

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

Vincenzo Iaia 

Luis "Guido Carli" University, Rome, Italy

Correspondence

Vincenzo Iaia, Luis "Guido Carli" University,
Rome, Italy.

Email: vincenzo.iaia@luiss.it

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,

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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 **EU Digital Copyright Law and the End-User**

Giuseppe Mazziotti, 2008-02-19 This book draws on the contents of the Ph D dissertation I wrote and defended at the European University Institute EUI of Florence At the beginning of my search I did not expect to write a book on the intersection between copyright law and digital technologies and in particular on the implications that digitisation presents for the interests of users of copyrighted works At that time I was neither an expert on new technologies nor an avid user who viewed the Internet as a no copyright land where anyone should download whatever content for free Before graduating from the University of Perugia School of Law I had established myself as a clarinet player who performed mostly chamber music and the symphonic repertoire I had also worked extensively as a radio speaker music critic and writer with the Italian public broadcaster RAI Radio3 In performing all these music related activities I developed a considerable interest for copyright issues and when choosing my dissertation topic I immediately opted for a work on copyright law that examined the economic rights

of music performers under the Italian and the EU legal systems I was very curious to see how and to what extent the law sought to protect the subtle particular kind of creativity and originality embodied in musical performances That was my first step towards writing a book on copyright law *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 Ghufraan 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 *Die Methodik des EuGH im Urheberrecht* Verena Roder, 2016-04-08 Das Urheberrecht ist heutzutage europ isch gepr gt Der EuGH konkretisiert im Rahmen einer autonomen Auslegung zunehmend unbestimmte Rechtsbegriffe Dies hat unter anderem Auswirkungen auf die Rechte der  ffentlichen Wiedergabe und der  ffentlichen Zuganglichmachung den Werkbegriff und die Privatkopieschranke Verena Roder systematisiert die EuGH Rechtsprechung zum Urheberrecht und leistet einen Beitrag zur europ ischen Methodik Sie untersucht die Urteilsbegr ndungen des EuGH Hervorzuheben sind die Ausführungen zur Bedeutung des V lkervertragsrechts mit seiner Direktivwirkung auf das europ ische Sekund rrecht Die rechtlichen Leitlinien die der EuGH entwickelt kennen im Urheberrecht auf eine Fulle von Konkretisierungsmaterial gest tzt werden auch auf einen systematischen Zusammenhang verschiedener Rechtsakte Die Autorin arbeitet die besondere Bedeutung des vorgelegten Sachverhalts f r die Auslegungsentscheidung heraus Abgerundet wird die Untersuchung durch einen Blick auf die kompetenzrechtliche Problematik derartiger Vorlageentscheidungen

Der Teileschutz im Urheberrecht Sebastian Benz, 2018-10-22 Long description Gibt es eine Untergrenze für den rechtlichen Schutz von Teilen eines Schutzgegenstands z B von Ausschnitten einer Ton oder Filmaufnahme Sebastian Benz untersucht diese Frage für das Urheberrecht und die verwandten Schutzrechte und entwickelt einen allgemeinen Lösungsansatz unter Berücksichtigung internationaler und unionsrechtlicher Vorgaben

Film Copyright in the European Union Pascal Kamina, 2016-04-28 Intellectual property issues in the film industry are often highly complex and in today's world are evolving rapidly In this second edition of Film Copyright in the European Union Pascal Kamina unravels the complexities of film protection in twenty eight member states of the European Union including thirteen new member states who have joined since the first edition As well as addressing key aspects of film copyright Pascal Kamina also deals with the protection of film works within the European Union in the context of European harmonisation of copyright laws Including a new chapter on copyright enforcement this second edition details the substantial developments in EU law during the last decade including major cases for the European Court of Justice new treaties and new directives This book will interest practitioners academics and students The developments on contracts and moral rights will be of particular interest to lawyers outside continental Europe

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

Dutfield and Suthersanen on Global Intellectual Property Law Graham Dutfield, Uma Suthersanen, 2020-01-31 A much anticipated new edition of this acclaimed work on intellectual property IP in its global context With intelligent and insightful coverage of IP law from international and comparative perspectives this second edition has been thoroughly revised and expanded This unique textbook presents the main IP rights identifying their basic features and tracing their evolution up to the present day by reference to statutes cases and international treaties

Intellectual Property Law Tanya Frances Aplin, Tanya Aplin, Jennifer Davis, 2022 This work provides a full and clear exposition of the fundamentals of intellectual property law in the UK It combines excerpts from cases and a broad range of secondary works with insightful commentary from the authors which will situate the law within a wider international comparative and political context

