

Are UK copyright laws outdated and should they be reviewed by Parliament?

Renowned pop music sensation recently in a candid manner remarked that “defending copyright infringement lawsuits has become as much a part of the job description for top musicians as the performance of hits.” Resonance was gained by this statement against the backdrop of a legal episode that occurred several months ago. Sheeran found himself amidst the public discourse on the intersection of creativity and litigation. The allegations pertained to his song ‘Thinking Out Loud’ which apparently bore resemblance to Marvin Gaye’s composition ‘Let’s get it on.’ During this period the jurists of New York adjudicated in favour of Sheeran.¹

Being a very personal and complex art form, musical composition frequently entails a careful balancing act between creativity and inspiration. The 'Thinking Out Loud' case serves as an example of the difficulties in objectively defining the point at which creativity becomes actionable infringement. Legal frameworks need to evolve as musical creativity expands in order to give clarity without limiting creativity.

The intersection of creativity and copyright infringement lawsuits raised questions about the existing copyright laws in the UK. It has led to complex legal terrain which requires skill to navigate. This essay explores the intricacies and realities surrounding copyright laws in the UK, examines how adaptable they are to modern society as well as if there is a need for reform in the current laws prevalent in the UK pertaining to copyright infringement.

In order to understand the contemporary landscape of the current laws of the UK governing copyright and intellectual property protection, one must embark on a historical journey through the evolution of

copyright laws in the UK. The origins of copyright laws in the UK can be traced back to the Statute of Anne in the 1710. With this statute, for the first time, authors had the rights to the copyright rather than the printers and publishers. To quote, the statute began this way: "Whereas Printers, Booksellers, and other Persons, have of late frequently taken the Liberty of Printing, Reprinting, and Publishing, or causing to be Printed, Reprinted, and Published Books, and other Writings, without the Consent of the Authors or Proprietors of such Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families" The Statute of Anne had a significant impact on the development of subsequent copyright laws around the globe and was in effect until it was superseded by the Copyright Act of 1842. The Copyright, Designs and Patents Act 1988 is the current copyright legislation in effect in the United Kingdom. It has undergone multiple amendments.²

Following the BREXIT, a number of copyright laws in the UK have the potential to be changed.

Copyright in the UK is known to be intangible property, and expands to various creative horizons such as book, music, etc. UK copyright regulations have undergone modifications as a result of Brexit. The UK national law was altered by the Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019, which eliminated any mention of the EU. Nonetheless, the majority of these laws have remained in effect and absorbed into UK law. The modifications impact a number of industries, including museums, content streaming services, database ownership, and satellite broadcasting.³

Another issue is that the UK copyright laws also has a provision of what they call 'fair usage' laws. You don't always require authorization in writing to utilise content protected by copyright. One such instance

is fair dealing as it is known in the UK. Any duplication of copyrighted content utilised for a specific, "transformative" purpose is considered fair use. It's frequently employed to critique, parody, or remark on a work that is protected by copyright. Sections 29 and 30 of the Copyright, Designs and Patents Act 1988 govern fair usage in the United Kingdom. Fair usage is entirely lawful, although in terms of UK copyright law, it's often ambiguous. What constitutes fair use and what does not are not standardised which leads to various interpretations and a legal grey area.⁴

We are amid a digital revolution which raises questions about this legislation that was clearly passed when digitalization was still way off. There are benefits and drawbacks to the ease with which we can distribute anything on the internet, including music, films, and other works. Naturally, authors and other creators suffer from a great deal of disadvantages.

Rapid technological development is the direct outcome of a high rate of innovation that eventually leads to unanticipated repercussions. The social and economic revolution that some abrupt technological advancements bring about is typically unexpected, even by the designers of the technology. Technology is advancing at such a rate that the development of pertinent copyright rules continues to lag. There are four primary aspects that explain why copyright laws are not keeping up with advancements in technology.

