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Subject- Cyber Law
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Concept- Multimedia and Copyright issues

Introduction

Multimedia is a term of complex meanings and divergent definitions within the business community. The computer industry has one definition; the entertainment industry another; and the telecommunications industries yet another. As one author in the field has observed, "the term can mean virtually whatever the user wants it to mean." Definitions of multimedia differ largely because the intended application of multimedia in each industry requires that certain aspects of multimedia are more important to each industry than are others. Despite our reluctance to place a singular definition upon multimedia, most industry groups seem to recognize that significant legal issues arise regarding the rights of ownership and use of pre-existing material for multimedia content.

For our purposes multimedia can be defined as follows:

Interactive software stored and transmitted in digital form which incorporates multiple forms of audio, video, graphics, text, animation, photography and special effects for display and performance on computer controlled video screens and sound systems.

Media (both digital and analogue) can be any of the following:

Text, drawings, graphics, photographs, film, video, wireless, audio, animation, VR, and so on. In the widest context, multimedia is a form of interpretative system providing a broader range of information. For example, it can place a particular work in more than one context, e.g. timelines. It makes it possible to introduce comparisons or detailed examinations (e.g. microscopic level detail). It also supports innovative learning tools and feedback mechanisms, such as participative spaces on the web.

Particularly in relation to museums, multimedia aids in the interpreting of collections which are not accessible, e.g. storage items, or in the reaching of audiences who are not physically in the Museum, e.g. virtual visitors, geographically excluded.

Multimedia further provides interactivity for a wider scope of audience; e.g. different interfaces for different audiences, such as language screens or separate children/adult entry points. Significantly the growth of media channels has made it possible to support the dissemination of collections in many ways, e.g. online catalogues, kiosks, e-publications, CDs, WAP pages, etc.

This article examines the challenging legal issues which arise from licensing such materials for incorporation into new multimedia products. While multimedia licenses may involve every type of intellectual property right, most licenses which involve photographs, film, video, audio, graphics, text and animation will consistently raise legal issues regarding copyright and the rights of publicity. These will be of principal importance in this examination. Trademarks,

service marks, trade dress, trade secrets, and moral rights issues are also raised in multimedia projects.

In predicting the legal issues that are likely to be presented by the licensing of pre-existing materials for multimedia content, the legal community is generally making an educated guess. Much of the excitement and hyperbole that has been generated in the legal community about multimedia thus far has been spawned by its potential rather than the success of its current application. In predicting the legal issues that are likely to be raised in multimedia development, its developers may also be benefitted by looking at the type of issues that were raised in the evolutionary progress of earlier technologies such as VCR's and compact disks recordings. These technologies were not particularly useful until a significant number of software offerings embodying pre-existing films and sound recordings were available in the new technological format.

Intellectual Property Licensing Rights Commonly Raised By The Use of Pre-Existing Materials

The following table identifies the most common intellectual property issues raised by licensing particular forms of pre-existing materials

		Text	Still Images, Photos, Drawings, Paintings & Sculptures Etc.	Sound Recordings	Motion Pictures & Audio/Video Works/Animation
Copyrights	1	Copyright in text owned by author or publisher	Copyright in the art or photograph by photographer or publisher or Artists who created the painting, drawing, etc.	Copyright in sound recording by creator of a) music or lyrics b) vocals c) sound effects d) text or spoken word	Copyright in the film, audio/video work or animation
Copyrights	2	Copyright in fictional characters owned by author or publisher	Copyrighted in character that is photographed, painted, drawn, etc.		a) Copyright in the original work from which the Audio Visual work was derived b) Copyright in fictional character
Rights of Publicity	3		Right of publicity held by the subject of the photograph	Right of publicity held by the performer and/or use of a sound-a-like	Right of Publicity held by Actors who did not convey such rights to the film/T.V. or A.V. company
Trademarks And Service Marks	4	Trademark Rights in books, titles or characters	Trademark in items photographed or shown which represent a	Trademarks in songs and album titles &	Trademark Rights in film title or name or appearance of

