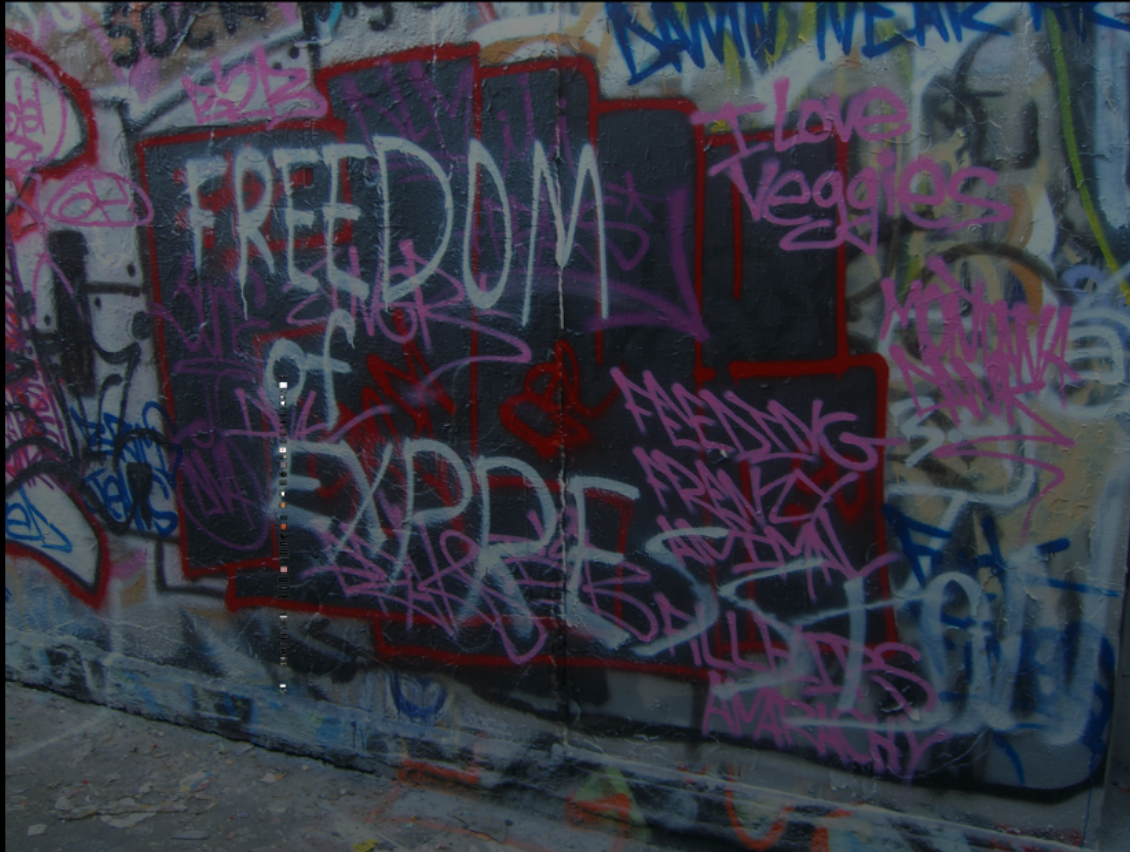


Copyright and freedom of expression



Pernille Bruun Andersen, University of Copenhagen

Article 10

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers [...]"

Information



IO protects not only the substance of the ideas and information but also the form in which they are presented.

The Universal Declaration of Human Rights

The international covenant on
civil and political rights

EU Charter of Fundamental Rights

Protocol I to the European Convention for
the Protection of Human Rights



An exclusive right to control
his/her work





How is this consistent with article 10?

