LEX LOCALIS-JOURNAL OF LOCAL SELF-GOVERNMENT
ISSN:1581-5374 E-ISSN:1855-363X
VOL. 20, NO. S1(2022)

COPYRIGHT PROTECTION IN THE AGE OF DIGITAL REPRODUCTION AND STREAMING

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Abstract
With the introduction of digital reproduction technology and streaming sites, the entire game of copyright has been completely turned upside down in the 21 st century. In this paper I am digging into the issues and how the existence of the law would be re-read when the instant digital copying and on-demand streaming would rule. My area of interest is the rights of the authors, fair use, and the place of digital platforms, and I conduct a doctrinal analysis of current legal initiatives, landmark cases, and academic opinions. I am pleased to discover that platforms provide individuals with an increased access and can suppress piracy by licensed services, but they are equally more difficult to use to enforce exclusive rights of the creators and create new tensions between creators and users. The current generation of creators find it difficult to make money and keep their work safe amidst rampant online piracy as well as changing revenue principles, and they often receive a fraction of the rising streaming profits. Simultaneously, the users and secondary creators are using doctrines such as fair use to defend transformative or innovative uses, putting the courts and legislators back to the task of re-evaluating the breadth of exceptions in the digital era. The copyright is transforming, as evidenced by the private content-moderation policies with the capability to defeat the fair use, as well as the recent judicial decisions that narrow the concept of transformative. The article extracts such major concerns as platform liability frameworks, the impact of DRM on the rights of its users, and global pressures to ensure that creators receive equitable compensation. Finally, I would propose legal and policy changes to achieve a more balanced approach between authors and the population and retain a strong copyright safeguard without stifling fair use and invention.

Keywords: copyright, protection, Digital age, transformative, policymaker

Introduction

The emergence of digital reproduction technologies and streaming media has discontinued the previous copyright protection patterns. In the olden days, when one had to copy a piece of work, it meant to physically copy and distribute the copies hence the authors and publishers had a good hold. Any digital file, song, film, ebook or pic can now be cloned slickly and passed throughout the world in a click. YouTube, Netflix and streaming giants such as Spotify have become the primary access points where individuals receive their media consumption and to a larger extent, it displaces purchase or download with on-demand access. This change leaves a ton of tough questions to the copyright law: What can we do to retain the rights of authors when copies are so easily available? What happens to fair use and such like exceptions when all media hoppers are pushed through a digital platform?

These are not only hypothetical questions. The financial and cultural interests are massive. Streaming music and video earnings worldwide have soared to as much as 2.6 billion dollars in 2015 but numerous creators are concerned that they are not getting their portion of this online cake. Meanwhile, consumers have become accustomed to enjoying an enormous library of works at a

single swab, and user-generated content performs well on the repackaging and critique of existing media. And more and more judges and legislators are being demanded to broker the conflict between the exclusive rights of the authors and the innovative new usages of works by the population. (Netanel, N. 2008)

The area of concern of this article is the rights of authors, fair use, and digital platforms. Authors rights The rights of copyright afforded to creators include the right to regulate reproduction, distribution, public performance and in certain jurisdictions the moral rights of attribution and integrity. The idea of fair use (and its analogs such as fair dealing) represents the notion that some socially desirable acts of using the copyrighted material should be permitted without permission, namely criticism, scholarship, parody and so forth. Digital platforms such as streaming services and content sharing are at a crossroad between the authors and audiences and they are becoming more influential in shaping the copyright enforcement and experience. This article seeks to provide some insight into the present condition of copyright law and its future by examining the relationships between the three components in the digital reproduction and streaming age. (Crews, K. D. 2020)

We start by examining the research and legal history that has formed the present position, whether it is one of the landmark legal cases or the latest scholarly debate. Second, I present the doctrinal approach which I employed in deconstructing statutes, case law and policy reports. In the Findings, I discuss the primary headaches and the changing interpretation of them, such as how streaming is impacting the control of authors, how the fair use is evolving or shrinking with emerging technology, how private arrangements and technology protections are influencing digital content. At the end, I offer policy suggestions to the lawmakers and other stakeholders in an effort to conclude by emphasizing the point that we need an adaptive balance between restrictive copyright and openness that drives creativity.

Literature Review

The history of copyright law is full of attempts by the system to align new technology with the needs of creators and the general public. Consider the printing press, the internet, every new medium provided the courts with an opportunity to experiment with how they strike a balance between people who make things and those who use them. One of the classical cases is the case of Sony Corp. of America v. Universal City Studios (1984, the decision on the Betamax). Sony believed that the time-shifting of TV programs by creating non-commercial home records, so that they could be watched later, was a fair use, despite the fact that this involved copying the entire content. Not only did that decision save the VCR technology but it also served as a significant drive in making it clear that personal and private use of new technology by new gadgets were possible under the exemptions of copyright and that this decision would shape the future understanding of courts of copy technology by DVRs to digital buffers. It demonstrated that a certain amount of copying freely is acceptable when it is used by the consumer and introduces a new innovation, which points to the current discussions in the Internet. (Fedar, J.M , 2003)

At the end of the 1990s and the beginning of the 2000s, the internet and compression of MP3 exploded the internet file-sharing. The Napster lawsuit of 2001 was a breakthrough: Napster, a peer-to-peer service allowing wholesale duplication and transfer of music by its users, was found guilty of contributory copyright infringement and was essentially closed down in A&M Records, Inc. v. Napster (Ninth Circuit). MGM v. (Zepeda, L.M, 2002) Cases which followed after. Grokster (2005) placed the federal courts in the hot seat, as it stated that peer-to-peer networks which promoted infringement were liable to be held accountable. These cases upheld authors'

rights by attacking the new modes of large-scale infringement, but they also highlighted the limits of litigation as a solution; illicit file-sharing continued via ever-more decentralized or offshore platforms, challenging the reach of national laws. (Beckerman-Rodau, A. 2005)

