

## SHIFTING TRENDS IN THE DIGITAL AGE: PROTECTION OF EXPRESSION VERSUS IDEAS IN THE US COPYRIGHT LAW

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### ABSTRACT

This study is about exploring the shifting trends in today's digital age, particularly with regard to the protection of expression versus ideas as understood in the US copyright law. The study utilized the qualitative approach in order to address the objectives identified. Accordingly, findings from the study revealed that expression and ideas, in the context of the copyright law, can be deemed in contrast with freedom of speech based on how it is exercised through the Internet channel. Grounded on this notion, this study concludes that the US copyright law protects copyrighted materials wherein the law is not intended to limit people from exercising freedom of speech, rather educate people regarding the extent of the protection of the rights of copyrighted materials so as to prevent reproduction without authorization especially in the digital age.

**KEYWORDS:** Trends in the Digital, Copyright

### INTRODUCTION

#### Shifting Trends in the Digital Age: Protection of Expression versus Ideas in the US Copyright Law Center

Information and technology have clearly gone together in today's world, considering the fact that both have become hugely incorporated into the lives of the people. Along with the improvement of Information and Communications Technology (ICT), the flow of information between and among people has become much smoother and much faster. In many countries and societies, the growing importance of communication and information technology is heavily pronounced, as they serve as leverage that allows people freely to express their ideas and opinions (Hope, 2011). Basically, freedom of expression is deemed a human right, which in all aspects, transpires among everyone, regardless of age, nationality, culture and another set of differences. This strongly emphasizes the fact that free speech is innately bestowed on each individual. However, there is also a two-sided argument on whether free speech should still be imposed at present, now that digital technology has already emerged and developed. There are governments and organizations that are trying to limit the people's ability and freedom to speak for themselves and on the other end, there are people who are also pushing themselves so that the entire world can hear their voices and sentiments (Columbia University, 2015).

There is a constant debate on how free speech must have to be exercised at the digital age. Several have pointed out that free speech is placed in line because of how digital technologies have paved the way for the context of making freedom of expression is being limited or restricted. The immense progress and development of technology has become one of the factors that have contributed in the restriction of free speech because of how people have recklessly and freely learned to share their ideas with the public. The copyright law of the United States has also placed a barrier on the communication between people, which can actually be purported as a contrasting notion about the rights of the people to

free speech as what has been emphasized in the First Amendment. With that, the notion regarding the restriction on the freedom of speech of the people is further delved into, particularly associating the specifications highlighted in the Copyright Law of the United States and the significant changes and development in communication brought by the continued progress of technology.

### **Evolution of Communication: the Digital Age**

The significance of communication has always been emphasized and recognized for several years, provided how it has paved the way for understanding between and among people as well as for the resolution of conflicts. Alongside the development of information and technology in today's world, there is no doubt that communication has been improved as well. It is acknowledged that technology has created a large impact on how people lead their lives, that is, even on the way they communicate with one another. As a matter of fact, the value of technology in communication becomes further denoted with the continually developing way of exchanging information through the use of the Internet and its integrated communication tools like email, social networking sites and many others (Orth, 2015).

The world has clearly experienced an immense transformation with the apparent development and growth of technology. The emergence of "Internet intermediaries" has become the tool that helps people to have a "rapid exchange of ideas and opinions globally" (Hughes, 2014, para. 3). On the viewpoint of the public, this is an opportunity that is aimed towards improving the level of communication among people and this should not be restricted, as it is still a part of their right to freely express. However, there are barriers that are deemed to impede the freedom of speech among people. From censorship to even the imposition of the principles underlying the copyright law, they still have an adverse effect on how freedom of speech has been extensively practiced by people (Hughes, 2014).

Communication and its continuous improvement have also been associated with people's freedom of expression. In spite of the several notions that point out how free speech is a basic right of every individual, there are still cases in which this right is being restricted, that is, taking into consideration the need to show carefulness and tact before saying something, especially out in public. An example of this restriction is focused on how people are prompted to limit what they say on the web, especially when a little mistake can already create a big deal. The evolution of communication through the use of technology does not purport to global progress, which in all fairness, is inevitable. In fact, the rapid changes and development in technology cannot be halted or prevented because people have already learned to embrace these changes and use them even to make their way of sharing and expressing be more convenient and be easier. The communication options brought by technology have indeed opened the people to venture out more opportunities that allow them to interact with others (Bajarin, 2014).

