

Copyright Licensing Agency Essay Competition 2021

Word count, including references: 1486

'Copyright only protects big companies.' Discuss.

Copyright is intrinsic to continual creation and competition. Where there is an author of original work, moral rights, including the 'paternity right', the 'right of integrity', 'false attribution', and the 'right of privacy', should be recognised.¹ The application of copyright protection should not be contentious or partisan. Therefore, this essay will argue that, in the context of UK law, copyright *does not* only protect big companies.

This is because:

1. Copyright's purpose is to protect without discrimination;
2. There is no correlation between copyright protection and company size;
3. Copyright protection does benefit smaller companies and individuals;
4. Copyright protection is multifaceted.

In this essay, copyright will be defined as: "...one of the main types of intellectual property. It allows the copyright owner to protect against others copying or reproducing their work... Copyright arises automatically... The work... needs to originate with the author, who will have used some judgement or skill in its creation..."² Big companies will refer to a definition for 'large companies', assuming that 'big' and 'large' are synonymous. Large companies

¹ TIMMS, F. 2020. *UK copyright law: the basics*. [online]. Available from: <https://www.pinsentmasons.com/out-law/guides/copyright-law-the-basics> [Accessed May 2021]

² COPYRIGHT LICENSING AGENCY. *What is copyright?* [online]. Available from: <https://cla.co.uk/what-is-copyright> [Accessed May 2021]

“meet at least two of the following criteria: turnover of more than £36 million, balance sheet total of more than £18 million, more than 250 employees.”³ This could imply that big companies hold dominant positions in their markets, due to greater resources, which alone is not a breach of UK competition law.

Copyright’s purpose is to protect without discrimination. Despite evolution in the legal scope of copyright since its inception in the first Copyright Act, the Statute of Anne (1710), to protect books and their authors, the right’s non-discriminatory purpose has been sustained. Copyright continues to concern the unique relationship between the author or rights-holder and their original work, even with significant technological advances, championing equal protection for all eligible, not only big companies. This is implicitly enshrined in the United Nation’s (UN) Universal Declaration of Human Rights, Article 27: “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”⁴ This indirect acknowledgement of copyright suggests how intellectual property rights (IPRs) and competition are fundamental to the British values of democracy, individual liberty and mutual respect, and are equally applicable to all.

There is no correlation between copyright protection and company size. The arguably flawed stance that copyright only protects big companies is magnified by the concept that

³ DELOITTE. 2019. *New 2019 reporting requirements for large private companies – a reminder* [online]. Available from: <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/audit/deloitte-uk-gib-private-company-requirements-october-2019.pdf> [Accessed June 2021]

⁴ UNITED NATIONS. *Universal Declaration of Human Rights* [online]. Available from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [Accessed June 2021]

such dominant companies are innately monopolies, manipulating copyright to undermine the originality of smaller companies and individuals. This advantage fostered by big companies is highlighted by Maskus: “Because IPRs offer their owners the legal ability to exclude others from using their ideas...they can establish breathtaking market power.”⁵ Meanwhile, Doctorow contends that copyrights are “expropriated” and used as “leverage” by big companies, whilst smaller companies “surrender” their own monopolies to enter the market, protecting the purported omnipotence of big companies. This undermines “the author's monopoly”⁶, and so the original purpose of copyright: to protect without discrimination. This has arguably been exacerbated by the UK’s Competition and Markets Authority removal of ‘monopoly’ from their name, suggesting regulation, including of copyright, that protects big companies.

Herein lies the issue: the Max Planck Institute for Intellectual Property and Competition Law states that a monopoly “...does not have to face any competitor in the relevant market.”⁷ In the UK, competition is safeguarded by accountability through the Copyright, Designs and Patents Act 1988 (CDPA), under which abuse of dominance is prevented by regulations such as limited copyright duration. Copyright prohibits imitation without consent, not the creation of new works in the same market for similar use, and so does not inhibit competition. To compliment this, the European Court of Justice demonstrated in case law

⁵ MASKUS, K. 2012, *Private Rights and Public Problems: The Global Economics of Intellectual Property in the 21st Century*. Washington, DC: Peterson Institute for International Economics.

⁶ DOCTOROW, C. 2020. *In Serving Big Company Interests, Copyright Is In Crisis*. [online]. Available from: <https://www.eff.org/deeplinks/2020/01/serving-big-company-interests-copyright-crisis> [Accessed May 2021]

⁷ MAX PLANCK INSTITUTE FOR INTELLECTUAL PROPERTY AND COMPETITION LAW. 2013. *Copyright, Competition and Development* [online]. Available from: https://www.wipo.int/export/sites/www/ip-competition/en/studies/copyright_competition_development.pdf [Accessed May 2021]

that unlawful, “abusive” behaviour is present where dominant companies refuse to provide copyright licences to competitors in the same market, “...to the detriment of consumers.”⁸

Whilst Brexit has changed the application of EU law in the UK, the EU-UK Trade and Cooperation Agreement maintains competition law that prevents abuse of dominance within markets.⁹ As such, where monopolies are prevented, company size and dominance does not directly correlate to their level of copyright protection. Consequently, this renders the assumption that copyright only protects big companies invalid.

