



Annex to Chapter 8 on the InfoSoc Directive – Reproduction right

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|  <i><u>Dr. Péter Mezei</u></i> | <i>INFOSOC DIRECTIVE #1</i> Chapter 8 aims to introduce the content and case law related to the right of reproduction under the InfoSoc Directive. |  <i><u>30 minutes</u></i> |
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Reading task

Please read the following case accessible via the attached link, and answer/discuss the questions/notes below.

Case C-310/17 – Levola Hengelo BV v. Smilde Foods BV, Judgment of the Court of 13 November 2018

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=207682&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3394936>

Please focus on the CJEU's argumentation regarding the requirement of objective nature of protectable expressions.

Questions to the reading

1. What are the conditions of originality under EU case law (from Infopaq to Heks'nkaas)?
2. Can the concept of originality be generally/neutrally applied to all relevant copyright subject matter?
3. Can the design of clothes or design of bicycles be original?
4. Can a tattoo, a circus performance, a magician's trick, a sports move etc. be original? Where is the dividing line between the works of "industrial" and "literary, artistic and scientific" nature?

Further recommended readings

<http://copyrightblog.kluweriplaw.com/2018/12/05/hommage-au-fromage-or-how-the-cjeu-said-farewell-to-heksnkaas-by-excluding-copyright-protection-for-works-of-taste/>

<http://ipkitten.blogspot.com/2018/11/the-levola-hengelo-cjeu-decision.html>

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Further questions/tasks to the chapter's content

1. What are the conceptual elements of reproduction?
2. Who are the beneficiaries of the right of reproduction?
3. What does technological neutrality mean?
4. What does “opt-out” mean?

List of relevant definitions/concepts

Please think these definitions/concepts over again, as they are crucial in understanding copyright law in the EU.

temporary reproduction, express consent, partial reproduction

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