



COPYLEFT AND MORAL RIGHTS: A VIABLE SOLUTION TO ENHANCE THE INTERESTS OF COPYRIGHT OWNERS IN OPEN ACCESS MODELS

By Karthiayani A

From Alliance School of Law, Alliance University, Bangalore, Karnataka.

Abstract

Humanity has come a long way since its conception. And it has since progressed slowly towards a better world. Human beings tend to develop new ideas about knowledge that has already been accumulated and thereby constantly improve existing knowledge. Copyright soon came into being after discovering their value, preserving these ideas and giving their thinker a monopoly on it. Nevertheless, the idea of "copyleft" came later, standing for how a free movement of information and knowledge would take place in society. Where the copyright license authorizes the author to prevent others from using, altering or reproducing his work, Copyleft, on the other hand, authorizes the author to distribute his work freely to the public for use, adaptation, alteration or reproduction purposes. Copyleft is strongly supported and criticized respectively by socialists and capitalists. Yes, copyleft is a noble idea when measured in terms of what benefits society. Not only can its compliance benefit society as a whole, but attempts to implement contracts under Copyleft will also show our society's tolerance towards people's will. The popularity of copyleft licenses not only represents people's will, but also shows the shifting process of societal perspective towards means of production..

Copyleft should be enforceable only if these terms and conditions are agreed by the parties. It should not be enforced or built in accordance with other intellectual property laws. Ultimately, every law's ultimate goal is to promote society's progress and improve every civilization. Open access licenses are a derivative of the copyleft movement. In this paper the implicit recognition of author's moral rights in open access movements will be examined. The paper will also focus on the relevance of moral rights in open access licenses. Also, the effects of recognizing moral rights on the economic interests of the copyright owner will be analyzed.

Keywords: Copyright, copyleft, open access models, moral rights.

1. Background

In 1976, the word 'copyleft' appeared in 'Dr. Dobb's Journal'. Copyleft licenses were used with computer software in the beginning and it has grown into 'Free Software Movement' later. The founder president of "Free Software Foundation", Richard Stallman, developed the first copyleft license in 1984.

There was widespread discontentment over profit-oriented intellectual property system and neglect of the requirements of general public. The working of copyright, patent and trademark was better suited for companies and not common people. Copyleft arose as a natural revolt against this, backed by a strong desire for intellectual freedom and need for sharing information openly. Copyleft inculcated a culture of sharing, using, and reusing intellectual creations.

Copyleft and open access movement have paved the way for a new method of protecting moral rights of authors of digital content. Copyleft movement is considered as an add-on to copyright law, helpful both to



users and authors. Copyleft guarantees free dissemination of knowledge on condition that attribution is given to authors. Public gets information, and the moral right of author is respected. Copyleft movement has not produced any new legislation. But, it safeguards users' interest and authors' interest. Copyright is not done away with but is applied in a different way. Copyright remains deactivated till a breach of moral right occurs.

2. Objective of the study

Copyright protection grants the copyright owner exclusive rights to reproduce, distribute, make derivative works, and publicly display or perform a work. In order to enjoy any economic reward from the work, the copyright owner depends on sales. But, the monetary interests involved in copyright restricts public access to knowledge. From a copyleft perspective the public owns such works. Copyleft is fundamentally against restricting access to knowledge. Open access licenses are a derivative of the copyleft movement. In this paper the implicit recognition of author's moral rights in open access movements will be examined. The paper will also focus on the relevance of moral rights in open access licenses. Also, the effects of recognizing moral rights on the economic interests of the copyright owner will be analyzed.

3. Research Problem

The Copyleft movement provides an alternative to copyright protection by proposing that authors release their works under the terms of a license to the general public. The implicit recognition of

moral rights in the open access model offers to enhance the rights of the copyright owner.

But, is it sufficient the economic rights of the copyright owner in a digital space should be analyzed.

