

The Dutch Approach

The economic rights

Dirk Visser

- Broad *verveelvoudigingsrecht*
 - Reproduction and adaptation
- Broad *openbaarmakingsrecht*
 - Communication to the public and distribution
 - Exhaustion only applies to the distribution right
- Broad general tort (6:162 Civil Code)

But what about ...

- Phonographic Performance (Ireland)
 - ECJ **15 March 2012**
 - Hotel: CD + player = communication to the public
- Donner
 - ECJ **21 June 2012**
 - A series of acts which can be qualified as distribution
- Usedsoft v. Oracle
 - ECJ **3 July 2012**
 - Exhaustion applies to downloading software

And what about ...

- SAS Institute
 - ECJ **2 May 2012**
 - Adaptation right harmonized too, as part of reproduction right?
- See: Joost Becker, *IEF* 11498

SAS Institute (recital 67-69)

- 67. It is only through the choice, sequence and combination of those words, figures or mathematical concepts that the author may express his creativity in an original manner and achieve a result, namely the user manual for the computer program, which is an intellectual creation (see, to that effect, *Infopaq International*, paragraph 45).
- 68. It is for the national court to ascertain whether the reproduction of those elements constitutes the reproduction of the expression of the intellectual creation of the author of the user manual for the computer program at issue in the main proceedings.
- 69. In this respect, the examination, in the light of Directive 2001/29, of the reproduction of those elements of the user manual for a computer program must be the same with respect to the creation of the user manual for a second program as it is with respect to the creation of that second program.

The 3 examples

- Public exhibition
- Distribution of transformed versions
- Deemed public

Public exhibition (23 DCA)



Distribution of transformed versions (no exhaustion)



Deemed Public (12.4 DCA)

- Marco del Corso, ECJ 15 March 2012



Exit "Willem Drees House" criterion!?

