

Copyright Criminalization in Israel

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Criminal copyright infringement emerged in 1862 in the United Kingdom. Initially, criminal copyright was rather narrow and limited in scope. Even after the birth of criminal copyright in other jurisdictions, until the 1970s, criminal copyright usually made only scattered legislative appearances; its scope was rather limited; and it was usually applied to specific types of works with relatively low criminal sanctions. Along with various factors, such as technological changes that increased the scope of infringements and raised new enforcement challenges, criminal copyright began to gain a more dominant role in copyright law: Since the 1970s policymakers throughout the world have expanded criminal copyright repeatedly and extensively to cover more types of works and actions and have raised monetary and nonmonetary sanctions.

Criminal copyright in Israel made its debut as a legal transplant from the British Empire with the transplantation of the 'British Copyright Act of 1911'. Through various amendments to the Copyright Act, Israel also experienced a criminalization process throughout the years. In 2007, however, when Israel legislated a new copyright act, it decided not to further criminalize copyright law and thus left the criminal sanctions from the repealed 1911 Act almost intact. Nevertheless, this form of criminalization might reappear soon, as currently the Israeli Parliament is considering amendments to the copyright act in the form of a new proposed bill. Among various suggested amendments, this proposed bill could drastically expand the scope of criminal copyright to apply on for-profit infringement of the making available and broadcast rights, which their infringement is currently only civil in nature. This form of criminalization, mostly based on deterrence and enforcement difficulties, could have dire consequences for the daily use of many users and thus might have a chilling effect on many legal activities. To gain better understanding of whether this form of criminalization is justified and its potential benefits and drawbacks, it must be scrutinized through the lens of criminalization theoretical frameworks.

The purpose of this research is to analyze the circumstances, justifications, and ramifications of copyright criminalization in Israel. It will begin by an overview of the criminalization process in the United Kingdom, which its Israeli law was based upon. The second part will review copyright criminalization in Israel since its independence, up until the latest proposed copyright amendment bill of 2016. The third part of the research will analyze the criminal sections in the proposed bill, to gain better understanding of the potential benefits and drawbacks of criminalizing for-profit infringement of the making available and broadcast rights. The fourth part will turn to theory and explore copyright criminalization in Israel under the main theoretical frameworks of criminalization as suggested in literature. The last part will summarize the discussion and argue that copyright criminalization, especially under the new proposed bill, was not always justified in Israel and thus should be revisited and perhaps revised.

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