			company's trademark or service mark	trademarks used as part of lyrics	fictional character
Moral Rights	5		Photographic Artist's moral rights under Visual Artist's Rights Act or State Law		Artist's moral rights under Visual Artist's Rights Act or State Law
Contract Claims	6	Guild or Union contract rights a) Writers Guild of America b) Screen Writers Guild	Trade agreements contract rights a) American Society of Media Photographers b) Graphic Artists Guild	Guilds & Unions contract rights a) Songwriting of America b) American Federation of Music c) Performing Arts Guild d) ASCAP, BMI, etc.	Guilds & Unions contract rights a) Screen Actors Guild b) AFTRA c) Actors Equity d) Dramatist Guild
Rights of Privacy	7	Defamation or invasion of privacy by text subject	Defamation by the words spoken/invasion of privacy claims by photograph subject	Defamation by the words spoken & rights of privacy invasion by unauthorized recordation	Defamation by words or visual depiction & rights of privacy invasion by unauthorized recordation

Protection of Multimedia Works: online

Digital technologies have made possible the creation of works with much more versatility than in the past. A work may now consist of literary, artistic, music and dramatic elements and may also include a phonogram and a cinematographic film.

Multimedia works by their basic premises are works combining different elements, such as text, sound, still visuals and moving images, into a single medium. Increasingly works from different categories are being fixed in a single medium of expression. Works from protected by copyright have become less and less differentiated by type and more and more equivalent to one another because they are in the same medium. This equivalence of works in digital form has made it increasingly easy to create a difficult-to-classify work by combining what have previously been thought of as separate categories of works for copyright purposes. This has given rise to the consideration of forming a separate category under the present Copyright laws for future.

The user can 'interact' with the work in ways previously unknown. He can make alterations and additions and even create a new work out of the stock of existing ones. If the rights for all classes of works were the same, then perhaps, this would not have been a major issue. But the law as it stands in India, distinguishes between different classes of works in the matter of rights. For example, the rights in a literary work and those in a cinematographic film are different. There is no rental right in a literary work, whereas there is such a right in cinematographic film. The authorship may raise another problem, as the criterion of authorship is different between

literary, dramatic, musical and artistic works on the one hand and cinematographic films and sound recordings on the other hand.

What kind of protection does a multimedia work attract in its individual combination of component parts. The question is how to qualify digital off-line and on-line media from a copyright perspective. The significance of the issue lies in the fact that the relevant categorization entails different legal consequences and the presence of multimedia work defies existing classification under the copyright law.

It is not a new type of work to the extent that a multimedia product can fall under one or several, already existing, categories. Protection of the individual elements of a multimedia work must not be confused with protection of the multimedia production as a whole. In accordance with the existing provisions of the Copyright Act it remains possible to dispose of the individual contributions separately, even after the individual elements have been combined in one single work. The actual classification of a particular multimedia product will depend on the type of work and on the different and specific characteristics of each individual multimedia product. Therefore, it has to be decided on a case-by-case basis. To the extent it is a literary work it gets protected as such; to the extent it is a cinematographic work, it attracts copyright protection as a cinematographic work and to the extent that it is a pure phonogram, its producer is protected. The final interpretation, of course, will then often be in the hands of the courts.

It is possible to consider and treat multimedia products as works similar to cinematographic film in the sense of section 2(f) of the Copyright Act, 1957. It seems possible to classify and to treat multimedia productions as collections of literary or artistic works in the sense of Article 2(5) of the Berne Convention and they might also fall under the category of compilations of data or other material in the sense of Article 10(2) of the TRIPS Agreement. There is also a view that multimedia work be classified as computer programme since every multimedia work will have a software component. As there are separate provisions for rights and authorship of a computer programme distinct from literary works in the Copyright Act, this could be a possible solution. However, issues may arise on the retention of separate copyrights in the works incorporated in the multimedia, in terms of section 13 of the Act and the rights of performers in the product. At present, large numbers of multi-media works are being created by combining pre-existing works. The classification of multi-media works is an issue, which needs to be looked into in depth.

There is nothing new in the combination of several types of works within one larger work or on one data carrier; phonograms and cinematographic works are examples from the past. What is new is that text, sound and visual information is now presented and stored in digital form. However, it would not be advisable to equate all multimedia works with the existing category of cinematographic works. The fact is that a multimedia work taken as one single product does not exactly fit any of the existing categories of works protected under the regime of copyright. The fact that digital products are vulnerable not only to copying of the whole work but also vis-à-vis copying of parts of the work poses additional problems. According to the previous prevailing opinion, unauthorized appropriation of parts of a work only amounts to an infringement of copyright where the relevant part attracted protection as such.

