

THE DEVELOPMENT AND HARMONISATION OF ORIGINALITY STANDARD OF PHOTOGRAPHIC WORKS IN THE COPYRIGHT FRAMEWORK OF THE EUROPEAN UNION

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Abstract: *The presented paper aims to assess and further explore the potential effects the jurisprudence of the Court of Justice of the European Union (“CJEU”) in the area of originality of photographic works might have on various national different understandings of originality itself and also on the provision of copyright protection to the products of photographic labour in each Member State of the EU (“Member State”). It is evident the CJEU with its jurisprudence took on to unify and harmonise different national approaches of the Member States. However, it is still relatively unknown how will the national copyright frameworks of the Member States adjust to the newly proposed rules of protection.*

1. Introduction to the Problem

Prior to the initiation of the harmonisation process in the field of copyright within the European Union (“EU”), fragmented national copyright frameworks originating from unique historical and social developments in each Member State did not ensure uniformity in granting copyright protection to photographic works.¹ As a result, the protection of photographic works in different Member States varied. In terms of legislation, the situation was officially recognised by Directive No. 2006/116/EC (“Term Directive”). The fragmentation was acknowledged in its Recital 16, which states that protection of photographic works “is the subject of varying regimes”.² From the perspective of the intended creation of a harmonised internal market³, the outlook of probable inconsistent decisions of national courts operating under individual copyright frameworks of Member States was not a desirable one.

1.1. Protection of Photographic Works – European Union Framework

Amongst the instruments of the first harmonisation phase and as the most relevant to photographic works, the Term Directive grants protection by copyright to all photographic works through its Article No. 6, given these are original in the sense that they are the author’s own intellectual creation.⁴ The diction of Article 6 of the Term Directive also creates a dual subject-matter differentiation for photographic works – it explicitly divides

¹ The notion of „photographic work“ will be used throughout the research topic proposal as a joint notion for photographs and other photographs in terms of the Term Directive, unless stated otherwise.

² Rec. 16, Directive 2006/116/EC of the European parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights [2006] OJ L 372/12.

³ CRAIG P. and HARLOW C., *Lawmaking in the European Union* (Kluwer 1999), Page 169.

⁴ Art. 6, Directive 2006/116/EC of the European parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights [2006] OJ L 372/12.

photographic works into photographs and other photographs. The Term Directive leaves the protection of the latter at the discretion of Member States. From the wording of Article 6, it can be derived that photographs are to be considered original and other photographs not. One can then deduce that the originality of a photographic work is the determining factor in whether it is to be granted copyright protection.

1.2. Jurisprudence of the CJEU on Photographic Works

Copyright law of the EU must rely on further interpretation of the Article 6 of the Term Directive by the CJEU through its case law. Such additional interpretation of legislature by the CJEU represents the second phase of the harmonisation process.⁵

Further interpretation of the originality standard by the CJEU runs through a string of case law. Case No. C-145/10⁶ (“Painer”) can be considered the most relevant to photographic works. The CJEU has described a number of ways through which a photographer can make free and creative choices at various points in production of a photographic work, through which originality can be demonstrated to the court⁷, hereby manifesting why a certain photographic work should be considered original and worthy of copyright protection. The manoeuvring room for demonstration of free and creative choices photographers can make throughout various stages of production of a photographic work has been set widely by the CJEU. As a result, in most Member States, copyright protection should be extended to photographic works which might not have been traditionally considered original in the past. By its decision in the Painer, the CJEU has thus lowered the threshold of the originality standard applicable to photographic works within most Member States’ copyright frameworks, with the result that only few photographic works would fail to satisfy it.

1.3. What is a Photographic Work?

At the time of its invention in the early 19th century, photography was at first considered non-creative, and therefore non-original mechanical process of producing images by exposing chemically sensitive material to light. However, with the gradual expansion of the technology, photography came to be considered an artistic activity, and its output – a photographic work, potentially artistic and therefore original.⁸

Turning to possible definitions of what a photographic work is and by what processes it is created, the definition provided by the Copyright, Designs and Patents Act 1988 (“CDPA”) of the United Kingdom, as one of the most fitting, was chosen:

*“a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film”.*⁹

The aforementioned definition reliably covers all types of photographic techniques by its width. Nonetheless, the extent to which copyright protection should be provided to photographic works has proved somewhat controversial.¹⁰ Still, photography, as a medium providing second-hand views of reality enabled by means of technical apparatuses and chemical or electronical processes, is hard to conceptualise, especially when compared to long-established products of artistic activities, such as paintings or sculptures.

