

# The Tension Between Creative Freedom and Copyright Law

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# Basics of Copyright Law

- What can be protected by copyright ?
- Requirements for copyright protection
- The rights of the copyright holder
- The exceptions to copyright protection
- The duration of copyright

# Basics of Copyright Law

- What can be protected by copyright ?
  - Literary and artistic works
  - Open definition = lots of things !

# Basics of Copyright Law

- Requirements for copyright protection
  - Expression (>< idea)
  - Originality (= « author's own intellectual creation » with « personnal touch »)

# Basics of Copyright Law

- The rights of the copyright holder
  - 2 types of rights
    - Economic
      - Reproduction
      - Communication (making available) to the public
      - Distribution
    - Moral
      - Divulcation
      - Paternity
      - Integrity
  - Broad interpretation

# Basics of Copyright Law

- The exceptions to copyright protection
  - Exhaustive list (>< general « Fair use » in US law)
    - Quotation
    - Parody
    - Incidental uses
    - ...
  - « 3 step test »
    - Certain special cases
    - Do not conflict with a normal exploitation of the work
    - Do not unreasonably prejudice the legitimate interests of the rightholder
  - Strict interpretation

# Basics of Copyright Law

- The duration of copyright
  - Life of the author + 70 years

# Tension Between Creative Freedom and Copyright Law

- Open definition of work + low threshold for protection  
= lots of copyrighted works
- Broad rights + strict exceptions + long duration  
= little creative freedom
- General definitions of copyright concepts  
= no clear-cut boundaries
- Copyright infringement depending on « similarity »  
= gray area between (infringing) copying and (free) inspiration
- Copyright protection is not a defense to copyright infringement  
= copyrighted work in its own sake can be a copyright infringement
- Balance between creative freedom and copyright protection already struck in the law  
= little space for freedom of (artistic) expression defense



# Tension Between Creative Freedom and Copyright Law

From copyright theory to artistic practice...