Foresighting some of these problems, legislators were already starting to make adjustments to the copyright legislation to suit the digital setting. In the United States, the Digital Millennium Copyright Act (DMCA) of 1998 put the WIPO Internet Treaties into effect, and also added two significant legal frameworks pertaining to our subject, namely, anti-circumvention and online service provider safe harbors. The anti-circumvention provisions (17 U.S.C. §1201) criminalize the interference of digital rights management (DRM) and technology safeguarding that the right-owners of a copyrighted work employ to protect their work. Although these measures are aimed at deterring piracy, they have been criticized to have a tendency of over-reaching and abridging legitimate uses since violating a digital lock is illegal even in cases where the intention (say format-shifting or quoting to comment) would otherwise be considered fair use. According to the researchers, the technology of DRM that was supported by the anti-circumvention laws might also suffocated on the fair use -it is hard- and may actually abolish the fair use/ fair dealing exception as the end-users are not able to exercise their customary rights in an electronic setting. The discursive debate of technology-user control presents itself here in the tech-control vs. user-right dispute on a regular basis in the academic debate. (Cobia, J. 2009)

The other giant pillar was the DMCA safe-harbor regulations (Section 512) that were designed to enable the online platforms to be in a position to expand without necessarily infringing on the copyright. The intermediaries under §512, including ISPs, hosting services, and subsequent social media, are given the shield of non-liability of money damages by infringing content of users, provided they adhere to the notice-and-takedown process and are not aware that they are infringing. This was a revolution to websites such as YouTube as it allowed the websites to serve a lot of user-created content without being nailed whenever an infringement occurred. The Viacom v. An average case of the usage of the safe-harbor in practice is associated with YouTube case. In 2007 Viacom also filed a lawsuit against YouTube over a claim of tens of thousands of clips of its TV shows being hosted on YouTube without permission. This was to be followed by years of court battles although in the end the courts ruled in favor of YouTube. The District Court (remanded by the Second Circuit) determined in 2013 that YouTube was eligible to the safe harbor: it lacked evidence that YouTube actively or had the red flag knowledge of any particular infringements, and, most importantly, it did not forfeit safe harbor immunity by engaging in voluntary content policing efforts. The case confirmed that platforms have the power to moderate, or eliminate content (even on commercial grounds), without being considered to possess the right and power to control all user infringements in a manner that abandons their immunity. The Viacom case is often said in the literature to have cemented the legal basis of the current user-generated content platforms a basis that provides platforms with flexibility, but also in effect services the enforcement of copyright to third parties through the system of notice-and-takedown. (Hassanabdali,A. 2011)

With the rise of digital distribution, more particularly streaming licensing, there has been an increasing body of commentary as to whether the legal system is properly safeguarding the interests of authors (i.e. the original creators) in this new marketplace. During the pre-digital period, authors regularly enjoyed statutory protections such as reproduction and distribution (such as by selling books or selling CDs) and could enjoy such doctrines as the first-sale rule (which allows the resale of the physical copies). The content of streaming business is however not sold to

the audience; it is only licensed to the services and will be given to the users on controlled means. This has created a lot of talk about a so-called value gap, a notion that has been brought up in policy circles, specifically in the form of the EU, where the disparity between the amount of money that digital platforms make and the relatively small amounts of money that ever find their way to the content producers is mentioned. It is still written in the literature that giant intermediaries, record labels, film studios, publishers, and the huge technological platforms are probably stealing most of the streaming revenue, and only individual writers and performers will have little to no left. These concerns in Europe resulted in the 2019 EU Directive on Copyright in the Digital Single Market, which introduced concerns on transparency, contract modifications, and revocation rights to authors, and outlined measures directed at user-uploaded platforms (which I will discuss further). WIPO has also begun addressing the question of paychecks to creators in the digital arena on the world stage, and its Standing Committee on Copyright and Related Rights considers it an international problem. (May, C. 2006)

Another controversial issue among scholars has been the scope of fair use (and other similar exceptions) in the digital era. On the one hand, there is an increased readiness of the courts to accommodate doctrines so that new technologies could be utilized to benefit. The search and research bundle of cases is a good example of mass digitization. In Authors Guild v. Authors Guild v. case, 2d Cir. 2015) and the case of Google Books case, 2d Cir. 2015). In HathiTrust, the court that upheld its holding in the Second Circuit (2d Cir. 2014), judges determined that scanning millions of books to generate a searchable database, which allowed the print-disabled access as well as snippets, was a transformative use of fair use. The case of Google Books specifically, suggested that wholesale digital reproduction of copyrighted materials could be a fair use in cases where the copyrighted materials were used as archival [and indexing] materials, even when entire large scale works were used. This was a step towards the expansion of fair use in line with digital innovation in treating how a use that does not replace the original market and has a new utility (in this case, full-text search and data mining) can be legitimate. Equally, the courts determined that the generation of thumbnail images and storage of them with an image search engine (as in Perfect 10 v. The fair use in Amazon.com, 9th Cir. 2007 was fairly useable since it was extremely transformative and performed an alternative purpose (easing access to information). (Diaz, A. S. 2013)

Fair use has on the other hand not blessed every effort to capitalize on technology. One opposition in the literature is the denial of a theory of a digital first sale. In Capitol Records v. reDigi (2d Cir. 2018) was a startup that allowed people to sell the music files that they bought on iTunes, resell those files: even when the original file was deleted after that, they created a new copy of the file (and resold it), which was proved to be liable in infringement. The court also determined that the first sale doctrine did not allow such digital exhaustion without express statutory mandate. This pointed out that the law nowadays in the context of digital goods as opposed to a used book or CD gives the authors of a work an ongoing right to influence every copy of it, as any transfer is a copy. Such use according to students and scholars is shaking the conventional thinking that you own everything that you buy and is one of the reasons why there is still controversy on whether the digital purchasers should be afforded the right to resale. An additional aspect that the literature identifies is that there is no digital exhaustion principle that would make resale markets illegal that would in turn force individuals to move to subscription models and would give the copyright holder greater control over the distribution and pricing. Any reform that would make it possible to

resell digital content would have to grapple with the ease of copying stuff and its implication on markets. (Duran, D. Y. 2018)