⁵ MARGONI T., “The Harmonisation of EU Copyright Law: The Originality Standard” [2016] SSRN Electronic Journal.

⁶ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798.

⁷ *Ibid.*, [90].

⁸ BENTLY L. and SHERMAN B., *Intellectual Property Law* (Oxford University Press 2004), Page 91.

⁹ Copyright, Designs and Patents Act 1988 (UK), s 4 (2) b).

¹⁰ NORMAN, H., *Intellectual Property Law Directions* (2nd ed.) (Oxford University Press 2014), Page 209.

The medium itself, given the wide range of possible exploitations of its potential by relatively unskilled individuals and with it connected the often ease of creation by a simple pressing of a button, the photography might still be struggling to find and secure its position amongst other traditional works of art.

1.4. Why Photographic Works?

As described in the previous paragraph, photographic works, being a special subject matter, have always created problems for copyright law.¹¹ Even nowadays, wide-spread new photographic technologies contribute to numerous and significant challenges and implications within the domain of copyright law.¹²

Photographic works might not be always easily marked with sufficient precision as original and therefore worthy of copyright protection. Moreover, some genres of photographic works are traditionally looked upon as non-original by their nature. In the context of the copyright framework of the European Union, Recital 16 of the Term Directive expressively states that the protection of other photographs – the non-original photographic works, is left to the discretion of the Member States.¹³ In the *Painer*, the CJEU confirms this and leaves the final decision regarding the presence of originality to be determined by national courts.¹⁴ If a national court finds the originality standard not to be applicable to a particular photographic work, it will be exempt from the copyright protection framework of that Member State. Photographic works could be labelled as “other photographs” and therefore be subject to decreased or no protection at all, depending on national legislation. Also, given the said expansion of copyright protection, national courts might begin to consider criteria such as merit or purpose of photographic works when determining their originality. The author of a photographic work, their career, popularity or level of professionalism might play a major role in the national court’s decision as well. One of the outcomes of such practices by national courts could see a decrease of the growing numbers of original photographic works due to the *Painer* decision. However, national courts are expressly prohibited to consider any of these criteria.¹⁵

As can be evident from the previous paragraph, provisions of the Term Directive explicitly foresee situations in which a photographic work might be subject to a dual treatment. Therefore, room for numerous differentiations of ranking in statuses of photographic works in various Member States is clearly expected by the EU legislator. The protection of a photographic work, might vary from Member State to Member State, including provision of protection itself, its type, length, its beginning and end.

2. Originality Criteria Introduced by the EU – First Harmonisation Phase

As part of the first phase of the harmonisation process undertaken in the EU in the field of copyright, an originality standard deriving from the traditions of the continental EU was formed. However different the copyrightable subject matters might be, the basis of the originality standard is always the “author’s own intellectual creation”. This established originality standard for works is to be applied to every area of copyright harmonised through its corresponding Directive. All Directives are consistent in their terminology: protection by copyright is provided only to works which are the author’s own intellectual creation.

More specifically related to the subject of photographic works, Article 6 of the Term Directive states that protection by copyright shall be provided only to photographic works original in a sense that they are the author’s

¹¹ LADDIE H. and others, *The Modern Law of Copyright and Designs* (LexisNexis 2011), Page 253.

¹² KATZENBERGER, *Neue Urheberrechtsprobleme der Photographie – Reproduktionsphotographie, Luftbild – und Satellitenaufnahmen* (GRUR, Int 1989) 116.

¹³ Rec. 16, Directive 2006/116/EC of the European parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights [2006] OJ L 372/12.

¹⁴ *Ibid.*, [99].

¹⁵ Rec. 16, Directive 2006/116/EC of the European parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights [2006] OJ L 372/12.

own intellectual creation.¹⁶ With the Term Directive being the most relevant to photographic works amongst other Directives, the evolution of the Directive itself as well as the originality standard contained therein will be given substantial attention.