4. Scope

The Copyleft movement questions the necessity of the exclusive rights granted to a copyright owner. According to this movement the copyright on certain works should be relaxed so that it can be used for non-commercial and academic purposes. A limited copyright on works should be available to the author. Copyleft should not be imposed. It should be construed harmoniously with other provisions of intellectual property laws.

5. Research Questions

- 1) Are the exclusive rights granted under Copyright laws restricting public access to knowledge?
- 2) What is the rationale behind the recognition of moral rights of author in open access licenses?
- 3) Does the recognition of moral rights compensate for the alleged reduction of economic rewards to the author in the open access model?

6. Hypothesis

Moral rights in open access models will enhance the interests of the copyright owner including economic interests.

7. Research Methodology

Doctrinal method of research will be used. While evaluating the rationale behind recognizing moral rights of the author in open access models two variables will be used: the moral rights of the copyright owner and the open access licenses attributed to the Copyleft movement. The research will be based on available primary as well as secondary sources. Primary sources include



the Indian Copyright Act, 1957 and several case studies. Secondary sources like books, articles published in various journals and newspapers will be used.

8. Introduction to the topic

The copyright law in historical accounts is known to be the legacy of technology. It has undergone systematic changes keeping in view the nature, extent and domain of technology involved to secure the public interest of creativity, innovation and ingenuity.¹ Its main thrust is to provide adequate incentives to authors and creators of diverse copyright works, on the one hand, and make such works accessible to the public on the other hand.² The copyright law had to adjust itself between the need

to award the creator and the desirability of making such works public.³ With the ubiquity of the Internet as a unique and wholly new medium of worldwide human communication all over the world, shrunk into a digital global village, the protection of copyright works has become a serious concern for lawyers, as well as, the other stakeholders.⁴ The Internet together with P2P computer networks makes it possible for an increasingly larger number of individuals to participate in collaborative information production, thereby enervate the efforts to provide incentives to original creators of intellectual property.⁵ The Internet enables

the nearly-instantaneous, original quality reproduction of and world-wide, lightening-speed dissemination of copyrighted works. The above restricting features of Internet make itself emerge as “the largest and strongest copy machine in the world”⁶ The puzzles and paradoxes underlying the digital dilemma, by nature, are connected with the dichotomy between the notion of “information wants to be free” and the demands for stronger proprietary control of information in the digital environment.⁷ This paper focuses on the battle between producers of content and free riders; between copyright industries and their own consumers; between taking profit from content and making it free. It is a battle fought on many levels, an economic level, an artistic level, a legal level, and an ideological level.

8.1. Copyright and its effects on public access to knowledge

Access to educational materials is crucial for the development of human capital, especially in the field of higher scientific and technical education, in order to contribute to developing countries' economic progress.⁸ Access to affordable teaching and learning materials is required for educating people, colleges, universities and libraries.⁹ Access is determined not only by a product's availability but also by its affordability.¹⁰ The cost of educational materials when prohibitive inhibits educational

¹ Andrew Murray, *Information Technology Law*, 4th edn, Oxford Publications (2012).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Consumers International Asia Pacific Office Working Paper, 'Copyright and Access to Knowledge Policy Recommendations on Flexibilities in Copyright Laws', 2006. Available at https://www.eifl.net/sites/default/files/resources/2014_09/a2k-report.pdf. Last accessed on 05/10/2019.

⁹ Ibid.

