BILETA

16th BILETA Annual Conference

April 9th - 10th, 2001.
University of Edinburgh, Scotland.

Protecting Webcast Content, Copyright on the Internet and Problems of Jurisdiction in the European Union

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Introduction

Traditional notions of copyright are based largely upon the form of a work, however digitized works are not restricted by form[1]. It is this elasticity of form and the new economics of the Internet that makes webcasting possible. Webcasting permits the distribution of vast quantities of a huge variety of copyright materials across the Internet at high speed. Thus while the potential for communication is maximized so is the potential for piracy. Technical systems have therefore evolved to create physical as opposed to legal barriers to piracy. Unfortunately technical protection cannot safeguard webcast content without a harmonised legal environment.

While the attitude of Europe's businesses and consumers towards electronic commerce is ambivalent, revenues from electronic commerce are predicted to increase rapidly[2]. In the face of the burgeoning global electronic commerce industry Europe is attempting to build its information society on the basis of an advanced telecommunications infrastructure, and the principles of consistent regulation, global integration, and access to an ever expanding and high quality knowledge base. However, present European attempts at the regulation of technological protection systems and the associated problem of determining jurisdiction where intellectual property disputes arise might not adequately protect webcast content. European legislation intended to protect copyright in broadcast works provides only patchy coverage and fails to provide harmonised protection. Recent European legislation affecting e-commerce is ill thought out in terms of exceptions to exclusive rights and does not deal adequately with relationship between copyright and other forms of protection. In terms of delict and contract the situation is no better, especially in jurisdictional matters that are of vital importance in relation to cross-border intellectual property disputes. Copyright disputes are sometimes not dealt with at all, and when they are the new rules on jurisdiction tend to be ill suited to new technologies such as webcasting.

What is Webcasting?

Webcasting is the delivery of content as real-time and recorded audio and video signals by broadcasting them over the Internet[3]. This technology allows web sites to be truly interactive and lets us experience the sights and sounds associated with particular products and places[4]. There are three fundamental types of webcast, push, on-demand, and streaming[5]. Push/pull technology as applied to webcasting refers to the transmission of audio, video and textual information transmitted to the user, what is transmitted is determined by a user profile. This is based upon geographic location, user searching behaviour and information submitted by users themselves[6]. Push technology sends users information targeted at them without their actively searching for it[7]. Pull technology on the other hand requires users to make a direct request for a web page using their browser; the oldest and most widely used type of pull technology is email[8]. Streaming technology involves the digital compression of audio, video, and text that is then transmitted in real time. While the quality of streamed webcasts were of poor quality when they first appeared in the 1990's quality has improved rapidly in recent years making streaming a commercially viable technically efficient use of webcasting technology because of its use of compressed data and improved software[9].

Streaming software creates a "buffer" of memory in the RAM of the users computer allowing it to download video or audio a few seconds at a time. The continual refreshing of the buffer facilitates continuous real-time playback thereby bringing the possibility of Video-on-demand over the Internet one step closer[1][0]. On-demand webcasting involves the transmission of compressed audio or video signals most commonly used to view live events. The effect is similar to that obtained on a VCR allowing users to fast-forward, rewind, pause, stop, record and replay the event being viewed on their VDU. The key feature of on-demand webcasting is the ability of the user to control the scheduling and appearance of the webcast[1][1]. Webcasting is most frequently a form of broadcasting i.e. where a single copy of a piece of content is sent to all users. There may be only one user i.e. unicasting, a few users i.e. narrowcasting, or many users i.e. multicasting. Narrowcasting is the broadcasting of digital content to targeted groups or even individuals, but because modern programming techniques allow software applications and narrowcasts to be combined the distinction between software and content is beginning to blur[1][2]. Currently the main markets for webcast content are corporate Intranets and other markets that need time sensitive information i.e. news, weather and live events. The main advantage of webcasting is the making available of a useful package of information without having to go to the bother of selecting it, however when this information fails to match user needs this can soon turn into a huge disadvantage[1][3]. Given the common belief amongst web surfers that "everything is free" (i.e. gratis) then the need to obtain maximum legal protection for copyright works, especially time sensitive information is key to the success of commercial webcasting.

