

Transformative uses in US and EU copyright

Stavroula Karapapa

Abstract

Contrary to the European copyright laws where copyright exceptions apply in specifically defined cases, American copyright doctrine supports the permissibility of any activity which can qualify as a fair use of the copyright work. The fair use doctrine typically exempts certain “transformative” uses of protected works, so that subsequent creators are not impaired in their activity. These are uses that involve a degree of creativity, as does for instance the creation of parodies. Quite recently, however, American Courts have expanded the scope of transformativeness – as implied in the fair use test – to cover uses of copyright works that are purely technologically-empowered and entail no creative element. This includes, for instance, the creation of thumbnail images of artistic works, or the use of student coursework to check plagiarism. While the scope of transformativeness to cover this kind of uses in the United States has been expanded, European Courts follow a restrictive approach and practically exclude from permissibility uses transformative by technology. The paper will shed light into this judicial gap and examine its consequences into the growth of innovative business models.