

Re-thinking the intellectual common goods

tensions between appropriation and liberation of intellectual goods and works in the digital age¹

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Summary:

This paper is based on concepts merged from my Ph.D thesis. Its main purpose is the discussion about [1] the relationship between the design of digital technologies and the changes in the regulation of author's right and copy right globally. More specifically, this document is focused in analyzing [2] the changes in the exercise of author's right and copy right, [3] the new business models and the commodification of intellectual goods and [4] the process of co-construction between regulations and digital technologies. In the final part, and opening further discussion, this paper presents [5] a short conclusion about the articulation between cultural management and the digital technology policy. Unfortunately, studies and researches on these topics have resulted dangerously neglectful in the scientific, cultural and political agendas in Latin American countries. For the same reason, this paper (and the supporting research on the subject) aims to initiate and strengthen researches on these topics.

[1] The thesis and the new place for the author's and copy rights:

The complete title of the Ph.D thesis is: 'Rethinking the intellectual common goods: socio-technical analysis on the process of co-construction between the regulations of author's right and copy right and the digital technologies for their management'³. This work analyzes, from a socio-technical perspective, [a] the legal-political tensions between the appropriation and liberation of intellectual goods and works in the digital age; [b] the process of co-construction between regulations on author's and copy rights and the digital technologies developed to manage these rights. To evince both nodular topics, the thesis analyzes three cases: (1) the anti-copying artifact (XCP) designed by Sony-BMG Music Entertainment; (2) the open licensing system of selective reservation of author's and copy rights of Creative Commons Corporation; (3) the management system of intellectual works in the virtual world Second Life.

This thesis describes how the expansion of electronic networks and developing distributed digital technologies have contributed to radical changes in the ways of production, distribution, commerce and management of the intellectual goods and works globally. Many

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[3] The work (in Spanish) was published on April of 2009. You could download it from <http://www.arielvercelli.org/rlbic.pdf>. It was released under a copyleft license of Creative Commons Attribution - ShareAlike 2.5 of Argentina.

of these changes can be perceived in the underlying structure of author's right and copy right: for example, and among others, in the concept of intellectual work, in the re-signification of authorship / ownership, in the emergency of new business models of cultural industries, in the struggles into the public domain or in the intimate relations between the management of intellectual goods and works with digital technologies. Thus, and after analyzing the three cases described above, we define the main concept that articulates the complete research: the new regulative forms linked (and their complex articulation) with the design of digital technologies define the political, cultural, social and economical future of our societies. As important as the analysis, this work aims to promote these legal-political and technological discussions.

[2] Radical changes in the exercise of author's and copy rights:

There are changes within the architecture of the cultural regulations. Digital technologies and the Internet have fostered a radical change in the capabilities and new "features" of authors, derivatives holds and general public. On one hand, as never before in human history, people can create intellectual works, publish them in a simple way, share, produce them on a collaborative manner or, at all time, dispose of an endless cultural heritage of intellectual goods and works globally. On the other hand, however, these same technologies can also encourage illegal copying, the enclosure of intellectual commons or the privatization / appropriation of different forms of intellectual value. The digital technologies and Internet favored, strengthened and renewed the direct exercise of author's and copy rights. These changes produce many new legal-political tensions within its architecture. In just over two decades the author's right and copy right went from being a branch of law with minor relevance to be the key gear for the intellectual value production, the cultural management and the regulation of our societies.

[3] New business models, industries and the commodification of the culture

The culture and its industries also have been severely affected by these technological changes. In just a few years we have developed new ways of creation of intellectual works. Some of these structures are more individual and close to the classical notion of authorship. Other forms of creativity are more collaborative and close to an "anonymous whisper". The new media technology have facilitated to the general public the access, copy, derivative works and even commerce of an uncountable amount of intellectual works that had been industrially produced and distributed. In addition, dangerously, these socio-technical changes have contributed to produce a commodification of cultural goods and the production of new types of "works" ("intellectual works", web routines, personal data, profiles) that so far had no apparent market value, and consequently are now becoming a high interest of many corporations of entertainment, video-games or information in the digital age.

[4] The co-construction of regulations and digital technologies

It is of singular importance to notice that the technological changes described imply have a direct relationship with the laws, its interpretations and the regulations of author's and copy right, globally considered. In the digital age, these regulations and the digital technologies developed for the management of these rights are part of a single process that we can defined as 'co-construction'. On one hand, this co-construction process allows the

identification of how to produce regulations to technologize the rights management and, on the other hand, how to produce technologies to regulate the management of these same rights. It is a circular process that many times is completely gray, codified, closed and black boxed. For that reason, it is very important to comprehend the referred co-construction process and to consider the social relevance of the design of technology for the culture management.

[5] Conclusion:

Changes in the author's and copy right law has not lessened globally. This thesis shows these changes and the imperative to re-think the author's right management and those that we define as our 'intellectual common goods'. Thus it is very important to notice that the ways of exercising these rights on intellectual works has radically changed. For example, Creative Commons licenses re-defined the concept of right to copy beyond the limits and exemptions of the classic 'author's right' and 'copyright'. Any law reforms was necessary to produce this process, just was an interpretation and a technological platform to these ends. Have these changes democratized the author's right and copyright management? It is essential to address the relationship between regulations and digital technologies. The process of co-construction between author's and copy right regulations and digital technologies for their management is just beginning. The three cases analyzed in the thesis show these dynamics. It is very important to comprehend that the design of technology has become one of the most important aspect of the legal-political, cultural, social and economic development of our societies.