

Kluwer Copyright Blog

Recently added copyright cases

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The KluwerCopyrightBlog is part of [Kluwer's IP Law portfolio](#). Whereas the blog serves as a platform where scholars and practitioners can share their informed opinions on specific aspects of IP law and jurisprudence, the related Kluwer Copyright Cases Database aims to accumulate important (new and older) case law in the field of copyright in one database.

To satisfy the increasing curiosity about what is happening in the copyright courts of other EU member states, we regularly publish short overviews of cases that were recently added to the database.

The selection of this month includes recently submitted cases from the UK, France, Italy, Portugal, Hungary, Malta and Finland:

UK: Court of Appeal of England and Wales, 10 April 2014 ([Lloyds v Shanley](#))

The appellate court upheld the High Court's finding that the copyright owner of a software tool had succeeded in his claim for infringement against two banking institutions.

The respondent is an experienced building contractor and businessman and in 2002 he formed a company to carry on a business of repairing properties on the instructions of building insurers. Within the purposes of this business, he had created a claim management software that incorporated a "scoping tool". He had a meeting with one of the employees of the second appellant with the view to join the second appellant's network of contractors. According to the respondent, during that meeting they entered into an oral agreement under which the employee of the second appellant had a limited license to use the scoping tool for testing and evaluation. The second appellant supplied the tool to its contractors and when the first appellant took over the second appellant in 2010, it was also making use of the tool.

The appeal was dismissed. The High Court judge concluded that the respondent wanted to win business from the second appellant but that he did not necessarily have any interest in any other company with which the second appellant might be connected. It was, however, plain that the respondent had not supplied the tool to the first appellant. In those circumstances the evidential burden would lie upon the appellants.

What is more, the High Court judge had quite properly placed no weight on the respondent's oral evidence, finding that his persistent lies had rendered it wholly unreliable. The judge had rightly rejected the respondent's claim that he had granted a personal license to the second appellant. There was no evidence or reason to believe that the respondent had granted any broader consent.

(Case submitted by Stavroula Karapapa, University of Reading and Maurizio Borghi, University of Bournemouth)

France: Constitutional Court of France, 8 February 2014 (act on unavailable books).

In this ruling, the French Constitutional Court rules that the Act No. 2012-287 of 1 March 2012 'on the digital exploitation of unavailable books of the twentieth century' complies with the French Constitution, stating that it is possible to undermine the right to property (stated in Articles 2 and 17 of the Declaration of Human and Civic Rights of 1789) if it is justified by reasons of public interest and proportionate to the objective pursued. These new provisions are intended to allow the digitisation and reissuing of books that are still protected by copyright, but no longer exploited.

Firstly, the Constitutional Court considers that the provisions of the 2012 Act pursue an objective of general interest, as they are intended to allow unavailable books, published before 1 January 2001 but having not yet fallen into the public domain, to be preserved and put at the disposal of the public, with a system that ensures remuneration for rightholders.

Secondly, the Constitutional Court explains that the system does not undermine the authors' right to property in the meaning of Article 17 of the Declaration of Human and Civic Rights of 26 August 1789, since the provisions of the Act do not affect the author's right to paternity nor his right to disclosure, only concern books that are not currently exploited (moreover, the use of collective management is subject to the absence of opposition of the author or the publisher), provide that the publisher that holds the right of reproduction of the printed book form has priority to ensure the reproduction and representation of the book in digital form, and provide that the collective society shall ensure the fair distribution of royalties to the rightholders.

(Case submitted by Brad Spitz, YS Avocats).

Poland: Court of appeal of Wroclaw, 30 January 2014 (Portrait right / group photo).

In a photo of a group of people (a former school class), the image of a particular individual is just a part of the whole picture. Therefore, in accordance with article 81 paragraph 2 item 2 of the Polish Copyright Act, it is not required to obtain permission for the distribution of such an image from each person in the photo.

The dispute concerned a photograph of the plaintiff that was published on a social network site. On the profile of a particular primary school, a user posted black-and-white photographs of a old school class, which showed, inter alia, the plaintiff. The court considered that a social network site is addressed primarily to participants and that the image should be recognizable not only for the person portrayed, but also for others.

The court also considered the nature of the picture, in the context of the exception referred to in art. 81 paragraph. 2 point 2 Copyright Act. An exemption from the obligation to obtain the consent of the person depicted refers to situations in which the person is visualized in a manner equivalent to the presentation of other participants in the same event. When people are a mere component of a

whole, permission is not required for the publication of the image. (*Case submitted by Marcin Balicki, Jagiellonian University*)

Portugal: Supreme Court of Justice of Portugal, 13 November 2013 (Extra TV speakers in a bar).

The Supreme Court of Justice endorsed the opinion of the Public Prosecutor and confirmed the judgment of 7 January 2013 of the Guimarães Court of Appeals, deciding that the installation of extra speakers for TV sets used in commercial undertakings to amplify broadcasted sound does not result in a new use of a broadcasted work and does not require authorization from copyright holders. Therefore, it is not the crime of usurpation punished under the Code of Copyright and Related Rights (Articles 149, 195 and 197).

The Supreme Court of Justice does not follow the opinion of the European Court of Justice in relation to the use of TV sets in pubs. In the opinion of the Supreme Court, there is no need for authorization and no requirement to pay the right owners a fair compensation for the pure reception of broadcasted works in a commercial undertaking by the use of radio and/or TV sets, with or without extra-speakers. Eventually the Supreme Court found that there was no uniformity in the case-law of the ECJ, considering the judgment of 15 March 2012 (C-135/210, SCF Consorzio Fonografici v. Marco Del Corso).

