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Patent Stream - session 4.1 3D

Printing: What to do when the Infringer is everywhere ?
3D Printing and IP - A French and European perspective

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3D printing and IP rights : is there a real threat ?

- A Legal and Empirical Study into the Intellectual Property Implications of 3D Printing - D. Mendis, D. Secchi and P Reeves - March 2015 - Research commissioned by the UK IPO - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/549044/Legal-Empirical-Executive-Summary.pdf

“A premature call for legislative and judicial action in the realm of 3D printing could stifle the public interest of “fostering creativity and innovation and the right of manufacturers and content creators to protect their livelihoods””

- Rapport du Conseil Supérieur de la Propriété Littéraire et artistique (France) - L'impression 3D et le droit d'auteur - Des Menaces à prévenir, des opportunités à saisir - Juin 2016 - <http://www.culturecommunication.gouv.fr/Thematiques/Propriete-litteraire-et-artistique/Conseil-superieur-de-la-propriete-litteraire-et-artistique/Travaux/Commissions-specialisees/Commission-du-CSPLA-sur-l-impression-3D>

A ce jour, la contrefaçon par l'impression 3D d'œuvres protégées par le droit d'auteur demeure très marginale et ne crée donc pas de préjudice significatif pour les titulaires de droits. Il ne paraît dès lors pas nécessaire, à ce stade, de modifier la législation européenne ou française.

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Case study : automotive spare parts

	Copyright (on the object)	Design (registered or unregistered)	Trademark	Patent
Main limits For automotive Spare parts	<ul style="list-style-type: none"> - Condition of originality - Copyright protection has a scope which varies depending on the EU country 	<ul style="list-style-type: none"> No protection: <ul style="list-style-type: none"> - for mainly functional designs - for non visible parts Private and non commercial use is non infringing 	<ul style="list-style-type: none"> Private and non commercial use is non infringing 	<ul style="list-style-type: none"> Private and non commercial use is non infringing

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Case study : automotive spare parts

Printer, scanner, or software manufacturer

. sells the equipment

3D digitalization (scan) service

. scans a protected work
. puts the 3D file on line

Sharing platforms / 3D printers

. share the files online

Professional 3D printing service

. prints for the end user
. allows the end user to print
on its premises

Private End user

. Prints and uses the printed copy

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Case study : automotive spare parts

Printer, scanner, or software manufacturer

. sells the equipment

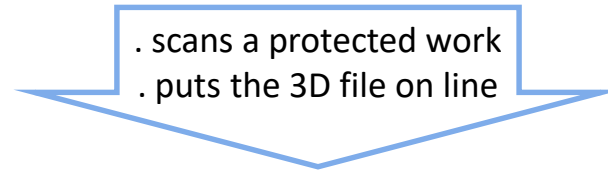
Copyright	Design	Trademark	Patent
Unlikely to apply, unless the equipment or software is specifically designed	Unlikely to apply, unless the equipment or software is specifically designed	No	Unlikely to apply, unless the equipment or software is specifically designed

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Case study : automotive spare parts

3D digitalization (scan) service



Copyright	Design	Trademark	Patent
Acts of reproduction Acts of representation	The CAD file itself would not be protected by a design right	Infringement act if the trademark is used when commercially disseminating the CAD file	Potential contributory infringement

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Case study : automotive spare parts

Sharing platforms / 3D printers

. share the files online

Copyright	Design	Trademark	Patent
At least Secondary liability: if an active role is played ECJ March 23, 2010 - Google AdWords / ECJ July 12, 2011 - L'Oreal vs. eBay			

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Case study : automotive spare parts

Professional 3D printing service

- . prints for the end user
- . allows the end user to print on its premises

Copyright	Design	Trademark	Patent
<ul style="list-style-type: none">. Printing is a reproduction act. To the contrary, one could consider that he is acting solely on behalf of the end-user	Manufacturing is an infringement act	No commercial use of the trademark	Manufacturing is an infringement act
Is the mere fact to allow the end user to print in the premises of the printing service sufficient to establish an infringement act ?			

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Case study : automotive spare parts

Private End user

. Prints and uses the printed copy

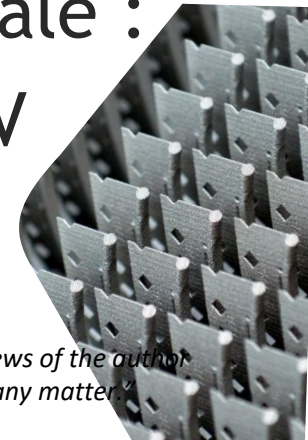
Copyright	Design	Trademark	Patent
. Can private copy be a valid exception for 3D printing ?	Law typically requires the use to be commercial		

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Case study : automotive spare parts

- Why is 3D printing not considered as a threat by the automotive industry but rather as an opportunity?
 - The BMW experiment
 - Extrapolated figures on the aftermarket parts suitable for 3D printing
 - An example of use of the metallic additive technology at an industrial scale :
 - ➔ AddUp a Michelin /Fives JV



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Case study : automotive spare parts

- The Current Status and Impact of 3D Printing Within the Industrial Sector: An Analysis of Six Case Studies - P.Reeves,D. Mendis - Feb 2015 - Research commissioned by the UK IPO

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/549046/Study-2.pdf

*“Based on the discussions with thought-leaders within the automotive industry and expert knowledge of the rate of development within the AM industry, **it is believed that it will be at least ten years before the automotive industry is affected by AM technology. After this period, there may be some opportunities in the aftermarket, but these will represent a fraction of the global market.**”*

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How to prepare the medium term future ?

- 3D printing as business opportunity for manufacturers
- Towards manufacturers licensing 3D files more widely ?
 - New business models to invent (*a parallel with the free software business*)
 - Key issues :
 - legal and technical control of the dissemination,
 - liability;,
 - price models, etc...

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Fablabs and online platforms

- Intermediaries are the source of the dissemination and are therefore key actors to work with on IP matter
- France :
 - “merely hosting” and “creating and editing” lead to different liability status - Article 6 LCEN (June 21, 2004)

*“Individuals or legal persons who provide, even free of charge, for allowing availability to the public by on-line public communication services, (...) **may not be liable for civil liability** arising from the activities or information stored at the request of a recipient of those services **if they were not effectively aware of their illicit character or of facts and circumstances giving rise to that character, or if, as soon as they had become aware of it, they acted promptly to withdraw such data or to render such access impossible**”.*

- 3D printing draft of law filed with the parliament on October 2016
- Further notable recommendation of French CNAC (National Anti-Counterfeiting Committee) :
 - “State actors could invite the Fab Labs to complement their Charter” [as to IP rights] - 3D printing Report - March 2016

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Thank you!



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