The first codified version of the Term Directive, the Council Directive 93/98/EEC¹⁷, included the first uniform standard of originality to be applied solely to photographic works in all Member States. In its Recital 17, which was transposed in full into the Recital 16 of the currently effective Term Directive, the Council Directive 93/98/EEC reads:

*“...a photographic work within the meaning of a Berne Convention is to be considered original if it is the author’s own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account...”*¹⁸

In order to fully comprehend its meaning and implications in terms of applicability to photographic works, we shall proceed to deconstruct the quoted originality standard with individual definitions of its notions.

The first notion, “photographic work”, represents an umbrella term used in both, the Council Directive 93/98/EEC and the Term Directive for photographs and other photographs. The former is considered to be an original work worthy of copyright protection, while the latter is not. From a traditional (analogue) technical standpoint, a photographic work can be characterised as product of the art or a process of producing images by means of the chemical action of light upon a sensitive film on a basis of paper, metal, glass, etc.¹⁹ However, this definition must be revised to reflect the current state of the art of photographic apparatuses and equipment. In simplified wording, a photograph is an image created by light on any photosensitive surface, whether it be a photographic film or a digital electronic image sensor. However, the notion of a photographic work should always be understood within the meaning of the “Berne Convention”, according to both Directives. Direct referrals to the second selected notion only emphasize the importance of this international treaty. Amongst other works, the Berne Convention for the Protection of Literary and Artistic Works provides a global cornerstone framework for protection of photographic works in its Article 2.²⁰ All Member States are also its contracting parties. The photographic work must also be “original”, i.e. not secondary, derivative or imitative.²¹ The third notion therefore requires a photographic work to be the first instance or initial source.

In general terms, the fourth selected notion of the “author” signifies the originator or a creator of something.²² When photographic works are created, their author is called a photographer. Overly simplified, a photographer is thus a person who produces a photographic work using a photographic apparatus. Closely connected to the person of an author is the fifth notion of a “own intellectual creation”. The adjective “intellectual” is meant as stemming from one’s intellect. The notion itself can be defined as the faculty of reasoning and understanding objectively, especially with regard to abstract matters.²³ The condition the photographer’s intellectual input into the creation of a photographic work emphasizes the level of the originality standard for input in the form of abstract concepts into photographer’s mind and their transformation into an objectively perceived medium: the photographic work. This input has to be the photographer’s own and personal, as indicated in

¹⁶ Art. 6, Directive 2006/116/EC of the European parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights [2006] OJ L 372/12.

¹⁷ Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights [1993] OJ L 290/9.

¹⁸ Ibid., Rec. 17.

¹⁹ GENDREAU Y., NORDEMANN A. and OESCH R., Copyright and Photographs: an International Survey (Kluwer Law International 1999), Page 26.

²⁰ Berne Convention for the Protection of Artistic and Literary Works (as amended on September 28 1979) [1979], Article 2 (1).

²¹ “Original” (Merriam-Webster) <https://www.merriam-webster.com/dictionary/original>.

²² “Author” (Merriam-Webster) <https://www.merriam-webster.com/dictionary/author>.

²³ “Intellect: Definition of Intellect in English by Lexico Dictionaries” (Lexico Dictionaries | English) <https://en.oxforddictionaries.com/definition/intellect>.

the formulation of the originality requirement. The resulting creation represents an act of creating or bringing something into existence – something that is created.²⁴

In addition to the above, a photographic work must reflect its creator's personality. The sixth notion of "personality" can be defined as a combination of characteristics or qualities that form an individual's distinctive character.²⁵ Apart from the requirement of own intellectual creation, the photographic work must be unique in a way of displaying their personal distinctive touch. This part of the originality requirement ensures that the photographic work is distinguishable from the works of other photographers on the basis of uniqueness of personality of each photographer as a person.

The seventh and the final eighth notion are "merit" and "purpose". Merit can be characterised as a quality of being particularly good or worthy, especially so as to deserve praise or reward.²⁶ Purpose, which shall not be taken into account when assessing the originality of a photographic work, represents the reason for which something is done or created or for which something exists.²⁷ Evaluating the merit and purpose of a photographic work can lead to assessments based on reputation or popularity standing of the photographic work, the genre it belongs to or its author's profile in society or amongst other photographers. This can lead to biased court decisions. Merit and purpose are excluded to prevent subjective assessments of the originality in photographic works. Photographic works would therefore be assessed without prejudice related to the reason behind their creation or their creator as a person.

