

Moral Rights Infringement on Online Book Publicity in Civil Law System

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Abstract

This paper is aim to examines moral rights infringement on online book publicity in cyberspace based on civil law system. Emergence of the Information Technology (IT) revolution will impact to emergence the intellectual property rights (IPRs) infringement. Nowadays, society can access the information on the web easily, so that information and digital products are able to be copied and modified easily. In this situation, technology provides ease of life for its users. However, copyright infringement for e-books is often overlooked. One of IPRs issue in cyberspace is moral rights infringement. Moral right infringement of book work is including illegal translation and illegal online publicity. These issues are related to a person's activities for making derivative and displaying the work without permission. Copyright is the legal protection extended to the rights owner in an original work that has created it so that the owner has "exclusive rights" of copyright in a book work.

Keywords: moral right infringement, online book publicity, illegal translated e-book, translation violation.

1. Introduction

There are so many copyright infringements on books, either in the form of plagiarism or illegal translation. The infringement is even more vulnerable performed in cyberspace. In digital era, to prevent copyright infringement at cyber space is not easy because digital product can be copied and modified easily. The general area of copyrights infringement, such as plagiarism, illegal translation, and piracy has often occurred.

Nowadays, the development of information and communication technology cause of the relationship become borderless and changes the condition of social, economic, and cultural quickly. Information Technology (IT) at this time is as a sword double-edged because it contributes not only to the increase prosperity and human civilization, but also effective to against the law.

Thus, it needs new law approach to combat the infringement. However, society viewed that traditional Intellectual Property (IP) Laws can't be applied to cyberspace case because it is a "new frontier", where ideas and information should flow freely in cyberspace. It is to become unfair for business environment. Law enforcement in cyberspace must be applied.

Copyright infringement is very dominated in cyberspace. Thus, it is very important to understand the legal basis on IPRs when opening online business to market the digital products. A lack of awareness of the importance IPRs protection is seen from the number of cases can be occurred. Nowadays, the basics of IP legal functioning of e-commerce as creative online business models radically change the legal environment of business¹. Thus, it must attempts to avoid illegal content in the online business.

There are a lot of copyright infringements related to illegal translation and conversion in digital form without the permission. For example, the illegal translation of e-book can be easily distributed and even sold in cyberspace. The infringement is not only harm for the author but also for consumers. In this situation, substance books have been changed and the consumer does not realize.

Consequently, the book has a meaning different from the original. Consumer will get wrong message. Furthermore, it will impact to not only detrimental to the economic rights, but also the author's moral rights. The author's moral rights are exclusively and inalienable, so it is vulnerable if someone translates and publishes electronically without get permission from author.

2. Moral Right of Book Author

Traditionally, the IP thief will try to sell stolen goods in online market. To sale illegal goods by a person or

¹See also Ferrera, Gerald R, Stephen D. Lichtenstein, Margo E. K. Reder, Robert C. Bird, William T.Schiano, (2004), *Cyber Law, Text and Cases*, 2nd Edition, Thomson, South-Western, West, USA. p.3.

group of thieves will be more free and easier in a diverse market space. By electronically, it makes difficult to track merchandise and catch the thief.

Nowadays, thief will free to sell the "Stolen IP" around the world through e-commerce business model. In the cases, eBay has become a common way for thieves to sell stolen goods. Selling online allows the thief- especially a place that is part of an organized effort to steal and sell access to different markets, for example, sales of stolen software for online¹.

IP theft on book works including illegal publishing and illegal translating because book gets protection under copyright law. In this regards, book is part of literary work which covers protection not only in electronic but also paper formats. In Indonesia law, copyright is the exclusive rights of copyright owner for specific period.

Copyright protection in Indonesia is governed by Law No. 19, 2002 on Copyright (copyright law). It confers protection automatically on literary works, musical works, artistic works, films, sound recordings and broadcasts once the requirements of the law are satisfied. Thus, the author of book gets protection by copyright regime.

The meaning of copyright is the exclusive right of an Author² or a Copyright Holder to publish or reproduce his/her work, which emerges automatically after the creation of the work without prejudice to restrictions pursuant to the prevailing laws and regulations³.

2.1. Author Rights in Copyright Regime

In many countries, copyright reflects in most countries two sets of interests that are generally referred to as economic and moral rights.

