

ROUTLEDGE RESEARCH IN INTELLECTUAL PROPERTY

Private Copying

Stavroula Karapapa



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Private Copying

This book offers an original analysis of private copying and determines its actual scope as an area of end-user freedom. The basis of this examination is Article 5(2)(b) of the Copyright Directive. Despite the fact that copying for private and non-commercial use is permitted by virtue of this article and the national laws that implemented it, there is no mandate that this privilege should not be technologically or contractually restricted. Because the legal nature of private copying is not settled, users may consider that they have a 'right' to private copying, whereas rightholders are in position to prohibit the exercise of this 'right'. With digital technology and the internet, this tension has become prominent: the conceptual contours of permissible private copying, namely the private and non-commercial character of the use, do not translate well, and tend to be less clear in the digital context.

With the permissible limits of private copying being contested and without clarity as to the legal nature of the private copying limitation, the scope of user freedom is being challenged. Private use, however, has always remained free in copyright law. Not only is it synonymous with user autonomy via the exhaustion doctrine, but it also finds protection under privacy considerations which come into play at the stage of copyright enforcement. The author of this book argues that the rationale for a private copying limitation remains unaltered in the digital world and maintains there is nothing to prevent national judges from interpreting the legal nature of private copying as a 'sacred' privilege that can be enforced against possible restrictions. *Private Copying* will be of particular interest to academics, students and practitioners of intellectual property law.

Stavroula Karapapa is lecturer in intellectual property law at Brunel University and a practising Barrister at the Athens Bar, specialising in Intellectual Property and Internet law. Her chief research interests focus on the intersection of law and technology, with particular emphasis on copyright law.

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Abbreviations

AG	Advocate General
AHRA	Audio Home Recording Act of 1992
ALAI	Association Littéraire et Artistique Internationale
All ER	All England Law Reports
CD	Compact Disc
CD-ROM	Compact Disc – Read Only Memory
CDPA	Copyright, Designs and Patents Act 1988
CJEU	Court of Justice of the European Union
DMCA	Digital Millennium Copyright Act
DRM	Digital Rights Management
DVD	Digital Video Disc
EC	European Communities
EC Treaty	Treaty Establishing the European Community
ECHR	European Convention on Human Rights
ECDR	European Copyright and Design Reports
ECJ	European Court of Justice
ECR	European Court Reports
EEA	European Economic Area
EMLR	Entertainment and Media Law Reports
EU	European Union
FCA	Federal Court of Australia
FSR	Fleet Street Reports
GATT	General Agreement on Tariffs and Trade
GRUR	Gewerblicher Rechtsschutz und Urheberrecht
IIC	International Review of Intellectual Property and Competition Law
IP	Internet Protocol
IPRs	Intellectual Property Rights
ISP	Internet Service Provider
IViR	Instituut voor Informatierecht (Institute for Information Law, University of Amsterdam)
JCP E	Semaine juridique, Entreprise et affaires
JCP G	Semaine juridique, Juris-classeur périodique

LAB	Legal Advisory Board of the European Commission
MP3	MPEG-1 Audio Layer 3 (digital audio encoding standard)
OJ C	Official Journal of the European Community (C Series)
OJ L	Official Journal of the European Community (L Series)
P2P	Peer-to-peer
PC	Personal Computer
PETs	Privacy Enhancing Technologies
QB	Queens Bench
QBD	Queens Bench Division
RIAA	Recording Industry Association of America
RIDA	Revue Internationale du Droit d'Auteur
RAM	Random Access Memory
SDNY	Southern District of New York
TEU	Treaty Establishing the European Union
RMI	Rights Management Information
TPM	Technological Protection Measure
TRIPS	Agreement on Trade Related Aspects of IPRs
UK	United Kingdom
US	United States of America
VHR	Video Cassette Recorder
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organisation
WLR	Weekly Law Reports
WTO	World Trade Organisation
WPPT	WIPO Performances and Phonograms Treaty
UNESCO	United Nations Educational, Scientific and Cultural Organisation

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Cyprus

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Czech Republic

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Denmark

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Estonia

Act of 22 September 2004 (RT I 1999, 54, 580) which came in force 29 October 2004, to amend the Copyright Act of 11 November 1992 (RT2 1992, 49, 615, consolidated text RT I 2000, 16, 109)	51, 84, 101, 125
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