

# The elephant in the room of EU copyright originality: Time to unpack and harmonize the essential requirement of copyright

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## Abstract

The dividing line between the artistic and literary heritage privatized by copyright and the public domain depends on just one word which is completely alien to the traditional legal jargon: originality. As if it were not enough the essential requirement of copyright is highly polysemic, being its meaning also sensitive to the specific temporal and geographical context. For instance, the same interior design for make-up stores has been reputed original in Italy but not in France and Portugal. The European legislator has deeply regulated several aspects of copyright, but paradoxically it is laconic on the fundamental element triggering the exclusive right: a work is original if it reflects the author's own intellectual creation. Although the CJEU played a pivotal role in filling this gap through a string of decisions, national judges are still uncertain on the relevant factors for the originality assessment, as witnessed by three new references for preliminary rulings. The different approaches to the originality requirement could be problematic for the well-functioning of the artistic and cultural markets considering the potential heterogeneous legal status of the same creation, which might be under copyright protection in one Member State while in the public domain in another one. This could prejudice rights clearance processes,

# Originality In Eu Copyright Originality In Eu Copyright

**Willy Alexander, Herman Cohen  
Jehoram**



## **Originality In Eu Copyright Originality In Eu Copyright:**

*Originality in EU Copyright* Eleonora Rosati, 2013-10-31 Through an assessment of the originality requirement this work guides the reader in interpreting judicial decisions which are of fundamental importance to current and future understanding of EU copyright The book's holistic approach and methodology t Judge-made EU Copyright Harmonisation Eleonora Rosati, European University Institute. Law Department, 2012 Over the last few years political and academic attention has focused on the future of copyright at the EU level Following two decades of piecemeal legislative interventions which have resulted in a limited harmonisation of the copyright laws of EU Member States a debate has ensued as to the feasibility and desirability of achieving full copyright harmonisation at the EU level This might be obtained either through a EU copyright code encompassing a codification of the present body of EU copyright directives or by way of a regulation to be enacted pursuant to new Article 118 1 TFEU aimed at creating an optional unitary copyright title Thus far however no such legislative initiatives have been undertaken Despite this impasse the CJEU has notably been acting in a proactive way inching towards full harmonisation With its 2009 decision in Case C 5 08 Infopaq the Court provided a EU wide understanding of an important principle of copyright the originality requirement The CJEU further elaborated upon this in subsequent case law notably Case C 393 09 Bezpe nostn Softwarov Asociace Joined Cases C 403 08 and C 429 08 Murphy Case C 145 10 Painer Case C 604 10 Football Dataco and Case C 406 10 SAS The meaning of originality adopted by the CJEU as a EU wide standard is akin to that envisaged in continental Member States copyright laws thus differing from the loose notion of originality under UK law As such an examination as to the implications of CJEU harmonising jurisprudence in this Member State shall be undertaken with regard to the scope of copyright protection and subject matter categorisation Overall this contribution wishes to assess how and to what extent CJEU case law has resulted in de facto EU copyright harmonisation In addition it will attempt to foresee the fate of EU copyright in light of copyright reform projects which are currently being discussed in political and academic circles both in the US and Europe Research Handbook on the Future of EU Copyright Estelle Derclaye, 2009-01-01 an important contribution to the study of EU copyright law It provides a good overview of different aspects of copyright law in the European Union and comprises a prevailing guide which undoubtedly will be of great use to both academics and practitioners Ghufan Sukkaryeh European Intellectual Property Review Estelle Derclaye's book is indeed a Handbook on EU copyright law since practically every aspect of copyright law is examined through the lens of EU law by foremost European specialists But it goes further than providing an understanding of what has been and ought to be happening in EU copyright law each chapter can touch a raw nerve in the copyright law of any country in the world Rarely has it been so obvious that EU copyright law can be considered a laboratory for copyright law in general Ysolde Gendreau Universit de Montr al Canada It has been over fifteen years since the EU started harmonising copyright law This original Handbook takes stock and questions what the future of EU copyright should be What went wrong with the harmonisation

