

3D Printing and Intellectual Property Rights

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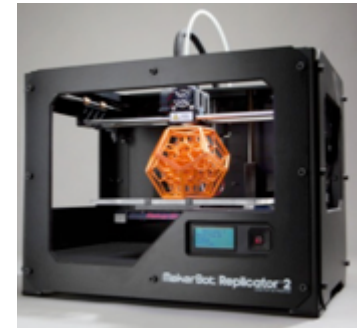
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Introduction

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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



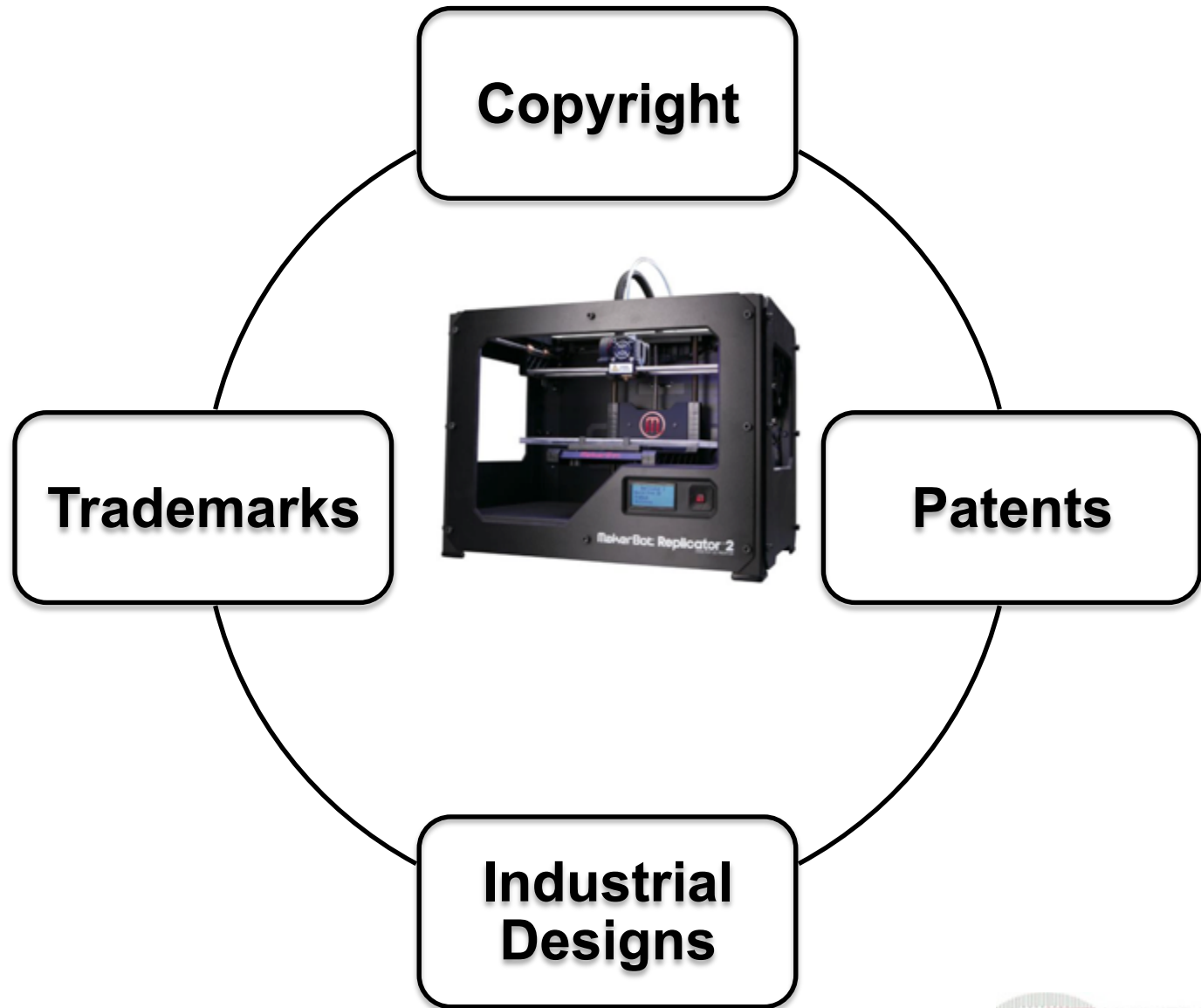
3D Printing: the making of copies



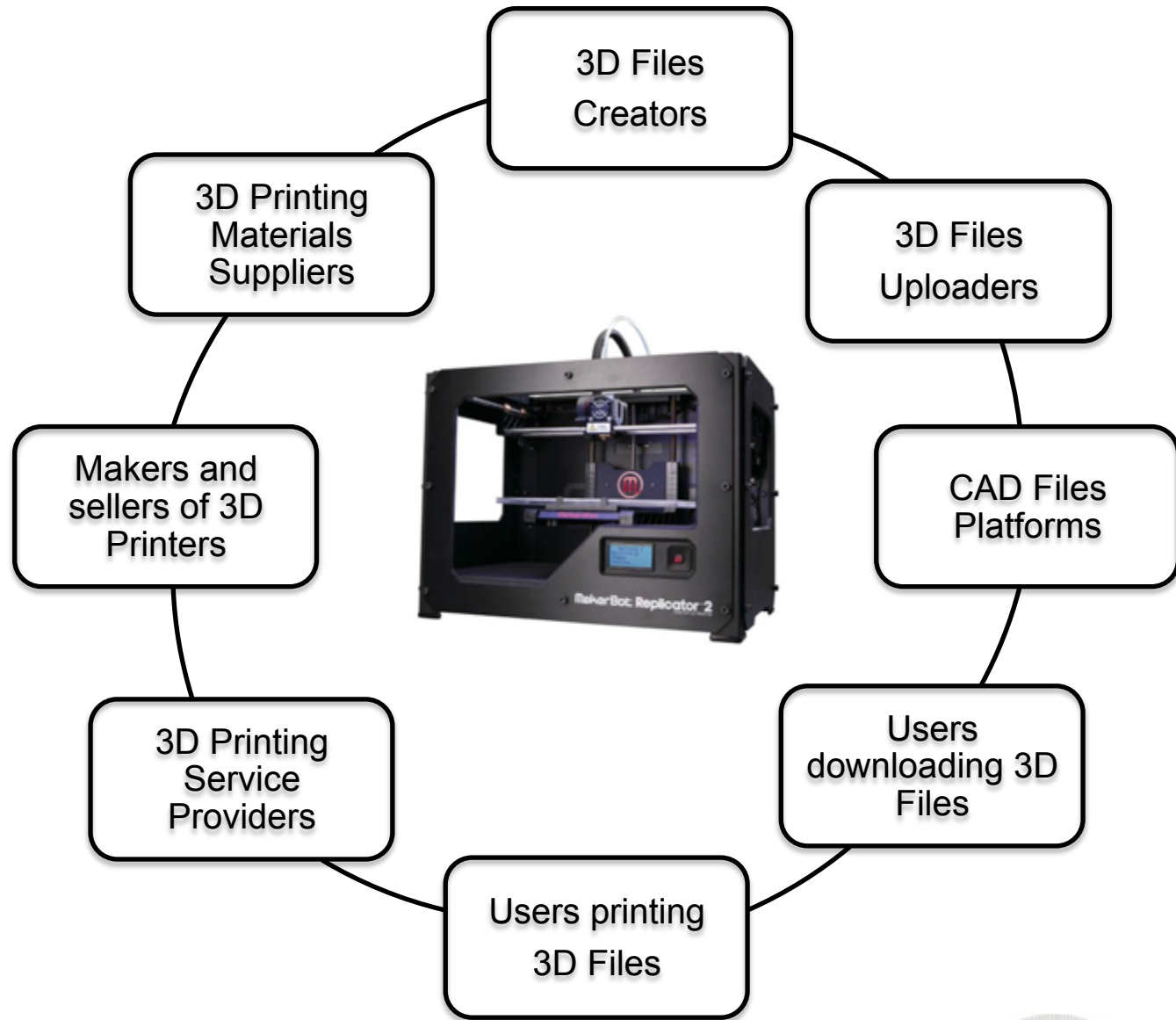
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3D Printing: a challenge to all IP Rights



