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The impact of differentiation in copyright law on the role and efficiency of copyright

Abstract of Doctoral Thesis

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CONTENT

„To my mind, copyright ought to be about liberating us from ignorance, enriching our culture and therefore the idea of copyright and freedom existing side by side as partners is a natural fit not an aberration."

BRIAN FITZGERALD[1]

[1] Brian FITZGERALD: Introductory Remarks. In: Brian FITZGERALD – Benedict ATKINSON (szerk.): *Copyright future, copyright freedom. Marking the 40 Year Anniversary of the Commencement of Australia's Copyright Act 1968*. Sydney, Sydney University Press, 2011. 21.

I. SUBJECT AND RESEARCH OBJECTIVES

There are various theories as to why copyright exists and as to what were the reasons that brought about changes in copyright during the last three hundred years. Furthermore, there is no consensus as to whether or not the role of copyright has undergone fundamental changes since the beginning of its existence, as to whether or not it is efficient in its current form, and as to if there was even a time in history when it worked in an efficient manner. The following main tasks have been identified in the course of investigating the impact of differentiation in copyright law on the role and efficiency of copyright.

1. Copyright has a direct impact on the life of almost every person, and more and more people have a well-formed opinion on the role and functioning of copyright. These opinions tend to approach copyright from various perspectives and tend to focus on various aspect of copyright. Also, these views are often limited on based on limited experiences regarding the role and operation of a specific field, but then they are extrapolated and used to criticize the entire field of copyright in general. With a view to clarifying the future role of copyright, it seems to be necessary to examine how the *original role* of copyright has changed, if this role itself has changed as a side effect of the continuously changing nature of the area, or it has been merely differentiated.

2. While the role of *balancing* was intended for copyright by the legislator, this role is not easy to carry out due to the complexity of legal relationships falling within the egis of copyright and to the strong and often conflicting interests of the stakeholders. The real conflicts of interests lying behind the apparent conflicts form part of the main focus of the thesis, and an attempt is made to determine if the future paths intended for copyright by the various stakeholders are indeed divergent, or there is a chance to achieve a real compromise.

While copyright was never intended to guard the tree of knowledge, it is now commonly thought of as a main impediment to access. The protection of the authors' rights and other aligned interests resulted in the emergence of numerous limits, exceptions, and restrictions in the structure of copyright, and more and more points of *differentiation* have been introduced by the legislator in an attempt to achieve balance of the regulation. The research seeks to discover such points of differentiation with a view to determine if the current breaking points are located at the right places with regard to the "tectonic plates" of copyright.

In this context, it is a fundamental question whether or not a *change of paradigm* is needed to modernize and improve the efficiency of copyright, or the continuous changes of the toolkit serving the paradigm of copyright law derives from the nature of copyright law, meaning that, in the wake of economic and social trends, copyright policy needs to give a response to the emergence or disappearance of certain differentiating factors. It is yet to be seen, if this purpose can be achieved without making copyright unnecessarily complex – in other words, it needs to be seen if the complexity of regulation has any adverse impact on the efficiency of the field, i.e. if the interests

of the stakeholders, including the granting of licenses and enforcing rights, can be ensured in a simple manner.

3. Furthermore, the thesis also covers the differentiated approach toward the *person* of the author, the work/performance of the original creator, and the role and importance of the relationship (set of relations) between the original creator, the intermediators, and the consumers in the cultural and creative industry. It is from this perspective, and with regard to the issues raised by the digital mass production practices of the 21st century, that the statement by BOYTHA György is considered: [c]opyright is always trying to return home, to the original creator, since its exclusive nature is rooted in the creative work of the author ("a szerzői jog hazafelé tendál, szívósan visszatörekszik a szerző személyéhez, hiszen kizárólagossága a szerzői alkotómunkában gyökerezik"[2]).

[2] BOYTHA György: Eltérő szerzői jogi koncepciók közelítésének kérdései, különös tekintettel a film jogvédelmére. In: *Ius privatum ius Commune Europae. Liber amicorum: Studia Ferenc Mádl dedicata.* Budapest, ELTE, 2001. 74.

