Copyright Law and the Progress of Science and the Useful Arts

By Alina Ng
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“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.”¹

The Copyright Law and the Progress of Science and the Useful Arts² provides an analysis of the current copyright laws against the original goal of the United States copyright system set out by the Constitution. The Constitutional goal of enacting copyright law is to “promote the progress of science by granting authors exclusive rights over literary and artistic works.”³ The book suggests that one of the frictions within the current copyright system is its conflicting attempts to protect “private economic rights over literary and artistic works,”⁴ and to also further the goal of promoting the progress of science and the useful arts.

The historical trend in copyright law is a steady increase in the restrictions that limit a user’s ability to access copyrightable works, as opposed to making information more accessible to individuals. In turn the system has limited the ability of society to access works in a public domain. The purpose of the book is to explore the reasons for the difficulties of the copyright system, and to begin to identify a system that would be more in sync with the Constitutional goals and the technological capabilities of society today.

¹ U.S. CONST. art. 1, § 8, cl. 8.
² Copyright Law and the Progress of Science and the Useful Arts (Alina Ng, Elgar Law, Technology and Society, 2011).
³ See Copyright Law and the Progress of Science and the Useful Arts, supra note 2.
⁴ See Copyright Law and the Progress of Science and the Useful Arts, supra note 2.
Alina Ng, an Associate Professor of Law at Mississippi College School of Law, argues throughout the book that the copyright system needs to consider moral and ethical principles to protect the interests of authors, users, and publishers of creative works. There is a need to consider the relationship between “laws, morals, and legal validity” to determine the rights of all parties involved in the creation of literary and artistic works. She attempts to look at the copyright system from a new angle, which includes aligning the legal system with the original constitutional purpose. The book is geared to lawyers and literary scholars who have knowledge about the copyright system and are interested in diving deeper into the relationship between copyright law and the progress of useful arts.

The book is separated into three distinct parts, each of which delves into the copyright system as it existed at a specific point in time. Each section is used to argue that a change to the copyright system is necessary in order to better society and to address the current criticisms of the system. The sections build on top of each other and Ng uses each part to promote her point of view. Part I looks at the current state of the copyright system. A key section and basis for Ng’s arguments, is her interpretation of the Constitutional language of “progress”, and “science and the useful arts.”\(^5\) She believes Congress meant “progress” to mean advancement, while “science and the useful arts” represented knowledge. Ng uses persuasive background information for supporting her argument. She argues that today’s challenge is to promote the advancement of knowledge, while at the same time protecting an author’s right under the copyright system. In order to promote advancement, knowledge has to be available to society, which the current copyright system continues to hinder through restrictive measures.

The role of technology has an impact on the availability of knowledge to the public. Technologies have allowed creative efforts to flourish nationally and internationally by

\(^5\) See Copyright Law and the Progress of Science and the Useful Arts, supra note 2.
promoting a group effort in creating and disseminating knowledge. With the advancement of technology, there is a need for users, authors, and publishers to work together to achieve the common goal of advancing knowledge in society to effectively achieve the initial goal set out in the Constitution.

Part II explores the development of the copyright system and the influence of copyright protection in England on the development of protection in the United States. Ng uses the first chapter in this section to make an argument that “progress is a human endeavor, and not just an economic activity.” For the purpose of this book, economic activity is defined as the ability to make money off of the copyrightable works, which the author argues is not the correct mind frame for analyzing copyright law. There cannot be significant progress of the end goal to achieve advancement of creativity and knowledge if the author and publisher’s primary goal is personal gain. There are non-economic rewards for creating work, which need to be considered. These rewards include recognition, professional advancement, credibility, generosity, or simple pleasure. The non-economic rewards will help further the goal of promoting science and useful arts. Ng’s argument is convincing because the promotion of the arts will not be accomplished if the primary concern is making profit for one’s self.

During the creation of the Constitutional Clause many ethical and moral principles were considered, but all did not make it into the clause itself. The lack of moral and ethical principles in the clause led to a missed opportunity to discuss the property rights of the author and in turn created difficulties in achieving the goals of the copyright system. The author argues there is a lack of understanding of the rights of an author in the copyright system, and a false understanding that exclusive right equates to a possessory entitlement under the Copyright Act. The main point Ng reiterates throughout the book is the lack of “moral and ethical principles

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6 See Copyright Law and the Progress of Science and the Useful Arts, supra note 2.
which guide the use and production of literary works.”7 There was an implicit understanding when the intellectual property clause was established in the United States Constitution that the copyright system be founded on norms of justice and fairness. These norms need to be reconsidered to balance the rights of all parties.

Part III analyzes the future of the copyright system. The author primarily uses this section to continue her argument that the current system needs to be updated to successfully promote the Constitutional goals of promoting science and the useful arts. There is a necessity for all parties, authors, users, and publishers, to work together toward a common goal of promoting the exchange of knowledge, which in turn Ng argues will be for the betterment of society. The one segment that Ng does not expand enough upon is where the copyright system should move to. She spends the majority of the book analyzing varying schools of thoughts, the historical development of copyright law, and philosopher ideas on the copyright system, instead of articulating an answer to the ultimate question of how the system can successfully change to better promote the Constitutional goals.

The book just begins to touch on how the legal system should be altered to achieve the normative social order that will help promote the goals of the copyright system. Of the three ways suggested, legislation, the courts, or faith that parties in the system will consider themselves bound by these norms, the author believes that the burden may fall on society to enforce the moral and ethical norms. However, this view creates the question of what will trigger society to start putting an emphasis on moral and ethical norms as opposed to continuing to operate the same way it’s been operating? The author points to a need for an understanding of these standards by the primary groups of authors, users, and publishers. After this section, I am left unconvinced that society will make the necessary changes on its own.

7 See Copyright Law and the Progress of Science and the Useful Arts, supra note 2.
The book provides an insightful background of the developments of copyright, which will in turn help persons make their own opinions on which school of thought is ultimately correct or more on point. Even though the book leaves questions open on how to appropriately change the copyright system, it does address the risks associated with not changing the system, including continued abuse of rights. The final message of the book is the same as advanced in the beginning. There is a need for a reconstruction of the copyright system that creates a common goal between authors, users, and publishers of progress of knowledge and creativity in society. After finishing reading, I was still left with the question of how to achieve advances in the copyright system under this school of thought.