¹⁰ Ibid (n 8).



opportunities, hence the need to ensure that educational materials remain affordable.¹¹ Copyright-protected educational materials are not always affordable.¹² The ability to assign and license copyright has enabled various industries to be sustained, such as the book publishing industry and the music publishing industry.¹³ Such industries enabled by copyright determine the price and availability of copyrighted material.¹⁴ As a result, large quantities of educational materials are sold at a rate beyond market scope in developing countries. This is an obstacle to obtaining information, thereby denying the right to education.¹⁵

8.2. Genesis of Copyleft

Some claim that copyright has gone too far, protecting commercial culture at the expense of non-commercial, favoring private rights holders to the detriment of the public domain, and inhibiting flows of inputs required for the ongoing development of art and intellect.¹⁶ There was widespread dissatisfaction with the profit-oriented system of intellectual property and disregard of the general public's requirements.¹⁷ Copyright patent and trademark practice was better suited for companies rather than for ordinary people. Copyleft emerged against this as a spontaneous rebellion, backed by a strong desire for intellectual freedom and the need to share information freely.¹⁸ Copyleft instilled a philosophy of exchanging

technological inventions, using them, and rejecting them. In general, software development has seen the emergence of "open source" or "copyleft" licensing, a prominent example of which is the GNU General Public License ("GPL").¹⁹ A GPL uses existing copyright law to try to permit the free use of software while at the same time prohibiting its sale or advertising, using an owner's existing rights.²⁰ Similarly, Creative Commons, a U.S.-based non-profit organization, attempts to build on current copyright law by providing a collection of "some rights reserved" licenses exclusively to authors and artists.²¹

Software companies supplied proprietary licensed softwares without revealing source code to block user-end improvements.²² In addition, copyleft movement introduced a new type of software license that provided the user with the source code to modify and use the software as required. Clearly, copyleft was opposed to information privatization and copyleft licenses secured end-users uncurtailed freedom and interest.²³ Copyleft licenses make the work much more accessible to the general public and the terms of use are transparent from the license itself, including those relevant to the author's moral rights.²⁴

Copyleft is fundamentally not very different from copyright. The author is protected by copyright and the rights remain with the

¹¹ Ibid (n 8).

¹² Ibid (n 8).

¹³ Ibid (n 8).

¹⁴ Ibid (n 8).

¹⁵ Ibid (n 8).

¹⁶ Adrienne K. Goss, 'Codifying a Commons: Copyright, Copyleft, and the Creative Commons Project', *Chicago-Kent Law Review*, Vol.82, Issue 2, 2007, pp. 963-998. Available at

<https://scholarship.kentlaw.iit.edu/cklawreview/vol82/iss2/24>. Last accessed on 29/8/2019.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid

²¹ Ibid.

²² Ibid.

²³ Ibid (n 16).

²⁴ Ibid.



public under copyleft. Most common with computer software, copyleft licensing, spread over time to other areas of creative work. In 2000, the Free Art Licenses were issued for artistic, sculptural, musical or performance works. Most music libraries currently use these licenses.²⁵

In addition, for the benefit of the general public, copyleft and open access suspends copyright. But the copyright law is enforced if conditions stipulated are violated. The campaign for copyleft and open access has paved the way for a new way to protect the moral rights of digital content authors.

The interplay between copyright protection and public's right to access knowledge will be discussed in the following chapter.

9. Copyright and access to knowledge

10.

10.1. *Copyright and dissemination of knowledge in the digital era*

Copyright is a successful concept. It is a well-established legal tradition that has evolved over the years and has shown its exceptional ability to adapt to social change. For common law countries, copyright law traces its history back to the Statute of Anne, passed in 1710.²⁶ Civil law countries are not far behind, having settled comfortably by the latter part of the eighteenth century on the principles of copyright.²⁷ But now there has been a dramatic change. Copyright survival is at risk.

At first glance, the obvious cause is technology.²⁸ There can be little doubt that technological change has brought completely new pressures to bear upon the world of copyright. With unparalleled ease and fluency, information is written, replicated and shared via digital media.²⁹ The crucial moment in a work's life has become its digital format debut. Once a work is digitized, with practically no constraints, it can be translated into different media, transmitted to an entity, distributed to the public, or shared across borders. The digital environment has the unparalleled ability to relax traditional information flow constraints.³⁰ This makes middlemen unnecessary.

