

# Kluwer Copyright Blog

## Top 10 posts on the Kluwer Copyright Blog in 2015

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As we enter a new year, we would like to take this opportunity to pass on our best wishes for 2016 to all of our readers, as well as reflect on developments in copyright over the past year. Last year was a busy one in the copyright world, with a number of landmark CJEU decisions, new proposals for European copyright reform as well as significant developments in a number of jurisdictions.



Here is a quick look back at the 10 most read posts from last year:

### **1. In breach of EU copyright law, Paris Court refuses to protect Mankowitz's photo of Jimi Hendrix**

*On 21 May 2015, the High Court of First Instance of Paris (Tribunal de Grande Instance) rendered a controversial judgment in which it ruled that a famous photograph of Jimi Hendrix, taken by Gered Mankowitz, was not original and therefore not protected by copyright.*

### **2. Everything you always wanted to know about private copying but were afraid to ask (Case C-463/12 Copydan Bandkopi v Nokia Danmark A/S)**

*On March 5, 2015 the Court of Justice of the European Union ruled on Case C-463/12 Copydan Båndkopi v Nokia Danmark A/S ('Copydan'). The case marked the seventh occasion on which the Court has ruled on the issue of the private copying limitation under art. 5(2)(b) Directive 2001/29/EC.*

### **3. The Dutch courts apply UsedSoft to the resale of eBooks**

*On 20 January, the Dutch court of appeals (Hof Amsterdam) gave its preliminary ruling in the case of Tom Kabinet. In this ruling the court had to consider whether the CJEU UsedSoft rationale applies to eBooks as well. Without giving a final judgment, the court indicated that it considers it quite likely that exhaustion of rights, as described in art 4(2) of the Infosoc Directive, also applies to intangible goods, such as eBooks.*

### **4. Ryanair Ltd v PR Aviation BV: contracts, rights and users in a "low cost" database law**

*The CJEU's interpretative work on copyright law issues launched in 2015 with the decision of 15 January in the case of Ryanair Ltd v PR Aviation BV (Case C-30/14). The Ryanair ruling, in which the CJEU held "...it is clear from the purpose and structure of Directive 96/9 that Articles 6(1), 8 and 15 thereof, **which establish mandatory rights for lawful users of databases**, are not applicable to a database which is not protected either by copyright or by the sui generis right under that directive, so that it does not prevent the adoption of contractual clauses concerning the conditions of use of such a database" was the latest stone added to the complex edifice of legal protection of databases in Europe.*

#### 5. Danish Court issues website blocking ruling concerning the illegal distribution of replica products

*The first Danish court decision on blocking an infringing website selling replica products was issued on December 11, 2014. It was the Danish Maritime and Commercial High Court that issued the ruling, which ordered Danish Internet Service Providers (ISPs) to block access to the online store, Interior Addict. Interior Addict is a website which illegally distributes replica furniture and lamps in Denmark.*

#### 6. YouTube is a hosting provider but one with extensive duties of care, say two German Courts

*YouTube is the most popular video-sharing website in the world. As it is not entirely free of videos that infringe third party copyrights, it is also subject to litigation around the world. But under what regime can YouTube be held liable: Direct copyright infringement (as a perpetrator)? Or mere indirect copyright infringement, which imposes further requirements for establishing liability? Two German courts – Oberlandesgericht (Court of Appeal) Hamburg and Landgericht (District Court) Munich I – ruled almost simultaneously on these interesting questions under German law.*

#### 7. EU Digital Single Market Copyright law: "Impressionist", but not impressive

*On May 6th, 2015 the European Commission revealed its eagerly anticipated plans for the EU digital single market. The EU Digital Market strategy, which aims to open up digital opportunities for individuals and businesses and enhance Europe's position as a world leader in the digital economy, is built on three pillars: (1) better access for consumers and businesses to digital goods and services across Europe; (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish; and (3) maximising the growth potential of the digital economy.*

#### 8. Allposters ECJ Decision: no exhaustion of rights in modifications of the copyright work

*In its decision in the Allposters case (C-419/13), the ECJ confirmed that exhaustion of the distribution rights does not apply to works that have been modified. The copyright owner can therefore still oppose the distribution of the modified work, even if he had agreed to the distribution of the original work.*

#### 9. Happy Public Domain Day

*When it comes to copyright it is a game of all or nothing. During the term that a copyright exists, the owner of a copyright has a monopoly on the work due to the exclusive rights of reproduction, distribution and communication to the public. When the copyright protection expires and the work enters the public domain, all exclusive rights vanish and the former copyright owner is left empty-*

handed. This post discusses the issues surrounding the entry into the public domain of the works of Mondriaan and Anne Frank.

## 10. UK Private Copying Exception ruled illegal

In October 2014 the government introduced a series of changes to the UK's copyright regime. One change, key to the objective of making copyright law better suited to the digital age, was the introduction of a private copying exception. That exception was put in jeopardy following a successful challenge by the music industry.

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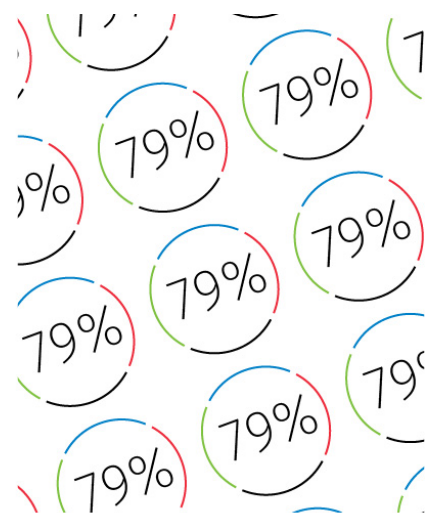
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