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Article

Why Does Copyright Law Meet Criticism in Society? The Importance of the Public Domain

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Abstract: This article is about a well-stocked public domain and equitable access to copyright-protected content to foster innovation and the creation of new works. It is a common misconception that stronger intellectual property rights promote economic progress, whereas copyright exceptions need to be somewhat conceded for socially motivated reasons. This is a false dichotomy. For the sake of research and development, teaching, and software or hardware interoperability, many companies need access to copyrighted materials. A lack of appropriate access can impede economic expansion.

Keywords: copyright law, copyright holder's monopoly, exclusive rights, public domain

1. Introduction

Although practically everyone is aware of the concept of the public domain, this widespread understanding is misleading. Items not covered by the exclusive right [1] are included in the public domain in its most broad form. But in reality, a simple perspective like this limits the problem to the absence of legal protection for certain items. The public domain is a complicated legal system that serves several crucial public purposes.

2. Materials and Methods

When writing the scientific article, historical-legal, comparative-legal, observation, a comprehensive study of the main fundamental and applied works, statistical analysis, and forecasts of the data was used.

3. Results and Discussion

WIPO Director-General Dr. Kamil Idris promised WIPO's assistance in February 2007 when Belarus established an electronic library "to ensure the protection of the country's scientific and artistic heritage." This wonderful project will come to a standstill at the outset if the public domain works that comprise the core of this online library are not available. This is because it will take a significant amount of time and resources to locate, identify, and obtain permission from copyright holders before any works can be included. These issues will be made worse by the likelihood that many works will become orphaned. Significant gaps in the documentation of Belarus's creative and scientific legacy are probably present [2].

The public domain is a major source of inspiration, creativity, and discovery for creators and is a component of humanity's shared cultural and intellectual legacy. There are no limitations on works in the public domain, and they can be utilized for both commercial

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and non-commercial purposes without obtaining permission. It is crucial for knowledge access and has to be available to the public for the benefit of researchers, universities, and creatives.

Regarding intellectual property law, allowing society to use an object while acknowledging its protection ability is crucial to establishing the public domain regime. As a result, it is permissible to engage in activities that typically fall under the purview of the copyright holder's authority; that is, this mode excludes items and activities that are not covered by copyright, such as messages that are solely informative or activities like following a recipe found in a cookbook. The dual nature of the system enables the legislator to create unique guidelines for their use rather than exclude pertinent things from the purview of copyright. In the context of guaranteeing the free interchange of knowledge in society, this opportunity proves to be incredibly significant and in demand.

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Exclusive rights currently have a monopolistic nature and are based on the idea of absolute law. According to V.A. Dozortsev, “The role of exclusive rights about intangible objects is the same as that of property rights concerning tangible ones. The exclusive right is the total ownership of intangible property, with the ability to use only other legal means permitted by the object's inherent qualities” [3]. The selection of this model was, of course, appropriate; but, to guarantee the gradual evolution of legislation in this field, the adverse aspects of the monopoly rights—which mainly affected the decrease in the utilization of pertinent facilities—had to be counterbalanced.

“Real” property, such as an apple, a car, or an acre of land, are “rival” products according to economists since they can only ever be used by one person or entity at a time. Therefore, granting someone exclusive rights over them is harmless because only one person can possess it and we can guarantee through trade that the one who values it the most will ultimately have it.

In contrast, a copyright in a certain text, for example, grants authority over every instance of that book—not just this or that one that contains the text. Being the only source of a good is the definition of a monopoly! Additionally, it has all of the typical monopoly-related effects, such as prices increasing relative to what they otherwise would have been and access being restricted relative to its efficient level when the price and cost of reproduction are equal.

Furthermore, when there is a lot of “reuse”—new work built upon old—the cost of monopolies can be very high because they prevent both user access and the production of new creative works [4]. So, the distinction between granting someone authority over one apple—the fruit they purchased, for example—and control over all apples is what separates "normal" property from “intellectual property”. While the former is ineffective and causes no harm, the latter does.

The broad consensus is that unfettered public access to knowledge and ensuring its movement are important. Simultaneously, it becomes apparent that the accomplishment of this mission essentially depends on the public domain’s well-functioning systems [5]. The existing paradigm of intellectual property, as observed in foreign literature, gives rise to the central issue of the “tragedy of anti-communities” [6], society’s estrangement from the products of its members’ intellectual endeavors. The fact that this issue exists results from the tension that exists between the monopolistic character of the law and the public character of intellectual property production. This equilibrium has long been maintained

by the implementation of unique limitations on the exclusive right, which permits the unrestricted use of pertinent intellectual output in instances of social significance. However, the equilibrium has frequently been upset in recent decades.

It is obvious that with such an active development of intellectual property protection, there cannot but be a threat that society will lose the opportunity to effectively use the results of intellectual activity created. At the same time, the issue of restricting the use of other people's intellectual property results without the consent of the rightsholder develops into a more complex problem of access to such objects, since it is possible to influence the rightsholder to ensure the provision of the results of intellectual activity belonging to him on fair terms (which, of course, will create competition for him) are very limited.

This problem is complicated by the fact that the use of intellectual property is becoming global (as opposed to the nationally limited effect of exclusive rights), which means that it is necessary to obtain consent for the use of the result of intellectual activity in the modern information society in several jurisdictions, possibly from different copyright holders. This raises the cost of using intellectual property and, consequently, the cost of public access to existing achievements of human thought, both in the cultural and technical spheres.

In these circumstances, the question of how to guarantee that society maintains (and, considering new demands, broadens) the area of unrestricted use of the products of creative work emerges. In this sense, a large number of studies demonstrating the shortcomings of the current understanding of intellectual property have surfaced in recent years [7]. Many of the arguments made in these studies are, of course, very contentious, but stricter intellectual property laws will hinder rather than promote the creative process in society, especially by having a detrimental effect on communication between people. Understanding that "the harm from overzealous copyright protection efforts may exceed the harm from potential violations" is crucial. Measurement is required, and quantitative measurement is preferred. Furthermore, if the outcome is something that is not in favor of copyright, we might discuss substituting the institution of copyright itself with another system" [8].

In the UK, copyright protects creative and literary works for seventy years after the creator's passing. Copyright ends at that time, and anybody can create copies of the work and distribute it to others. After that, customers will have the advantage of being able to access the job for less, sometimes even for free. For instance, digital reproductions of well-known literary works that are in the public domain are published by Project Gutenberg. Through the Mechanical Curator project at the British Library, illustrations from printed books are digitally converted and made accessible on Flickr.

In contrast, this implies that the owners of the rights will be unable to prevent copies of their work from being made and may even experience a loss of income. Because of this, certain owners of intellectual property have pushed governments to expand the application of copyright in order to maintain their ability to profit from a select few classic, well-known works. Disney Corporation is one instance of this. If the US Congress had not passed the Copyright Term Extension Act in 1998—dubbed the "Mickey Mouse Protection Act" by some—the copyright protection for certain works starring Mickey Mouse would have expired in 2003 (95 years for corporate works).

4. Conclusion

Extended periods of protection of copyright law additionally worsen the issue of which are copyright works whose owners keep holding a monopoly over their works. This makes rights clearance challenging, time-consuming, and extremely costly in terms of budgets and library resources. This is especially important now that libraries are required to obtain permission before including works in digitization initiatives. A disproportionate

amount of damage is occurring to academic, intellectual, or lesser-known works that have no economic value but are significant to academics, historians, architects, and other experts.

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