Fair use may serve as a sword and as a lightning rod in the context of user generated content. The proliferation of platforms such as YouTube, Tik Tok, and Twitch has generated a massive tsunami of uploads which use some preexisting copyrighted content, such as a commentary video that edits movies, a fan edit of a song, or a stream (with background music playing). It is a huge task to make out which of such uses is infringement and which is a fair use of transformative nature. Famous legal battalions have occurred such as in Lenz v. The case of Universal* (N.D. Cal. 2008) that states that copyright owners should take into account fair use prior to a DMCA taking down (the so-called dancing baby case with the You-Tube child dancing to Prince). However, the power to regulate these applications has been transferred to the extent to which it is in the court and into the hands of specific platforms and automated systems (Randazza, M. J. 2015). As an example, the Content ID feature of YouTube frequently blocks or monetizes the videos of the users when their rights are being infringed upon, despite the possibility that the fair use could also be applicable, due to the fact that the platform also has dealings with large copyright holders, requiring a strict control over the situation. According to Tang, the speech on a [major] platform that is creative is self-regulated by a series of very secretive licensing agreements with large copyright owners, and as a result, there is a scenario where the substantive law of copyright is being silently rewritten in practice. According to this literature, the equilibrium between user rights and the rights of the authors is being increasingly made not in the legislatures or courtrooms but in the individual content moderation policies of the handful of tech giants.

The Directive, at article 17, obliges large content-sharing platforms to either license the content uploaded by users or have measures in place to filter user- uploaded content to exclude the unlicensed, which in effect places an additional burden on the platforms to police uploads. This proved very controversial with many viewing it as a victory to those with rights (bridging the value gap by making YouTube and other sites share revenue or block content) and others as a limitation to expression by the users (the worry about over-blocking fair use like parody or criticism). The Directive includes the wording that protects exceptions and user right, as well, although the issue concerning the practical implementation of the Directive is also highly regulated concerning the EU member countries and platforms. It also introduced rules that are author centric (Article 18-22) that give creators a voice in revenue and the right to revoke license in the event that their work is not being used. Based on the initial academic reasoning on these provisions, they may enrich the contracts of authors in future, but it is not clear how enforceable they are.

Concisely, the literature demonstrates a dynamic play of forces: technology allows users to copy and share works in new forms that, in many cases, outpace the law; authors and industries seek more protections and new licensing models; and the doctrine of fair use, which was previously viewed as an eccentric fallback measure, have become major points of contention over defining innovation and control in the digital era. This essay is on the basis of that article and it has included recent cases and policy developments to give a synthesized knowledge appropriate in a first-rate academic debate on the issue.

Methodology

In this study, I adopted a doctrinal legal approach in examining copyright protection in digital reproduction and streaming as an environment. The approach suits as I am considering legal principles, laws and case law and their interpretation, or potential interpretation, in light of the existing issues. I am examining major legal documents, including the U.S. copyright act (1976,

amended), the DMCA (1998) and the EU copyright directive (2019), as well as the major court rulings, primarily of the U.S and the EU. Through analyzing views (particularly the groundbreaking cases listed above) and written materials, I expect to narrow the scope of the existing legal provisions and tendencies regulating the rights of authors and the concept of fair use in the realm of digital fields.

In addition to primary sources, I use secondary scholarship to provide context, criticism, and insight. Those are law-review articles, academic monographs and reports by such organizations as WIPO or national copyright authorities. As an example, the recent articles of IP law journals were reviewed to scoop the current debates concerning the responsibility of platforms, remuneration of the creators fairly, and the effectiveness of exceptions such as fair use in the present times. I also tried to incorporate some of the old and new commentaries so that I could have a blend of both the historical overview and the latest debate.

I hold my primary perspective on this material is that of a doctrinal perspective i.e. I am researching into statutes, the four-factor fair use test, safe harbor regulations, and what exclusive rights actually constitute. Then I attempt to project those rules onto the situations that we are exposed to with digital copying and streaming. The law is not always engraved in stone, and so I look at how comparable cases are handled by the U.S. courts and the EU courts, such as the party liable of intermediaries or the effect of text-/data-mining exemptions. The mere comparison of these various legal traditions helps to provide us with a better picture of the changes to recommend.

I did not do any work in the field or numbers crunching. It is not a survey or economical model but is all legal analysis. However, to demonstrate the significance of the legal framework in practice, I do attract numbers elsewhere, such as numbers on revenue generated by the streaming industry or research more generally on how much creators get money.

The rationale to go doctrinally means simply to articulate what the existing law (lex lata) provides on copyright in the era of streaming, and then to question whether the law is working to the benefit of authors, platforms and the people. In a falling short, I will recommend what reforms (lex ferenda) may do. My synthesis is the Findings section that follows and the Recommendations are offered as a direct result of the gaps that I see.

Findings

My results can be subdivided into several main aspects: the way infringement and enforcement are evolving, platforms have become gatekeepers, the tug-of-war between the rights of authors and the rights of users (fair use), and the way that new legal interpretations can tip that scale. These are the themes of the entire picture.

1. Ubiquitous Digital Copying: New Scope and Scale of Infringement

To begin with, digital technology has contributed to infringement becoming incredibly larger. When everything was analog, copying was would be costly and incomplete but currently any file may be copied and shared instantly around the entire world. This is why the enforcement process becomes a constant problem to authors and people who own their rights. There is still high level of digital piracy in the form of music, movies, e-books, software, anything, and the internet generates it with the help of torrents, dubious downloading sites, and illegal streaming servers. Although anti-piracy drives have been made after 20 years, the issue remains, according to ESQwire regarding the simple exchange of information via the internet. The inundation of infringement compels authors to combine legal and technological devices, with ambivalent success (Oberholzer -Gee and Strumpf 2010).