acquis What did the directives do well Should copyright be further harmonised Each of the 25 recognised copyright experts from different European countries gives a critical account of the EU harmonisation carried out on several aspects of copyright law subject matter originality duration rights defences etc and asks whether further harmonisation is desirable or not This way the Handbook not only gives guidance to European institutions as to what remains to be done or needs to be remedied but is also the first overall picture of current and future EU copyright law This Handbook will be of great interest to academics and intellectual property lawyers as well as general commercial lawyers across Europe because it reviews European directives in the field of copyright and also the relationships between copyright and other laws Policymakers will also find much to interest them in the discussions regarding the future of EU copyright law and the proposed amendments to the existing legal framework

**Governance of Intellectual Property Rights in China and Europe** Nari Lee, Niklas Bruun, Mingde Li, 2016-01-29 Intellectual property IP law has been widely discussed in recent scholarship though many recent works explore the topic from a largely descriptive perspective This book provides an analytical and comparative study of Chinese and European IP law as well as an analysis of system reforms in China The book highlights in three parts intellectual property for innovation and creativity in China comparing concepts and norms in Chinese and European IP law and governance of practices and IP enforcement Demonstrating that the governance of IP rights requires the adoption of a set of norms the contributors also argue that success is dependent on a transformation of the perspectives and implementation Students and scholars of IP law and Chinese IP law in particular will find this book to be a valuable resource to their work It will also be of interest to IP practitioners looking for an insight into system reforms in China

*Global Intellectual Property Law* Graham Dutfield, Uma Suthersanen, 2008-01-01 the book is enlightening for practitioners who are often required to take into account global considerations when advising clients It would be of particular interest to policy makers in the intellectual property field Australian Intellectual Property Law Bulletin Dutfield and Suthersanen have skillfully captured in one concise volume all the important things you need to know about international intellectual property law The materials are accessible timely methodically presented and at times critical The book's detailed in depth and comparative analyses provide helpful insights into the increasingly complex international intellectual property system Global Intellectual Property Law is not only an effective textbook for students interested in the subject but a desktop companion for policymakers and professionals who need a quick and up to date overview of global intellectual property issues Peter K Yu Drake University US and Zhongnan University of Economics and Law China Today global intellectual property rules affect everything from poor people's access to essential medicines to farmers rights in seeds to access to knowledge on the Internet But at the same time that pundits declare that intellectual property has come of age this body of law is more contested than ever with critics asking whether intellectual property is even necessary to stimulate innovation and whether and how intellectual property ought to be tailored to address the health and developmental needs of the global South Dutfield and

Suthersanen's *Global Intellectual Property Law* is a timely and lucid contribution to the field. This tome covers every hot button area of international intellectual property law and policy from debates over the affect of intellectual property on development to controversy over biotechnology and property rights in life to claims by indigenous people and developing countries for new property rights in traditional knowledge. Dutfield and Suthersanen describe the current terrain comparing North American, European and developing world approaches much to their credit they do not shy away from describing points of tension among global actors. *Global Intellectual Property Law* is a must have for scholars and practitioners in the field for whom I anticipate the book will become a trusted and oft used reference on their bookshelf. The book is clearly written and engaging enough to be perfect for students or laypersons interested in acquiring a comprehensive and critical appraisal of the field.

Madhavi Sunder, University of California, Davis, US

Dutfield and Suthersanen have succeeded in writing an engaging treatise that offers a truly modern perspective on intellectual property today. With examples from every continent from every level of jurisdiction, national, regional, international, their study covers all the traditional fundamentals of intellectual property law as well as the current critical interrogations that their development raises. It is a book with character.

