Kluwer Copyright Blog

Top 10 posts on the Kluwer Copyright Blog in 2017

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As we enter a new year, we would like to take this opportunity to pass on our best wishes for 2018 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, proposals for European copyright reform and significant developments in a number of jurisdictions.

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

1. UK Damages for Copyright Infringement: More than Flagrancy?

A decision in the UK Intellectual Property and Enterprise Court (IPEC) provided some helpful guidance on the application of the 'user principle' and, more importantly, on the interplay between damages for flagrant infringement under s.97(2) of the Copyright Designs and Patents Act 1988 (CDPA) and damages under Article 13 of the IP Enforcement Directive (Directive 2004/48).

2. EU Copyright Reform: Outside the Safe Harbours, Intermediary Liability Capsizes into Incoherence

The European Commission released its new copyright reform package. Prominent within this is its proposal for a new Directive on Copyright in the Digital Single Market. The proposal contains an array of controversial offerings, but from the perspective of this intermediary liability blogger, the most interesting provision is the proposed Article 13 on 'Certain uses of protected content by online services'. The post discusses how this is highly problematic in a number of different ways.

3. Brexit and copyright law: will the English courts revert to the 'old' test for originality?

Whilst copyright has remained far less harmonised across EU member states than other IP rights, one aspect of UK law which has been affected by the EU is the originality threshold required for copyright to subsist in databases and (arguably) in literary, dramatic, musical and artistic works.

This article considers the impact that the EU (and in particular the Infopaq decision of the CJEU) has had on the threshold for copyright protection in the UK, and whether the UK might revert to a different threshold once the UK leaves the EU.

4. Comments on the 'value gap' provisions in the European Commission's Proposal for a Directive on Copyright in the Digital Single Market (Article 13 and Recital 38)

In the debates on the 'value gap' provisions in the European Commission's DSM proposal (Art. 13 and Recital 38), it has been suggested that these provisions would modify the current scope of the exclusive right of communication /making available to the public and the liability exemptions of the E-commerce Directive and should therefore be deleted or amended. This article shows that the proposal does not modify, but only clarifies certain aspects of relevant EU law.

5.UK Brexit Judgment: R (Miller) v Secretary of State for Exiting the European Union

The UK Supreme Court handed down its judgment in R (Miller) v Secretary of State for Exiting the European Union, a case in which the court had to determine the steps required under UK law before the process of leaving the European Union can be initiated. This judgment clarifies the legal steps the UK must take to trigger Article 50 of the Lisbon Treaty, thereby commencing the Brexit process.

6. Communication to the public in copyright law – the German struggle with the CJEU concept

In Germany, the harmonisation of the meaning of communication to the public has not led to increased legal clarity, rather it has caused considerable uncertainty. A look at recent decisions in Germany compared with recent CJEU case law illustrates the areas which have been clarified and those that remain open. When interpreting the term communication to the public, the German courts must always remain within the scope of Art. 267 TFEU – as must other national courts. Clearly, the views of different German courts as to what is acte clair sometimes deviate from one another, as illustrated in this post.

7. Denmark: Infopaq-case finally decided after eight years

Following the preliminary Infopaq rulings of the European Court of Justice, the Danish Supreme Court ruled that extracts of newspaper articles comprising no more than 11 words can be works protected by copyright. The use of extracts that are the results of a process of data capture undertaken by the media analysis company Infopaq International A/S (now Infomedia) constitutes copyright infringement, unless prior consent from right holders has been obtained.

8. Football Dataco: skill and labour is dead!

"The crux of the judgment comes at paragraph 42 when the court clearly states that skill and labour in the selection or arrangement of the data, even if significant, is not sufficient as such to trigger copyright protection." This article discusses the Court of Justice's judgment in Case C-604/10, Football Dataco & others v. Yahoo UK ! & others.

9. Linking to illegal content can constitute a copyright infringement – CJEU Sanoma interpreted by a German Court

In GS Media vs. Sanoma, the CJEU ruled that linking to illegal content may be considered to be a "communication to the public" and can therefore constitute copyright infringement (C-160/15 of 8 September 2016). The District Court Hamburg has now been among the first German courts to take account of the CJEU's decision. The Hamburg court has, in particular, interpreted what constitutes a "for profit" link and what duties the linker has to check the legality of the content linked to.

10. CJEU Decision on Ziggo: The Pirate Bay Communicates Works to the Public

On 14 June 2017, the CJEU handed down its highly anticipated decision in Case C-610/15, Stichting Brein v Ziggo. As reported on this blog, the case represents the first time that the liability proper (i.e. for damages, as opposed to mere injunctions) of an internet intermediary for copyright infringement has been considered at the European level. The Court concluded that the intermediary in question – the peer-to-peer file-sharing website The Pirate Bay (TPB) – communicates works to the public. In the process, it has influenced the definition of direct copyright infringement in EU law and the range of actors which may be said to be engaging in it.

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This entry was posted on Wednesday, January 10th, 2018 at 10:54 am 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, Case Law, inter alia, for ensuring that EU law is interpreted and applied in a consistent way in all EU countries. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law. The CJEU also resolves legal disputes between national governments and EU institutions, and can take action against EU institutions on behalf of individuals, companies or organisations.”>CJEU, Denmark, European Union, Germany, Landmark Cases, Legislative process, United Kingdom

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