### **The Context of the Right of Free Speech**

Free speech is taken more than just the need to empower individuals to learn to stand firm on their beliefs and principles, that is, as it also seeks to understand the important of being able to express themselves freely – their point of views, their opinions and their ideas, subjective or not. Being a human right, free speech is therefore considered highly essential in the growth and progress of every individual, as they continue to pave the way for a more liberated society wherein all people are given the chance and the freedom to speak up and share their ideas and personal standpoints. Free speech belongs to the cluster of human rights, which must have to be empowered and at the same time, exercised. More

than that, it has also been specifically entailed that “all human rights are indivisible, interdependent, and interrelated: the improvement of one right facilitates advancement of the others; the deprivation of one right adversely affects other” (Hope, 2011, p. 5). From that assertion, it can therefore be conveyed and understood that any restriction in the right of free speech can definitely place an adversity on how the other rights are being exercised, that is, considering that by putting limitation on how much people are allowed to share to the public, their right of having to exercise their innate rights will be defeated in the process. On the other hand, Rothman (2010) has also indicated a standpoint with regards to the copyright law of United States as a restriction to what the First Amendment has pointed out – people’s right to free speech. Despite the evident notion that the copyright law places a restriction on the people’s freedom to speak and do, the courts did not make relevant actions to execute First Amendment review in copyright cases. A primary reason for this that the copyright law is occasionally regarded as an exception to free speech.

In addition, the role of technology in free speech has become even more pronounced, considering the fact that with technology, sharing and exchanging of information becomes a smoother and easier flow. This implies that through the wide access of various communication tools in the digital age, the expression becomes a whole lot more convenient to do. However, the development of technology has also put a tremendous threat on the freedom of speech among people. This is manifested on how the access to the Internet has also provided authorities to determine the irregularity of the spoken or shared ideas of some people, prompting them to limit this right. Several companies together with some of the governments and other public authorities are gearing towards the need to restrict the right, as a way of regulating the words spoken and shared to the public. This means that there must have to be a divide on what should be shared and what should be not. People, from different walks of life, basically have a similar stand on this argument, deeming that their right to express themselves should not be limited, which then paved the way for different social movements which are initiated and headed by activists and citizens who are seeking justice on the exercise of their right to expression (Columbia University, 2012).

### **United States’ Copyright Law**

It is indicated that copyright and free speech are two “complementary” concepts, provided that main function of copyright is to protect and at the same time, promote “literary, musical and artistic creativity, the enrichment of cultural heritage and the dissemination of knowledge and information goods to the general public” (Article 19, 2013). From this association, it is impeccably highlighted that there are factors, which denote to the restriction of free speech in a way that the ideas shared are limited, in connection with the copyright grounds imposed by the government. For one, the restrictions regarding the ownership of ideas, which are denoted on copyright are actually broad-ranged in order to specifically determine how the right to free speech is still accorded with a much larger protection. Furthermore, the digital sharing or use of cultural goods is not subjected to copyright restrictions, thus, implying that if people download these cultural goods online, this is actually a part of the “right to personal enjoyment of cultural goods” by the people (Article 19, 2013).

In connection with the context of freedom of speech and the rapid development of technology, it is indicated that the United States’ Copyright Law has seemed to contrast with the country’s empowerment of the exercise of the right to free speech. This is entailed on how the government, through its policies and other legal impositions, has made a fair point on copyright protection, that is, safeguarding all original works and other works of authorship that include literary works, sound recordings, architectural works, among others (U.S. Copyright Office, 2011). As the stipulations regarding the protection of original ideas under the copyright law of United States made under the said law become clear to the public,

contrasting viewpoints and arguments started to emerge, that is, entailing how the copyright law only benefits the authors of the works and provide disadvantage on the part of the entire public. United States, being democratic and empowering country, has been always in the front row in advocating the exercise of human rights but with the restrictions placed by the implementation of the Copyright Law, inconsistency is deemed relevantly involved. As a matter of fact, the advocacy of United States for free speech is manifested on the implementation of the First Amendment which emphasizes the context and importance of free speech in the country (Ruane, 2014).