This is the copyright industry's greatest fear: redundancy.³¹ How can they confront a new reality in which they no longer have the position as disseminators of knowledge? Two possible strategies were explored in the response of industry to this challenge. The first is fighting fire with fire- in this case, technology with technology, as the expression goes.³² Industry initially supported the design of digital "locks" making data unavailable, but the technique has had limited success.³³ There is no completely secure encryption software, so code-breaking is a persistent threat.

A second and more complex approach has been to create a more abstract battle-to combat the proliferation of digital media by trying to impose legal restrictions on the use of copyright works where either technical

²⁵ Ibid.

²⁶ Mira T. Sundara Rajan, *Moral Rights-Principles, Practice and New Technology* (1st edn, Oxford University Press, 2011), pp. 487-537.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.



constraints do not exist or can be circumvented.³⁴ But here, not only has corporate strategy tried to hold on to existing rights. Alternatively, copyright companies have also tried to expand their rights in the digital world-lobbying governments to implement copyright legislation and pursuing litigation against groups and individuals who may be held responsible for the infringement of copyright. Industry's approach to new media was all-inclusive.³⁵ Copyright laws must prohibit any activity involving the replication and communication of works in digital format.³⁶ In practice, this means that any digital use of a work will require the copyright owner's permission and a fee would be created for every digital transaction.

But that's not how copyright works. Historically, only certain applications of a work fall within the laws of copyright. A bright line, in particular, typically distinguishes the use of a work from private use for commercial purposes, which is outside the scope of copyright law.³⁷ Much of what happens in the digital age involves activities that resemble what is usually considered to be private use of works.

10.2. Balancing the interests of the copyright owner and public

There is a deeper reason behind it: social choice.³⁸ In the copyright industry, in general, actors have made contentious choices about how to adapt to new technology. In most cases, such decisions have failed to address social change, of which there is no question that an inflexible

copyright law will become a target.³⁹ Established relationships are going to change-authors and artists, publishers and

record labels are all in new situations. The existing power balance is altered. Current business models need to be modified in the copyright industry.

Change is inevitable, but none of it means the demise of the principle of copyright. If the loss of copyright is indeed at hand, at least part of the blame rests with the tactics of key players in the copyright industry.⁴⁰ They also helped create the greatest feeling of anti-copyright in history.⁴¹

To some extent, the copyright industry's position is understandable. They are engaged in a fight for survival, and from their viewpoint, the use of any weapon at their disposal is fully justified. The reaction may be disproportionate-tactics such as persecuting people in cases of copyright represent a lousy approach to public relations and weaken public sympathy for entertainment companies' actual plight.⁴²

Yes, their approach's aggressiveness has generated a backlash. The word "free" may summarize the reaction.

"Free" for different people means different things.⁴³ For most members of the public, "free" means available without charge in the form of music downloads. Yet "free" software and "free" culture supporters are saying something else. The dynamics of the copyright dispute are highly polarized, with industry pressing for maximum protections increasingly effectively, on the one hand,

³⁴ Ibid.

³⁵ Ibid (n 26).

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.



and anti-copyright campaigns on the other, calling for the abolition of most, if not all, knowledge-related copyright restrictions.⁴⁴ Industry and protesters are the protagonists in this drama.

There is no real reason why the open access movement's sympathies should be against authors. Nonetheless, the rage of open access campaigns is rightly aimed at the copyright works' corporate owners, who enjoy the copyright control's financial rewards overwhelmingly. That point brings us back to the issue of freedom in the digital age and what it entails Lessig's definition of "free" is an appealing one, as is his call for a balanced approach to copyright law.⁴⁵ It makes eminent sense to lighten copyright restrictions.

When the issue of lightening copyright restrictions is discussed, the impact of such relaxations on the moral rights of an author should be considered. Moral rights are not expressly mentioned under open access models but an implicit recognition is given. The relevance of such a recognition will be the primary focus of the following chapter.

