

PUBLIC INTEREST ISSUES IN COPYRIGHT

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In today's knowledge economy, anything which has got commercial value gets protected under some or other form of intellectual property right (IPR's). IPR's are exclusive rights which grants a monopoly to the IP right holder to commercially exploit their intellectual property. In other words, such rights restrict or exclude others from exploiting such IPR's without the consent of the right holder. However, laws in various countries including India do provide certain exceptions to such exclusive rights in interest of public welfare.

Copyright is a bundle of rights, *inter alia* the rights of reproduction, communication to the public, adaptation and translation of the work¹. These rights are given by the *State* to the creators of such literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. However, there could be slight variations in the composition of the rights depending on the work.

Relationship between the protection of intellectual property rights and public interest is one of the major issue arises in any copyright debate relating to the role of copyright in society. Thus, the question is ***why does the law protect copyright?***

1. As the copyright works are the fruits of the mind, *authors should have the right to control their works*. Thus, law protect the copyright.
2. The economic premise is that, the *authors must be compensated* for the exploitation of their work *as a return on the labour and skill they expended in creating their works*. Thus, law protect the copyright.
3. If an author earns profit from his/her work, they will *continue to generate creative and original works*. Thus, law aims to provide incentives to the authors to create.
4. Last, but not the least, the widest possible dissemination of *copyright works*

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¹A hand book of copyright law, Government of India, Ministry of Human Resource Development, Department of Secondary Education and Higher Education accessible at copyright.gov.in/documents/handbook.html

benefits the public. Thus, law protect the copyright.

All these four principles mentioned hereinabove are cumulative and interdependent. It underpins copyright protection. In countries with a *common law tradition* (like India), the economic and social arguments are the most influential, whereas the first principle is dominant in the *civil law tradition*.

The expansion of copyright laws has often been affected by two conflicting views, one that hold *copyrights as private property* and the other that consider them as a *public policy issue*². The concept of copyright works as private property puts more prominence on the acknowledgment of the intelligence and talent of the author with the purpose of encouraging further efforts and contributions from him/her and applying them to the original creation.

An effective copyright regime is an essential element for encouraging investment in cultural production and investment will be lacking in societies where such protection doesn't exist.

An effective copyright system will give the copyright holders a fighting chance and an opportunity to generate revenue from his own creativity³.

Where such copyright protection is not effectively introduced and maintained in law and in practice, the creative community gets silenced. In other words, when a society fails to provide incentives to its own creators, then such creators will cease to exist, and the “access” will be limited only to foreign cultural materials.

On the contrary, those who support copyrights as a public policy issue, highlight the importance of public welfare in the accessing and using of copyright work⁴. The foremost purpose of copyright systems under a public policy stance is to promote the progress of culture and useful arts.

Copyright law has a utilitarian objective, which has to be fulfilled through economic incentives given to authors⁵. Creative works produce social and cultural benefits for society. Often the market power of the copyright owner, combined with property aspirations prevents

² J.J. Hua, *Toward a More Balanced Approach: Rethinking and Readjusting Copyright Systems in the Digital Network Era*, Springer-Verlag Berlin Heidelberg (2014).

³ Turkewitz, Neil. *Copyright and the Public Interest: Not Necessarily Competing Forces*, Intellectual Property Watch (2015).

⁴ *Supra* note 2.

⁵ Ahuja, RC. *Intellectual property rights and the politics of knowledge: questions of knowledge, property and rights*, accessible at http://shodhganga.inflibnet.ac.in/bitstream/10603/14592/9/09_chapter%203.pdf

the free flow of information and impedes learning⁶.

The conflict between public access and incentives to authors is not a novel problem but is merely aroused in a new context. The need for the protection of copyright has gained its significance due to the fast pace in the technology development. If we look at the past, copyright was not at all a subject matter of dispute, when the printing press was invented.

In this era of information technology anyone can easily access the copyrighted works and can copy and share the same among the public without the permission of the copyright holder. There is no possible justification for prohibiting the public from copying what it wants to copy. This mandates a new approach to the copyright law.

Restrictions of copyright owner's monopoly such as the doctrine of fair use are inevitable. However, Copyright systems were developed and designed as a balancing act in that the interests of authors to gain commercial

benefits are weighed against the welfare of the public in accessing and using copyright works.

Copyright is more than just the sum of economic conditions. It has a public purpose, which is supposed to be accomplished by its private function, and that creates problems when deciding where to draw a public/private distinction. The main problem in copyright is that public benefit is usually unsuited to the owner's benefit⁷.

But, the courts often adopt the "*Law and Economics*" approach in copyright analysis and neglect the essential interest of the society to have a close and liberal contact with works of authorship. This is because, the current copyright system is based on the economic philosophy. As a result, the copyright system creates private property in creative works so that the market can simultaneously provide economic incentives for authors and disseminate authors' works⁸.

However, in a free market system, the copyright owners can reap benefits for their work without diminishing the access of the public, especially when learning and culture are

⁶ Haggart B & Jablonski M. *Internet freedom and copyright maximalism: Contradictory hypocrisy or complementary policies?* The Information Society - An International Journal (2017), Volume 33(3) pp. 103-118

⁷ Kotzeva, Daryana I., *Public and Private Interests in Copyright Law: Creativity, Science and Democracy vs. Property*

and Market, LLM Theses and Essays, University of Georgia School of Law, Paper 26 (2002).

⁸ Wendy J. Gordon, *Fair use as market failure: a structural and economic analysis of the Betamax case and its predecessors*, 82 Colum.L.Rev. 1600, 1605 (1982).

concerned. Complications occur if they start to claim property rights over their creations. Property is not compatible with learning because it poses limitations while learning insists on promotion.

Copyright policy must be set through the complex interaction among copyright owners

and society but always such discussions have to be held with sufficient understanding of the role and the purpose of copyright. Only in that way copyright can contribute to a healthy public sphere where science, democracy and culture are fully recognized.

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