Copyright, by definition, refers to “an exclusive, transferable right give to a creator for a fixed number of years to copy, print, publish, perform, film, record or otherwise control the use of literary, musical, dramatic, or artistic works” (Article 19, 2013, p 8). From this definition, it can be understood that the purpose of establishing a copyright policy lies on the need to impose a firm and fundamental rule with regards to the reproduction of works with authorship in order to protect the rights of the authors and their original works. Nonetheless, the transformative impact brought by using technology in communication and expression becomes one of the primary reasons why copyright policy must be strongly implemented and complied with by the public. The impacts being referred to in the digital age do not solely purport on how digitized the society has become now today; but these particular impacts are more interrelated with how the communication and interaction between and among people has become changed in a way that it is more convenient and accessible (McGonagle, 2013). This is related with the hypothesis in a way that it focuses on delving into the context of how the continued development in technology affects communication and the compliance of the people with the copyright law of United States, alongside their empowerment for their right to free speech.

The copyright law of United States, in consideration with its various fundamental aspects and stipulations, is more focused on how the works with authorship must be protected from any unauthorized reproduction with the use of the Internet and through that, the best interest of the authors whose original works have been granted protection will be promoted. In spite the intention of the law as what Hughes (2014) has underscored, some citizens do not agree in this set-up, strongly emphasizing the idea that that their right to free expression is disregarded, that is, noting the fact that their the Internet intermediaries such as the communication tools including email and social networking sites serve as the best venues for exchange of information and for sharing ideas. The profound need to put restrictions in free speech is further denoted on how the users are becoming reckless in what they post or share online. Thus, apart from the illegal content in the web, other types of content are also banned. This is the main principle that Article 19 of the International Standard Series by United Nations is empowering all throughout (Hughes, Human Rights in the Digital Age, 2014).

### **Article 19**

Article 19 is primarily a standard that can be applied in the United States, considering that it is one which has been strengthened and advocated by the United Nations itself. This does not merely transcend on the need to acknowledge the rights of the people with regards to free speech, but it also creates a strong emphasis on making the Internet a venue for information exchange. In addition, it also denotes on the scope of copyright law, in relevance with the use of the Internet.

Article 19 of the UN indicates that the Internet intermediaries should not be, in any way, be used as agents that prevent the exercise of free speech online. This goes with the concept that the development of technology such as the introduction of the Internet is a milestone that must be used in making an exchange of information much easier and not the other way around. As what the article has further implied, “Internet intermediaries play a vital role as gatekeepers of the

Internet and facilitators of the free exchange of information and ideas online” (Article 19, 2013, p 16). This then connotes with the fact that if there are instances in which the intermediaries will be held accountable for the users’ way of exchanging information and of sharing their personal viewpoints, there must have to be the involvement and strict imposition of the law, considering that the primary aim of these intermediaries is not to ensure law or policy compliance regarding infringement and other relevant issues, but to empower the exercise of the right to free speech of the people (Article 19, 2013).

This abovementioned emphasis in Article 19 on The Right to Share Principles is apparently contrasting with the ideas presented in the U.S. copyright law, at least some of it. The law has explicitly provided that the copyright owners of a particular work or cultural good has the right to ownership of it, that is, denoting that the people who possess a copy of the work or cultural good without authorization from the owner is primarily deemed a violation of the copyright protection vested upon the owner (Article 19, 2013). In that regard, the use of a copyrighted work or cultural good is limited to how the copyright owner deems fit it to be used, that is, whether it should be publicly made available or if it is intended for a particular group of people only. Nonetheless, there are also limitations to the said rule. As a matter of fact, this limitation is similar with that of the Article 19 which connotes that copyright grounds are not imposed on the work or cultural good if it is fairly used, implying to how the work or good is being utilized. This goes in line with the exceptions on the infringement of importation or exportation of the work or cultural good. For one, if it is for the fulfillment of an educational, religious and governmental purpose, then this is not subjected to infringement. In that account, there is the need to actually determine whether the process of obtaining, using and distributing the copyrighted work or cultural good, with the use of digital technologies, fall under the exceptions provided by the copyright law in United States (Cornell University Law School, 2015).

