

Geneva-Group Workshop – October 2006

- ***COPYRIGHT IN MOBILE DEVICES (RINGTONE TRUETONE, ETC.)*** – Only two decades of cell phones. How does one protects one's rights in this astonishing super-growing market where everyone wants to have its own "branded" cell phone with most recent melody instead of decades of "old bell ringing"?
- Did we forget to protect the "owner's" rights in such musical works? Who is in fact the "owner"?
- We will try to touch the tip of the iceberg in copyrights ownership in Mobile Devices which is a huge profit source for the cell phone and content provider's corporations all around the world.



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© **RIGHT IN MOBILE**
Ringtone, Truetone

by

Ady Nordman - Attorney-at-Law

Hirsch & Co. Law Offices

in cooperation with

Soroker-Agmon, Advocate & Patent Attorneys

ady@nordman.co.il



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W O 1 W 2 W 3 Y 2 Z 2 Z W
2 W O Z W 2 Y 2
W 4 H 6 7 1 Z 2 Y
W 5 W 2 X H X

*"The thing that hath been, it is that which shall be;
and that which is done is that which shall be done:
and there is no new thing under the sun"
(Ecclesiastes Chapter 1, 9)*

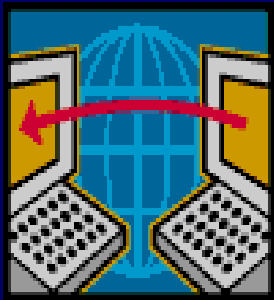


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Copyright in Modern Age

- Copyright in Modern Age may seem to be complicated.
- Professionals need extensive technological knowledge (e.g. how does protocols work?).
- However it seems that the technological changes has not changed Copyright principles.
- Copyrights in cellular devices, much like copyrights in computer's, internet and in new devices are based on the same principles which have been established at the beginning of the 19th Century in the English and American laws. The mere fact that between the paper and the internet web page lies hundred of years of technological development does not reduce the conventional legal principles of copyrights' examination which are originality and creativity.



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Questions???

Is copying a derivative work? and that is what you are doing when you download a ringtone onto your phone, is illegal?

There is the additional twist with ringers in that they ring in other people's ears and that could be construed as a public performance. Some may argue that this may constitute a further infringement of copyright laws.



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Main Topics :

- Introduction - Cellular Devices Technological Development
- WAP technology and its impact on digital copyright content.
- Copyrights in digital contents which is unique to Cellular Devices – Ringtone, Truetone, etc.



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Introduction: Cellular Device

Mobile Cellular Device is an all inclusive name for various types of two-way radio telephone that can receive and transmit electrical signals at the same time.

Cellular communication is facilitated by the electrical signals transmitted and transferred by cellular base stations each covering a relative small area (cell) Each device connects to the nearest cellular base stations and those are connected to a main base station (MSC) that is routing the calls from and to the relevant cell.



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Little History...

First Generation

From mid 60th until the 80th several analog cellular systems have been developed:

- IMTS (Improved Mobile Telephone system)
- AMPS (Analog Access Communication System)
- TACS (Total Access Communication System)
- NMT (Nordic Mobile System)

In 1973 Motorola © was the first to demonstrate the use of cellular phones.

First prototype was introduced by Bell © in 1979.



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Digital Cellular Devices

Second and Third Generation

- In the early 90th first development of digital cellular systems appeared and replaced the analog systems.
- The digital systems was characterized by higher quality of transmitting and receiving.
- Second generation cellular devices enabled other add-on services e.g., the transfer of data between devices using digital modem installed in the mobile device (GSM - Global System for Mobile), Voice Mail, Short Message Service (SMS) and more.



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Cellular Devices Development

- The vast penetration of second generation cellular phones which have risen to more than 100% in developed countries (more than one device per person) and development of the internet have lead manufacturers of cellular devices to change their philosophy.
- The Third generation cellular device is one that can be used as a “universal remote control” for all of life’s needs that includes many other add-on functions.



