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Copyright or Right-To-Copy? Towards the Proper Balance between Freedom of Expression and Copyright in Cyberspace

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Abstract

This article examined the renewed theoretical approaches to seeking the proper balance between the human right to freedom of expression, opinion and information on the one hand, and copyright on the other hand. This analysis was done with regard to the context of current information society's digital environment. This article showed that the way of striking a renewed balance between the two is by reforming the existing copyright law. It is recommended that, an upgraded copyright law must be able to prevent the tensions between exclusive rights and the right to freedom of expression.

Keywords: Copyright, Freedom of Expression, Harmonization, Human Rights, Information Society, Restrictions and Limitations,

Introduction

Amidst the serious problems affecting the development of the existing information society is the problem of collision and conflict between fundamental human rights, intellectual property rights [IPRs] and copyright. The most significant aspects of this general problem is the tension formed as a result of conflicting rights expressions, especially within the digital environment (Voorhoof, 2015).

The conflict between copyright and human rights is currently becoming very tangible as the global cyberspace advances. In order to build a proper [*fair and effective*] new balance between these contradictive rights, one has to battle with some important conflicting issues. Fundamental among these issues is the effort needed to simply contest the scope of copyright. Additionally, seeking a new balance is desirable to avoid the underestimation of the position of authors' economic and moral rights against the achievement of an unlimited exercise of the right to freedom of expression, opinion and information. For that reason, there emerges the necessity to examine new theoretical perspectives (Feyter, & Pavlakos, 2008; Sané, 2007; Winston, 2010).

These new theoretical perspectives should incorporate a more effective, fair, explicitly defined balance between interests of copyright owners on the one hand, and users' right to the freedom of expression, on the other hand. In addition, profound rethinking of global legal systems

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and other stakeholders will be needed to construct this novel balance, both in practice and the enactment of appropriate legislative measures. At the level of legal doctrine, the interrelation between the freedom of expression and copyright [*in the light of new approaches*] must take into account, the new nuances of their realization in the context of the digitized information society.

As a result, this article examined the transformed theoretical approaches to seeking the effective and fair balance between the human right to freedom of expression and copyright within the digitized information society.

Methods

Given the problem of striking the proper balance between the freedom of expression and copyright in the modern information society, this analysis is founded on the following research questions regarding intellectual property [IP];

1. What are IPRs – tools for or barriers to exercising of digitized human right?
2. Are they tools for providing an open information environment or tools for numerous restrictions?

{*These questions are fundamental for global e-development of Information and Communication Technology [ICT]. There are solid reasons to recognize that the clear determination of the nature of IP in the ICT age and nature of contradiction between copyright and free expression would serve better, the transition unto a balanced system of digitization*}.

3. What is regarded as tensions; internal or external conflict?

{*There are lots of arguments concerning the nature of an external conflict between human rights and copyright. Where freedom of expression and copyright are being seen as something alien to each other, copyright is explicated as the barrier to the full exercising of information rights. This often limits the access to information contained in an author's works*}.

This article is based on reviews of existing and past international data and documents on IP, IPRs, Copyright, Human Rights, Information Society, and Freedom of Expression.

Results

The findings are organized into the following themes. These include; (a) freedom of expression and copyright: most sensitive issues, (b) the human rights, the free expression and copyright, and (c) copyright through lens of the dichotomy 'idea – expression'.

Theme 1: Freedom of expression and copyright: Most sensitive issues

It is fair to say that tensions between copyright and the freedom of expression are regarded broadly in the context of possible restrictions on the freedom of expression. *"If one accepts the idea that freedom of expression is a dynamic freedom, one must accept that not only may it expand, it may also be reduced. And if nature of freedom entails – as for any other freedom – the question as to what the limits to freedom of expression are, who should fix them and what the consequences are if these limits are not respected"* (Zeno-Zencovich, 2008, p. 2). It is noteworthy that the freedom of expression is no absolute right at all. It is therefore, subjected to numerous restrictions on legible grounds and specified by international human rights law.