2.1.1. The Economic Rights on Book Works

The economic rights of the author enable him to earn a living from his work. It is a form of commercialization of his work. This is as a compensation and reward in an effort of creating the work. Copyright therefore grants the author the exclusive right to authorize others to use his work under agreed terms⁴ and to take action against unauthorized uses.

These rights are recognized by copyright laws worldwide and generally cover all relevant commercial activities in international trade such as the physical reproduction of books to be released on the Internet in the form of e-book. Theoretically, economic rights are exercised during the period of protection. These rights are exercised by the owners while alive, and upon death, for a period of 50 years by their heirs⁵. It protects property rights, which entitles authors to publish and economically benefit from their published works.

In the principle, the copyright in a work infringed when a person who not being owner of the copyright, and without license from the owner, does or authorizes⁶ such as makes for sale or hire any infringing copy, distributes infringing copies, makes or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies; or causes the work to be performed in public.

Copyright is the term used to describe the bundle of rights that is granted by statute in respect of original works and other subject-matter for limited periods of time and subject to certain permitted exceptions. The law provided protection for limited monopoly to author for economic rights. In this regards, the author's right is transferable by assignment, testamentary disposition or by operation of law, in which case the assignee shall be the owner⁷.

These exclusive rights apply irrespective of whether the works are copied partly or wholly. Thus, infringement of copyright occurs if the person claiming can show that the defendant has done such an act. In other words, the burden of proof lies on the person claiming that his/her work has been infringed⁸. In this regards, the infringement act may be direct (for example, making a photocopy or a disk to disk copy) or indirect (for example, making a clay model of a sculpture from a photograph of the sculpture)⁹.

2.1.2. The Moral Rights on Book Works

In theory, moral rights have a different concept of economic rights. "Moral rights" is the English translation of the French phrase *droit moral*. A moral right is as safeguard personal and reputational rights, which permit authors to defend both the integrity of their works and the use of their names¹⁰. In context of moral rights¹¹, authors typically have a non-pecuniary interest in his work, notably to decide whether their works should be

¹ Chuck Easttom and Det.Jeff Taylor (2011), *Computer Crime, Investigation, and the Law*, Course Technology, Boston, USA, p. 208.

² See Article 5 (1) b Copyright Law, Author is the person whose name is mentioned in a Work or published as the Author of a Work.

³ See article 2 (1) Copyright Law

⁴ See article 45 on License, Copyright Law

⁵ See article 29 (2) Copyright Law and See also www.myipo.gov.my

⁶ See www.myipo.gov.my

⁷ See www.myipo.gov.my

⁸ "General Information of Copyrights", accessed February 14, 2012. <http://www.myipo.gov.my/en/copyright/general-information.html>,

⁹David I. Bainbridge (2008), *Introduction to Information Technology Law*, Pearson Longman, UK, p.23.

¹⁰ See also Stephanie C. Ardito, *Moral Rights for Authors and Artists: In light of the Tasini ruling, is the next step to advocate for legislation?*, accessed February 14, 2012. <http://www.infoday.com/it/jan02/ardito.htm>.

¹¹ See article 24 Copyright Law

made public at all, to claim authorship, and to object to any use that can be considered as prejudicial to the work's integrity.

Moral rights constitute a characteristic of the civil law tradition, such as in Indonesia. Other legal systems, particularly those of common law countries, may grant protection of such rights on a legal basis outside of copyright, for instance under tort, unfair competition and contract law.

They're a major element of European copyright law and are becoming increasingly important as the Web becomes more globalized. Moral rights are a set of rights that are separate from the author's copyright on a piece¹. These rights are generally considered inalienable, which means that they cannot be given away or sold, and thus persist even if the copyright to a work is completely sold.

A moral right is the rights to oppose changes in the copyright that could harm the reputation of the creator. In other words, the moral right is as an eternal ownership for author.

The concept of moral rights relies on the connection between an author and her creation. Moral rights protect the personal and reputational, rather than purely monetary, value of a work to its creator².

The understanding of author's moral rights is as defined by the Berne Convention³, are as follows:

1. The right to claim authorship of the work
2. The right to object to any distortion, mutilation or modification of the work
3. The right to object to any derogatory action that may damage the authors honor or reputation.

