# Contents

## 1 Copyright Law Changes and Developments in Digital Network Era

1.1 Introduction .................................................................................................................. 1

1.2 Interrelationship Between Technology Development and Copyright Laws ........................................................................................................... 3

1.3 Amendment and Expansion of Copyright Protection Under Digital Network Environment ........................................................................................................... 5

1.3.1 Amendment and Development of International Copyright Conventions ........................................................................................................... 5

1.3.2 Changes and Amendments of Copyright Protection Systems in Developed Regions ........................................................................................................... 9

1.3.3 New Stages of Copyright Reforms ........................................................................... 13

1.3.4 Conclusion: Expansion of Copyright Protection Under Digital Network Environment ........................................................................................................... 17

1.4 Should China Imitate or Innovate? ........................................................................... 20

1.4.1 Development and Amendment of Copyright Protection System in China ....................................................................................................................... 21

1.4.2 Should China Imitate or Innovate? ........................................................................... 31

1.5 Conclusion .................................................................................................................. 35

References ....................................................................................................................... 36

## 2 Balance of Interest in Copyright Systems and Imbalances Under Digital Network Environments

2.1 Introduction .................................................................................................................. 39

2.2 Balance of Interest in Copyright Systems .................................................................. 41

2.2.1 Philosophical Analysis of Intellectual Property Systems ................................ 41

2.2.2 Economical Analysis of Intellectual Property Systems ................................... 45

2.2.3 Origin and Development of Copyright Laws ....................................................... 48

2.2.4 Dual Goals of Copyright Systems ....................................................................... 53
2.3 Current Imbalance of Interest in Copyright Systems ........................................... 55
  2.3.1 Borderline of Balance of Interests: Accessibility of Copyright Works ................... 55
  2.3.2 Justification of Expanding Copyrights ......................................................... 56
  2.3.3 Current Imbalance of Interests in Copyright Systems ...................................... 57
2.4 Conclusion ........................................................................................................... 66
References ................................................................................................................ 67

3 Toward a More Balanced Model: Revision of Anti-circumvention Rules ........................................... 69
  3.1 Introduction ......................................................................................................... 69
  3.2 Basic Understanding of Protection of Digital Rights Management and Technological Protection Measures ................................................................. 71
    3.2.1 Conventional Protection of Technological Measures and Rights Management Information ............................................................. 72
    3.2.2 Key Terms in the Protection of Technological Protection Measures .................. 73
  3.3 Balanced or Unbalanced: Anti-circumvention Rules of Digital Millennium Copyright Act ................................................................. 75
    3.3.1 Contents of DMCA Anti-circumvention Rule .................................................. 76
    3.3.2 Balanced Designs: Exceptions Under the Anti-circumvention Rule .................. 77
    3.3.3 Unbalanced Designs: Existing Problems in the Anti-circumvention Rule ............ 80
    3.3.4 Conclusion: Balanced Designs Weighing Unbalanced Designs ....................... 87
  3.4 Introduction of a More Balanced Model of Anti-circumvention Rule ........................................... 88
    3.4.1 Technological Design: Guaranteeing Minimum Use ........................................ 90
    3.4.2 Legislative Design: Inserting General Condition and Exception ....................... 91
    3.4.3 Judicial Design: Reaching Decision Case by Case Based on Prerequisite and General Exception ................................................................. 94
    3.4.4 Scheme Outside Intellectual Property Law: Importation of Anti-circumvention Rule into Competition Law ......................................................... 95
    3.4.5 Suggestions for the New Round of Reform Regarding Anti-circumvention Rules in China ................................................................. 96
  3.5 Conclusion ......................................................................................................... 98
References ................................................................................................................ 99

