

# European Intellectual Property Review

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#### **The Delicate Scope of Economic Rights in EU Copyright Law: Opinion of the European Copyright Society in light of Case C-161/17, *Land Nordrhein-Westfalen v Renckhoff* (Córdoba Case) 335**

This opinion from the European Copyright Society (ECS) discusses the implications of the recent decision of the CJEU in Case 161/17 (*Renckhoff v Córdoba*). In that case, the CJEU has confirmed that the uploading of a photograph that was already made available on a different website with the consent of the photographer constitutes an act of communication to the public. The ECS is concerned with the further consequences of the ruling, as this finding should not lead to the result that a student's inclusion of a photograph in a school assignment made available on the school's website constitutes a copyright infringement. The ECS points in this respect to the availability of exceptions and limitations, notably for the purposes of education and quotation, and also suggests that the CJEU should consider developing a *de minimis* rule for dealing with uses that have minimal impact on the interests of right holders.

### Articles

MARCELLA FAVALE

#### **Bouncing Back from Oblivion: Can Reversionary Copyright Help Unlock Orphan Works? 339**

The importance and potential of mass digitisation of cultural heritage institutions in Europe is well known, as also is the stalemate created by the difficulty of clearing the rights of these works that are mostly out of commerce and whose right holder is not known or locatable. The European legislator tried to address this stalemate by introducing a copyright exception for these so-called orphan works, which can be digitised and published after carrying out a diligent search. However, as the rules to implement this diligent search are quite demanding, and the sources to be consulted are largely inaccessible, cultural institutions struggle to get their collections out in the digital world, so that they can have a second life. Presumption of copyright ownership makes this picture even more blurry. After a work is created, it is delivered to a complex web of potential copyright transfers and attributions, which makes the quest for right holders potentially endless. The reversion of copyright, which returns the rights to the author under certain conditions (time lapse, or inactivity of the publisher) adds complexity to this picture, as it very much differs from country to country. The analysis of data from a follow-on of the EnDOW project in conjunction with ongoing and recent research shows that reversionary copyright, far from being an outdated and scarcely useful tool (Bently and Ginsburg 2010), has great potential to relieve the problem of orphan works, if correctly recognised and developed.

DR MATHILDE PAVIS

#### **“In Fashion, One Day You are In, the Next You are Out”: Comparative Perspectives on the Exclusion of Fashion Models from Performers' Rights 347**

This article explores the exclusion of models from performers' rights. Taking the example of France, which has expressly excluded models from intellectual property rights, the author demonstrates that this interpretation of performers' rights breaches international intellectual property treaties.

RICHARD BINNS

#### **The Trade Secret Recipe: A “Reasonable” Step-by-Step Guide to Protecting Your Confidential Information 359**

This article looks briefly at the common law development in the UK of breach of confidence and the nature of a “trade secret”, before going on to consider some practical measures that could be taken in order to demonstrate pursuant to the Trade Secrets Directive (2016/943) (which was required to be implemented in EU Member States by 9 June 2018) that reasonable steps have been taken to keep such trade secrets or information secret.

