The Implications of Referring of Computer Generated Works to the Public Domain

Akbar Ismanjanov

Abstract

The magnitude of the software development, leads to a proliferation of the works autonomously created by computer, without any significant expenditure of human skill and effort.[1] Nowadays, computer's contribution to the works becoming increasingly substantial, and consequently the user's input less feasible. Google Deep Dream Art can be exemplary in substantial nature of the machine made creative output in the artwork. The idea-expression dichotomy of copyrights rendering protection to original expression rather than the idea. However, this expression in the form of content output is predominantly coming from the computer, rather than from the user with the use of a skill.[2] In *Ameretto Ranch Breedables, LLC v Ozimals, Inc.*, the copyrights over virtual animals for Second Life online computer game was not upheld due to claiming protection over the functionality of the object.[3] This raises the question on possibility of recognizing the computer-generated works as open information and part of the public domain. Leading Australian case *Victoria Park Racing & Recreations Grounds Co. Ltd v Taylor* connotes on lack of ownership in raw information.[4] Moreover, the outcomes of recent Australian case *IceTV* also did not recognize copyrights over the fact-based works.[5] However, this comes along with the calls to "remedy the lacuna of 'authorless' works",[6] as can implicate predatory attitude to CGWs defeating the incentivizing function of copyrights. It can further curtail the use of virtual tools that facilitate creativity in its contemporary form.

Research question

What are the legal implications of referring of computer-generated works to the public domain evidenced in legal practice, and whether this approach is congruent with the copyright doctrine?

---

[1] Anne Fitzgerald, Tim Seidenspinner, "Copyright and Computer Generated Materials – Is it Time to Reboot the Discussion About Authorship?" [2013] VicULawJJl 5; (2013) 3(1) Victoria University Law and Justice Journal 47

[2] Catherine Colston, Kirsty Middleton, *Modern Intellectual Property* Law (2nd edn., Cavendish 2005) 301

[3] *Amaretto Ranch Breedables v. Ozimals*, Inc., 2010 WL 5387774 (N.D. Cal. Dec. 21, 2010).

[4]*Victoria Park Racing & Recreations Grounds CO. Ltd v Taylor* (1937) 58 CLR 479

[5]Jani McCutcheon, The Vanishing Author in Computer Generated Works: A Critical Analysis of Recent Australian Case Law, Vol 36 Melbourne Univ. L.Rev. 919

[6] Woodrow Barfield (2006) "Intellectual Property Rights in Virtual Environments: Considering the Rights of Owners, Programmers and Virtual Avatars," Akron Law Review, vol 39 (2006) issue 3, art 2, 915

Research objective

Examine the legal prospects of recognition of computer-generated works as objects of a public domain, instigated by the jurisprudence of European and International courts, from the perspectives of copyright law.

Methodology

Inextricably intervened object of research involving a range of subject areas insists on conducting cross-sectional research across the Information Science and Law, as well as interdisciplinary research between IP law and Internet Law. The study aims to hold the analytical type of research with the involvement of analogical reasoning in the identification of the relations of legal provisions of Internet law and Copyrights. The work involves a comparative analysis of the European Union law and International best practices in approaches to the status of CGWs. Modeling and projective approach concerning the practices in different areas of law are planned to be applied to distinguish the application of norms of one area in another. Action-research with problem-solving approach will be enabled to construe potential practical impact of the proposal with the application of the standards of one area of law in another with offering solutions from the law-in-context legal tradition.