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Registration Date : 13, March 2008)
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Creators, to be or not to be: that is the question!

Nowadays in the world of IT are two roads proposed to go on: one is to protect copyrights and keep creators to be creative, and the other is to neglect copyrights and force creators as well as culture to wane. For creators, to be or not to be: that is the question.

Cultural Impact of DRM Free

“As the majority of hobbyists must be aware, most of you steal your software.....Is this fair? One thing you do do is prevent good software from being written. Who can afford to do professional work for nothing? I would appreciate letters from any one who wants to pay up,” This is a famous message in the Open Letter to Hobbyists written by Bill Gates to the members of Homebrew Computer Club on 3 February 1976, just some time later than the day that he and his colleague, Paul Allen, launched Altair BASIC Interpreter in 1975, when paying-no-royalty was popular for software production.

Science, technology, culture, and all human activities of creation, no matter if the products are tangible or intangible, are originated from intellectual activities, or ideas. Aggregation of a number of various ideas are integrated together and take shape of a tangible object, i.e. a product, say, a car or an airplane to provide the value of transportation, and some others take shape of an intangible object, i.e. an expression, such as music, novel, and other cultural work as well as software mentioned above to provide the value of relaxation, recollection, and convenience of life.

On the other hand, as long as we stay with such a principle of social management that the valuable goods and service reach our hands through exchange in the market, there shall be required another principle that property rights must be guaranteed for each of the members of society. If no property right is guaranteed, neither the owner nor the owned will be identified, and if neither the

owner nor the owned is identified, then market shall have no way to function.

Historically, for the society which lives with markets, property rights for the ideas taken into some shape have been guaranteed in the form of patents and copyrights. In other words, patents and copyrights are the corner stone of human society which protects the origin of human activities of creation; we, human beings, have ever spent tremendously long time to recognize it and to make it real.

Nowadays, as IT (Internet Technology) grows and spreads, ideas are molded and transferred around with the huge quantity and velocity we have never experienced. In the first place where things had started, property rights for ideas thus embodied in the IT world were adequately managed with the name of Digital Rights. Since then, however, as IT and business on it evolved rapidly, creation and transfer of ideas has seemed unchained to have the ideas thus embodied flood out to public with no limitation and we have lost control over the management of property rights for them. As a result, we are sinking in the gulf of over-supply of precious shapes of ideas and crap, and doing nothing but only seeing ideas thus embodied degraded to zero value in the market. We are responsible for making embodied ideas no-value as properties. Is it tantamount to saying that we are currently jeopardizing the origin of human activities of creation?

The above phenomena are radically seen in the world of music business. For long time therein, the property rights for expressions of new ideas, or new music, have been protected by the concepts of copyrights and neighboring rights. The way of the protection is i)to take the expressions of ideas (=music) to be intellectual assets, ii)to count how many times such expressions of ideas (=music) are used, and iii)to pay the profits generated by the expressions of ideas (=music) back to the owners. In order to identify the exact frequency of the uses, it is necessary to prevent, as much as possible, from unauthorized copying, to a sort of lock up music packages like CD and DVD, and to have the servers save all the records of the uses on the internet. All this about is called Digital Rights Management-DRM. DRM is a legal, technical and commercial system which acknowledges, calculates and monetizes for the owners the value of the property rights for expressed ideas. Even though DRM could not perfectly get rid of unauthorized uses, it is said that DRM over music in Japan was ever successful to decrease illegal copies down to 30%, while North American market of music, which had not undertaken DRM, suffered from illegal copies occupying 95% of the market. Music without DRM is called DRM Free music. People in the music market in North America ever decided to go down the road of DRM Free, and this decision might be one of the reasons why the market therein is severely shrinking.

Later 2011, as North American market for music had shrunk, Japanese market for music rose to become the biggest in the world of the whole music business, including not only CD sales but also online distribution. This might show that the methodology of music business adopted in North America was not the best.

In Japan, however, the music market changed the gear to DRM Free for a number of works to be distributed on line in 2012. Just except for some super-star artists, almost all music labels and master-copy holders began to distribute music DRM Free on line. This means that a music file initially downloaded with one-time payment can be unlimitedly copied, and that consequently there will be no monitor or management of the uses, no matter if the file is viewed or listened to many times by many different end users. For the owner of the property right for the music or performance, only one payment in the first place will be rendered, her receiving nothing for the file being copied, notwithstanding how broadly her music spreads or her performance is accepted over the world. The issue in the long term is that some large group of end users, in particular, teenage users, may be inclined to non-paid access to music or performance rather than to initial one-time payment for it.

