

that would maximize their common goal of promoting and preserving the generation of creative expression within society.

### ***C. The Public Interest Dimension of Copyright***

A possible means of resolving the aforesaid conflict is offered by the school of thought which views both copyright and the freedom of expression as being based upon the same fundamental equilibrium as enumerated above.<sup>5</sup> Hence the key to resolving the persisting tension depends upon the achievement of the right balance between the private interests and public rights protected through each one of these values.

An indication as to the manner in which such a balance may be achieved is offered by the notion of copyright as a doctrine of public interest or an instrument of social good that seeks to bestow on society as a whole the benefit of the generation of creative expression.

This conception of the need to balance the rights of authors against the legitimate interests of the public is also reflected in Article 27 of the UDHR which provides to everyone the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is an author, while simultaneously enumerating the right accorded to everyone to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Hence based upon this view of copyright law, if the ultimate aim of copyright is to secure the public interest in the generation of creative and artistic works, it may be argued that the scope of the private exclusive right that is accorded to the copyright owner should be defined within the scope of such public interest and that the exclusive rights accorded under copyright should be suitably limited so as to

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5 Paul L.C. Torremans *Copyright (and Other Intellectual Property Rights) as a Human Right*, in *Intellectual Property and Human Rights* 197 Wolters Kluwer (Paul L.C. Torremans ed.2008).

prevent a copyright holder from deriving profit from his creation in a manner adverse to the legitimate interests of the public.

#### ***D. Seeking a Suitable Mechanism to Achieve the Right Balance***

A divergence can be perceived in the views of the copyright community as to the most effective means by which the tension between these competing interests maybe resolved.

One viewpoint expounds that the idea-expression dichotomy of copyright presents a means by which this tension may be reconciled within the inherent conceptual framework of copyright itself. In accordance with this view since the protection granted under copyright extends only to the expression of a work and not to the facts and ideas underlying such expression, this forms a limitation within the conceptual framework of copyright itself which prevents copyright from unreasonably encroaching upon the guarantee of free speech.<sup>6</sup>

However it has been noted that although the line between idea and expression is often hard to discern, the point of divergence between idea and expression is not intended to vary, thus robbing the doctrine of much needed flexibility in developing into an efficient tool by means of which such reconciliation maybe attempted.<sup>7</sup>

It has also been pointed out that although at one point of the evolution of copyright it would have been true to hold that copyright only protected expression and therefore it would have been possible to avoid infringement through merely using the factual or conceptual information contained in the copyrighted work, present day realities do not allow for such a simplistic interpretation.<sup>8</sup> For example in cer-

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6 Melville B. Nimmer *Does Copyright Abridge the First Amendment Guarantee of a Free Speech and Press?* 17 UCLA L. REV. 1180, 1189 (1970).

7 Jay Dratler Jr. *Fair Use in Copyright Law* 43 U. MIAMI L. REV. 233, 245 (1988).

8 Alexandra Sims *The Public Interest Defence in Copyright Law: Myth or Reality?* 6 EIPR 335, 339 [2006].