Kluwer Copyright Blog

Brexit and European copyright law: some conclusions and delusions

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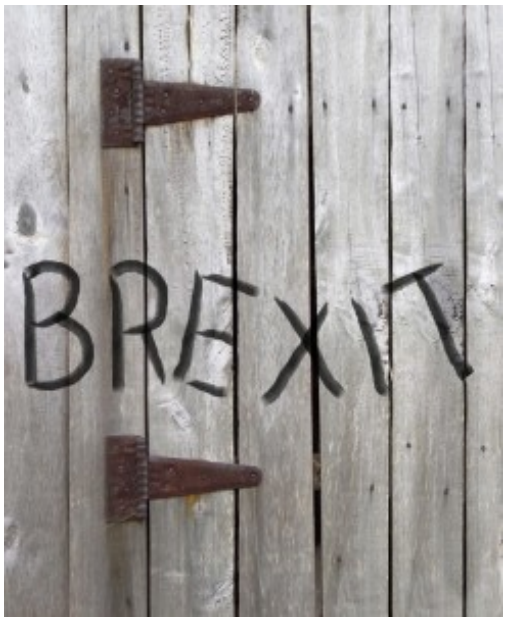

The UK electorate's vote to leave the European Union has been perceived as a bolt from the blue. After the initial shock, the potential legal and business implications of Brexit have been widely discussed. In the field of IP, the main concern has been to predict how UK IP business and law will be affected. How will the IP business of UK companies in Europe be affected? What will be the fate of UK copyright law?

Brexit's "box" is reasonably feared as being able to bring great uncertainty and potential loss to the UK Pandora. Indeed, even if the more EU friendly Norwegian model of the EEA is finally adopted, UK copyright law will be seen as a faraway friend or, even worse, as a lone wolf which traces its own solitary route contrary to the unifying forces of the trans-border reality of a digital market.

But, another question is also worth discussing. What could Brexit bring to EU copyright law? Up until now, the EU harmonisation process has been hampered by the iconic divide between the civil law (the "droit auteur") tradition and the common law vision of copyright, the most prominent representative of which has been the UK. In this context, EU copyright law has necessarily emerged through thorny and sometimes meaningless compromises between author-centered and market-centered approaches. Even though those divergences are in practice less flagrant than they appear, this conceptual split has impeded the harmonisation in domains where the differences are more striking, such as in the case of authorship, moral rights or copyright contracts. Therefore, the idea of EU copyright unification has been mainly seen as a long term perspective.

But, would it remain the same if UK copyright law did not have to be taken into consideration in the decision making process? Indeed, while it is very sad that UK citizens have chosen a solitary

route, Brexit could be seen not only as a tragedy for Europe, but also as an opportunity for deeper integration in European Copyright law. Indeed, not having to take into account UK copyright rules and principles could theoretically facilitate the process of unification of EU copyright law. Even though other EU countries, such as Ireland and Cyprus, also embody the common law copyright tradition, the absence of the major player, the UK, will definitely be significant. So, is it possible that an EU Copyright Code, – more Europe- will be easier to achieve thanks to Europe's failure to convince of its values and its legitimacy?

On the one hand, UK copyright law marginalization would *a priori* enable a more humanistic perception of copyright law to prevail: strong recognition and protection of moral rights (instead of minimum standards, a broad scope of protection covering also the distortion of the spirit of the work linked to the circumstances of its presentation together with an exclusion of the possibility of a waiver of moral rights), a stronger resale right, EU rules for the question of authorship (express recognition of the principle of the natural person of the author as initial copyright rightholder), restrictions on the transfer of copyright and principles enabling the authors to liberate themselves from abusive contractual clauses, a standard of fair and proportionate remuneration of authors (establishment of principles that link the remuneration of the author with the revenues coming from the exploitation of the work, such as a principle of an *a priori* proportionate remuneration for authors).

On the other hand, this viewpoint could be seen as doctrinal delusion, since it somehow forgets that, over the years , EU copyright law has gained a certain independence from national traditions. This autonomy has been many times affirmed by the CJEU. Indeed, EU copyright law has been built under the light of the internal market's priorities. The logic of the market requires the easy and unhampered circulation of copyright and related rights protected subject matter instead of an emphasis on the personal sensitivities of authors. In other words, in an economic union, works of the mind are primarily seen as valuable self-directed assets which shall be commercialised easily in the single market and not as the extension of the personality of their authors and it is doubtful that this vision will dramatically change. In this context, the voluntary isolation of UK copyright law could be seen by some circles as an example to follow and, as a result, as a starting point for an inverse process of marginalization of EU copyright rules together with a growing emphasis on the legitimacy of the pluralism of national copyright particularities.

This entry was posted on Thursday, June 30th, 2016 at 4:27 pm and is filed under Britain' and '**ex**it' and refers to the UK leaving the European Union (EU). A referendum – a vote in which everyone (or nearly everyone) of voting age can take part – was held on 23 June 2016, to decide whether the UK should leave or remain in the EU. Leave won by 51.9% to 48.1%. Britain's departure from the EU is scheduled to take place at 11pm UK time on 29 March 2019.">Brexit, European Union, United Kingdom
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