EU Copyright Law Harmonisation Estelle Derclaye, Gilles Stupfler, 2025-09-18 This book provides the first comprehensive comparative and

empirical analysis of the state of harmonisation in EU copyright law in the 27 Member States and the UK at the level of national courts For 3 decades the EU has harmonised many aspects of copyright law via EU legislation and the case law of the Court of Justice of the EU CJEU However it is not known whether national courts actually comply with it as a comprehensive analysis of the national case law has not yet been done This book addresses this major gap in the literature In the book a lawyer and a statistician analyse some of the most recent decisions on EU copyright law issued by the 27 Member States and the UK pre and post Brexit using doctrinal and quantitative methodologies The main research question addressed is whether there is disharmony in the national case law and whether this is owed to Members States misimplementing EU copyright legislation lack of clarity of EU legislation and or case law or national courts being unaware misinterpreting or resisting CJEU case law The book provides detailed legal analyses and descriptive statistics per topic per type of work per country across countries and over time supported by statistical analysis Its findings and in depth reflections on the law and how to improve it are of crucial relevance for policymakers and the judiciary at EU and national level and will interest scholarly audiences in the UK EU EEA and beyond

Der Schutz der Gestaltung von Gebrauchsgegenständen Andreas Starcke, 2019-07-22 Der rechtliche Schutz der Gestaltung von Gebrauchsgegenständen oder auch des Designs berührt verschiedene Rechte des Geistigen Eigentums insbesondere das Designrecht das Urheberrecht und das Markenrecht Andreas Starcke untersucht diese Möglichkeiten des Schutzes unter besonderer Berücksichtigung des Umgangs mit der Funktionalität des jeweiligen Gegenstandes einerseits und der Notwendigkeit einer innovativen Gestaltungsleistung andererseits Er geht dabei insbesondere auf das Spannungsverhältnis der Schutzrechte zueinander ein und berücksichtigt die zunehmende Europäisierung des gesamten Bereichs des Designschutzes Darauf aufbauend untersucht er wie in Fällen zu verfahren ist in denen an derselben Gestaltung mehrere Schutzrechte bestehen die aber zu unterschiedlichen Rechtsfolgen etwa bei der rechtsgeschäftlichen Verwertung oder beim Schutzzumfang führen [Intellectual Property Law: Text, Cases, and Materials](#) Tanya Aplin, Tanya Frances Aplin, Jennifer Davis, 2013-08-29 This book provides a full and clear exposition of the fundamentals of intellectual property law in the UK It combines excerpts from cases and a broad range of secondary works with insightful commentary from the authors which will situate the law within a wider international context

Transnational Intellectual Property Law Robert P. Merges, Seagull Haiyan Song, 2018-04-27 As companies and organisations increasingly operate across national boundaries so the incentive to understand how to acquire deploy and protect IP rights in multiple national jurisdictions has rapidly increased Transnational Intellectual Property Law meets the need for a book that introduces contemporary intellectual property as it is practiced in today's global context Focusing on three major IP regimes the United States Europe and China the unique transnational approach of this textbook will help law students and lawyers across the world understand not only how IP operates in different national contexts but also how to coordinate IP protection across numerous national jurisdictions International IP treaties are also covered but in the context

of an overall emphasis on transnational coordination of legal rights and strategies

The Subject of Copyright Ewa Laskowska-Litak, 2023-09-22 Exploring the concept of copyright subject matter through the lenses of law aesthetics and cognitive science this book describes the historical evolution of a work into an artefact that qualifies as copyrightable subject matter Discussing the originality requirement towards an artefactual understating of intangible goods copyright's present struggles with modern societies and technologies and growing inequalities between rights holders and producers the book adopts an interdisciplinary approach based on studies in law aesthetics neuroscience and cognitive science to present a novel perspective on the non artefactual and contextual identification of copyright subject matter The book examines the challenges raised by aesthetic and neuroaesthetic concepts and cognitive studies seeking to create a unifying framework of identification strategies for modern copyright law which embrace historical philosophical and social perspectives the book develops a research methodology that offers a new interdisciplinary and holistic approach for understanding the subject of copyright and better addressing the needs of modern society technology and business models Touching on normative understandings of creativity and legal philosophical aesthetic and cognitive considerations with regard to the idea expression dichotomy in copyright law the book will be of immense interest to legal scholars legal philosophers aestheticians and neuroaestheticians

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 Intellectual Property and Moral Rights* Ysolde Gendreau, 2023-09-06 This comprehensive Research Handbook examines moral rights since their establishment in the 19th century and considers the roles they play in the 21st century in relation to the technological environment in which copyright exists Drawing together rich perspectives on intellectual property law around the world this Research Handbook provides new insights on the traditional issues of moral rights and analyses more recent challenges in copyright law patent law and trademark law **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 styles 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 **3D Printing and Intellectual Property** Lucas S. Osborn, 2019-09-05 Focuses on the novel issues raised for IP law by 3D printing for the major IP systems around the world **Research Handbook on Copyright Law** Paul Torremans, 2017-10-27 This second edition is a timely presentation of the state of the art in copyright research Copyright law is currently at the centre of many debates and the subject of substantive new developments The new edition of the Research Handbook captures these fast moving developments and goes far beyond a mere update of the chapters All of the topical chapters are completely new

and the authors have been chosen for their expertise and excellence in the areas concerned Research Handbook on Copyright Law offers global coverage both in terms of substance and in terms of author expertise and maps both the present and future of the discipline It will prove an invaluable research tool for all those involved in copyright research who wish to keep up with the pace at which this area of law is evolving

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