II. METHODOLOGY

The research is based on an extensive review of Hungarian and foreign *scientific literature* that is primarily relevant to Hungarian and European copyright legislation and practice. In addition to legal studies and papers, the dogmatic analysis also relies on sources presenting discussing the relevant issues from an economic perspective, as well as on works describing structural changes in society. The methods of comparative law are not applied in the thesis, but attention is drawn to problems arising from the differences between Anglo-Saxon and continental copyright traditions.

With regard to the future of copyright, an attempt is made to present various positions, but the search for answers to the questions raised is guided by a consciously chosen values. A review of Hungarian and European Union *legislation* and *practice* was also necessary to identify the points of differentiation in copyright policy. Instead of presenting such policies in a descriptive manner, close attention is paid to the identified breaking points only.

The research into the *common denominator* of theories and proposals regarding the role of copyright in the 21st century, as well as into the possible directions of policy development, is guided by a desire for continuity and compromise. Furthermore, such research may not ignore the fact that the efficient functioning of copyright is also dependent on the adequate functioning of *other legal fields* that have a strong impact on the cultural and creative sector. However, after pointing out the connection points, such other fields are not analysed here in more detail.

The thesis takes into account the well-established *EU and international legal background* of copyright. Thus, relevant sources regarding currently pending EU reforms and processes are also discussed in the context of the possible directions of Hungarian legal development, and both theoretical and practical conclusions are drawn from such sources that are relevant to the subject matter of the thesis.

III. THE RESULTS AND THE APPLICABILITY OF THE RESEARCH

1. Background

1.1. A review of the history of copyright suggests that the way of understanding the role and justification for the creation of copyright has changed over time, and different *partial goal* were emphasised in different ages that resonated with the social, economic, and cultural realities of the given period. Naturally, works of authorship have always existed, but *the economic importance of the process of creation and intermediation* has been increasing during the last three centuries. The legislator normally tries to establish a settled framework for the cultural market based on the principles of *recognition* and fair *distribution*, so that the free, fast, cheap, and modern distribution of works of authorship can be ensured by an environment that is *free of censorship* and is based on *free market competition*. It might be regarded as a mere accident that the emerging legal framework eventually focused on the author, but it can be also considered to be the token of the viability and efficiency of copyright.

1.2. It has become clear that individual and original works can provide and contribute to more than fame, immortality, self-expression, cultural improvement, and the overall knowledge of society: they can also provide – through being sold or used– to provide the financial means required to create other works. The means chosen by the legislator for this purpose was the *exclusive right to grant licenses*. This privilege, as well as its ever existing limitations, serve a very real purpose, i.e. to ensure that the works of the author are distributed to the widest possible audience. In addition to the regulatory framework that focused on the protection of investments, the *more and more clearly defined theoretical foundations* resulted in the recognition of the intellectual efforts of the author. In the 'game of copyright', the stakeholders concerned were distrustful toward the idea of laying down the protection of authors in international conventions and formulating such rights as fundamental rights; in response to copyright becoming a fundamental human right, *the audience also claimed to have fundamental rights* to cultural values. Naturally, the regulatory framework kept developing in an attempt to find a balance between the rights and interests of all stakeholders.

1.3. Since the issue is becoming more and more global, the complex *national* policies seeking to respond to the challenges of a rather complex reality need to fit into the existing *international* and *EU* regulatory framework. With regard to more and more apparent problems arising from the principles of a *territorial* approach, numerous copyright scholars believed in the beginning of the 20th century that the creation of a *consolidated global private law* was nothing more than a utopia, but they also believed that a *consolidated copyright regime* could become a reality, as *copyright was a fairly fresh and flexible field of law and, unlike property law or family law, it was free from regional, historical, or national characteristics.* Furthermore, they also believed that *the reality regulated by copyright law, i.e. the relationship*

between the author and his audience, was of the same nature in the entire world.[3] However, this idea was not reflected by the regulatory framework of copyright that was influenced by various factors and sought to find a reasonable compromise between the competing interests of stakeholders.