However, Recital 17 of the Council Directive 93/98/EEC, the predecessor of the Term Directive, also included the following wording:

*"...whereas in order to achieve a sufficient harmonization of the term of protection of photographic works, in particular of those which, due to their artistic or professional character, are of importance within the internal market..."*²⁸

To some degree, this is contradictory to further statements prohibiting the assessment of merit and purpose of a photographic work, as described above. It is hard to understand the descriptors "artistic" or "professional" other than to indicate the context or aesthetic worth of the photographic work.²⁹ It has been suggested, that the decision whether or not there is a sufficient amount of creative input may therefore depend, illogically, on the type of context in which the photographic work was taken.³⁰ This contradiction was later amended by the Term Directive, in which the reworded diction of its now Recital 16 completely left out references to artistic or professional character as well as to importance within the internal market, and thus declared the requirement of total objectivity when assessing the originality, in accordance with the originality standard stated therein.

The concept of the "author's own intellectual creation" was adopted as a compromise formula during the first phase of the harmonisation process between the relatively low originality threshold required as a precondition for copyright protection in the UK and the higher standards being used throughout the Member States of the EU.³¹ Nonetheless, the true meaning of this definition and its applicability remained rather unclear. Further

²⁴ "Creation" (Merriam-Webster) <https://www.merriam-webster.com/dictionary/creation>.

²⁵ "Personality: Definition of Personality in English by Lexico Dictionaries" (Lexico Dictionaries | English) <https://en.oxforddictionaries.com/definition/personality>.

²⁶ "Merit: Definition of Merit in English by Lexico Dictionaries" (Lexico Dictionaries | English) <https://en.oxforddictionaries.com/definition/merit>.

²⁷ "Purpose: Definition of Purpose in English by Lexico Dictionaries" (Lexico Dictionaries | English) <https://en.oxforddictionaries.com/definition/purpose>.

²⁸ Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights [1993] OJ L 290/9, Recital 17.

²⁹ TRITTON G., *Intellectual Property in Europe* (Sweet & Maxwell 2008), Page 519.

³⁰ *Ibid.*

³¹ STAMATOUDI I.A. and TORREMANS P., *EU Copyright Law: a Commentary* (Edward Elgar 2014), Page 1103.

clarification of the drafted originality standard was left to the CJEU through its case law during the second harmonisation phase.

3. Originality Criteria Introduced by the EU – Second Harmonisation Phase

Further interpretation of legislature by the CJEU provides an additional significant source of information on the applicability of legal provisions and their approximation to factual situations. In the past, the CJEU was asked to decide a number of cases related to originality and copyright. The case law chosen to demonstrate the development of originality standard was selected in respect to its relevance in terms of the degree of assessment of originality of works and suitability of its analogous applicability to photographic works. Due to the limited space provided by this paper, only the most relevant decisions of the CJEU to the dissertation topic are to be described in detail below. Amongst the cases intentionally left out for the aforementioned reasons are the following: The *Infopaq* case³², The *Bezpečnostní softwarová asociace* case³³, The *Murphy* case³⁴, The *Football Dataco* case³⁵, The *SAS* case³⁶, The *Levola* case³⁷, The *Cofemel*³⁸ and The *Brompton Bicycle* case³⁹.
*The Painer case*⁴⁰

In essence, clarification was sought as to whether the originality standard for photographic works, as defined in Article 6 of the Term Directive, and according to which copyright protection vests in photographs which are their “author’s own intellectual creation”, is such as to include photographic works of portrait genre.⁴¹ If the answer to this question were affirmative, the follow up question of the referring Austrian court was whether the threshold for protection should be higher than for other categories of photographic works, because of the allegedly minor degree of creative freedom such photographic works display.⁴² In other words, the referring court wanted to clarify if the photographic works of portrait genre are afforded “weaker” copyright protection or no copyright protection at all, due to their realistic nature and with it connected the minor formative freedom of a photographer.⁴³