11. Moral rights of Copyright owner in Open Access Models

Although there are several moral rights, the rights of attribution (paternity) and integrity are the most widely recognized moral rights. The right to attribution / paternity simply means that an author has the unfailing right

to associate his name with his own work.⁴⁶ According to the right of integrity the author also has the right to demand that improvements or inconsistencies remain uncompromising in the artistic integrity of his work-although in most jurisdictions the author should prove that his reputation is at stake in the matter.⁴⁷ The nature of the interests of attribution and integrity is the capacity of the author to respond by asserting his rights in a court of law to the mistreatment of his work.⁴⁸

"With the arrival of the information society the question of moral rights is becoming more urgent than it was. Digital technology is making it easier to modify works."⁴⁹ This statement clearly states that the explosive growth of Internet and online services and technical resources allowing users to directly access and exploit creative works has resulted in a massive violation of copyright, including moral rights, as well as non-performance of the author's moral right.⁵⁰ The ability to copy, modify and redistribute works of art by means of information technology has made it extremely difficult for authors to control the use of their work and to assert their moral rights where problems arise.⁵¹

11.1. Challenges posed to moral rights in the digital age

The doctrine of moral rights faces three kinds of challenges in the digital age. First, copyright law has become the primary form

⁴⁴ Ibid (n 26).

⁴⁵ Ibid.

⁴⁶ Abhinav K. Mishra & Rupesh Chandra Madhav, 'Open Access Movement and Moral Rights: Rejuvenation of Digital Copyright', NLUD Press, 2015, pp.1-22. Available at <https://www.google.co.in/search?client=opera&q=Open+Access+Movement+and+Moral+Rights%3A+Rej>

uvenation+of+Digital+Copyright+Abhinav+K.+Mishra+and+Rupesh+Chandra+Madhav&sourceid=opera&ie=UTF-8&oe=UTF-8, last accessed on 17/10/2019.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.



of regulation governing new technology.⁵² For example, computer program and databases are protected as 'literary work' under copyright. With the addition of these kinds of new works, the conventional copyright law norms sometimes become insufficient to meet the needs of these kinds of new subjects, particularly in digital works such as computer programs and software databases.⁵³ The main problem with works relating to digital space is the question of authorship and originality.⁵⁴

The second challenge comes from new technology-generated creative possibilities.⁵⁵ The development in information technology has created numerous ways to create new copyright quickly and easily alter, implement and use existing copyrighted work.

Thirdly, 'new technologies have made it possible for members of public to intervene in creative works in a new way, making seamless and imperceptible changes.'⁵⁶ In case of open creative collaborative works authorship vests in the huge number of persons out in public. In these kinds of works, they can legally make seamless and substantial changes according to their choice. For the substantial changes made, they surely are the authors but the problem always arises about the recognition of moral right.

The moral right of integrity of the first and earlier author(s) is shaken when other authors modify the work according to themselves and while considering the entire

work or text for attribution purposes, the moral right of paternity is questioned.⁵⁷ And these rights are important to talk about as these are the author's intrinsic rights and mostly rights that are in perpetuity and can be exercised even after the copyright term has expired.⁵⁸ And also because even when author's economic right is clearly determinable or even clearly secured, it may be in question

11.2. Changes brought by Copyleft movement

Copy-left or open access movement's objective of free access to knowledge has helped creating a new way of protection to moral rights of author in digital contents.⁵⁹

The importance of moral rights in digital space has been summed up by Professor Mira T. Sundararajan in lines below, as:

"...an emphasis on moral rights may help, not only to redirect copyright reform in less developed jurisdictions, but also, to re-establish a balance among the different interests implicated in copyright on the international stage. In particular, moral rights may help to build a new alternative to copyright for the Digital Age".⁶⁰

Sure, digital content goes beyond the narrow scope of copyright law, and the new, non-economic, and fundamental defense of moral rights is the one that can only be used to take all digital content into the single copyright domain. But as we know, moral law itself was not sufficiently effective and the open access mechanism became the only viable thing to complete the above-mentioned

⁵² Mira T. Sundara Rajan, 'Moral Rights-Principles, Practice and New Technology' (1st edn, Oxford University Press, 2011), pp. 487-537.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid (n 52).