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



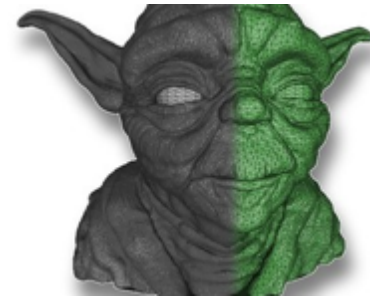
↪ UNDER COPYRIGHT: illegal IF

✘ 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

Bonjour,

si ca interesse, j'ai une M5 E60 en modelisation CAO (facettisé), .prt pour NX, je peux la convertir si besoin.

- ✗ 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...)

Downloading 3D Files

- ↪ Under Copyright:
 - ✗ Illegal if the source is illegal

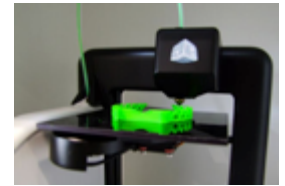


- ↪ Under Patents and Industrial Designs:
 - ✗ Legal: no making of an object

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 ?

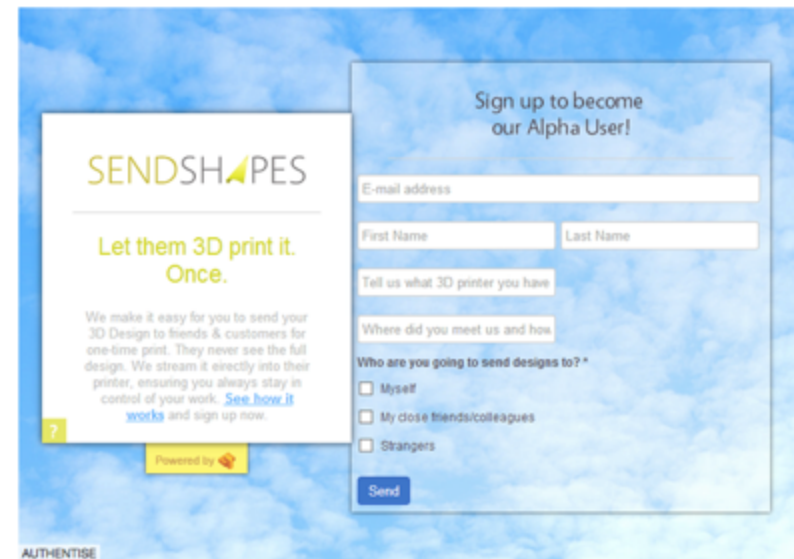


Private copying vs. Private use

- ↪ 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)



The image shows a screenshot of the SENDSHAPES website's sign-up page. The page has a blue background with a white box containing the company logo and a sign-up form. The logo reads 'SENDSHAPES' with a yellow triangle. Below the logo, the text says 'Let them 3D print it. Once.' and 'We make it easy for you to send your 3D Design to friends & customers for one-time print. They never see the full design. We stream it directly into their printer, ensuring you always stay in control of your work. See how it works and sign up now.' There is a 'Powered by' logo at the bottom of the white box. The sign-up form is titled 'Sign up to become our Alpha User!' and includes fields for 'E-mail address', 'First Name', and 'Last Name'. Below these are two text input fields: 'Tell us what 3D printer you have' and 'Where did you meet us and how'. A section titled 'Who are you going to send designs to?*' has three radio button options: 'Myself', 'My close friends/colleagues', and 'Strangers'. A blue 'Send' button is at the bottom of the form. The word 'AUTHENTISE' is visible in the bottom left corner of the page.

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 act 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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