

Co creatorship in the digital era

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1

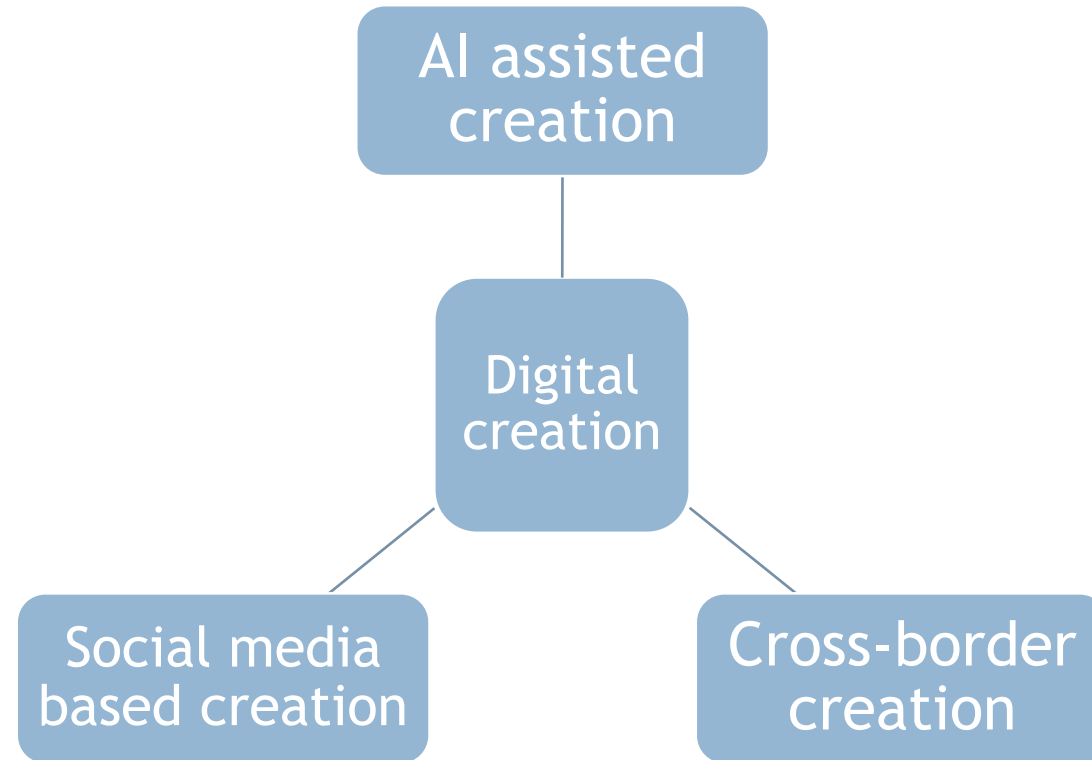
European Commission's Green Paper on Copyright and Related Rights in the Information Society (1995)

- *“The traditional picture of the author as a craftsman working more or less in isolation and using wholly original materials is contradicted by new forms of creation. The new products and services are increasingly the outcome of a process in which a great many people have taken part - their individual contributions often difficult to identify - and in which several different techniques have been used [...] (European Commission, 1995).”*

Multiple authors and Berne convention

- Article 7bis => the death of the last surviving author
- Recital 14 of the Term Directive: *“The question of authorship of the whole or a part of a work is a question of fact which the national courts may have to decide.”*

Contemporary challenges of co-creation





Work hypothesis

- Can a **common core** of joint authorship principles be found in the national copyright laws of the Member States which could serve as a basis for **an EU definition** of joint authorship fit for the digital age ?

