

Abstract

Copyright Limitations/Exceptions as Dispositive Norms?

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This paper aims at clarifying the nature of copyright limitations/exceptions either as *jus cogens* or as *jus dispositivum*.

Although copyright law is often understood as a *lex specialis* in relationship to the civil code, the academic discussion on its specificity is still infrequent, and has been undertaken only incidentally. Likewise, research on the *jus cogens* and/or *jus dispositivum* character of copyright limitations has been made to some extent, but overlooked among many academics and practitioners. As a consequence, they are not being developed based on substantially theoretical grounds, especially by getting the understanding of those legal concepts well established in civil law involved in copyright world.

In light of this consciousness concerning this problematic, this paper will start from the question how *jus cogens* and *jus dispositivum* are understood in the general sense of law, and examine in sequence how the distinction between both terms is being made in civil law. We will then also look at how this distinction could and should affect copyright law, and try to find the right position of *jus cogens/dispositivum* in the context of copyright law. Furthermore, it will investigate, with a depth, how and to what extent these discussions have been and can be reflected in the development of this area.

Based on the reached findings, this paper will analyze the individual positions among copyright scholars regarding the two legal concepts and their role in understanding the copyright limitations and the exhaustion of copyright. When reviewing the trends derived from the analysis, it is able to evaluate them on the basis of how they are theoretically well reasoned.

Copyright law is neither far from civil law, nor completely bound up by the principles and theories rooted in civil law. It is necessary to clarify, by

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means of developing the firm and stable theories, how (in)dependent the copyright law should be.

Keywords

Intellectual Property, Copyright, Copyright Limitations, Copyright Exceptions, Exhaustion of Copyright, Jus Cogens, Jus Dispositivum, Copyright Transfer, Copyright Assignment, Copyright License