COPYRIGHT AND PROTECTION OF RESEARCH RESULTS IN THE DIGITAL AGE

Human creativity needs technology to express itself. The discipline of intellectual work is strictly related to technological developments: the embryo of a legal protection of intellectual property takes shape at the turning point of the invention of movable type printing. The historical antecedents of modern laws on protection of intellectual works are represented by the privileges granted by the sovereign for printers. Unlike the property on material things (which dates back to the dawn of time), intellectual property law (patent and copyright) could be considered a recent law.

Before the invention of movable type printing, the original costed the same as the copy (the cost is the payment of the slave, the scribe). With movable types, the original (matrix) is very expensive, the copy is cheap (the marginal cost of producing the copies is low). The second printer copies the matrix (supporting costs) and then he must support only the marginal costs of producing copies. With a new market (the book) and a new business model (selling large-scale copies of the originals with a cover price) comes the need for new rules.

The “information good” is characterized by the following features: the immateriality, the inexhaustibility, the incremental and cumulative nature. Then, information can be assimilated to the category of the “public goods”: these are not rival and not excludable goods. The public goods determine a situation in which an efficient market (i.e., the contract system on which it is based) cannot work and the state must intervene to correct the failure (the so-called market failure). One of the possible state remedies for a market failure is the creation of a monopoly/property rights (copyright and patents), in order to create artificially (i.e., by the force of law) the excludibility that is missing to information in the state of nature. Thus, Copyright (or patent) is an exclusive right that allows (in theory) to apply an higher price with respect to the marginal cost. The possibility to charge a very competitive prices is an incentive to create and distribute. It is a poised balance: the exclusive right is limited in time and extent, for balancing the incentive to produce inventive and creative information with the access to that information.

Until the specimens were copied with difficulty or a copy was qualitatively much lower than the original, the rules mentioned before have fulfilled the assigned task. The system started to crack with the implementation of tools that permitted to easily reproduce protected works (i.e., photocopiers, tape recorders, VCRs, ...). Finally, the digital technologies determined a sort of epochal challenge to the traditional patterns of protection of copyright: the
easy production of copies, the impossibility to distinguish the copy from the original by a quality point of view, the easiness of distribution of copies. Copyright laws are still there to recognize exclusive rights to creators of original works. These exclusive rights and their enforceability through the system of state courts lose their importance. This new scenario determines new threats and new instruments of protection, pushing to a redefinition of the elements that characterize intellectual works: the evolution of the concept of work, the evolution of the concept of author, the evolution of the concept of creativity.

The lecture is aimed to outline an overview of the history of intellectual property protection, in order to truly understand the rationale of it, and to provide the main features of the copyright and protection of research results in the digital age.

References:

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