1.4. In the beginning, it was relatively easy for copyright to strike a balance, sine the interests of the various actors were more or less aligned. While the *fundamental concept of copyright focuses on the relationship between the work and its author*, it also needed take into account more and more diverse situations and scenarios. Among others, copyright needs to take into account the *distinctive features of various kinds of works*, as well as the fact that the range of kinds of *relationships between a work of authorship and the author* is rather wide. While dividing lines were drawn along the different kinds of works, the regulatory framework was also influenced by the level of susceptibility of various works to be produced on a *mass* scale. Also, further adjustments are needed whenever a new kind of work or performance emerges that cannot be fit into any of the existing categories.

1.5. The meaning of protection became also closely dependent on the *ways of use* that are typical concerning the various kinds of works. The differences between communicating works in a material and immaterial form, the ease of reproduction, the typical means of distribution, as well as the means of communication to the public require different regulatory provisions, but the method of publication is also relevant in itself. The position of the right holders may be quite different as well, as the level of *control* over the use of their work, the relationship between the work and its author, the *desire* or *ability* to monitor the use of the work, as well as the possible need for (different kinds of) intermediaries may be rather different in each case.

1.6. *From the perspective of the users*, the *ease of use* of a work, as well as the needs of the public regarding a specific work may be rather versatile. In addition to the provisions that enable the enjoyment of a work of authorship, numerous provisions have been introduced to ensure the usability of works, corresponding to the *information content* of the given work. It has become apparent that the *purpose of use*, both by the authors and by the audience (e.g. advertising, investment, private use, enjoyment etc.), is a relevant aspect, and the commercial nature, economic impact, as well as the functioning and size of the concerned industry came to have a material impact on the definition of the extent of protection, exceptions, and limitations. For some works, their *"product nature"* is a dominant factor, as their mass "consumption" (i.e. a short usage cycle and even shorter period of enjoyment) is a very real purpose. In contrast to the forms of uses that are considered passing or special, other segments of the cultural market are regarded as more *permanent*. For a significant number of works, economic utilization is not a relevant factor.

1.7. In certain situations, the eventual enjoyment of a work of authorship requires a long and complex network of intermediaries, and the *chain of licenses* and the detailed meaning of personal and economic rights is heavily influenced by the nature (technical and economic features) of the

[3] TÓTH János: *Szellemi alkotás és jog*. Kecskeméti Református Szent Ekklézsia, 1947. 16.

given method of use. The less restricted flow of works may be a result of the intentions of the right holder, or it may be made possible by the legislator (even against the will of the right holder) on the basis of public interest considerations, or for economic, technical, or other reasons. In each such situation (and corresponding to the type of the given work and the method of use), emphasis is placed on a different *goal* of copyright regulation.

1.8. The different approach of various *legal systems* toward copyright also causes significant differences. Among others, there might be significant differences regarding the treatment of neighbouring rights, personal rights, the waiver of such rights, the transferability of economic rights, as well as the emphasis placed on business and competition considerations in general. These differences become quite important for right holders, investors, users, and members of the audience in cases of *cross-border use*. Considerations relating to *territoriality* may have an impact on the uses and even the very possibility of enforcing various rights, and such differences may be of low or utmost importance for different kinds of works.

1.9. While the *foundations* of copyright *remained the same* during the last three centuries, the various kinds of works and types of uses had a considerable impact on copyright's ability to perform its intended *role*, bearing in mind that even this intended role might be different concerning the various categories of works, meaning that even our expectations concerning copyright has become differentiated. The combination of all the above considerations resulted in a rather diverse and *complex* regulatory framework both at international and national level. While it might seem justified to take into account *more and more differentiating factors* in order to improve efficiency, increasing the level of complexity of the regulatory framework might actually limit the efficient functioning of copyright policy.

2. Findings concerning the role of copyright

2.1. Copyright plays an important and versatile role in the 21st century: it has different impact, possibilities, and functions in different fields, and it cannot perform its tasks in all relevant segments fully and efficiently, seeking to achieve Pareto optimality, without modernization.

