UGC, content attribution & moral rights

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Licenses for Europe
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Introduction

• Maintaining the attribution and integrity of original works in the digital environment
• Challenge is not new:
• 1995 Green paper on INFOSOC
• 1996 Follow-up Report on Green Paper
• 2000 Study – no harmonization needed
  – no authors consulted in music
legal framework

– Berne Convention Article 6bis
  • Attribution right, integrity right (minimum standards)
– National law
  • civil law v common law
  • France, Germany
  • UK: also right Against False attribution (UK, 1988 CDPA s.84)
    – but s.87 (2) CDPA!
  • US: Monty Python case, VARA
  • Term: perpetual in some jurisdictions (i.e. France) – practical consequences see 2007 Victor Hugo case
Background

- Digital technology unleashed new ways for creative expressions
- enables more than just consuming culture -
  - interactively engaging in it
    - Multi-media art, software art
- Results are shared on social media sites, blogs
This is great...

opportunities:

• For small businesses & young entrepreneurs

• For users actively engaging in culture

• For authors
  – For Creators, who want to collaborate
    • No reason to say no to a remix request and to a business opportunity

• But: authors want to be consulted
Challenge

Content attribution

• Difficult to find out original creator
• Authors frequently not credited (music)
• Way forward:
  – Development of ID tools (digital signatures, watermarking etc)
  – Encouraging collaborations of guilds & social media platforms
  – EC leaded Dialogue & Awareness campaigns
Challenge

• False attribution

Yekaterina Samutsevich (Pussy Riot) at Creators Conference discussing moral rights
Photo: Gaetano Saturno
False attribution:

Sweden Democrats (Sverigedemokraterna) women's association made a political campaign film and used the music of SKAP composer member Börge Ring.

Börge Ring had not been approached permission to use his work.
Challenge

- **derogatory treatment & integrity**
- Emma Delves-Broughton v House of Harlot
- Professional photographer (claimant) took picture of model in laying in grass
- The claimant then passed the photo onto the model saying she could use it for her own purposes
- Model passed photo to defendant who cropped it, rotated it and changed it in Photoshop
- Defendant (House of Harlot) used the modified version for website of its business
  - Claimant found out that defendant used the photo for over 6 month on the website and social media
  - Defendant never approached claimant to ask for license or permission
  - Claimant asked defendant to take it down – defendant refused
  - sued for copyright infringement and derogatory treatment
  - Outcome: infringement of moral rights
  - Modified photo USG?
Perez & Ors v Fernandez [2012] FMCA

- Perez (Pitbul): hip hop artist, songwriter, producer
- Ferndandez: DJ
- Fernandez received audio drop for promoting the tour of Perez (in 2008)
- Perez was author of audio drop
- 2010 Fernandez remixed Perez’s song “bon bon” with “audio drop”
- Fernandez uploaded the version on his website & social media
- Perez not approached
- Perez sued
  - integrety as author and
  - derogatory treatment
- Outcome: moral rights infringement because derogatory to the honor and reputation of Perez as hip hop artist
• Link between moral rights and cultural heritage??
• Moral rights colored by aspects of cultural property rights and cultural heritage?
Challenge

• Amar Nath Sehgal vs Union of India [2005 (30) PTC 253]
• Litigation in favor of the author (mutilation and derogatory treatment of his sculture)
• necessity to protect moral rights
• right of society of India to see original work
• Culture is supposed once to entre public domain
• there is a right that it enters also in original form (cultural heritage)
Conclusion

• moral rights are of growing relevance in particular within the digital environment;
  – digital environment popular channels to promote and exploit their works (particular popular music, media art etc.)

• preservation of cultural heritage

• Way forward:
  – New ID tools (digital signatures, watermarking etc)
  – Raising awareness
  – Notifications and “labels” in terms of conditions
Thank you for your patience!

References

• Smita Kheria – Moral Rights in the Digital Environment: „Authors“ absence from Authors‘ rights debate

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• Emma Delves-Broughton v House of Harlot, 2012

  • http://www.herbertsmithfreehills.com/-/media/Freehills/A09031221%2025.PDF