

## The Trajectories of Creative Content Protecting Law in Indonesia: Dealing with the Challenge and Advancing the Potential

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### ABSTRACT

The article aims at determining the legal protection of creative content uploaded by the creators through online media as well as the challenges faced by the creators in protecting their works. This research includes descriptive normative of the legal research that describes the legal protection and the challenges faced by the creators in protecting their works. The secondary data are obtained from the case file of Agency France Presse v. Morel, Decision No. 68/HC/2005/PN.Niaga.Jkt.Pst, and Decision No. 056 PK/Pdt.Sus/2010. The collection of secondary data is done through literature study. Based on the results, it can be concluded that, *first*, United States copyright laws and the Digital Millennium Copyright Act (DMCA) have accommodated the protection of the works uploaded through online media even though they have not been registered in the relevant institution as demonstrated by the case of Agence France Presse v. Morel. *Second*, the Indonesian copyright law has some similarities to the articles of the DMCA used in the case of AFP v. Morel. Referring to the case No. 68/HC/2005/PN.Niaga.Jkt.Pst, in the case the copyright of the infringing logo has not been registered and it is registered by a party who is not the actual creator, it is decided that the registration can be cancelled with evidence presented at the trial. Several challenges faced in protecting creative content include the contractual relationships between users and service providers, the absence of copyright registration, and the characters of user in digital media. The terms of service set by service providers usually non-exclusive licenses or royalty free in which they can utilise the works in accordance with the existing provisions.

**Keywords:** *Protection law, copyright, user-generated content, creative content, anti piracy.*

### INTRODUCTION

A creation is a product generated from one's imagination or innovation in the form of a work state of art that can be enjoyed by society at large. A creative work certainly has remarkable added value created by its creator. The time, ideas and creativity aimed at the creation certainly gives value to the generated work.

Current technological developments, however, have changed the culture of modern society from the traditional to the digital ones. Moreover, the digital era has offered many conveniences that can be felt directly by the public through the internet. Searching for information is not as complicated as it used to be where newspaper was the main media to find the latest news. Almost every individual has a cell phone called a Smartphone, which facilitates them to reach various platforms of communications. The internet also provides space for creators to create and show off their works to the public. It is a media for those who may have insufficient capital but have high enthusiasm. Numerous music, designs, logos, images, writings and so on are uploaded by numbers of creators to the Internet.

Nevertheless, despite of its many advantages, the Internet also poses some negative effects. The ease in obtaining information is also directly proportional to the simplicity in spreading information. The ease of access allows people to see, listen to, or copy the creative content uploaded by the actual creator. It is certainly very detrimental to the creators who have devoted their creative ideas only to see the results of their efforts copied by others and even commercialised without permission.

In the cyberspace, any content uploaded by creators is usually called user-generated content (UGC), which is a content uploaded by a user of a system or service that can be accessed by other users of the system. The UGC can be in the form of video, blog, discussion forum, image, audio, and other forms created by users. The existence of UGC as a part of the service system provider makes the user as the subject of the terms and conditions of the service system provider. Some international popular service system providers are YouTube, Facebook, Sound Cloud, and Twitter. In Indonesia, similar sites are created including meTube, Vidio, and Kaskus.

In Indonesia, the case filed by a creator whose work is misused by others is rarely found. It is different with the creators in the United States, who actively go to court to settle such cases. One of the cases is a photographer who uploaded a picture of Maryland at a photo sharing site and found out that, four years later, the picture had been used by an atlas company as one of atlas book covers. Recognising his rights, he filed a lawsuit against the company even though had to accept the decision that he lost. The decision was made based on the provisions of the photo sharing site, in which the users do not have exclusive rights for every photo uploaded in the site hence any party may use even commercialise it.

Based on the description above, some problems can be formulated, namely: 1) What is the legal protection for creative content uploaded by creators through online media abroad? 2) What is the legal protection for creative content uploaded by creators through online media in Indonesia? 3) What challenges encountered by the creators in relations with the protection of creative content uploaded through online media or user-generated content in this digital era?

