



The Future of Copyright Law

The reform debate of copyright law in Germany

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Dr. Thomas Hoffmann, LL.M., Attorney at Law (GER)
DAAD-Lecturer in Law, University of Tartu



“Copyright Nazi: *Noun. A person or company who is persistent in sniffing out, suing for, and demanding immediate ceases of unauthorized use of their intellectual property.”*

www.UrbanDictionary.com



„La plus sacrée, la plus légitime, la plus inattaquable (...), la plus personnelle de toutes les propriétés, est l'ouvrage, fruit de la pensée d'un écrivain.“

Le Chapelier, before the French National Assembly, 1791, commenting the first French Copyright Code



→ Copyright is one of the most controversially discussed public issues in Germany



- Developed as field of law only in the **20ies**
- Regulated in copyright code (Urheberrechtsgesetz, **UrhG**), 1965



I. Recent Reforms

→ In the **late 90ies**:

Call for reform due to
digitalisation and globalization



I. Recent Reforms

- Reform took place in two “baskets” (2003 and 2008),
- third basket was planned for this year.



Basket I (2003)

- 1) Right to make **private copies** continues to exist, but the violation of copyright protection mechanisms cause liability for damages, sec. 53

If commercially done: Crime



Basket I (2003)

2) P2P-networks: Sec. 53
applicable on all material which
has been uploaded “obviously
unlawfully”

(Megaupload, BitTorrent)



Basket I (2003)

- 3) Introduction of new form of use: “*Making available*”
- 4) Implementation of “Copyright-Directive” (2001/29/EC)



Basket I (2003)

→ 1. Basket criticized for imposing extensive research duties/criminalizing consumers



Basket II (2008):

1) Privileges for Science and Research:

*a) Sec 52a: Permission to make available copyrighted materials to **students/for research***

*b) Sec 52b: Reproductions in public and academic **libraries** (outside use prohibited)*



Basket II (2008):

- 2) **Standard fee** for use of private copies and other permitted uses, sec. 54a. I
- 3) Planned **de minimis-rule**: Finally was not implemented in sec. 106



Basket III (prep. since 2010):

- 1) Private copying: Only copies of the **original** shall be allowed.



Basket III (prep. since 2010):

- 2) IP right for **press publishers**, analogous to the rights of phonogram and film producers, referring to the commercial use of press products to license.
 - „**Lex Google**“ → news aggregator („snippets“)



Basket III (prep. since 2010):

- 3) **Open Access:** Secondary exploitation right for authors of scientific papers („OA-Business Models“)
- 4) Freely accessible **public viewing** (football) in bars etc. shall require a license as well (today: Only when paid for by watchers)



Basket III (prep. since 2010):

5) Orphan works:

The use of works whose copyright is difficult or impossible to determine shall be simplified



Basket III (prep. since 2010):

- **Protest** against these intentions from various sides.
- Lead the the rise of new political Party intending to represent „*Digital Natives*“:



- Founded in 2006
- 2011: Entered four state parliaments in Germany (> 5 %)



- 1) The **term of protection** shall be shortened to 10 years post mortem auctoris, alleviating orphan works problem.
- 2) Authors shall regain their rights faster in case of **non-exploitation**; exclusive licences shall be limited to a maximum term of 25 years.



- 3) Institutions of **public education** shall not be required to pay for using copyright works beyond the initial purchase price.

- 4) Libraries shall be entitled to store works in **digital archives**; free access for educational purposes shall be guaranteed.



- 5) The right to make private copies shall be defined and guaranteed; the creation of "**remixes**" and "mashups" shall be facilitated. Technological protection measures and digital rights management shall be abolished.

- 6) Private, direct, non-commercial **file sharing** and the passing on of works shall be de-criminalized.



7) New business models shall be developed (for instance "micropayment", crowd funding, levies). Authors shall receive equitable remuneration but data protection must be guaranteed; mutual trust and new distribution channels are essential.



8) The practice of sending **warning letters** to private individuals shall be stopped; in order to have free WLAN networks, the concept of "Störerhaftung" ("disturbance liability" - secondary liability for someone else's infringement due to a breach of duty care) shall be abolished.



