

# **COPYRIGHT REFORM IN THE UNITED STATES**

**Distinctions from Continental Approaches**

# **DISTINCTIONS FROM CONTINENTAL APPROACHES**

- A. Distinctions in US rules**
- B. Distinctions in US reform debate**

# DISTINCTIONS IN US JUSTIFICATIONS FOR COPYRIGHT LAW

US  
underpinnings:

Historically,  
theories have been  
more UTILITARIAN  
or ECONOMIC in  
nature

European  
underpinnings:

Historically, theories  
have related more  
to NATURAL rights,  
PERSONHOOD, or  
AUTHORS' rights

versus

# SOME DISTINCTIONS IN US COPYRIGHT LAWS

- ① Formalities (e.g., copyright notices and copyright registration) continue to have lingering significance in the US.
  - a) You must obtain a registration for your copyrighted work before initiating a lawsuit.
  - b) You can ensure a greater award of damages by registering your work within a certain period after publication.
  - c) You must submit deposits of your work in order to obtain a registration.
  - d) You can defeat a defense of “innocent infringement” by putting a copyright notice (e.g., “© 2012 Christoph Schewe”) on your work.

# SOME DISTINCTIONS IN US COPYRIGHT LAWS

- ① Formalities (e.g., copyright notices and copyright registration) continue to have lingering significance in the US.
- ② “Fair use” exceptions to liability generally are more broadly defined in the US.

## Fair Use Factors (17 U.S.C. § 107):

- a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- b) the nature of the copyrighted work;
- c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d) the effect of the use upon the potential market for or value of the copyrighted work.

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- ② “Fair use” exceptions to liability generally are more broadly defined in the US.
- ③ “Work made for hire” doctrine may offer broader protections for corporate works in the US.
  - a) Individual creator does not receive any rights to own or exploit.
  - b) Individual creator cannot reclaim rights through “termination of transfers” rights.
  - c) Duration of work made for hire may be longer than if authorship had vested in an individual creator.

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- ④ “Moral rights” or “droit moral” are more limited in the US.

17 U.S.C. 101: A “work of visual art” is – (1) a painting, drawing, print, or sculpture, existing in a single copy, [or] in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author . . . or (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.”

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- ④ “Moral rights” or “droit moral” are more limited in the US.
- ⑤ The US does not have a separate category for protection of database rights as may be found in Europe.
- ⑥ Statutory damages may result in greater penalties in the US, regardless of plaintiff’s actual damages or infringer’s intent.

# SOME DISCUSSIONS IN US REFORM DEBATE

- ① How do we enforce against unauthorized distribution of protected content worldwide without hindering the free exchange of ideas?
- ② Should we overhaul the US Copyright Act to better address the realities of changing technologies and automatic protections (resulting in too many copyrights but too few claims)?
- ③ Can we limit liability for infringement of “orphan works”?
- ④ Is there any way to reign in the duration of copyrights?
- ⑤ This week’s Supreme Court case: does the “First Sale” doctrine exempt from liability sales of American products acquired abroad?
- ⑥ Should we explicitly permit “space-shifting” of legally acquired media in same way that we protect “time-shifting”?