

CONSTRUCTION OF STATUTE

- The teleological approach to interpretation is an approach which is informed by the natural law school and holds that there are certain basic values and principles which form the foundation of the legal system and the courts should always endeavour to interpret statutes in a manner as to promote those values.
- The legislative enactment, according to this theory merely lays down a general guide and gives the courts wide leeway in which to deal with individual cases as the justice of the case demands in light of the reason and moral sense of men.

PART A - AUTHORIAL RIGHTS

Authors' Rights as Human Rights

Universal Declaration of Human Rights 1948

Art. 27

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

International Covenant on Economic, Social and Cultural Rights 1966

Art.15

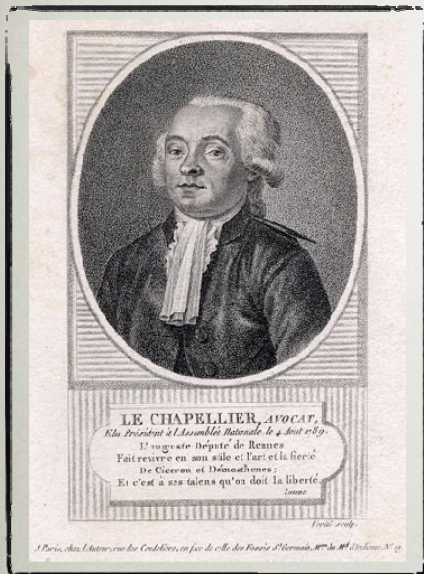
1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Justifications - Human Rights

European Charter of Fundamental Rights of the European Union, 2000

Article 17 Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

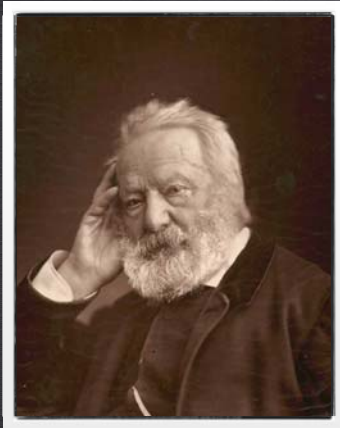


“The most sacred, the most legitimate, the most unassailable, and, if I may say so, the most personal of all properties, is the work, the fruit of the mind of a writer”

Source: Le Chapelier's report (1791), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, www.copyrighthistory.org

Once the author has disclosed the work to the public, when the work is in the hands of everyone, when all educated men know it and have imbued it with happy memories, it seems that since then, the writer has affiliated the public with his property, or rather has fully transmitted his property to the public

Source: Le Chapelier's report (1791), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, www.copyrighthistory.org



Victor Hugo, by Nadar, 1878

Le livre, comme livre, appartient à l'auteur, mais comme pensée, il appartient—le mot n'est pas trop vaste—au genre humain. Toutes les intelligences y ont droit. Si l'un des deux droits, le droit de l'écrivain et le droit de l'esprit humain, devait être sacrifié, ce serait, certes, le droit de l'écrivain, car l'intérêt public est notre préoccupation unique....

Victor Hugo, Discours d'ouverture du Congrès Littéraire International de 1878.

“ The book, as a book, belongs to the author, but as thought, it represents - and it is not too exaggerated a word - the human race. All minds are entitled. If one of the two rights, namely, the right of the author and the right of humanity, had to be sacrificed, it would certainly be the right of the author, because the public interest is our sole concern...”

Translation: U.Suthersanen/ T.Straub.



Sony Corp. v Universal City Studios, 464 US 417 (1984), citing *United States v. Paramount Pictures, Inc.*, 334 US 131 (1948).

"The copyright law, like the patent statutes, makes reward to the owner a secondary consideration. [...]"

The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors."

Public Interest

PART B - INTRINSIC AND EXTRINSIC EXCEPTIONS AND LIMITATIONS - OR USER RIGHTS?

