

Extended contents

<i>Acknowledgments</i>	xi
<i>List of abbreviations</i>	xiv
Introduction	1
1. The background	1
2. Some terminological notes	5
2.1 The diachronic and synchronic polysemy of property	5
2.2 Propertization	11
2.3 Copyright vs authors' right(s)	11
3. Structure of the work and jurisdictional focus	11
1. The theoretical framework of copyright propertization	17
1. Copyright and normative property theories	18
1.1 Philosophical justifications	20
1.1.1 The Lockean argument	20
1.1.2 The Kantian and Hegelian arguments	23
1.1.3 The utilitarian argument	25
1.2 Economic justifications	27
2. Copyright and conceptual (property) theories	32
2.1 The French debate	32
2.2 The German debate	38
2.3 The Italian debate	42
3. Intermezzo: the role of copyright history	46
4. Conclusions	48
2. <i>Droit d'auteur</i>, copyright and the historical epiphanies of propertization	50
1. Pre-historic bites	51
2. The English model: from common law to statutory copyright	55
3. The French model of <i>droit d'auteur</i> : not only a case of property rhetoric	63

4. The continental model beyond France: the development of authors' rights in Germany and Italy	74
4.1 The birth and evolution of <i>diritto d'autore</i>	75
4.2 The harmonization of the German <i>Urheberrecht</i>	81
5. Conclusions	86
3. The EU copyright model, or how to lose the compass in a systemic chaos	88
1. A hidden paradigm shift? Evidence from EU legislative history	90
1.1 The vertical phase (1988–2001)	91
1.2 The horizontal phase (2001–2008)	95
1.3 The multi-level phase (2008–today)	100
1.3.1 A long preparation ...	101
1.3.2 ... for a few legislative acts	106
2. Article 17(2) CFREU: meaningful or meaningless?	110
3. Activism of the CJEU in EU copyright harmonization: trends and effects	115
3.1 The early days: copyright and primary EC law (1971–1991)	115
3.2 The interregnum (1991–2006)	117
3.3 A decade of rampant harmonization (2006–2016)	122
3.3.1 Subject matter and conditions of protection: the notions of work and originality under the label of 'author's own intellectual creation'	123
3.3.2 Authorship	125
3.3.3 Exclusive rights	126
3.3.3.1 Reproduction	126
3.3.3.2 Communication to the public	127
3.3.3.3 Distribution and exhaustion	132
3.3.4 Exceptions and limitations; fair remuneration	137
3.3.5 ISP liability and enforcement	142
4. Conclusions	146
4. The different faces and effects of copyright propertization: EU vs Member States	150
1. Propertizing without a property framework: post-modernism and the EU copyright model	151
2. Presence and absence of property concepts in national copyright systems	159

2.1	Copyright as property in the United Kingdom: neat qualification, but limited systematic relevance	160
2.2	The French <i>propriété littéraire</i> as a bridge between the civil and common law experiences	162
2.3	Germany and its anti-proprietary (resi)stance	169
2.4	The Italian <i>diritto d'autore</i> as hybrid, second-generation model	173
3.	Copyright within the framework of constitutional property: national experiences	178
3.1	France	178
3.2	Germany	181
3.3	Italy	186
4.	Conclusions – or ‘does it matter whether [copyright] is property?’	189
5.	The social function of copyright as property right	191
1.	The social function of property rights in Europe: doctrinal and judicial history from civil codes to modern constitutions	194
1.1	The German constitutional property model and its internal social obligation (<i>Eigentum verpflichtet</i>)	195
1.2	A constitutional property jurisprudence without a constitutional property clause: the late development and particularities of the French experience	199
1.3	The social function of the Italian constitutional property	205
2.	A clash between the EU and national constitutional property models?	209
2.1	The European Court of Human Rights	210
2.2	The Court of Justice of the European Union	214
3.	A common social function for EU property law	218
4.	Vertical and horizontal effects of the social function doctrine on property rights and relationships	220
5.	Vertical and horizontal effects of the social function of copyright as property right	224
6.	Interlude: the functions of EU copyright law	227
7.	Conclusions	229
6.	Building and harmonizing EU copyright law within the property framework: a four-dimensional experiment of systematization	233
1.	Subject	235

2. Object	238
2.1 Different works, different regimes	239
2.2 Theorizing abandonment	241
3. Content (economic rights)	245
4. Structure	250
4.1 Exceptions	251
4.2 Fair balance	252
4.3 Three-step test	253
4.4 Abuse and misuse of copyright	254
4.5 Contractual overridability of exceptions	260
5. Conclusions	262
Conclusions	267
Bibliography	273
<i>Index</i>	303