Online enforcement also is a nightmare as it transcends borders. One stream may have servers and uploaders as well as downloaders in various nations and each nation has its regulations. Illegal may be less harsh in one country than in the other and methods such as site blocking or asset seizure require dirty international collaboration. The international character of streaming challenges the old enforcement techniques and there are desires to curb international harmonization. The treaties and coordinated efforts, such as the anti-piracy efforts by Interpol, have had some impact, yet the pirates continue to jump to other new fields or even networks.

Simultaneously, authorized streaming platforms have demonstrated an avenue to reduce a certain amount of piracy, providing convenient substitutions. Following the Napster era, the music industry shifted to licensed services such as iTunes and then to all-you-can-hear services such as Spotify. These services are attributed to reducing the extent of music piracy through the ease of accessing them legally as opposed to seeking illegal downloads. The concept of Spotify combines a massive catalog and low-costs and easy-to-use technology and DRM that prevents users to create permanent copies. Spotify prevents the distribution of illegal copies by locking the playback to one app and encrypting the files in the cache. Technology and business models will allow decreasing infringement, yet they will transfer power to the platform, raising a new legal problem of DRM and terms of service (Bengtsson and Hansson 2001).

The mere convenience of copying digitally also made enforcement an automated regular process. Authors do not only file a lawsuit but instead use applications such as YouTube Content ID or web crawlers to identify and delete infringing content. This is feasible due to the volume, however, it results in false positives and over-enforcement, which affects legal usage (which we will later address under fair use). Thus, the answer is a set of legal safe harbors, self-regulating, and licensed options that seek to guide consumers to legal rather than illegal consuming.

2. Streaming Platforms as New Gatekeepers and Private Regulators

Finally, platforms are also gatekeepers - what is uploaded, under what conditions and how the income is shared. YouTube, Facebook, Twitch, Spotify, Netflix, and others are the type of influence that used to be the prerogative of an author or a government. This has established a paradigm also known as platform law the concept that platform policies and algorithms constitute the rules of online speech and creativity, in a manner that may circumvent or prevail over the public law.

On the part of the authors, a good thing is that the distribution of works all over the world has never been so easy as it becomes through platforms. The artist is able to post video or music and watch it become available all over the world without having a physical publishing house. Nevertheless, the entry barrier is compliance with platform regulations which might be uncompromising and opaque. Indicatively, the general provisions of YouTube enable it to monetize any content, as well as to delete or silence the videos of the copyrighted content on request of the rights holders irrespective of whether the use could be legally justified. Studies also show that the biggest ones do not usually depend on the notice-and-takedown process of the DMCA safe harbor publicly and in a contested way, but they act under the ideology of private agreements. These confidential arrangements with large music and media corporations permit user material that contains licensed snippets to remain online in exchange with advertising income or some other criteria, although they also tend to demand that websites actively block or delete any unlicensed applications that copyright holders are displeased about. This, in effect, according to Tang, constitutes the substantive law of copyright being silently rewritten in private contracts, i.e. fair use may be disregarded because a site has a deal with a movie studio that does not acknowledge

it, and a video essay that uses a film clip may also be blocked or even demonetized when it would otherwise win a fair use case in court. (Büchel, J., & Rusche, C. 2020)

The platforms also dictate the mode of remuneration of the authors. In music streaming, Spotify and Apple Music use royalty per stream, although the rates are usually not determined by the authors themselves they may even be the result of negotiations in the industry, or even mandatory licensing (such as in the US, mechanical royalties by songwriters of interactive streams are rate-regulated by a federal board). These rates have been strongly condemned by a host of musicians as being too low, which takes millions of plays to match the income of a handful of album sales. Spotify has been sued on royalties, hey, we learned. It is also not very favorable to the publishers and authors that the streaming services are not licensing all the rights. Among some of the first controversies, Spotify was not acquiring all the mechanical rights of songs and this led to class actions. Overall, a handful of giant platforms have the ability to bargain with take-it-or-leave-it conditions to millions of creators. Even content policies such as Twitch exhibit that power. Under pressure by the owners of the right to the music, the platform says that streamers cannot play the rights-copyrighted music after not being licensed. This caused a surge of DMCA takedowns in 2020 to compel creators to remove thousands of archived videos. The idea is that copyright protection is an attempt by platforms to secure their own immunity against liability, but the impact on an individual creator can be enormous, as it may take years of work to disappear overnight due to a small music usage.

Meanwhile, platforms serve as required facilitators to receive authorization otherwise known as illegitimate. The Content ID of YouTube has its critics, but it is also a laissez-faire to creativity of users. Most of the rights holders simply leave a fan vids or remixes online and simply cash in on them rather than taking them down. This makes the derivative works a semi tolerated zone that is completely under the sway of the private economic powers, rather than under a legal principle that is open ended. (Husovec, M., & Quintais, J. P. 2021)

The Article 17 regime of the EU makes the platforms more active in licensing. It promotes or, according to some, requires them to license user uploads on a blanket basis with the music and media companies so that creators (or at least right owners) are paid each time their work is reused. As a matter of fact, Article 17 liability construct encourages rights clearance and revenue sharing in instances where feasible. It is effectively, formalizing the gatekeeper position: license contents paid (gatekeeper) or police the gate (unlicensed contents). In any case, they are the ones who determine what expression by users is green-lit.

Overall, streaming is now a necessary distribution but has in the process become de facto regulators of the copyright material. They are good brokers of the authors/audience relationship, and their interests (not to be sued and to make profit) are not necessarily optimal to one side (maximalist protection of authors) or the other (openness of users and the audience). This is a hallmark of the contemporary environment, and this privatization of enforcing the copyright makes it more difficult to balance the legal tradition, as can also be seen in the fair use context.

