

Law

Question: Ed Sheeran said "Defending copyright infringement lawsuits has become as much a part of the job description for top musicians as the performance of hits". Discuss whether UK copyright laws are out of date and should be reviewed by Parliament.

Maya Angelou, a renowned American poet and civil rights activist once quipped, "You can't use up creativity. The more you use, the more you have." Such is the sacrosanct nature of ideas, and to give due credit, the creator. Accordingly, we have bulwarked the right of a person to own his ideas through implementing copyright laws. Yet, the very same palisade which defends one's intellectual property also stifles societal progress by barricading other's access to these invaluable ideas. This tension is evermore amplified with the advent of the technological milieu against the backdrop of archaic copyright laws in the United Kingdom. As such, we may not hesitate in answering the question in the affirmative.

This essay will understand copyright laws as a set of legally binding rules which protects a creator's original works of authorship (including literary, dramatic, musical, and artistic works) from being used or duplicated without their permission (US Copyright Office, 2023). Specifically, the Copyright, Designs and Patents Act 1988 is the legislation in question. A general yardstick to consider the copyright law to be outdated would be when it falls foul of public welfare (i.e. it is unable to adequately protect the creator's rights *while* allowing for societal progress) due to temporal changes. The modal verb 'should' connotes that Parliament bears the onus of reviewing passé UK copyright laws insofar as it is probable to do so, and it enhances societal welfare.

Detractors may concede that UK copyright laws are inefficacious, but not outdated, due to the abstract nature of creation. The first legislative instrument to grant a monopoly right over content (ALACC, 2023) dates back to 1710: The Statute of Anne, otherwise known as the Copyright Act 1710. Notably, the statute only applied to books, as it accounted for the prominence of the printing press then and sought to protect the interests of the authors. However, while the statute was a landmark development in the law that took into account current interests, flaws still undermined the statute's efficacy. For instance, the exclusive application of the statute to the jurisdiction of Great Britain meant that works created in other countries were not automatically protected. As a result, problems such as cross-border piracy arose. A parallel case in the 21st century would be the enactment of New Digital Economy Act 2017 to supplement the existing Copyright, Designs and Patents Act 1988 in a bid to stamp out online piracy. Estimates by the UK's Intellectual Property Office (IPO) show that a quarter of the population in the UK engages in the consumption of content accessed through digital piracy (Poquiz, 2023). While the statute may be modern, problems still abound in and of itself. Inherent limitations such as the inability of UK law to apply extraterritorially (which is an essential consideration in light of the global nature of the Internet), apart from constraints in enforcing the law prove that UK copyright laws are still far from desirable. Insofar as the laws try their best to account for the prevailing trend, these laws cannot be dismissed to be outdated, but are still indubitably inefficacious. We might then conclude that since time immemorial, copyright laws have always fallen short – not due to temporal changes, but the vast creative power of humankind. Creativity at its core is an eternal, causally inert, and non-spatiotemporal entity (Irmak, 1970) that constantly morphs and manifests in multitudinous forms. The limitless reach of creativity spans further than the boundaries of intellectual property that law can protect. Additionally, there are manifold factors, apart from temporal change, surrounding the

conception, delivery and reproduction of ideas. The music industry exemplifies the difficulties in delimiting when similar works become deemed as an infringement of copyright. This boils down to the fact that a certain harmonic structure forms the backbone of millions of songs – the I-VI-IV-V chord progression (Mitchakes, 2019). Yet, music is a universal language that simply cannot be patented. Such a move is akin to trademarking commonly used English words, which is simply preposterous (both in theory and enforcement). The universality of music and the consequent debilitation of creativity should such a legislation be permitted is what makes the line between a copyrighted song and one that simply utilises a similar harmonic structure a fine one. Resultantly, fallible laws may not be able to account for such intricacies existent since time immemorial and thus compromise the interests of authors. As such, UK copyright laws may not be out of date, but are nonetheless flawed and should be reviewed by Parliament.

Yet, such a claim is too parochial and ignores the fact that temporal changes have *indeed* rendered many UK copyright laws ineffectual, even if it may not be the sole cause. I contend that UK copyright laws are outmoded and should be reviewed by Parliament for the following reasons.

