

Reconceptualizing the Idea of Responsibility in Copyright Law

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This Article puts forward a new ethical theory of copyright protection by examining the ethics of responsibility that should be channeled into copyright law. It considers how and why copyright law should be reformed to embrace a strong vision of copyright holders' responsibilities. It argues that a copyrighted work is not only the embodiment of its author's thought and personality, but also the embodiment of the social enterprise of sharing intangible resources to promote creativity, of shaping people's cultural power, and of pursuing the quest for justice. These social values inherent in all copyrighted works provide the ethical justification for introducing into copyright law the ethics of responsibility and enforcing it as a core function of copyright law. Following the ethics of responsibility that this Article proposes, copyright law should function to grant exclusive rights to copyright holders, and also to impose social responsibilities on them. Moreover, the Article argues that the ethics of responsibility can address the limitations of the First Amendment and the Copyright Clause of the U.S. Constitution in protecting the public interest in access to copyrighted works.

This Article is divided into three parts. Part I reveals that there has been a massive irresponsibility mentality among many copyright holders. It further examines the roots of the irresponsibility mentality and the reasons why copyright law has failed to deal with this problem. Part II considers the ethical basis for imposing responsibilities on copyright holders. It shows that while individual rights are crucial for each individual, responsibilities are crucial for shaping social membership. Copyright holders have dual identities as individuals and as social members. Responsibilities should be imposed on copyright holders because they are social members who receive benefits from publicly available cultural resources and are situated in the larger network of cultural participation and distribution of social resources. It then argues that copyright law should have dual functions: protecting copyright holders' rights and enforcing their responsibilities.

Part III of this Article moves on to explore the extent to which the ethics of responsibility can be translated into legal rules in copyright law. It argues that this transition should involve two crucial steps of implementation. The first step deals with the assimilation of what I call the responsibility policy into copyright law as a central concern for making legislative and judicial decisions on copyright protection. The second step involves applying the responsibility policy and redefinition of the nature of copyright limitations in order to reform copyright law. The reform should introduce legal rules to enforce two kinds of copyright holders' responsibilities: negative responsibilities and collective responsibilities.