The Extent of Legal Protection of Webcast Content in Europe

The main instrument of U.K. copyright law is the Copyright, Designs and Patents Act 1988 (`the CDPA'), it safeguards economic rights rather than moral rights by restricting the use of three main categories of work, namely original literary, dramatic, musical or artistic works; sound recordings, films, broadcasts or cable programmes; and typographical arrangements of published editions. Webcasts straddle all three of these categories, but from a technological perspective they fit most easily into the second category. Article 11bis(1) of the Berne Convention obliges Member States to protect literary and artistic works transmitted as wireless broadcasts, cable transmissions, retransmissions of broadcasts, and the communication to the public of works that have been rebroadcast. Article 14(1) of the Berne Convention provides similar protection in relation to cinematographic works. These rights are implemented by s.18 of the CDPA which restricts the issue of copyright works to the public, s.19 of the CDPA which restricts performances of copyright works, and s.20 of the CDPA protects copyright works which are included in a cable programme service. Under s.7(1) of the CDPA a "cable programme" means a service which consists wholly or mainly in sending visual messages, sound or other information by means of a telecommunications system, otherwise than by wireless telegraphy. Interactive services are exempted from this definition under s.7(2)(a) of the CDPA where a service or part of a service permits the sending and receipt of audio-visual information other than control data over the same transmission system.

Broadcasting

One of the few U.K. cases concerning webcasting is the Shetland Times case[1][4], which was an application for an interim interdict by the owners of a local newspaper in respect of hyperlinks placed in the defender's newspaper because these links contained headlines taken verbatim from the pursuer's newspaper and news reporting site. These links further bypassed pages in the pursuers web site thereby denying the pursuer advertising revenue. At the interim hearing in the Court of Session the pursuer contended, firstly, that the headlines made available on their web site were cable programmes within the meaning of s.7 of the CDPA, and that the defender had infringed their copyright in those headlines and the URLs of the hyperlinks under s.20 of the CDPA. The pursuer's second ground of action was that the headlines were their literary works and that the activities of the

defender amounted to infringement of those works within the meaning of section 7 of the CDPA. The court granted the pursuer an interim interdict since it was arguable that a sending of information had taken place given the practical effect of the insertion of the hyperlinks in the defender's site, and because this resulted in the defender being the sender of the information. As to the defense based upon s.7(1) of the CDPA, he recognized that interactivity was possible, but dismissed the defense because it could be argued that interactivity was a severable feature of the pursuer's cable programme service. Further, it was at least arguable that the headlines were literary works and therefore subject to copyright. This case fails to protect webcast content in three key ways. First, it gives little guidance as to the nature of an interactive service; secondly the analysis of what constitutes a literary work is inadequate in that the court does not define the level of originality needed for a headline to be a copyright work; thirdly, there is little or no analysis of technical or economic arguments.

Communication by satellite and cable

In the Hostelaria Asturiana case[1][5] the ECJ decided an appeal concerning the interpretation of Art.1 (2)(a) and (3) of the Satellite Directive[1][6]. The case involved a Spanish hotel that had installed a system for the reception of television programmes broadcast terrestrially or by satellite; the programmes were then distributed to various rooms in the building without payment of a licence fee. A dispute therefore arose as to whether this constituted an act of communication to the public. On the basis of Article 8 of the Satellite Directive and the twenty-seventh recital of its preamble the ECJ decided that Member States were not required to introduce or define the scope of a specific cable retransmission right, however the Satellite Directive did impose an obligation on Member states to observe copyright and related rights with regard to programmes retransmitted by other Member States in their territory. It was therefore incumbent upon Member states to decide cases concerning the legitimacy of cable retransmission in accordance with national law. While this avoids the application of different national laws to a single act of broadcasting this approach creates uncertainty and inconsistency with regard to the cable retransmission right.