In addition, iTunes Match will be put in service in the second half of 2012 in Japan. iTunes Match, ever launched in November 2011 in North America, is online music distribution service via cloud, which enables end users to replay music with as high sound quality as iTunes with various iOS devices as well as personal computers anytime and anywhere by accessing their music file lists (library) through internet. iTunes Match charges an end user for US\$24.99 annually. It is presumed that the owners of the property rights for music or performance might be given a great blow, since even a music file which an end user gets in hand illegally and registers on iCloud could be equally made replayable with the same quality of sound as iTunes, as long as iTunes Match finds it matched with a file on iTunes Store. Even though it is true that the owners of the property rights will be paid by iTunes Match even in the case of illegal uses of music files, a question might still be asked: "Is it fair that the owner of the property right for such a music file illegally used would only receive a proportion of US\$24.99 per year (=US\$2.0825 per month)?"



Suppose that people put aside copyrights or neighboring rights for music and neglect them, the only way left to the artists to protect their rights for expressed ideas may be to depend on performance tours and merchandising alone. Given this, how could fresh capital for investment flow in the market? How could brilliant talents for professionalism be called in? World-class big names we

have ever seen might have no way to emerge in the future. Looking at this situation with a long sight, this kind of loss would be suffered not only by music artists and companies but also by end users as well; this would become the loss of culture and society.

Frankly speaking, a number of entertaining works easily lose their freshness in being used just at a couple of times, but music, being favorite, may always refresh the memory of a special moment of life every time when it is listened to. Those created and impressed especially by various individuals will be interwoven into a huge stream of culture, going over time and space. If this dynamism of the flow of creations is valued zero by society, or no reward will be given to the creators of those ideas, then what else would satisfy the creators? Would it be just joy of self-expression? Is this worthy enough for them?

There might be an objection to all the lines mentioned above. Some would claim that hindrance over end users has been a “wall of DRM” in CD sales and online distribution of music, not being a wall of devices or a wall of manufacturers. They would continue to say that if there were no DRM, there would be almost no worry for end users about what will happen to devices or service in the coming future, where end users could buy music at ease and such service of online distribution of music could be further expanded to general users. In addition, this would deter from copyright piracy.

We, in the world of IT, seem standing at the point of a forked road; one branch leads to the society where DRM protects the rights for embodiment of ideas so as to preserve carefully the origin of human activities of creation, and the other to the society where DRM Free makes embodiment of ideas no value but puts the first priority on fast diffusion of the works without concern about the origin of human activities of creation.

Isn't there really the third way to go: the way that we can, at the same time, BOTH respect the embodiment of ideas as the origin of human activities of creation, which should be properly paid for, AND accelerate the spread of those thus embodied among people, or end users? If IT is on question, there must be some way, say, something technological or operational, to combine DRM with the fast spread of the works, say, music. This is my belief. Based on this belief, I would like to provide the following proposal for evaluation of the readers:

1. First of all, it is required to acknowledge that copyrights center on all works, not only hardware but also software. On corollary, it is required, at the managerial and operational level, to count and record the frequency of uses of the copyrights for works or performance so

as to set forth a base for reward to the rights owners.

2. Copyrights and neighboring rights (including the rights of master-copy holders), most of which are currently rewarded by the way of License Payment at the time of product purchase, should also have the other option of reward, i.e. the way of Use-Based Royalty Payment. The latter way is to grasp all uses of the works (not accompanied by payment at the time of the respective uses) and to charge the end users later based on the frequency of the uses. It will charge all uses of the rights for reward, and hence tremendously presses down the cost of the rights thus charged to end users in each use. (In North America, "Sound Exchange", an organization to administrate the internet radio broadcasting services, has adopted the way of Use-Based Royalty Payment. For them, the way of Use-Based Royalty Payment came up to the real operations after a gradual process of their response to the needs of markets, and now is steadily working as business.)

3. A) On Web, utilizing the technology of cloud, we should monitor and manage, with the central servers, the frequency of uses of the works which will occur in various devices and equipment connected with the cloud. (This way of management has already been adopted by Spotify in North Europe, working well as business.)

B) For the uses at a Local side (in hand of end users), we should bifurcate neighboring rights into two different kinds of concepts, such as "Promotional Master-Copyrights" and "Commercial Master-Copyrights", so as to enable both DRM and DRM Free to co-reside. Commercial Master Copies will be supplied only to the copyrights-protected media, which is under DRM or where copying is under control, like online-distribution, DVD and Blu-ray disc etc., while Promotional Master Copies will be delivered to the non-copyrights-protected media, not being under DRM or copy-control, such as MP3, iTunes, YOUTUBE, CD etc. One music file could have either a Commercial Master Copy or a Promotional Master Copy only, and another music file may be given both of them at a time produced by changing the size, arrangements or mixing etc.

I wish that people will sympathize with the proposal above, and hope that they will take it serious to administrate the proper payment for embodiment of ideas, i.e. that for the origin of human activities of creation.