

Towards an author-centric European copyright law?

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Author-centric aspects of the EU copyright *acquis*

- Unwaivable right to equitable remuneration (Dir 2006/115, Art 5)
- Authorship provision re cinematographic and audiovisual works – to include principal director (Dir 2006/116, Art 2)
- Exceptions and limitations – requirement of attribution of source, fair compensation
- Artists' resale right (Dir 2001/84)
- Copyright & Related Rights in the DSM Dir, Art 18-22 (fair remuneration provisions)

Non author-centric features

- Recitals to IS Dir and DSM Dir refer to incentives for creativity – but nothing on recognition of creators' rights
- Absence of general provisions on authorship / ownership
- Until recently, limited contractual protection for authors
- Moral rights excluded from the *acquis*
- Low threshold of creativity / originality
- Copyright & Related Rights in the DSM Dir, Art 16 (*de-Reprobel* provision)

No creators' rights in European legal order

- *“Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”*

(UNDHR, Art 27(2))

- Not incorporated in Charter of Fundamental Rights

The development of a more author-centric approach in the CJEU's jurisprudence?

- (C-5/08) *Infopaq International A/S v Danske Dagblades Forening*
- (C-572/13) *Hewlett-Packard v Reprobel*
- (C-201/13) *Deckmyn v Vandersteen*

- (C-469/17) *Funke Medien NRW GmbH v FRG* (AGO)
- (C-476/17) *Pelham GmbH v Hütter* (AGO)
- (C-516/17) *Spiegel Online v Volker Beck* (AGO)

(C-469/17) *Funke Medien NRW GmbH v FRG*

- “...[The ‘creativity’ requirement] was not...invented by EU law: it appears in most domestic copyright laws, at least in continental law systems. [fn] It therefore forms part, in a sense, of the legal traditions of the Member States.” [17]
- “Copyright has two main objectives. The first is to protect the personal relationship between the author and his work as his intellectual creation and therefore, in a sense, an emanation of his personality. This primarily involves the area of moral rights.....

(C-469/17) *Funke Medien NRW GmbH v FRG*

“...The second objective is to enable authors to exploit their works economically and thus earn an income from their creative endeavours. This involves the area of property rights, subject to harmonisation at EU level. In order for a restriction on freedom of expression flowing from copyright to be characterised as necessary, it must meet those two objectives.” [58]

(C-469/17) *Funke Medien NRW GmbH v FRG*

- “...[T]he origin of and justification for copyright, in the form of both moral and property rights, lies in the special relationship between the author and his work. Thus, where there is no author, there is no copyright, in the form of either moral or property rights.” [60]

(C-476/17) *Pelham GmbH v Hütter* **(AGO)**

- In discussing the “fair balance” between competing rights:
 - “Moral rights, particularly the right to the integrity of the work, may legitimately preclude use of that work, even where that use is covered by an exception.” [Footnote is a reference to *Deckmyn*]

(C-516/17) *Spiegel Online v Volker Beck*

- Balance of rights:
 - Even though moral rights falling outside *acquis*, to be taken into account when interpreting legislative rules [77]
 - In balancing competing rights, author's freedom of thought under EU Charter, Art 10 to be considered. How can author exercise this freedom if change of conviction not acknowledged [79]

Conclusion

- Evidence of tension between “incomplete” system of EU copyright law and author-centric national systems
- How far can this process be carried in the case of moral rights?
- Are there other areas of the acquis which are open to such author-centric interpretation?
 - Interpretation of the concept of “author”?
 - Greater intrusion into contractual relations?
 - Oversight of applications of exceptions and limitations via Art 5(5)?