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COPYRIGHT LAW AND THE DIGITAL ERA

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Abstract. This thesis provides a lot of information about copyright and the statement of copyright in the digital age. In addition, digital copyright is foreign specific features of reforms in the states and national Intellectual property law for the social media era adequately explores existing legal issues in modernization.

Keywords: copyright laws, digital content, copyright issues, music industry, digital reproduction and digital era.

With the emergence of social media platforms such as YouTube, Facebook, and Instagram, it is easier to create and share digital content than ever before. Digital content is created in new formats by new “creators.” As a result, the public is more familiar with copyright law and its issues. Users of social media obtain copyright infringement notices for mistakenly uploading digital content, or their social media postings are deleted. Further, many artists’ copyrights suffer from unauthorized reproduction or replication of their original work over social media platforms. Accordingly, some scholars suggest that the current copyright laws are not keeping pace with our rapidly growing digital culture.¹ Moreover, there are concerns that copyright law no longer serves its original purpose of “helping” the public in the new era of digital technology.² Is copyright law outdated and, therefore, in need of change?

An Overview of the Current Copyright Law and the Digital Era

What is copyright? Copyright laws are one of the distinguishing powers granted by Congress under the Constitution.³ The United State Copyright Office defines copyright as a form of intellectual property law, which protects “original works of

¹ See A. Abbott, et al., *Creativity and Innovation Unchained: Why Copyright Law Must be Updated for the Digital Age by Simplifying It*, Regulatory Transparency Project of the Federalist Soc’y (Oct. 27, 2017), <https://regproject.org/paper/creativity-innovation-unchained-copyright-law-must-updated-digital-age-simplifying/>.

² What are the major criticisms of the copyright laws in the US?, *New Media Rights* (June 28, 2017, 4:46 PM), https://www.newmediarights.org/business_models/artist/what_are_major_criticisms_copyright_laws_us.

³ David H. Donaldson Jr., *After 40 Years, Copyright Law Needs To Be Tweaked*, *UT News* (Jan. 8, 2018), <https://news.utexas.edu/2018/01/08/after-40-years-copyright-law-needs-to-be-tweaked/>.



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authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.” A work obtains automatic copyright protection at the moment a person creates it.⁴ However, the copyright system, which used to deal with a tangible medium of expression, now uses terms like “de-materialized” works in the digital form.⁵

The traditional idea of copyright law, such as the right of reproduction and distribution, has become practically obsolete in the digital era. People can now digitalize all works whether they are text, images, diagrams or sounds. Once digitalized, all works are equal and people can merge, manipulate, mix and transform to create a vast collection of unique works. Thus, the new technologies replaced physical reproduction with digital reproduction.

Regardless of criticisms that argue today’s copyright law is outdated and ineffective, some scholars assert that “the basics of copyright are fully compatible with modern technology.” They further contend that problems arise from specific provisions enacted years ago which tried to address long-gone issues. These specific provisions “shackle today’s creative marketplace.” Thus, what are the issues with the current copyright system that shackles today’s creative market place?

Copyright Issues in the Music Industry

The music industry is where copyright law becomes blurred and complicated because of the emergence of new technologies. For instance, the debut of interactive streaming services, like Spotify, have encouraged the growth of music consumption and overall revenue of the music industry.⁶ Streaming services, like Spotify, are interactive services that allow listeners to choose songs actively. Although the music industry keeps evolving and making progress, copyright laws governing the industry are not evolving or progressing. For example, current copyright law does not define what interactive streaming is. Further, it does not provide clear guidelines for which exclusive rights the interactive services infringe. Because of the unclear, outdated legislation and the lack of guidelines regarding on-demand streaming, the music industry is suffering significant complications in proper payouts.

⁴ *Copyright in General, Copyright.gov*, <https://www.copyright.gov/help/faq/faq-general.html> (last visited Apr. 6, 2019).

⁵ *Challenges in the Enforcement of Protection of Copyright laws in the Digital Era, Law Gup Shup* (Dec. 6, 2017), <https://lawgupshup.com/2017/12/challenges-in-the-enforcement-of-protection-of-copyrights-laws-in-the-digital-era/>.

⁶ *Arthur Chang, Outdated and Ineffective: The problems with Copyright Law, The Claremont J. L. and Pub. Pol’y* 33 (2018).



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Additionally, the thriving problem of online theft expedited by digital technologies also endangers the music industry. For example, the music industry revenues from 2001 to 2015 fell from \$14 billion to \$7 billion. Moreover, in 2018 alone, the overall album sales were down 18.2 percent, and the overall song sales were down 28.8 percent.⁷ Some scholars believe these losses are due to the theft of copyrighted works. For instance, according to a 2012 survey of academic literature contemplating the effects of piracy, Carnegie Mellon University researchers concluded that “the vast majority of the literature (particularly the literature published in top peer-reviewed journals) finds evidence that piracy harms media sales.” This piracy hurts not only the content creators but also new online distribution services, like Netflix and Spotify. Although the Digital Millennium Copyright Act of 1998 (“DMCA”) was enacted to “promote robust digital economy by providing meaning protection for creators while also protecting legitimate online services against unreasonable liability for infringing activities of their users,” creators complain the law fails to fulfill its purpose. Creators contend the law shifts the burden entirely to copyright owners because Title II of the DMCA, the Online Copyright infringement Liability Limitation Act (“OCILLA”) only requires two things for a service provider to be eligible for liability constraint. The OCILLA holds a service provider liable only when they “(1) adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers; and (2) must accommodate and not interfere with ‘standard technical measures.’” As a result, OCILLA allows online services providers like YouTube to profit off of illegal materials by continuing to sell advertisements to viewers who come from these unlawful streams.

Recent Changes in Copyright Law

Although copyright law needs improving in many of its aspects, the law recently went through significant changes. For example, the Music Modernization Act (“MMA”) became law as of October 11, 2018.⁸ The public recognizes this law as the first significant copyright legislation to pass in decades.⁹

⁷ *BuzzAngle Music 2018 Report on Music Consumption, Buzz Angle Music (Jan. 3, 2019), <https://www.buzzanglemusic.com/buzzangle-music-2018-report-on-music-consumption/>.*

⁸ *Copyright Law Changes That May Affect You, Stan. Univ. Libr., <https://fairuse.stanford.edu/overview/faqs/law-changes/>.*

⁹ *Dave Davis, Music modernization Act of 2018 Becomes Law, Copyright Clearance Center (Oct. 11, 2018),*



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This legislation attempts to accomplish three major changes. First, users will now need to pay for the use of music by streaming services in a regularized royalty arrangement. Second, audio producers and engineers who participated in musical recordings will start to get royalty payments when the online and the satellite radio services play their records. Further, these individuals can now seek royalties directly, rather than pursuing the sound recording artists and performers for their payment. And finally, digital services will have to pay for their use of songs recorded and released before 1972. For instance, the copyright law did not previously protect these recordings.

Conclusion

It is inevitable that works of art will continue to suffer as the digital era rapidly evolves. Especially, stagnant copyright law places a heavy burden on the music industry. Although lawmakers fail to recognize the quick changes in technology, they still can mitigate these problems by making necessary changes. For example, providing clear infringement guidelines in the streaming industry, enacting robust legislation against piracy, and discouraging service providers from profiting off of illegal materials might alleviate problems. To prevent the regression of the music industry that is affected by copyright law, Congress must take competent care to protect the interest of the public. That is, protecting copyright should not hinder recession in the literary and artistic fields, but rather, encourage people to make ingenious efforts to prosper in the creative world.



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