2.2. In the context of shaping the meaning of protection, it is important to remember that, in line with its original role, *copyright must be a means of, and not an obstacle to, expanding the scope of works in the public domain*. Thus, the legislator needs to take into consideration that even the meaning of *public domain* has various layers. (Also, while copyright considers the scope of protected works and performances rather diverse and versatile, the public may not have the same ideas on differentiation from its *access-focused* – and also quite transformed – perspective.) Copyright seeks to support and enable access to, and remove the obstacles (including territoriality-based obstacles) of, access in a manner that focuses on the *purpose* of such access (e.g. instead of eliminating territoriality, copyright may seek to prevent its functioning as an obstacle to access).

2.3. In the digital age and in addition to its *access-focused* approach (which requires a dynamic balance), copyright also has an increasingly important role in the *preservation*, archival, and organisation of various works and performances. As a consequence, it does not only ensure that works and performances are produced, used, and accessed at a mass scale in an organized manner, but it also contributes to the elimination 'consumer' uncertainty and grey zones.

2.4. At the same time, it would be a fundamental mistake to think that the removal of all obstacles to access would, *in itself*, bring us any closer to the improvement of public welfare. These efforts need to be aligned with efforts to solve the more delicate and political task of ensuring that valuable and attractive cultural and information products requiring significant creative and financial efforts can be created in a sustainable manner.[4] With a view to serving the interests of all stakeholders, copyright needs to protect and encourage the author, i.e. the first part of the value chain, as well as other investors in the cultural and creative industries.

2.5. While the relevant *environment has changed* significantly, copyright, as an economic and legal means and in line with its original role, needs to promote the intellectual and financial recognition of the *creator* even in this changed environment. Nevertheless, copyright is *not the only means* to achieve this purpose, and authors (due to the various differences between certain creators) do not rely on copyright to the same extent. The rights granted to the author do not seek to create a gap between the work and its social environment. If they do have in fact such an effect, the role of copyright becomes twofold. It needs to take the necessary measures to find a more flexible solution, where such a solution can be achieved by the means of copyright, or, if factors beyond the scope of copyright are needed to promote efficiency, copyright needs to ensure compatibility of such means.

2.6. Copyright is characterized by the duality of financial and intellectual interests. In our age, it is not about which side or theory we decide to emphasize or rely on to justify the existence of copyright (or the need to eliminate it). The important fact is that there are areas within copyright itself that focus more on one of these two factors. *In general and regarding the entire field of copyright*, placing excessive emphasis on the personality of the author can be just as damaging as following a purely financial approach.

2.7. Copyright also needs to tackle the ambivalence of its own existence: on the one hand, copyright seeks to create an environment that benefits all stakeholders, but, on the other hand, it has become an obstacle to access (even if a temporary one) that is considered unacceptable by a significant part of society. A no opportunity has arisen yet that could resolve this conflicted state of affairs in a blink of the eye, it seems necessary to review each point of differentiation from this perspective as well.

[4] ID. FICSOR–SÁR–SZINGER–TOMORI–BÉKÉS–DETREKŐI–FÁBRI–GRAD-GYENGE–HUMPFNER–PATAKI-KVASNYIK i. m. 151.

3. Efficiency and differentiation

3.1. Some of the differentiation points already established to improve efficiency has become *more emphasised*, new breaking points are emerging, while the removal of certain already existing distinctions seems to be desirable. These trends do not necessarily involve any legislative act, it is often enough to make adjustments regarding the application of existing copyright provisions. Copyright can function efficiently in the present technological, social, and economic environment, if it can ensure the open and *inclusive* the *application* of copyright legislation (as opposed to exclusivity). While the continuous changes of the toolkit serving the paradigm of copyright law is the nature of copyright law, such shifts need to represent a sustainable form of improvement. To this end, it is seems necessary to ensure that the *lines of distinction are defined in the most suitable manner*.