4 Establishing Certainty About Liability for Internet Service Providers and Safe Harbor Regulations ................................................................. 101
  4.1 Introduction ....................................................................................................... 101
  4.2 Introduction on Internet Service Providers ......................................................... 103
    4.2.1 Definition of Internet Service Providers ........................................................ 103
    4.2.2 Importance of Establishing Certainty About Liability and Limitations for Internet Service Providers ................................................................. 106
4.3 Internet Service Provider Liability and Safe Harbor Rules
Established by Common Law Cases
4.3.1 Sony Safe Harbor Rule
4.3.2 Contributory and Vicarious Liability Rules
4.3.3 Authorization or Joint Tortfeasor Liability
of Commonwealth Jurisdictions

4.4 Internet Service Provider Liability and Safe Harbor
Rules Established by Statutes
4.4.1 Notice and Takedown Regime
4.4.2 Counter Notification Regime
4.4.3 Subpoena Procedure or Norwich Pharmacal Order

4.5 New Development in Internet Service Provider Liability
4.5.1 New Conditions for Safe Harbors on Internet
Service Provider Liability: The Graduated Response
4.5.2 Internet Service Provider Injunctions Ruled
in European Courts

4.6 Conclusion: Recommendations for Establishing Certainty
of Internet Service Provider Liability

References

5 Reconstruction of Copyright Limitations and Exceptions
in Digital Network Age: Importation of Legal Flexibility
and Certainty
5.1 Introduction
5.2 Theories of Copyright Limitations and Exceptions
5.2.1 Academic Arguments That Support Copyright Limitations
and Exceptions
5.2.2 International Treaty Obligations
5.3 Reconstruction of Copyright Limitations and Exceptions
5.3.1 Importing Flexibility and Certainty into Copyright
Limitations and Exceptions
5.3.2 Importing Four-Factor Balancing Test
as Abstract Guidance
5.3.3 Importing Nonexclusive List of Exceptions as Minute
Prescriptions
5.4 Supplementary Schemes
5.4.1 Compulsory Licensing Scheme
5.4.2 Copyright No Action Policy
5.4.3 Community Guidelines
5.5 Conclusion

References

6 Construction of Digital Commons and Exploration
of Public Domain
6.1 Introduction
6.2 Alternative Schemes: Digital Commons
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3 Construction and Promotion of Creative Commons</td>
<td>179</td>
</tr>
<tr>
<td>6.3.1 Creative Commons Licenses</td>
<td>179</td>
</tr>
<tr>
<td>6.3.2 Creative Commons in Greater China</td>
<td>182</td>
</tr>
<tr>
<td>6.3.3 Creative Commons China Mainland Licensing</td>
<td>183</td>
</tr>
<tr>
<td>6.3.4 Positive and Negative Impacts of Promoting Creative Commons in Mainland China</td>
<td>186</td>
</tr>
<tr>
<td>6.4 Impact of Digital Commons on Public Domain</td>
<td>190</td>
</tr>
<tr>
<td>6.4.1 Necessity of Public Domain</td>
<td>191</td>
</tr>
<tr>
<td>6.4.2 Shrinking Public Domain in Digital Age: Threats from Second Enclosure</td>
<td>193</td>
</tr>
<tr>
<td>6.4.3 Constructing Public Domain in Digital Age: Influence of Digital Commons</td>
<td>196</td>
</tr>
<tr>
<td>6.5 Conclusion</td>
<td>199</td>
</tr>
<tr>
<td>References</td>
<td>199</td>
</tr>
</tbody>
</table>

**Conclusion** ................................................................. 201

**Main Findings** ............................................................. 201

**Contributions of the Study** ....................................... 204

- Revision of Anti-circumvention Rule .................................. 205
- Amending Internet Service Provider Liability and Safe Harbors ...... 206
- Importing Legal Flexibility and Certainty into Copyright ......... 208
- Limitations and Exceptions ........................................... 208
- Promoting Digital Commons Projects .................................. 209

**Concluding Remarks** .................................................... 210

**Reference** ................................................................. 210

**List of Legislations** ................................................. 211

**List of Cases** ........................................................... 213

**Bibliography** ............................................................. 215