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Third Generation Cellular Device

Outlook© online Sync

Build-in MSN Messenger©

Bluetooth stereo connection + Infra-red

Wi-Fi

MP3 player, digital camera with high resolution and flash

Build-in speaker

Business card scanner.

Video conference.

QWERTY keyboard

Build in extended memory as well as memory expansions.



Sony Ericsson P990i



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Copyrights in Cellular Devices

- Copyrights in cellular devices is divided into three sub fields:
 - Copyrights in the copied content or copied using the device.
 - Copyrights of broadcasts by cellular devices.
 - Copyrights in the components of the cellular device or cellular communication systems.



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Copyrights in Digital Contents

- To enable the transfer of digital content like a song, video clip or animation to the end user cellular device there is a need (in most cases) to convert and decode such content.
- There are many corporations that specialize in such transformation of music and video to cellular devices (e.g., www.logiamobile.com and others.).



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Cellular Devices Contents

- “Contents World” for digital cellular devices is extensive and rich. There are several main contents fields:
 - **Ringtone** – phone ring which is comprised of music and/or wording.
 - **Effect tune** – animation work viewed by the cellular device.
 - **True tone** – ring which is comprised of a “real” song/music work.
 - **MP3** – Audio file that can be played on the cellular device.
 - **MP4** – Video file that can be viewed on the cellular device.



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WAP Protocol

- Most of the new cellular devices also enables their users to surf the internet as well as upload and download contents.
- WAP (Wireless Application Part) is the global open applicable standard that was designed to better utilize the cellular devices connection to the internet while showing the relevant data in a format that is suitable to the limitation set by the cellular device: small screen, limited resources of computing, reception disturbances etc.



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WAP Protocol

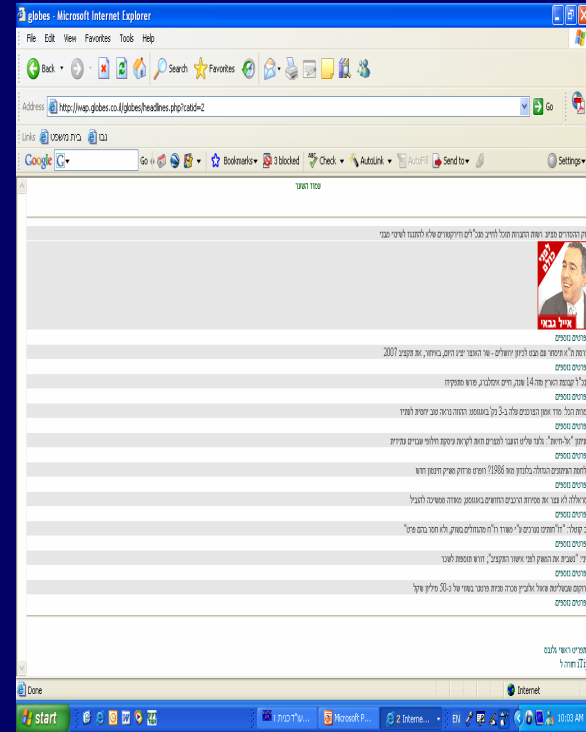
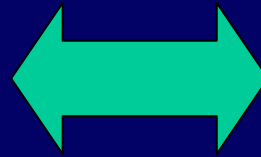
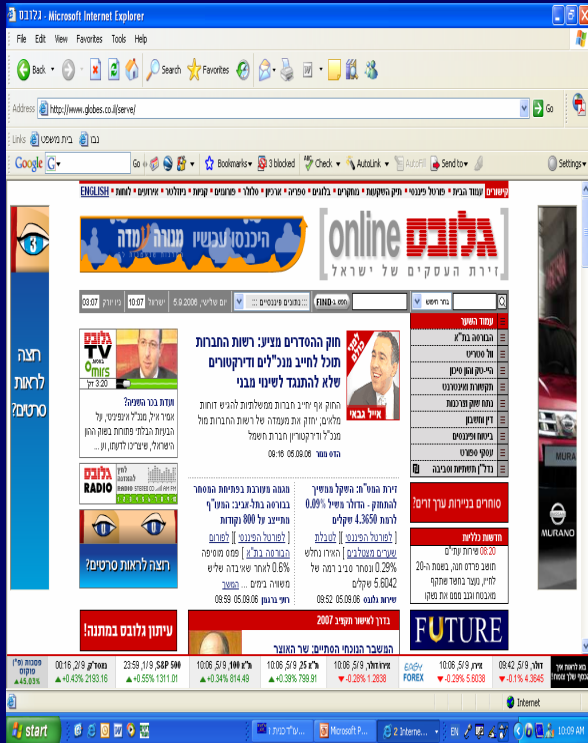
- In order to build a web page for WAP there is a need to use WML programming software.
- One can either write directly in WML or convert HTML or XTMHL pages to WML.
- Conversion of a web page from HTML to WML changes the page format as HTML enables to show animation, color, graphics and design in high resolution which is not possible on a cellular device.