The freedom of expression and information can really be limited under the copyright law. This fact evokes great anxiety. It seems the anxiety has gradually risen up in the modern democratic society, though copyright is no foundation for an automatic restriction on the right to free expression, opinion and information. In a different way, copyright dilutes the freedom of expression and even undermines them. It is one of the sorts of private-property rights that serves as the foundation for liberal and democratic society and its economy [e.g. *viewed as the legal primacy*] (Smith, 2007). Hence, copyright can be perceived, in a way, as a limitation of the right to freedom of expression and the barrier to its realization respectively.

In effect, none of the restrictions of the freedom of expression, on the grounds of copyright protection may be imposed by authorities. This condition is possible if it is clear that exercising the right to freedom of expression gives effect to grave violations of exclusive rights of copyright holders. These restrictions have to be prescribed demonstratively by the national law and be consistent with international law. As the European Court of Human Rights [ECtHR] suggests, non-pertinent and unbalanced restrictive interferences with the right to freedom of expression and

information risk have a 'chilling effect' on the democratic society and its development (Voorhoof, 2015).

The freedom of expression, being subjected to various limitations and restrictions remains definite vis-à-vis the various branches of national laws (Voorhoof, 2015). Copyright cannot have abstract external and internal limitations to the freedom of expression. All the same, a case-law of the European Union [E U] and the ECtHR demonstrates that, the right to the freedom of expression and information can acts as a concrete constraint of copyright. The point is that, copyright should take into account the restrictions placed on the freedom of expression due to the interest of copyright holders in the digital environment (Voorhoof, 2015). In a more critical perspective, the freedom of expression has to respect copyright because copyright as a part of the right to property, needs protection and respect.

A disrespectful relation to copyright, that is one of the conditions of cultural and economic progress, necessitates tensions and abuses of authors' exclusive rights [*these interests are imperiled by the exercise of the freedom of expression*]. In this case, the right to freedom of expression is not seen as a remedy for the infringement of copyright. In other words, the freedom of expression should not be eccentric as to another group of interests [e.g. *interests of holders of exclusive rights*]. This idea is consistent with some generalizations of Daniel J. Baum. He stressed the need for balancing the human right of freedom of expression against other legitimate interests. *"Freedom of expression principles can come into play in numerous settings"* (Baum, 2014, p. 12).

From our analysis, copyright only creates some difficulties vis-à-vis the exercising of freedom of expression, rather than blocking its full realization. According to Craig (2011), *"if the freedom of expression protects individual's rights to express herself without limitations imposed upon the content of her speech, copyright prevents the individual from expressing herself through another's copyrightable expression"* [p. 203]. However, signed barriers are by no means absolute also because of rules on authorized use of author's content. Erected barriers are found in certain situations, to be precise; (a) situation of imbalance between interests of authors and users, and (b) the legacy legislation in the area of copyright protection.

In finding the agreed common ground between the copyright law and the freedom of expression, the debate on implementation of the ACTA [*Anti-Counterfeiting Trade Agreement, 2011*] in Europe, and the SOPA [*Stop Online Piracy Act, 2011*] and the PIPA [*Protect Intellectual Property Act, 2011*] in the United States of America had exhibited some challenges. These clearly revealed that, attempts to strike the balance between rights of authors and rights of users are not easy, especially when governments are perceived by relevant stakeholders as responding much more to pressure from economic entities, safeguarding mainly their profit margins (Benedek, & Ketteman, 2014).

Theme 2: The human rights, the free expression and copyright

The complexity of this conflicting relations is that, copyright is not just recognized as private-proprietary entitlement, but also as one of the fundamental human rights. This recognition permits the transition from the context of the problems of copyright protection to that of what is protected [*originality, idea, data, form*] and the scope of exercising exploitation rights. This approach ignores the awareness that copyright is also a human right. Of course, this fact complicates the understanding and possible resolution of the assumed conflict between the two. Nevertheless, it allows for an opportunity to upgrade the status, application of copyright and to renew the understanding of its enforcement as a law. This is done in the vein of a need for shift of copyright paradigm in accordance with the spirit of information society and the full realization of the right to freedom of expression. Thus, there is a complex problem of scrutinizing the correlation between copyright, [*as one of the human rights*] and the other human rights (Council of Europe, 2008).