Lawrence M. Friedman (1984) suggested three important elements that can determine the function of a law, namely structure, substance and legal culture. A good legal structure will work optimally if it is supported by appropriate legal substance, and vice versa. Both elements will work effectively if they are accompanied by a good legal culture from the community. The absence of the legal culture within the community will ruin the whole meaning. The substance of the law includes rules, norms and patterns of behaviour (written law and applicable law - living in society). Furthermore, Friedman also added the fourth component called the legal impact. This component is intended as the impact of a legal decision, which is the object of a research (Friedman, 1984, 16).

#### LITERATURE REVIEW

In general, McKeough and Stewart (1997) and Singh (2011) have explicated that IPR is a set of rights granted by law to protect economic investment from creative efforts. Furthermore, DG IPR and ECAP define IPR as the right that arises for the brain's thought results that produce a product or process that is useful for humans (DG IPR and EC-ASEAN IPRs Co-operation Program (ECAP II), 2006).

The term 'copyright' actually comes from a common law country, copyright, while in France, it is known as *droit d'auteur* and in Germany as *urheberrecht*. In the UK, the use of the term 'copyright' is initially developed to protect publishers, instead of the creator. Nevertheless, along with the development of law and technology, protection is also given to the creator and the scope is expanded simultaneously. It does not only cover the literature fields, but also drama, music, artistic work, photography, and so forth (Purwaningsih, 2005).

David Bainbridge (1999) asserted that copyright gives the owner the right to do things in relation to the work, which includes making a copy, broadcasting or giving a public performance. Anyone else who does any of these things (known as the acts restricted by copyright). The concept of copyright protection is already a universal rule. Article 27 paragraph (2) of General Statement of Human Rights confirms that every person has the right to receive moral protection and material interests from the products of one's creation in the fields of science, literature and art.

Ricketson (1988) and O'Rourke (2001) stated that humans naturally have the right to the results of their mind creation. In other words, a person has a natural right to the product of his/her work that must be recognised as his/her property. If such a concept is applied to copyright, it can be said that it is the most essential foundation for a creator for the possession of an intellectual work or a work produced by his/her mind (Damian, 2002).

In the context of legal structure, the United States has an eligible system for cases related to the violation of the copyright of creative content uploaded in online media. It is demonstrated by the case of *Agence France Presse against Morel* where the case was brought to the New York District Court.

According to Stewart (1989), there are three points that form the basis of moral rights, namely: 1) *Droit de divulgation* (the right of publication) is the right to decide whether the work is to be made public; 2) *Droit de paternite* (the right of paternity) is the right to claim authorship of published works; 3) *Droit de respect de l'oeuvre* (the right of integrity) is the right of the author to safeguard his reputation by preserving the integrity of the work.

Substantially, the law of the United States can be seen through the renewal of the Copyright Act with the promulgation of the Digital Millennium Copyright Act (DMCA) whereby this law provides new provisions regarding the scope of protection of intellectual property rights—which include copyright in the cyberspace. It can also be seen in the case of *AFP v. Morel*, in which articles in the DMCA and the Copyright Act are used.

The case experienced by Morel is one of the cases about UGC or content uploaded by users to digital media. The case relates to the picture uploaded by Morel, which is then re-uploaded by others, and ended with the sublicense gained by AFP and Getty. Morel is a professional photographer who has worked in Haiti for more than twenty-five years. AFP is a French news agency that provides international photo services to the media, including newspapers around the world. On January 12, 2010, Morel was in Port au Prince, Haiti, when an earthquake occurred in the city. Morel captured the impact of the earthquake in a photo and then uploaded the picture to *Twitpic*.

A few minutes after Morel uploaded the photo, Lisandro Suero ("Suero") copied the photo and uploaded it to his *Twitpic* page and wrote "exclusive catastrophic photos for credit and copyright". Suero is not a photographer and was not in Haiti when the earthquake occurred. However, she did not give credit to Morel. One hour after Morel uploaded his photo, Vincent Amalvy ("Amalvy"), a photo editor from AFP, including Morel's photo link on his Twitter page.

An hour later, Amalvy wrote on Suero's Twitter page asking about the photo she uploaded. Amalvy also briefly sent an email to Morel to ask about the photo. But minutes later and before Morel responded, AFP downloaded Morel's thirteen photos of the disaster in Haiti via Suero's Twitter page.

