Digital Copyright

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The options and questions raised around the subject of allowing the public access to information is a bone of contention for anyone holding a copyright in the digital age. Since the internet became the world-wide medium for sharing information, the boundaries have been broken down allowing almost unlimited access to any kind of information. Recently the tables have been turned on copyright holders of works of literature as millions of books have been scanned and digitalised by way of the Google Book Project[1] forcing copyright holders to prove their ownership. In contrast to the current Swiss Copyright Law and the Berne Convention, which provide a basic level of protection to creators of works with individual character or nature, information sharing is no longer guided and supported in a way which protects the interests of copyright holders as was originally intended.

Swiss Copyright Law and its Revision

The recent controversial movements in the area of copyright law have been more noticeable on the world stage. However a hot topic of debate remains the update of Swiss Copyright Law which was enacted in June 2008. Prior to this revision, Swiss Copyright Law had remained untouched for almost 20 years and dated back to 1992. The law protects works (artistic and literary creations of the mind) of individual nature and the author's proprietary rights as well as moral rights (dualistic principle)[2]. Central to the debate over the efficacy of the law in the digital age, the law also includes provisions to govern the presumption of authorship (art. 8), the principle of exhaustion (art. 12), as well as use of the work in question (art. 10). These sections are key to providing clarity on the following aspects: Who *created* what and may lawfully exercise copyright (i.e. crediting an author for his work); who *owns* what, consents to sale and receives remuneration; whether a work may be reproduced, performed and distributed and when this may take place.

The World Intellectual Property Organisation (WIPO) executed two international internet treaties in 1996 (World Copyright Treaty, WCT and World Performances and Phonograms Treaty, WPPT) calling for the adaptation of copyright law. Switzerland, as a party to the agreements, ratified their content which resulted in the 2008 revision to Swiss Copyright Law. The main changes included allowing not only copyright holders but now also the artists, producers and broadcasters to exercise on-demand[3] rights; better protection for performers of folklore[4]; installation of technical measures to protect against illegal access or copying of digital con-

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1 Google works with libraries to scan in the works of authors considered no longer commercially available (public domain works). The Google Book Project is not the only such initiative. Other book scanning initiatives include Project Gutenberg, Internet Archive and Cornell University. For more information on the current status of the Google Project see http://books.google.com/googlebooks/agreement/.

2 Rehbinder, Schweizerisches Urheberrecht, 3. Auflage, Bern 2000, p. 73, «Man unterscheidet traditionell zwei Gruppen von Urheberinteressen, nämlich vermögensrechtliche (materielle) und persönlichkeitsrechtliche (ideelle). Daraus hat sich die das URG prägende dualistische Theorie den Schluss gezogen, das Urheberrecht bestehe aus zwei Teilen.»

3 *On-demand* refers to the making available of works or protection against unauthorised offerings via a communication channel such as the internet. Originally this on-demand right was only available to the copyright holders.

4 Swiss Copyright Law refers to the example of flag twirling.

tent (often referred to as Digital Rights Management or DRM[5]); making illegal the removal of legal rights and permitted use of content information[6].

Current Copyright issues in Switzerland

Despite the revision not all gaps have been filled. On the one hand, the technical possibilities available to consumers to acquire and reproduce (in high quality) content do not support an understanding of copyright's function. Even artists and authors cannot live off air and love of their work alone[7] and if the creators of art and literature are not fairly remunerated, the incentive to innovate will grind to a halt. Quite simply, the lack of protection against illegal copying and use of digitally available content is exacerbated by a copyright law which is outdated. On the other hand, the technical possibilities available to creators of content to digitally protect their work (made mandatory by the 2008 revision) function as an addendum to existing copyright law. Digital Rights Management may please copyright holders, but the barrier created to provide copyright protection in the internet age is creating a new set of problems for the consumers (for example DRM can prevent back-up copies of music bought on CD being made). It is a vicious circle with no way out for either party.

Copyright, by any other name …

Copyright by any other name is arguably no longer still copyright. It is now DRM, or Creative Commons[8] or just a licence. Copyright law, as any law, defines barriers. The 2008 revision was not ineffective and amendments are necessary. However can the barriers be kept up and reinforced as quickly as needed in a world intent on breaking down barriers to create access for all?

5 For example, copy protect on music CDs.
6 Some technical measures might actually lead to certain uses of content being hindered. See https://www.ige.ch/urheberrecht/teilrevision.html
7 Ständerat Oskar Wettstein in «Revision des Urheberrechtsgesetzes», Suisse Culture, 2. Auflage, Mai 2006.
8 An initiative also referred to as «Copyleft» which offers copyright holders the ability via a web based form to define how their work may be used once they decide to publish it. For more information see: www.creativecommons.ch