

Copyright and Moral Norms

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The role normative principles such as morality and ethics play in a legal system is debatable and scholars have often disagreed on whether, and to what extent, laws ought to reflect or incorporate moral and ethical norms given the heterogeneity of society's views and beliefs on controversial questions of right and wrong conduct. This paper challenges legal positivism's assertion that moral expectations do (or should) not have a role to play in informing legal analysis by arguing that copyright laws ought to match moral norms of authorship and creativity if the law is to achieve sustainable progress of science and the useful arts. As jurists, legal scholars, and society generally become increasingly divided about the proper role of copyright laws in advancing culture and society, it may be critical for us, as a knowledge-based globalized society, to raise and answer questions about the role that legally-acknowledged moral norms may play in the copyright system. This paper is divided into three major parts. The first part of this paper will evaluate broader scholarship and debates that have occurred in legal literature between positivists and natural lawyers to draw out the essential premise for the disagreement between both school of thoughts and demonstrate that legal analysis will be more complete by considering laws as they should be in accordance with moral and ethical principles. The second part of this paper will discuss why this analysis, which is central to jurisprudence, is important to copyright law and how the analysis will reshape how jurists, scholars, and society view and understand copyright law as a legal institution charged with a responsibility to promote progress of science and the useful arts. The third part of the paper will present a view of how such an understanding of the of the copyright system will allow the legal system to more effectively advance society and culture through authentic expressions and freedom to use literary and artistic works. This paper will conclude with a short proposal on how moral norms may be incorporated into the copyright system to achieve the desired result of advancing society and culture.