Ysolde Gendreau, Universit  de Montr al, Canada

*Global Intellectual Property Law* by Dutfield and Suthersanen provides a broad overview of the issues at stake concerning fair and effective ways to organize the information resources upon which the well being of us all depends. The book highlights international and comparative perspectives on IP law and policy. Although primarily targeted at postgraduate level students, the book is enlightening also for practitioners and a must read for all policy makers and opinion leaders in the IP field.

Thomas Dreier, University of Karlsruhe, Germany

Globalisation of trade means that intangible informational resources are now produced, bartered and consumed anywhere and everywhere, defying jurisdictional borders. Intellectual property has moved into the mainstream of national economic and developmental planning. In the recent past, it has also emerged as the central impetus in multilateral

*Global Governance of Intellectual Property in the 21st Century*, Mark Perry, 2016-05-24

This book analyses the governance foundations of innovation: brands, inventions, secrets and expression, which are the keys to a century based on knowledge. They are reflected in legal rights that have been fermenting over centuries of national policy deliberations on intellectual property rights constantly in flux in the face of new advances in science, but overall a trend towards greater protectionism. As countries are challenged by the strictures of international agreements, often extorted through imbalanced power relationships, they seek their own national means for beneficial differentiation from the new global norms whilst complying with international obligations. This book deals with the outcomes of regional governance of intellectual property which often creates ripples in the search for harmony in the laws that form the basis for the future of intellectual property. The work has contributions that come from developing and developed nations showing a common theme of the struggle to find the balance in an area of law that often does not provide clearcut solutions to real world environments. There are many intellectual property struggles illustrated in this work.

patent at the boundaries of nature and invention the need for drug development which is driven by profit based on the patent monopoly copyright the expression of original thought seeking to maximise exposure facilitated by the internet but a system that facilitates rampant copying trade marks supporting company branding seeks to exploit global branding through naming domains names and other areas concomitant to the globalisation of intellectual property governance such as foreign direct investment This book holds up a mirror to the issues of world governance of intellectual property rights in this century asking whether the direction we are currently following is in the best interest of global citizens and showing the divergence that constraints are stimulating on a national level

### **Research Handbook on Property, Law and Theory** Chris

Bevan,2024-08-06 This comprehensive Research Handbook interrogates and offers historical as well as contemporary understandings of property property law and property theory Chapters locate the role of property in key theoretical debates and examine property s place in significant social contexts covering topics such as Indigenous property artificial intelligence cryptoassets property and the art world environmentalism and climate change

Intellectual Property Rights, Copynorm and the Fashion Industry Marlena Jankowska,2023-12-22 This book traces the development of the fashion industry providing insight into the business and in particular its interrelations with copyright law The book explores how the greatest haute couture fashion designers also had a sense for business and that their attention to copyright was one of the weapons in protecting their market position The work also confronts the peculiarities of the fashion industry as a means of demonstrating the importance of intellectual property protection while pointing out the many challenges involved A central aim is to provide a copyrightability test for fashion goods based on detailed analysis of the legal regulations in the USA and EU countries specifically Italy France the Netherlands Germany and Poland The book will be of interest to researchers and academics working in the areas of Intellectual Property Law Copyright Law Business Law Fashion Law and Design The Open Access version of this book available at <http://www.taylorfrancis.com> has been made available under a Creative Commons Attribution CC BY 4.0 license

### **The Originality Standard of Photographic Works in EU Copyright Law** Marián

Jankovič,2025-01-24 Originality Standard of Photographic Works in EU Copyright Law By Mari n Jankovic Marian Jankovic The omnipresence of photographic products in almost everyone s lives is considered natural almost unavoidable If one makes the connection of the said omnipresence with the constant development of new technologies the increase of interactions with possible legal consequences involving photographic products as a potential subject matter appropriable by copyright might be expected to be inevitable Such outlined situation brings the necessity to sufficiently legally define and clarify under which circumstances in other words upon the fulfilment of what conditions and criteria can a photographic product be considered the subject matter of copyright This shall be done in order to assure the legal certainty of both the photographers as well as the potential users of their photographic products The medium of photography especially its production process necessitating involvement of technological equipment is not as easily graspable and comprehensible as other traditional works of art This