2.2. Moral Right Protection in Civil Law System

The history of copyright law starts with early privileges and monopolies granted to printers of books. Initially copyright law only applied to the copying of books. Over time other uses such as translations and derivative works were made subject to copyright and copyright now covers a wide range of works⁴.

Nowadays, national copyright laws have been standardized to some extent through international and regional agreements such as the Berne Convention. Although there are consistencies among nations' copyright laws, each jurisdiction has separate and distinct laws and regulations about copyright. Some jurisdictions also recognize moral rights of creators, such as the right to be credited for the work. In a license agreement or an assignment of copyright can contain terms requiring that the author's name be placed prominently on copies of the work and that the work must not be modified⁵.

Regarding to moral right, there is any different perception between civil law and common law system. In Civil law systems to adopt a strong link between the rights and the person of the author, such as in Germany and Indonesia.

This system more protect author than corporation, such as publisher. While, common law jurisdictions are more willing to accept corporate ownership of copyright, as in the U.S. work for hire⁶ principle. Although the following comparison is simplistic and dependent on the exact laws of individual countries, it is difficult to see an effective (economic) difference in the two situations⁷:

In Common law system, employer owns the copyright in work created by employees. While, in Civil law system, employer can enjoys an exclusive license to the economic rights in work created by employees. In this regards, Civil law systems have also been forceful in protecting the moral rights of authors, arguing that their creativity deserves protection as an integral part of their personality. In other word, a moral right in civil law principle is as safeguard personal and reputational rights, which permit authors to defend both the integrity of their works and the use of their names.

For example, in Indonesia, it provides moral rights protection of book author which is regulated by copyright law⁸. An Author requires the Copyright Holder to attach the name on his work. Thus, it is forbidden to make changes to a Work although the Copyright has been transferred to another party, except with the consent of the Author or his heir if the Author has been deceased. In this regards, only the Author who remain entitled to make changes to his Work in accordance with social propriety. Therefore, this right is as eternal ownership for author.

Copyright Law in Indonesia provides protection for author than publisher so that the author is able to have right to authorship of the work and the right to object to any distortion, mutilation or modification of the work.

¹ See also Stephanie C. Ardito, *Op.cit*

² Betsy Rosenblatt (1198), *Moral Rights Basics*, Harvard Law School, accessed February 14, 2012. <http://cyber.law.harvard.edu/property/library/moralprimer.html>.

³ See Article 6bis of Berne Convention

⁴ See http://en.wikipedia.org/wiki/Moral_rights_%28copyright_law%29, accessed on February 24, 2012.

⁵ David I. Bainbridge (1999), *Intellectual Property*, Pitman Publishing, UK, p.99.

⁶ A work made for hire (sometimes abbreviated as work for hire or WFH) is an exception to the general rule that the person who actually creates a work is the legally recognized author of that work. See http://en.wikipedia.org/wiki/Work_for_hire, accessed on February 24, 2012.

⁷ http://en.wikipedia.org/wiki/Authors%27_rights#Distinction_between_common_law_copyright_and_civil_law_authors.E2.80.99_rights, accessed on February 24, 2012.

⁸ See Article 24 on Copyright Law

Thus, translation without permission is much prohibited. The copyright law provides prevention and protection for moral right of book author. It is also will prevents the works from a distortion or mutilation of the language.

This system is to protect the author systematically. This is a tribute to the author of the book, so his name remains attached to his work until whenever. Even this moral right is also effectively to protect the work from illegal translation because the risk of illegal translation which allows the content of his work changes. It allows changing the original meaning of the work. Thus, the illegal translation works will give an incorrect understanding to the community.

3. Moral Right Infringement on Online Book Publicity

In theoretical, copyright infringement occurred if anyone who exploits any of the exclusive rights of copyright without the copyright owner's permission. If copyright owner feels aggrieved and a lawsuit is brought to the court, then the offender found guilty are required to pay amount of money to the owner.

In fact, there are a lot of book piracy cases in Indonesia¹. Copyright infringement for academic books and journals, continues to be a major concern, especially at commercial copy shops in and around university campuses, as well as in university libraries. While, online piracy of textbooks, reference, and trade books also appears to be increasing, likely from digital scans of analog books.

In the context of illegal translation, it will impact to originality of the works because the meaning of the content of book should be different from original. Thus, to avoid wrong message through getting permission from the author is mandatory. It can be used for identifying the author of a work (the right of paternity).