→ The debate culminates 3-4 times per year in more or less spectacular **happenings:**

- May 2012: „Wir sind die Urheber“ (1500 signatures),
- March 2012: 50 „Tatort“-authors
- ACTA



II. Academic Approaches

“Modellgesetz Geistiges Eigentum”

(head: Prof. Hans-Jürgen Ahrens,
Osnabrück)

- Started in 2008
- Partly financed by GRUR
(German association for Industrial
property and Copyright)



II. 1) Initiative

- Modell Law was published in May 2011
- Commentary was published in May 2012
- English Translation will follow in autumn 2012



II. 2) Purpose

1. Reorganization of substantial law:

- a) Providing a **structure** to the protection concept of property rights (clearly determined levels of protection)



II. 2) Purpose

1. Reorganization of substantial law:

- a) Providing a **structure** to the protection concept of property rights (clearly determined levels of protection)
- b) **Harmonization** of industrial property rights and copyrights



II. 2) Purpose

2. New substantial law:

- a) Regulation of the **transfer** of industrial property/copyrights



II. 2) Purpose

2. New substantial law:

- a) Regulation of the **transfer** of industrial property/copyrights
- b) Uniform implementation of currently drafted **EU directives**



II. 2) Purpose

3. Procedural law:

a) Uniform administrative proceedings



II. 2) Purpose

3. Procedural law:

- a) Uniform administrative proceedings
- b) Uniform court proceedings



II. 2) Purpose

3. Procedural law:

- a) Uniform administrative proceedings
- b) Uniform court proceedings
- c) Parallel enforcement structures



II. 2) Purpose

4. International Law:

a) Regulation of Private International Law



II. 2) Purpose

4. International Law:

- a) Regulation of **Private International Law**
- b) Regulation of the relationship between national and **community (copy-
)rights**



II. 3) Structure

Book 1: General Part

– Section 1: Formation of rights, restrictions

- Title 1: Intellectual Property Rights
- Title 2: Other security positions
- Title 3: Substantive and temporal barriers



II. 3) Structure

Book 1: General Part

– Section 2: Applicable law and jurisdiction

- Title 1: Hierarchy of legal sources
- Title 2: Applicable Law
- Title 3: International jurisdiction
- Title 4: Substantive and territorial jurisdiction
- Title 5: Lis pendens and related procedures



II. 3) Structure

Book 1: General Part

– Section 3: Violation of Rights, enforcement

- Title 1: Private law consequences of violation of a protection right
- Title 2: Crimes, offences
- Title 3: Measures of the Customs authorities



II. 3) Structure

Book 1: General Part

– Section 4: IP Rights as assets

- Title 1: Transfer of property rights
- Title 2: Real rights, enforcement and insolvency
- Title 3: Licensing of intellectual property rights
- Title 4: Free licences and compulsory licenses
- Title 5: Pres. of ownership, effect against 3rd parties
- Title 6: Rights to grant rights and pending



II. 3) Structure

Book I Part 2: Organisation and Procedural Law

- **Section 1: Registration and supervisory authorities**
 - Title 1: organization, responsibilities, statutory authorization
 - Title 2: organization, powers



II. 3) Structure

Book I Part 2: Organisation and Procedural Law

– Section 2: Administrative proceedings

- Title 1: General provisions relating to proceedings at the Patent and Trade Mark Registry
- Title 2: General provisions relating to proceedings at the Federal Office of Plant Varieties



II. 3) Structure

Book I Part 2: Organisation and Procedural Law

– Section 3: Court Proceedings

- Title 1: Organization
- Title 2: Proceedings



II. 3) Structure

Book 3: Copyright

Book 4: Trade Mark Law

Book 5: Patent law

Book 6: Utility Model law

Book 7: Industrial Design Protection Law



II. 3) Structure

Facultatively:

- **Book 8: Plant Variety Protection Law**
(Sortenschutzrecht)
- **Book 9: Semiconductor Protection Law**
- **Book 10: Employee's Invention Law**



→ What do you think about it?



III. Contact

Dr. Thomas Hoffmann, LL.M.,

DAAD-Lecturer in Law

Tartu University

Näituse 13a

50409 Tartu, Estonia

Tel +372 5919 6614

Home www.rechtintartu.ee