AFP uploaded a photo of Morel to its online photo database called Image Forum and sent it to Getty, a company that licensed images or photos. Under the partnership agreement, Getty holds exclusive rights to market AFP photos in North America and the United Kingdom. Morel's photo was given with a credit letter "AFP/Getty/Lisandro Suero," which indicated AFP and Getty as licensing agents and Suero as the photographer. Getty then licensed Morel's photos to various third-party news agencies including CBS and CNN.

Twitpic's terms of service state that, "By uploading your photos to Twitpic, you give Twitpic permission to use or distribute your photos on Twitpic.com or affiliated sites. All images uploaded are copyright © their respective owners." Even so, there are other provisions on Twitter stating that, "Notwithstanding [sic] the inter alia TOS state, 'you retain your rights to any content you. . . post on or through the services'".

Morel took and uploaded the picture on Twitpic and wrote on Twitter that he had an "exclusive earthquake photo" as he linked his Twitter page to his Twitpic page. There is no copyright notice in the photo, but the Twitpic page includes "Morel" and "photo by morel" on the photo. Moreover, Twitpic page also contains a copyright notice "© 2010 Twitpic Inc, All Rights Reserved." By uploading photos on the internet, Morel wanted to share news about the earthquake, retain his copyright, and receive recognition and compensation for his photo license.

The login page of Twitpic has warned the users that "by clicking 'Allow', you continue to operate under Twitter's Terms of Service," which means that by pressing the "Allow" button, the users have recognised the terms. The terms of the service read:

By submitting, posting, or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute content in any and all media or distribution methods.

Tip: This license is authorising us to make your Tweets available to the rest of the world and let others do the same. But what's yours is yours - your own content.

Twitter's terms clarify that this license gives "the right for Twitter to make the content available to other companies, organisations and individuals who have a partnership with Twitter." Furthermore, the provision emphasises that "we encourage and allow extensive reuse of content." Based on this term, Twitter only gives a license to use the content on Twitter and their partners. Meanwhile, Twitpic also provides a license to use the photo only on 'Twitpic.com and partner sites'. In fact, AFP and Third Party Defendants are not the partners of either Twitter or Twitpic, but only fellow users. In addition, Twitter's provision of "encouraging and permitting extensive content reuse" does not necessarily entitle other

users to reuse content containing copyright. In contrast, the language is in stark contrast to the terms "license" and "rights" on Twitter. AFP and Third Party Defendants do not fulfil the conditions to prove that they have a license to use Morel's photo.

The DMCA prohibits intentional providing or distributing Content Management Information (CMI) or false copyright management information with "the purpose of causing, enabling, facilitating, or concealing infringement." The 17 USC § 1202 (a) CMI is defined as "information submitted in connection with a copy or phonorecord of a work or performance or an exhibition of a work, including in digital form such as: a. Title and other information about the identity of a work, including information specified in the copyright notice; b) Name and other identifying information about the creator of the work; c) Name and other identifying information about the copyright holder of the work, including information specified in the copyright notice.

The DMCA in 17 USC § 1202 (b) also prohibits acts "without the authority of the copyright or legal holder" and knowingly or know that it will "cause, allow, facilitate, or conceal" a violation, such as: a) intentionally delete or change copyright management information; b) distribute or import for copyright management information knowing that copyright management information has been deleted or changed without the authority of the copyright or legal owner; or) distribute works, copies of works, or phonorecords, knowing that copyright management information has been deleted or changed without the authority of the copyright or legal owner.

The fact that AFP claimed the photo label with the credit of "AFP/Getty/Daniel Morel" and "AFP/Getty/Lisandro Suero" is an indication of a violation. AFP knows that the CMI is incorrect. Based on that evidence, AFP has violated 17 USC § 1202 (a) because it has provided and distributed fake CMI with a view to causing, enabling, facilitating, or hiding a violation. Based on the evidence, AFP recognises that Suero is not the owner of the photo. After knowing this, AFP issued a credit revision notice stating that Morel is the owner of the picture. Nevertheless, the photos are still available even though they have not received permission from Morel. Hence, based on this evidence, AFP has changed CMI on Morel's unauthorised photos from Morel and distributed copies that have been changed in accordance with 17 USC § 1202 (b) (1) (2) and 1202 (c) (2).