In this regards, meaning of "illegal" is against the law. While, meaning of "translation" is the communication of the meaning of a source-language text by means of an equivalent target-language text². Thus, it is illegal to translate the book without the written consent of the author because it will change the meaning of the original source.

However, translators always risk inappropriate spill-over of source-language idiom and usage into the target-language translation. On the other hand, spill-over have imported useful source-language calques and loanwords that have enriched the target languages. Indeed, translators have helped substantially to shape the languages into which they have translated³.

Illegal translation and online publicity will impact to moral rights infringement of book author. This paper identified some moral infringement, as follows:

3.1. Damage the Authorship of Illegal Online Publicity

Copyright protection for book work is a form of protection given to the book authors of "original works of authorship". The book author will have the right to make copies, distribute copies, perform, display and make derivative works. In this regards, author has right to make "derivative work" including making modifications, adaptations or even make translating the work to another media. And only the copyright right has right to publish the works in cyberspace.

In the case of e-book publications without permission which is done by Google is as evidence that get permission from the author is obligatory. Where in the case, federal judge rejected a deal between the giant search engine of Google and lawyers for authors and publishers that would have let the Google commercialize book works over the world's largest digital library.

The deal will impact to Google's rights to exploit entire books, without permission of the copyright owners. Therefore, U.S. Circuit Judge has rejected a \$125 million settlement that was opposed by Google rivals, consumer watchdogs, academic experts, literary agents and even foreign governments⁴ although Google has already scanned more than 15 million books for the project.

The above case developed after Google announcing that it had agreed with several major research libraries to digitally copy books and other writings in their collections in 2004. The authors and publishers sought financial damages and a court order to block the copying when they sued Google in 2005 after Google failed to obtain copyright permission to scan the books⁵.

¹See Book Piracy, Indonesia, International Intellectual Property Alliance (IIPA) 2013 Special 301 Report On Copyright Protection And Enforcement,

<http://www.iipa.com/rbc/2013/2013SPEC301INDONESIA.PDF>, p.81. accessed on August 2, 2012.

²Namit Bhatia, *The Oxford Companion to the English Language*, ed., 1992, pp. 1,051-54, see also <http://en.wikipedia.org/wiki/Translation>, accessed on February 15, 2012.

³ Christopher Kasperek, "The Translator's Endless Toil", *The Polish Review*, vol. XXVIII, no. 2, 1983, pp. 84-87. see also <http://en.wikipedia.org/wiki/Translation>, accessed on February 15, 2012.

⁴ Larry Neumeister, *Judge rejects Google settlement with authors, publishers over digital library*, accessed February 15, 2012.

http://www.breitbart.com/article.php?id=cp_imb33psvn2&show_article=1.. See also The Star Newspaper, *Judge Calls Off Plans For Google Library*, Tuesday, March 29, 2011. P. IT13

⁵ *Ibid*

In the case, if Google is allowed to scan and publish electronically without getting permission, it not only would be detrimental of author's economic rights but also author's moral rights. Even though, moral rights will not be directly related to authors' financial damage, but it will greatly affect the author right to claim authorship of the work.

The readers will be more familiar with Google than the book author. This will be feared could damage to the author reputation. Such as occurred in the use of the site YouTube, all service users will mention the main source is YouTube as a source material, rather than knowing who the owner of the works. Whereas, it is only the author who has the rights to publish in any form including audiovisual works and any material used on the Internet.

In copyrights principle, getting permission from the author is mandatory. In this regards, to "publish" a work means to distribute copies of that work to the public both traditionally and electronically. This process will involve a publisher to distribute the copies of the book to the public which has been agreed with the author. Even in the United States that uses the common law legal system, the "right of publicity" is a right under state law¹ so that the author has the right to control not only the commercial use but also damage the authorship for illegal publication activities.

Ownership of copyright is like a chain, with the author/creator being the first owner, therefore being the first link in the chain. Links are added each time the author/creator sells, licenses or gives away all or part of the copyright² during the protection period of copyright is still valid. Thus, the author as a moral right holder can claim authorship of the work for illegal activities.

3.2. Damage the Author Honor of Illegal Translation

A moral rights holder has right to control for any distortion, mutilation or modification of the work, where it can occur in the translation of illegal activities. The case of illegal translated books sold on cyberspace is also very often occurring. The problem with illegal translations is not only for author but also consumer who purchased the e-book. Most of these translations are performed by amateurs, which may result in a completely different version from the original text.

