

Copyright Law and Technology: Challenging the Concept of Balance

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Abstract

*Somewhat recently, intellectual property law has been under constant investigation which challenges the modes and approaches regarding how to manage the effect of innovative progression on its customarily settled standards. In addition, discusses right now encompassing the problem between the copyright and innovation are constantly inimically arranged – between the interests of creators versus those of the general public; among makers and customers; between private and public space. Likewise, different copyright defences under various public what is more global lawful structures are challenged with their capacity of finding some kind of harmony. Consequently, the idea of 'balance' has turned into an essential thought that different lawful arrangements what is more analyses are taking a stab at to accomplish, yet additionally view it as a situating guideline for intellectual property law's enhancement. This paper starts with an **Introduction**, which analyses the concept of balance between the two regimes as a whole, stating the objectives of the current research paper, framing the 3 research questions and mentioning the research methodology and then the research paper is divided into various parts. The starting discussion talks about the concept of balance between the copyright and technology at present. It highlights the concept of balance between copyright and technology in the past, thus further paper mentions the scope and importance of balance between these concepts with the emergence of technology with changing times. The paper is finally concluded by the **Conclusion** stating the viewpoint of the researcher after analysing the 3 research questions.*

Keywords: Balance, copyright, technology, public interest and individual's interest

INTRODUCTION

The copyright law has always been questioned when it comes to going along with the pace of modern technologies that keep on evolving from time to time. The provisions of this Act were established long time back on traditionally established principles and now with the changing and evolving world, it becomes difficult for the approaches handling it and protecting the interest of all. But, in spite of all these hurdles it is still difficult to bridge the gap between the old and the new environment. While bridging the gap, several challenges are imposed in promoting and protection of property. Copyright has become a questionable and popular subject these days, because the speed with which the digitalization is taking place, it is becoming an ongoing loop that how is it going to adjust with the technology.

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In any case, in these cycles of outline of positions and understandings in that regard, every one of them are being hidden in their brought together yearning for securing and advancing the science what's more, workmanship, the information on humankind, the innovativeness as significant human need ensured moreover as a basic human right. However, we ought not neglect

to pressure the risk of this partition and in the most natural sounding way for Bauman the “self-definitions” being made in that endeavouring ‘to draw their very own limit identity’. Hence they become self-inclusive or self-affectionate discourses not completely material to the more extensive conversation concerning copyright. The book trouble is “*the way to draw the limits of such local area as may fill in as the region for authoritative practices*”. Those detachments are seen through the semantic accompanying utilization of thoughts producing double resistances, for example, private necessities—public interests; creators—clients; creator’s freedoms—client’s privileges’ and so forth.

OBJECTIVES OF STUDY

1. To understand the concept of balance between copyright law and technology.
2. To analyse the background of the balance at present, past and with advent of times.
3. To determine the importance of balancing between the two concepts.

RESEARCH QUESTIONS

1. What is the concept of balance between copyright law and technology at present?
2. What was the concept of balance between copyright law and technology in the past?
3. What is the concept of balance between copyright law and technology with the emergence of digitalization?

RESEARCH METHODOLOGY

The researchers have completed this research paper by following the Doctrinal approach, which means that all the available primary sources are referred for the same. This includes Acts, Regulations, Rules, Case laws to examine and study the above-mentioned research questions. However, references have also been made through secondary sources, which include books, articles from reliable websites, reports to understand and examine the concepts of Copyright law and technology, which keeps on challenging the concept of balance between them with landmark cases in detail.

BALANCE IN COPYRIGHT LAW TODAY

The concept of balance in copyright law has been explained with different meanings and context. This can be viewed as the purpose of copyright law that should be attained, this implies that a balance should be attained between the private needs of individuals and the public interests at large. An invention should be such that it affects none of them and both the parties are at par thereby maintaining balance. Following this, it can also be expressed as a precedent which the courts can follow for interpretation in future and base its judgments, ratio decidendi and obiter dictum. Next, the principles of balance can become the core principles, values of copyright law and lastly, the amendments that are to be brought about in the copyright law bases its provisions on the same. In order to maintain the essence and integrity of the copyright law, maintenance of balance is required.

