Comparative Analysis of Article 17 of the European Union's Copyright Directive and the UK's Safe Harbor Regulation: Assessing Effectiveness in Addressing Online Copyright Infringement

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DOI: https://dx.doi.org/10.47772/IJRISS.2025.9010087

Received: 31 December 2024; Accepted: 04 January 2025; Published: 03 February 2025

ABSTRACT

The main focus of this research is to examine whether Article 17 of the European Union's Directive on Copyright in the Digital Single Market provides a better solution to online copyright infringement, compared with the 'safe harbour' rule in the UK (s97A of Copyright, Designs and Patents Act 1988). This initially based on whether Article 17 of the European Union's Directive on Copyright in the Digital Single Market is a better solution to online copyright infringement than the UK's safe harbour rule (s97A of Copyright, Designs and Patents Act 1988) or not.

INTRODUCTION

This article examines whether Article 17 of the European Union;s Directive on Copyright in the Digital Single Market is a more effective remedy to online copyright infringement than the UK's safe harbor law (section 97A of the Copyright, Designs, and Patents Act 1988). It examines the legislation governing Copy Rights under Intellectual Property, the validity of Copy Rights, who owns the copyright, copyright infringement within the scope of online copyright infringement, and copyright limits. This article then looks at the UK's Safe Harbour Rule (He, 2023), which is in compliance with Section 97 A of the Copyright, Designs, and Patents Act of 1988, as well as the notion of a Digital Single Market under Article 17 of the European Union Copyright Directive. The study objectively reviews and contrasts the two statutes, examining the implications, their application, and presents concluding observations and future challenges.

What is Intellectual property Law and Law in the United Kingdom?

Intellectual property (IP) is defined broadly as the legal rights that come from intellectual effort in the economic, scientific, literary, and creative domains. Countries have intellectual property laws in place to give statutory expression to creators' moral and economic rights in their creations, as well as the public's right to access those creations, and to promote creativity and the dissemination and application of its results as a deliberate act of government policy, as well as to encourage fair trading, which contributes to economic and social development (WIPO, 1998, p3).

It would incorporate statute and common law provisions, as well as elements inspired by international, European, and national concerns (Abbe Brown, et al, 2019).

UK Intellectual Property Law Overview

- Four major types of intellectual property: Patents, Designs, Trademarks, and Copyright.
- Common law actions include passing off, breach of confidence, and sui generis (Abbe Brown, et al, 2019).

Copyright framework in the UK

Copyright law in Europe began in the 15th and 16th centuries with the Copyright Act of 1709 (Rahmatian, 2013). Modern copyright began in the 18th century, primarily for printed books, and later extended to works of

art and drama. The UK incorporated the Berne Convention into the Copyright Act 1911, which supplanted the existing copyrights from the 19th century. The Copyright, Designs and Patents Act 1988 (CDPA 1988) is the current key legislation for copyright and associated rights in the UK. CDPA 1988 focuses on property rights in relation to original literary, dramatic, musical, or artistic works, sound recordings, films, broadcasts, and the typographical arrangement of published editions. Copyright law protects aesthetic and artistic creations, as well as derivative works such as films, sound, recordings, cable programs, broadcasts, and the typographical arrangement of a published work. Throughout the twentieth century, copyright was expanded to protect new forms of intellectual property, such as computer software and databases (Abbe Brown, et al, 2019, p53). Work must meet three conditions to be copyright protected: Originality, Expression, and Fixation.

Validity of the Copyright

Expression

Copyright law in the UK protects the expression of an idea rather than the idea itself. Lord Hoffmann clarified that a copyright work may express ideas that are not protected due to their lack of connection to the work's literary, dramatic, musical, or artistic nature. Others can express these ideas in their own works. Additionally, certain ideas expressed by a copyright work may not be protected if they are not original or commonplace. The concept of 'work' is used in European Union directives to describe the rights given to copyright owners, but it has not been defined or harmonised through European Union Jurisprudence. However, in Levola v Hengelo, the ruling was reversed, indicating that the concept of 'work' is not defined or harmonised.

