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

Kluwer Copyright Blog
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Will copyright revert to its pre-Brexit state on 'author's own intellectual creation' tests once the UK leaves the EU?

With the UK's departure from the EU, there is increasing concern that the long-standing EU test for originality in copyright law will be overridden by the post-Brexit test for originality.

In 2011, the Court of Appeal in Infopaq decided that the expression of the skill and labour exercised by the author was not sufficient to establish originality. Instead, the court held that the expression of the skill and labour exercised by the author must be unique and not the result of the application of general principles or principles of the art. In other words, the court held that the expression of the skill and labour exercised by the author must be unique and not the result of the application of general principles or principles of the art.

The Infopaq test for originality was developed in the context of copyright protection for databases under the Directive on the Legal Protection of Databases. This provides that, across the EU, a work has to be original in the sense that it is the result of the application of the author's own intellectual creation to a database.

In 2001, the Court of Appeal in University Tutorial Press v University of London Press held that a work was not original if it was the result of the application of general principles or principles of the art. In other words, the court held that the expression of the skill and labour exercised by the author must be unique and not the result of the application of general principles or principles of the art.

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