3.2. While the role of distinctions already established with a view to improving efficiency is changing, the introduction of new distinctions also seems to be necessary. In this context, scientific literature has put forward proposals that are based on more refined and powerful distinctions regarding the *emergence of protection* (e.g. registration, removal of certain types of works). However, the introduction of a new form of protection that takes into account recent changes to the subjective aspects of the author (i.e. the intent to create a piece of authorship) seems to be more feasible than changing the threshold of protection (which is defined in a rather general way to ensure the protection of authors). Naturally, the choice between the available options (i.e. limiting the general nature of legal protection, narrowing the outcome of a unique and individual creative process, or adjusting the meaning of legal protection) is strongly dependent on the values preferred by the legislator.

3.3. In addition to the *types* and features of various works (analogue or digital copies, existence and number of any tangible carrier, information content etc.) and the typical *way of use*, possibly on a mass scale, the *purpose of creation* may also reveal fundamental differences as to how copyright should relate to a specific piece of work or performance. It is not only the functional pieces of work that have a rather peculiar position in this respect. The *person* and *intent* (motivation) *of the author* is taken into account with increasing weight in the course of shaping copyright regimes. This *does not* mean that the relationship between a work and its author would become closer in the future for all kinds of works and performances. On the contrary, placing more emphasis on the intent of the author is expected in most cases to *liberate access to works of authorship* even further.

3.4. In cases, where the author itself does not attach to its work, the primary aim is not the artificial maintenance of the attachment, but rather the avoidance of the uncertainty. It has been an option for the original creator at all times to provide for the free use of its work, even without the payment of a royalty. The possibility to express this sort of intention in a much easier way (which would result an unambiguous position too) is a fundamental need within the age of Internet. If it is impossible to set a boundary between the "amateur" and the "professional" author by way of a legal instrument, the distinct groups of authors may attempt to use the distinct opportunities

provided for by copyright law, simply by the fact that the exercise of a private right (although should not be waived) may not be obliged, even if it is ethically/philosophically grounded.

3.5. It is also apparent that the expansion of *special forms* of free use makes royalty collection through mandatory collective copyright management less and less exceptional. With regard to indirect statutory licenses, distinctions are not made along the lines of kinds or types of works, or even the method of use in itself, but – in addition to the need for mass use – on the basis of the *purpose of use* and granting *access* for the purpose of creative use in a broad sense (e.g. data mining, user generated/uploaded contents). However, the development of a transparent classification seems to be quite far from being considered a simple matter.

3.6. The *impact of use* seems to be an emerging distinctive factor. The *profit oriented* nature of use offers useful guidance, but it is not an adequate basis of distinction in itself. With regard to the relationship between audience and intermediaries, the profit oriented approach of the intermediaries seems to be less important than the impact of their activities on access (e.g. concerning works that are not available commercially). With regard to the relationship between right holders and intermediaries, the revision of the distinctive factors underlying the concept of *safe harbours* seems to be necessary. Nevertheless, the impact of various uses on the interests of the right holder seems to be rather versatile from many other perspectives as well (see the issues relating to uses of *lesser significance*, user generated/uploaded contents, digital exhaustion of rights, or the rental of digital copies).

3.7. It became clear quite early that the distinction between analogue and digital cannot be used as a statutory line of division, but it certainly revealed some new points of differentiation. The issue of functional identicalness was also raised (due to, among others, the natural differences between tangible and digital copies) by efforts to apply the statutory provisions protecting the interests of various stakeholders to online uses. In other words, technology neutrality is not the same as the ignorance of technology. Changes to the technological environment *in itself* have an impact on the interests of the audience and users (as seen in the context of problems associated with the application of existing limitations and restriction in an online environment), on the one hand, and on the interests of the right holder (the impact of certain restrictions on the interests of authors may be amplified without being accompanied by any user interest), on the other hand.

