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Protection for databases : the European Database Directive and its effects in the Netherlands, France and the United Kingdom

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Protection for databases

Protection for databases

The European Database Directive
and its effects in the Netherlands,
France and the United Kingdom

PROEFSCHRIFT

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The motto by Man Ray (American Dadaist and surrealist, 1890-1976) was taken from his preface in L. Anselmino, *Man Ray opera grafica*, Torino 1973.

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To create is divine, to reproduce is human

Man Ray

Preface

A lengthy project has come to an end. When we started our research on the Database Directive it had not even been transposed in the countries on which we focused this study. Yet, because of the prolonged length of the project, we were able to take note of the important judgments which the European Court of Justice delivered on the Directive's interpretation in November 2004, and of the first evaluation of the Directive. Moreover, we had the opportunity to travel abroad. We enjoyed a useful stay at the Max-Planck-Institut für Geistiges Eigentum, Wettbewerbs- und Steuerrecht in München and also visited the Institut de Recherche en Propriété Intellectuelle Henri Desbois (IRPI) in Paris.

At first, our intention was to study the effects of the Database Directive in more countries than the three which we eventually chose. We were especially keen on Italy because an intensive course in Italian was compulsory during our study of art history, as were several research visits to Florence. However, this plan proved to be too ambitious given the several posts which we held alongside conducting our Ph.D. research. Although these posts delayed our research, we could not have done without them. They enabled us to escape from academic humour and take part in the 'real world'. Here, we were glad to be able to work on the interface between law and the arts, which perfectly matched our training as a lawyer and an art historian. We would very much like to thank our former colleagues at the Council for Culture for the opportunity to learn about cultural policy and museum management, and at the Council of State, where we gained an insight into the law on subsidies and on the protection of cultural heritage.

Our dual training also accounts for the concern expressed in this study regarding the public interest served by museums, libraries and archives. In fulfilling their task of preserving our common cultural heritage and making it available on the internet for scholars and the general public, copyright and the new *sui generis* right present them with serious obstacles. Besides our Ph.D. research we had the opportunity to write some publications in which legal information is 'translated' for non-lawyers working in the cultural sector. We have learned that cultural institutions are in great need of such publications and we are grateful to the Boekmanstichting in Amsterdam, the Archives Taskforce, the Museums Association and the National Library for inviting us to help meet this need. We also wish to thank the Faculty of Creative and Performing Arts of Leiden University and the Reinwardt Academy in

Amsterdam for enabling us to regularly give guest lectures to their students, who have broadened our mind by their captivating questions. Our research has highly benefited from these experiences.

Finally, we also owe great debt to our colleagues at eLaw@Leiden, Centre for Law in the Information Society, at Leiden University for facilitating and supporting our Ph.D. research and our other research projects in many ways. They have always provided an excellent 'ambiente' for our efforts.

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Table of abbreviations

Periodicals are given in italics

AIDA	<i>Annali italiani del diritto d'autore, della cultura e dello spettacolo</i>
AMI	<i>Tijdschrift voor Auteurs-, Media- en Informatierecht</i>
AMR	<i>Auteursrecht, tijdschrift voor auteurs- en mediarecht</i>
art(s).	article(s)
BC	Berne Convention for the Protection of Literary and Artistic Works
BGH	Bundesgerichtshof (German Supreme Court)
BIE	<i>Bijblad Industriële Eigendom</i>
CA	Cour d'appel (French Court of Appeal)
Cass.	Cour de cassation (French Supreme Court), with the chambers:
1re civ.	première chambre civil (first civil law chamber)
ass. plén.	assemblée plénière (full assembly)
CDPA	Copyright, Designs and Patents Act 1988 (British Copyright Act)
Ch.	<i>Law Reports, Chancery Division (3rd Series)</i>
Ch. D.	<i>Law Reports, Chancery Division (2nd Series)</i>
Ch.D.	Chancery Division of the England and Wales High Court
C.L.S.R.	<i>Computer Law & Security Report</i>
CMLR	<i>Common Market Law Review</i>
CPI	Code de la Propriété Intellectuelle 1992 (French Copyright Act)
CR	<i>Computerrecht</i>
CRDR	Copyright and Rights in Databases Regulations 1997 (British transposition)
CuR	<i>Computer und Recht</i>
CuR Int	<i>Computer und Recht International</i>
D.	<i>Recueil Dalloz Sirey</i> , with the following sections:
chron.	<i>chronique</i>
inf. rap.	<i>informations rapides</i>
jur.	<i>jurisprudence</i>
somm.	<i>sommaires commentés</i>
D. Affaires	<i>Recueil Dalloz Sirey – Cahier Droit des Affaires</i>
DCA	Auteurswet 1912 (Dutch Copyright Act)
D.I.T.	<i>Droit de l'informatique et des télécoms</i>
ECLR	<i>European Competition Law Review</i>
Ecosoc	Economic and Social Committee (EU)
ECR	<i>European Court Reports</i>
EEA	European Economic Area
EIPR	<i>European Intellectual Property Review</i>
E.M.L.R.	<i>Entertainment and Media Law Reports</i>

