



Basics on © law

Intellectual property, work of the mind, author, moral rights, economic rights, exceptions, reuse, plagiarism, piracy

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Intellectual property

- Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.
- Source: WIPO What is intellectual property?
<http://www.wipo.int/about-ip/en/>



Creations of the mind

- A wide range of creative, intellectual or artistic works, in constant evolution
- Specified by law and jurisdiction
- E.g. poems, theses, plays, other literary works, motion pictures, choreography, musical compositions, sound recordings, paintings, drawings, sculptures, photographs, computer software, radio and television broadcasts...
- Originality and expression of personality (author)



Creations of the mind (cont'd)

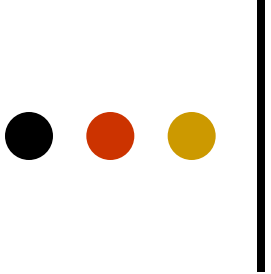
Will not be considered here:

- Trademarks
- Patents
- Industrial design
- Trade dress (visual appearance)
- Trade secrets (confidential information)
- Databases (*sui generis* law)
- Related rights (*droits voisins*)



Author

- A person
- With a significant contribution to work
- Exclusive right-holder
- Legal status



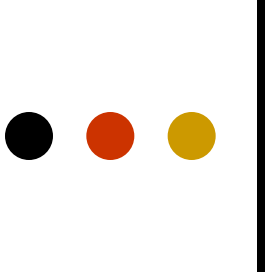
Author (cont'd)

- Collaborative works (book with chapters)
- Composite works (anthology)
- Collective works (encyclopedia)
- Orphan works
- Ghostwriters
- Public officers, employees etc.



The person and the work

- Automatic protection (no need for registration)
 - The person
 - The original creation
 - Its exploitation
- Work on support (form, manner)
 - Not protected: ideas
 - Not protected: support
- Exclusive rights, (partly) limited in time



Moral rights (French law)

- Protection of the author and his creation
 - Paternity
 - Integrity
 - Disclosure
 - Withdrawal and repentance
- Cannot be sold or assigned to others
- Not limited in time



Economic rights (copyright)

- Protection of financial interests (exploitation)
- Exclusive rights
 - To produce copies or reproductions of the work and to sell those copies
 - To create derivative works (adaptation)
 - To perform or display the work publicly (presentation)
 - To translate the work
 - To sell or assign these rights to others
- Limited in time (70 years)
- Private property vs public domain



Exceptions

- Legal use of protected works, without permission by rightholder
- Allowed by law or court decision
- International framework (Berne Convention, WIPO)
- Object to interpretation and procedures



Exceptions (cont'd)

- Berne convention three-step test
- “It shall be a matter for legislation (...) to permit the reproduction of such works
 1. in certain special cases,
 2. provided that such reproduction does not conflict with a normal exploitation of the work
 3. and does not unreasonably prejudice the legitimate interests of the author.”
- Not for individual decisions (vs fair use)



Exceptions (EU)

3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

- (a) use for illustration for teaching or scientific research
- (b) uses, for the benefit of people with a disability
- (c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics
- (d) quotations for purposes such as criticism or review
- (e) use for the purposes of public security
- (f) use of political speeches as well as extracts of public lectures or similar works
- (g) use during religious celebrations or official celebrations organised by a public authority
- (h) use of works, such as works of architecture or sculpture made to be located permanently in public places;
- (i) incidental inclusion of a work or other subject-matter in other material;
- (j) use for the purpose of advertising the public exhibition or sale of artistic works
- (k) use for the purpose of caricature, parody or pastiche
- (l) use in connection with the demonstration or repair of equipment
- (m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building
- (n) use by communication or making available, for the purpose of research or private study
- (o) use in certain other cases of minor importance where exceptions or limitations already exist under national law

o Source: Directive 2001/29/EC



Exceptions (France)

- Private copy
- Representation in cercle of family
- Quotation
- Press review
- Education and research
- Libraries, archives, museums
- Handicap
- ...



Exceptions (NL)

- Copy for personal use
- Library exception (archives, museums)
- Display exception in the context of non-profit education (AV material in classroom)
- Education exception: reproduction of parts of work in the context of non-profit education
- Right to quote
- ...



Exceptions (cont'd)

- Evolution related to technology and usage
- Actually, four hot topics:
 - Handicap
 - Education and research
 - Libraries
 - Mashups



Reuse

- Work of the mind as data
- Text, images, figures, tables etc.
- Datasets linked to publications
- Text and data mining
- Annotation, tagging, indexing
- Metadata
- Mashups?



Plagiarism

- Stealing of published material (vs citation)
- May be © infringement
- Always against codes of ethics (science, journalism...)
- The case of students' works
- Argument against open access publishing?
- Plagiarism detection software




Piracy

- Copyright infringement (use without permission)
- Mainly reproduction (copying) and representation (dissemination)
- But: “many kinds of ‘piracy’ are useful and productive (and) every generation welcomes the pirates from the past” (Lessig, 2004, p.66)



In short

- Grey literature, insofar it is work of the mind, is copyright protected
- Yet, there may be more problems with the authorship
- What means “normal exploitation of the work”, with regards to grey literature?
- Which are the “legitimate interests of the author” of grey literature which (often) is not object of commercial dissemination?



Bibliography and contact

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