

Uk protection of interest of the rights holders



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INTRODUCTION

In the 17th century, the economic investments of publishers and printing press were threatened by unlicensed copyists who were involved in unauthorised printings and reproduction of copyrighted material.[1] At that time, the common-law remedies were very ineffective making the publishers to labour in vain. The introduction of the 1709 Statute of Anne put a landmark in the protection of copyright in literary works in the form of statutory monopolies and regulations, giving the authors exclusive rights and used to control the distribution of books by publishers.[2] The act provided a copyright which lasted for 14 years and if the author were still alive during the period of its expiry, the right will be returned to him for another 14 years, giving a total of a 28-year period.[3] The law on copyright started to develop and included things like sculptures, engravings and some others.

The law of intellectual property (IP) has been closely linked with economic development and innovation. The case of *Donaldson v Beckett* established that copyright is considered to have a dual purpose.[4] The first purpose is to protect the interest of the right holders so they are encouraged to publish their works and make gains from it. The second purpose is to encourage creativity and innovation and the sharing of knowledge so that the public can have access to copyrighted work for learning purposes. As copyright developed a key issue arose which is need for legislators to strike a balance between the protection of the interest of the right holders and the promotion of innovation and creativity of the public at large. Legislature has worked hard to achieve a good balance as the size of the statute has increased over the years. The Copyright, Designs and Patents Act 1988 (CDPA), is the

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current act which attempts to create the balance. These groups of conflicting interest argue that its interest should be prioritised by the legal framework but legislature should not prioritise any interest to achieve a balanced system.[5]

This paper will discuss the current situation on how the UK achieves an effective balance between the protection of interest of the rights holders and the encouraging of innovation and creativity, by using the scope of copyright to find how it is necessary for economic growth. It will look at issue concerning the duration of copyright in UK. Finally, this paper takes a critical look at defence of fair dealings in the UK and compares it to fair use in US. This essay concludes that the law on copyright does not create an effective balance between the interest or the right holders and the encouragement of innovation and creativity.

SCOPE OF COPYRIGHT

Lessig defines the scope of copyright as “ the range of rights granted by the law”.[6]The law of copyright has expanded and tried to adapt because of development in technology. In modern times, the law on copyright does not only cover publishing, printing of a creative work it extends to derivative works and all the steps previously taken by taken by authors to protect their works have been abolished by the rule that imposing authors to accept the protection offered by the law.[7] Copyright work covers a wide range of materials and output and does not require any form of registration like patents or designs. To illustrate the extent to which copyright goes, in the case of *Elanco v Mandops*, the court established that the label with

instructions on a barrel of herbicide is a literary work that is subject to copyright.[8] The law tries to create a balance by making provisions for adequate protection and adequate access. The idea of this balance originated from the 1709 Statute of Anne where it was established that the purpose of the act was for “ the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies’.[9]It was also established in the 1774 case of Donaldson v Beckett, where it saw the nature of copyright as distinct from traditional forms of property mainly because of its underlying social function.[10]Copyright work needs to be accessible and this can be explained in the following ways as the development of human society is based on derivation of the works of others. First, the public needs to have access to copyright work so that they can access the ideas of the works. The use of the idea is free from copyright infringement if the user will not copy the expression of the idea for the author. Second, the public involves two groups of people, which are the users who use the work as a source of learning and the potential authors who borrow ideas from them. If the works of the author are not available, he will receive monetary rewards without contributing to the society and hindering economic development.[11]

The protection of copyrights of the right holder is based on the basic idea of why should someone reap benefits from the work of another. Copyright has been closely linked with the economic principle of monopoly, it is often criticized to be harmful to the public interest in a free and open competition. They claim that it will give monopolist the power to increase the prices and they will make it difficult for these rights to be accessed. Adherents of this

principle of monopoly have suggested that the monopoly exists in a temporary form to creators and innovators, and it incentivises for creativity through the offer of time limited on innovative investment and economic rewards.[12]In a system with poor IP rules where consumers can use goods without paying for them, no one will want to invest in innovation as it will put them at a competitive disadvantage and the output of useful works will start to diminish having a negative impact on the knowledge base of the society.

THE DURATION OF COPYRIGHT

In considering the extent to which the UK's law achieves a balance in copyright law, the duration of the law is an important factor to be considered. It is important because it determines when the work will be open to the public domain, if the term of copyright is too short it will have a negative effect on the right holders as they will not be motivated to create works when they cannot reap the benefits.[13]The duration of copyright has been controversial and there have been debates on the topic of how long copyright should last.[14]In the CDPA 1988, the length of copyright is the life time of the author with an additional 70 years for literary works. The length was initially lower by 20 years which was argued to be more than adequate.

