

Copyright as an Engine of Censorship

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Commentators have widely discussed the tension between copyright and free speech. More recently, Frank La Rue, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, expressed concern about the use of the graduated response system to address copyright infringement. Consumer advocates and civil liberties groups have also highlighted the free speech problems in legislation (SOPA and PIPA) and international treaties (ACTA and TPP).

One issue commentators have yet to fully explore concerns the tension and conflict between copyright and free speech in countries that heavily restrict information flows or that substantially control cultural industries. Because such tension and conflict varies according to historical, political, social, cultural, and religious contexts, the same intellectual property standards can have different ramifications for the protection of internet freedom in different countries.

Focusing on countries with heavy information control, this article examines the need for greater copyright freedom to compensate for the lack of freedom of expression. It further articulates how, in some countries, “creative reuse” could be transformed into “liberative reuse.” The article questions Justice Ginsburg’s argument in *Eldred v. Ashcroft* that “the First Amendment . . . bears less heavily when speakers assert the right to make other people’s speeches.” It explains why the reproduction of speech created by others is sometimes needed to promote free speech.

The article also highlights the free speech challenges in an environment where enforcement measures are increasingly strengthened and where criminal liability is introduced to address massive copyright infringement on the internet. It concludes with some suggestions on how to harness the copyright system to promote free speech values and internet freedom.