Based on the evidence, it can be proven that Getty has violated 17 USC § 1202 (a) of the DMCA. It is claimed for knowing that Suero's credit photos were still available at the Getty and failed to delete them after an AFP notification, the judge concluded that he was doing this with the aim of continuing to provide Suero's credit licenses to Getty's customers. Based on this fact, Getty certainly knew that when its staff failed to delete the photo from Getty, it actually knew that the CMI listed in Suero's credited photo was incorrect copyright management information. However, there is insufficient evidence to state that Getty has violated 17 USC § 1202 (b) of the DMCA.

Based on the evidence, there are two possibilities in which the CMI in Morel's photo was changed or deleted without any authority when Suero took the photo from Morel's Twitpic page and deleted the identity information contained on the photo, and when AFP changed the credit of the photo (from Suero to Morel). Although Getty was not involved directly in the action, it might be responsible for distributing the photo when they actually knew that its CMI had been changed or deleted without the authorization of Morel as the photographer. The DMCA allows the aggrieved party to choose between recovering actual losses and legal damages as stated in 17 USC § 1203 (c) (1), (3). Furthermore, the § 1203 (c)

(3 (B) states that for violations of § 1202, the plaintiff "may choose to recover damages for each offense with an amount of not less than \$ 2,500 or no more than \$ 25,000".

The Copyright Act gives the judge the authority to make a decision on legal damage if the violation is committed deliberately by the prosecutor (17 USC § 504 (c) (2)). Violation is declared to be intentional if: (1) "The defendant is aware of the violation that occurs" or (2) "The action done by the defendant is a 'negligence' for, or 'deliberate blindness' to the rights of the copyright holder."

Gebhard, Getty's staff member who was responsible to delete the photos, actually knew that AFP had sent a revision of the credit label and a notification of image deletion. However, he claimed that he did not see the substance of the credit label revision from AFP, yet he admitted that he searched for Morel's credit photos as a response of the deletion notification. He also admitted finding several creditors of 'David Morel' and concluded the intended revision from 'David' to 'Daniel' without further investigation. The judge did not believe the explanation because based on Gebhard's email, he had actually seen the substance of the credit label's revision and knew that Morel's picture had been available to Getty customers with Suero's credit on it. Based on this fact, Gebhard's mistake for not finding or deleting Suero as the creditor of photos from the Getty site was sufficient evidence of violation.

Copyright Act in 17 USC § 504 (a) (c) gives the plaintiff the right to choose between receiving compensation for loss in the form of actual loss plus profits from the offender or legal loss. Alternatively, in addition to real damages, the copyright holder has the possibility to recover legal losses any time before the final decision is made in accordance with 17 USC § 504 (c). The amount ranges from \$ 750 to \$ 30,000 per work. But if the copyright holder can prove that the offense was intentional, the compensation may be higher up to \$ 150,000 per work. In the meantime, if the offender can prove that the violation is not intentional but instead accidental, the compensation can be lowered to less than \$ 200 for court discretion.

Based on data from the Muso Anti-piracy Consulting Firm, globally, the level of digital copyright infringement or piracy in 2017 is relatively high. There are approximately 300 billion visits to piracy sites throughout the world. These include illegal downloading and streaming of TV shows and music in 2017. The United States ranked first in online piracy by registering 27.9 billion visits to piracy sites (Muso, 2018). The data shows that despite the existence of regulations and judicial system, piracy or copyright infringements in cyberspace is continually occurring and even increasing. Nevertheless, the data of piracy contents have been registered in the database of copyright management managers, hence the number of piracy activities or copyright infringement can be counted.

Meanwhile, unlike the data presented by Muso, the creative content uploaded by users is not registered in the database so that certain data cannot be obtained. In addition, detection of creative content copied and re-uploaded by other users cannot be done. Referring to the case of AFP against Morel, Morel did not know directly that Suero had re-uploaded his picture, which was then re-uploaded by AFP on its site and sent it to Getty. Moreover, AFP and Getty did not give credit to Morel as the actual photographer, instead to Suero as the sender. Morel learned that his photo had been copied and distributed without his permission in which the photo gave Suero/AFP/Getty credit where he never gave a license to them.

## METHODOLOGY

The present study uses a juridical approach to describe the problems associated with various laws and regulations. In the preparation of this study, the author uses descriptive research. Descriptive research can be interpreted as a procedure or method of solving research problems by describing the state of the object being investigated (person, institution, community, etc.) based on the facts at the present time.

