Kluwer Copyright Blog

Goodbye, Geschriftenbescherming!

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Wednesday, March 6th, 2013

Besides tulips, cheese, football and other recreational matters, the Netherlands are famous for its copyright protection of non-original writings. *Geschriftenbescherming*, as the Dutch call this legal anomaly (and only they know how to pronounce it), is a remnant of an ancient eighteenth-century printer's right that lives on until this day in the Dutch Copyright Act of 1912. Deviating from the idea of author's right (droit d'auteur) to which Dutch law otherwise subscribes, the Dutch Act protects 'writings' that do not meet the test of originality. Article 10 (1), first item, of the Act, mentions as protected subject matter 'books, brochures, newspapers, periodicals and *all* other writings.' Over the years, the word *all* (as in 'all other writings') has caused lively, and sometimes unruly, debates in Dutch copyright circles. Eventually, in a series of landmark decisions concerning the protection of radio and television program listings, the Dutch Supreme Court (Hoge Raad) decided that this word was to be interpreted almost literally. According to the Court even the most banal or trivial writings are protected by copyright, provided that they are published or intended for publication (Supreme Court 17 April 1953, NJ 1954, 211 (Het Radioprogramma); Supreme Court 27 January 1961, NJ 1962, 355 (Explicator); Supreme Court 25 June 1965, NJ 1966, 116 (Televizier)).

Thus, in the Netherlands producers of telephone directories, address books, almanacs and catalogs have always enjoyed copyright protection against unauthorized reproduction. More controversially, the Dutch public broadcasting organizations for many years successfully invoked geschriftenbescherming to monopolize the market for radio and television guides. In more recent times, copyright protection of non-original writings also became a popular instrument for protecting computerized databases, even after the EU's Database Directive of 1996 harmonized database copyright according to the standard of the 'author's own intellectual creation'.

After last year's Football Dataco decision by the Court of Justice (CJEU, 1 March 2012, Case C-604/10) it was clear that maintaining geschriftenbescherming for databases was untenable. Following the recommendations of the Dutch Copyright Committee, the Government has now announced its intention to abolish geschriftenbescherming – not only for databases, but across the board. On February 11, 2013 the Government published a draft bill that would remove a single word ('all') from the text of Article 10(1) of the Dutch Copyright, and thereby put this relic of a distant past finally to rest. Farewell, geschriftenbescherming!

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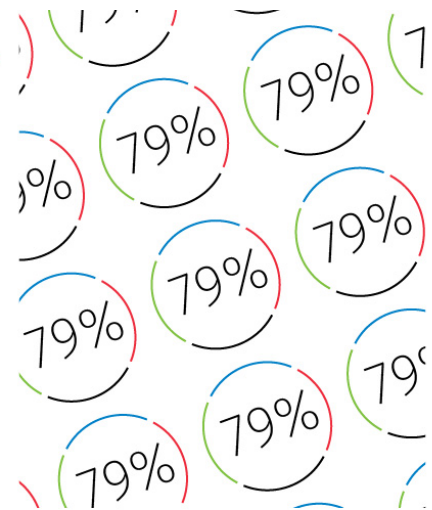

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