Re-transmission by a licensee

Prior to recent changes in the law retransmissions by licensees were permissible, in the Foxtel case [1][7], an Austalian case is used here because the Broadcasting Services Act 1992 (the 1992 Act) contains provisions similar to those in the Television Without Frontiers Directive[1][8] relating to listed sporting events[1][9]. In this case the owners of five free-to-air television channels sued their licensees after they established a cable pay subscription service and began re-transmitting their broadcasts to subscribers without their consent. In the subsequent action the plaintiffs alleged that the defendant's retransmissions constituted violations of the 1992 Act and the Copyright Act 1968. On appeal the Federal court of Australia held that s.212(1) of the 1992 Act applies to content rather than methods of transmission. Further the respondents were licensees for the purposes of s.199(4) of the Copyright Act 1968 which exempts licence holders from liability for infringement where they operate a diffusion service that is simultaneous with the original broadcast signal without altering the signal as originally broadcast and which is limited to the area of the original broadcast. This being so, it was therefore unnecessary to consider whether they were liable under s.212(2) of the 1992 Act. The case is important because it places in doubt on the applicability of the Copyright Act 1968 to licensed broadcasts and confirms the right of licensees to broadcast an unaltered simultaneous signal in the licence area of the original broadcast[2][0].

Distribution to other countries

Distribution of copyright content to third countries is unlawful where the work is publicly performed

in that country. In the ICRAVETV case [2][1] the defendants streamed retransmissions of cable television broadcasts onto the Internet with advertisements broadcast in a separate stream that was viewed next to the original content. While this kind of activity was perfectly legal in Canada it was not legal in the U.S.. The defendant therefore forced users to enter their local area code and agree to terms contained in a click-wrap agreement that only permitted users to view the content under specified conditions such as residence in Canada. The plaintiffs applied to the Pennsylvania district court for an interim injunction alleging violation of their exclusive rights of performance and distribution under s.106 the Copyright Act 1976 as well as unfair competition, and trade mark dilution. Primarily on the basis of the defendants own computer records the court held that jurisdiction was established for the purposes of United States law since there had been un-authorized performances of the plaintiff's copyright works in the U.S., the majority of those accessing the defendants web site were residents of the United States and the balance of convenience tipped in favour of the plaintiff. Accordingly an interim injunction was awarded enjoining the defendants from infringing the plaintiff's exclusive rights for a period of two years from the date of the first infringement. Notably the injunction also required regular compliance reports to be compiled, detailed logging of site traffic and the submission of server logs. Both this case and the recent Napster Appeal[2][2] are too dependent on highly variable technical factors which make a nonsense of traditional notions of copyright i.e. the infringer's knowledge of infringing acts and their ability to monitor them[2][3].

The Implications of New Economic Models on the Internet

The two most serious physical constraints on webcasting are the speed of computer processors, i.e. the speed of servers, and bandwidth[2][4]. Even with the development of new digital compression algorithms the bandwidth requirement for multimedia is high[2][5]. However, the bandwidth of the Internet is growing and the speed of processors is increasing year by year. The marginal cost of digital reproduction on the Internet is near zero so very large amounts of data can be transmitted for virtually nothing once the essential equipment and infrastructure costs are paid. It is this economics of abundance as opposed to the economics of scarcity that distinguishes Internet economic models from real-world economic models. The Internet has therefore developed economic models of its own; many of these are based on treating information content as if it is valueless[2][6]. Even in this environment some real-world economic models such as advertising and sponsorship have been successfully transplanted onto the Internet.

Advertising models are suited to digital forms of product delivery since they exploit high levels of user access and generate revenues proportionate to the number of hits received by a web site rather than deriving revenue directly from the user. The subscription model on the other hand derives revenue from consumers but requires prepayment of subscriptions along with secured access to content; examples of this type of web site include many pornography sites and some music sites[2][7]. Freeware is an example of a native Internet business model, using this model software is given away free in order to promote sales of linked products. A good example of this is Netscape Navigator[2][8]. Another model is the library model; here a library of information is made available to consumers in order to establish a presence on the Internet. The information barter model is very common and involves the exchange of personal information for digital products and services. However, the most fundamental native Internet business models are access provision and web site hosting that involve the provision of a service i.e. electronic mail for a prepaid subscription or where the service is free in exchange for access to consumers[2][9].