3. Fair Use and Exceptions Under Strain and Evolution

More than ever, fair use (along with other restrictions on the rights of authors) is significant, and debated. As we have analyzed, fair use is an essential safety valve allowing new technology and creative practices to flourish, yet the digital world is being stretched by changes to the judiciary, unclear legislation, and private limitations.

Regarding the courts, they have broadened the fair use to suit the new digital functionality. The other instances like the Google Books one argued that the creation of digital copies to help search

or analyse data or access them could be a fair use as they do not replace the original market and still transform the work. This shows that law can change to become technologically receptive and in the interest of the people, like the spread of knowledge and content conservation. Other cases such as the legality of DVR services to make individualized copies on behalf of its users (the case with cablevision remote DVR in 2008 that was distinctly not Aereo but was deemed a de minimis exception, and the streaming case seen as implicitly licensed but treated as a de minimis exception) or the acceptance of some incidental copies as being fair (as in the case of buffer copies in RAM) or otherwise non-infringing (as in the case of buffer copies in RAM).

Also, technology or contracts in digital environments usually forego or preempt fair use. As mentioned above, DRM can be used to lock down a piece of work to the extent that to make a fair use, it is necessary to go around a protection (which is also unlawful under DMCA 1201, unless with an exemption). Similarly, the term of service of platforms frequently forbid the uploading of anything not owned or authorized by the user effectively prohibiting even the legitimate fair use uploads by default, as platforms usually cannot rule out fair use in real-time. Other platforms have begun to add features to allow users to contest claims and claim fair use, but it remains an immature field. We find that the pragmatic capability to participate in fair use is possibly constraining in the online environment, although the jurisprudential teaching in the books might still be the same or even in the future, extended. The fee and effort to invoke fair use (such as counternote filing a DMCA notification and exposure to a lawsuit, or attending court to obtain a declaratory judgment) is prohibitive to the majority of individuals and small creators. This has led to an unequal situation, with big corporations tending to strike licensing agreements (so they do not have to resort to fair use), and individuals tending to self censor or have their work deleted since they cannot practically assert fair use in the presence of automated take down. (Penney, J. W. 2019)

We also observe that various nations have varying ways of dealing with exceptions and that is important in international forums. The American liberal concept of fair use could allow through what Germany would bar under its tougher quotation laws or under Italy, through its closed-list copyright exceptions. That puts a black hole in the law that contributed to the formulation of the EU Article 17, which mandates platforms to prevent hosting unlicensed content but does not specify the exceptions. Other European jurisdictions are also including additional open-ended exceptions (e.g. the UK or the former so-called fair use-like proposals in the EU), but the transatlantic divide remains: the U.S. is inclined to deciding fair use; the EU is listing the permitted uses and asking platforms to bargain they can override.

Irrespective of such difficulties, the fair use and similar doctrine remains a policy battleground. Libraries, archives, educators and consumer rights advocates are campaigning to make broader exceptions so as to permit digital lending, preservation, text-and-data mining and culture sharing. Indicatively, the result of the Internet Archive case (which upheld the rejection of unlicensed e-book lending as fair use) has served as a catalyst to debates as to whether or not the law of copyright should be expressly adjusted to permit libraries to produce and distribute e-copies of books under their possession on the condition of controlled lending, particularly in the context of the conversion of the world to e-books. Equally, the emergence of artificial intelligence that is trained on massive datasets of creative materials has raised new fair use debates e.g. whether training an AI on a copyrighted text or image is a fair use? In the U.S, (one of the more recent examples, reported in the news) an AI firm was able to defend that relying on books to train a model amounted to a type of transformative fair use, which is much more uncharted territory. These emerging problems

represent the technological innovations that are pushing the fair use doctrine to the edges of its limit. (Panezi, A. 2017)

Simply put, fair use remains critical to innovation and free speech, but again the actual scope of it in the digital streaming age depends not just on legal principle. It concerns a technology design, platform regulations, and the readiness of courts and legislators to adapt ancient principles to updated realities. We are experiencing a push-pull: broadening the scope of socially useful technology, and a crackdown on applications that either damage the existing markets or applications that platforms cannot easily scale to.

4. Strengthening of Authors' Rights in Law vs. Reality

We have also observed a difference between legal improvements to the rights of the authors and daily life of the creators. Authors and revenue have been narrowed in response by legislators, particularly in Europe, in response to the imbalances of the digital market. An example of this is the EU Directive 2019, which made transparency requirements (authors must be aware of how their work is used), best-seller provisions (offering the right to make changes to a contract in case of unacceptable pay), and even a right to revocation (in case the work is not used, authors can withdraw the license). That is reflected in these tools where an author would grant rights and then watch a platform transform an otherwise minor hit into a global sensation without sharing the fortune. In the same way, such economies as France have applied direct rights of authors and performers based on streaming (e.g. an author is guaranteed a minimum royalty per stream, administered via collective societies). The term of fair remuneration has become a buzzword in the policy discourse. (Dusollier, et al, 2020)

Nevertheless, these measures take place in the real world, whose actual influence is yet to be strongly felt. Contracts and industry standards are inertial and new rights (such as an author right to demand extra payment when a piece of work performs better than expected) can only be enforced through court action or through collective action, something that creators are usually too shy or incapable of doing on their own. In addition, a large number of these rules do not exist beyond the EU and the content being international, the fortunes of the authors may still be heavily reliant upon standards set by few large players. To use the example of an independent musician, EU rules may be beneficial in cases where the label does not pay them per a stream in Europe, but in cases where their streams are on a service based in the U.S and there are no protections, the inequity persists. The question also arises of moral rights European law has long been familiar with the moral rights of authors (to be credited, to object to derogatory treatment of their work), but in the remix culture of the digital, moral rights may be in conflict with transformative uses. There was little evidence of explicit developments that have linked moral rights to digital platforms other than the fascinating bit of information that Tang found on the fact that private agreements can establish something very much akin to a moral right in that the rights holder has a kind of veto over a specific use of his or her content on the platforms. As an example, a movie studio may demand YouTube take down any use of its footage that the movie studio considers to be offensive or damaging to its brand, which in effect gives its authority to regulate reputational elements of use in addition to what any copyright statute can permit.

