

Dusollier, Séverine, Professor, Sciences Po, Ecole de Droit (France), “Users' rights in copyright as inclusive rights: a model for enforceability and sustainability of privileged uses of works”

Despite the recent discourses on the necessary balances in copyright law, a prominent role is still given to the property right of the copyright owners, users' rights or privileges being only considered as exceptions or limitations to that principle. That follows the central role property assumes in our legal regimes, and the key rule of exclusivity that characterizes property and intellectual property. Exclusivity is defined as the power to exclude others from the use of a resource and to individually control its use. For there is not counterpart to exclusivity in our legal regimes, no legal concept is apt to describe situations of 'inclusivity' where a resource is collectively shared and no one has the power to exclude others from its use. Users' rights in copyright are a perfect example of so-defined inclusive situations lacking any enforceability or legal remedies, failing a legal concept of inclusive right. This paper proposes a new legal figure of inclusive right and applies it to three situations of users' rights in copyright: (1) copyright exceptions, (2) the right of the public to use public domain works, (3) the right of the licensees in copyleft licenses. In those three case studies, the objective of the 'inclusive right' would be to endow the entitlement of the user to benefit from the work with enforceability and legal remedies enabling the sustainability of the use.