Although the Internet has a hardware infrastructure it is also a virtual network, virtual networks differ from real networks in the way they allocate value to goods. Like actual networks virtual networks are made up of a complex web of formal and informal contracts that create the value the network delivers[3][0], a value that increases in proportion to the increase in the number of additional

users of identical or interoperable goods[3][1]. While the Internet requires compliance with a number of common protocols users are not in fact linked together. These protocols do not create physical boundaries but rather facilitate software interoperability. The net effect of this is that Internet economics is subject to very strong positive feedback that results from consumer demand for what other consumers already own[3][2]. This economic analysis eventually finds its way into legal analysis of copyright, contract law and competition law[3][3].

Technical Protection of Webcast Content

Encryption Technologies

There is a range of technologies available for protecting digital content; in terms of webcasting encryption technologies are the most widely used. Encryption involves the conversion of data into a secret code, usually using complex algorithms. Other complex algorithms are then used to convert the code into a readable form[3][4]. Unfortunately it is only a matter of time before people other than the legitimate users of the secret code decrypt it. Thus it is not hard to see that legal measures prohibiting circumvention are vital if we are to slow down this process. Article 11 of the WIPO Copyright Treaty of 1996 was designed to bridge this gap by providing effective legal remedies against the circumvention of effective technological measures employed by right owners attempting to protect their rights under the Berne Convention[3][5].

Access Control or Copy Protection?

The two main forms of technological protection are access control and copy protection. Access control is the easiest to implement and most secure because if a hacker cannot get into a computer system there is very little he can do to it, however it is also a blunt instrument that prevents users from carrying out lawful activities i.e. educational use. Copy protection is more acceptable to users but requires more sophisticated programming. Both access control and copy protection require compulsory industry standards to work effectively. In the first case access control mechanisms must be installed on computer hardware[3][6], and in the second case copy protection techniques work by the incorporation of flags in digital signals that must be recognized by the hardware installation[3][7]. One such standard is the Serial Copyright Management System (SCMS) that allows users to make an unlimited number of copies from the original but prevents them from making second-generation copies. The system works through the hardware recognition of control flags embedded in the software. SCMS is used primarily to protect musical recordings, but can be readily circumvented[3][8].

The Content Scramble System

The Content Scramble System (CSS) is a copy management system designed to control access to DVD films and to prevent their being copied by encrypting the DVD's digital code. Matsushita Electric Industrial Co. and Toshiba Corp. developed it between 1996 and 1997. Unfortunately a Norwegian schoolboy decrypted it in September 1999. The code used to achieve this is known, as DeCSS was made available over the Internet eventually finding its way on to a hackers web site known as 2600 magazine[3][9].

Digital Identification

While un-authorised uses of copyrighted material can be prevented using encryption and more primitive technologies such as password protection, digital watermarking may ultimately turn out to be the better deterrent. This is because watermarking is difficult to remove and facilitates the

tracking of unauthorized uses[4][0]. However, encryption techniques in combination with a digital signature can prevent digital manipulation and false attribution of works. Digital IDs issued by certification authorities are already on the market. The role of the certification authority is to check the validity of customer's personal details before issuing them with an ID[4][1].

Jurisdiction Issues on Copyright and Webcasting

The Internet and the onset of electronic commerce has put new global demands on the application of territorially-based jurisdiction rules[4][2]. The Internet is a global network of networks that facilitates electronic commerce. Rules of jurisdiction are mainly applied within a state's geographical border, and are often limited by the extent to which the state's sovereign powers can be applied outside the jurisdiction. According to Wadlow, copyrights do not derive from the state or its sovereign power, but "...they arise in all member states *ex lege* from general legislation."[4][3] Copyholders want to be able to sue for infringement in their own domestic courts, but where they can do this within Europe will depend on where the defendant is domiciled and more especially where the infringement occurred (being either the *lex loci contractus* or the *lex loci delicti*). In other states, such as Holland and the United States, injunctions for copyright infringement may be extraterritorial[4][4]. As companies converge to compete in the global market the ability to establish jurisdiction where liability for infringement of digital services arises (for example as licenses are often effective only in particular territories) increases in importance and relevance. Companies also need to combat international piracy, particularly where misapplication of webcast technology has occurred. However, U.K.courts may refuse jurisdiction on the grounds of *forum non conveniens*, on the basis that a more appropriate forum exists that should consider the case.