Firstly, ample amount of time is required to create new laws. The process of drafting laws is intricate and requires numerous procedural safeguards as well as a wide range of institutions and players. While some inventions come from a drawn-out, meticulously planned process many creative breakthroughs are sudden and impulsive. Accidents have been the source of many inventions. Many of our well-known

scientists made their discoveries by accident. For example, the discovery of penicillin antibiotics and the invention of the implantable artificial pacemaker.

Secondly, because technological advancements are unpredictable it is challenging for legislators to bridge the gap between the rapidly advancing technologies and the lagging copyright laws. This causes the gap between the two to widen even further. This makes bridging the legal delay inherently complex.

Third, open-ended and vague standards are required in copyright law due to the unpredictable nature of development. Open-ended standards allow for various interpretations which lead to more decisions being taken at the judicial level, which further adds to legal delay, even as they lower error costs and provide copyright decision makers greater flexibility.

Finally, a lot of the times, copyright owners only become aware of the ramifications of innovative uses of their protected content after the usage has already gained popularity and visibility. Hence, the initial ambiguity around the possible social and economic effects of a new technology is a contributing reason to the legal delay associated with copyright.⁵

In the global context, a unified strategy for intellectual property protection was established by international agreements like the Berne Convention. However, copyright's conventional territoriality is under threat from the digital sphere, so countries need to harmonise their legal systems. As a party to numerous international treaties, the UK must carefully balance upholding the rights of its creators with adhering to international norms.⁶

One such issue that copyright laws must address in this new era of digitality is generative artificial intelligence (AI).⁷ A subset of artificial intelligence and machine learning known as "generative AI" involves teaching a computer programme complex techniques to create original works of art, music, and literature. Deep learning techniques give rise to generative AI, which can perform more complex or endless tasks, recognise more intricate patterns, and form opinions all without the need for direct human input.⁸

In the present circumstances, AI models like ChatGPT produce content based on sources from across the internet. Copyright laws in the UK, or anywhere else in the world for that matter, present difficulties considering artificial intelligence. The ownership of the generated content, establishing authorship, and judging creativity are a few difficulties. The New York Times recently filed a copyright infringement lawsuit against OpenAI, the company that created ChatGPT, in the US, claiming that some of the content that the model produced was taken directly from its publications. In the UK, similar situations involving AI models and copyright regulations may occur.

Although there is currently general consensus that AI most likely falls under the definition of computer-generated works, the current drafting of UK legislation notes that, for the purposes of copyright ownership of computer-generated works, a "person" would be the author; consequently, an AI system itself can hold copyright over AI-generated outputs. The UK Supreme Court concluded in *Thaler v. Comptroller-General of Patents, Designs and Trademarks* that the scheme is on the footing that patents can only be given to humans explicitly when examining whether an AI system can be the inventor under section 7(3) of the Patents Act 1977.

Unlike the US, the UK has a special provision under the CDPA for computer-generated works that permits AI-generated outputs to be protected by copyright. Nevertheless, the same concerns about the amount of human authorship needed for a user of an AI system to be considered the owner of AI-generated output and the extent to which the human can be removed from the creative input while still maintaining authorship remain, applicable to most jurisdictions.⁹

In conclusion, Ed Sheeran's remark highlights the difficulties that not only musicians but also creators in many industries encounter while navigating the complex legal terrain of copyright infringement claims. Industries have undergone significant transformation in the digital era, bringing with it new difficulties that necessitate a thorough review of the UK's current copyright regulations. In order to make sure that the legislative framework is in line with the realities of the digital age, a thorough examination by Parliament is not only necessary but also urgent.

The Parliament's review should focus on changing the copyright laws while paying attention to global context, setting parameters for the fair dealing laws and most importantly how to bridge the gap between technological advancements for example with AI and digitalization of the music industry. The Parliament should create copyright rules that support innovation, uphold artists' rights, and support a thriving and long-lasting cultural ecosystem by working together in an inclusive and collaborative approach.

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