(*Case submitted by Alexandre Pereira, Law Faculty of Coimbra University*)

Italy: Supreme Court of Cassation of Italy, 4 September 2013 (S.V. v. Mediaset / Endemol).

An Italian film director (S.V.) sued two mass media and film production companies (Mediaset and Enndemol) alleging that they had illegitimately modified his cinematographic work entitled “La tata. Come una mamma” – which was originally made of two episodes of approximately 100 minutes each – and had broadcast the modified version as a single episode of approximately 120 minutes.

The claimant argued that such significant abridgment has deprived the work of scenes that he deemed fundamental in order to allow the viewer to have a full understanding of the work and of its “social” meaning, this being an infringement of his moral right to the integrity of the work under Article 20 of the Italian Copyright Act (Law no. 633/1941). The Court, recalling that the modification of a work has both economic and moral implications, stated that the economic right to modify a work can be validly transferred by way of a contract.

However, even when the right to modify the work has been transferred to a third party, the author retains the inalienable moral right to object to any modification or distortion of the work, which would be prejudicial to his honour or reputation. In this case, the Court of Appeal held that the modifications occurred did not alter the narrative structure of the cinematographic work and its “social meaning”.

(*Case submitted by Giorgio Spedicato, Monducci Perri Spedicato & Partners*).

Malta: First Hall of the Civil Court, 4 July 2013 (Mallia / MK Leisure).

The Court found that plaintiff was the owner of the script for “Knights Spectacular 1565” and that the respondent company had infringed his copyright by producing the show without his consent. The court also awarded damages amounting to EUR 3500 for the illegitimate production of the

show which are payable by the respondent company to the plaintiff.

The plaintiff wrote the script for the show “Knights Spectacular 1565” before being officially employed by the company, and upon being employed, no written employment contract was signed, nor was any other contract signed between the parties regarding copyright. The plaintiff was employed by the respondent company as the “artistic director” of the show and had to oversee the rehearsals and put together the show to bring it to production, and once production started the plaintiff was to oversee production and direct the show. The show was produced every week, sometimes twice a week, for the duration of the plaintiff’s employment. Plaintiff was unfairly dismissed by the Company but the show continued to be produced once a week. Plaintiff was not receiving any compensation for the shows being produced, for the use of his script or for the use of other works (such as brochures) which were subject of copyright.

The plaintiff argued that Maltese law does not have a “work for hire” clause; and that the definition of a “collective work” is “a work which has been created by two or more physical persons at the initiative and under the direction of a physical person or legal entity with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated in the work” and that in this case the contributing physical persons were more than identifiable since they were listed and individually named in different brochures and programs accompanying the show.

(Case submitted by Jeanine Rizzo, Fenech & Fenech Advocates)

Hungary: Supreme Court of Hungary, 1 January 2005 (Copyright of an architect).

The proper exercise of the right of ownership cannot result in an infringement of the copyright of the architect with regard to the plan of a building. The construction of a building for industrial use was halted by a decision of the owner. The real estate was sold and the new owner commissioned the defendants to plan an office building.

The architectural plans were made and – according to the requests of the owner – the existing building was not entirely demolished, but some structural parts of it were used, some were modified, some were demolished and new structural parts were designed for the new building. The Supreme Court held that, regarding the structural parts in question, the defendants did not exploit the claimant’s plans. Considering the previously existing structural parts of a building as technical characteristics while making new plans cannot be qualified as exploitation. The owner is entitled to rebuild, modify or even demolish a building if he considers that it is necessary.

(Case submitted by Eszter Kabai, Artisjus)

Finland: Supreme Court of Finland, 7 February 2006 (The Most Beautiful Christmas Carols).

Two Finnish parishes organized six events about and with (the most beautiful) Christmas carols. According to the Supreme Court that the performance of the works in the churches was the main feature of the events. However, as it were charity events and the performers didn’t get paid, the church was not obliged to pay royalties to the Finnish Composers’ Copyright Society Teosto.

Finland: Supreme Court of Finland, 2 September 2005 (Eija-Riitta Kantola v. VL-Musiikki Oy)

Change of stage name. Artist Eija-Riitta Kantola signed an artist contract with record company

CAJ Music. According to the contract the record company had the right to use Kantola's name or her stage name Eijariitta pertaining her sound records. Later on Kantola became known under the new stage name Eija Kantola, which was not mentioned in the original contract between Kantola and CAJ Music.

The record company VL-Musiikki, which had acquired the recording rights, produced new records from the old master tapes using Kantola's new stage name in the marketing. The Supreme Court held that the act was a breach of contract as well as an infringement of the so called paternity right manifested in the section 3 paragraph 1 of the Finnish Copyright Act.

(Finnish cases submitted by Herkko Hietanen, Helsinki Institute for Information Technology).

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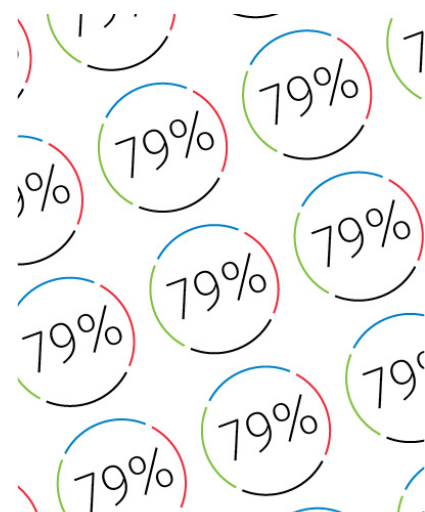
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