Fixation

The 'fixation' doctrine in copyright law is crucial in determining the scope of 'works' that exist because of an individual who expresses them and another who reduces them to material form. The CDPA states that copyright does not exist unless a recording is made, but whether the work is recorded by or with the author's permission is irrelevant. However, unrecorded spoken words, impromptu stage performances, and aleatory musical composition works do not satisfy fixation, so there is no fixation requirement for artistic works, broadcasts, and films.

Originality

Originality is another essential test in determining what kind of work is copyright protected. There is no legal definition of originality, but it has evolved through case law (University of London Press v University Tutorial [1916] 2 Ch 601). The CDPA requires literary, dramatic, musical, or artistic works to be original. In the UK, the 'labour, skill, and judgement' test is used to determine whether the originality threshold for creation has been met. The ECJ's case introduced the additional factor of the 'author's own intellectual creation' as a yardstick of copyright originality.

It is essential to consider whether the initial ownership is with the author in sound recordings, films, broadcasts, published editions, and computer-generated works. The crown owns parliamentary copyright, and joint authorship recognizes that a work may have more than one author.

Infringement

Copyright infringement is the exclusive right to copy, issue copies, rent or lend, perform, show, play, communicate, or adapt the copyrighted work. It is crucial for creators or copyright owners to identify their rights and protect themselves from potential violations. However, there are exceptions and limitations to copyright infringement, such as fair dealing in computer programs and databases, temporary reproduction of databases, lawful use within contract scope, and exceptions for educational establishments and libraries (Abeysekara, 2013). Limitations include public interests, public policy, human rights, and no derogation grant.

RESEARCH METHODOLOGY

This study adopts a mixed-methods approach, integrating doctrinal legal analysis, comparative analysis, and

empirical research to provide a comprehensive understanding of the legislation examines the legislation governing Copy Rights under Intellectual Property, including their validity, ownership, online copyright infringement, and restrictions, while also offering proof and a point of view (Mohamed, 2016). The doctrinal analysis focuses on Sri Lanka's legal framework, including instruments like Patents Act 1977, Registered Designs Act 1949 and Copyright, Designs and Patents Act 1988, Trade Marks Act 1994 and Copyright, Designs and Patents Act 1988 and Copyright, Designs and Patents Act 1988. This research shows that evolution of Copyright in the Digital Single Market provides a better solution to online copyright infringement as well as Safe Harbour Rule and legal status of case laws. Further this will elaborate Injunctions, damages, and an accounting of profits are among the remedies available under UK law for online copyright infringement. The Safe Harbour rule protects Internet Service Providers (ISPs) from liability if they have no direct knowledge of the illegal content. The Digital Millennium Copyright Act of 1998 shields service providers from responsibility provided they do not know about the infringing material, delete or limit access to it, do not profit financially from it, and follow specific "notice and take-down" requirements. The European Commission updated the EU's single market by combining 28 national digital markets into a single one, resulting in the approval of the Digital Single Market Strategy. The research gives final thoughts and future problems after unbiasedly reviewing and contrasting the two legislations, looking at the ramifications and how they are applied.

RESULTS AND DISCUSSION

Copyright infringement is classified into primary and secondary types, with UK law providing remedies for online copyright infringement. In the UK, remedies include injunctions, damages, and an accounting of profits. Internet Service Providers (ISPs) are crucial in discussing their liability under the Safe Harbour rule, which shields ISPs from liability as long as they have no specific knowledge of the infringing content on the platform (He, 2023, p364). The Digital Millennium Copyright Act of 1998 in the United States helps protect service providers from liability if they do not know about the infringing material on their system, remove or block access to it as soon as they realize it, do not profit financially from the infringing material, and comply with certain "notice and take-down" provisions of the Act that enable copyright.