ambiguity has been also carried over into the legal area which resulted in various differentiating treatments of photographic products within the national copyright frameworks of Member States of the European Union Chosen for the highlighting of the already mentioned various differentiating treatments and their particularities copyright frameworks of Germany France Czech and Slovak republics have been chosen as basis for the conducted research The European Union has tried to remedy the outlined state of affairs by way of the so called harmonisation As part of its first phase a legislative framework in a form of Directives has been created Within the said framework a condition for appropriability of photographic products by copyright has been formulated the so called originality standard of author s own intellectual creation As part of its second phase the said originality standard formulated via the previously created legislative framework has been applied in practice and enhanced by the Court of Justice of the European Union with the addition of a personal touch As a result of both phases combined a solely applicable requirement for appropriation of photographic products by copyright within the copyright framework of the European Union has been formulated The figurative trigger for the initiation of the said second phase a legal dispute revolving around the use of an official portrait photographic product depicting a pupil without the photographer s consent has been chosen by the Court of Justice of the European Union Whether the outlined state of affairs consisting of various national differentiating treatments of photographic products has been remedied indeed will be demonstrated on the assessment of the current position of photographic products after the completion of both harmonisation phases within the four selected national copyright frameworks In particular the applicability of the harmonised originality standard as well as the applicability of the said national particularities will be assessed

### **Kreation Innovation Märkte - Creation**

**Innovation Markets** Florent Thouvenin, Alexander Peukert, Thomas Jaeger, Christophe Geiger, 2024-03-05 Reto M Hilty hat im europäischen deutschen und schweizerischen Immaterialg recht tiefe Spuren hinterlassen Aus Anlass seiner Emeritierung als Direktor des Max Planck Instituts für Innovation und Wettbewerb und als Professor ad personam an der Universität Zürich würdigen seine Freunde Kollegen und Schüler sein Wirken mit dieser Festschrift Die Bandbreite der Themen und die Vielfalt der Autoren spiegeln die Vielschichtigkeit der Tätigkeiten des Jubilars Die Festschrift enthält Beiträge zu Grundsatzfragen des IP Rechts zum Patent Urheber Design und Markenrecht zum Schutz von Geschäftsgeheimnissen zum Recht der geographischen Herkunftsangaben sowie zum Kartell und Lauterkeitsrecht Ein Schwerpunkt liegt auf den Herausforderungen der Digitalisierung insb auf dem Umgang des IP Rechts mit Daten und Künstlicher Intelligenz KI Reto M Hilty has left a deep mark on European German and Swiss intellectual property law On the occasion of his retirement as Director of the Max Planck Institute for Innovation and Competition and as Professor ad personam at the University of Zurich his friends and colleagues pay tribute to his work with this Festschrift The range of topics and the variety of authors reflect the impressive spectrum of Reto s activities The Festschrift contains contributions on fundamental questions of IP law on patent copyright design and trademark law on the protection of trade secrets on the law of geographical indications as well

as on antitrust and unfair competition law One focus is on the challenges of digitalisation in particular on how IP law deals with data and artificial intelligence AI