LIMITATIONS AS USER RIGHTS - ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- Good government and successful societies are based on freedom and respect for human rights - Amartya Sen:
 - . . . we also have to understand the remarkable empirical connection that links freedoms of different kinds with one another. Political freedoms (in the form of free speech and elections) help to promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help generate personal abundance as well as public resources for social facilities. Freedoms of different kinds can strengthen one another.
- Newer (individual) social, economic, and cultural human rights
- The second generation of rights obliges public authorities to take active measures to provide for the community by granting individual rights to property, food, health care, labour and education. This set of human rights reflects the current discourse as to how intellectual property rights can affect access to knowledge and essential medicines.
- The debate is not new: in 1769, Mr Justice Yates argued against a perpetual or indefinite copyright stating that it would lead to anti-competitive practices, excessive pricing, and would further go against the 'natural rights of mankind in the exercise of their trade and calling', as it would restrain the natural right to labour of printers and booksellers. - *Millar v Taylor*

Article 15(1), International Covenant on Economic,
Social and Cultural Rights, 1966

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.



2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

Giambattista Tiepolo, Solomon's Judgement, (1729)



“balance the
protection of public
and private interests
in knowledge.”

AND

“guarantee the social
dimensions of
intellectual property”

Source: UN Economic and Social Council, Committee on Economic, Social and Cultural Rights, “Human rights and intellectual property”, U.N. Doc. E/C.12/2001/15 (Dec. 14, 2001)

RIGHT TO EDUCATION

- Article 13
- 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved

CANADA - CCH

- Any act falling within the fair dealing exception will not be an infringement of copyright.
- The fair dealing exception, like other exceptions in the Copyright Act, is a user's right.
- In order to maintain the proper balance between the rights of a copyright owner and users' interests, it must not be interpreted restrictively. As Professor Vaver, *supra*, has explained, at p. 171: "User rights are not just loopholes. Both owner rights and user rights should therefore be given the fair and balanced reading that befits remedial legislation."

ALBERTA (EDUCATION) V. CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT) - CANADA SUPREME COURT

- With respect, the word "private" in "private study" should not be understood as requiring users to view copyrighted works in splendid isolation. Studying and learning are essentially personal endeavours, whether they are engaged in with others or in solitude. By focusing on the geography of classroom instruction rather than on the concept of studying, the Board again artificially separated the teachers' instruction from the students' studying.
- Teachers have no ulterior motive when providing copies to students. Nor can teachers be characterized as having the completely separate purpose of "instruction"; they are there to facilitate the students' research and private study. It seems to me to be axiomatic that most students lack the expertise to find or request the materials required for their own research and private study, and rely on the guidance of their teachers. They study what they are told to study, and the teacher's purpose in providing copies is to enable the students to have the material they need for the purpose of studying. The teacher/copier therefore shares a symbiotic purpose with the student/user who is engaging in research or private study. Instruction and research/private study are, in the school context, tautological.
- "It was neither artificial nor unreasonable to conclude that the photocopies mainly serve the teacher's purpose of teaching and that this was the relevant and predominant purpose of the dealing."

ALBERTA (EDUCATION) V. CANADIAN COPYRIGHT LICENSING AGENCY (ACCESS COPYRIGHT) - CANADA SUPREME COURT

- buying books for each student is not a realistic alternative to teachers copying short excerpts to supplement student textbooks. First, the schools have already purchased originals that are kept in the class or library, from which the teachers make copies. The teacher merely facilitates wider access to this limited number of texts by making copies available to all students who need them. In addition, purchasing a greater number of original textbooks to distribute to students is unreasonable in light of the Board's finding that teachers only photocopy short excerpts to complement existing textbooks. Under the Board's approach, schools would be required to buy sufficient copies for every student of every text, magazine and newspaper in Access Copyright's repertoire that is relied on by a teacher. This is a demonstrably unrealistic outcome.