UK copyright laws do not adequately address emerging models of content distribution and compensation. A core tenet of copyright law is the protection of the author's interest, which includes financial compensation. As the U.S. Supreme Court aptly stated in *Mazer v. Stein*, 'The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that [the author's] rewards [should be] commensurate with the services rendered.' (Hull, 2003) However, the advent of modern technology has revolutionised the mediums by which content is communicated, resultantly upsetting this balance to the detriment

of the author. The unprecedented reach of the internet and prevalence of electronic devices (i.e. smartphones, tablets, computers) far outstrips that of traditional media (i.e. newspapers, radio, television). UK epitomises this trend, ranging 6th globally in terms of internet penetration rate at 98%. (Petrosyan, 2023). Additionally, other forms of reproductive technology such as laser-printers have become so accessible that the barriers to entry of reproducing and publishing one's work have become incredibly low. In fact, this shift in power distribution of content production from one that is top-down to bottom-up, is so seismic that UK copyright law has been unable to keep with the evolution. A corollary of such a trend is the infringement of the author's right in the form of online piracy, oftentimes without any justice being delivered. A case in point is the IP Crime and Enforcement Report 2018-2019, which concludes that the value creative industries bring to the UK is £101.5bn a year (Awbi, 2019). Such overwhelming damage is attributed to the proliferation of 'stream-ripping piracy'. Enabled by contemporary digital media and unprecedented internet speeds, the term refers to 'an act where the user pastes their chosen link into the website, which then converts the content into a file for the user to download' (Martin, 2020). UK laws simply cannot keep up with breakneck speeds at which information is distributed, especially when operations are protected by a veil of anonymity which renders accountability under the law a Herculean task to achieve. As compared to the past where sales are generally physical and thus more accountable, the modern-day digital landscape sees creators compensated for their work on a pay-per-stream basis. This translates to much graver financial losses, as well as a deeper incursion of copyright laws and the fundamental rule of law. Therefore, it is fair to say that UK's copyright laws has fallen behind the times, and a review by Parliament is necessary.

In the same vein, UK copyright laws are not tailored to modern-day necessities of fair use. As defined by BRIFFA, fair dealing in the context of UK 'allows individuals to use copyrighted material for specific purposes, provided such use is considered fair, reasonable, and falls within the permissible acts defined by law' (Bering, 2023). These exceptions are crucial in promoting societal welfare, as they prevent a rigid application of copyright law which would stifle the very creativity the law is designed to foster (Havard, 2023). In the milieu of cognitive surplus, UK stands to gain from the vibrant, groundbreaking ideas that the populace offer. Yet, the roots of UK copyright laws run too deeply in the context of the past to account for the needs of the present. Underpinning this limitation is the overly restrictive stance that the state has adopted in granting exceptions to exclusive copyrights, with contestations arising from the word 'fair'. *Ashdown v. Telegraph Group Ltd* [2002] ECDR 32 is a case in point. The case concerned an alleged copyright infringement of Mr Paddy Ashdown's confidential meeting record by The Sunday Telegraph, who published articles based on the record without paying for it (Walker, 2002). Ultimately, the court ruled in favour of Ashdown, which many critics deemed to be an assault on the fourth estate of democracy. The Telegraph relied on the fair dealing exception for reporting current events, asserting that publishing the diary excerpts would shed light on pertinent political issues and enhance the public interest. Given that journalism is evermore crucial in the healthy functioning of modern democracies, it certainly seems regrettable that UK copyright laws have obstructed the flow of essential information that is key to the betterment of society. While this may have been justified on the grounds of protecting political legitimacy decades ago, such an argument no longer holds water in the present day where unfettered discourse is the best way to gain legitimacy. To draw a comparison, we need not look any further than UK's superpower counterpart, USA. The latter's 'fair use' doctrine has granted much more

latitude to the definition of 'fair', which enshrines a cornerstone of democracy – freedom of expression. Hence, UK's copyright laws are outdated and in need of a review by Parliament.

In an age where change is the only constant, UK's copyright laws have fallen short of the rigorous demands of our modern age, resultantly compromising both the interests of creators as well as society. Before we lose complete balance on this tenuous tightrope that we tread, it is imperative for UK Parliament to recognise the exigency of reviewing outdated copyright laws and undertake tangible steps to salvage the issue.

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