Corrective Justice and Copyright Infringement

Abstract

This article demonstrates that one crucially important function of copyright infringement cases is corrective justice. However, because scholars and lawmakers often conceive of copyright in solely economic terms, this goal is often overlooked and demonstrable unfairness occurs as a result.

The article uses tort law theory to make three novel points. Firstly, the economic theory of copyright is incomplete. This theory states that copyright is a tool for providing authors with incentives to create new works. However, this goal does not explain the legal relationship between the author and the infringer. If all we want to do is give authors incentives, then all we need to do is reward creation. Government subsidies and prizes are examples of methods for incentivizing creation without requiring the author to sue the infringer.

Secondly, corrective justice is a function of copyright infringement cases. This explains the author-infringer relationship. Corrective justice maintains equality between people. People are equally entitled to their rights. When someone does not respect the rights of others they cause an inequality. The wrongdoer gains something and the victim loses something. By making the wrongdoer compensate the victim, the law removes the gain and loss and restores the antecedent equality. This is one basic function of copyright infringement cases. Copyright is provided for a mix of reasons (some economic, some based on natural rights). Thereafter, when someone infringes copyright, they cause an inequality to arise: the infringer gains the ability to copy without paying a license fee, while the author loses the work’s market value. Making the infringer compensate the author removes the gains and losses and restores the equality between the parties.

Finally, this important goal is often overlooked. The article will demonstrate three cases where the law does not adequately restore the equality between author and infringer, and which are accordingly unfair. The examples are: statutory
damages for wilful infringement, litigation fees, and mass copyright infringement suits.