The question of why the copyright law has given such extended timeframe was answered in 1991 by The World Intellectual Property Organisation (WIPO) and it was also suggested in connection with a possible Protocol to the Berne Convention. The justification for length of copyright here was stated in the Preamble to the draft Directive saying:

“ The Commission stresses the need to harmonise copyright and neighbouring rights at a high level of protection since these rights are fundamental to intellectual creation and their protection ensures the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole.”[15]

The protection provided for authors is of positive value but by providing them with endless monopoly rights is detrimental to the security of the good of the public.[16]It can be argued that there was once a balance in 1790, where the Congress passed the first copyright law that was available for 14 years and renewable for another 14 years for works they wanted. The enactment of the new law has caused the public domain to be eroded rather than enriched.[17]The increase in the duration has caused a reduction in the creativity and causes problems that are harmful to its own purpose and welfare. From the economic perspective, extended periods of copyright will bring about an increase costs to the consumers by the additional payment and the cost of collection.[18]It can also be argued that this extended periods for copyright are not necessary to protect the commercial exploitation of works as they are rapidly exploited, they may be sold to gain part of gain from part of the royalties.[19]

The length of copyright terms has deprived the public of creative inspiration and puts the public at a loss, which is the opposite of a motivation for further creation. With the situation in the UK it has become clear that the long-lasting copyright is cannot work in favour of the public, which is its main objective.

FAIR DEALINGS

Since the introduction of Copyrights Act in 1911, there have been different statutory defences that have been existing in relation to copyright infringement, and fair dealing is the most important of them all. Fair dealing in the UK is similar to the Fair use in USA. Fair dealings have been recognised by case law prior to the 1911 Act, which tries to strike a balance between the interest of the right holder and interest of the user for encouragement of innovation and creativity. This was supported in the Government's Green Paper which stated that:

“ These exceptions are of obvious importance in that they seek to establish a proper balance between the legitimate interests of copyright owners and the legitimate desires of users of copyright material. “[20]

It covers three main areas which include private study and research, review and criticism and news reporting. Fair dealings for research and private study can be found in s29 of the Act. If the relevant conditions are met there will be no infringement of copyright for the purpose of research. The rule fair dealing also applies to dramatic, literary, musical or artistic works for research purposes but there must be no commercial benefit from it. An example of this is the case of Green Amps, where the High Court decided that there was a breach of the non- commercial restriction when copying took place in a non-commercial research which the end-product was a commercial product.[21]Fair dealings for criticism gives permission to the use of the work of others for criticising and reviewing work as long sufficient acknowledgement is given. The work must be published through an

authorised act for this defence to apply. Fair dealings for the purpose of reporting current events applies to all works apart from photographs

The term fairness does not have any defined meaning and it must be defined by the court. To determine fairness the court has a set of tests which it uses. There are 3 main factors for this test but they are not fixed.[22]The first is if the fair dealing is commercially competing with the authors exploitation of his work. The second factor is whether the work has been published to the public in some form, but still leaves the possibility of fair dealings with unpublished works. The third factor is the amount and the level of importance of the work that has been taken. It indicates that work should not be taken beyond what is “ reasonable or appropriate”.[23]Other relevant factors have been set out in the case of Fraser-Woodward by Mann J, which list the factors above and others of relevance like the intended use of the work, whether the work has unreasonably prejudiced the interest of the author.[24]

The UK law on fair dealings is often criticised as being inflexible, restrictive and impedes innovation and undermining its primary purpose of facilitating creation and the exchange of new works. On several occasions, it has been directly compared with the Fair use system adopted in US. The fair use has been described to be a flexible system, although it may have its disadvantages one of which is the uncertainty in the law,[25]it can still be argued to be a better system than that in the UK. The test for fair use in the US includes, first the purpose and character of use, the nature of the copyright work, the amount and substantiality of the portion used and the last relevant factor is the effect of the use upon the potential market for or

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value of the copyrighted work.[26]The system in the US is more flexible and it is more of a general defence than the fair dealings as it gives the court the opportunity give room for new exceptions or the modification of existing ones as we continue to experience development in technology.[27]In a system with an open-ended defence there is less need to worry about the changes that might occur in the future as the flexibility of the law is enough to adapt to changes.

The current state of fair dealing can also be seen to restrict the development of scholarly works. The British Library commissioned a paper that criticised UK's copyright law saying it has to be redefined as it brings about difficulty in licencing works, as permission is needed from the right holder.[28]If the source cannot be found, the work cannot be used and this reduces the quality of research. The law regarding fair dealing are not in line with the interest of the users and the creatives. They are illegitimate and they restrict innovation.

CONCLUSION

In conclusion, the area of law which copyright should cover is forever increasing, so the legislative body of the law must stay in tune with these changes and it is left with the task to strike a balance between the interest rights holder and the encouragement of innovation and creativity. The scope of copyright law is very broad and almost any right material could fall under this therefore making it difficult to control and strike a balance in the law. The imbalance in the law will hinder the encouragement of creativity and will have an effect on economic development.

The duration of the copyright has been an issue and will always be. Its excessive length is an interruption to the process of creativity and innovation. Although it has a long list of problems it still has not found a reason to start rethinking alternatives. The fair dealing is another important area of copyright law and in the UK, it is very rigid compared to that of the US and it does not cover works that may come about in the future. There might need to be a reform in this area of the law. The law in UK has been making a conscious effort to strike a balance between the interest of the shareholders and the encouragement of creation and innovation of the public but it is argued here to be inadequate.

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