



History and purposes of copyright formalities: A European perspective

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Contents of the presentation

1. How copyright formalities lost their significance in the pre-digital era.
 - Explained from a European perspective.
2. Why formalities have gained more prominence in recent debates about copyright reform.

Copyright formalities in Europe

- Historically, copyright formalities were known in most countries in Europe.
- In the early 20th century they were abolished:
 - in Germany in 1907;
 - in the United Kingdom in 1911;
 - in the Netherlands in 1912; and
 - in France in 1925.

Nature of © formalities in Europe in the 19th century

- In the first half of the 19th century, formalities in Europe were mostly constitutive of the right.
 - No protection unless formalities were fulfilled.
- In the second half of the 19th century: formalities were no longer constitutive of copyright, but they remained relevant for the exercise of rights.
 - Often they were a precondition to sue.

Reasons for loosening the regime, but still retaining © formalities

- Belief that the act of creation was sufficient for establishing protection and that non-compliance with formalities should not result into a loss of copyright (formalities as traps-for-the-unwary).
- Still, formalities fulfilled a number of important functions in relation to the exercise of rights (to prove anteriority of authorship, etc.).

Reasons for abolishing © formalities

- International prohibition on formalities (art. 5(2) BC): to prevent that formalities must be fulfilled in all countries where authors seek protection.
 - Formalities could be maintained for national situations, but most states do not want to grant nationals a worse protection than foreigners.
- At the time, formalities were not really seen as essential and critical features of copyright law.

The renewed interest in © formalities in the digital era

- Formalities may play a useful role in addressing some key challenges in the digital era:
 1. Creating legal certainty about copyright claims.
 2. Improving rights clearance
 - E.g. orphan works.
 3. Enhancing the free flow of information.

Example 1

- Greens/European Free Alliance, *Creation and Copyright in the Digital Era* (Sep. 28, 2011):
 - “From now, and within a time frame of 5 years after the production, registration of copyright work should be compulsory for authors to enjoy commercial exclusivity. This would greatly limit the existence of orphan works in the future.”

Example 2

- Comité des Sages, *The New Renaissance* (Jan. 10, 2011), key recommendation:
 - “Future orphan works must be avoided. Some form of registration should be considered as a precondition for a full exercise of rights. A discussion on adapting the Berne Convention on this point in order to make it fit for the digital age should be taken up in the context of WIPO and promoted by the European Commission.”

Possible functions of © formalities

- Formalities may function as:
 1. a condition for copyright protection (‘filter’);
 2. a manner of identifying protected works;
 3. a signal to the public that copyright extends to a particular object (‘warning’);
 4. evidence of copyright ownership; and
 5. a source of information.

Thank you for your attention!

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