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Serendipity? **The positive effect of the CJEU's Case** **Law on Irish and British Authors**

Outline

- 1) Selection of areas: categorisation/works covered, protection requirements, rights & infringement, exceptions
 - NB: Caveat re ‘overruled’ decisions & Irish law
- Cases: *Infopaq(+)*, *Flos*, *Levola*, *Cofemel*
- 2) Value to UK and Irish authors and Brexit - Back to square one?



Defining selected areas impacted by CJEU case law

- Categorisation is over at least for LDMA (though special rules apply to some works, e.g. databases)
- Fixation is over?
- Lower originality requirement => higher
- Infringement => sometimes easier, sometimes harder
- Fewer economic rights and more exceptions (linked to categories) => now more rights and fewer exceptions
- **=> CJEU case law has rendered UK and Irish copyright laws more protective of authors in many respects**

Categorisation & fixation - impact of *Levola*

- In germ mainly in *BSA* and *FAPL*, ‘confirmation’ in *Levola*
- No categories required for ‘original works’ i.e. ‘LDMA’
- Mainly artistic works (*Creation Records* overruled in part) and some dramatic works i.e. video games (*Nova, Banner, Nintendo v PC Box*)? Sculptures (*Lucasfilm*)?
- Fixation: permanence is not required (>< *Merchandising Corporation of America v Harpbond*) – fixation not required?

Originality - impact of *Infopaq* and subsequent originality case law

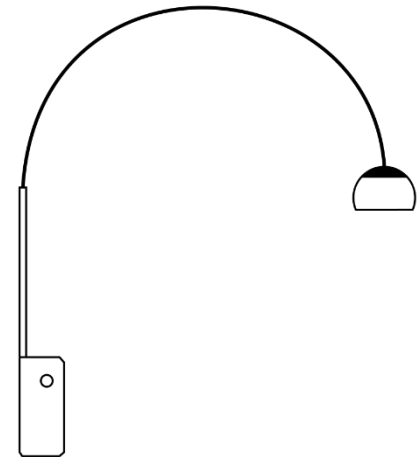
- AOIC => Short titles are now protected (>< *Exxon* and *Francis Day & Hunter v 20th Century Fox*)
- *Cofemel* - If CJEU follows AG, combination of *Levola* and *Cofemel* => works of artistic craftsmanship must be protected at lower level of AOIC (>< *Hensher+*)
- BUT fewer works are protected (>< *Ladbroke v William Hill*) ...

Rights and infringement

- ... BUT more strongly – *Painer* broadens scope of protection (>< *Kenrick v Lawrence*)
- Sometimes easier to infringe thanks to *Infopaq* – short parts which reflect the AOIC may not reflect SSJL or commercial value (>< *BBC v Time Out*)
- Do authors of artistic works have more rights? Performance and adaptation are not harmonised but important if work does not have to fall in a category (>< *Anacon* and *Electronic Techniques*) – purely domestic issue but affected by CJEU?

Exceptions

- *Flos*: S. 52 is repealed => full term of protection for works of applied art
- S. 51: *Infopaq* increased the scope of the exception



Arco lamp, Castiglioni brothers; drawing Andrea Pavanello, Wikipedia, CCBYSA



Value for British & Irish authors + Brexit

- Benefits authors? Less unfair but too protective in some respects? Court is not legislature, cannot fine-tune, give holistic reply
- Brexit: All these changes in vain?
- Maybe not, depends on outcome of deal
- Even if no deal, EU acquis is now part of UK domestic legislation until effectively repealed



Thank you for your attention



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