For example, in China, Harry Potter and Leopard Walk up to Dragon were released. Any offender has translated the novel without permission. Thus, this work caused of misperception for reader. In this book, Harry becomes a fat, hairy dwarf, is stripped of all his magical powers and is made to fight a dragon that embodies the entire world's evil³.

Illegal translation will impact to shifting the book content. This is a form of infringement of copyright indirectly because the work not directly to make copy from the original, but it have modified in the other form. The creations of original work have changed. It will impact to the damage of author's right of integrity because the works has altered in such a fashion as to constitute a "distortion" or "mutilation" of the original work. It will also harm the author's reputation or honor.

Therefore, book translation without get permission is serious copyright infringement in many countries. It is an activity of against the law because can be changed the meaning of a source-language text which impact to damage of author honor. For example, in a case of a French student was arrested and had to spend a night in jail accused of violating copyright, after posting his French translation of Harry Potter and the Deathly Hallows online.

The illegal translation version was found by a French anti-counterfeiting agency on a French P2P site which posted the translation. The network made a profit from advertising sites where the translation was found. The unnamed French 16-year-old translated the entire book in a matter of days and posted in online for public view⁴.

In this regards, information technology can be used to facilitate in against the law, so that the illegal version can be shared or marketed electronically. Therefore, copyright law should be applied in cyberspace. It is one of negative impacts in IT usage, easy to translate. The illegal activity will impact to "language modification" of the original work of author.

Marketing digital product through online business is risky for book author. Collaboration between IPR violators and mobile phone provider can easy to sell the illegal version through mobile phone. For example, Unauthorized Chinese versions of popular Japanese novels, including works by best-selling author Haruki Murakami, have been sold as e-books on Apple's online store. The producers of the pirated copies apparently scanned printed works of the Chinese translations without permission and converted them into digital form for e-

¹ As opposed to under federal law like copyright, See <http://www.copyrightkids.org/definitions.html#rightofpublicity>, accessed on September 2, 2013.

² Who Owns Copyright?. Government of Canada Publication, <http://publications.gc.ca/site/eng/ccl/aboutCopyright.html>, accessed on September 2, 2013.

³ Posts Tagged 'illegal translations', 2010, accessed February 10, 2012. <http://spanish-translation-blog.spanishtranslation.us/tags/illegal-translations>,

⁴ Ibid

book¹.

The above copyright infringement not only occurs in book translation but also in movie translation. IPR violator is also possible to translate movie without get permission from author. Case in Poland, 2007, illegal movie translator were accused and arrested for posting illegal movie translations. They could be accused of illegal publication of copyrighted works².

Any illegal activities are related to illegal translation in form of book translation or movie translation which is shared and marketed electronically. It will result in meaning distortion and meaning modification of the work. Thus, the author as a moral right holder can sue for causing damage in honor.

Doing business through e-commerce business model should respect to legal content. Bad faith to do the business will lead to do violation. Involvement of organized crime in the cyber world is already quite extensive. Thus, law enforcement in copyright infringement issue is crucial.

4. Conclusion

In general, this paper concludes that moral right protection in civil law system is focus on claiming authorship and honor of author works both in form of traditionally and electronically. This paper identify that moral right infringement on book works are including damage the authorship of illegal online publicity and damage the author honor of illegal translation. The both of infringement will cause of weaken link between the rights and the author.

The Original work of authorship provides the author protection on damage in Illegal Online Publicity. Displaying on online publicity is part of derivative work. Thus, the "right of publicity" is an author or copyright holder's right to control damage the authorship on illegal publicity activities. Illegal publicity will result in weak recognition of the authorship of the work.

While, the integrity of the work provides the author protection on damage the author honor or reputation. The book content is essential part of integrity work for author or copyright holder. The "right of translation" is an author or copyright holder's right to control damage the honor for illegal translation activities which will cause of any modification on the content. Thus, it will shift the book content. Illegal translation can be classified as "indirect copyright infringement" because it can change the meaning of source-language text to target-language text or other form, such as movie.

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¹Agence France-Presse, 2010. Pirate Chinese versions of Haruki Murakami's novels, others sold online, accessed on May 1, 2012, <http://showbizandstyle.inquirer.net>.

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