The European Commission has sought to modernize the EU's single market by consolidating 28 national digital markets into a single one. This has led to the adoption of the Digital Single Market Strategy, which introduced the Portability Regulation, passed a directive and regulation to carry out the Marrakesh Treaty in the EU, and proposed a Directive on Copyright in the Digital Single Market (Abeysekara, 2011).

The safe harbor provisions are exempt from liability under EU law, but injunctive relief remains. At the turn of the millennium, European legislators passed the ECommerce Directive (ECD), which limited-service providers' liability for their users' illegal actions. The term 'value gap' has been used to describe this concern in the EU copyright reform debate. The Copyright in the Digital Single Market (CDSM) represents a significant change in copyright law and European intermediary liability in general (Romero Moreno, 2020, p182). Article 17 of Directive 2019/790 on Copyright in the Digital Single Market provides for a specific regime of authorization and liability for copyright and rights related to copyright which applies to certain information society service providers defined as online content-sharing service providers under Article 2(6) of the Directive.

Online Content-Sharing Service Providers (OCSSPs) are exempt from liability in the absence of authorization if three conditions are met in combination: they must have made every reasonable effort to obtain authorization, ensure the absence of specific protected content for which rightsholders have provided the relevant and necessary information, and high industry standards of professional diligence determine which efforts are required (Górska-Jankowska, 2024). However, it is unclear how far the OCSSPs obligation to safeguard these requirements goes. Article 17 (4) CDSM is based on the operators' "best efforts" and thus appears to introduce a more subjective obligation.

Article 17 (8) CDSM complicates matters further by stating that the application of Article 17 CDSM may not result in any general monitoring obligation. This provision appears to contradict CDSM obligations in Article 17 (4), which appear to require platforms to engage in general monitoring in order to avoid liability. It is up to

Member States to reconcile these contradictory elements of Article 17 CDSM when attempting to transpose the provision into national law.

When comparing the safe harbor' rule in the UK with Article 17 CDSM under the purview of injunction, it is important to consider all factors relevant to the circumstances, including whether the provider has received the proper notice (He, 2023). The ability to obtain an injunction against an intermediary whose services are used by third parties to infringe an IP right has proven to be a valuable tool in the hands of rightsholders, particularly in an online context.

CONCLUSION

Despite numerous imbalances, EU rules on copyright in the Digital Single Market are the best remedy for copyright infringement. The UK's Digital Single Market reform plan, which went into effect on June 6, 2019, is the most effective remedy. The UK has stated that it will not leave the EU before June 7, 2021, for incorporation into national law. The United Kingdom has indicated that it will be exempt from implementing any Digital Copyright Directive regulations as a result of Brexit. The modifications in author and performer pay are the least likely to be enacted in the UK. The UK's creative sectors have seen progress, such as higher TV production costs and the establishment of unions with agreed-upon minimum conditions. However, the cost of talent has grown due to higher commissioning volumes and budget levels from SVOD providers. The music industry is anticipated to advocate for reforms to the safe harbor policy, such as greater accountability for online content-sharing platforms. This is consistent with the government's plan on internet hazards. Both the US and the EU are evaluating safe harbor regulations, and making modifications might help prevent piracy. The UK's inability to implement modifications to the Directive may provide it a competitive edge in luring online content-sharing services. However, platforms are opposed to these changes, and if they must be imposed elsewhere in Europe, the UK's unique regime may provide a challenge. Upload filters may be mandated for platforms that serve the EU and the UK, possibly leading to forced harmonization. Copyright law would most certainly require main legislation in the future, while Directives might previously be applied by Statutory Instruments. It is critical to determine if the negotiations for an EU trade pact alter the UK's stance. The Directive-related concerns are not addressed in the UK's proposed working text for a comprehensive free trade deal with the EU. The UK government's future copyright policy may be influenced by trade agreements with the United States.

SPECIAL THANKS

Throughout the study process, the authors maintained ongoing communication with several resource individuals. They expressed their complete support. The authors appreciated their thoughtfulness, direction, assistance, and time when and when needed. Thank you to everyone who contributed to the research.

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