

Kluwer Copyright Blog

To register or not to register?

Lucie Guibault (Schulich School of Law) · Thursday, October 11th, 2012



On 27 September, the Dutch government introduced what at first glance would seem an inconsequential proposal, e.g. to amend the [Register Act of 1970](#) whereby the possibility for legal and natural persons to register their copyright protected work at the tax office will be eliminated. Should the Dutch proposal be adopted, the registration of private deeds will be limited to those acts concerning subject matter for which registration is a legal formality.

The reasoning behind this proposal is that a deed that witnesses an agreement between two parties has probative force between the parties whether the deed is registered or not. Registration of a work or an invention offers no independent copyright or patent protection. Such registration gives no additional legal value. This is true of course: copyright protection accrues automatically to the author of an original work, upon creation of that work; any mandatory registration requirement on foreign authors for the recognition of the existence or exercise of copyright protection would be contrary to article 5(2) of the Berne Convention. Moreover, the registration of a work at the Dutch tax office presents no added-value to potential users, since the database is no searchable by third parties. It forms in no way a facilitator for the conclusion of licences in respect of the works registered, and barely constitutes a useful tool for the effective enforcement of rights.

The Dutch legislative initiative comes in sharp contrast to the recent trend noticeable in Europe, as in the UK for example. Last July, a committee of the UK Intellectual Property Office led by Richard Hooper published its final report for the Feasibility Study into the Digital Copyright Exchange. This report is part of the Hargreaves implementation and is meant to tackle the problem of copyright licensing in the digital age by putting forward the creation of a cross sectoral [Digital Copyright Exchange](#). Regarding the Digital Copyright Exchange, the report recommends the following:

‘Recommendation: DCE

Having defined the need for much better data and the need for those data to be compatible and interoperable with common standards and a common language across both sectoral and national boundaries (Section 4 above), we recommend that these data building blocks and common standards are used to create a not-for-profit, industry-led, industry-funded Copyright Hub with some possible

Government pump-priming in the early stages.’

The proposed Copyright Hub would entail the creation of a copyright registry, which would link – on a voluntary, opt-in and non-exclusive basis – to databases containing copyright ownership data, permitted uses and licences granted. The main advantages are currently seen in the area of digital copyright enforcement. However, such a registry would undeniably reduce transaction costs and make licensing more transparent, not only allowing business models to flourish on the Internet, but also giving anyone, including the general public, educational institutions and cultural heritage institutions, a clear indication of what they can and cannot do with the work and whom to contact should they wish to obtain additional permission. Such a registry would arguably eliminate the orphan work’s problem for the future, the key residing in the reliability of the metadata registered.

Interestingly, the Hooper report makes no express mention of the upcoming Orphan Works Directive in which a registry is to be set up in each Member State to record the efforts of any diligent search and the status of works declared orphan. Nevertheless, the proposed Copyright Hub would be designed to form ‘one of the places where prospective users of an orphan work could go to demonstrate that they have carried out a diligent and reasonable search to find the owners. It has also been suggested that the Hub could contain or provide access to orphan works registries’ (paragraph 99 of the document). These characteristics would presumably make it compatible with the new directive.

In this sense, the proposed legislative modification to the Dutch Register Act 1970 is indeed likely to remain inconsequential, for such a registry would by no means meet the requirements of the Orphan Works Directive. When the time comes to implement this Directive, the Dutch Government will be confronted with similar issues as the UK Government is currently facing. Hopefully, the Dutch, as all other governments within the European Union, will try to reach standardized and compatible solutions which will enable easy cross-border licensing.

Meanwhile, the commercial business of offering copyright registration services seems to burgeon everywhere, like in [France](#), [Italy](#) and [Spain](#), to name but these three. Services claim to be the first, the oldest, the biggest or the best copyright registry to inform about copyrights allowing rights holders to manage their rights in the digital era. Some claim to be the only solution for effective copyright protection, but offer no possibility for users to search their database. More or less dubious claims, knowing that registration is not a condition for copyright protection! But such language does attest of the fact that there is money to be made in addressing the legal uncertainty about rights ownership online. But such services will be short lived as soon as government registries will be created as part of the implementation of the Orphan Works Directive.

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