

Reconstructing Copyright to Promote Creativity in Internet Age

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Abstract

The original purpose of copyright system was to promote creativity, at least it was claimed to be so in the Statute of Anne and the US Constitution. However, this claim has become a laughing stock in the age of Internet. Instead of being a promoter of creativity, copyright has now been widely perceived as an impediment of creativity because of its ever-expanding protection in width, length and strength. Many studies have been devoted to “fix” the copyright problems, which include reconceptualization of copyright law (Jessica Litman and Pamela Samuelson), shortening protection term (Neil Netanel), reclaiming fair use (Patricia Aufderheide and Peter Jaszi), perfecting licensing scheme (William Fisher, David Lange, etc.), and employing Creative Commons and open source project to give authors more control over how to use their works legitimately (e.g., Lessig). While endorsing the spirit of the above proposals, this paper suggests specific ways to reconstruct the copyright system so that it can live up to its original purpose, which include raising the bar of copyrightability from originality to more popularly accepted concept of creativity, broadening the scope of copyright works to include all contents recreated or remixed on Internet, shortening the protection term to author’s life plus 25 years, adopting an open-ended fair use regime that allows all free uses on the Internet, and integrate more workable voluntary, compulsory and public licensing schemes into copyright system. The paper rationalizes these suggestions first by looking back at the root and history of copyright to see why and how the categories of copyright works were added, the originality determined, and the term extended, and what is the impact of these changes on creativity. The paper then analyzes four different stages of creativity – conception of creative ideas, making the ideas into creative products, commoditization and consumption of the creative products – and assesses how much copyright protection is needed for each of these stages. This analysis will be done in connection with the special nature of the Internet and the problems caused to copyright such as whether pastiche work, appropriation art, remix, mash-ups, vids, blogs, and memes of all kinds would infringe copyright. Lastly, the paper will critically compare the pros and cons of various academic views in fixing the current copyright problems, and justifies its own views and suggestions. It is hoped that the proposals and discussions in this paper will add value and knowledge to the current discourse on how to reform copyright system in order to promote creativity in the Internet age.