Plan of the presentation

I. Basic Fundamental Components of Joint Authorship in EU Copyright Law

A. The territorial and chronological indifference in Joint authorship

B. The concept of “sufficient” / “significant” contribution

II. The fundamental divergences

A. “Common design” and “Common intention””: joint authorship vs derivative work

B. The “integration” requirement

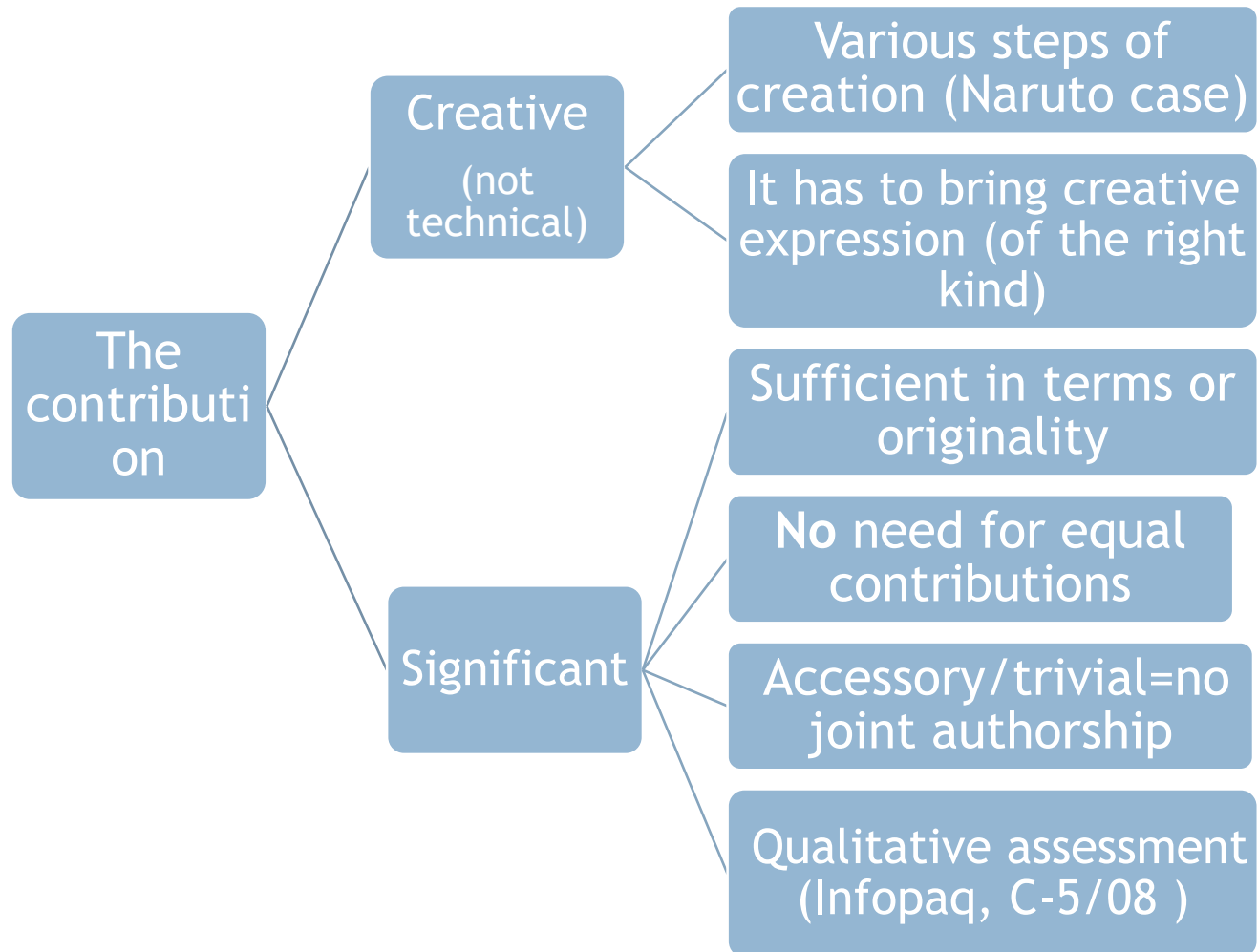
- UK : Cala Homes v Alfred McAlpine Homes East Ltd (1995), Beckingham v. Hodgens (2003), Brown vs Mcasso Music (2005)
- Cour Cassation 1er ch. Civ. 19 decembre 2013, no 12-28.912 (*the authors of songs which were later incorporated in an audiovisual work held to be joint authors of the audiovisual work*)
- CJEU: Painer case (C-145/10)



The territorial and chronological indifference in joint authorship



The concept of sufficient/significant contribution



Collaboration and “Common design”

