3D Printing and Intellectual Property Rights

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Introduction

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- Director of the IP/IT Master’s Degree, Paris Descartes University
- Intellectual Property Specialist
- Organized the IRPI Conference on 3D printing and Intellectual Property Rights (19 June 2014)
IP Rights in the Digital Era
3D Printing: the making of copies
3D Printing: a challenge to all IP Rights

- Copyright
- Trademarks
- Patents
- Industrial Designs
Who is responsible for potential infringements?
Rules may vary depending on the specific IP right at stake
What Acts related to 3D Printing may be illegal under IP rights?

I/ Acts of “Direct” Infringement on IP Rights

II/ Acts of “Indirect” Infringement on IP Rights
I/ Acts of “Direct” Infringement on IP Rights
Creating a 3D File

- Using a scanner
- Using a specific CAD Software

UNDER COPYRIGHT: illegal IF

- Original work is protected
- You reproduce or adapt the protected work

UNLESS you fall under an exception:

- Teaching or scientific research, for non commercial purposes
- Private copying
The private copying exception in the EU

- Optional under the “Copyright in the information society directive”
- “Reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation”
- Most EU States have implemented it
Does the private copying exception apply to 3D Printing?

1) The source of the copy must be LEGAL ➔ no copying something downloaded illegally

2) Fair compensation for authors? Not currently ➔ exception not applicable

3) Reproduction on a “MEDIUM”? No

4) 3-step Test applying to all exceptions:
   - Special cases
   - Exceptions must not conflict with a normal exploitation of the work
   - They must not unreasonably prejudice the legitimate interests of the rightholder

CONCLUSION: the exception hardly seems applicable to 3D Printing as of now
Creating a 3D File under Industrial Property Rights

Legal under Patent and Industrial Design Rights:

- Exclusive rights only forbid the MAKING OF A PRODUCT
Uploading a 3D File

Under Copyright:

- Illegal: Communication to the Public of a protected work
- UNLESS you fall under the teaching or scientific research exception

Under Industrial Designs:

- Legal: you are neither MAKING nor OFFERING a PRODUCT

Under Patents:

- No direct infringement
- BUT indirect infringement if you provide the MEANS to infringe on a patent (cf. plans, notices…)

Bonjour,
si ça interresse, j'ai une M5 E60 en modelisation CAO (facetisé), .prt pour NX, je peux la convertir si besoin.
Downloading 3D Files

ё Under Copyright:
  ✗ Illegal if the source is illegal

ё Under Patents and Industrial Designs:
  ✗ Legal: no making of an object
Printing IP-Protected Objects

Under Copyright:
- Illegal: reproduction/imitation of a protected work
- No private copying exception

Under Industrial Property Rights:
- Illegal: making a PRODUCT incorporating a protected design / a patented invention or process
- The same applies to reproductions with small differences
- 3 exceptions:
  - acts done privately and for non-commercial purposes
  - acts done for experimental purposes
  - acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source
Printing IP-Protected Objects

Under Trademark Law:

✗ Illegal to reproduce or imitate a protected trademark (verbal, figurative or 3-dimensional)

IF:

▪ Use in the course of trade
  ➔ “private use” exception?
▪ Use to distinguish similar products (except for famous trademarks)
  ➔ What if you change the destination of the product after printing it?
Private copying vs. Private use

Unlike copyright, Industrial Property Rights seem to allow for private use.

No legal definition of:
- Conditions of application
- Number of copies allowed
- People allowed to make private uses
- Whether the source must be legal
- Whether it is compensated

The private use exception allows individuals to print any object protected by an industrial property right without any kind of limitation or compensation.

Should legislators regulate private use?
- Extend the fair compensation system (based on what?)
De facto limitations to the private use exception

- Contractual limitations (for example, number of copies)
- Technical devices protecting 3D Files and restricting the possibility of printing objects
- Databases of protected 3D Files
- Devices on 3D printers controlling the lawfulness of 3D Files (DRM)
Selling 3D-Printed Objects

 Illegal under all IP Rights:
- Distribution of a protected work
- Offering / putting on the market of a product in which the design is incorporated
- Offering / putting on the market of patented inventions
- Offering / putting on the market of trademarked products
II/ Acts of “Indirect” Infringement on IP Rights
Platforms offering 3D Files

Can they benefit from “safe harbor” provisions under EU law?

CJEU Google Adwords 2012: The service provider is not liable for the storage of information if:

- It has not played an active role of such a kind as to give it knowledge of, or control over, the data stored; AND
- Having obtained knowledge of the unlawful nature of those data, it failed to act expeditiously to remove or disable access to the data concerned (= NOTICE AND TAKE DOWN)
Creators of hyperlinks redirecting to 3D Files

CJEU Svensson 2014:

- The provision of hyperlinks does not constitute an of communication to the public ➔ hyperlinks are legal in general (provided the target content is legal)

- BUT the situation is different if the hyperlink permits users of the site on which that link appears to circumvent restrictions put in place by the site on which the protected work appears in order to restrict public access to that work (NEW public)
Makers and sellers of 3D scanners and printers

- Legal activity
- They cannot be regarded as accomplices to illegal acts that would be committed by individuals using these equipments
  - Unless they encourage users to commit these acts
3D-printing service providers

On-demand 3D printing services providers:
- May be liable for printing illegal objects under all IP rights
  - Reproduction of copyrighted works
  - Making of products incorporating protected designs / patented inventions
  - Use in the course of trade of trademarks
- Contractual guarantee and liability limitation clauses

Self-service 3D printing services providers:
- No direct reproduction/ making
- Customers are liable
- Guarantee and liability limitation clauses
Conclusion

- 3D printing as a wonderful technological improvement
- Main legal issue: private copying / use
- Finding the right balance between rights of IP right holders and users
- Legal rules should not come as an obstacle to the development of 3D printing
- Besides IP: guarantee and liability issues
Thank you for your attention!

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