

distributed among the participants of the conference without the permission of Professor Laroche.

### Hypothetical 3:

A music band the *Wannabees* composes a new track. The track is made up of segments of different songs that were popular during the early 1980's arranged and supplemented in intervals by music composed by the *Wannabees*.

Surprisingly the arrangement of the different tracks come together to form a single composite song and it becomes an instant hit.

## 2. *The Thesis: Object, Scope and Methodology*

The object of this thesis is therefore to analyze the development, interpretation and application of the public interest doctrine in the jurisdictions of England, France and Germany and to consider the potential it offers in developing into a broad and general exception to copyright protection, capable of resolving the existing tensions between copyright protection and the competing values of the freedom of expression and the right to information.

These three jurisdictions have been selected on the basis that they represent three different legal traditions of copyright law. England offers a model of the Anglo-American common law tradition, while France and Germany consist of jurisdictions which reflect the civil law tradition based on the distinction *inter alia* between author's rights and neighboring rights. Of these it may be seen that France adopts a dualist approach<sup>1</sup> to copyright while Germany can be seen to take a monist approach.<sup>2</sup>

---

1 French law views the personal and economic and societal interests as separate, yet forming a duality. Dana Beldiman *Fundamental Rights, Author's Right and Copyright-Commonalities or Divergences?* 29 COLUM J.L & ARTS 39, 41 Note 3 (2005).

2 German law views the personal and economic and societal interests as being intertwined. *Id* Note 4.

Hence these jurisdictions represent examples of the three primary traditions of copyright law. It is hoped that a review of the developments that have been taking place in them would assist in offering a comprehensive view of the issues that would arise in attempting to introduce a public interest exception to copyright law within the Member States of the European Union.

In the course of this analysis, the thesis shall also proceed to consider factors which could potentially limit the expansion of a public interest exception to copyright; primarily the “three step test” to copyright limitations under the Berne Convention as well as the EC Copyright Directive which could pose a potential impediment to the development of a broad-based exemption to copyright.

Throughout this thesis, reference shall be made to the fair use doctrine in the US in considering the scope and expansion the public interest exception may hope to achieve, and parallels will be drawn between the approaches in the US and Europe with regard to copyright and the freedom of expression and information.

## ***B. The Discord in Context : A Case of Competing Interests***

The persisting discord between copyright and the freedom of expression and the attendant right to information stems from the primary character of copyright as an exclusive legal monopoly granted to an author in relation to the original, literary or artistic expression embodied in his work.

The exclusive monopoly thus created over original expression has the potential to impose serious limitations upon the manner in which individual members of the public or the public at large may access, utilize or disseminate that expression, or build upon such expression through the creation of derivative works.

The value accorded to the promotion and preservation of the freedom of expression and the right to information in contemporary jurisprudence and its significance to the progress and development of modern democratic society remains unchallenged. As such they have