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Discuss whether UK copyright laws are out of date and should be reviewed by Parliament.

The rich history of copyright law in the United Kingdom and the influence its jurisprudence amasses in the Anglo-American legal sphere must not be understated. Its legacy even dates to the reign of Queen Elizabeth I, to when she would grant monopolies for items of common use — like wine, salt, and leather — by the royal prerogative. Currently, the Copyright Designs and Patents Act of 1988[i] is *in situ* to safeguard intellectual property from moral and economic exploitation — but can it adeptly fulfil this function, 35 years after its enaction? One must look towards extending the scope of the 'fair dealing' principle[ii] when considering what the best path of action for the legislature to take may be: by providing further exemptions to the Copyright Act, it would not only uphold the interests of the creator by garnering visibility for their work, but also enrich our cultural and intellectual milieu, by shifting away from the pervasive commodity culture that the current copyright law mechanisms foster.

One sees John Locke's Theory of Property at the centre of the aforementioned Act: it posits that individual property is an inviolable natural right, which no law-making body is entitled to undermine. This begs the question — what defines individual property? The etymological root of property is the Latin *proprius:* what is one's own. In his *Second Treatise to Government*[iii], Locke proposed the notion that since God "hath given the world to men in common," and that all human beings are intrinsically free and equal in the state of nature, each must make their own labour to distinguish themselves. Lockean ethics defines *proprius* as items that had been taken from the common store of goods and mixed with "The labour of his body, and the work of his hands"; he argued that to deny one's rights to their own work, be it their physical or intellectual exertion, is to make them a slave. In response to the UK Government's proposed changes to the 'copyright exhaustion' rule — which is a legal doctrine

describing how a copyright owner's right to control copies of their work 'exhausts' after its first sale[iv]— Kate Mosse, renowned British novelist, argued that "if we don't ensure writers remain respected for their work, then many will be forced to leave the industry and Britain's cultural landscape will suffer hugely,"[v]. Deductively, Locke's jurisprudence is analogous to the domain of copyright law, because without the safeguard of copyright law to protect one's intellectual property from unlawful exploitation, then there would be no certainty that creators can reap the fruits of their labour. Ergo, there would be little incentive for individuals to engage in creative fields *ab initio*. Copyright law provisions are rendered impractical when they do not accommodate for the growing commercialisation of intellectual property. If the public sector, which encompasses the economic objectives of entrepreneurs and the Government, acquires primacy over the private sector — the original creator of the work — then a law is not fit for purpose and is flawed.

However, to examine the effectiveness of the Copyright Designs and Patents Act, it must be analysed through a consequential lens, particularly one of a utilitarian nature. Before any law is promulgated, it is imperative that it strikes a perfect balance between the interests of the public and private sectors; it must ensure the maximum amount of happiness for as many people as possible. Locke's belief that the right of the author to their own work is inalienable is undermined by the utilitarian view that, insofar as it serves the greater good (in this case, extending the frontier of knowledge), then limitations on individual proprietary rights are moral and just. This principle was invoked in the *Donaldson v. Becket* case of 1774[vi]: this saw the House of Lords ruling that the natural authorial property right was superseded by the antecedent Statute of Anne of 1710[vii], which mandated a statutory limit on how long published works were protected by copyright, contrary to the Lockean ideal of perpetual copyright protection. The Lords recognised the cruciality of creative works entering the

public intellectual sphere, thus aligning with the utilitarian logic that decisions should strive towards the betterment of wider society. From this, the notion of 'fair dealing' emerges.

