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SPECIAL SECTION

Is Digital Rights Management an IPR?

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ABSTRACT

The relationship between law and technology has to be strengthened to raise the level of present electronic era. Though it is a challenging task, as per the latest know-how, it is the time to respond to new technologies. Till recently, the law makers handled problems presented by technology without breakdown of legal resources. Convergence of computers and Internet has posed a much graver problem, which legal policy makers find difficult to address. Music and film industries are also facing the heat of Internet piracy. Their reliance on traditional laws pertaining to copyright or other laws have not produced the expected results. In this scenario, a new emerging revolutionary digital technology, that could enable the originator to manage, control, permit usage of digital content is most welcoming. This article discusses the possibilities of paper management of IPR becoming digital management of IPR and surmise that DRM is becoming an important tool to manage digital products.

Keywords: Digital right management, intellectual property rights, copyrights, digital contents, piracy

1. INTRODUCTION

DRM, an acronym for Digital Rights Management, is a new emerging and revolutionary technique applied and used for restricting the free use and transfer of digital contents. It is basically an aggregation of technologies, which specifies, manages, and enforces rules in all aspects of usage and distribution of digital content. The process of DRM is used in a number of media, but is most commonly found in video and music files. Using this technique the right holder of a specific work, be it audio or video, can manage his copyright material and the terms and conditions on which it is made available to the users.

2. WWW AND PIRACY

World Wide Web (WWW) evolved as a classic media for dissemination of information. Every conceivable form of information in different formats is available on the net. Personal computers furthered the access to net by netizens even in remote areas. Along with this boom came the piracy; in the music, audio and video, the written, fictional, and non-fictional work, even to the extent of piracy of e-mails. The Internet has now become a gigantic copying machine enabling unlimited illegal copying of contents. Also, there was a phenomenal improvement in compression technology such as MP3, RAR files, etc., which reduced download speed to almost 10 to 15 per cent of the earlier download time. The availability of multiple and perfect copies of various work has become a threat to the music industry's viability and profitability. Ingenious programmers started free sharing networks like the Gnutella (Gnutella is the third-most-popular file sharing network on the Internet), enabling peer-to-peer copying, which hit the revenues of the music industry. The more defiant music lovers even started breaking into precious databanks of the music industry and pilfered the loot to their hearts content. Copyright protection, though sounded formidable, was not proving adequate enough. The industry was in search of a

more effective and immediate process or technique, which could enable the author or performer or the right holder to control and permit that could either stop such copying or permit the use or download on payment of certain price. The goal was to protect the rights of the author, prevent piracy and encourage digital music commerce, and to ensure that only paying consumers can access media.

3. SETTING STANDARDS AND SELF-PROTECTION

To fight back this digital piracy, the music industry got together and created secure digital music initiative (SDMI). The SDMI is a working group, comprised of over 150 businesses and organisations with significant interests in the future of digital music, working to develop a specification for its secure distribution and securing music across all digital-delivery platforms. DRM is one part of the SDMI. In the past few years, DRM has developed into a viable system for intellectual property (IP) protection and enforcement. The music industry's prayer for a programme that could stem the tide of unauthorised file sharing has been answered in the form of DRM. Indirectly, DRM is also protecting the IPR of the owners, thereby proving itself an important facilitating mechanism for protecting copyrights in free market. Like specified IP protections such as copyright, DRM also can protect several other kinds of rights like the right to privacy, a fundamental right in many legal systems, which can directly or indirectly affect the distribution of the information, the product or even in remote, the services too. It is predicted that the current approaches to IP protection and enforcement through DRM may render the present legal protection available in form of copyright archaic.

4. COMPONENTS OF DRM

The following are some of the broad components and important areas of DRM (only a broad indication and not specific related areas):

- Business objective and privacy.
- Planning the product, identifying the rights and related documents.
- Basis of use of such rights.
- Management of legal and other rights.
- Tools of DRM: legal and technical.

4.1 Business Objective and Privacy

Every entity starts with an objective. The objective, being the vision of the company, obviously has an aura of secrecy or privacy around it. The entity could be an individual, a partnership, a private limited company, a trust or a society. It is still not clear as to how DRM could step in at this very nascent stage, though there are ideas visualised and visions set, there is not enough work done or information or strategy developed to segregate, decide, and crystallise the probable course of action, be it manufacturing, programming, developing a prototype, etc. It could simply be stated that this nascent stage is the drawing board stage. In such a scenario, it is to be seen whether a technique like DRM can be implemented or even protection tools like non-disclosure, trade secrecy agreements are simple enough to give the adequate protection at this stage.

4.2 Planning the Product, Identifying the Rights and Related Documents

It has been the experience of various organisations, which have implemented the DRM package either in its simple format or complex procedures, that initial identification of work or product, the recordings of the works, the concerned and right owners, their rights and the works and also their consent to exploit the work is a bit difficult. Let us take one aspect, identification of material and document of a literary work. The products in general in literary work are books, compilations of information, electronic database, computer scripts or programs, articles, etc. Having done this the next step would be to identify the work and who created the said work. This can be done in various ways like enquiring about the owners' rights, checking for copyright notices, and also a search of relevant industry catalogues.

It is a general rule that a creator or producer of material holds the copyright unless there is an agreement to the contrary. Authors could be writers, music composers or even software developers. Once the identification of the author is done, then the moral and performers right should be taken into account. In the maze of technology development the system should not forget to respect the moral and performers rights. This can be achieved by detailing all the information about the performer, the work done by him, etc.