It still remains to be decided whether multimedia works should be regarded as a separate category of works protected under the regime of copyright. Since it has not yet been clarified to what extent multimedia works fall within one of the above-mentioned types of work, it should be pointed out in legislation that a work can consist of the combination or merging of

other works. This would ensure that the prerequisites of protection were not examined separately but in relation to the multimedia work as a whole, which would enable protection of the interactivity so characteristic of many multimedia works, provided that it fulfils the originality requirement.

1.P2P Networking

Peer-to-peer (hereinafter referred as P2P) is defined as two or more computers connected by software which enables the connected computers to transit files or data to other connected computers. In recent usage, P2P has come to describe applications in which users can use the Internet to exchange files with each other directly or through a mediating server. It is helpful to think of the P2P network as a conversation between computers - some computers are "talking" while others are "listening". The P2P connection means that it's a direct link, The file is being directly transferred from one computer to the other, it is not going through any mediating server. Napster and Gnutella are examples of this kind of P2P software.

a) Napster: Napster was created by 10-year-old Shawn Fanning in 1999 and it quickly became popular around the world and pioneered the concept of P2P file sharing. With Napster, individual people stored files that they wanted to share (typically mp3 music files) on their hard disks and shared them directly with other people.

In order to enjoy a free music file First of all one had to become a member of Napster service by downloading the Napster software on one's computer. The Napster software was available for free at the Napster's Web site 'www.napster.com'. After implementing the Napster software the computer became a small server able to make files available to other Napster users. Then the computer connected to Napster's central servers. The Napster software that a member downloaded on his computer automatically told Napster central servers that these were the music files on his computer. So, the Napster central servers had a complete list of every shared song available on every hard disk connected to Napster at that time. A Napster user could send a request to the Napster server for a particular piece(s) of music. Now the Napster server did not contain any music on its own server but had a list of all the music that was available on the Napster members' computers. The list was dynamic in nature as the music files available depended on which member was online at a particular time. The entire user community could be searched for artists or titles in seconds. One could simply type in the name of an artist or song, receive a list of what was available, and then downloaded the music from another user's hard drive.

Napster grew to having 57 million users of its service with a consistent 1.6 million using the system at any given time." Napster became so popular so quickly because it offered a unique product - free music that anybody obtain nearly effortlessly from a gigantic database. You no longer had to go to the music store to get music. You no longer had to pay for it. You no longer had to sorry about cuing up a CD and finding a cassette to record it onto. And nearly every song in the universe was available. At its peak, Napster was perhaps the most popular Web site ever created. Technically, all computers can be divided into two categories, client and server. A client computer avails of the services provided by the server computer and the server computer serves the client computers.

But for the music industry Napster was a big, automated way to illegally copy copyrighted material. The music industry was against Napster because people could get music for free instead of paying for a CD and any music downloaded was considered a loss of business

opportunity. The industry sued Napster under a claim of copyright infringement. Napster's defense was that it contained no copyrighted music filed on its servers. It just had a list of what was available on Napster's users' computers. So, if at all any one is liable for copyright infringement it is the person who downloads the copyrighted product or the person who makes it available and not Napster itself. But the court had sufficient reasons to inject Napster for copyright infringement. The court said that putting the list on the Web site was akin to running a huge distribution network. Napster's key weakness lay in its architecture - the way that the creators designed the system. The central database of song titles was Napster's Achilles' heel. The court ordered Napster to stop listing the music files which were under copyright protection and there was no means with Napster to segregate copyrighted music filed from those that were in public domain. The only option with Napster was to shut down the database and the absence of a central database killed the entire Napster network.