Copyright, among other things, has the status of the human rights due to such rights like; the right to property and the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author [*Article 15(1)(c) of the International Covenant on economic, social and cultural rights/ICESCR*]. Therefore, the human rights approach to IPRs in general and copyright in particular is valid in many ways (Chapman, 2002; Helfer, & Austin, 2011; Helfer, 2007; Yu, 2007).

But unfortunately, the right to protection of the moral and material interests of creators is often not mentioned within the catalog of economic, social and cultural rights (Donnelly, 2003;

Helfer, 2007; Rehman, 2009; Ssennyonjo, 2010). This is an essential deficiency in the legal doctrine. However, at the same time, amidst scholars and activists, there is a conveyed issue on clarification of obligations provided for by the ICESCR. By ratifying or acceding to the Covenant [ICESCR], States parties freely assume a wide range of binding obligations. "*However, the nature of the obligations that it imposes has been the subject of controversy*" (Sepúlveda, 2003, p. 2).

At once, the typology of States Parties' obligations has been elaborated in detail in the international legal doctrine and this includes obligations to respect, protect, fulfill [*facilitate, provide, promote*] these rights (Chapman, 2001). Besides, there is a modest consensus on scope of these states' obligations. As Mary Dowell-Jones argues, "*the normative composition of socio-economic rights in international law is therefore much more fluid than of civil and political rights, with states agreeing to achieve them progressively to the maximum of available resources rather than undertaking to respect and to ensure them as is the case with civil and political rights*" (Dowell-Jones, 2004, p. 54).

Regarding states' obligations in area of IPRs protection, there are several detailed obligations enshrined in the body of international legal instruments. The obligations under these instruments are implemented at the national legislative level. Apparently, this circumstance leads to an emergence of a dissonance - accompanying the encompassing copyright and the freedom of expression. In this sense, it is difficult to assert that IPRs, including copyright, is the marginalized range of rights in comparison with other economic, social and cultural rights as Croven (1998) had stressed. The obligations of states under Article 15(1)(*c*) of the ICESCR are expressed clearly and exist as an autonomous subject matter. More so, with regard to protection of moral and material interests of creators, the states' obligations are sufficiently obvious. The right to protection of works of mind is an immanent element of author's rights.

The departure of human rights-based approach to copyright from the human rights of authors belong to the second generation of international human rights. Indeed, "persistent false distinctions between civil and political rights, and economic, social and cultural rights, and lack of understanding of the legal nature and content of economic, social and cultural rights have undermined effective action on economic, social and cultural rights" (Clapham, 2007, p. VIII). We propose that the nature of copyright as a human right is in twofold. On the one hand, copyright is a type of the human right to property, and, on the other hand, it may be viewed undoubtedly, in a way, as result of the free expression and free creativity. [*Incidentally, copyright could be examined as the human right in the context of the right to freedom of expression and right to free creative activity*]. In both cases, copyright can also be guaranteed, for example, under the ECHR and the ICESCR as the human right or under the EU's Charter of fundamental rights as the fundamental rights.

As it can be seen, the ICECR recognizes such author's rights as moral rights. Indeed, the digital environment functions as a space for the freedom of expression. This affects not only the exclusive (economic), but also the moral rights of authors. The moral right means that the creator has continuing interest vis-à-vis ensuring respectable treatment with his /her work. While the creator transfers the exclusive rights to another, and therein losing the economic interest in created works, he (or she) retains an inmost linkage with one's own works. Anyway, the digital environment affects similarly not only the exclusive, but also his (or her) moral rights. The creators are especially interested in integrity of their created works, as they can undergo some form of modification. This is becoming easy on the new technological platform.

The '*human rights-based approach to copyright*' gives rise to the fundamental methodological starting point point for reconciling copyright and the right to freedom of expression [such as '*the principle of indivisibility and inseparability of human rights*']. This principle is the firm rule to ensure an effectively balance of public interest in the free expression against the interests of copyright owners and conversely. Furthermore, this principle also serves as the background for settling the problem of reconciliation of such analyzed category of rights, that is, the real problem of law because one right is not seen as having more weight than other rights. This principle has been highlighted and elucidated in the current international law doctrine (Eide, 2007; Rehman, 2009; Winston, 2010).