A breakdown of the Advocate General Trstenjak’s opinion⁴⁴ will be presented first. Amongst other considerations, Trstenjak noted that the creator of a portrait photographic work enjoys a small degree of individual formative freedom, thus the copyright protection of such photographic work is accordingly narrow.⁴⁵ In order for such photographic work to be original in similar cases, a photographer must utilise the available formative freedom available to them.⁴⁶ Trstenjak also noted the absence of several aspects, such as a certain degree of artistic quality or novelty, purpose of creation, expenditure and costs.⁴⁷ In respect to the aforementioned, the conclusion reached by Trstenjak stated that due to the not excessively high criteria governing copyright protection of photographic works in the Term Directive, photographic works of the portrait genre are afforded

³² C-5/08 *Infopaq International* [2009] ECLI:EU:C:2009:465.

³³ C-393/09 *Bezpečnostní softwarová asociace* [2010] ECLI:EU:C:2010:816.

³⁴ C-403/08 *Football Association Premier League and Others* [2011] ECLI:EU:C:2011:631.

³⁵ C-604/10 *Football Dataco and Others* [2012] ECLI:EU:C:2012:115.

³⁶ C-406/10 *SAS Institute* [2012] ECLI:EU:C:2012:259.

³⁷ C-310/17 *Levola Hengelo* [2018] ECLI:EU:C:2018:899.

³⁸ C-683/17 *Cofemel* [2019] ECLI:EU:2019:721.

³⁹ C-833/18 *Brompton Bicycle* [2020] ECLI:EU:C:2020:461.

⁴⁰ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798.

⁴¹ ROSATI E., *Originality in EU Copyright: Full Harmonisation through Case Law* (Edward Elgar 2013), Page 151.

⁴² *Ibid.*, page 151.

⁴³ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798, para. 43 (4).

⁴⁴ C-145/10 *Painer* [2013] ECLI:EU:C:2011:239, Opinion of AG Trstenjak.

⁴⁵ *Ibid.*, [108].

⁴⁶ *Ibid.*, [122].

⁴⁷ *Ibid.*, [123].

copyright protection if they are an original intellectual creation of a photographer, which requires them to have left their mark by using the available formative freedom.⁴⁸

In line with its previous case law on the subject, the CJEU held that in order for a photographic work to be eligible for copyright protection, it must be the author's own intellectual creation⁴⁹ provided that the author was able to express their creative abilities in its production by making free and creative choices.⁵⁰ These creative choices can be characterised as those which can be isolated by a method of asking whether two authors would have been likely to produce essentially the same work in comparable circumstances.⁵¹ It is these creative choices that produce the protectable expression – an original work.⁵² According to the CJEU, copyright-protected expression in a form of an original photographic work may manifest in several ways and at various points throughout its production:

*“In the preparation phase, the photographer can choose the background, the subject's pose and the lighting. When taking a portrait photograph, he can choose the framing, the angle of view and the atmosphere created. Finally, when selecting the snapshot, the photographer may choose from a variety of developing techniques the one he wishes to adopt or, where appropriate, use computer software.”*⁵³

The remaining room for creative choices, however limited, is nonetheless still sufficient to produce an original photographic work.⁵⁴ Therefore, the creative choices, as described by the CJEU, can be conveniently executed by photographers in the context of production of a photographic work. However, the CJEU did not provide guidance on how much significance should be attributed to the creative part of the choices taken.⁵⁵ Accordingly, whether or not the input in the form of creative choices is sufficient for a finding of originality depends on the context of a photographic work.⁵⁶ Nonetheless, the final decision on the presence of the “personal touch” of a photographer in the photographic work is to be determined by national courts on case to case basis.⁵⁷

4. Conclusion

The CJEU's emphasis on the presence of a “personal touch”, the manifested outcome of the author's creative choices in a work, serves the purpose of clarifying the applicable sole criterion for originality – a combination of author's personality and their own intellectual creation.⁵⁸ Additionally, the concept of personal touch itself serves as a convenient tool to differentiate between carefully composed photographic works and mere “point and shoot” snapshots.⁵⁹ This differs from the situation in the UK, where even a mere snapshot might be original and copyrightable due to its great commercial potential.⁶⁰ The CJEU's decision in the Painer has had an immense impact on the subject matter categorisation. The CJEU stressed the need to focus on the

⁴⁸ Ibid., [215] (4).

