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Film Copyright in the European Union

Intellectual property issues in the film industry are often highly complex and in today's world are evolving rapidly. In the first book on this subject, Pascal Kamina unravels the complexities of film protection in the fifteen Member States of the European Union, giving special emphasis to the United Kingdom and France. As well as addressing key aspects of film copyright, Pascal Kamina also deals with the protection of film works within the European Union in the context of European harmonisation of copyright laws. He details the main features of the domestic legislations of EU Member States, and identifies the difficulties awaiting a further harmonisation of copyright and neighbouring rights in this field. This book will interest practitioners, academics and students. The developments on contracts and moral rights will be of particular interest to lawyers outside continental Europe.

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Foreword

In the realm of copyright, films and other audiovisual productions have become the archetypal complex work. The range of creative participants in the production of a film is often extensive, the risk to investors is considerable. Yet the prospects for the lucky few who succeed in scoring a hit with viewers are celestial: a powerful flow of revenues from the film itself, at the box-office and on television, a parallel stream from the sale of merchandise, and ultimately the chance of making sequels and other follow-ons. The legal organisation behind these exploitations turns at root on copyright protection and in economic detail upon contractual relationships. In future, technological controls over the exploitation of digital material will become increasingly crucial. The governing law has developed in different countries in response to pressures from national film-makers and also from powerful outsiders, led by the Leviathan that is Hollywood. On the film scene in Europe, Americanophobia is never far from the surface – as the negotiators of the GATT-WTO accord discovered as it was ripening for signature in 1994.

Beside these festering jealousies, there are differences of basic attitude: is film a grubby little form of mass entertainment, a tinsel make-believe which ordinary people need and will pay for in large numbers? Or is it the great new art of the twentieth century, through which directors illuminate our human condition in comparable degree with the greatest masters of language and music and the plastic arts? In the European Union, these differences of perception left their stamp upon national copyright legislation. As a result, the European Commission determined that there were major distortions across the Single Market. Since 1992, it has set about eliminating them by directive.

Dr Kamina's book analyses the process of 'approximation' that the intervention of EC legislation has induced in the national systems. A Frenchman, whose formation as an intellectual property lawyer has been divided between Poitiers and Cambridge, and who now practises and

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teaches in his own country, he is well equipped for the task. There will be many who seek his careful guidance through the legal quagmire that is the European law (or laws) of film copyright.

WILLIAM R. CORNISH
Series editor

Preface

This book deals with the protection of film works within the European Union. It is designed to help students, academics and practitioners discover and understand the richness and complexity of the matter, in the context of the European harmonisation of copyright laws. It attempts to describe in detail the main features of the domestic legislation of EU Member States, and to identify the difficulties awaiting a further harmonisation of copyright and neighbouring rights in this field.

Of course, the result falls short of my initial, ideal objectives. This book is not a reference book on film copyright. Rather, it aims to give students and academics alike an introduction to the subject, leading to further research. The book also aims to be of some help to professionals in the film industry.

It was impossible for me to give an account of the legislation of the fifteen EU Member States with the same level of detail. As a result, I have focused primarily on the laws of the United Kingdom and France. There is no need to justify the choice of UK copyright law, given the importance of the UK film industry in Europe and the role played by the Copyright Acts of 1956 and 1988 as legislative models in several copyright countries. Continental and American readers may be surprised to see how different UK solutions are from those of the US. The choice of the French system may also be justified for similar reasons. However, I should stress that, in several respects, French *droit d'auteur* is very different from other continental authors' rights laws. This is especially true not only as regards the laws of countries of the Germanic tradition, but also as regards Italian, Dutch and Scandinavian laws. I hope this book will help in understanding these differences. A Frenchman who speaks on behalf of authors' rights countries in general is not entirely to be trusted.

Although I have tried to balance the developments of UK copyright, on the one hand, and those of *droit d'auteur*, on the other hand, several parts of this book are much more detailed when it comes to UK law. This is mainly due to the casuistic approach adopted in the UK copyright Acts (the CDPA 1988 is more than 300 sections long, while the

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corresponding authors' rights Acts usually contain around 100 articles, drafted in a much more general and synthetic way), and to the complexity of certain choices made by UK law in this field (see, for example, the developments concerning the subject-matter for protection, moral rights and performer's rights).

Finally, the reader should be aware that several interesting questions, which are not specific to films, are left out of this study (for example, the question of the enforcement of rights).

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I apologise in advance for any possible errors of omission and commission in respect of certain domestic legislation. Needless to say, any errors that remain are entirely my own. I welcome any comments and suggestions for improvements, perhaps to appear in a future edition. The law is stated as of 1 January 2001.

Abbreviations

AC	<i>Appeal Cases</i>
AIR	<i>All India Reports</i>
ALAI	Association Littéraire et Artistique Internationale
All ER	<i>All England Law Reports</i>
BGH	Bundesgerichtshof (Federal Court of Justice)
CA	Court of Appeal
CDPA	Copyright, Designs and Patents Act 1988
CPR	<i>Canadian Patent Reporter</i>
DLR	<i>Dominion Law Reports</i>
EIPR	<i>European Intellectual Property Review</i>
EMLR	<i>Entertainment and Media Law Reports</i>
FSR	<i>Fleet Street Reports</i>
FTLR	<i>Financial Times Law Reports</i>
GRUR	<i>Gewerblicher Rechtsschutz und Urheberrecht</i>
GRUR Int.	<i>Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil</i>
HL	House of Lords
IIC	<i>International Review of Industrial Property and Copyright Law</i>
KB	King's Bench
MCC	<i>MacGillivray Copyright Cases</i>
NZLR	<i>New Zealand Law Reports</i>
p.m.a.	<i>post mortem auctoris</i>
QB	Queen's Bench
QBD	Queen's Bench Division
RGZ	<i>Entscheidungen des Reichsgerichtes in Zivilsachen</i>
RIDA	<i>Revue Internationale du Droit d'Auteur</i>
RPC	<i>Reports of Patent, Design and Trade Mark Cases</i>
SABAM	Société des Auteurs Belges-Belgische Auteurs Maatschappij
SACD	Société des Auteurs et Compositeurs Dramatiques
SACEM	Société des Auteurs Compositeurs Editeurs de Musique

List of abbreviations

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SCAM	Société Civile des Auteurs Multimédia
SDRM	Société pour l'Administration du Droit de Reproduction Mécanique des Auteurs, Compositeurs et Editeurs
SGAE	Sociedad General de Autores y Editores
SI	statutory instrument (UK)
SLT	<i>Scots Law Times</i>
TLR	<i>Times Law Reports</i>
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UCC	Uniform Commercial Code
USC	United States Code
USPA	Union Syndicale de la Production Audiovisuelle
WIPO	World Intellectual Property Organization
WLR	<i>Weekly Law Reports</i>
WTO	World Trade Organization
ZUM	<i>Zeitschrift für Urheber- und Medienrecht</i>