"*The indivisibility and interdependence of all human rights – civil, cultural, economic, political and social – are fundamental tenets of international human rights law, repeatedly reaffirmed, perhaps most notably at the 1993 World Conference on Human Rights. This has not*

always been the case. Indeed, human rights advocates had to devote immense effort to achieve the normative and the practical recognition of the interdependence of rights. Indivisibility and interdependence are central principles of human rights, as is the inherent dignity of human being, participation and gender equity" (United Nations, 2005, p. 4). It could be regarded as an initial theoretical ground of mitigation the tensions between various international human rights, including tensions between copyright and the free expression. As it was to be expected, the implementation of this principle is a difficult problem. Noted by Sané (2007), "*while the prioritization of one or other category of rights should have disappeared after 1993, this is unfortunately far from true*" (p. 2). This same conclusion had been confirmed by Feyter and Pavlakos (2008). The balance-based approach to privacy has therefore been outlined in Clapham's (2007) work. In our opinion, the contradiction between copyright and the freedom of expression is a similar case.

From the perspective of the above stressed principle, the confrontation of IPRs and the freedom of expression, associated with the rights to free opinion and information, as well as other international human rights, raise long-standing issues regarding the connection between different generations of international human rights. The dilemma is to find the balance as a ground for sufficient realization of all internationally recognized human rights. The increasing relevance of their protection refers to such core guarantees, as the wide principle of balance in the international human rights system, whereas the differences between sets of rights, including political, civil, economic, social and cultural rights, are claimed. In conjunction with the said dilemma, the models of relation between copyright and the freedom of expression are determined by approaches having different insights into the status of these rights in the international system of human rights.

The current philosophical paradigm of international human rights law denies the acceptability of contradiction between internationally recognized rights, belonging to one or different sets of international human rights. The Vienna Conference in 1993 has defined the core principle of international human rights law, such as the above-noted principle of universal, interrelatedness, interdependence and indivisibility of human rights. Under para. 5 of part No 1 of the Vienna Declaration and Programme of Action endorsed by the Vienna Conference on human rights stated that, "*while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*"

On the topic of tension between copyright and the freedom of expression, it should be mentioned that it is a tension within the international human rights system but having derivative character. Of course, there are some theoretical conditions to recognize copyright as one of the international human rights. Likewise, it is also relevant to the second generation of international rights (Torremans, 2004, p.5). However, the fact is certain, copyright is mainly protected and usually in practice under national, supranational and international instrument in the area of intellectual property. This coverage excludes the ICESCR or the ECHR aiming at protection of economic, social and cultural rights.

Theme 3: Copyright through lens of the dichotomy 'idea – expression'

The human rights-based approach to solving the problem of reconciliation between the human right to freedom of expression and copyright may be justified by the information and expression aspects of copyrighted works. As it is evident, copyright directly relates to the freedom of expression and information that is founded in the context of the new methodological perspective. According to Sané (2007), "*many human rights can be considered as multidimensional. The right to education could be qualified as a social and cultural right as well as civil right… The right to freedom of expression is certainly a civil and political right. However, it could also be considered as a cultural right?*" (p. 2). Bearing in mind of this approach, it will be true to suggest that copyright – having aspects of information, intersects with information rights. Although these groups of rights [i.e. copyright and information rights], are related to different generations of human rights, namely; first and second accordingly, the intersection is obvious.

Within the scope of copyright, it should be noted that the creative results are more than that of information. Since it has such fundamental property such as creative self-expression of creator's individuality. Therefore, copyright deals with protection of expression of ideas or information

reaching necessary threshold of originality with regard to literary, artistic and musical works. Despite the fact that original creative works depict some level of expression [i.e. in-most depths of mind], they obviously have information aspects viewed through lens of the dichotomy *'idea – expression'*. However, these aspects are of special nature. Because creative works are significant for both culture and society, and at the same time have certain economic worth, they ought to be disseminated and used in conformity with the legal order. In effect, their use should be grounded also on rules of intellectual property law like copyright. Consequently, this forms the basis for transforming the exclusive rights of the creators to copyright holders as legal monopoly in the area of using exploitation rights [*reproduction, public communication, adaptation, translation and so on*]. For example, it is generally known that copyright offers the exclusive rights - that can be transferred, to creators for a fixed number of years. The exercise of these rights offer them the privilege to control the over use of their works [*namely to copy, print, record*].

