

# Copyright in the Digital Age



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# How has the environment changed?

## I. New Technology

### A. Digitization

1. Serial copying – Perfect copy form a copy
2. Metadata – IDs the artist and title

### B. Internet

1. Instant access to 100s of millions

### C. Broadband connection

1. Larger files at faster speeds
2. Broadband penetration continues to grow



# How has the environment changed?

## D. Copy Equipment

1. Cheaper and smaller
2. Moved into the home

## II. Individual users can affect the market

- A. Enforcement has traditionally focused on the distributor
  1. The user has become a distributor
    - i. Peer-to-Peer networks (P2P)
  2. Copyright law is complex
- B. Need for innovative solutions



# How has the environment changed?

## III. New Business Models

### A. Creative licensing

1. Video games – user generated content
2. Limited copies of music downloads

### B. Streaming

1. What rights are implicated?
  - i. Public Performance
  - ii. Reproduction – buffer copy



# How has the environment changed?

## C. On-demand

1. Movies
2. Interactive radio

## D. Product vs. Service

1. Cable TV
2. Pandora

## E. Distribution costs are low

1. Marketing, Packaging
2. Global Distribution
3. Production costs even higher



# Legal Implications?

## I. Reproduction

- A. Any Sound or Visual recording shall be considered a reproduction (Berne Art 9(3))
- B. WCT Art 1 and WPPT Art 7 (Agreed statement)
  - 1. Reproduction Right and Exceptions fully apply in the digital environment, and
  - 2. Storage in digital form in an electronic medium constitutes a reproduction



# Legal Implications?

## C. Examples of economic value entirely in the RAM copy

1. Load licensed copy on LAN server, then unlicensed users use RAM copies
2. Downloads of software on demand that are used immediately then discarded

## D. Implied license

## E. Thumbnails

1. Considered fair use



# Legal Implications?

## II. Secondary liability

### A. Contributory Liability

1. Knows or has reason to know of infringement, and
2. Induces, causes, or materially contributes to the infringing conduct of another

### B. Vicarious Liability

1. Right and ability to control, and
2. Direct financial interest



# Legal Implications?

## III. Limitation on ISP liability

### A. Notice and takedown

1. Copyright owner can send notification
2. ISP must “respond expeditiously” to take down
3. User can send a counter-notification
4. ISP must put back up between 10 and 14 days later, unless first person files lawsuit in court.



# WIPO Internet Treaties

## I. Overview

- A. The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- B. These treaties were negotiated in 1996 and entered into force in 2002.
- C. Contracting Parties: WCT (64); WPPT (62)
- D. The U.S. implements them through the Digital Millennium Copyright Act (DMCA) and other laws.



# WIPO Internet Treaties

## I. Making Available

## II. Technological Protection Measures (TPMs)

A. Any technology, device, or component that...is designed to prevent or restrict acts...which are not authorized by the owner of rights or by the law.

1. Access Controls
2. Copy Controls



# WIPO Internet Treaties

- B. Obligation to provide adequate legal protection and effective legal remedies against circumvention of TPMs.
  - 1. Adequate legal protection
    - i. Prohibit the act of circumvention.
    - ii. Prohibit the devices and services that are used to facilitate circumvention.
    - iii. Limit exceptions.
  - 2. Effective legal remedies
    - i. Civil remedies
    - ii. Criminal penalties



# WIPO Internet Treaties

## III. Rights Management Information (RMI)

### A. What is RMI?

1. Any information that identifies the work, the author, or owner of any right in the work; or,
2. information about the terms or conditions of use...
3. when it is attached to the work or appears in connection with the communication to the public of the work.



# WIPO Internet Treaties

- B. Parties must provide “adequate and effective legal remedies” against
1. knowingly removing or altering electronic RMI, or
  2. disseminating works that have had RMI removed or altered
  3. Must have knowledge or reasonable grounds to know that the act will induce, enable, facilitate, or conceal an infringement.



# Conclusion

- The Internet/technology/the digital environment offer incredible opportunities for creative and knowledge-based assets.
- They also present formidable challenges and an ever changing environment.
- The goal is to provide a legal system that allows the benefits of the digital era while addressing the challenges and changing technological environment.



# THANK YOU

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