

The Incoherence of Readers' Copyright

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A number of prominent legal scholars have recently expressed support for a copyright system in the U.S. that gives rights not just to authors and creators of content but also to those who read, view, and listen to that content. These user rights go well beyond fair use and typically encompass broad access and distribution rights, including the right to share digital content with others. The idea of a "law of user's rights" (Patterson and Lindberg 1991) is not new, although there has always been a measure of resistance. Yet this idea has gained considerable traction among intellectual property scholars, especially within the last decade. They see copyright as far too heavily tilted toward enriching owners of content; hence the law must be reconfigured to offer more concrete benefits and opportunities to the consumers of content. Litman (2011), for example, ardently insists that we must "reclaim copyright for readers." What specific rights should readers have? While some argue for a modest set of user rights, others propose a thick set of rights including the right to share works with others along with the right to recode or transform a work to give it a different meaning, even if the new product is highly derivative of the original work.

The problem with this position is twofold. First, it is more plausible and philosophically precise to express readers' interest in terms of "liberties" rather than "rights." In Hohfeldian terms (1919) a true right must be a "claim right," and readers can have a claim right that authors should do "X" if and only if authors have a duty to do "X." It is difficult to make a case that authors have a moral duty to make their works accessible and shareable in the same way that a doctor has a duty to respect the privacy of his or her patients. The second problem concerns the scope of these liberties. Arguably, some audience interests should be accommodated because they do not unduly compromise an author's rights. Hence, certain liberties such as format shifting (i.e., copying to different media) should be expanded. But giving users an entitlement to publicly share copyrighted works without permission or to transform a work for commercial purposes undermines the essence of the copyright system. That legal system exists primarily to protect the moral interests of authors who have an entitlement to control their content within carefully prescribed limits. The law must respect the asymmetry of interests between the consumers of creative works and the creators of those works, who deserve to preserve the work's meaning and enjoy the fruits of their labor for a reasonable period of time.

We conclude, therefore, that while the liberties of readers, listeners, or viewers could be expanded by broadening the terms of fair use, the notion that readers have valid and robust "claim rights" is incoherent and morally untenable.

References:

- Litman, J. (2011). Readers' Copyright. 208 *Journal of the Copyright Society of the USA* 325.
Patterson, L. Ray and Lindberg, S. (1991). *The Nature of Copyright: A Law of Users' Rights*.
Hohfeld, W. N. (1919), *Fundamental Legal Conceptions*. New Haven: Yale University Press.