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
      – Divulgation
      – 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 »
  = grey 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...