There is a relevant notion on how Article 19 wants to place an emphasis on, especially with regards to how free speech must be empowered, instead of being restricted. Copyright protection, as included in the Copyright Law and other set of policies imposed in any country like the United States, is all but a helpful government intervention because it recognizes the importance of protection of the authors and their respective original works. Nonetheless, this creates confusion on how the goal is to be achieved without compromising the right to free speech by the public. In addition, the copyright policy might be a barrier that impedes people to have access to knowledge through the access to wide range of information and in that case, freedom of expression is again adversely affected, deeming that such human right does not only refer to freedom of expression alone but also considers the process of gaining information from valuable sources (Article 19, 2013).

### **US Copyright Law in Free Speech**

The Copyright Law of United States, as already indicated, primarily focuses on providing protection to the authors and their original works, thus, strictly prohibiting any form of unauthorized reproduction. For one, it is deemed that if the cultural good is fairly used, the stipulations under the copyright law are not imposed, that is, with relevance on how work or cultural good is being used as denoted by U.S. Copyright Office (2011). More so, the use of the work or good for purposes such as education, religion and for the government, it is not also subjected to the conditions that fall under the infringement rule of the law. In that regard, it has become significantly essential to first determine the process in which the work or good is obtained, deeming that it is one of the most fundamental principles or bases which can identify whether it

has been used for a valid reason and not for personal interest (U.S. Copyright Office, 2011).

Actually, it is quite contrasting on how United States has made a stand regarding the use of authored works or cultural goods and the concept of free speech in the country. As what many people have denoted about the copyright law, it definitely puts a limitation on how the public can be able to exercise their right to free speech. However, this does not consistently align with the US Constitution, considering that the country, being one that highly promotes democracy and freedom. This means that the citizens of United States are given the liberty and the autonomy to express themselves without having the need to worry about government rules and policies that limit their ability to voice out their opinions and point of views (U.S. Embassy, 2013).

In addition to this, the context of what the Copyright Law of United States is entailing basically does not entirely mean that the people's way of expressing is limited because the law has provided a demand regarding the use of work and cultural goods online. The law itself is very specific in emphasizing that what is only prohibited is the unauthorized use of someone else's work; however, in accordance with the outlined exceptions included. In addition to this, it is also significantly considered that freedom of expression is not limited in a way that people are impeded to express freely, because they too are still given the opportunity to speak up and voice out their opinions and individual subjective standpoints. It is specifically implied that the copyright law is not intended to limit the exercise of the right to free speech of the people but is only a reminder that there is a limitation to this freedom. People cannot just go on posting and using information that they obtained from the works of other people for their personal benefit because just like them, it is also the right of the authors of the work or good to be protected and to have their works be copyrighted and protected as well. In that manner, the US copyright law is not for the purpose of putting a restriction to the free speech of the people in the country, but to properly educate them regarding the extent of such right.

In the context of the immense change in the way people communicate and exchange information because of the rapid growth and development of digital technologies, the issue with regards to the rights of the people to express themselves freely and without restrictions and the legal impositions of the US government on the copyright ownership is actually becoming more immense as well. Freedom of speech does not necessarily mean having to express ideas by using those which are owned by other people. In fact, the scope in which the US has covered on its copyright law is very specific and broad in order to ensure that the copyright grounds are particularly determined and at the same time, understood by the public.

## CONCLUSIONS

In conclusion, the new age of technology has paved way for new rules and regulations that are applicable for it. This would regard the cyber era where people are fond of using the internet as a communication tool that is capable of sharing music, videos, etc. Which are copyright protected. With the new trend, there are already rules that for users that can protect their ideas and products in the new age of technology. This copyright rule, however, has been obstructed by the people's freedom of speech and is also hindering the freedom of information. However, it has been given to a conclusion that the copyright law has limitations and does not, in any way, give any hindrances to the freedom of speech or information but only protects the rights of the owners and authors. In relation to the cyber-age technology, the copyright protects the author's rights in his/her materials/ work of art, in the web.



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