Prescribed by law

Necessary in a democratic society

For the protection of the rights of others

Long list of exemptions

Quote







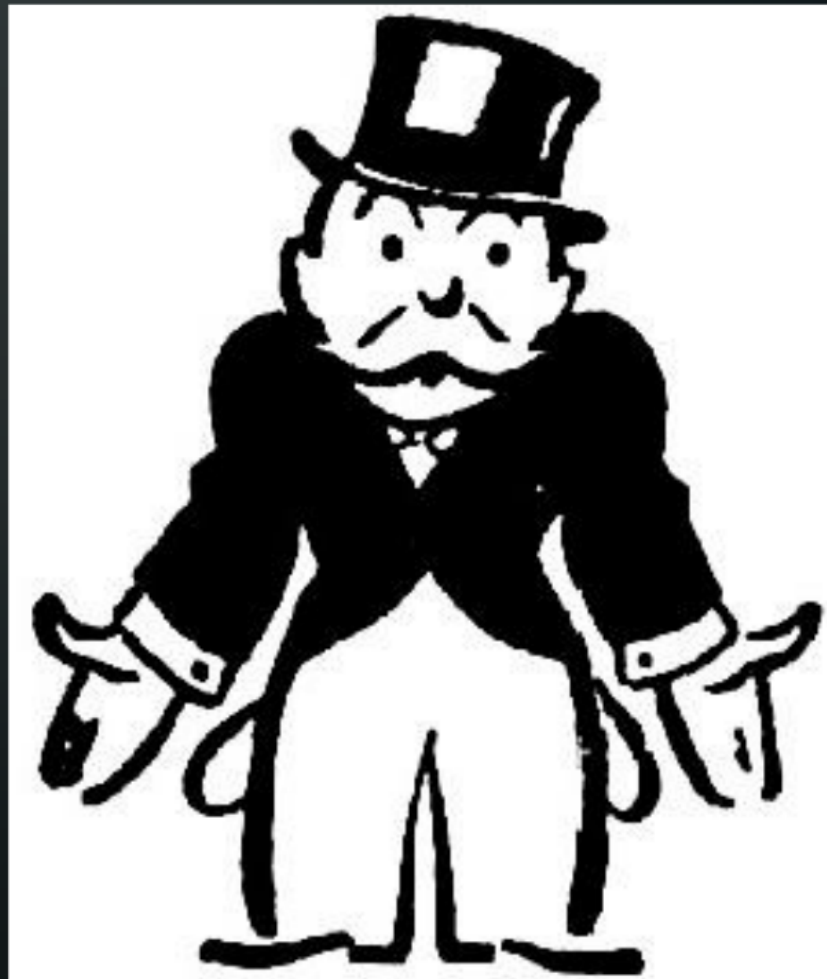
A weighing of interests



The purpose



No economic gain

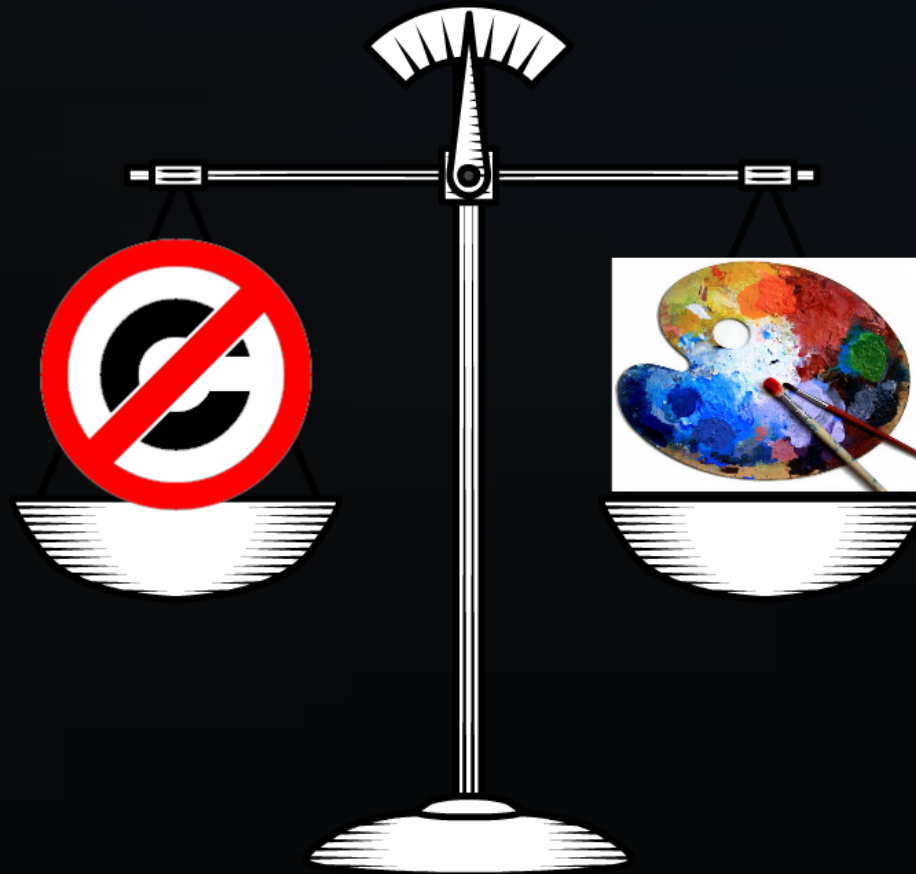








A weighing of interests



Pornographic collage

The purpose was Revenge

Hornsleth's freedom of speech argument
could lead to no other result

Ashby Donald and others v. France



Prescribed by law

Necessary in a democratic society

For the protection of the rights of others

Thesis in the thesis

“

The fundamental right to freedom of expression can affect the outcome of a copyright case in ways that deviates from what is normally accepted according to traditional copyright theory.

”

It is my theory that freedom of expression is a fundamental right that can set aside copyright when...

... the copyright owner uses his copyright to suppress criticism.

... the copyrighted material is being presented in the shape of a political message or statement

... a user uses copyrighted material as a way to express himself artistically

