+ Copyright Reform in the United States

– Distinctions from Continental Approaches

Presented by Seth Shelden
Adjunct Prof. at Cardozo School of Law
Fulbright Scholar - Visiting Prof. at University of Latvia
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I. Certain Distinctions in US Laws

Theoretical underpinnings of US laws tend to be more economic or utilitarian; natural rights or authors' rights play less of a role.

a. Formalities (*e.g.*, copyright notices and incentives for registration) continue to have lingering significance in the US.

b. "Work made for hire" doctrine may offer broader protections for corporate works in the US.

c. "Fair use" exceptions to liability generally are more broadly defined in the US.

d. "Moral rights" or "droit moral" are more limited in the US.

e. The US does not have a separate category for protection of database rights as may be found in Europe.

f. Statutory damages may result in greater penalties in the US, regardless of plaintiff's actual damages or infringer's intent.

II. Certain Discussions in US Reform Debate

a. How do we enforce against unauthorized distribution of protected content worldwide without hindering the free exchange of ideas?

b. 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)?

c. Can we limit liability for infringement of "orphan works"?

d. Is there any way to reasonably reign in the duration of copyright?

e. This week's Supreme Court case: does the "First Sale" doctrine exempt from liability sales of American products acquired abroad?

f. Should we explicitly permit "space-shifting" of legally acquired media in same way that we protect "time-shifting"?