3.8. The overall picture is shaped by *numerous fundamental changes*, such as the fact that the focus is shifting from the act of reproduction to *distribution and communication to the public* (hence it is of utmost importance to clarify the meaning of communication to the public, as well as the status of the parties involved), or that, in addition to the works/performance themselves, the services relating to the *flow* of such works and performances is are becoming more and more important. These changes challenge the justification for some existing distinctions (e.g. the removal of certain types of works from the possibility of citation as a form of free use), and the meaning of some essential and clear terms, such as private purpose, has undergone fundamental changes. In most cases,

audience do not only want to access the ideas embodied in a work of authorship, but to the work itself, meaning that the demand to use copyrighted works is widening (see, for example, the problems of derivative works and creative re-use).

4. Back to the author – intellectual and economic recognition in the 21st century

4.1. The fact that copyright *regimes* focus the role of the author does not mean any "hostility" toward other members of society. Placing the author in the centre of attention – an arguably arbitrary act – was actually needed to ensure that the cultural market can function without censorship. The meaning of the rather limited economic and personal rights afforded to the original author has undergone significant changes by the 21st century. It is one of the most important tasks today to develop models that allow for the open application of copyright, meaning that they ensure the economic and intellectual recognition of the creator in an environment that focuses on the act of access and use. In this context, it is important to develop models that can override the principle that *investment incentives cannot work efficiently without restricting the flow of information*.[5]

4.2. With regard to *economic rights*, the economic considerations are among the most heavily criticized aspects of the current copyright regime. There seems to be a strong desire to exercise the exclusive rights, defined by more and more extensive limitations and restrictions, in a flexible, simple, and almost "automated" manner. The avoidance of such limits is the responsibility of copyright law, however, the rightholders itself will take advantage of the opportunities of the new business models and, upon its decision, transfer its economic rights, simply entitle users or (partially) release its work into public domain, etc. In this regard, copyright law indeed *hurries back to the person of the author*, as the original author itself has a very important role in ceasing uncertain situations (which incur often from void waivers), although, even the Copyright Act contains various solutions for symptomatic treatment (e.g., in the case of orphan works).

4.3. The foregoing ambition to hurry back *does not* mean the increase of the control of the rightholders over access, but is essential for originating the right of use (as this was the role of the economic right too at the time of the birth of copyright law). In addition, although the principle of *preliminary licensing right* remained and, in my view, shall remain, however, its *individual exercise* decreases: besides the various forms of (indirect non addressed) legal licenses, the general term and conditions applied by rightholders is more and more frequent in order to reach simplicity.

4.4. The economic right of the author undergoes an important change also in a sense that the *significance of making perceptible* more and more transforms. The substance of copyright law rather departs from the (individual) licensing of certain ways of use (e.g., copying). As "formally" this can be regarded as a separation from the original target of copyright law, it rather traces back to it. "One of the main targets of copyright law is that the author and who invests into the creation shall

[5] SZALAI Ákos i. m. 374.

permanently benefit from the use of the work during the term protection."[6] However, as written above, in the case of certain works this happens less and less by way of licensing use, or at least the majority of the use of works does not happen by way of original ways of use. As a result, users may feel economic rights of authors as *unnecessary* barriers in cases where the use of works does not mean utilization, in particular when the author does not aim at utilization of its own work (due personal reasons or a reason deriving from the work).

4.5. However, it is true even today that "the royalty fee, as the price of any other product, are being determined on the basis of demand and supply."[7] The existence and characteristics of solvent demand, the various ways of financing, the role of end-users, users and intermediaries have made the picture very colorful. While the original aim of the constitutional regime of copyright law was to create, by way of the transferable exclusive rights of the author, the economic encouragement of the free distribution of original ideas (which may depend on the market only), by today, the majority of works cannot subsist solely from the market. Although, protectors always existed within the system of copyright, however, it is a question whether we can tackle with the various issues and influence incurred with respect to (mainly state) subsidies.

4.6. Works significantly differ from each other (i) to what extent *productive industry* settles thereon, (ii) whether there is a need for (significant) investment to their creation, and (iii) how the required monetary background can be provided; nevertheless, even original rightholders differ from each other in a sense whether or not they intend to benefit from the profit directly or indirectly produced by their work. Anyway, creative activities may not be pursued as "leisuretime activity". The need for *proper* portion from the profit produced by intermediaries also distorts the existing borderlines.

