



3D PRINTING: INTELLECTUAL PROPERTY RIGHT HOLDERS BEWARE!

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3D printing is the generic name given to a family of additive manufacturing processes. These are processes that are employed to build a desired object by adding material layer by layer. One can thus obtain very complex shapes and properties that cannot easily be obtained by any other manufacturing method (casting, machining, etc.).

Although this technology seems to be straight out of sci-fi movies, it will soon be present in our daily lives ... if such is not the case already! Today, industrial printers are more efficient and less costly than ever. Moreover, various manufacturers offer personal printers at affordable prices.

It is very rare that a technology creates so much interest in such a wide array of industries. 3D printing has sparked interest from the general manufacturing, automotive, industrial design and medical research industries. Consultants McKinsey & Co. has identified 3D printing as one of the 10 most important technologies to watch in the next 20 years. The firm believes that 3D printing could generate an overall economic impact of 230 to 550 billion dollars per year in 2025. This number was calculated while contemplating only the applications available today.

In conjunction with the development of machines, websites now host files containing the 3D geometries for all sorts of items that can be downloaded and printed. Today, one can find online files needed to make jewelry, toys, replacement parts for appliances ... and even firearms. Meanwhile, the development of 3D scanners that can faithfully translate the 3D geometry of a physical object into a computer file progresses and their use is accordingly becoming more widespread.

With all these developments, several holders of intellectual property rights are concerned that their rights may be violated and traded on the web in the same way that the music files were in the early 2000s. Here, we briefly examine the possible impacts of the proliferation of 3D printing on intellectual property rights.

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a) Copyright

Copyright protects the original work of an author from any reproduction without consent. It is the manufacturers of high consumption products that are most vulnerable to the arrival of the personal 3D printer. Suffice to say it will soon be easy enough to produce a toy, building block or a figurine depicting a cartoon character without the knowledge of the creator or the copyright holder. Although the counterfeiting work is easy to identify, the problem will be for the rights holder to determine who is liable for infringement. In other words, who is liable for the counterfeiting: the person who uploaded the file, the website that hosts the file, the person who prints the object or the person using it? These questions highlight the new problems that 3D printing creates: the separation between those who develop a product from those who make them. It is therefore essential for copyright holders to be vigilant about the use of their works on the web, otherwise they may lose control over their distribution.

b) Patents

Patents on processes or articles will be affected by the arrival of 3D printing. Indeed, it is possible that the production of a patented process using additive manufacturing is not an infringement if this method had not been claimed or described by the inventor at the time of patent searches. Thus, it is possible that several patents are circumvented by a competitor who uses 3D printing. On the other hand, 3D printing will not change much for patents relating to the actual products given these patents do not pertain to the manufacturing process. Thus, copying a patented product using 3D printing will remain an act of infringement, no matter which process is used to make it.

c) Trademarks

The protection offered by a registered trademark can easily be circumvented because it would theoretically be legal to remove a reference to the trademark of a product and thereby avoid liability for unauthorized use of this mark. In other words, a user could remove the trademark from a frame for eyeglasses from the file containing the 3D elements and print the frame without infringing upon the rights of the trademark holder. However, for the use of a trademark or a distinctive sign of a product manufactured at home, additive manufacturing will not change the current law: the use of someone else's trademark without permission is and will remain a violation of the trademark holder's rights.

d) Industrial design patents

Industrial design patents protect the shape and appearance of objects produced in large quantities, such as furniture or kitchen items. As is the case with patents, reproduction without permission of an object that is protected by industrial design remains an infringement.

Finally, although the intellectual property rights are treated separately, it must be remembered that they are all interrelated and therefore it is possible that infringements will arise under more than one aspect. Despite the adverse impact of recent developments in 3D printing materials, holders of intellectual property rights should benefit from these advancements for their future creations while continuing to enforce their existing rights. Vigilance remains crucial.



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