Access to Knowledge & Preservation of Public Domain: How Copyright’s Balance is Disappearing

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– What is Copyright / Copyright Law?

– What are the Underlying Values?
   an owner of information exists
   author is important
   copying is bad

- Where do these values come from?
Mode of Communication

- Speech
- Writing
  - university training / scholar-scribe
- Print
  - Values inherent to copyright
- Digital?
**Ancient Scribes**

- “The scribe was considered one of the most desirable professions in Egyptian societies; however, it was a difficult vocation to achieve.”

- “Egyptian Schools for Scribes Inflicted Ten to Twelve Years of Intensive Training and Discipline on Those Who Desired the Advantages of This Profession.”

(www.wordinfo.info/words/index/info/view_unit/2654)
Scholar-Scribe

- The ideal Scholar-Scribe in a study filled with manuscripts and the implements of his labor.

- [www2.sunysuffolk.edu/oconnog/story/illumman.html](http://www2.sunysuffolk.edu/oconnog/story/illumman.html)
Birth of Modern Copyright Law (An overly simplified history)
An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.
Principles of Copyright Law

1) Purpose

- **United States Constitution article 1 section 8 clause 8**: Congress shall have Power...
  To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. -> US Copyright Act

2) Mechanism of copyright law

- Exclusive rights ⇒ public interest
- Incentive system: to promote creativity and progress
  ⇒ How much incentives are appropriate to promote progress?
- Importance of balance: reward to authors/public interest, production/use
  ⇒ which will promote public interest?
- Rules Inherent in Copyright Law that were designed to ensure the rational application of copyright law in scope and operation
Balancing Rules (Disappearing?)

- Originality (v. functional, utilitarian)
  - protects “original” works of authorship
    -> DB w/out originality protected by law for investment

- Term of Protection (for limited time) -> Public Domain
  - 21yrs/28yrs -> 50yrs after authors death
  -> 70yrs after (100yrs ago, 100yrs later)

- Scholarly Work
  - Aggressive Commercialization against Authors’ Will
    • by Industry + Government + Association

- Fair use / Exceptions
  - defense -> not much applicable in Internet (commercial use because anonymous user, normally would have to pay) – reward for investment

- Limited secondary liability
  - simply providing tools and encouraging by advertising will not make Sony liable -> broad liability in P2P (business conduct by advertising and newsletters is inducement) -> affects other countries as well
Country (시골풍경)
Washing Clothes (빨래)
Pounding Clothes (다듬이질)
Taxi (택시)
Seeing a Doctor (병원 진료)
Korean Chess (장기놀이)
Singing with an Organ (풍금에 맞추어 노래)
Swing (그네뛰기)
Korean See-Saw (널뛰기)
Future
Future
Methods of enforcement

- Suing and criminalizing individuals
- Disproportionate to the conduct
- Invading privacy
- Aggressive suit of copyright holders and law firms (sometimes baseless claim, but threatening, disturbing, & harming enough)
Law for the Discouragement of Learning?

- Vicious cycle of the so-called global standard
  - US contents industry’s strong lobbying power and financial resources influence copyright law and regime (relatively weak network providers, ISPs, technology and computer industry, users?)
  - US copyright law influences other countries (through WIPO, WTO, FRA, ACTA, etc.)
  - Most countries do not have an established position about copyright, not even based on their own interests
  - Disadvantages to all the stakeholders
    - eg. File-sharing was not decreased, but p2p based market could not grow, so music industry was not better off. Users are actively challenged and they are harmed financially and psychologically + develop distrust about law in general and about law-related professionals.
How to break this vicious cycle of discouraging environment?

- Promoting strong public domain
  - cc, library, open access project, authors’ will and effort, government’s interest

- Promoting individual fight back on copyright abuse & baseless claim
  - suit, information sharing, education, mobilization
    - eg. Youtube, p2p file-sharing

- Computer & Internet industry fight back
Rationales for Strong Copyright Protection
-not supported by evidence

- More production of information
- Creating Employment
- GDP Increase
- IP Industry is Important in Economically Advanced Countries

-> none of these are clearly supported by evidence
   (eg. CCAA study)