EU	European Union
EWCA (<i>Civ</i>)	<i>England and Wales Court of Appeal (Civil Division)</i>
EWHC (<i>Ch</i>)	<i>England and Wales High Court (Chancery Division)</i>
EWHC (<i>Pat</i>)	<i>England and Wales High Court (Patents Court)</i>
F.S.R.	Fleet Street Reports
Gaz. Pal.	Gazette du Palais
GRUR	Gewerblicher Rechtsschutz und Urheberrecht
GRUR Int	Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil
HR	Hoge Raad (Dutch Supreme Court)
H.R.	House of Representatives (abbreviation used for United States bills)
IER	<i>Intellectuele Eigendom & Reclamerecht</i>
IIC	<i>International Review of Industrial Property and Copyright Law</i>
ISO	International Organization for Standardization
JAVI	<i>Juridische Aspecten van Internet</i>
JCP	<i>Juris-Classeur Périodique (La Semaine Juridique)</i>
KG	<i>Kort Geding</i>
LAB	Legal Advisory Board (EU)
<i>L. Ed.</i>	<i>United States Supreme Court Reports, Lawyers' Edition</i>
MMR	<i>Multimedia und Recht</i>
NJ	<i>Nederlandse Jurisprudentie</i>
NJB	<i>Nederlands Juristenblad</i>
NJW	<i>Neue Juristische Wochenschrift</i>
NJW-CoR	<i>Neue Juristische Wochenschrift Computerreport</i>
NMa	Nederlandse Mededingingsautoriteit (Dutch Competition Authority)
no(s).	number(s)
note	with annotation by
NTER	<i>Nederlands Tijdschrift voor Europees Recht</i>
OJEC	<i>Official Journal of the European Communities</i>
OPTA	Onafhankelijke Post en Telecommunicatie Autoriteit (Dutch Independent Post and Telecommunications Authority)
para(s).	paragraph(s)
PbEG	<i>Publicatieblad van de Europese Gemeenschappen</i>
reg(s).	regulation(s)
RIDA	<i>Revue Internationale du Droit d'Auteur</i>
RTD <i>com</i>	<i>Revue trimestrielle du droit commercial</i>
RPC	<i>Reports of Patent, Design and Trade Mark Cases</i>
<i>RvdW</i>	<i>Rechtspraak van de Week</i>
<i>Schulze</i>	<i>E. Schulze, Rechtsprechung zum Urheberrecht, München: Beck 1979-</i>
ScotCS	<i>Scottish Court of Session Decisions</i>
S. Ct.	United States Supreme Court
<i>S. Ct.</i>	<i>Supreme Court Reporter</i>
S.I.	Statutory Instrument (subordinate legislation of the United Kingdom)
s.l.	sine loco (without place of publication)
s(s).	section(s)
TGI	Tribunal de Grande Instance (French Court of First Instance)
<i>T.L.R.</i>	<i>Times Law Reports</i>

TRIPS	GATT Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994
US	United States
<i>U.S.</i>	<i>United States Supreme Court Reports</i>
USC	United States Code title 17 on copyright
v.	versus
WIPO	World Intellectual Property Organisation
<i>W.L.R.</i>	<i>Weekly Law Reports</i>
ZR	<i>Rechtsprechung in Zivilsachen</i>