Prior to disputing these assertions and acknowledging its present copyright position, in order to understand how frequently and in what context this word has been used in recent treaties and directives dealing with this subject, it is useful to look at how many times and in what context it has been used. That’s impossible. What is it? Surprisingly, it only made its first appearance in European and international directives and agreements in 1994, as part of the WTO’s (World Trade Organization) Trade Related Agreement. Article 7 (general provisions and basic provisions) covers aspects of intellectual property rights. The following principles apply to the agreement’s goals [1]:

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and technology transfer and dissemination, to the mutual benefit of producers and users of technological knowledge, and in a manner that is conducive to social and economic welfare, as well as a balance of rights and obligations.”

While technical innovation is acknowledged, the application of balance in this context does not go beyond the basic legal goal of striking a balance between rights and obligations. At the very least, it

does not enforce or embody the concept of balance that appears later in official documents and discussions on the subject. The importance of the WIPO (World Intellectual Property Organization) in the Copyright Treaty is only mentioned once in the preamble, as follows: "...Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research, and access to information, as reflected in the Berne Convention..." [2].

As opposed to the past, the last option has currently more explicit comprehension of the equilibrium, finding some kind of harmony not among freedoms and commitments, but rather more explicitly between creator's freedoms and "bigger public interest". As such, having the driving force of progress "general society interest" addresses what today in the talk would be in all probability be covered with work of "client's freedoms", or as Ginsburg named them "access rights" changing the gauging side of the worth from public interest into a public need. The work of client's freedoms has effectively seen light in the Canadian case *CCH Canadian Ltd. v. Law Society of Upper Canada* [3] where the court saw that guard of reasonable managing ought to be deciphered generously, not as a special case but rather as an indispensable piece of the framework, subsequently expressing "The reasonable managing exemption, as different special cases in the Copyright Act, is a client's right."

Strangely, copyright law goes through a change which makes privileges on the two sides of the gauging scale over the elusiveness's it assumes to secure and advance. As it turns out, copyright legitimizations are constantly advancing and still have not arrived at its balance. In setting of the EU (European Union) people group, in the Copyright Directive 2001 [4] it is likewise referenced once under presentation 31:

"A reasonable harmony between privileges and interests between the various classes of rights holders, also as between the various classes of rights holders and clients of secured subject-matter must be protected. The current exemptions and limits to the privileges as set out by the Member States must be reconsidered in the light of the new electronic environment..."

This reconfirms the incorporation of the idea of equilibrium, again among privileges and interests with that distinction it perceives the multifaceted quality of the equilibrium inside copyright guideline. Moreover, we could recognize the transaction of the creators and clients, however likewise that of the proprietors and their freedoms and interests. Having been upheld to keep a speed with the "data society", the interest of the general population is arranged in the way of talking of the current exemptions and limits, discussed and broke down in enormous number. As needs be, special cases are considered the main component that could secure general society and empower admittance to scholarly works. In that regard, rather than these transnational guidelines, there is developing number of drives starting from different institutional and exploration conditions who are drawn in to finding some kind of harmony in this computerized age with the main accessible instrument given – the special cases for the proprietor's elite freedoms. Following the Adephi Charter on Innovativeness, Innovation and Intellectual Property, in the second section of the Copyright for Imagination – A Declaration for Europe, it is expressed that corresponding to the presence of selective freedoms saw as motivations for venture and creation of social and information-based products:

"The exemptions for these privileges make a decent framework that consider the utilization of inventive works to help development, creation, contest and the public interest. Well-crafted exemptions can serve the two objectives: protecting prizes and motivators for makers while additionally uplifting imaginative reuses that advantage the general population..."

In this current setting, which the copyright talk shows, we comprehend the significance of the qualities, the maker's need and public interests that intellectual property law advances and ensures; that we have the system of exemptions and limits to find some kind of harmony and as long we adhere to the situating rule of equilibrium we are in good shape. Anyway, the truth is somewhat unique to this.

BALANCE IN COPYRIGHT LAW BEFORE TODAY

While looking at the first chapter and analyzing that the concept of balance was hand in hand with the copyright law. It was never seen as a hidden concept in the copyright law. The first and the foremost reason for balancing revolves around protection of publisher's interest and rights. During that time, it revolved around protection of publisher's rights and not maintaining a balance thereby. The copies were given more of a protection than given to that of a publisher.