European Rules of Jurisdiction in Copyright Matters

Rules of Jurisdiction for Delictual Liability

Infringement of webcasts may result in delictual liability. In addition to Article 16(4), the Brussels Convention provides for a special ground of jurisdiction in Article 5(3). Article 5(3) states that in matters relating to a delict, quasi-delict or tort, a person domiciled in a Contracting State may be sued in the place where the alleged harm occurred. From the Intellectual Property perspective, Wadlow reports that the purpose of Article 5(3) was to ensure that the "...the jurisdiction of the courts where the right in question exists and has been infringed..." was protected[4][5]. There may be many locations where the harm occurs as a result of infringement of webcasts, a situation analogous with the case *Sheville v Press Alliance*[4][6], in which defamatory statements were made in a newspaper circulated in several jurisdictions. The outcome of this case was that a plaintiff could bring a single action for all the damage caused where the defendant is domiciled or multiple actions in the appropriate E.C. Member states where damage was alleged to have occurred. On an independent interpretation of the Brussels Convention copyright infringement cases are to be raised in the jurisdiction where the copyright infringement occurred[4][7]. It follows then that this should also apply where infringement of a webcast takes place, or indeed where the right to sue for infringement exists. How this will apply where the right to sue for infringement of a webcast exists in a jurisdiction not party to the Brussels Convention is another matter.

Jurisdiction Rules for Contract Liability in Matters of Copyright

Breach of a contract for misuse of the webcast site or its content is a concern to the providers of the webcast material. It may arise where the webcast material is used for a purpose not permitted by the

contract or passed on to a third party without the webcast provider's permission. Article 5(1) of the Brussels Convention is a special ground of jurisdiction for contracts falling within the Convention's scope. It states, *inter alia*, that in matters relating to contract, jurisdiction can be established at the place of performance of the obligation in question. The definitions of "place of performance" and "obligation in question" have been given independent meanings by the European Court of Justice, thereby ensuring that the Convention is not subject to national definitions and application[4]8. If a contract were in place between the webcast provider and user then the provisions of Article 5(1) would apply on the basis of the *Peters v. ZNAV* case[4]9, which reiterated the requirement for an independent meaning to be given to "matters relating to contract". What could be more difficult to establish is where exactly the place of performance takes place? Stone reiterates that this has to be determined "...in accordance with the substantive law which is applicable to the obligation under the conflict rules of the country whose court is seised."[5]0 For Europe, Stone explains that the Rome Convention (on Contractual Obligations) would be used. However, in terms of the copyright infringement of webcasts, issues of determining jurisdiction (and choice of law) are likely to extend beyond Europe.

The Brussels 1 Regulation and Rules of Jurisdiction For Online Transactions

As a result of the increased competencies of the European Union from the Treaty of Amsterdam and the measures taken in the field of Justice and Home Affairs, rules of jurisdiction (as well as recognition and enforcement) for civil and commercial matters are to be replaced with a Community Instrument. The new instrument is the `Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,' [5]1 (the `Brussels 1 Regulation') and will be implemented throughout Europe from March 2002[5]2. We can consider the new provisions contained in Article 5 for contractual and delictual liability and seek to contextualise them for infringement of webcasts.

Article 5 of the new Regulation states inter alia, that in matters relating to a contract, a person domiciled in a Member State can be sued in the courts for the place of performance of the obligation in question. The new Regulation provides clarification of the meaning of place of performance depending upon whether that performance is for goods or services.. Article 5(1)(b) states that `the place of performance of the obligation in question shall be in the case of sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered.'[5]4 For services, the Regulation states that `the place in a Member State where, under the contract, the services were provided or should have been provided.'[5]5 Article 5(1)(c) states that if subparagraph (b) is not applicable, subparagraph (a) is to be applied. The European Union sought to distinguish between the place of performance of goods and services. Ian Lloyd suggests that webcasting should be classified as provision of a service because there is no transfer of physical goods or intellectual property even where videos or CDs are transmitted from sender to receiver via the Internet[5]3 However, the definition that will be given for the place of performance of digital services in the form of webcast technologies has yet to be tested in the European courts.

