Mirror, mirror, tell me, is the Copyright law fair and balanced? Reflection on AG’s conclusions on the Spiegel Online case (Part I)

Please refer to this post for full text availability. Mirror, mirror, tell me, is the Copyright law fair and balanced? Reflection on AG’s conclusions on the Spiegel Online case (Part I)

Kluwer Copyright Blog
February 15, 2019

Copyright exceptions - "Member States"

The case is part of a case, where the AG reporting current events by means of photography, cinematography, broadcasting or protection of moral rights in EU copyright law.

The AG concludes with the sibylline finding that MS are free as to the choice and wording of the exceptions they consider appropriate to implement in order to comply with the obligation to protect the exclusive rights of the author. For the AG, while MS have some freedom in the choice and wording of the exceptions they implement, the criteria for the implementation of the exceptions should be the same. This would be in line with the Federal Court of Justice in Germany, which considered that the exceptions should be implemented in a way that is consistent with the fundamental rights of the author.

The specific conditions for the exercise of news reporting exceptions in domestic copyright laws

The present case also raises the question of the compatibility of national copyright exceptions with Directive 2001/29 from a different angle. Can the MS implement a copyright exception, whose justification basis is the exception of Article 10bis (2) of the Berne Convention, which is much more specific in relation to the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in Case C-516/17, delivered on 12 December 2018. For further analysis of Pelham see here. For the AG, while MS have some freedom in the choice and wording of the exceptions they implement, the criteria for the implementation of the exceptions should be the same. This would be in line with the Federal Court of Justice in Germany, which considered that the exceptions should be implemented in a way that is consistent with the fundamental rights of the author.

The specific conditions for the exercise of news reporting exceptions in domestic copyright laws

The questions referred to the CJEU by the German court (BGH) point to the controversial issue of the relationship of copyright exceptions with fundamental rights and the scope of copyright exceptions in the digital era. Equally thought provoking are the answers of the AG. The first part of this blogpost focuses on the questions referred to the CJEU by the German court (BGH) point to the controversial issue of the relationship of copyright exceptions with fundamental rights and the scope of copyright exceptions in the digital era. Equally thought provoking are the answers of the AG. The first part of this blogpost focuses on the questions referred to the CJEU by the German court (BGH). Please refer to this post for full text availability. Mirror, mirror, tell me, is the Copyright law fair and balanced? Reflection on AG’s conclusions on the Spiegel Online case (Part I)

I)

The degree of freedom of Member States in relation to copyright exceptions

One of the central questions of the dispute concerns the determination of the degree of latitude afforded to the MS in exercising the exceptions provided for in Directive 2001/29. Can the MS consider the list of exceptions of Article 10bis (2) of the Berne Convention, which is much more specific in relation to the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in a different way?

The degree of freedom of Member States in relation to copyright exceptions

The questions referred to the CJEU by the German court (BGH) point to the controversial issue of the relationship of copyright exceptions with fundamental rights and the scope of copyright exceptions in the digital era. Equally thought provoking are the answers of the AG. The first part of this blogpost focuses on the questions referred to the CJEU by the German court (BGH)

The degree of freedom of Member States in relation to copyright exceptions

The AG concludes with the sibylline finding that MS are free as to the choice and wording of the exceptions they consider appropriate to implement in order to comply with the obligation to protect the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in a different way.

The specific conditions for the exercise of news reporting exceptions in domestic copyright laws

The present case also raises the question of the compatibility of national copyright exceptions with Directive 2001/29 from a different angle. Can the MS implement a copyright exception, whose justification basis is the exception of Article 10bis (2) of the Berne Convention, which is much more specific in relation to the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in a different way?

The specific conditions for the exercise of news reporting exceptions in domestic copyright laws

The questions referred to the CJEU by the German court (BGH) point to the controversial issue of the relationship of copyright exceptions with fundamental rights and the scope of copyright exceptions in the digital era. Equally thought provoking are the answers of the AG. The first part of this blogpost focuses on the questions referred to the CJEU by the German court (BGH)

The specific conditions for the exercise of news reporting exceptions in domestic copyright laws

The AG concludes with the sibylline finding that MS are free as to the choice and wording of the exceptions they consider appropriate to implement in order to comply with the obligation to protect the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in a different way. The AG concludes with the sibylline finding that MS are free as to the choice and wording of the exceptions they consider appropriate to implement in order to comply with the obligation to protect the exclusive rights of the author provided in Directive 2001/29, so as to limit such exclusive rights in a different way.