Soekanto and Mamuji (2009) argues that by conducting a descriptive study, it will be easy to understand problems (cases), which are related to other phenomena or symptoms. In addition, the present study is a normative legal research, in which the method used in this study is legal research through literature study. Thus, this study uses is a normative juridical research with descriptive method

## RESULTS AND DISCUSSION

In terms of legal structure, Indonesia has a fairly legal structure similar with those in the United States. Any cases related to copyright infringement will be brought to the District Court.

In Indonesia, the government has enacted Law Number 28 of 2014 concerning Copyright (Copyright Law). In the Dutch colonial era, Indonesia once participated in the Berne.

Convention in which it was declared applicable for the Dutch East Indies since 1 August 1931 with Staatsblad 1931 No. 325. The text and translation of the Berne Convention is available in Staatsblad 1931 No. 435. Furthermore, the Berne Convention declared applicable in Indonesia was the amendment version ratified in Rome on June 2, 1928 (Gautama, 1975).

In 1958, the Indonesian government through the Karya Cabinet (Juanda Cabinet) declared that Indonesia would not officially participated in the Berne Convention for the protection and artistic works due to the absence of a National Copyright Act hence it was assumed to be unfeasible to participate in an international agreement concerning copyright (Gautama, 1975).

Furthermore, Law No. 28 of 2014 (hereinafter referred to as UUHC) becomes the prevailing legal basis for copyright protection in Indonesia. Before the publication of the latest UUHC, Indonesia experienced a change of law concerning copyright for five times, namely Law No. 6 of 1982, Law No. 7 of 1987, Law No. 12 of 1997, Law No. 19 of 2002, and the recent Law No. 28 of 2014. The Government has adjusted the contents of the law with the TRIPS agreement at the UUHC in 1997. However, the revision continues to provide better protection for the creators in Indonesia.

Article 1 paragraph (11) of UUHC states: "The announcement was reading, broadcasting, exhibiting, a creation using any tool either electronic or non-electronic, or perform any way that an invention can be read, heard, or seen by others". It means that the creator who uploads a work online or to Internet media actually has made an announcement of his/her creation.

If we refer to the case of AFP v. Morel, the articles in 17 USC § 504, § 1202, and § 1203 are in accordance with the UUHC in Indonesia. The 17 USC § 1202 has in common with Article 7 jo. Article 112 UUHC. This article states: 1) Copyright management information as referred to in Article 6 letter a includes information about: methods or systems that can identify the original substance of the Creation and the Creator, and the information code and access code; 2) Copyright electronic information as referred to in Article 6 letter b includes

information about: (a) a Work, which appears and attaches electronically in relation to the Announcement of Creation activities, (b) the name of the creator, its alias or pseudonym, (c) Creator as Copyright Holder, (d) period and conditions of use of the Work, (e) number, and (f) code of information; 3) Copyright management information as referred to in paragraph (1) and Copyright electronic information as referred to in paragraph (2) owned by the Author is prohibited from being removed, altered, or tampered with.

Furthermore, the 17 USC § 1202 contains provisions regarding copyright infringement in the case of forgery of copyright management information. Meanwhile, Article 7 UUHC describes the definition of electronic copyright information which includes information about creation, the name of the creator; copyright holder; the period and conditions of use of the creation; number and information code. Examining the case of AFP v. Morel, Morel's copyright management information can be included in Article 7 paragraph (2) where information about the ownership of Morel's photos on his Twitpic page has been changed by AFP and Getty. AFP and Getty's intentions can be imposed in Article 112 in which without Morel's permission and authority, they change the copyright management information and use it commercially by selling licenses to their customers.

Through the UUHC, the government can also monitor copyright content and related rights in information and communication technology. These provisions are stated in Article 54-56 UUHC and further explained by the Minister of Law and Human Rights together with the Minister of Communication and Information Technology by issuing a joint regulation concerning the implementation of closing content and/or access rights of users of copyright infringement and/or related rights in electronic systems. This regulation regulates the mechanism for a creator, copyright holder, related rights owner, and other parties who have the authority to identify other parties who commit copyright infringement on their works in an electronic system.