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.



objective and stop the copyright from dying, particularly in the copyright system of different countries. Although the copyright does not deliberately come before us in open access, but the truth is that

copyleft is not opposed to copyright, it's just a play of words. Open access uses the copyright as its armour and moral rights as its weapon and it collectively fights the complexities of digital contents in digital space.⁶¹

11.3. Benefits of Copyleft

Since the live use of the internet and PC is the part of life, the violation could be mixed with and without any benefit, and the defense of copyright, including moral rights, is weakened even by the use of this device.⁶² This incapacity has begun copyright's slow demise. "Copyright survival is under threat."⁶³ The open access movement has come to serve both ends as an add-on to copyright law; the end of the user as well as the end of the author. Since, copyright violation dilutes not only economic rights but also moral rights of author and it's not pertinent to stop the violation at all by means of protection or force, the open access makes the dissemination of knowledge without any excessive protection among the public on the condition that the attribution to its author is well provided.⁶⁴ Thus the public, when gets knowledge free, in turn back tries to respect the moral rights of author or contributor. The

reader then gets free access to information as a matter of right and author voluntary gets recognition among public and his moral rights are protected even in the very fragile kind of works i.e. digital contents.⁶⁵

11.4. Relevance of moral rights in digital space

The value of moral interests is generally recognized by open access campaigns. These movements are ideologically diverse, but moral rights seem to emerge in all of them from practical concerns about preserving the integrity of the open source environment.⁶⁶

The language of authorship's natural rights is explicitly—maybe disingenuously—rejected by the free software community but for creative individuals the copyleft community has a soft-hearted sympathy.⁶⁷

Moral rights in a digital environment should not only be remembered, but their recognition should also be extended in two important ways. First, a corresponding human right of creators should be established as access to knowledge becomes recognized as a human right.⁶⁸ Moral rights can provide the basic principles of such a right—disclosure, assignment and integrity Moral rights can also provide

the correct legal framework: the moral rights principle clearly prohibits the possibility of ownership or possession in businesses.⁶⁹ These are an author's personal rights, relying on a human being to invest and exercise them

⁶¹ Ibid (n 52).

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Abhinav K. Mishra & Rupesh Chandra Madhav, 'Open Access Movement and Moral Rights:

Rejuvenation of Digital Copyright', NLU Press, 2015, pp.1-22. Available at <https://www.google.co.in/search?client=opera&q=Open+Access+Movement+and+Moral+Rights%3A+Rejuvenation+of+Digital+Copyright+Abhinav+K.+Mishra+and+Rupesh+Chandra+Madhav&sourceid=opera&ie=UTF-8&oe=UTF-8>, last accessed on 17/10/2019.

⁶⁹ Ibid (n 68).



with meaning. It is important to recognize a human creative right, not only to protect authors and their works, but also to protect society as a whole from the consequences of losing touch with one's own humanity.⁷⁰ An integral part of human nature is the intellectual life. Technology cannot replace culture; neither man nor woman can be replaced by machine.⁷¹

Surprisingly, the second area of moral rights growth can take them into the field of economic rights. Much of the open access movement's mindset is focused on the "free" access principle.⁷² While both the free software movement and Creative Commons underline the value of liberty in an ideological sense, the Creative Commons licensing system also means freedom from payment, in practice. The "free" use model has its appeal and purposes in this sense.⁷³

