and a reconsideration of copyright protection

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***Abstract:** In recent years, the market for digital content on the Internet has developed at a tremendous pace: Music, videos, and articles have all increased their online presence at fast rates. While advances in Internet distribution technology have brought about great benefits, they have at the same time also created a great number of copyright disputes. This article aims to analyze and explain new technologies and business models and the relevant legal challenges through changes in the methods of distribution and consumption of copyrighted content.*

In recent years, along with the widespread adoption of broadband and increase in the ability of the Internet to handle large amounts of data, the market for digital content on the Internet has grown and continues to grow at a remarkable pace. According to the CNNIC's 27th Report on Internet Development, among its ten most-common uses, music, videos, and articles received places 2, 7, and 10 respectively with 79.2%, 62.1%, and 42.6% of respondents' votes. With such data it is obvious that the Internet has already become a vital means of consuming copyrighted content.

Though Internet distribution technology has yielded many benefits, at the same time it has also caused numerous headaches for content rights holders. According to statistics, the number of copyright cases in Beijing and Shanghai these past three years has grown dramatically. Internet copyright cases already hold the largest proportion of IP cases.¹ This article will explore several changes to methods of consuming and distributing copyrighted material in order to explain and analyze the legal challenges brought by these new technologies and business models.

Music

From a historical standpoint, the music industry's main modes of distributing and consuming content can be divided into three types: performance rights in giving live performances, the right to reproduce and publish (this is the mode for release of recorded media with which we are familiar), and live streaming on the internet.

According to statistics, the current retail rate of digital music has increased by 15-20 percent, whereas the rate of CD sales has decreased by the same proportion. In fact, by the end of 2010 the retail volumes of digital music and CDs were

¹ Chen, Jinchuan: "Increasing number of Internet copyright cases." [EB/OL] [June 3, 2010], <http://ip.people.com.cn/GB/141383/177175/10620601.html>

equivalent.² It is not difficult to imagine that if this current trend continues, CDs will completely disappear from our lives in the near future.

Videos

The distribution of videos and motion pictures can also be divided into three types: theatrical releases, DVDs, and Internet streaming. However, the methods of distributing and profiting from motion pictures are different than those of music. Due to natural advantages in video effects, widespread availability, and social aspects, theatrical releases are the main profitable distribution method for motion pictures. On the other hand, and in common with music, distribution of films and television programs over the Internet is replacing the more traditional DVD distribution channel due to a combination of cost advantage and convenience in storage, update and on-demand streaming.

Written Works

The two typical distribution channels of written works are paper media and the Internet. Due to the widespread of e-readers, the development of e-paper technology and the efforts to expand 3G networks, e-reader adoption and technological development are both advancing at an amazing pace. However, this has also put tremendous pressure on traditional distribution of newspapers and other print media; according to authoritative prediction, 90% of traditional print media will be distributed digitally by 2015.³

Software

Traditionally, the software industry's main distribution method was to sell physical discs containing the software, such as CDs. Microsoft is unquestionably the most successful representative of this mode of distribution. The second method is through Internet distribution. Under this mode, software is available for download over the Internet and is usually free; the software providers collect profits from selling license keys for either installation or use of the software. Most of the popular antivirus software that we use is operated on this model. The third distribution method is called SAAS (Software as a Service) and it is a creature born of cloud computing. SAAS derives value also from Internet distribution:

² "Apple iTunes already accounts for 1/4 of music sales in the US." [N/OL] World Computers, 2009[2010.06.03], <http://it.icxo.com/htmlnews/2009/08/19/1373083.htm>

³ Industry Insight: Digital Books to Surpass Traditional Press Media, <http://news.sohu.com/20041209/n223409501.shtml>

Software providers don't rely on reproduction or release of software to earn profits but rather upon the providing of the software.

As seen from the remarkable change in the means of distribution and use of the preceding four works, content distribution and consumption models are in the midst of upheaval. Under the influence of modern distribution technology, there is a shift underway from traditional models of selling copies of a copyrighted product to selling the access to the copyrighted product itself. But our copyright laws are unquestionably more suited to the traditional model of selling a physical copy of a work, leading to serious problems in adapting to new technology. This author believes that future revisions to China's Copyright Law should seek to consider and respond to the following issues:

First, broaden the scope of Internet distribution rights: Merge broadcasting rights into information network distribution rights; act in accordance with Article 8 of the Wipo Copyright Treaty and establish the idea of a unified set of rights for supplying a copyrighted work to be distributed over the Internet to consumers. This is to avoid the awkward issue that Article 17 of the Copyright Law has already listed 17 kinds of copyrights but "other rights enjoyed by the copyright holder" still apply to remedy unauthorized network timed rebroadcasts.

Second, on the premise of improving the collective copyright management and the fee collection system for statutory license, print media content that has been reposted on the Internet should be allowed within the scope of statutory license. Unauthorized use of articles or images currently occupies a very large proportion of online copyright cases, but they also have small amount of objective and relatively unambiguous circumstances. With such a large volume of easily-resolved cases still going to trial, there is obviously a tremendous waste of legal resources. By allowing reposting on Internet within statutory license, the number of copyright disputes will decrease dramatically. However, one must also simultaneously accompany this with a reformation of collective copyright management and fee collection systems for statutory license, or else risk severely threatening the natural balance of interests.

Third, incorporate the "Computer Software Protection Regulations" into the national "Copyright Law." This will both codify the specialized nature of software and clarify the granting of protection to object code stored in memory and the converted form thereof; as seen from the discussion of SAAS model above, the copyright protection of the online and service software is severely lacking. Infringing parties can use technological measures to make alteration on software to

the same effect to but not by changing source code and object codes at all. If the illegality of these sorts of actions is not confirmed, it will become very difficult for software service providers to continue offering this model in the future.

Fourth, a logical three-step test should be put in place both to make the fair use system more accommodating and to strengthen legal protection to neutral information transmission technology. In legal practice, webpage snapshots, offline downloading, and other new technology are distinctively neutral; their development and application have had a major impact on increasing the efficiency of data transmission. They do not have any necessary conflict with the legal consumption of content. But under current enumerating legislation, it is quite difficult for relevant technologies to be deemed as fair use. The three-step test would use a catchall standard to regulate fair use, thus increasing the ability of the Chinese Copyright Law to accommodate this new technology. This will also have benefits for the wider development of the Internet industry.

Throughout the history of copyright law development, each new development in distribution technology has been accompanied with a lowering of barriers to copying, thus correspondingly decreasing the ability of copyright holders' control over their content. But at the same time, copyright holders have also gained more effective means of distribution as well as new means of deriving value from their content.

The “zero-cost” advantage and the unparalleled convenience and efficiency of Internet release as compared with traditional release methods necessarily make it a means of releasing copyrighted content replacing all others. Therefore, copyright holders should follow the path of history and while simultaneously combating piracy also establish their own authorized pathways for distribution of content over the Internet, to satisfy the demands of vast numbers of consumers for digital content. Otherwise, with so many consumer demands unsatisfied, the fight against Internet piracy will be rather difficult. At the same time, with the changing business models where Internet distribution rights are at the core, the copyright law should also evolve and innovate accordingly to better accommodate and promote the developments of advanced distribution technology.