Based on Article 2 paragraph (2) of the joint regulation of Minister of Law and Human Rights No. 14 of 2015 and Minister of Communication and Information No. 26 of 2015, parties who can file a case in a court include the creator, Copyright holder, owner of Related Rights, Copyright license holder or Related Rights, National Collective Management Institution or Collective Management Institution, authorised association, or other party that has the authority. Reports are submitted to the minister that organises government affairs in the legal field through the Director General of Intellectual Property. Subsequently, verification of report will be conducted to check the suitability of the report with existing data. If the evidence is adequate, the Ministry of Law and Human Rights and Ministry of Communication and Information will solve the issue by closing the content or providing access rights to sites reported for copyright infringement. To submit a complaint or petition, a creator, copyright holder, or authorised person must meet several requirements, i.e., identity, proof of rights to the Work and/or Product Related Rights, site address, type and/or name of content that violates the Copyright and/or Rights Related, types of violation, and other information related to content that violates Copyright and/or Related Rights.

Before AFP and Getty took Morel's photo and distributed it, Morel initially uploaded photos via Twitpic. Meanwhile, based on the provisions in Twitpic, by uploading the photo on Twitpic, Morel has given permission to Twitpic for using or distributing the photo on Twitpic.com or their affiliate sites in which the copyright still belongs to the creator. Therefore, Morel has agreed that the photos can be used and distributed by Twitpic and their affiliate sites. Morel's approval for the use and distribution by Twitpic, thus, is included



in the economic rights of the creator and copyright holder as explicated in Article 9 paragraph (1) UUHC. Such actions must be obliged to obtain the permission of the author or copyright holder hence permission becomes an obligation.

In fact, AFP uploaded and distributed the photo without permission from Morel. It claimed that the photo was obtained from the Suero's Twitpic page, in which Suero actually took the photo from Morel's Twitpic page. AFP argued that it had attempted to contact Morel but did not get a response hence it downloaded the photos from Suero's Twitpic page. AFP also re-uploaded the photo to one of their sites and sent the photo to Getty. AFP and Getty are not included in Twitter's affiliate sites. Therefore, as AFP downloaded the photo from Suero's page, its status is only as a user. Thus, AFP and Getty have actually violated Article 9 UUHC and fulfilled the element of Article 113 paragraph (3) UUHC which reads:

Any person who is with no rights and/or without permission of the Creator or Copyright holder violates the economic rights of the Creator as referred to in Article 9 Paragraph (1) letter a, b, e, and/or g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

Furthermore, Article 1 paragraph (23) UUHC states that piracy is a multiplication of works and/or products of illegally related rights and the distribution of multiplied goods extensively to gain economic benefits. Article 113 paragraph (2) UUHC can also be implemented and carried out concerning with piracy. Meanwhile, Article 113 paragraph (4) reads: Any person who meets the elements referred to in paragraph (3) are carried out in the form of piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp.4,000,000,000.00 (four billion rupiah).

In Indonesia, the case similar to AFP v. Morel is still rare. However, there are several cases of copyright infringement that have not been registered and resolved in court. An example of similar case is the case of the logo of 'Al Irsyad Al Islamiyyah', which was a dispute between Ir. H. Hisyam Thalib against H. Husen Maskati. The plaintiff is Ir. H. Hisyam Thalib, the official head of the Center for the Association of Al Irsyad Al Islamiyyah, while the defendant is H. Husen Maskati, the Secretary General of the association in 1999-2004.

In 2001, the defendant registered the logo of 'Al Irsyad Al Islamiyyah' by listing himself as the creator. The plaintiff as the Head of Al Irsyad Al Islamiyyah filed a lawsuit against the defendant. In the trial, it was decided that even though the logo was registered by the defendant, the data presented at the trial succeeded in convincing the judge that the defendant was not the real creator because the logo had existed since 1935 and been the logo of Al Irsyad Al Islamiyyah since then.

A lawsuit can be made if there are parties that violate the copyright of the creator even though the work has not been registered. A court order can cancel an existing copyright registration in case sufficient evidence is found. Article 74 UUHC states that the court decision that has permanent legal power of cancellation of the recording of work or product Related Rights is one of the factors that causes the abolition of the legal force of recording works and related products.