- French copyright law: the collaborative work (*œuvre de collaboration*) is defined as a work of mind to the creation of which several natural persons have contributed.
- UK law also comprises “collaboration” in the concept of joint authorship.
 - According to CDPA, s10(1) “... a “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors”.
- Germany: “ Where several persons have jointly created a work without it being possible to separately exploit their individual shares in the work, they are joint authors of the work”.
- Spain: “the unitary result of the collaboration of two or more authors”

Two main tendencies

A loose perception of the “common design”

- Joint authorship is recognized even in the absence of a common intention be joint authors
- UK cases: Beckingham v Hodges, Springfield v Thame

A stronger requirement of “concerted creative effort” undertaken jointly

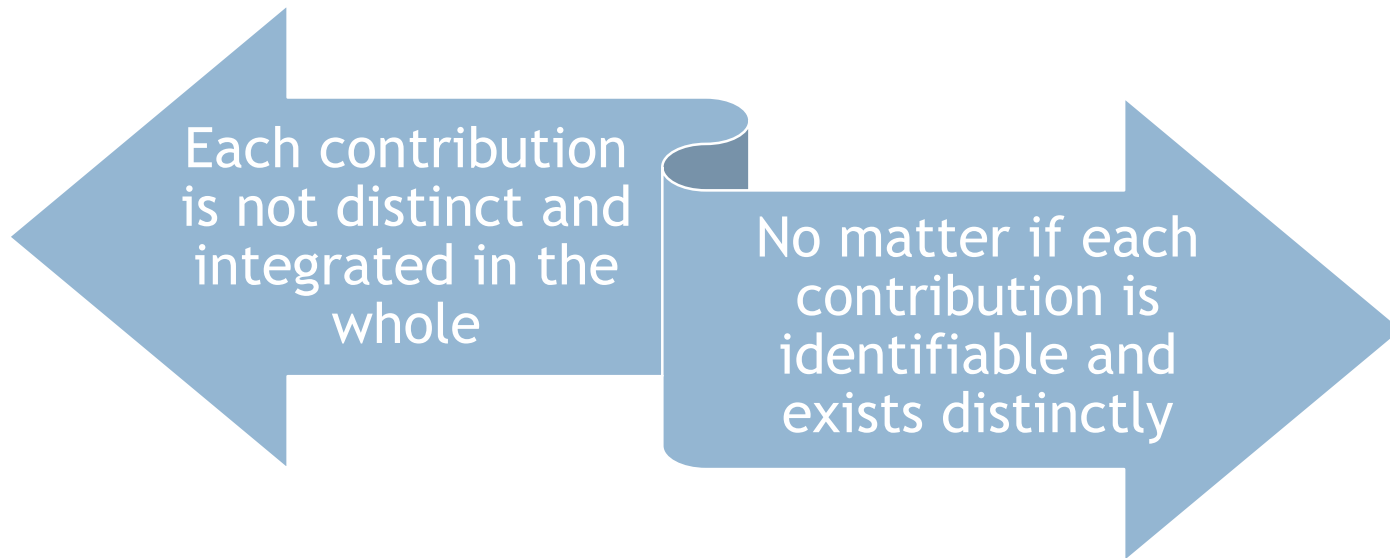
- “common inspiration” (“communauté d’ inspiration”)
- “mutual control” (“contrôle mutuel”),
- “intellectual intimacy” (“intimité spirituelle”)
- “direct collaboration” in Greek copyright law

The « common design” criteria and new digital works



- New forms of collaborative works respond only to the “loose” perception of the prerequisite of “common design”
- Findings in Levola case (C-310/17)=> the work defined by the objective “eyes” of the public?

The “integration” requirement



- **Factual inseparability** : UK, Ireland, Cyprus, Italy, Netherlands
- **Inseparability of the contributions from an economic point of view** : German, Czech, Hungarian law
- **2 scenarios** of collaborative works : Belgium (“divisible” and “indivisible”)

Conclusion

- EU copyright law shall decide on 2 issues :
 - First, the element of the factual inseparability of the contributions
 - Second, the “common design” prerequisite
- “intention to create”: emergence of AI assisted works

Thank you for your attention !