11.5. *Interests of copyright owner in open access models*

As a matter of fact, all open access licenses preserve moral rights to the extent they apply. Unlike copyright, the open access licenses stipulate the provision of explicitly recognizing the moral right of paternity, when using the work of any author without even express consent or permission from him.⁷⁴ Moral rights are inalienable and rights *in perpetute*.⁷⁵ Most of the countries doesn't allow waiver of moral rights.⁷⁶ The open access license makes the work in public only without any copying restriction.⁷⁷

Actually any open access license, never takes away the copyright.⁷⁸ Rather, they impose an obligation on the user of that work to respect the moral rights of author in case if he wishes to continue use the work without the permission.⁷⁹ And even that person doesn't oblige to do the same the whole copyright including the moral rights imposes upon him.⁸⁰ For protecting moral rights of author it's a 'double edged sword', which in any case protects the same. Thus, open access has protected moral rights of author firstly in a 'double edged sword' manner, making them legally liable in either case and secondly making people liable to protect moral rights on their own by providing them right to free access to information, where cost is only to recognize and respect the moral rights of author, which in turn they do very happily; and thirdly by a whole new author- user relationship.⁸¹

Open access uses the protection of moral rights to defend and promote authors' integrity, which is the basic goal of this movement, but in the meantime it is the violation of moral rights that leads to invoke the mechanism of copyright against the possible infringement. The procedures for fundamental violation are the same, but they depend on the moral rights. Most of the world's copyright system recognizes moral rights, and copyleft also makes them enforceable where the copyright system does not properly recognize moral rights.

11.6. *Recommendations*

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Mira T. Sundara Rajan, '*Moral Rights-Principles, Practice and New Technology*' (1st edn, Oxford University Press, 2011), pp. 487-537.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.



The copyright schemes should accept open access licenses as providing better protection for digital content in digital space and rejuvenating copyright. This would also lead to better protection of copyleft and copyright-recognized authors' rights. The infringers would then have greater certainty of being detected and would try not to breach the license terms. It may provide a more legal way for writers to opt out under copyleft licenses to publish their works.

The consistency of open access licensing is necessary to take action before expressly acknowledging it in the copyright process. The proliferation of licenses displaying a variety of terms creates confusion not only between authors, but also between users and law enforcers. Under the auspices of one universal organization or group of countries, the licensing terms of different organizations must be uniform along the line through any guidelines or rules.

12. Conclusion

Open access movements and moral rights are likely to be sympathetic to each other in several respects. Both reflect anti-corporate approaches to creative work. Each of them focuses on individual rights in their own way. Indeed, the two ideals share common social concerns. Moral rights, through preserving the link between human personality and creative work, aim to preserve culture. Through encouraging people to use and re-use culture to create new culture, Copyleft aims to encourage it.

Both models have significance, but they will be unique in the culture that emerges from each. Even copyleft recognizes that there are limits to "creative destruction": even the "free" culture of copyleft cannot exist without any sense of preservation at all. This probably explains the migration of ideas

regarding moral rights into the copyleft, which considers attribution and integrity as important principles in the digital environment.

Moral rights will always need to be balanced against freedom of expression. In fact, the problem is one of balancing mutual rights and freedoms. Both the freedom of expression of the creator of a work and the expressive freedom of the public who seek access to it must gain adequate recognition. Recognition of moral rights as part of copyleft licenses will enhance the interests of the copyright owner in many ways. Users get free access to works and author's moral right is well protected. If these rights are violated copyright can be legally enforced. Copyright is not done away with but it is applied in a different way. Copyright remains deactivated till a breach of moral rights occurs. The copyright owner is not restricted from licensing out his works for a royalty and at the same time the licensees under open access models use it for dissemination of knowledge. The user of such licenses are not given the rights to commercially exploit the work without prior consent of the owner. The moment moral rights are violated the copyright law comes into play to protect the interests of the copyright owner. Thus, the hypothesis proposed can be considered to be proved to an extent.