For delictual matters, the new Regulation states that jurisdiction is established "...at the place where harmful event occured or may occur." This point appears to be settled now in Europe but as stated earlier, infringement of webcasts may occur outside of Europe. Accordingly, the international private law rules of the forum (lex fori) concerned must be consulted. Advance consideration of the potential forum's rules is desirable but may not be workable in practice. This difficulty is further fuelled by the extent to which the webcast technology is available. Without globally harmonised rules, the contract between the parties ought to address the matter of jurisdiction for delictual infringement.

Electronic Commerce and the Information Society

The principle of an Information Society was established by the Corfu Summit of 24/25 June 1994, and on 19 July 1994 an Action Plan entitled " Europe's way to the Information Society" was adopted, from this document we can identify four main policy lines. Firstly the Information Society requires an improving business environment in which regulation is consistent and transparent. This will also entail swift take-up of information and communication technologies in all sectors of the economy. Secondly, the knowledge base of society must be expanded. Thirdly, people must be given access to a wide variety of services and content, this will involve an emphasis on quality assurance and consumer protection. Fourthly, there must be a greater degree of integration and collaboration on international scale in order to ensure Europe's global competitiveness[5][6].

The latest raft of European legislation on e-commerce must be consistent with the above goals if the Information Society is to become a reality, by providing a low level of protection for webcast content this legislation may fail to meet these goals.

The Copyright Directive

Common Position (EC) No 48/2000 was adopted by the European Parliament on 14 February, 2001 with a view to adopting a European and Counsel Directive on the harmonization of certain aspects of copyright and related rights in the information society in compliance with the WIPO Copyright Treaty. According to Recitals 5 and 6 the main objective of the proposed Directive is to harmonize Member States responses with regard to the legal safeguards for technological protection measures used by copyright owners as a means of safeguarding their rights in the context of the internal market. Article 3 of the Common Position provides for an exclusive right of copyright owners to make available to the public their works in such a way that members of the public may access them from a place and a time individually chosen by them. The Common Position has problems however, while creating broad and harmonized rights of communication and reproduction under Articles 2, 3 and 4[5][7], it also creates an exhaustive list of exceptions, this goes further than the WIPO Treaty by defining specific exceptions to the exclusive rights rather than merely permitting them, they are all subject to interpretation and must inevitably lead to uncertainty[5][8]. The Directive does not deal with issues of rights administration (i.e. the exclusivity of rights) and does not deal with moral rights[5][9], by providing excessively broad protection for technological measures in Article 6 the Directive threatens to replace copyright with technological monopolies and electronic contracts[6][0]. This could eventually to lead to market distortions and may undermine consumer confidence thereby increasing demand for pirated works and encouraging hackers to crack technological protection systems. Although technical protection measures allow right owners to control time, place of release, and pricing, the DVD market in Europe for example is one of six global regions. Technical measures enforce regional differences imposed by right owners using regional codes. While the Commission sees that there is the potential for monopolistic practices in the DVD market it has not yet found any infringement of Articles 85 and 86 of the EC Treaty[6][1].

The Rental Rights Directive and the Satellite Directive

The Rental Rights Directive of 19 November 1992[6][2] has the making of rental and lending into restricted acts as one of its primary objectives. Under the new section 18A of the CDPA owners of copyright in literary, dramatic, musical and artistic works have the right to prohibit the rental and lending of those works. However, this preserves the outmoded system of categories and narrow definitions used by the CDPA, a system that is technologically challenged and can exclude multimedia works.[6][3] The Directive also required the amendment of s.18 of the CDPA so that extra-territorial jurisdiction can be claimed in respect of works issued to the public where broadcast works are marketed outside of the EEA without the consent of the copyright owner and then

imported into the EEA, however where works are imported from one E.U. state to another this is not the case[6]4. The Satellite Directive changes the law so that the applicable law as regards infringement is the law of the state where infringing broadcasters commence their uplink to the satellite. It therefore follows that broadcasting licenses will only be required from the uplink state thereby restricting the right of the copyright owner to bring actions where the signal is received[6]5. This compounds the inconsistent treatment of the right of retransmission already discussed.