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Conversion of Web Pages to WAP



September 5, 2006 Home page of Israel Globes Financial Newspaper webpage



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Adaptation Right as Unique Owner Right

- In cases of conversion using WAP it seems that there is a use of adaptation which is a unique right owned by the owner of the work.
- This is covered by copyrights laws around the world.



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Is HTML Conversion to WAP is Adaptation?

- One can see the conversion of an HTML page to WAP as an adaptation of work.
- In the conversion process the page is “cut” and most of the graphic and design elements are taken out. The result is a web page which differs from the original work thus including mostly text in low resolution.
- The final web page differs from the original work and constitute an adaptation of the original work. There are two different legal approach to the change that was done in the work.



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Does HTML Conversion to WAP Prejudice the Owner's Moral Rights*?

- The extent of completeness is controversial.
- Terms like “change”, “disruption”, “value diminish” are terms which need to be interpreted in order to fill them with content.
- Conversion of a web page from HTML to WAP renders the quality of the web page.
- Case law has declared that publication of a book in low quality does prejudice the owner’s moral right hence violating his copyrights.

Moral rights are rights of creators of copyrighted works generally recognized in civil law jurisdictions and first recognized in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. While the USA became a signatory to the convention in 1988, it still does not completely recognize moral rights as part of copyright law, but rather as part of other bodies of law, such as defamation or unfair competition. Those jurisdictions that include moral rights in their copyright statutes are called droit d'auteur states, which literally means "right of the author".



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What is a Ringtone?



- Ringtone - A ring tone is the sound made by a telephone to indicate an incoming call. The term, however, is most often used to refer to the customizable sounds available on mobile phones. This facility was originally provided so that people would be able to determine when their phone was ringing when in the company of other mobile phone owners. (Wikipedia)
- Note that an Israeli patent attorney named Marco Luzzatto has brought at the end of August 2005 a lawsuit against Siemens claiming he is the owner of a registered patent on ringtones in Israel, Europe and US. The Israeli case was settled while the parties did not reveal the settlement details.



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Ringtones as a work eligible to Copyright

- Are Ringtones considered works that are copyrightable?
- Who is the owner of such rights?
- Is a Ringtone considered a considerable part of the original work?

Note there is even an agreed sound recording copyrights symbol



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Worldwide Copyrights in Ringtones

Canada



- A major and important decision on copyrights in Ringtones and Truetones was recently (Aug 18, 2006) delivered by the Canadian Copyright Board.
- The Canadian Copyright Board has concluded that Ringtone is a copyrightable musical work.
- Board has also concluded that the owner of the rights on a Ringtone which is based on an original work of music is the owner of the original work from which the Ringtone was made.

"In our opinion, a musical ringtone constitutes a substantial part of a musical work. If there were no substantial part of the musical work reproduced, there would be little or no incentive to the consumer to purchase it".