⁴⁹ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798; para. 87.

⁵⁰ Ibid., [89].

⁵¹ GERVAIS D./DERCLAYE E., „The scope of computer program protection after SAS: are we closer to answers?“ (2012) 34(8) *European Intellectual Property Review*, Pages 565–572.

⁵² Ibid.

⁵³ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798; para. 91.

⁵⁴ HANDIG C., The “sweat of the brow” is not enough! – more than a blueprint of the European copyright term “work“ (2013) 35(6) *European Intellectual Property Review*, Pages 334–340.

⁵⁵ Ibid.

⁵⁶ STAMATOUDI I.A. and TORREMANS P., *EU Copyright Law: a Commentary* (Edward Elgar 2014), Page 278.

⁵⁷ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798; para. 94.

⁵⁸ ROSATI E., *Originality in EU Copyright: Full Harmonisation through Case Law* (Edward Elgar 2013), Page 153.

⁵⁹ LEE Y.H., “Photographs and the standard of originality in Europe: Eva-Maria Painer v Standard VerlagsGmbH, Axel Springer AG, Süddeutsche Zeitung GmbH, SPIEGEL-Verlag Rudolf AUGSTEIN GmbH & Co KG and Verlag M. DuMont Schauberg Expedition der Kölnischen Zeitung GmbH & Co KG (C-145/10)” (2012) 34(4) *European Intellectual Property Review*, Pages 290–293.

⁶⁰ CORNISH W.R. and LLEWELYN D., *Patents, Copyrights, Trademarks and Allied Rights* (Sweet & Maxwell Ltd 2007), Page 429.

actual presence of originality in the photographic work, rather than on the photographic genre the assessed photographic work belongs to.⁶¹

Through its decision in the Painer, the CJEU forces national courts to explore the potential of photography as a medium. National courts have to assess photographic works in detail and investigate their production process in order to discover aspects in which the originality of such works might reside. The CJEU has also affected photographers. They now have a manual of steps, which if taken and manifested in photographic works via the notion of “personal touch”, shall ensure originality – thus strengthening their position in terms of copyright protection. Last but not least, the CJEU has also influenced the social perception of certain traditionally non-original photographic genres as original.

The string of case law on the subject is united by one common notion – the “author’s own intellectual creation”. The notion itself is to be understood as consisting of “creative freedom”,⁶² “personal touch”⁶³ and “free and creative choices”.⁶⁴

To conclude, by application of CJEU’s guidance, whether it be direct instructions or tests derived from its case law, the national courts must make a finding of originality in works, which, at that time, appeared to be the sole requirement qualifying a work for copyright protection.⁶⁵ However, the notion of copyright protectable work now also presupposes the fulfilment of requirement of “sufficient precision and objectivity” of the expression, apart from originality.⁶⁶ Therefore, following the decisions in *The Levola*, *The Cofemel* and *The Brompton Bicycle* cases, any creative product, regardless of its nature, may be considered an object of copyright protection, if the cumulative requirements of originality and identification with sufficient precision and objectivity are fulfilled.⁶⁷ However are the objectivity and precision considered to be criteria known for their hard conceptualisation and application to artistic expressions.⁶⁸ Nevertheless, their fulfilment should not pose a problem for photographic works.

5. Literature

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⁶¹ *Ibid.*, page 154.

⁶² C-403/08 *Football Association Premier League and Others* [2011] ECLI:EU:C:2011:631.

⁶³ C-145/10 *Painer* [2013] ECLI:EU:C:2011:798.

⁶⁴ C-604/10 *Football Dataco and Others* [2012] ECLI:EU:C:2012:115.

⁶⁵ ROSATI E., *Originality in EU Copyright: Full Harmonisation through Case Law* (Edward Elgar 2013), Page 188.

⁶⁶ ROSATI, E. (2019, September 17), *The Cofemel decision well beyond the “simple” issue of designs and copyright*. The OPKat. Available at: <https://ipkitten.blogspot.com/2019/09/the-cofemel-decision-well-beyond-simple.html>.

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