Traditionally, the copyright law has primarily dealt with the protection of the right of owners [*be it creators or not*], to exploit creative works economically. More so, the exclusive rights are concrete form of property rights protected by Article 1 of Protocol 1 of the ECHR. Contrarily, the exclusive rights due to copyright are significant to the culture of society and its economy. The right to use creative works by the public [*that is the present heterogeneous commonality of interested users*] is the same for culture and science or particular information having specificity amongst other information flows. In essence, artistic and literary works are unique examples of creative expressions in conjunction with the freedom of artistic and literary creativity, conferred by the ICESCR (art. 15.3).

Likewise, scientific researchers also have the right to self-expression in conformity with acknowledged right to the freedom of scientific research. Authorities, private persons or organizations are obliged not to encroach unduly on the freedom of artistic expressions and scientific researches. Making their works copyrighted, these creators do not only express their ideas, but also have the right to take part in the exchange of cultural and scientific information. At the same time, they enjoy the right to freedom of expression in general. They also have the right to take part in exchanging sociopolitical information and ideas of all kinds. In certain cases, they, being rights holders, have opportunity to control some information and expression flows. Accordingly, they act not only as creators, but also as key controllers of the information contained in their copyrighted works. Conforming to Bainbridge and Howell (2010), "*copyright does not protect the idea but the independent expression of the idea… Copyright does not create monopolies. It is intended to prevent others from taking unfair advantage of a person's creative efforts for a defined period of time"* (p. 3).

The provision of article 12, that is the "*scope of copyright protection*" within the "*Copyright Treaty*" of the World Intellectual Property Organization states that, copyright protection extends to expressions of authors and not to ideas, procedures, methods of operation or mathematical concepts as such. Accordingly, the expressions of authors' ideas are the protected objects. As Bainbridge (2010) further remarks, copyright is a means of exploiting works by the owner. The right to exploit is being conferred to another within special regimes of intellectual property protection. From this perspective, "copyright protects works. The owner of copyright initially the author of the work or her employer, has the exclusive right to use the work in ways" (p. 6).

However, authors do not have monopoly over information. They are monopolists in the sphere of its exploitation. Concurrently, public and users have the right to access ideas and their expression. This 'access-right' became an independent subject matter of intellectual property theory, having been applied to the digital environment (Efroni, 2011). Consequently, the free access to information in any form includes the free access to information contained in copyrighted works. This information is a condition of social and person development. Because ideas subsist to be used by public, the public is intrigued with ideas contained in copyrighted works. The concept of copyright typically means available access to copyrighted work on the basis of the respect for author's rights.

At any rate, copyright specifies the conditions of access to information contained in author's works as forms of author's expression. As Lenert (2014) stresses, copyright itself is an engine of the free expression. "*By establishing a marketable right the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas*" (p. 38). Hence, copyright can be defined as both, the legal order of disseminating author's self-expression of individual ideas and as

the legal order of access to copyrighted works. Remarkably, access to creative copyrighted works is designed not only to the simple enjoining of public. Rather, it operates with the aim of finding additional means for one's own self-expression. In so doing, self-expression of users involves others' expressions of copyrighted works. We consider the right of free expression, opinion and information to be an integral part of the right to enjoy copyrighted results of science and culture. The freedom of expression should therefore respect copyright as a condition for a high level of democratic participation, cultural and scientific development.

The modern culture is aware of emerging art forms constructed by using original works [*in derivative and transformed means*]. Derivative and transformative works having economic dimension take certain place now in contemporary artistic and cultural expressions, benefiting and enriching the cultural diversity. These works, being spread widely due to digital technology and the Internet have become one of modifications of the freedom of expression - based on the use of original copyrighted content. In other words, new technologies facilitate one remarkable shift. This is the shift from users as a passive consumers of copyrighted content to active co-creators, increasingly involved in the cultural and knowledge creativity. This is an unprecedented situation influencing the new meaning of copyright in the context of achieving the new forms of balance between interests of creators of copyrighted works and creative users.