4.7. The highlighted target here is the *ease of entitlement*. Although, for this purpose the sphere of those works, the economic rights of which may be transferred, may be extended; however, in my view, as regards the efficient entitlement, it is more important to modernize the license agreements in terms of their form and content. With a view to this, the role of data banks, which help identifying the status, the rightholder and the lawful utilization of the work (often also forming the way of enjoyment), are crucial.

4.8. The role of the author reveals during the flexible use of economic rights (and, by this, during the efforts to filter out the abuse with rights) and, simultaneously, the will of the author, and the intention to return home to the original creator, has a significant role in the course of the ideal recognition. In this respect, the legislator is reluctant to allow full separation from the work (due to guarantee reasons, and for the purpose of ensuring authenticity), but allows wide freedom in the ways of exercising thereof. While in a number of cases, the rightholder does not intend to exercise

[6] FALUDI (2007) i. m. 200.

[7] RANSCHBURG (1901) i. m.

its moral rights (where the declaration to this end has a huge significance), in other cases, these rights are important for the author (either for ensuring indirect monetary incomes). The absence of the possibility of waiver does not harm the interests of rightholders or users, as this does not result in any block of trading.

4.9. This statement does not contradict with the fact that in many cases the public does not feel certain works/creations as pertaining to certain authors. The role of the moral rights of authors has fundamentally changed: in the age of mass copies and impersonal cultural products, it is possibly more important, to appreciate the connection between the individual and original work and the creator thereof, where such appreciation is needed. The new forms of publicity and the freedom of access do not contravene with such attempts – (by referring to the foregoing epigraph) the creator/rightholder may return the work/creation to the after-ages in a way that his/her personality may be discovered therein.

4.10. Although, in the age of "creative commons" [8] and "culture improving crowds" the emphasis is being put on the works, the product, the goods, the information contained therein and the alternative business models, themselves, this tendency does not, however, mean that in the course of *each* creating activity, the personality and the moral rights of the creator shall be put into shade. Moreover, while we are "seeking the balance", we should not forget about the author and that one of the main roles of copyright is the ideal recognition of authors. In cases where such recognition is not needed by the rightholder, or such is irrelevant for the public, the exercise of rights may be, *upon retaining the essence of law*, be adjusted to the new needs and situations.

4.11. A copyright law, compartmentalized along balanced and appropriate differentiation points, shall *encourage* the extension of public domain and the participation in a well-organized cultural and creative market. No doubt, copyright law in different areas does not fulfil its incentive role *equally*; it is not required, though, as other areas of law and other types of incentives may have a significant role as well.

4.12. The "*intention to return home to the original creator*" therefore shall not mean the increase of control of the author over its work, the overemphasis of moral rights and the exercise of its economic rights in a way blocking access. The role of copyright law is to ensure that the "free flow of content" live together in the future with the recognition of the rights of the "creator individual". The work disclosed to public, from certain aspects, separates from its creator, and shall have influence even without the will of the creator ("habent sua fata libelli"). [9] However, the simplifying and automated entitlement and the realignment of the exercise of economic rights do not exclude the recognition of the ideal and economic interests of the *original creator*. Nevertheless, this requires new

[8] A Creative Commons „atyja", Lawrence LESSIG fogalmazott úgy a mozgalmát ért vádakra, hogy közösségük tagjai nem 'kommunisták', hanem 'kommonisták'. James DOUGLAS: Introduction – does copyright have limits: Eldred v Ashcroft and its aftermath? *Queensland University of Technology Law and Justice Journal* 2005/2. 217.

[9] BENÁRD Aurél: Személyhez fűződő jogok. In: BENÁRD Aurél – TÍMÁR István: *A szerzői jog kézikönyve*. Budapest, Közgazdasági és Jogi Könyvkiadó, 1973. 109.

differentiation points and, unquestionably, one may rely upon copyright law in different degrees, depending on the case and territory.