Copyrights as Collateral

- Introduction -

Prof. Dr. Thomas DREIER

Center for Applied Legals Studies (ZAR)
Institute for Information Law (IIR)
University of Karlsruhe
Germany

E-mail: dreier@ira.uka.de
Overview

- **Copyright as IP-right:**
  - Some particular features

- **Copyrighted subject matter:**
  - From poems to computer programs

- **Collateral to be given and by whom:**
  - From copyright as such to claims for royalties

- **Copyright v. Authors rights:**
  - Copyright v. Authors rights: moral rights and their effects
# Copyright as IP-right

- **Copyright is an IP right:**
  - its object ("work" / "related subject matter") is an immaterial good
  - grants exclusive rights (subject to limitations/exceptions)
  - Possibility to grant use rights (exclusive / non-exclusive)
  - Principle of territoriality

- **However, compared to other IP-rights, copyright shows certain special features:**
  - no formalities required for existence (Art. 5 II Berne Convention)
  - Registries only in some countries (e.g. US)
  - sometimes registry also / only for (certain) transactions

- **Effects on:**
  - ascertaining existence and scope
  - finding the owner
  - finding and verifying the validity of contracts (no *bona fide* acquisition)
  - world-wide existence
## Copyrighted subject matter

### Overview

#### Copyright and IP

- **Art. 2 I Berne Convention (BC):**
  - "... every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as ..."  
  - "... books and other writings, lectures, dramatic works, choreographic works, musical compositions, cinematographic works, paintings, architecture, sculpture, photographies, maps ..."
  - also: computer programs (Art. 10 I TRIPS; Art. 4 WCT)

### Subject matter

- **Plus „related rights“ / „neighboring rights“**
  - performing artists
  - producers of phonograms
  - broadcasting organisations
  - in some countries: filmproducer; database-maker
Collateral

<table>
<thead>
<tr>
<th>Overview</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Copyright and IP</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Subject matter</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Collateral</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Copyright v. Authors’ rights</th>
</tr>
</thead>
</table>

- **What may serve as collateral in copyright:**
  - Copyright as such (*in toto*)
  - Exploitation (use) rights
    - exclusive rights
    - non-exclusive rights
    (in some countries: distinction between entitlement in rem and contractual claim)
  - Claims for remuneration
    - Contractual royalties
    - Statutory claims for remuneration
  - Royalties / remuneration as such
  - copies of protected works

- **Who may grant collateral:**
  - Original author
  - subsequent rightholder (holding either copyright as such, or having use rights or claims for remuneration)
Copyright v. Authors rights

- **Copyright:**
  - a right to make copies (essentially an economic right)
  - US, UK and English-speaking countries

- **Authors rights:**
  - protecting the author's personality as expressed in his work
  - continental European approach (in particular France, Germany et al., with national differences)

- **Consequences:**
  - Because rights are linked to the author's personality, authors rights can not be transferred as such (*in toto*)
  - only exploitation / use rights are transferable
  - subsequent transfers of use rights are often subject to the original author's consent
  - there may be certain other author protective restrictions (e.g. regarding the scope of use rights transfer, regarding future works etc.)
  - exercise of moral rights mit jeopardize the economic exploitation
Copyrights as Collateral

- Introduction -

Prof. Dr. Thomas DREIER

Center for Applied Legals Studies (ZAR)
Institute for Information Law (IIR)

University of Karlsruhe
Germany

E-mail: dreier@ira.uka.de