One must also acknowledge that authorial works are not inherently commodities, thus should not be regarded as such by the law. In *Das Kapital*, Karl Marx postulated that the commodification of labour (or, in this context, intellectual property) was a product of capitalism, and that exchange value is the only form in which the value of commodities can manifest itself or be expressed[viii]. This is in tandem with his theory of alienation as discussed in the *Economic and Philosophical Manuscripts of 1844*, wherein he described how workers experience four forms of estrangement: from their own product, the labour process, their creative potential as human beings, and other workers[ix]. Therefore, Marx's theory of commodification and alienation can be conceptually applied to the domain of intellectual property, since one may argue that arts only metamorphosed from a cultural catalyst to a mere asset to be exchanged with the onset of capitalism — from which rampant commercialisation developed. Constrictive copyright legislation wholly defies our human nature which commands us to seek intellectual pursuits for its own sake. Locke's theory is also subjugated by the fragility of the concept of the 'author'. After all, if we adhere to the logic that one's *proprius* is completely their own, we're making the fallacious assumption that ideas aren't — deliberately or subconsciously — built on the works of other people; they don't simply spring into existence.

Therefore, the current concept of 'free dealing' under current UK copyright legislation is unequivocally a narrow and restrictive mechanism which impedes the dissemination of knowledge. In *On Liberty*, John Stuart Mill articulated that "The only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others"[x] — in other words, citizens have the right to act freely given that their actions do not pose a threat to others. Hence, the legislature does not have the moral authority to exercise strict restrictions on individuals who

seek to use copyrighted material for non-harmful purposes. Although one must recognise that perhaps economic 'harm' could be caused to the author of the material, the right of wider society to exchange ideas and collectively develop is greater than the right of the license-holder to pecuniary gain. The case of *Aaron Swartz v. US*[xi] highlights the manifold ramifications of copyright legislation: the co-founder of Reddit was indicted in 2011 for surreptitiously downloading millions of subscription-only JSTOR articles onto his laptop in an MIT closet. Although JSTOR and MIT chose not to pursue any civil penalty against him, the federal prosecution went ahead with the case to make an example out of Swartz — to serve as a deterrent. In September 2012, the number of charges was raised from 4 to 13, and he was faced with the prospect of up to 35 years in prison and up to $1 million in fines[xii]; in January the next year, he was discovered in his Brooklyn apartment after committing suicide. By Mill's logic, Swartz's 'crime' was harmless: there was no economic loss suffered by JSTOR, thus, the law overstepped its authority, wielding more power than it could rightfully exercise. The case undermined his civil liberties to the extent where his father announced that he was "killed by the government,"[xiii] rather than himself.

The Robin Hood of the Internet-Age, Swartz's personal philosophy was that access to knowledge is a human right, and that the privatisation of scholarly articles by private corporations eroded this. That "sharing," information locked behind paywalls with other people was not the "moral equivalent of plundering a ship and murdering its crew," but simply a "moral imperative,"[xiv]. Hence, for the State to not base copyright legislation off Mill's jurisprudence is to create a system which stagnates the progression of mankind. If the 'fair use' doctrine of the US, which allowed the Government to unscrupulously intimidate Aaron Swartz under the claim that "stealing was stealing,"[xv] (although he returned all the articles to JSTOR and did not seek any monetary gain, nor cause harm to any individuals) is the same doctrine that is collectively acknowledged as having a broader scope than the

'fair dealing' doctrine of the UK, then Aaron Swartz v. US serves as a warning to our legal system. It is a call for legal reform, one which sees the promulgation of a new Copyright Act that will accommodate for the growth of innovation and ideas. After all, if Parliament seeks to ensure legislation is compatible with the Human Rights Act of 1998, which stipulates that "No person shall be denied the right to education,"[xvi] then shouldn't the responsibility to increase individual access to creative works (as, of course, the 'freedom of knowledge' is integral to the 'right to education') be immediately conferred on the UK Government?

Given this analysis, it becomes evident that the UK legal structure demands the enactment of a brand-new Copyright Act, to supplant the anachronistic 1988 Act, with two central tenets: firstly, to democratise access to knowledge, and secondly, adaptable to the ever-changing zeitgeist. This can only be achieved with an Act which exhibits a panoptic and flexible extension of the 'free dealing' doctrine. French philosopher Victor Cousin coined the term 'l'art pour l'art', translating to 'art for art's sake': yet, in an age of rampant commercialisation and digitalisation, this no longer holds any weight. Instead, 'law' must be 'for art's sake'. It's time for copyright legislation to act as an intermediary for the growing paradox that is the sacrosanct role of knowledge as both a commodity and a vehicle of human development, now more than ever. As Aaron Swartz said, "Information is power"[xvii]— the law must revere it as such.

