Brexit and copyright law: will the English courts revert to the ‘old’ test for originality?

Kluwer Copyright Blog
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This article was originally published on the Kluwer Copyright Blog. Brexit and copyright law and the English courts invest in the ‘‘old’’ test for originality? Kluwer Copyright Blog, December 1, 2016, Blogging & Copyright Law (Bristows LLP) under copyright law and English courts revert to the ‘old’ test for originality?

As discussed in this blog post, the impact which Brexit has on the UK’s copyright law is generally set by statute, although there are some notable exceptions. The copyright law in the UK has traditionally given a low threshold for copyright protection in databases, literary, dramatic, musical and artistic works. This threshold has remained low in the UK, and whether the UK might revert to a different threshold once the UK leaves the EU.

Within the EU, copyright and databases law is harmonized. This means that copyright law and databases law are the same across the EU. This is because the EU has directed its Member States to adopt EU law into domestic law. This means that the EU law becomes part of the domestic law of each Member State. In the UK, copyright law is derived from the EU. This means that the EU law becomes part of the domestic law of the UK.

This continental approach to assessing originality has been introduced into EU law and thereby into UK law. This approach requires that the work be the author’s own intellectual creation. The author’s own intellectual creation is the threshold for copyright protection under EU law. This continental approach to assessing originality is in line with CJEU jurisprudence, and the English case law which has been shaped by it.

In 2013, the Court of Appeal in
Temple Island Collections
infopaq
SAS Institute v World Programming Limited
Meltwater
established by
University of London Press v University Tutorial Press and
Ladbroke v William Hill, the CJEU held that the reproduction of 11-word extracts from newspaper articles amounted to reproduction of a copyright work if the elements which were reproduced were the expression of the author’s own intellectual creation. The CJEU further developed the concept of an ‘author’s own intellectual creation’ in its decision in
Necrozma
ltd
where the CJEU held that the work in question was protected by copyright if it was the author’s own intellectual creation.

The CJEU has confirmed that the reproduction of a copyright work if the elements which were reproduced were the expression of the author’s own intellectual creation is the threshold for copyright protection. The CJEU has held that the reproduction of a copyright work if the elements which were reproduced were the expression of the author’s own intellectual creation is the threshold for copyright protection. The CJEU has held that the reproduction of a copyright work if the elements which were reproduced were the expression of the author’s own intellectual creation is the threshold for copyright protection.

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However, there are key factors which might result in the continental approach to assessing originality being overturned. These key factors are:

1. The CJEU ruling in
Temple Island Collections
infopaq
SAS Institute v World Programming Limited
Meltwater
which established that the work in question was protected by copyright if it was the author’s own intellectual creation.

2. The CJEU ruling in
Temple Island Collections
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SAS Institute v World Programming Limited
Meltwater
which established that the work in question was protected by copyright if it was the author’s own intellectual creation.

3. The CJEU ruling in
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