In fact, '*the fair use of copyrighted works and the fair remuneration of creators'* are still difficult problems faced by authors and the general public. In essence, authors are interested in high level of protection of their exclusive rights and in their stronger enforcement. The public is however interested in use of protected works as broad as possible. In this sense, copyright and the freedom of expression are really antithetical. Copyright prevents all, except the copyright owners, from expressing protected information. In most cases, the problem with the use of author's works does not arise because there is a possibility to publish one's own works or to form one's own expressions based on other protected works, although not in same words. As pointed out by Lord M. R. Phillips [*Britain Court of Appeal*] regarding the case; 'Ashdown v. Telegraph Group Ltd (2001)', it is important that citizens should be free to express ideas and to convey information in the form of words of their choice. "While freedom of expression does not confer the freedom routinely to use a form of expression devised by someone else, there were circumstances when the freedom to do so is important. These circumstances might be rare, but, when they did occur, freedom of expression would come into conflict with copyright…" (Lenert, 2014, p.67).

We deem the conflict between the author's rights and the right to expression as situated at the conflict of different forms of expression. In light of extended expressions in the digital era, the scope of notion 'expression' needs to be adjusted within context of new technologies [*especially, online platforms providing the capacity to express and to communicate infinitely at almost no cost*]. Every creative work as an element of the Internet content could be regarded as a creator's expression. However, the Internet is filled with numerous expressions of users that are not copyrighted works. Only in this case, original approach of John Perry Barlow [*famous activist of Electronic Frontier Foundation*] is a true. He says, "*I do not regard my expression as a form of property. Property is something that can be taken from me. If I do not have it, somebody else does. Expression is not like that. The notion that expression is like that is entirely a consequence of taking a system of expression and transporting it around, which was necessary before there was the Internet, which has the capacity to do this infinitely at almost no cost*" (Anderson, 2011).

There are also conflated issues concerning copyright and free speech. These issues are the traditional way in which number of scientists go. It is noteworthy that free speech is not considered as a form of property. In contrast to that, no one considers one's own opinion or attitude as an object of intellectual property rights. Moreover, these opinions are placed in virtual space of the Internet. The expression is an object of the property rights only in some conditions. The property can be alienated [i.e. *it is something that can be taken from us*]. The expression occurring in communicative process within the cyberspace, unlike creative expression, have a tendency to promote the realization of moral and economic interests of copyright owners. The creative works are different; they contain monetary value.

Discussion

The critical reflections on the reality of conflict between the two groups of rights and the future perspectives of their harmonization on basis of the fair and proper balance are, at least,

situated in numerous debates around the substance of copyright and information rights (Spence, 2007). Currently, the explored relationship between these two categories of rights forms an integral part of the intellectual property theory. This conclusion is grounded on the contemporary conception of IPRs. This reflects various shades of relations between IP and the right to information and expression (Colston, & Galloway, 2010; Dutfield, & Suthersanen, 2008).

In an attempt to regulate the digital environment, the freedom of expression has become the subject matter of information law. Therefore, connections between analyzed rights are immediately reflected in theories of legal regulation of information. These connections are also being reflected in the doctrine of information law because the copyright system is an essential part of the regulation of digital environment. Consequently, Murray (2010) endorsed a strict scrutiny, having investigated the issues on digital content and copyright, as well as copyright in the digital environment.

Looking at the future of copyright [*in the digital and e-innovative environment*] through lens of freedom of expression invokes the rethinking of its legal nature. This trend supplements the investigation of both protection and enforcement of copyright in the digital environment (Lemley, 1997; Stamatoudi, 2010). Indeed, traditionally, protection of IPRs was connected with defending books, movies and music. However, the digital reality of modern information society has become a vast and complete environment where author's rights are exercised now. Furthermore, dissemination and use of creative works take place now in the digital reality where they are subjected to digitization. This environment generates a renewed notion of copyright as, in a broad sense, protection of exclusive rights, or as the right to their protection.