The other direction of reinforcing the rights of authors is enforcement mechanisms. Recently, the U.S. created a small-claims tribunal on copyright (the Copyright Claims Board in the CASE Act) that, in theory, would assist individual creators to enforce their rights at a prohibitive cost of federal litigation. Also, the exploration of technological enforcement like blockchain is being undertaken

by rightsholders to trace its usage (as observed in multiple commentaries). These innovations are however not yet fully embraced.

Another curious event is also mentioned: the authors sometimes are in conflict with the representatives of their own industry in terms of easy-going distribution. An eloquent case is the Viacom v. YouTube example mentioned above; Viacom, as a corporation, sued YouTube, but a lot of individual creators, including those who created the shows on Viacom, preferred the presence and the remix culture availed by the site. On the same note, there were mixed reactions on the part of authors on books of Google Books, some perceived it as a violation of their rights whereas others saw it as an advantage of discovery and reading. Therefore, the very concept of authors rights is a sophisticated one; it does not have a single face since even authors themselves have different opinions about the extent to which their works should be restricted or distributed.

The law is also reluctant to consider the protection of economic rights, which is based on the assumption that authors wish to gain as much control as possible. In reality however, most of these creators adopt adaptable approaches including Creative Commons licensing or open-access distribution to reach more people. We discover in our study that the legal system is not fully aware of these subtleties; it only supplies the authors with the exclusionary rights and then provides exceptions, instead of providing more dynamic models of intermediate rights or collective compensation that can reflect the current consumption trends.

In short, although the trend towards strengthening the legal statuses of authors is indicated by recent legal reform, it might be either the protection of authors of contracts or the creation of new liability in the form of revenue sharing on platforms, but there will always be a gap between the law and practice. Several creators believe they are in a treadmill: their payments are not commensurate to their work being watched by millions through streaming, due to the bad revenue number and the dilutive impact of the per-use value within a streaming economy (a single download may count as the worth of some 200 streams). This gap probably will have to be closed with the help of not only legislation but also new industry standards along with a potential collective bargaining. As an example, songwriters and performers can negotiate terms of streaming more favorable to them with their unions or guilds, which has already been attempted by nascent ones. WIPO debate on the value gap brings out the fact that this is not a local contract problem, but a global one.

5. Landmark Cases Shaping the Digital Copyright Landscape

In the themes discussed above, there have been landmark cases that have been used as a point of reference in regard to the law adjusting to the digital reproduction and streaming. In our results, the effect of such cases is strengthened, some of which are worth grouping together based on their principles:

- Case Aereo (2014, US Supreme Court): American Broadcasting Cos. v. Aereo, Inc. was about whether a service that broadcasted TV to subscribers with the help of tiny individualized antennas violated the public performance right. In a controversial case, the Supreme Court decided that the service provided by Aereo was in fact an unlicensed public performance, basically due to the fact that Aereo was comparable to a cable system that was retransmitting broadcasts. This case reinstated the copyright owners to control as it barred an emerging technology to take advantage of what it perceived to be a gap (the individual antenna per user). The move was observed to have the effect of likely enhancing the dominance that the copyright owners of their audiovisual material and how such material will be displayed... publicly, which will likely complicate the competition of

alternative streaming models. Differently put, the defeat of Aereo was an indication that even ingenious technical solutions would not be permitted to avoid the necessity of the licensing in the streaming scenario, thereby further strengthening the rights of the authors and broadcasters in the new media delivery procedures. (Fraser, A. 2014)

- Viacom v. YouTube (2010-2013, US): This case, which has been mentioned above, is critical in the interpretation of DMCA in the platform era. It made clear that platforms are not responsible provided they adhere to the regulations of the notice-and-takedown and they do not possess the demonstrable awareness of particular violations. It also implicitly endorsed the practice of content curation of platforms without liability. This indeed facilitated the emergence of YouTube and such like systems, the setting where the majority of the current copyright/fair use fights are waged (i.e. not in courts but simply on the platforms). (Hassanabadi, A. 2011)
- Google Books (2015, US Second Circuit) and other cases: These approved a broad understanding of transformative fair use of digital archives and search. These cases have led to a ripple effect by the blessing of the mass digitization of a new purpose, giving confidence to projects that employ data analytics on copyrighted content (to be used to research, train AI, etc.) in the fair use defense, at least in the U.S. (Plevan, K. A. 2016)
- ReDigi (2018, US Second Circuit): Ruled of great importance in closing the first sale door in the digital world, without express legislative modification, and therefore continue to exert a greater dominance on digital copies by the authors. (Dunbar et al, 2022)
- Cases of the European Court of Justice: Not discussed above, the ECJ has had a string of cases that are defining digital copyright: Svensson (2014) on hyperlinking to content already publicly available (not an infringing communication to the public, provided it is not circumventing a paywall), GS Media (2016) on top of that conducting a link to infringing content is infringement when done profitably with knowledge, Filmspeler (2017) on selling a device that comes pre-loaded with pirate add-ons is infringement All these cases highlight the manner in which the various courts in Europe have been making new boundary demarcations of digital utilities to the traditional rights and exceptions in Europe. There is a trend to which one can refer: the ECJ is more inclined to have the exclusive rights (such as communication to the public) construed broadly in order to cover new technologies, whereas the exceptions are construed narrowly (they are usually closed lists). This is a bit contrary to the U.S. policy of a more limited set of rights (because of the existence of the safe harbors) and a more broadly-spread exception (because of the fair use).

Each landmark case not only settled the case-in-question but also conveyed clear messages to industry practitioners and content creators about what was permissible behavior and thus influenced future behavior. For example, the consequences of the Warhol ruling have created a new caution in commercial use of pre-existing images without express licensing; in the wake of the Aereo decision, many companies who would have wanted to deliver broadcast content over the internet decided to pursue licensing arrangements, or make a transition into fully-fledged cable-like providers, a development that is the underpinning of the rise of "cord-cutter" live TV streaming models that pay subscription fees to channels today.