... the user has no economic gain.

The PhD will examine to what extent this theory is true...

1

How has freedom of expression
affected copyright up until now?

If/how freedom of expression has affected
the interpretation of existing statutory
law

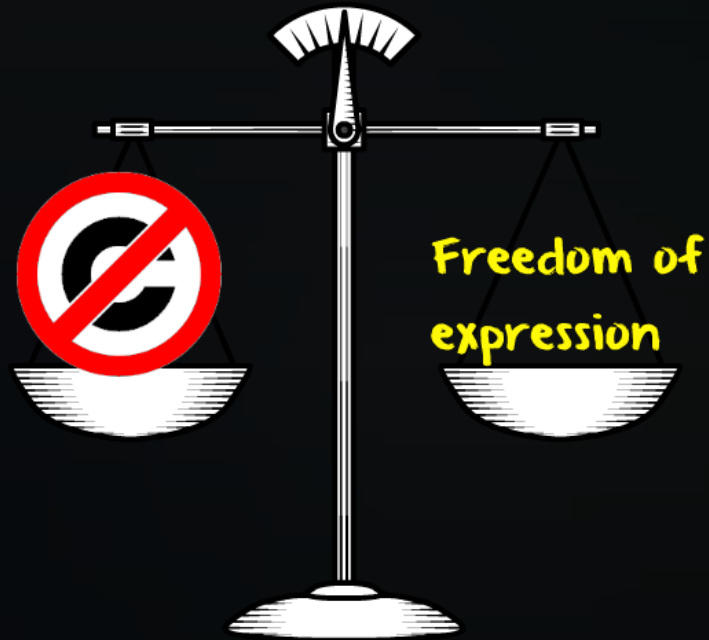
Non-statutory exemption

2

Has any principles of copyright law been affected by freedom of expression?

My primary focus will be to what extent freedom of expression has affected the idea/expression dichotomy.

3



Is it possible to list up some general factors/
elements/considerations which in practice can
affect the weighing of interests?

On the basis of selected case law I will make a systematic analysis and mapping of all the elements/factors/considerations that to date has shown to affect the outcome of copyright cases where an infringer has invoked freedom of expression.

Do you agree or disagree with the following statement:

"It is wrong to assume that the copyright/
freedom of expression-conflict can be solved by
applying the *lex specialis*, the *lex posterior* or the
lex superior principle"