4.3 Basis of Use of Such Rights

A right is based on the consent of such right holder. If a copyright user is not exercising his exclusive right himself, then he can give permission through licenses to other people to do so. Such licenses could be subject to certain payment conditions like outright sale or royalty or license fee, etc. In

a digital environment the copyright owner may expressly or impliedly license the work to some other. It is to be remembered that almost all common DRM platforms or systems digitally reproduce the content and transmit them to the end users. However, in such transmission there is one practical problem that arises. In the multiple reproduction of such content in various servers, the transmission and retransmission from one server to another, a temporary memory is created till such content reaches the end user. The matter of concern could be such temporary copy created as a part of the technical process. Whether this infringes copyright or not depends upon whether the original transmission is authorised. Also, under the Copyright Act the temporary material, which is a part of the technical process of transmission, do not infringe the copyright provided the original transmission is authorised. It also means that if a particular work is being transmitted on the Internet, rights need not be obtained to make temporary copies.

4.4 Management of Legal and Other Rights

The most common rights that could accrue to the author are copyrights, trade secrets, and patents. Rights management is a very crucial stage in the entire process. Normally, it can be on two levels, organisational and the product level. The management of rights can be successfully achieved only when a management plan is put in its place. At the organisational level, rights management could include setting up of rights management policies, refining such policies, drafting and managing of agreements, managing the information on rights acquired, which would also include knowing from whose the rights were received, how broad such rights are so on and so forth, control and enforcement of licenses, supporting licenses, and also the revenue collection. Management of rights would also include valuating of rights where under factors like creating costs, time taken to produce, are also considered. One more aspect is the mode of securing such rights where under acquiring variety of consents and authorisations need to be done. Development of appropriate agreements is also a very vital part of the management. Agreements portray the extent of rights that can be acquired or bargained. These agreements could be assignment agreements, which involves transfer of ownership for consideration or licenses, which may include nonexclusive licenses, etc. Similarly, at the product level things to be attended, acquiring adequate information on the product information on policies and agreements, enforcement of such rights, and also revenue collection support are also important.

4.5 Tools of DRM

DRM also incorporates and envisages technical and legal tools that are vital. These tools are:

4.5.1 Technical Tools

DRM can be performed by several different kinds of tools like a right definition language. Though it is demanding to define a particular language, however, extensible rights markup language (eXRML), and open digital rights language (ODRI) may define DRM. There are also the communication protocols that need to be developed to maintain the homogeneity of understanding the transferring of data.

4.5.2 Legal Tools

Legal tools constitute the copyrights, patents, trade marks, the various law enforcement authorities, modes of settlements of disputes like arbitration, court rulings, etc. In the matters of evidence, technical tools may be needed to show and prove evidence. For this purpose legal tools may have to heavily depend on technical tools. Thus, it can be concluded that in the matter of legal proceedings and establishment of evidence, it is imperative that legal as well as technical tools are deployed and worked in consonance.

Some of the major entertainment companies are using DRM or copy protection, to confine the digital media. These DRM technologies do nothing to stop copyright pirates, but instead end up interfering with fans' lawful use of music, movies, and other copyrighted works. DRM can prevent one from making backups of the DVDs and music downloaded from online stores, recording favourite TV programmes, using the portable media player, remixing clips of movies, and much more. At present, DRM has been introduced as the Digital Millennium Copyright Act (DMCA). Circumventing DRM locks or create the tools to do so, even to enable non-infringing fair uses, may lend to the receiving end of a lawsuit. The DMCA has been a disaster for innovation, free speech, fair use, and competition. Further, the US Congress is now considering new laws that go beyond the DMCA, mandating DRM in a wide array of digital media, devices and personal computers, giving entertainment industry lawyers, and federal bureaucrats veto power over new gadgets.

5. CONCLUSION

It is beyond doubt that DRM is becoming increasingly an important area with its focus on management of digital products. Today, the situation is that many

companies are developing their own DRM systems, be it small or large. There are companies and entrepreneurs who have developed DRM packages and products on a commercial platform. Sometimes such companies are also designing and developing tailor made DRM packages in accordance with the specific needs. Though a standard language and a homogeneous protocol network are yet to be fully developed, efforts are being made to speed up the process. It would be only a matter of time before such standardisation is implemented at a commercial level.

It is a future that the know-how, development, knowledge and use of the DRM system is likely to be absorbed into normal business skills and practices in next few years. Usages could be free or cheap or even expensive but things are brightening up for the DRM infrastructure.

For creators and all sorts of content communities, DRM is likely to enable the growth and success of e-market and finally will be the key point in e-commerce system for marketing of the digital content, and will enable a smooth, safe, secure movement of the digital work from the creator and producer to retailers and consumers at a cost. DRM, if proved reliable, may see authors seek legal advice on more occasions.

About the Author

Shri C. Vidyadhar Bhatt is a Postgraduate in Indian Laws and Library & Information Sciences. He also obtained Postgraduate Diplomas in Public Relations, Theatre Arts, Computer Applications, and Cyber Laws, and Legal Information Systems. He worked as Assistant Registrar (Library and Legal Information Services) at High Court of Andhra Pradesh. He computerised system integration and workflow system in High Court of Andhra Pradesh, and introduced *Grandhalaya*, library management software for the judges' library. He specialised in writing head notes for the orders/judgments rendered by the Hon'ble judges. He has also worked as Editor-in-Charge for Indian Law Reports (Andhra Pradesh Series). Presently, he is rendering the services in the Judicial Department of High Court of Andhra Pradesh as Deputy Registrar. He is working on cyber laws and IPRs and on the different innovations of legal information systems and their development.