### **Artificial Intelligence, Design Law and Fashion** Hasan Kadir

Yilmaztekin, 2022-12-30 Artificial intelligence AI now infiltrates our culture After a couple of difficult winters AI today is a word on everybody's lips and it attracts everyone's attention regardless of whether they are experts or not From Apple's Siri to Amazon's Alexa Tesla's auto driving cars to facial recognition systems in CCTV cameras Netflix's film offering services to Google's search engine we live in a world of AI goods The advent of AI powered technologies increasingly affects people's lives across the globe As a tool for productivity and cost efficiency AI also shapes our economy and welfare AI generated designs and works are becoming more popular Today AI technologies can generate several intellectual creations Fashion is one of the industries that AI can profoundly impact AI tools and devices are currently being used in the fashion industry to create fashion models fabric and jewellery designs and clothing When we talk about AI generated designs we instead focus on the fruits of innovation more best selling apparels more fashionable designs and more fulfilment of customer expectations without paying heed to who the designer is Designers invest a lot of talent time and finances into designing and creating each article of clothing and accessory before they release their work to the public Pattern drafting is the first and most important step in dressmaking Designers typically start with a general sketch on paper add style elements and colours revise and refine everything and finally deliver their design to dressmakers AI accelerates this time consuming and labour intensive process Yet the full legal consequences of AI in fashion industry are often forgotten An AI device's ability to generate fashion designs raises the question of who will own intellectual property rights over the fashion designs Will it be the fashion designer who hires or contracts with the AI programmer Will it be the programmer Will it be the AI itself Or will it be a joint work of humans and computers And who will be liable for infringement deriving from use of third party material in AI generated fashion designs This book explores answers to these questions within the framework of EU design and copyright laws It also crafts a solution proposal based on a three step test and model norms which could be used to unleash the authors' rights holders and infringers around AI generated fashion designs

### **Intellectual Property and Information Law: Essays in Honour of Herman Cohen Jehoram** Willy Alexander, Herman Cohen Jehoram, 1998-10-22 This significant new work honours the tremendous achievements of Professor Herman Cohen Jehoram in the field of intellectual property law Herman Cohen Jehoram put the Netherlands on the intellectual property law map through his organizational and academic work for the World Intellectual Property Organization WIPO the Association Littéraire et Artistique Internationale ALAI and the European Commission He has also served as the voice of Dutch copyright law abroad and has been described as the founding father of the University of Amsterdam's Institute for Information Law This collection of essays is worthy of the person International in scope the contributions from prominent experts cover a broad range of topics in intellectual property law reflecting the broad academic and historical interests of Professor Cohen Jehoram Intellectual Property and Information

Law not only represents a lasting monument to a major force in the field but also offers a range of valuable insights into specific issues in contemporary intellectual property media and information law

INFORMATION LAW SERIES 6     Law and policy in international business ,1995     **Gewerblicher Rechtsschutz und Urheberrecht** ,1993     Albany Law Journal ,1884     Revue Canadienne Du Droit de Commerce ,1998     The Standards Edge Sherrie Bolin,2002     Intellectual Property and the Internal Market of the European Community Peter Groves,1993-02-23 This work perhaps for the first time provides a description of the great variety of proposals at EEC level for the reform and harmonisation of intellectual property law It addresses patents copyright and neighbouring rights trade marks biotechnology semiconductor chips topography right industrial designs and plant breeders rights Save as required for the purpose of shedding light on the EEC proposals it does not attempt to examine member states national laws In the case of industrial designs where no harmonisation has yet been proposed a very brief survey of national jurisdictions is presented There is a useful appendix of documents a bibliography and index This practical handbook will prove invaluable to practitioners both in the IP field and non specialists seeking up to date information on European developments including solicitors barristers patent agents and trade mark agents in private practice commerce and industry throughout the EEC and in Member States major trading partners     *The Law of Public Communication* Kent Middleton,William Eyre Lee,Bill F. Chamberlin,2005 Focusing on the implications of the law for practitioners this annually updated text examines legal issues affecting journalism political and commercial speech and electronic media The 2005 Edition of this top selling media law text includes the most current information available explaining the law as it applies to the daily work of writers broadcasters advertisers cable operators Internet service providers public relations practitioners photographers and other public communicators By presenting statutes and cases in a cohesive manner that is understandable even to students studying law for the first time the authors ensure that students will acquire a firm grasp of the legal issues affecting the media     LAW AND POLICY IN INTERNATIONAL BUISNESS ,

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