In collating these findings, it is clear that copyright law in the digital age is still in the midst of an active legal negotiation between well-established legal principles and new technological realities. The net effect so far has been neither an unequivocal triumph for maximalist control nor an all-out

paradigm shift towards open use, but rather a patchwork of compromises, with extensions in some arenas accompanied by retrenchments in others. Authors benefit from a new, widened global audience, but share control at the same time to the extent of platform intermediariespaid users benefit from a new level of access and creatively, but also face new restrictions and forms of oversight; and platforms themselves have taken on major roles, at times with responsibilities similar to traditional media conglomerates, at other times with demands for their status as neutral hosts. The following Recommendations section builds on these findings to suggest ways in which statutory and policy frameworks may need to change in order to address the gaps and tensions identified.

Recommendations

In view of the above empirical and doctrinal findings, the present section makes a series of recommendations that are intended to target a wide range of stakeholders, including policymakers, adjudicatory bodies, digital platforms, authors, and end-users, in an effort to more closely align statutory copyright regimes with the exigencies of digital reproduction and streaming technology. The underlying objective is to achieve a more balanced balance that protects the rights of creators while, at the same time, preserving the principles of fair use and the public interest in democratising the creative content. The recommendations are grouped as a set of principles for action:

1. In order to close what scholars have referred to as the "value gap" - the fact that creators usually do not receive an adequate share of the revenue generated by streaming, legal frameworks throughout the world should consider adopting regulatory mechanisms similar to the one adopted by the European Union in the 2019 Directive. Such mechanisms would include mandatory transparency mandates that allow authors to determine how their works are being exploited and to measure the amount of money being made in that exploitation, as well as contractual provisions that allow authors to seek additional remuneration when the success of a work is realized beyond original financial projections. Moreover, the promotion of collective bargaining and collective rights management schemes would allow songwriters, photographers and others who produce content to negotiate minimum royalty rates with platforms. A related avenue of exploration are user-centric payment models, in which a subscriber's fee is divided directly between the individual artists actually being accessed, as opposed to being indiscriminately pooled across a broad catalog.
2. Governments should seek to strengthen international cooperation to fight commercial piracy on a large scale, through the use of treaties and joint enforcement activities, while at the same time building in strong protections for fair use and free expression. A tangible legislative action would be to amend anti-circumvention laws to include acceptable exceptions to non-infringing, legitimate uses. For example, the law might provide for bypassing digital rights management (DRM) mechanisms when such bypass is done only in support of uses that would qualify as fair use such as the extraction of short excerpts for the purpose of criticism or accessibility where such bypassing will be an absolute bar to lawful conduct. Complementary reforms may include refining the Digital Millennium Copyright Act's notice-and-takedown process by adding a "notice-and-fair-use" process, similar to the requirements set forth in Lenz v. Universal, under which platforms would be required to make a quick, potentially automated, initial assessment of content flagged for common fair use situations (e.g. very short clip or commentary-attached uses) before removing it. In practice, this would mean that disputed material could be kept around for a while, perhaps in a non-monetized state, until a human judges whether it qualifies for fair

use-avoiding the current "guilty until proven innocent" paradigm that tends to suppress legitimate user uploads unduly.

3. Digital platforms, being de facto regulators of content, are subject to accountability for the exercise of their substantive power. Policymakers could require greater transparency from platforms about their content identification algorithms, takedown decisions and licensing arrangements. For instance, platforms might be asked to include periodic metrics that describe the amount of uploads that were blocked or monetised on the basis of copyright claims as well as the frequency of counter-notices and subsequent reinstatements. Moreover, user rights could be made into law through mechanisms similar to the ones in Article 17 of the EU Directive which would require platforms not to prevent availability of legitimate user uploads within the ambit of quotation, criticism, or parody. Implementation of an independent ombudsman or appellate forum within major platforms would give users a fair process to contest removals and thus introduce fair use sensibilities into platform governance, keeping private rules from trumping public law balances.
4. Legislators should consider the feasibility of a "digital exhaustion" rule that would make it easier to transfer rights of ownership in digital content under controlled conditions. While the outright resale of digital copies, a digital analogue of the first sale doctrine in physical media, is complicated by the fact that there is no limitation on digital duplication, a regulated license-transfer system could allow a consumer to transfer access to a digital good to another party, while forfeiting their own access, preserving a net zero increase in copies. Such a system could be administered through platforms or third-party marketplaces that would be licensed under copyright by the copyright holders, which ensures that authors continue to receive a proportionate share of proceeds from subsequent transfers - as could be done through modest resale royalty or micro-licensing fees. Even if a thoroughgoing digital resale system is not adopted, extending the lending rights of libraries for e-books and other digital materials under reasonable safeguards would be a significant step in the right direction. Legislation is possible to empower libraries to make a limited number of digital copies for loan, subject to a one user at a time model with revocation of access of the copy upon completion of loan, in order to institutionalise the principles conveyed in projects such as Internet Archive while fitting into statutory or contractual frameworks to make payments to publishers.
5. It could be caused by the fact that it is hard to license the content to new creators (such as a YouTuber that wants to legally include a song snippet). This would be relieved by a concerted industry challenge to establish streamlined micro-licensing systems. Collected societies, media companies, and technology platforms should also work together on a copyright clearinghouse a single place that creators can easily check to see which uses have been pre-cleared or can be licensed at a small fee. An example is that this would decrease unintentional infringement by having a database of music that could be used in UGC videos with automatic revenue sharing or with a small nominal fee. The terms (e.g., this image may be reused without a commercial use but with mentioning its owner; this video clip can be used to 10 seconds as the part of a review) could be presented in the form of standardized metadata attached to digital files (with the help of content identification technology) and redirected to the licensing system that the platform operates. Such measures can help defend the rights of authors by simplifying it to do what is right (according to the law) instead of responding afterwards by takedown and lawsuits.