Although it was not decided it seems that the right of performance lies with the relevant entity which performed it which have also rights in the chain of rights and is eligible in most cases for consideration as well.



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Worldwide Copyrights in Ringtones



USA

- Famous Rapper Eminem's publishing companies (Eight Mile Style and Martin Affiliated) have settled a court action with Cellus US selling mobile phone ringtones of the artist's songs over the internet. Settlement actually stopped the sale of Eminem's songs by Cellus.
- There's a battle going on between the Recording Industry Association of America (RIAA) and the National Music Publishers' Association (NMPA), the Songwriters Guild of America and the Nashville Songwriters Association International over whether record companies and other ringtone distributors may obtain a compulsory digital phonorecord delivery (DPD) license—the digital version of a mechanical license—for the composition at the statutory rate or must negotiate a license for each ringtone use". The Copyright Royalty Board referred on August 23, 2006 the question to the Copyright Office.
- The issue will hinge on whether ringtones are a derivative work or not which may of course have a huge impact on the industry.
- July 2006 - The group of artists who filed a class action lawsuit against Sony BMG, alleging the music giant has underpaid artist royalties for digital music transactions, has added ringtones to its list of grievances.



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Worldwide Copyrights in Ringtones

Malaysia (August 2005)

- The Recording Industry Association of Malaysia (RIM) has set up a one-stop center to license local music repertoire for digital distribution.
- The move is to address the complex licensing issues associated with the digital distribution of music, it said. But for now the licensing is restricted to ringtones, as a test.



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Worldwide Copyrights in Ringtones

China



- June 22, 2006 – R2G which has the exclusive publishing rights to all of Jay Chou's titles for ringtone applications in China — has won US\$6,250 from China.com for the illegal use of ringtone applications for 18 songs by popular Taiwanese singer, Jay Chou in violation of China copyright laws



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Worldwide Copyrights in Ringtones

Israel



- Courts in Israel have not yet handled the question of copyrights in Ringtones.
- There is a good chance that this issue will be dealt with in a claim which was filed against one of Israel largest cellular phone companies (Cellcom) in the District Court of Tel-Aviv.



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Summation

- A Cellular device is a device which is regulated by numerous normative frames of laws.
- The conversion of digital contents can constitute a breach of copyright.
- Ringtones are protected musical works that is owned by the original musical work owner. The ringtone is a substantial part of the original musical work.



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Draws Conclusions

- It seems that songwriters, composers, Lyricists and other copyrights owners did not pay much attention in the past as small parts of their music work may have been used here and there (.e.g., toys etc.)
- Lyricists and composers in particular have been taking a one-time fee from producers for songs for decades without considering royalties on the material that can sometimes be far more valuable than the original fee.
- Ringtone, Truetones and alike files were not part of the “original” historical custom licenses contracts and only since the introduction of the second and moreover the third generation mobile devices couple of years ago copyrights owners “discovered” the unique enormous economic value of their rights even if one is talking about a small fraction of their music work. What is also evident is that, in contradiction to the “not willing to pay for music” people using the peer-to-peer downloads, people and especially teenagers are willing to pay, sometimes overpay, for such small fraction of music. in many cases ringtone sales are outpacing recording single sales of the same song.



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Draws Conclusions

- The Legal systems in most countries is not up to date with the huge spread of such “new” rights and in most cases there is no legislation and in some places there are court’s decision or rather settlements/agreements between owners and cellular device manufactures, cellular corporations or content provider which of course are based on the remarkable consideration that one can make out of few second of music (sometimes in really poor quality).
- I have no doubt that Legislation will pick up but industry and business is, as always, way a head and an owner who does not have the financial means to fight for his rights may loose a great deal of money as well as dilution of his rights in this money-spinner industry for the cellular companies.
- Personally I must draw the conclusion that copyrights owners in music work do own full rights as I think that Ringtones, Truetones etc. are to be considered derivative from the original music work.



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