Then again, it very well may be contended that the idea of equilibrium has been joined in copyright's essential standards, which could be found in the different copyright supports and understandings, absolutely conveying various implications since the commencement and in that capacity consistently present today in the talk of copyright and licensed innovation overall. What could be followed out is that as Statue of Anne, the 'Represent the Encouragement of Learning' incorporated the restricted term of copyright (against the never-ending normal right) it recognized the capability of the public space. Thus, the incorporation of the idea of restricted property directly inside and its understanding, as chosen in *Donaldson v Becket*, [5] shows what helped finding some kind of harmony in copyright, essentially in consensual way.

Litman states that in the US, the Congress found some kind of harmony by making copyrights heap of privileges, *"for example, printing republishing, distributing and vending- which today in contemporary language is considered selective privileges to make, disperse and sell copies."* What might be addressed later on is if the idea of equilibrium stretches out past these freedoms, into the standards whereupon copyright remains alive at the lead position. In case we are examining them to be together, it should be viewed as a condition rather a set of principles upon which the various provisions of copyright would base its values on.

CONCEPT OF BALANCE INSTIGATED BY TECHNOLOGY

The concept of balance is seen as a developing principle which provides shape to the policies between the copyright and technology. However, the same is not true and rather this should be seen as a guidance approach towards the dealing of conundrum between copyright and technology.

With the emergence of technology, *firstly*, it has challenged the principles of copyright and this proved to be challenging for its evolution at both national and international level and *secondly*, it has created a sense of uncertainty, legitimate crisis and reluctant to address the issues and problems. All of this together created a loophole and raised issues of debating. *Gillespie notes this paradox as "the technologies represent both the potential of shifting the balance of copyright to account for new dynamics in the circulation of culture, and the justification for why an older balance must be preserved or regained"* [6].

The concept of older balance is still unclear and thereby a conclusion is drawn that the advent of technology is creating two effects simultaneously and while we start focusing on one, all the debates revolving the essence, process, purpose and value of copyright starts coming up in the picture. The debates that come up can be viewed as affected by technology. Copyright law and technology share a symbiotic relationship with one another. The emergence of new technologies creates the noble ways via which the content of copyright can be enjoyed and accessed. This provides wider options to the creator to sell his work but later on this only adds to further problems and creates complications. The concept of balance here can be seen as:

1. A balance that has to be achieved between the private and public needs and interests.
2. The way of interpretation of statutes as per the decision of the court.
3. Becoming a central principle around which, the structure of copyright law is formed.

A fair and systematic balance of copyright is required in order to maintain equity in the system and the system should be such that it:

1. Protects the exclusive rights of the individuals.

2. Make the entire process smooth and effective whereby there is no difficulty in accessing the content legally and lawfully.
3. There is clearness among the exceptions and limitations with the creator's rights and interests.

The digital technologies provide for wider opportunities for the producers to create their works better and enhance them. These technologies help in creating new forms of interaction and communication. The sole objective and function of copyright should be to promote "*the progress of science and useful arts*" keeping in mind the interests involved of the private and public interests. The component of balance therefore, adds the incentives and rewards of the rights holders than is necessary for the creation of creative works [7].

CONCLUSION

The researcher would like to conclude her paper by stating that it is essential to acknowledge the fact that the concept of balance needs to be technologized with the changing times in order to maintain a framework between copyright and technology. However, a proper balance fails in many a situation and therefore, there is disbalance created. The law always tries to create equilibrium but there are instances when it fails and this is seen as an ongoing principle which keeps on setting itself according to the needs, social, cultural and economic changes.

In addition, the equilibrium could not be distinguished and found between the copyright and innovation since their settlement or addressing the problem is not in tracking down a fragile equilibrium, be that as it may, seeing the unevenness in the actual law. Albeit the law would never achieve these intangibles in coherent structure, essentially it should track down another method of understanding those open qualities [8]. In scrutinizing the idea of equilibrium, it ought to be recognized that equilibrium is a state of harmony which law overall persistently attempts to accomplish. Be that as it may, equilibrium ought not be seen or expected to arrive at copyright harmony where all contrary energies are proportionate and fixed. It is somewhat a continuous course of shuffling and being inundated in the motion of social, social, monetary and lawful cycles. It is the activity behind the articles, qualities and creation that moves the entire discussion. It isn't the methodology as such that ought to be accomplished. At long last, in perspective on the current catalyst of progress, the inquiry emerges if the idea of equilibrium as *de lege ferenda* rule ought to be set as *de lege lata* standard to address the current of social, legitimate, financial, political and social cycles.

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