

Contents

| | |
|---|----|
| 1 Introduction | 1 |
| 1.1 Background | 2 |
| 1.1.1 Copyright Goals and Rationales | 3 |
| 1.1.2 Systems of Copyright Protection | 6 |
| 1.1.3 EU Competence in Copyright | 9 |
| 1.1.4 Development of the Copyright <i>Acquis</i> | 13 |
| 1.2 Problem Definition | 18 |
| 1.3 Outline and Methodology | 18 |
| References | 22 |
| 2 A Normative Gap in Copyright Lawmaking? | 25 |
| 2.1 Introduction | 25 |
| 2.2 Specific Methodology | 26 |
| 2.3 Treaty-Related Objectives | 28 |
| 2.3.1 Establishment and Functioning of the Internal Market | 28 |
| 2.3.2 Fostering Culture | 36 |
| 2.4 Protection of a Specific Interest | 39 |
| 2.4.1 Authors and Performers | 40 |
| 2.4.2 Content Industries | 44 |
| 2.4.3 Intermediaries | 48 |
| 2.4.4 End Users | 50 |
| 2.5 Compliance with the International Framework | 52 |
| 2.6 Conclusion | 53 |
| References | 56 |
| 3 Colonizing the Normative Gap: The Intervention of the Court of Justice | 59 |
| 3.1 Introduction | 59 |
| 3.2 Specific Methodology | 60 |
| 3.3 Conflict Between EU Principles and Copyright | 61 |
| 3.4 Judicial Solutions | 67 |
| 3.4.1 Existence Versus Exercise Doctrine | 67 |

| | | |
|----------|--|------------|
| 3.4.2 | Specific Subject Matter Doctrine | 70 |
| 3.4.3 | Principle of Exhaustion of Rights | 73 |
| 3.4.4 | Principle of Non-discrimination on Grounds of Nationality | 77 |
| 3.5 | Conclusion | 79 |
| | References | 81 |
| 4 | Minding the Normative Gap: The EU Treaties | 83 |
| 4.1 | Introduction | 83 |
| 4.2 | Specific Methodology | 84 |
| 4.3 | Historical Background | 85 |
| 4.4 | Objectives of the EU | 91 |
| 4.4.1 | Establishment of an Internal Market | 92 |
| 4.4.2 | Promotion of the EU's Values | 95 |
| 4.4.3 | Respect Cultural Diversity | 103 |
| 4.5 | Principles Underlying the Competence System | 106 |
| 4.5.1 | Conferral | 106 |
| 4.5.2 | Subsidiarity | 110 |
| 4.5.3 | Proportionality | 112 |
| 4.6 | Conclusion | 114 |
| | References | 115 |
| 5 | Bridging the Normative Gap: Proposed Benchmarks for Copyright Lawmaking | 119 |
| 5.1 | Introduction | 119 |
| 5.2 | Specific Methodology | 120 |
| 5.3 | Harmonization of National Laws | 123 |
| 5.4 | Respect for National Cultures and Traditions | 131 |
| 5.5 | Protection of Creators | 135 |
| 5.6 | Protection of End Users | 139 |
| 5.7 | Promotion of Competitiveness of EU Industries | 143 |
| 5.8 | Conclusion | 146 |
| | References | 148 |
| 6 | Field-Testing the Normative Bridge: The EU Copyright Acquis | 151 |
| 6.1 | Introduction | 151 |
| 6.2 | Specific Methodology | 152 |
| 6.3 | Harmonization of National Laws | 153 |
| 6.3.1 | The Need for Harmonization | 154 |
| 6.3.2 | The Harmonizing Effect of Directives | 162 |
| 6.4 | Respect for National Cultures and Traditions | 175 |
| 6.4.1 | Compromise Between the Systems of Copyright and <i>droit d'auteur</i> | 176 |
| 6.4.2 | Accommodation of National Legal and Cultural Specificities | 178 |

| | | |
|----------|---|------------|
| 6.5 | Protection of Creators | 181 |
| 6.5.1 | Guarantee of Income and Recognition to Creators | 181 |
| 6.5.2 | Facilitation of Further Creative Uses | 187 |
| 6.6 | Protection of End Users | 190 |
| 6.6.1 | Establishment of Exceptions to Exclusive Rights | 192 |
| 6.6.2 | Strength of Exceptions | 195 |
| 6.7 | Promotion of Competitiveness of EU Industries | 198 |
| 6.7.1 | Grant of Limited Rights | 200 |
| 6.7.2 | Establishment of Competition-Related Exceptions to Rights | 202 |
| 6.8 | Conclusion | 203 |
| | References | 205 |
| 7 | The Normative Gap: Water Under the Bridge | 211 |
| 7.1 | Summary | 212 |
| 7.2 | The Problem of Having a Normative Gap in Copyright Lawmaking | 215 |
| 7.3 | Challenges in the Benchmarking Exercise | 216 |
| 7.4 | The Stream that Lies Beyond | 218 |
| | References | 223 |
| | Table of Case Law | 225 |
| | Table of International Treaties | 237 |
| | Table of EU Legislation and Materials | 239 |
| | Table of National Legislation (Ordered Chronologically) | 249 |