Copyright and Digital Rights Management: Moving Beyond Protection?

The distribution of motion pictures, music, games and other media over the Internet has been increasing in recent years, and the number of portable media players owned by the public also increases rapidly. These facts make potential piracy problems formidable. One way of tackling these problems has been, and still is, the use of technical protection measures known as Digital Rights Management (DRM). In this workshop, four speakers from industry and legal backgrounds highlighted the problems and discussed solutions to the practical and legal challenges.

Ms. Kate Logan, Senior Director Business Affairs Digital, at EMI International, introduced the subject, observing how DRM has enabled the introduction of entirely new business models, such as monthly subscriptions providing free access to all music files on stock, which does not require the user to store materials on his own hard disc or to maintain CDs. Ms. Logan described DRM as a "passport control" which permits access to the material with the right "visa". However, as with border controls, no DRM system is uncrackable. Furthermore, the decryption of encrypted music files etc. have implications on the quality of the music files etc. actually made available to the user. This and other circumstances have led EMI to choose to sell CDs and allow downloads DRM-free, and others are doing the same.

Mr. Frank Rittman, Regional Vice President and Legal Counsel, Asia-Pacific for the Motion Picture Association, went on to explain how DRM has changed the way in which the motion picture industry does business, in light of the fact that home-viewed entertainment now accounts for 81% of motion picture industry revenues. Mr. Rittman agreed with Ms. Logan that no system is unbreakable, but DRM helps honest consumers stay honest, in that it prevents "casual piracy". One of the main practical industry problems with DRM is interoperability, and working towards standards is a main focus for the industry.

Mr. Noam Shemtov, Queen Mary Intellectual Property Research Institute, dealt with a number of legal issues regarding the implementation of the WIPO Copyright Treaty (WCT) anti-circumvention provisions, concentrating mainly on the efforts made in the United States under the DMCA that prohibits circumvention of technological protection measures and the trafficking of circumvention tools.

Mr. Benoit Michaux, avocat, of Simont Braun, Bruxelles, characterised DRM as the addition of a third layer of protection of copyrighted materials (the first being the copyright protection and the second being the technological protection as such), and discussed whether this may be one layer too many, considering that it also effectively protects materials that are not subject to copyright, or prevents acts that are excepted...
from copyright. Mr. Michaux concluded that at least in the European Union, the legislator has not gone too far in protecting the interests of IP owners.

The ensuing debate showed that the topic is partly controversial, but, as Mr. Rittman pointed out, there is no other way of allowing those who pay to view or listen, while not allowing those who do not pay.

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