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Topic: Copyright in Germany

- Regulations throughout the European Union are heterogeneous, e.g. the British have no fees on recording and duplication hard- and software while most other countries have such a fee.
- European Council passed new guide lines for Copyright in Europe that now has to be reflected in national laws
- Germany is about to ratify its new version of copyright law
- This new law gives reason for heavy dispute between legislative and various organizations representing different portions of "users": Various Universities, Chaos Computer Club, Ver.di (Germany's largest union)

Status quo of copyright:

- Copyright has boundaries when it comes to protect the owner, it also protects society. Copyright law is supposed to be a mediator between the owner of content and the consumer of content.
- Every consumer is allowed to make a private copy of what ever media and content he legally possesses.
- Recordings of broadcasted content, radio and television, for private use are legal
- Schools and universities enjoy special freedoms. They are allowed to replicate material for teaching, to show movies and play audio tapes without having to take special action in order not to violate copyrights.
- Libraries have the duty, by law, to preserve all content and make it accessible to the public. Buying content once entitles libraries to make the purchased copy available to the public

The proposed new copyright law:

- Has similarities to the DMCA
- It is supposed to maintain the boundaries in current copyright. It still does for analog and print media.
- It contains paragraphs that guarantee full control of every copy to the content distributor by making it illegal to circumvent any copy protection mechanism in order to make a private copy.
- Also illegal will be the distribution of well known facts whose knowledge can be used to

circumvent access restrictions, e.g. the algorithm used to compile the 10 digit unique number in German photo IDs. Knowledge of this algorithm enables determination of the birth date of the ID holder. Used to protect access to adult content on the web.

Consequences:

- DRM systems give full copy control over content on digital media: movies on DVDs, music on Cds, broadcasted content over digital radio and television.
- Today Adobe Acrobat Reader and Windows Media Player come with DRM systems to enforce license
- Microsoft's policy forbids viewing of Media Player files on non-Windows Systems. In order to use the new Media Player versions the user has to agree to a license that allows MS to update the player without notification of the user.
- MP3 is legally dead for private use as it is employed today.
- DVDs are not legally viewable on Linux systems any more. De facto this is the case in the US today.
- Schools, universities and libraries are not able to provide the information anymore if they can not find an agreement with every single distributor.
- There might be what John Perry Barlow calls a "Reality Distortion Field": Mass media has high control over content (US television/news networks).

And reality?

- Right now there is not enough awareness of the problem in the public.
- People copy for private use because they are used to do so. From this habit they won't part and the outcry will come when the law is enforced. The law will be ignored by the masses and therefore not enforceable.
- Today this is pretty much true in the US, but it is only possible because there are places on earth where people develop the necessary tools without the possibility of prosecution (e.g. DeCSS in Norway, Windows media codecs for Linux in Hungary)

But...

- The media, music and software industry gets more and more aggressive
- TCPA is only around the corner and will make moral courage technically more difficult. Simply not using Windows to use legally purchased (as we think of legal now) software, content may be a crime.
- The pressure from the US and European countries will force all other countries with trade relations to act in a similar way
- Already today an argument for European software patents is not that they are useful to protect an invention but to protect against the completely screwed up US patent law. European companies need patents to trade them in against US patents.
- "If you want to use MP3 to steal copyrighted music, it's not clear to me that you're in much of a position to make moral judgments on others." [3]

Effects on (software) licensing/distribution:

- Private backups become illegal, with TCPA they might become impossible, though I doubt that. There is always a way... This means no mp3s for the player to go to the gym, no copy of a CD for use in your car.
- Use of certain digital data under Linux becomes illegal. Windows Media files, DVDs, watermarked pictures and mp3s, etc.
- User may be charged per view/read/use where he was used to pay once use anywhere, e.g. books.
- Schools and Universities loose their privilege to copy material for educational purposes. Short excerpts of written documents may still be reproduced without explicit authorization of the content owner, showing film material becomes illegal without prior authorization of the content owner.
- Libraries won't be able to provide a lot of content because the administrative barriers get to high.
- Recording of broadcasted digital material (radio, television) becomes illegal. With hardware incorporating Digital Rights Management (DRM) it becomes impossible.

The global effects:

- "Bad Karma" for the industry
- Information might become accessible only to those who have the money to pay for it.
- Stronger polarization of the parts of the world that leave full control over digital content to the owner and those who don't.
- Other countries, that can not afford to separate themselves from the US and EU market in this case, are forced to put similar laws in place.
- Makes a strong point for countries not to respect copyright at all because delivering unrestricted, illegal copies to the black market in the restrictive countries generates revenues.
- The black market for illegal copies and hacked hardware devices will grow.
- People will have a diminishing sense of wrongdoing when using illegal copies because they feel ripped of by the industry and think it is only fair to fight back.
- Content vendors and consumers become "enemies".
- This is already an issue with software today. Who, for example, owns a legal copy of MS Office? At this ridiculous prize?

My point:

- The new copyright regulations loose their functions as a mediator. It does not enable fair use any more.
- A consequentialist point can be made that promoting such laws is not to the best of the company because of image loss and fueling the black market.
- A duty based point can be made that generalizing this way to do business will reduce customer rights to a minimum.
- A rights based point can be made, that anybody should have free access to all information. Freedom of Information (Informationsfreiheit) is guaranteed as a basic right in the German constitution. (The new law might be challenged and the Constitutional Court will have to decide whether it is conform to the German constitution (Grundgesetz))
- The position of the government, from a utilitarian point of view is controversial. They are supposed to act for the good of society. What's actually best for the people is debatable. What's

best for the government is being reelected.

- The attitude of "copy for revenge" can not stand the test of rule based ethics. But may be justifiable from a utilitarian or rights based perspective.

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