Abstract

Reconceptualizing Exceptions and Limitations to Infringement of Moral Rights:

Perspectives from Israeli and British Law

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The new Israeli Copyright Act and the U.K.'s Copyright, Designs and Patent Act of 1988 (CDPA) provide authors of original works not only with economic rights, but also with moral rights. Interestingly, both legal systems also provide for different tailored defenses against claims of infringement of moral rights. These defenses in both legal systems are separate from the defenses provided against infringement of economic rights. In neither legal system are the defenses for infringement of economic rights applicable to infringement of moral rights. The Israeli Copyright Act includes a special reasonableness defense against claims of infringement of moral rights. The CDPA has many defenses tailored for infringement claims of each and every moral right. Unlike these legal systems, the U.S., for example, applies the general defenses, particularly the fair use defense, to infringement claims of the narrow moral rights available under the U.S. Copyright Act.

This Article wishes to explore the dichotomy between the defenses against infringement claims of economic and moral rights by making a number of contributions: Descriptively, it will compare the defenses available for infringement of moral rights in different legal regimes, tracing the history of the dichotomy back to its origins. Theoretically, the Article will try to explore whether such a dichotomy is justified, given the different underpinnings of economic and moral rights. Lastly, the Article will normatively make a few contributions, suggesting that the dichotomized approach should be reconsidered and that the fair use defense, as well as other major defenses to copyright infringement, can properly address moral rights infringements and the concerns underlying such rights.