

Check against delivery



UGC, content attribution & moral rights

Patrick Ager
Licenses for Europe
WG II
7 March 2013

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
- Fernandez: DJ
- Fernandez received audio drop for promoting the tour of Perez (in 2008)
- Perez was author of audio drop
- 2010 Fernandez remixed Perez' song „bon bon“ with „audio drop“
- Fernandez uploaded the version on his website & social media
- Perez not approached
- Perez sued
 - integrity 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 sculpture)
- necessity to protect moral rights
- right of society of India to see original work
- Culture is supposed once to enter 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
-
- Mira T. Sundara Rajan, DPhil (Oxon), Canada Research Chair in Intellectual Property Law, Associate Professor of Law, University of British Columbia – articles on 1709 Moral Right Blog
-
- **Emma Delves-Broughton v House of Harlot, 2012**
- http://www.lawdit.co.uk/reading_room/room/view_article.asp?name=../articles/1040-the-patents-county-court-moral-rights-infringement.htm
-
- **Perez & Ors v Fernandez [2012] FMCA 2.**
- <http://www.herbertsmithfreehills.com/-/media/Freehills/A09031221%2025.PDF>