6. Given the consolidated position of both content owners (big media conglomerates) and distributors (dominant platforms), competition authorities should keep their eyes open. Scrutinising exclusive agreements that might lock up content or suppress competition would protect the interests of both the creator and consumer. For example, exclusive terminations that essentially set industry-wide royalty baselines at a low level should raise an antitrust concern, as might contractual terms limiting creators' bargaining power or gag clauses. Likewise, practices such as strategically moving content from one vertically integrated services to another (some studios moving out of a third-party streaming platform to their own house service) could pass the legal test but could undermine market diversity. A regulatory approach that creates a level playing field for emerging entrants, irrespective of their size, from smaller streaming services to independent artist platforms, would maintain the leverage of authors and protect consumer choice.
7. The power of law is necessarily limited by the behaviour of the subjects of the law; and hence it is of paramount importance to inculcate informed behaviour by those who create and use content. Educational programs that explain the rights of creators and obligations of creators, such as focused education for young creators of YouTube content on how to avoid infringement and properly use fair use, or for musicians on how to negotiate streaming contracts or interpret royalty statements, would help bolster compliance. Concurrently, user education initiatives to de-mystify the ubiquity of the internet (e.g. the myth that "something on the internet is free to use") would help reduce inadvertent infractions. Platforms can facilitate this process by integrating real time prompts or decision aids-for example, an upload filter that alerts users whenever a video contains a full music track for which they have no clear rights, that suggests alternatives, such as licensed libraries, or confirms fair use status-and thus reduces the conflict and encourages a culture that respects authorship, while also allowing for legitimate creativity.
8. Lawmakers and courts must keep an eye on the fast-pace development of technologies such as artificial intelligence, blockchain, and the metaverse, and their impact on copyright law. In the field of AI, defining the scope of the exceptions of data mining, which can be compared to recent EU initiatives, and deciding on the legality of training on copyrighted materials will be key. Blockchain technologies offer opportunities for transparent royalty distribution and provenance tracking: non-fungible token (NFT) marketplaces, for example, can be designed to auto-pay the original artists for secondary sales, ensuring continued remuneration. A proactive, iterative adjustment of copyright policy to reflect these technological developments will help prevent obsolescence and make sure that the law is responsive to innovation.

Implementation of these recommendations will no doubt require careful work and at times delicate compromise. Nonetheless, the overall principle that unites them is evident: copyright law must evolve in order to be fit for purpose in the digital and streaming age, and to protect the legitimate interests of authors without being unduly stifling of creative expression and access. Through the adoption of the measures proposed, we can dream of a system where incentives for creation, means of dissemination and respect for user rights exist in a more harmonious equilibrium.

Conclusion

The modern age of digital reproduction and streaming can be a time that is both exhilarating and fraught, and that therefore has an enormous effect upon the doctrines of copyright law. In this discussion, I have explored the ways in which the pre existing paradigm of the rights of authors

and the doctrines of fair use are currently being put under pressure and transformed by technologies that facilitate the instant transmission of copies and the global dissemination of cultural content, and by platforms that have emerged as new intermediaries in the cultural economy. Drawing on recent judicial rulings and academic commentary, the analysis finds a changing landscape, one in which the courts and legislatures continually adjust the balance between giving power to creative individuals and empowering end-users, sometimes through new and innovative reforms and sometimes by restating ancient principles in light of novel problems.

Key observations include the recognition that modern authors are working in a context where the control over copies is substantially harder to enforce, which makes governing platforms and revenue generation mechanisms more important than the ability to directly control copies. The principles of fair use and those of other statutory limitations are still indispensable in ensuring that creativity is not smothered and knowledge is disseminated, but they are now under pressure from the forces arising from the mechanism of automatic enforcement and the ever more restrictive interpretation in certain contexts. The dominance of streaming services has had some undeniable benefits, including reducing piracy, increasing access, and creating new marketplaces, but it has also led to a concentration of power that has the potential to marginalize the interests of individual creators and silence user rights. The idea that the conceptual scope of authors' rights will grow-which is partly the issue with notions like fair remuneration and empowered bargaining power-makes or breaks the effectiveness of such developments depends on their implementation, as well as their adoption by all parts of the world.

My recommendations call for something of pendulum swing in one direction or another, but instead a calibrated approach that enhances the ability of authors to make a living through digital channels and protects the public interest in commentary, scholarship, and derivative creativity. Practically, this means modernizing legislation (by, for instance, reconciling anti-circumvention provisions and fair use and coming up with mechanisms for digital lending) while holding platforms to a higher standard of fairness and transparency and promoting collaborative solutions (like better licensing systems instead of adversarial impasses).

Copyright law has long followed the path of technology, from player pianos to radio, from VHS tapes to the internet. Each technological shift requires a reconsideration of the way we think about the essence of the basic bargain of contract: granting exclusive rights to spur creation, while ensuring those rights are limited enough to keep the ecosystem open and innovative. In the current context of digital reproduction and streaming, this bargain is continuously being re-negotiated. Digital content creators are faced with a complex statutory nexus, yet at the same time have unprecedented tools to disseminate and engage with audiences. Law and policy must therefore ensure that this environment is one that is conducive to creativity on all spectrums - not just one that functions for large studios and platforms; but for the diversity of authors and users that are now active in cultural production.

In conclusion, although piracy, platform dominance, and legal uncertainty offer real challenges, the trajectory need not be one of constant conflict. Through careful reforms and mutual engagement of the various players involved, copyright can indeed continue to fulfill its original purpose - the promotion of the advancement of science and the useful arts - even as the mediums and models of dissemination undergo rapid transformation. The age of digital reproduction and streaming, therefore, should not be seen as the wholesale dismantling of copyright but an opportunity to give it a boost: to build a regime that is resilient, equitable and forward looking, and

reflective of the aspirations and values of the digital society in which we find ourselves.

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