



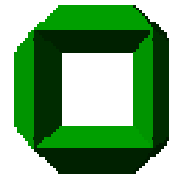
UNCITRAL – Secured interests in IP-rights

Copyrights as Collateral - Introduction -

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Overview

Overview

Copyright and IP

Subject matter

Collateral

Copyright v.
Authors' rights



- **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

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- **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

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▪ 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, photographs, maps ...“
- also: computer programs (Art. 10 I TRIPS; Art. 4 WCT)

▪ Plus „related rights“ / „neighboring rights“

- performing artists
- producers of phonograms
- broadcasting organisations
- in some countries: filmproducer; database-maker



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▪ 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

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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



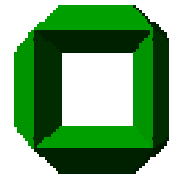
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