The moral rights of the author are a way of recognizing and honoring creators-not only the authors of creative works, but also, the creator within ourselves. When the user of copyright works finally sees himself or herself represented in the author, society will actually be on the brink of an exciting transformation.



Bibliography

Primary Sources

Statutes

Indian Copyright Act, 1957.

Secondary Sources

Books

Andrew Murray, *Information Technology Law*, 4th Edn, Oxford Publications (2012).

David M. Berry, *Copy, Rip, Burn- The Politics of Copyleft and Open Source*, 1st Edn, Pluto Press (2008).

Mira T. Sundara Rajan, *Moral Rights- Principles, Practice and New Technology*, 1st Edn, Oxford University Press (2011).

S. Rajendran, *Copyright, Copyleft and Libraries*, 1st Edn, Sree Viswayogi Publications (2017).

Articles

Abhinav K. Mishra & Rupesh Chandra Madhav, 'Open Access Movement and Moral Rights: Rejuvenation of Digital Copyright', *NLUD Press*, 2015, pp.1-22. Available at <https://www.google.co.in/search?client=opera&q=Open+Access+Movement+and+Moral+Rights%3A+Rejuvenation+of+Digital+Copyright+Abhinav+K.+Mishra+and+Rupesh+Chandra+Madhav&sourceid=opera&ie=UTF-8&oe=UTF-8>, last accessed on 17/10/2019.

Adrienne K. Goss, 'Codifying a Commons: Copyright, Copyleft, and the Creative Commons Project', *Chicago-Kent Law Review*, Vol. 82, Issue 2 (Apr. 2007), pp.963-995, <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3609&c>

ontext=cklawreview, last accessed in April, 2007.

Arushi Maheshwari & Kartik Agarwal, 'Copyleft: Copying 'done 'Right'', *The Indian Journal of Law*, Vol. 4.1, 2017, http://docs.manupatra.in/newsline/articles/Upload/CD7EE46B-F529-42C7-AA95-899D5283C495.1-B_IPR.pdf, last accessed in 2019.

Consumers International Asia Pacific Office Working Paper, 'Copyright and Access to Knowledge Policy Recommendations on Flexibilities in Copyright Laws', 2006. Available at <https://www.eifl.net/sites/default/files/resources/201409/a2k-report.pdf>. Last accessed on 05/10/2019.

Chip Patterson, 'Copyright Misuse and Modified Copyleft: New Solutions to the Challenges of Internet Standardization', *Michigan Law Review*, Vol. 98, No. 5 (Mar., 2000), pp. 1351-1383, <http://www.jstor.org/stable/1290373>, last accessed on 19/06/2014, 14:11.

Fareed Ahmad Rafiqil & Iftikhar Hussian Bhat, 'Copyright Protection in Digital Environment: Emerging Issues', *International Journal of Humanities and Social Science Invention*, Vol. 2 Issue 4, 2013, pp.6-15, [http://www.ijhssi.org/papers/v2\(4\)/version-3/B240615.pdf](http://www.ijhssi.org/papers/v2(4)/version-3/B240615.pdf), last accessed in April 2013.

Ira V. Heffan, 'Copyleft: Licensing Collaborative Works in the Digital Age', *Stanford Law Review*, Vol. 49, No. 6 (Jul., 1997), pp. 1487-



1521,
<http://www.jstor.org/stable/122935>
1, last accessed on 25/12/2015
12:27.

Myra Tawfik, 'History in the Balance: Copyright and Access to Knowledge', University of Windsor, 2010, <https://scholar.uwindsor.ca/lawpub/17>, last accessed on 18/10/2019.

Vikrant Narayana Vasudeva, 'Open Source Software Paradigm and Intellectual Property Right', Journal of Intellectual Property Rights, Vol.17 (Nov, 2012), <http://nopr.niscair.res.in/bitstream/123456789/15019/1/JIPR%2017%286%29%20511-520.pdf>, last accessed on 29/08/2019.

