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COPYRIGHT AND FREEDOM OF EXPRESSION: CONFLUENCES AND CONFLICTS – A GENERAL OVERVIEW

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Abstract

The relationship between copyright and freedom of expression is controversial. Two opposing views have surfaced. At one end of the spectrum, is the argument that copyright is one of the means of securing freedom of expression, as the Supreme Court has stated that “Framers intended copyright itself to be the engine of free expression” (*Harper and Row Publishers v. Nation Enterprises*, 471 US 539, 558 (1985) per O’Connor J.). Some copyright law theorists argue that the idea/expression dichotomy principle as well as the statutory exceptions and limitations on copyright adequately safeguard a party’s freedom of expression.

At the other end, there is the argument that “Copyright is antithetical to freedom of expression. It prevents all, save the owner of copyright, from expressing information in the form of the literary work protected by copyright” (*Ashdown v. Telegraph Group Ltd.* [2001] EMLR 44 (C.A.) per Lord Phillips M.R. at para. 30). Partisans of freedom of expression argue that having to ask for the author’s permission in order to use his expression, or part of it, and occasionally the author’s invoking of his moral rights critically limit freedom of expression.

There has been extensive discussion on the relationship between copyright and freedom of expression over the years in the United States. However, the debate has only flared up recently on a European level, and, to an extent, on a national level. As a result, the interaction between the two rights constitutes a grey area; no clear boundaries have been drawn between the rights; and there is no general consensus as to the role of freedom of expression in the context of copyright.

The root of the problem appears to lie in the difficulty of balancing the rights of the authors with those of the general public and those who address them.

This presentation aims to demonstrate that copyright is, to an extent, challenging the effective recognition of freedom of expression. This proposition is approached through an analysis of the relationship between the author’s moral right of integrity and another party’s right of freedom of expression, on a national level, with references to the international and regional aspects. In particular, the presentation considers the laws of the United States, United Kingdom, France and Germany in the context of this relationship. These countries have been chosen as they are comparatively rich in case law and legal literature on the rights under consideration; they may be taken as representative of their respective wider legal systems, while, at the same time, having notable differences among them.

In essence, the presentation seeks to demonstrate that conflicts so far unresolved on an international or regional level arise between copyright and freedom of expression, specifically in the case of the exercise of the integrity right of the author. Possibly, the solution will lie in international agreement on the way the conflicts are to be solved.