

Originality in EU Copyright: Full Harmonization through Case Law


Eleonora Rosati

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INTEGRATION OF EU COPYRIGHT LAW An appreciation by Phillip Taylor MBE and Elizabeth Taylor of Richmond Green Chambers
Harmonisation of European Union law: will it ever happen? Specifically, will it ever happen for copyright law? As observed by Edward Elgar, the publishers of this thought provoking book, full harmonisation of the copyright laws of EU member states has long been a holy grail for copyright lawyers. The reality, they add is that only limited harmonization has occurred resulting from ad-hoc legislative interventions. Limited or not, the author Eleonora Rosati is unequivocal in seeing such harmonization as a process which in view of recent developments, will almost inevitably lead to greater harmonization in EU copyright law as time moves on. We are on the cusp of the convergence of two great trends, she remarks, the pervading influence of the digital environment and the progression of European integration. Integration of EU copyright law, if it eventually happens, will naturally pivot round the concept of originality; originality being the basis of copyright protection and the central core of copyright. In the UK, originality refers to skill, labour and effort, and is regarded as somewhat more loosely interpreted term than on the continent, at least that's what legal minds on the continent obviously think, preferring as they do a stricter definition. What is significant about Rosati's book, (which originated as a PhD thesis) is that even though originality lies at the heart of copyright law, it has never actually been subjected to such in-depth analysis as it receives here. Meticulously and extensively footnoted (a boon to researchers) this book explores virtually all aspects of originality in EU copyright, including insights into the way the legal understanding of this concept has changed over time and may well change further in the direction of evolving a truly harmonized EU copyright law, however feasible and/or desirable that may be. As the book focuses on case law, a very useful feature is its inclusion of a table of cases in chronological order across a range of jurisdictions worldwide. Note too, the tables of EU/EC/EEC legislation and of EU policy documents, also in chronological order. For obvious reasons, this book will have immediate appeal for copyright lawyers, especially those working cross-border in the EU. Academics, students and don't forget EU officials and policy makers areas will also find it intriguing, even visionary, for it is as much about future possibilities as it is about present realities. The publication date is cited as at 2013.

'This book guides us expertly through the controversial area of originality, a concept which lies at the very foundation of copyright law, but which has never before been analysed in any depth as a topic in its own right. Originality has however now become a hot topic, given the controversial recent case law of the EU Court of Justice on it, and the manner in which some national courts in the EU are seeking to apply it, which makes this book especially timely.' - Trevor Cook, Bird Bird LLP, UK
Full harmonization of the copyright laws of EU Member States has long been a holy grail for copyright lawyers, but with the reality thus far being only limited harmonization resulting from ad-hoc legislative interventions, there are serious questions over the feasibility and indeed desirability of this goal. Notwithstanding, as this book makes eloquently clear, whilst legislative initiatives have been limited, the CJEU has been acting proactively, establishing through its decisional practice the de facto harmonization of an important principle of copyright: the originality requirement. Through an assessment of the originality requirement, this work guides the reader in interpreting judicial decisions which are of fundamental importance to current and future understanding of EU copyright. The book's holistic approach and methodology takes in analysis of; recent decisions of the CJEU in light of broader EU copyright reform debate; the implications of CJEU case law in Member States which have traditionally adopted different approaches to copyright (eg the UK); the originality requirement in EU, UK and continental Member States; recent UK decisions from an EU perspective; and academic copyright reform projects, both in Europe and the US. Originality in EU Copyright will appeal to academics, policymakers and EU officers, students, practitioners and in-house counsels.
Contents: Foreword Table of Cases (in Chronological Order) Table of EU/EC/EEC Legislation (in Chronological Order) Table of EU/EC Policy Documents (in Chronological Order) Introduction 1. The Challenges of EU Copyright: 'United in Diversity' - Does it Work? 2. Originality as a Policy Tool: Shaping the Breadth of Protection 3. Originality in a Work, or a Work of Originality: The Effects of the Infopaq Decision 4. The CJEU Goes Ahead: The Decisions in Murphy, Painer, Football Dataco and SAS 5. Challenging the UK Understanding of Copyright: Originality and Subject-matter Categorization at the Forefront of the Debate 6. The Future of Copyright at the EU Level: The Shape of Harmonization Bibliography Index

'Rosati's text is both a readable and useful review of where we are in copyright at present, combined with a strong argument that we are on the 'right road'. . . Overall, Rosati's text provides a very accessible view of the topic. I have some scepticism that harmonization of originality is really the most central problem for the copyright system, but she puts her case across well.' -- Philip Leith, Web Journal of Current Legal Issues . . . this book will have immediate appeal for copyright lawyers, especially those working cross-border in the EU. Academics, students and don't forget EU officials and policy makers areas will also find it intriguing, even visionary, for it is as much about future possibilities as it is about present realities.' -- Phillip Taylor MBE and Elizabeth Taylor, The Barrister Magazine
'Rosati has made a valuable contribution to the study of European copyright law.' -- Sir Richard Arnold, Journal of Intellectual Property Law and Practice
'This book guides us expertly through the controversial area of originality, a concept which lies at the very foundation of copyright law, but which has never before been analysed in any depth as a

topic in its own right. Originality has however now become a hot topic, given the controversial recent case law of the EU Court of Justice on it, and the manner in which some national courts in the EU are seeking to apply it, which makes this book especially timely.' -- Trevor Cook, Bird Bird LLP, UK 'This text has been well drafted and documented, the legal analysis is sound and competent and the author manages to provide useful insights into UK and US law. She also manages to put her subject in perspective, taking into account the inevitable policy issues, which, however, could be extended to what the actual role of the court is in the much-debated EU copyright harmonisation. I strongly recommend reading this book.' -- Irini Stamatoudi, European Intellectual Property About the Author Eleonora Rosati, Italian-qualified Lawyer and Post-doctoral Research Associate, University of Cambridge, UK. Previously, she was a PhD Researcher at the European University Institute, Italy