Based on data from the Muso Anti-piracy Consulting Firm, the level of violations or online piracy in Indonesia is relatively high. Although Indonesia has no access to piracy sites, the piracy rate ranked the 8th in the world. Based on the data from Muso, the United States ranked first with 27.9 billion visits to piracy sites in 2017, followed by Russia (20.6 billion), India (17 billion), Brazil (12.7 billion), Turkey (11.9 billion), Japan (10.6 billion), France (10.5 billion), Indonesia (10.4 billion), Germany (10.2 billion), and the United Kingdom (9 billion). Similar to the United States, the piracy or digital violation rate in Indonesia is quite high, even though the access to legal contents is relatively uncomplicated. Unlike in the United States where cases of copyright infringement of creative content are quite common, in Indonesia, such cases are rarely brought to court. It shows that Indonesian content creators, particularly in online media, either have not fully utilised the existing legal instruments or there has been no detrimental copyright infringement considering many steps that must be taken before filing a lawsuit.

One of the principles in the Berne Convention is the principle of automatic protection, namely the condition in which copyright protection is granted without fulfilling certain formalities. Article 1 UUHC states that Copyright is the creator's exclusive right arises automatically based on the principle of declarative after a work is embodied in a tangible form without prejudice to the restrictions in accordance with the provisions of the legislation.

In connection with a content uploaded on the UGC site, when the user registers and uploads a content, he has automatically signed a contract with the site. The contract is contained in the 'Terms of Service' on each UGC site.

Furthermore, the Terms of Service are actually included in the scope of licensing to other parties to implement economic rights, either partly or wholly. In accordance with Article 9 of UUHC, these economic rights include the publication of works; multiplication in all forms; translation of creation; adaptation, arrangement, transformation of creation; distribution of works or copies thereof; show creation; announcement of creation; creation communication; and creation of creations. In addition, the agreement in the provision of services is in line with Article 80 paragraph (1) UUHC where the Copyright holder or the owner of the Related Rights has the right to give a license to another party based on a written agreement to carry out the acts referred to in Article 9 paragraph (1), Article 23 paragraph (21), Article 24 paragraph (2), and Article 25 paragraph (21).

Moreover, Article 80 paragraph (3) UUHC requires the licensee to grant royalties to the copyright holder or related rights owner for a certain period of time unless otherwise agreed. Site service providers should also provide a provision that allows users give the royalty-free licensing. Therefore, the licensee can fully exploit the content as long as it is in accordance with the provisions of the listed services.

The provision also becomes a pretext for site service providers to prevent any potential lawsuits if the content uploaded by users violates one's copyright. Moreover, the DMCA "Safe Harbor" clarifies that site service providers can be free from liability for copyright infringement on content uploaded to their system if they meet the conditions given. The 17 USC § 512 (c) states that site service providers must meet the requirements, namely: (a) does not receive a financial benefit directly attributable to the infringing activities; (b) does not have actual knowledge that the material is infringing or is not aware of facts or circumstances from which infringing material or activity is apparent; (c) upon a notification from the copyright holder or representative agent, act expeditiously to remove the material that is claimed to be infringing. Based on the terms of service, the site service provider emphasises

that the user and the owner/creator will retain the copyright of a work. However, by uploading a work, the user has licensed it so that it can be used by the service provider in accordance with the terms of service. In other words, the owner of the work still holds the copyright, yet the service provider can exploit the work in the interest of the service in accordance with the provisions.

Nevertheless, it can be assumed that the exploitation of a creator's work by the service provider is actually a part of compensation for the distribution of the work. The users have number of options of site service provider. In addition, several sites allow users to maximize their economic rights, such as limiting the exploitation of photo, giving a copyright label, and applying a paid license.

The contractual relationships between users and site service providers also requires an improvement. In fact, users often ignore the terms of service proposed by site service provider. Unlike the court order in the case of *AFP v. Morel*, a photographer in the United States named Art Dragulis had to lose his lawsuit against an atlas company because he did not understand the provisions of site providers hence his case was declared as self-negligence. He decided to give his photo license under a Creative Commons BY-SA-2.0 license that allows commercial use of the photo while still crediting Art Dragulis as the photographer. Although copyright has been stated since the work is announced regardless of the media, the license embedded in the work also has an important role in ensuring the rights of the creator.

Second, legal protection for works that have not been registered. Many creators in online media will have inquiry about the legal protection of their works, which have not been registered according to the law.