The Electronic Commerce Directive

On 4 May 2000, the European Parliament and Council of the European Union adopted the Electronic Commerce Directive[6]6. The Directive is intended to improve the operation of the internal market [6]7 by ensuring the free movement of information society services between Member States[6]8. The Directive covers `any service normally provided for remuneration, at a distance, by electronic means [6]9. Bearing in mind the economic models previously outlined this excludes many forms of webcasting from its application. In terms of broadcasting `point to multipoint' transmissions are excluded because the Directive requires that transmissions should be provided `at the individual request of a recipent'[7]0, however point-to-point services such as video-on-demand and interactive transmissions are included[7]1. Where a dispute concerning webcast content does fall within the application of Article 3 of the Directive (i.e. not specifically exempted and not covered by the Brussels Convention) then applicable law will be that of the country in which the service provider engages in economic activity in an establishment for an indefinite period regardless of the mere presence or use of any equipment used for Internet service provision[7]2. While the country of origin rule set out in Article 3 of the Directive has no direct bearing on copyright[7]3 it has indirect impact upon webcasting in its failure to deal with jurisdiction in consumer contract disputes[7]4, contracts (i.e. licenses) being a commonly used method of legal protection for webcast content often used in combination with copyright and technical protection measures. However, on a more positive note the Directive does provide some measures to protect consumers, i.e. minimum standards for information provision and formation of contract, and is subject to review in 2003[7]5.

Conclusion

Webcasting is fast changing the nature of the Internet and streaming technology has brought video-on-demand just one step closer. As the economic value of webcast content increases so will the temptation to misappropriate it . Technical protection measures require a harmonized legal environment and uniform technical standards for them to work effectively. Current attempts to produce harmonized and transparent regulations to encourage electronic commerce are not integrated and do not adequately protect webcast content and fail to meet the objectives of the Information Society. These regulations sometimes do not consider economic models not based on direct remuneration and could produce the kind of market distortions that encourage piracy. While rules of jurisdiction in civil matters within Europe are being harmonized by legal instruments such as the Brussels Regulation, laws affecting webcasting in an indirect way sometimes do not consider copyright issues or jurisdiction in copyright disputes originating outside of the E.U.. One key reasons for these deficiencies is the fact that the European legislative process, often a long and protracted procedure, does not take into account changes in technology during the course of negotiations[7]6.

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[*] Ph.D. Researchers, The Law School, University of Strathclyde, Mrs Gillies gratefully acknowledges the assistance of the Clark Foundation for Legal Education. Both authors are also

grateful to Catherine Colston for her invaluable comments.

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[6] ibid. p21.

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[9] See note 4 above, p28.

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[13] ibid., p4.

[14]*Shetland Times Ltd. v. Wills* [1997] F.S.R. 604

[15] (Case C-293/98)

[16] Directive 93/83 on the coordination of certain rules concerning copyright rights related to copyright applicable to satellite broadcasting and cable retransmission.

[17]*Amalgamated Television Services Pty Ltd. v. Foxtel Television Pty Ltd*. No. G873 of 1995 FED No.281/96

[18] Directive 89/552 on the coordination of certain provisions concerning the pursuit of television broadcasting activities

[19] Lesley Sutton, "Australia: Broadcasting", (1997) 8 Ent. L.R., E60

[20] Anne Fitzgerald, "Broadcasting: Cable TV", (1996) 2 C.T.L.R., T-123

[21]*Twentieth Century Fox Film Corp. v. ICRAVETV.COM* No. 00-120, 2000 U.S. Dist. LEXIS 1013 (W.D. Pa. Jan. 28, 2000).

[22]*A & M Records, Inc. v. Napster, Inc.* 114 F.Supp.2d 896.

[23] The analysis of the ninth circuit Court of Appeals in Napster is based on the test for contributory copyright infringement in *Religious Tech Ctr. v. Netcom Online Communication Servs*., Inc., 907 F. Supp.1361, 1373-74 (N.D. Cal. 1995) i.e. that the infringer "know or have reason to know" of direct infringement.

