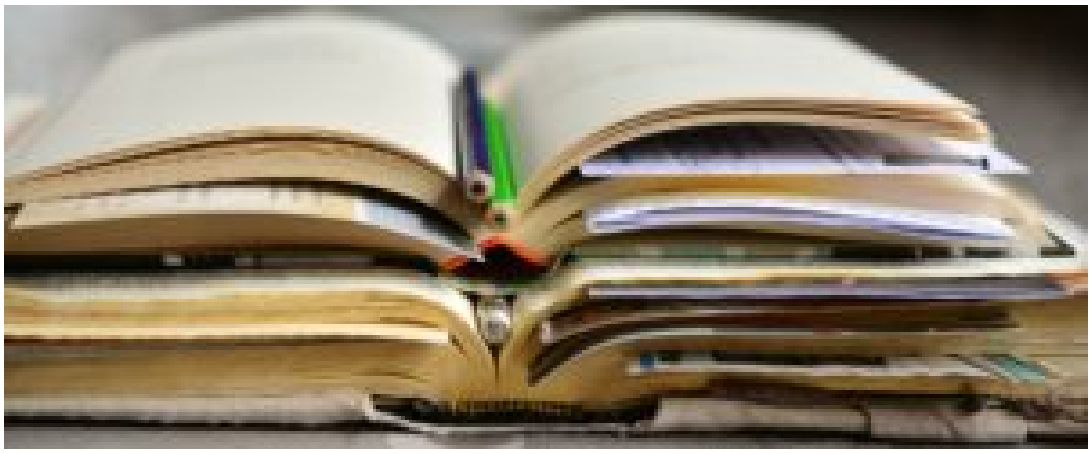
Kluwer Copyright Blog

Spanish Supreme Court rules on Student's Copyright Infringement claim

Mabel Klimt, Claudia Pérez (Elzaburu) · Wednesday, April 1st, 2020



The Spanish Supreme Court has ruled in a case concerning the infringement of copyright of a student whose professor reproduced, without the former's consent, certain sections of the student's research work. This case gave the Court the opportunity to analyse the issue of originality of academic works and provide guidance on authorship of a University work.

Facts of the Case

In 2009, as part of a doctoral programme, the claimant prepared a thesis entitled "The Laws of Burgos, a precedent to international law and to the recognition of human rights" (*Las Leyes de Burgos, precedente del derecho internacional y del reconocimiento de los derechos humanos*) under the direction of the defendant, Juan Enrique. This work, following its assessment by a board of which the defendant formed part, was published in the institutional repository of the library of the University of Burgos. Three years later, part of the work (specifically sections 2 and 3) appeared as an almost literal reproduction in two publications of the defendant: one forming part of a chapter in a book and the other in the Castile and León Legal Journal (*Revista Jurídica de Castilla y León*).

Following his discovery of the publication of part of his work with the defendant claiming authorship, the claimant lodged a copyright infringement action with the Mercantile Court. After several appeals, culminating in a decision by the Provincial Appellate Court of Burgos that the claimant's copyright had been infringed and that damages were consequently payable, the case was brought before the Spanish Supreme Court.

Judgment of the Supreme Court

The Court first considered whether the work in question was original, in light of the defendant's argument that the work published did not involve any novelty in the field of legal sciences, either in relation to its content or the way the ideas were expressed. The Court reiterated that it is not the scientific content of the work that makes it original, but the way in which the ideas are put forward. What was relevant here, and made the work original, was that *"the way in which it was set out differed from that already in existence while not being commonplace"*.

Secondly, the Court looked at the question of authorship. The defendant alleged lack of authorship on the grounds that the paragraphs copied were not the creation of the claimant but of the professor, who had presented on the topic in question at a conference in 2009 which the claimant had attended. It was after this conference that they were included in the work allegedly copied. The Court dismissed this argument, clarifying that, apart from certain exceptions, there is no presumption of authorship of the professors who direct the creation of this type of work. The Court explained that it is normal when a professor directs the research work of his students for him to contribute towards its creation by providing ideas, guidance and suggestions, this being precisely the function pertaining to professors. This is not to say that, as a result, there is a partial or total presumption in relation to the authorship of the work, unless the parts of the work considered to have been copied had been published previously by the professor.

The Court therefore dismissed the cassation appeal and confirmed the judgment of the appellate court. The decision has been reported in more detail on Kluwer IP Law.

This entry was posted on Wednesday, April 1st, 2020 at 8:00 am and is filed under Case Law, Infringement, Originality, Reproduction (right of), Spain
You can follow any responses to this entry through the Comments (RSS) feed. You can leave a response, or trackback from your own site.