In principle, legal protection of a work arises not only because of a registration of copyright. The legal protection automatically appears when a work is announced or published. Yet although registration is not an obligation, it can be used as evidence for a possible dispute. Article 64 paragraph (2) of the UUHC states that the recording of works and product related rights is not a requirement to obtain copyright and related rights.

In addition, the users generally copy a content without any permission, which is a behaviour that is difficult to control. Monitoring the actions of all users related to the work or content is not an easy task. Consequently, it is common to find copies of the work on either a single site or different sites. However, a lawsuit entails the losses suffered by both parties as well as energy needed during the court process. Yet, the intention to file a complaint is not realised because it is not proportional to the required cost, time and energy. One solution to prevent a work is copied by any user without permission is by submitting a complaint to the site service provider for deleting the work/content because it has violated the copyright. Generally, site service providers will respond quickly to such complaints thus the solution will be inexpensive and uncomplicated.

Even though the law does not specifically regulate creative content, it can be included in the prevailing UUHC. However, the behaviour of online media users is difficult to control by law. Copyright infringement tends to be neglected instead of being brought to the court. Many factors must be considered, ranging from the loss suffered due to the violation to the length of time that requires mind and energy. Despite the loss is possibly insignificant, it may be not proportional to the energy and thought devoted to the process. Online protection can be obtained by creators in accordance with the "Safe Harbor" provisions of the DMCA. In fact, DMCA has implemented a requirement for site service providers to prevent any conflict regarding infringing content.

Creators can submit deletion of content that violates the creator's work by posting information needed to the related site service provider. In addition, not all site service providers promptly respond any complaints about copyright infringement, especially for works uploaded by creators.

### CONCLUSION

Based on the formulation of the problem, discussion and the results of the research described in previous section, the authors can draw the following conclusions:

First, the development of copyright protection has been initiated since the implementation of Berne Convention in 1886 to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement in 1994, WIPO Copyright Treaty (WCT), and the Digital Millennium Copyright Act (DMCA) by the United States. The DMCA is an implementation of copyright circulation in the digital world. This law regulates many issues including copyright management information and the responsibility of the site service provider.

Second, in Indonesia, the ratification of Law Number 28 of 2014 concerning Copyright has regulated all matters relating to copyright. Referring to the *Agence France Presse/AFP v. Morel*, the UUHC has similarities with the articles of the DMCA in the context of the basis for the trial. Articles in 17 USC § 504, § 1202, and § 1203 are in accordance with the UUHC in Indonesia. The 17 USC § 1202 is identical with Article 7 jo. Article 112 UUHC, concerning the falsification of copyright management information. The distribution of photo by AFP and Getty can be claimed as an activity entails economic rights. Article 9 (paragraph) 1 UUHC states such activity must obtain the permission from the creator or copyright holder, and it is prohibited if done without any permission.

Third, challenges regarding the legal protection of creative content in online media relate to contractual relationships between users and site service providers where users must encounter the prevailing standard license agreement, which cannot be changed. Users must accept the agreement if they deliberately upload their works to certain service provider sites. The terms of service set by service providers usually non-exclusive licenses or royalty free in which they can utilise the works in accordance with the existing provisions. Users must accept the possibility of an exploitation of their works when they upload their works to particular service provider system.

Legal protection of works that have not been registered, as demonstrated by the case of the logo of 'Al Irsyad Al Islamiyyah' or the dispute between Ir. H. Hisyam Thalib against H. Husen Maskati. The logo had not been registered before and was registered by H. Husen Maskati as the secretary of the institution under his name. Nevertheless, the trial proved that H. Husen Maskati is not the creator of the logo thus the registration is cancelled. This case becomes an enlightenment that the creator still has the rights to a work as long as it has not been licensed.

The character of the users in online media and the development of technology result in the user's ability to freely access information anytime and anywhere. It will be very complicated to monitor every user in digital media for not copying and/or utilising one's work. Legal protection that can be utilised by creators is the scheme of DMCA 'Safe Harbour' that allows site service providers to avoid any responsibility related to copyright infringement through the application of the conditions in which they will directly delete the infringing content in accordance with the notification received. At a meantime, creators can send such

notification to the site service provider hence the infringing material/content will be deleted. However, not all site service providers respond quickly to such a notification.

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