[24] Bandwidth is the number of bits per second that can be sent over the transmission medium.

[25] See note 4 above, p32.

[26] Paul Bambury, `A Taxonomy of Internet Commerce', First Monday, 1998, issue 3, no.10, p4 available at http://www.firstmonday.dk/issues/issue3_10/bambury/index.htm.

[27] ibid.

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[29] ibid., p5.

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[32] ibid., p495.

[33] ibid., p496.

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[36] Dean S. Marks and Bruce H. Turnbull, Technical Protection Measures: The Intersection of Technology, Law, and Commercial Licenses', [2000] 22 E.I.P.R., p201

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[38] ibid.

[39]*Universal City Studios, Inc. v. Reimerdes* 00 Civ. 0277 (LAK) (S.D.N.Y., 2000).

[40] Patricia Akester, "Survey of Technological Measures For Protection of Copyright", (2001) 12 Ent.L.R., p38.

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[42] See for example Paul Torremans "Private International Law Aspects of IP - Internet Disputes", in Lillian Edwards and Charlotte Waelde (eds), *Law and the Internet A Framework for Electronic Commerce*, Second Edition, Hart Publishing, Oxford, 2000.

[43] Christopher Wadlow, *Enforcement of Intellectual Property in European and International Law*,

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[44] See *Pearce v Ove Arup Partnership Ltd*., The Times, February 10, 1999 (CA) and

Playboy Enterprises, Inc v. Chucklebery Publishing, Inc., 939 F. Supp. 1032 (S.D.N.Y. 1996).

[45] See note 43 above, p94 *et seq*.

[46]*Sheville v Press Alliance* [1995] E.C.R. 1-415

[47]*See note 43.*

[48] See Peter Stone, *Civil Jurisdiction and Judgments in Europe*, Longman, London, 1998 at p.50 *et seq*.

[49]*Peters v ZNAV*, 34/82 [1983] E.C.R. 987.

[50] See note 48, p.57.

[51] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,' OJ L12/1 2001.

[52] Brussels Regulation, [2001] 1 O.J. L12/1, p.4.

[54] Brussels Regulation, [2001] O.J. L12/1, p4.

[55] ibid.

[53] Comments of Professor Ian J. Lloyd at the University of Strathclyde Law School on 5 March 2001.

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[57] Thomas C. Vinje, "Should We Begin Digging Copyright's Grave?", [2000] 22 E.I.P.R., p551.

[58] Gary Lea, `Issues of access and content regulation arising from the EU draft Directives on copyright in the Information Society and e-commerce', (1999) 4 Comms. L., p209

[59] Bernt Hugenholtz, "Why the Copyright Directive is Unimportant, and Possibly Invalid", [2000] 11 E.I.P.R. 2000, p501

[60] See note 57 above, p555.

[61] Joint answer to Written Questions E-1509/00 and E-1510/00 given by Mr Monti on behalf of the Commission, [2000] O.J., C53E/158.

[62] Directive 93/83 on rental rights, lending rights and certain rights related to copyright, [1993] O.J., L248/15.

[63] Andrew Christie: "A proposal for Simplifying United Kingdom Copyright Law", [2001] 23 E.I.P.R., p26.

[64] Alan Coulthard, "The Copyright and Related Rights Regulations 1996", (1997) 2 Comms.L.,

p175.

[65] ibid.

[66] Directive 2000/31 of 8 June 2000 on certain aspects of information society services, in particular electronic commerce, in the Internal Market, [2000] O.J. L178/1.

[67] The main goal of the Internal Market is to ensure free movement of goods and services throughout the E.U. without obstruction by national legislation.

[68] See Article 1.

[69] Article 1(2) of Directive 98/34 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services, as amended by Directive 98/48 on the legal protection of services based on, or consisting of, conditional access.

[70] Geoffroy de Foestraets, `E-Commerce: a New European Framework', (2000) 28 I.B.L., p390.

[71] ibid., p390., note 8.

[72] ibid., p15.

[73] See note 2 above, p26, note 6.

[74] See Article 9(a).

[75] See note 2 above, p27.

[76] See note 60 above, p551