

Alert | Intellectual Property Litigation



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EU Court Ruling Expands Copyright Protection for International Works of Applied Art

Go-To Guide:

- The CJEU ruled that EU countries must protect copyrights for works of applied art that meet EU standards, regardless of where they come from or the creator’s nationality.
- This decision overturns the previous “material reciprocity test,” which limited protection for works not copyrighted in their home country.
- The ruling aims to standardize copyright protection across the EU for applied art.
- Creators from countries with stricter copyright laws may now be able to claim and enforce their copyrights in the EU, even if their work is not protected at home.

The Court of Justice of the European Union (CJEU) handed down its [ruling in *Kwantum v. Vitra*](#) on 24 October 2024. This ruling reflects a significant shift regarding EU protection of the works of applied art originating outside of the EU.

In this dispute, the Dutch Supreme Court (*Hoge Raad*) submitted prejudicial questions regarding the application of Article 2(7) of the Berne Convention for the Protection of Literary and Artistic Works (BC).¹

¹ See [October 2022 GT Alert](#) for additional background.

In short, the CJEU held that EU Member States must provide copyright protection to works of applied art that meet EU copyright requirements, regardless of the works' origin or the author's nationality. Because copyright laws are mostly standardized across the EU, individual EU countries cannot use the Berne Convention (BC)'s reciprocal protection rules when deciding how to protect creative works.

Background

Vitra Collections is a Swiss family business that manufactures designer furniture, including chairs designed by the since-deceased spouses, Charles and Ray Eames, who were U.S. nationals. Vitra holds the intellectual property rights over those chairs. Among others, Vitra also manufactures the Dining Sidechair Wood (DSW) chair. The DSW chair was designed as part of a competition the New York Museum of Modern Art launched in 1948. While created in the United States, the DSW is not protected by copyright there.

Kwantum operates a chain of shops selling interior design articles in the Netherlands and Belgium. In 2014, Vitra Collections noticed that Kwantum was marketing a chair called the 'Paris Chair' which, according to Vitra, infringes the DSW chair copyright.

The Dutch lower court held that the Paris Chair did not infringe the DSW, but the Court of Appeal overturned this decision, holding the opposite. Kwantum appealed before the Dutch Supreme Court (*Hoge Raad*), arguing against the Court of Appeals' application of "the material reciprocity test" stipulated in Article 2(7) BC. Subsequently, the Dutch Supreme Court (*Hoge Raad*) submitted prejudicial questions about applying the material reciprocity test and the protection that may be granted under Directive 2001/29, which harmonizes certain aspects of copyright law, and the Charter, to works of applied art originating in a third country or works the author of which is not a Member State national.

The 'Material Reciprocity Test'

The material reciprocity test applies to works of applied art, industrial designs, and models. The test entails that, if the country of origin grants special protection (i.e., a special intellectual property regime such as design patents) to such works, designs, and models, then any member of the BC must grant the same special protection. However, if the country of origin does not grant the special protection, special protection is not granted elsewhere. In short, if a work of applied art is not granted copyright protection in one jurisdiction, that work will not be granted copyright protection in another.

The CJEU's Ruling

First, the CJEU clarified that a situation where a company claims copyright protection for a subject matter of applied art marketed in a Member State, provided that that subject matter may be classified as a "work" within the meaning of Directive 2001/29², falls within the material scope of EU law.

Second, the CJEU made clear that Directive 2001/29 stipulates no requirements relating to the "work's" origin or the author's nationality. Directive 2001/29 should, therefore, grant copyright protection to a "work," irrespective of its origin or the author's nationality.

² Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Next, the CJEU stated that a Member State's application of the material reciprocity test would undermine Directive 2001/29's objective, which is harmonizing copyright in the internal market, since works of applied art might be treated differently in each of the Member States.

Lastly, the CJEU added that any limitation of EU intellectual property rights, as stipulated in Article 17(2) of the Charter, must be provided by law, according to Article 52(1) of the Charter. It is for the EU legislature alone to determine whether the copyright grant under Directive 2001/29 should be limited. A Member State's application of the material reciprocity test in the context of works of applied art originating in third countries would encompass such a limitation. Therefore, Member States are not competent to implement the material reciprocity test for such works.

Potential Impacts of the CJEU's Ruling

This ruling reflects a significant shift regarding the EU protection of the works of applied art originating outside of the EU. The material reciprocity test has a particularly restrictive effect on copyright protection of works of applied art from jurisdictions in which the threshold for copyright protection of such works is high, such as the United States. The ruling moderates this effect.

The ruling is clear in stating that works of applied art from outside of the EU must be granted copyright protection in each Member State if the art meets requirements for EU copyright protection for applied art. The CJEU clarifies that copyright may be granted under EU requirements to works of applied art originating outside the EU, regardless of the protection granted in the origin country. Therefore, the ruling may lead to widespread enforcement of copyright protection granted for works of applied art originating outside of the EU, even if those works do not enjoy such protection in its originating country.

Conclusion

The impact of the CJEU's ruling lies in the fact that works of applied art originating from outside of the EU may now be granted copyright protection in the EU, even though the work does not enjoy copyright protection in its originating country. For authors in jurisdictions in which the threshold for copyright protection is high, this means that they may claim and enforce their copyright in the EU without the restriction of the material reciprocity test.

Authors

This GT Alert was prepared by:

- **Radboud Ribbert** | +31 20 301 7333 | Radboud.Ribbert@gtlaw.com
- **Wouter van Wengen** | +31 20 301 7445 | Wouter.vanWengen@gtlaw.com
- **Vincent de Bruin** [~] | Intern | Amsterdam

[~] *Not admitted to the practice of law.*

Albany. Amsterdam. Atlanta. Austin. Berlin[~]. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia[~]. Las Vegas. London[~]. Long Island. Los Angeles. Mexico City[~]. Miami. Milan[~]. Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo[>]. Seoul[~]. Shanghai. Silicon Valley. Singapore[~]. Tallahassee. Tampa. Tel Aviv[^]. Tokyo[~]. United Arab Emirates[<]. Warsaw[~]. Washington, D.C. West Palm Beach. Westchester County.

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