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[i] *Copyright Designs and Patents Act 1988,* c. 48. Available at: https://www.legislation.gov.uk/ukpga/1988/48/section/1 (Accessed: 18 December 2023).

[ii] Intellectual Property Office (IPO). (2014) 'Exceptions to copyright', updated 4th January 2021. Available at: https://www.gov.uk/guidance/exceptions-to-copyright (Accessed: 18th December 2023).

[iii] Locke, J. (1940) *Of Civil Government: Two Treatises,* Second Treatise, c. 5. London: J.M Dents & Sons.

[iv] Intellectual Property Office (IPO). *'Consultation document on the UK's future regime for exhaustion of IP rights'*, updated 18th January 2022, Available at: https://www.gov.uk/government/consultations/uks-future-exhaustion-of-intellectual-property-rights-

regime/the-uks-future-regime-for-the-exhaustion-of-ip-rights#ministerial-foreword (Accessed: 20th December 2023).

[v] Flood, A. (2022) *'Government pauses plans to rewrite UK copyright laws after authors protest'*, The Guardian, 19th January 2022. Available at: https://www.theguardian.com/books/2022/jan/19/government-pauses-plans-to-rewrite-uk-copyright-laws-after-authors-protest (Accessed: 20th December 2023).

[vi] Deazley, R. (2008) *'Commentary on Donaldson v. Becket (1774)'*, in *Primary Sources on Copyright (1450-1900*), eds L. Bently & M. Kretschmer, www.copyright.history.org. Available at: https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=commentary_uk_1774 (Accessed: 28th December 2023).

[vii] *The Statues of the Realm* (1810-1825), 8 Ann. c. 21: '*An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned' 1710.*

[viii] Marx, K. (1867) *Das Kapital*, vol. 1, c. 1. Moscow: Progress Publishers.

[ix] Marx, K. (1844) *Economic & Philosophic Manuscripts of 1844.* Moscow: Progress Publishers.

[x] Mill, J.S. (1859) *On Liberty*, c. 1, p. 15. Kitchener, Ontario: Batoche Books.

[xi] *United States of America v. Aaron Swartz*, 1:11-cr-10260-NMG. United States District Court for the District of Massachusetts, filed 14th July 2011. Available at: https://archive.org/details/gov.uscourts.mad.137971 (Accessed: 26th December 2023).

[xii] US Attorney's Office District of Massachusetts. (2011) *'ALLEGED HACKER CHARGED WITH STEALING OVER FOUR MILLION DOCUMENTS FROM MIT NETWORK',* July 19th 2011. Available at: https://web.archive.org/web/20120526080523/http://www.justice.gov/usao/ma/news/2011/July/SwartzAaronPR.html (Accessed: 26th December 2023)

[xiii] Muskal, M. (2013) *"Aaron Swartz was 'killed by the government,' father tells mourners"*, The Los Angeles Times, January 15th 2013. Available at: https://www.latimes.com/nation/la-xpm-2013-jan-15-la-na-nn-aaron-swartz-funeral-eulogy-father-20130115-story.html (Accessed: 26th December 2023).

[xiv] Swartz, A. (2008) *Guerilla Open Access Manifesto*. Available at: https://archive.org/details/GuerillaOpenAccessManifesto (Accessed: 26th December 2023).

[xv] Arthur, C. (2011) *'Reddit co-founder accused of stealing 4.8m JSTOR documents from MIT'*, The Guardian, 19th July 2011. Available at: https://www.theguardian.com/technology/2011/jul/19/reddit-founder-swartz-jstor-accused (Accessed: 26th December 2023).

[xvi] *Human Rights Act 1998*, c. 42, Protocol 1, Article 2. Available at: https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/II/chapter/2 (Accessed: 26th December 2023).

[xvii] See Swartz (n xiv).