b) Post Napster P2P Networks: With Napster gone, what the world had at that point was something like 100 million people around the globe hungry to share more and more files. It was only a matter of time before another system came along to fill the gap. One distinguishing feature of the P2P services that came after Napster was that they had no central server maintaining direct file listings of all the files. The other distinction was that Napster was related to music files and that too specifically mp3 files. But most of these new softwares, Gnutella, Kazaa, etc., allow any type of files to be transmitted and downloaded. Gnutella is an underground variant of Napster whose popularity has risen dramatically in the wake of the litigation in which Napster had been embroiled. Gnutella has dozens of clients available. Some of the popular Gnutella clients include: BearShare, Gnucleus, LimeWire, Morpheus, and XoloX. Given that there is no central server to store the names and locations of all the available files first, one has to install a version of Gnutella on one's computer and type in the name of the song/film or any other file one wants to find. The machine knows of at least one other Gnutella machine somewhere on the network because it has been told the location of the machine by typing in the IP address, or because the software has an IP address for a Gnutella host pre-programmed in. The machine sends the file name typed in to the Gnutella machine(s) it knows about. These machines search to see if the requested file is on the local hard disk. If so, they send back the file name (and machine IP address) to the requester. At the same time, all of these machines send out the same request to the machines they are connected to, and the process repeats. After getting all of the search results the machine directly contacts the computer that has the desired file. It is an extremely simple and clever way of distributing a query to thousands of machines very quickly.

Kazaa is the latest version in the P2P technology which is spreading like a wildfire. Kazaa was originally established in the Netherlands. Kazaa network is built on a technology called the Fast-track technology. This is different from Gnutella in the manner that this software actually converts certain good quality computers in a particular network into supernodes^^ which perform the listing function. The P2P searches occur through users with these supernodes. A supernode contains a list of some of the files available and where they are located. The Kazaa software first searches the nearest supernode to a user and then refers his search to other supernodes and so on. This process is designed to make searching as fast as possible and means that searching will take place only through the files that have been indexed by the supernodes.

In **Buma and Stemra v. Kazaa**, an action for copyright infringement was brought against Kazaa by Buma and Stemra in a Dutch Court. The Plaintiffs, Buma and Stemra, a Dutch Copyright licensing group, sued Kazaa for the distribution of software which allowed users to make unauthorized copies of copyrighted works. In November of 2001, the district court of

Amsterdam ruled in favour of the copyright industry and ordered Kazaa to remove its website. Kazaa, thereupon, filed an appeal vide matter *Kazaa v. Buma and Stemra*^{^^} in the Amsterdam court of appeal. The court of appeal decided in Kazaa's favour and reversed the findings of the district court stating that the Kazaa technology has many other substantial and legitimate uses such as trading jokes and personal photographs apart from the fact that it could be used for copyright violations. Further, after release Kazaa.com is not monitoring the way it is being used and is not in a position to control it.

However, in the meantime, Kazaa had already left Holland; Sharman Networks purchased the rights to distribute the software from its Dutch owners, and Kazaa is now managed from Australia, but incorporated in Vanuatu, a South Pacific island.

c) Extent of Damage by P2P Networks: Millions of people around the world have downloaded P2P softwares and are increasingly using them to exchange music, movie and software files. According to CNET.download.com there are over 2.5 million downloads per week of the Kazaa Media Desktop Software and 111 million downloads of the Gantella-based Morpheus software accounts per week. According to The International Federation of the Phonographic Industry (hereinafter referred as IFPI), an organization representing the recording industry worldwide, for the year 2001, worldwide record sales were US\$ 33.7 billion dollars. The availability of free music on the Internet was blamed for the 5% drop in global sales of compact discs. In the year 2002, global sales were down 9.2%. World sales recorded music fell by 10.9% in value and by 10.7% in units in the first half of 2003. Interim sales of all audio and music video formats were worth \$US 12.7 billion, compared to \$US 14.2 billion in the same period of 2002.

The stakes as reported by the Industry are definitely high. The Industry points the finger directly at the Internet. But these figures have all been brought out by the IFPI comprises a membership of more than 1500 record companies, including independents and majors, Industry. Moreover, it can't be said with unflinching certainty that how much of this loss is due to online piracy. So, on the question of the impact this activity is having on entertainment company profits one has to be agnostic: other factors, such as the state of the economy, and the easy availability of CD's and DVD's in the form and containing the tracks that users want, will also have a bearing on the sales of prerecorded music, films and software. There is also a tendency by the entertainment industries to argue that every copy made through the medium of file-sharing is a lost sale and missed business opportunity. That begs the question as to whether the person who made the copy would have actually paid to acquire a legitimate copy had the alternative not been available.

In India, the problem of infringement through the Internet has yet to reach the magnitude that it has in some developed countries - we have had no Napster-like problem on anything like the same scale, audio cassettes still being the most common and most accessible form in which copies of sound recordings are stored, being much cheaper and more widespread than the digital alternative. That situation could no doubt change.