Copyright protection does benefit smaller companies and individuals. Whilst it is argued that copyright only protects big companies as they are “more established and have greater access to funding”¹⁰, therefore more able to accommodate legal cases that challenge competition from smaller companies and individuals, this is refuted by a World Intellectual Property Organisation (WIPO) study. The study states that countries legally protect intellectual property to grant authors their deserved rights and to “promote creativity and innovation, so contributing to economic and social development.”¹¹ This could imply that copyright protection is beneficial to the creativity of smaller companies and individuals, particularly as they are without the greater financial risks of big companies. For original work on a smaller, somewhat safer scale, moral rights enable smaller companies and individuals to gain greater presence in their markets, by restricting usage of their unique

⁸ CORDELL, N. (& B. POTTS). 2019. *Copyright litigation in UK (England and Wales): overview* [online]. Available from: [https://uk.practicallaw.thomsonreuters.com/w-011-3729?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-011-3729?transitionType=Default&contextData=(sc.Default)&firstPage=true) [Accessed June 2021]

⁹ NORTON ROSE FULBRIGHT. 2021. *The impact of Brexit on antitrust and competition* [online]. Available from: <https://www.nortonrosefulbright.com/en/knowledge/publications/e8d5744d/the-impact-of-brexit-on-antitrust-and-competition> [Accessed June 2021]

¹⁰ QUAIN, S. 2018. *The Advantages of a Large Business* [online]. Available from: <https://smallbusiness.chron.com/advantages-large-business-21007.html> [Accessed June 2021]

¹¹ WIPO. 2016. *Understanding Copyright and Related Rights* [online]. Available from: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf [Accessed May 2021]

work and by earning income through licensing, selling and royalties, to the same extent as big companies. Copyright protection is based on universal criteria, maintaining competition within markets. Additionally, copyright's automatic application, independent of the costly legal action (more accessible to big companies), supports the equitable foundation upon which copyright protection originated, demonstrating that copyright does not only protect big companies.

Furthermore, Article 17 of the UN's Universal Declaration of Human Rights states: "No one shall be arbitrarily deprived of his property." Arguably, this supports the conditional nature of copyright within the CDPA, leaving little ground upon which the law can be manipulated, and so the argument that smaller companies and individuals cannot benefit from copyright protection breaks down. As such, big companies are unable to legally abuse their dominance, afforded by advantageous resources, using copyright protection to deprive smaller companies of their property during infringement cases. This international standard was upheld during the *Nespresso v. Espresso Club* (2019) case, whereby the dominant Nespresso unsuccessfully attempted to sue Espresso Club for alleged copyright infringement. This exemplifies how accountability regarding copyright is maintained, ensuring it's original purpose is upheld, so by implication: copyright does not only protect big companies.

Copyright protection is multifaceted. Whilst it primarily safeguards original works, copyright also protects individuals and communities by perpetuating cultural creation that has significant socio-economic benefits, allowing countries, companies and individuals to develop. The WIPO study, referenced previously, highlights that "...protection of

copyright...serves the twin objectives of preserving and developing national culture and providing a means for commercial exploitation..." Some argue that "copyright law can create barriers"¹², by restricting access to resources that provide opportunities vital to social-economic wellbeing, such as education. However, by finding an optimal level of copyright, using limitations and exceptions outlined in the CDPA, a dynamic system is formed in which protected works are accessed, enjoyed and produced, regardless of company size.

Copyright protection must continue to evolve as technological advances develop our methods for originality. Nevertheless, the underlying purpose remains the same. In the UK, copyright does not only protect big companies; accountability through domestic and international law ensures copyright protection for companies of all sizes and individuals, by inhibiting abuse of dominance, and for communities, by providing a channel for socio-economic growth. However, this can only happen in countries, like the UK, where copyright law is applied consistently and impartially within a framework that also protects competition. Copyright is not a device used by big companies to gain ultimate market dominance; it is a cornerstone of the UK's constitution, enabling creativity, advancing competition and preserving consumer welfare.

¹² SHAVER, L. 2014. *Washington University Law Review: Copyright and Inequality* [online]. Available from: https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6112&context=law_lawreview [Accessed May 2021]

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