

The Criminal Copyright Gap

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Copyright law undergoes a criminalization process. Since the birth of criminal copyright in the 19th century, there has been a substantial increase in criminal copyright legislation. Copyright criminalization could possibly lead to a paradigm shift towards a criminal-oriented law. However, legislation alone is insufficient to change the perception of copyright as a criminal-oriented law, as it also depends on practice. Thus, if enforcement is sporadic and relatively low, an increase of criminal legislation in copyright law does not mark a paradigmatical change towards a criminal copyright perception. Analyzing statistical data regarding criminal copyright prosecutions reveals that criminal prosecutions are still relatively rare. Although the massive increase of criminal copyright legislation should have led to a higher scale of enforcement, the current reality is that criminal prosecutions are scant, leading to a criminal copyright gap between legislation and enforcement. This Article introduces the criminal copyright gap. I review the legislative history of copyright criminalization since its birth in 1897, while dividing the process into two separate phases: The Low-Tech Phase that took place in the end of the 19th century; and the High-Tech Phase, which is further divided into two sub-phases: an analog phase, which occurred in the beginning of the 1970s and lasted until 1992, and a digital phase, which occurred in the beginning of 1992 and still lasts. Then, I examine the practical aspects of copyright criminalization by analyzing statistical data on criminal copyright filings. I argue that statistical data reveals that the on-going legislative process of copyright criminalization is not applied in practice, and thus search for the possible explanations of this criminal copyright gap. I opine that the criminal copyright gap leads to the conclusion that currently criminal copyright is not undergoing a paradigm shift. Finally, I conclude that although copyright law is not yet criminal-oriented, a paradigmatical shift towards a criminal copyright regime could occur in the near future, if enforcement of copyright infringements will become more substantial.

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