Kluwer Copyright Blog

A Century of Dutch Copyright Law

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Monday, July 30th, 2012

On September 23, 1912, the Dutch Copyright Act – *Auteurswet* – was enacted. A century after its enactment the Dutch law is one of the world's oldest 'living' acts of the author's rights tradition. While the Act has seen many small and large amendments since its adoption in 1912, it has never been thoroughly revised, so its conception and basic structure have remained essentially intact.

On August 31, 2012, the Dutch Copyright Society (Vereniging voor Auteursrecht) will celebrate the Act's hundredth anniversary with a large international conference to be held in Amsterdam at the beautiful Royal Tropical Institute (Koninklijk Instituut voor de Tropen). The conference will look at the characteristic elements of the Dutch Act from an international and European perspective. Four prominent scholars on international and European copyright – Prof. Lionel Bently (Cambridge), Prof. Thomas Dreier (Karlsruhe), Prof. Paul Goldstein (Stanford) and Prof. Frank Gotzen (Leuven) – will query what the world of copyright may or may not have learned, or may yet learn, from the Dutch legislative experience. Each presentation will be followed by a comment by a Dutch expert.
The conference will be opened by Dr. Francis Gurry, the Director-General of WIPO.

In preparation of the conference sixteen scholars on Dutch copyright have written extensive papers on distinct aspects of the Dutch Act. These papers have been collected into a book to be published by Delex that will be officially presented at the conference to Fred Teeven, the Dutch State Secretary for Security and Justice.

Compared to other laws of the author's right tradition Dutch copyright law contains many noteworthy and sometimes controversial features, some of which may have to be reassessed following recent case law from the European Court of Justice.

The Dutch Supreme Court in recent decades has been extremely generous in granting copyright protection to subject matter well beyond the traditional field of 'literature, science and art', such as chemical formulae, perfumes, and even routine conversations. Whether such productions can qualify as 'intellectual creations' as interpreted by the European Court remains to be seen.

One of the most salient features of the Dutch Act has always been *geschriftenbescherming*, i.e. the protection of non-original writings – a remnant of case law decided by the Dutch Supreme Court

prior to 1912 that was carried over into the present Act. Following the European Court of Justice's Football Dataco judgment the survival of this primordial copyright regime has also become highly questionable.

Another controversial feature is Dutch copyright law's unique rule on works made under employment, which vests both copyright ownership and authorship in the employer, and therefore effectively allocates moral rights in a legal person. Surely, such a rule would be hard to conceive in other author's right jurisdictions.

Yet another noteworthy feature of the Dutch Act is the virtual absence of rules dealing with author's contracts. However, the Dutch Government has recently introduced a long-awaited bill to fill this void. The proposed law on author's contracts would provide for, inter alia, a general right to fair remuneration; a 'bestseller' rule giving authors a right to claim additional remuneration in case of gross disproportionality between payments received and the entire commercial proceeds of the work; a right of termination and reversion in case of insufficient use (non-usus) of the transferred right; a right to invalidate unfair terms in author's contracts; and the establishment of a dispute settlement committee.

Registration for the international conference on a Century of Dutch Copyright Law is now open.

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This entry was posted on Monday, July 30th, 2012 at 12:44 pm and is filed under Database right, Jurisdiction, Legislative process, Netherlands
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