We also fully agree that copyright on the Internet is a core part of digital copyright law (Elkin-Koren, 1988). This presumes a new form of the balanced relation between users' and author's interests in the context of the digital environment as the new communicative reality. The digital copyright law progressively intersects the information and intellectual property law. This is a new-minted legal innovation for the digital age. This innovation is accompanied by the appearance of new social norms and digital culture that resists the old copyright institutions. As a result, intellectual property theory, notably the theory of copyright, is generating a new justification of copyright for the digital age (Merges, 2011).

Eventually, the debated digital copyright law is an embodiment of the process of copyright digitization. We can also view therewith the advent of contextual concept of digitization of property. An interesting opinion on 'digital property' was expressed by Murray (2010). The approach concerning 'virtual property' in the digital environment was introduced by Primavera de Filippi (Filippi, 2009). We consider that these new trend in the doctrine of property rights are somewhat relevant for the digital era and will form the basis of a possible concept of digitization of IPRs, especially copyright. It could mean that, copyright is one of the digital rights actively connecting with other digital rights; for example, digitized right to free expression. However, such a perspective of development can be a lap of the future. At present, the relations between copyright and the right to freedom of expression is still being explored in a traditional manner, taking into account new conditions affecting their exercise in the digital environment.

The development of the digital environment is followed by the appearance of the problem of digital and digital-related rights' protection under national and international laws [*particularly; international information law, international law of intellectual property and international human rights law*]. Regarding the digitization of the right to expression and information, their association with copyright though indicate similar form of digital rights, they have two different legal properties. The first is the internationally recognized human right while the second is mainly the right of ownership which undoubtedly has a human right profile. Similarly, the legal doctrine is yet to be faced with the necessity to reconsider the information and expression rights at the digital stage of information society. This review should be done in the light of copyright evolution, with regard to the logic and trends in development of the digital environment.

Conclusion

In summary, the reality of information society exacts the revision of the dominance copyright as a concept. With the aim of reconciling the copyright system with the digital environment, both freedom of expression and the exclusive author's rights were reviewed in this study. However, we consider that revising the concept of copyright [*both at theoretical and practical levels*] should not

be conceived as a sort of private-proprietary rights. Conceptualizing copyright in a relational manner means that copyright system shares [*not only potentially*], a core value of the information society. Respectively, copyright has to be one of the guarantees underlying the freedom of expression at both national and international levels. In other words, the copyright legislation and appropriate policies should deal with fostering creative capacities of all participants to increase information flow and communication. Hence, copyright in the information society cannot be identified solely with the rights of rights' holders to control the citizens' expression using copyrighted works. In this case, tensions, becoming an obvious clash, are far from adequate resolution. The current paradigm of copyright can be ideated to be consistent with terms of the free communication and expression. In other words, the respect for the right to freedom of expression as the fundamental pillar of the democratic society, should reach a balance with copyright in the context of digital reality.

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Conflicts of interest statement

The authors declare that they do not have any conflict of interest.

References

Anderson, N. (2011). *Copyfight EFF co-founder enters e-G8 "lion's den" rips into lions*. Retrieved on 12/6/2016 from: http://arstechnica.com/tech-policy/news/2011/05/eff-co-founder-enters-copyright-lion.

Bainbridge, D. (2010). *Intellectual Property* (*8th ed.*). Harlow: Longman.

Bainbridge, D., & Howell, C. (2010). *Law express: Intellectual property law* (2nd ed.). London: Longman.

Baum, D. (2014). *Freedom of expression*. Toronto: Dundurn.

Benedek, W., & Ketteman, M. (2014). *Freedom of expression and the internet*. Strasburg: Council of Europe.

Chapman, A. (2001). Approaching intellectual property as a human rights: Obligations related to Article 15 (I) (c). *Copyright Bulletin, 35,* 13-15.

Chapman, A. (2002). The Human Rights Implications of Intellectual Property Protection. *Journal of International Economic Law,* 5(4), 861-882.

Clapham, A. (2007). *Human rights: A very short introduction*. Oxford, New York: Oxford University Press.

Colston, C. & Galloway, J. (2010). *Modern intellectual property law* (*3rd ed.*). Abingdon: Routledge.

Council of Europe (2008). *Copyright and human rights: Report prepared by the group of specialists on human rights in the information society (MC-S-IS)*. Strasburg: Council of Europe.

