

# Inspiration and issues regarding creative continuity from a copyright law perspective

## Abstract

An omnipresent element in the emergence of copyright-protected works is the inspiration by the creative work of previous authors and creative continuity with its results. Yet in which manner does copyright law deal with situations when the personal imprint of the author in the form of a work is not exclusively the imprint of the sole author? Problematic in fulfilling the goal of fostering creativity remains establishing the regulatory balance between protecting existing works and protecting the possibility of freely creating new works. The topic of this paper is an analysis of non-contractual flexibility which copyright law offers to authors building upon previous works, including an evaluation of the current regulation.

At first, the terms inspiration and creative continuity are placed in a copyright law context and the areas which are key to enabling non-contractual flexibility are identified. The thesis is divided into two pivotal parts, which contain ten analytical sections. The first part deals with an analysis of the definition components of a copyright protected work, which represent the general limits of copyright protection. The aim of this part is to outline the differentiation between copyright protected and unprotected elements of creative output, including the differentiating criteria, by which to evaluate the options for non-contractual creative continuity for further authors. The analytical sections in the first part address the positive and negative definitions of a work, with a specific focus on the requirement of individuality, together with an evaluation of the judicial development of the work concept through decisions of the CJEU. The generalised methodological divisions between protected and unprotected elements are subsequently considered, namely the idea/expression dichotomy principle. During its analyses, the thesis also heavily relies on a comparison with German doctrine and case law, namely due to its interconnectedness with Czech doctrine, and at the end of the first part contains a comparative section with the Dutch regulation.

The second part focuses on the regulation of exceptions and limitations of copyright protection, that is, limitations *stricto sensu*. The concept of exceptions as a closed list of specific situations, together with its material supplement with the three-step test, are subject to analysis and evaluation. The following section specifically deals with select exceptions which best serve to create room for creative continuity. The closed list concept is compared to an open exception concept, including the until recently effective German doctrine of *freie Benutzung*. The end of

this thesis is dedicated to evaluating the current development course of flexibility on the field of European copyright law, along with reflections *de lege ferenda* and an outline of suitable topics for further research.

Key words: inspiration; copyright protected work; derivative works; exceptions and limitations; flexibility