Craig, C. (2011). *Copyright, Communication and Culture: Towards a Relational Theory of Copyright Law*. Cheltenham: Edward Elgar Publishing.

Croven, M. (1998). *The International Covenant on Economic, Social, and Cultural Rights: A perspective on its development*. Oxford: Oxford University Press.

Donnelly, J. (2003). *Universal Human Rights in Theory and Practice, 2nd ed.* New York: Cornell University Press.

Dowell-Jones, M. (2004). *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the economic deficit*. Leiden: Martinus Nijhoff Publishers.

Dutfield, G., & Suthersanen, U. (2008). *Global intellectual property*. Cheltenham, Northampton: Edward Elgar.

Efroni, Z. (2011). *Access-right: The future of digital copyright law*. Oxford: Oxford University Press.

Eide, A. (2007). Interdependence and indivisibility of human rights. In Y. Donders & V. Volodin (Eds.), *Human rights in education, science, and culture: Legal developments and challenges* (2nd ed.). Paris: UNESCO.

Elkin-Koren, N. (1988). Copyright in cyberspace – Rights without law? *Chicago – Kent L. Review, 73,* 101-144.

Feyter, K., & Pavlakos, G. (Eds.) (2008). *The tension between group rights and human rights: A multidisciplinary approach*. Oxford: Hart.

Filippi, P. (2009). Copyright in the digital environment: From intellectual property to virtualproperty? Retrieved on 2/6/2016 from: http://www.virtualgoods.org/2009/79_VirtualGoods2009Book.pdf.

Helfer, L. & Austin, G. (2011). *Human Rights and Intellectual Property. Mapping the Global Interface*. Cambridge: Cambridge University Press.

Helfer, L. (2007). Toward a Human Rights Framework for Intellectual Property. *UC Davis Law Review, 40*, 971-1038.

Lemley, M. (1997). Dealing with overlapping copyright on the internet. *University Dayton Law Review, 22,* 548-589.

Lenert, M. (2014). *The free flow of information: Media law and freedom of expression in the United States*. Raleigh: Lulu Press.

Merges, R. (2011). *Justifying intellectual property*. Cambridge, MA: Harvard University Press.

Murray, A. (2010). *Information technology law: The law and society*. Oxford: Oxford University Press.

Rehman, R. (2009). *International Human Rights Law*. Harlow: Logman.

Sané, P. (2007). Introduction. In Y. Donders & V. Volodin (Eds.), *Human rights in education, science, and culture: legal development and challenges*. Paris: UNESCO/Ashgate.

Sepúlveda, C. (2003). *The Nature of the obligations under the International Covenant on Economic, Social and Cultural Rights*. Antwerp: Intersentia.

Smith, R. (2007). *Textbook on International Human Rights* (3rd ed.). Oxford: Oxford University Press.

Ssennyonjo, M. (2010). Economic, social and cultural rights: An examination of state obligations. In S. Joseph & A. McBeth (Eds.), Research handbook on *international human rights law*. Cheltenham: Edward Elgar Publishing.

Stamatoudi, I. (2010). *Copyright enforcement and the internet*. The Netherland: Kluwer Law International.

Torremans, P. (2004). Copyright as a Human Rights. In P. Torremans (Ed.), *Copyright and human rights freedom – Intellectual property – privacy*. The Hague: Kluwer Law International.

United Nations (2005). *Economic, social and cultural rights. Handbook for National Human Rights Institutions*. Geneva: United Nations.

Voorhoof, D. (2015). Freedom of expression and the right to information: Implications for copyright". In G. Christophe (Ed.), *Research handbook on human rights and intellectual property*. Cheltenham: Edward Elgar Publishing.

Winston, M. (2010). Indivisibility and interdependence of human rights. *University of Nebraska Human Rights and Human Diversity Monograph*. Series 2:1. Lincoln: University of Nebraska.

Yu, P. (2007). Reconceptualizing Intellectual Property Interests in a Human Rights Framework. *UC Davis Law Review, 40*, 1039-1149.

Zeno-Zencovich, V. (2008). *Freedom of expression: A critical and comparative analysis*. Abington: Routledge.