



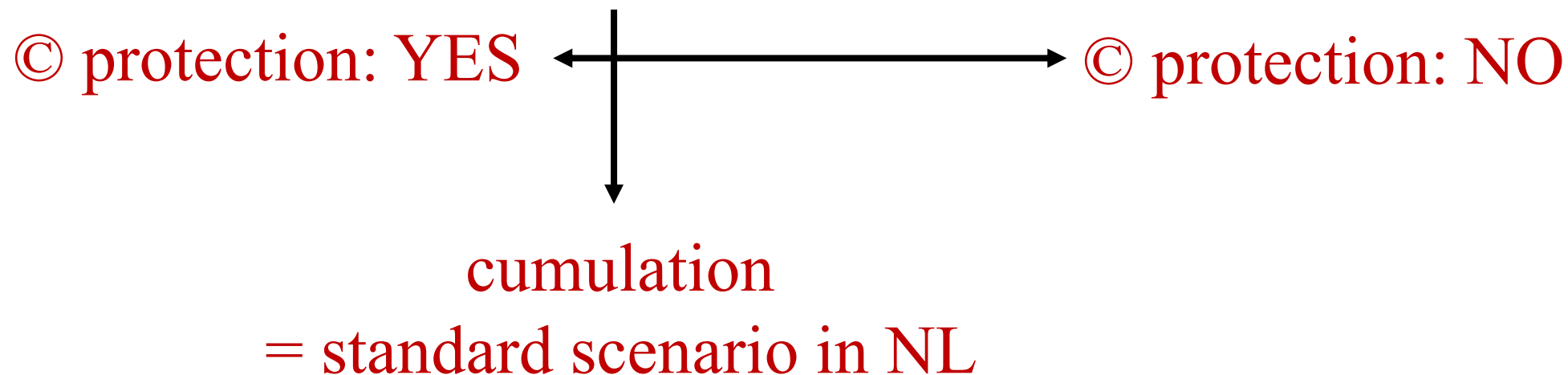
GRUR Jahrestagung 2025 – Berlin

# Werk ~~oder~~ und Design

Prof. Dr. Martin Senftleben, 16. Oktober 2025

## Locating the Dutch approach

“Different legal systems provide different answers to that question, ranging from the **exclusion** of utilitarian objects from copyright protection to **full protection...**” (AG Szpunar, Mio and konektra)



## Bird's-eye perspective

doors to  
copyright  
wide open

infringement  
analysis to prevent  
overprotection



A photograph of the University of Amsterdam building, featuring a prominent white tower with the university logo. The building is a mix of brick and modern glass architecture. In the foreground, there are green trees and a canal with a bridge. A white box with the word 'Examples' is overlaid on the image.

# Examples

# Low threshold for © protection



## Court of Appeal The Hague, 9 March 2021, ECLI:NL:GHDHA:2021:1344, Diesel/Calvin Klein

- Diesel identifies 8 relevant design features
- stripe elements 2 to 5 decisive according to the Court:
  - runs from approximately halfway down the right edge of the coin pocket **diagonally down to the left edge**
  - across the **entire width** of the coin pocket
  - ending at the bottom left against the top edge of the front pocket on the front of the pants
  - positioned so that the coin **pocket is divided into two sections**
- decisive in which sense?

## Court of Appeal The Hague, 9 March 2021, ECLI:NL:GHDHA:2021:1344, Diesel/Calvin Klein

- copyright protection: YES

“The court finds that the **combination** of these elements meets the requirements of the [free, creative choices] criterion and is therefore eligible for copyright protection.” [40]

- copyright infringement: NO

“...now that the [Calvin Klein] label is a horizontal strip placed at the top of the coin pocket, the court finds that the **overall impressions** do not match.” [43]

# Further examples: copyright YES, infringement NO



**Little doubt  
about  
Birkin bag**



A photograph of the University of Amsterdam building, featuring a prominent white tower with the university's logo. The building is modern with a dark facade and large windows. In the foreground, there are green trees and a canal with a bridge. A white text box is overlaid on the image.

Impact on the  
protection systems

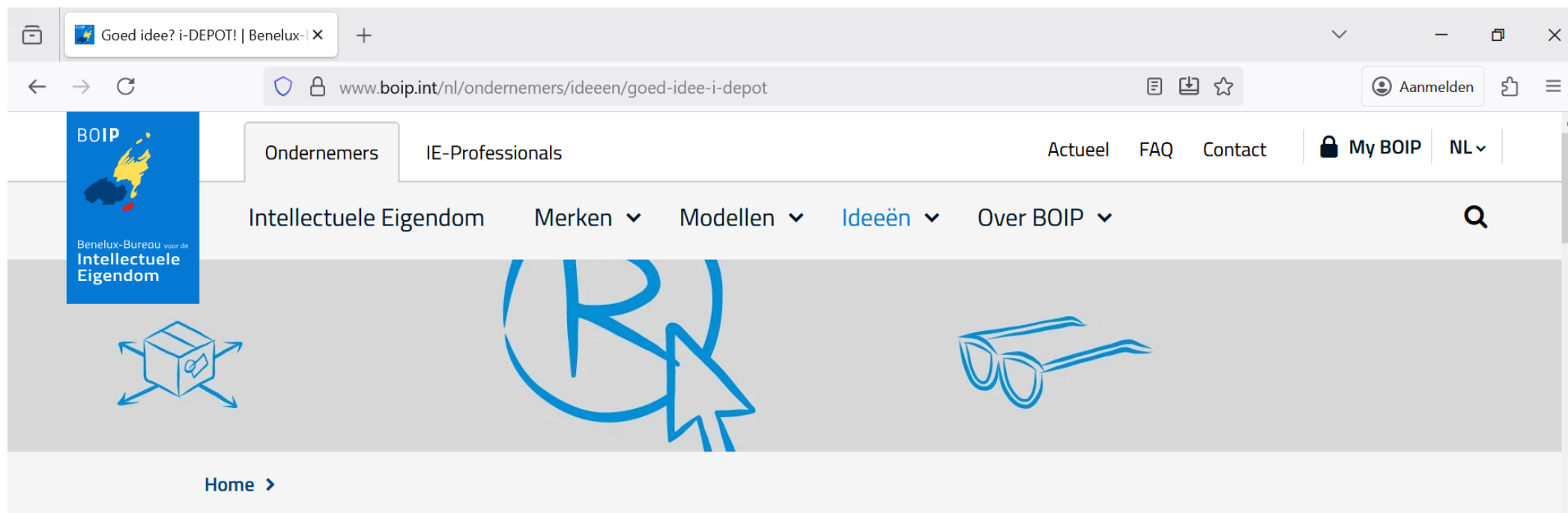
# Ownership

- design ownership for commissioning parties

“If a design has been created on commission, the commissioning party shall, unless specified otherwise, be **deemed to be the designer**, provided that the commission was given with a view to commercial or industrial use...” (Art. 3.8 Benelux Convention)
- copyright for commissioning parties

“Where a design is created in the circumstances referred to in Article 3.8, the copyright relating to the design shall belong to the **party deemed to be the designer...**” (Art. 3.29 Benelux Convention)

# Registration?



## Goed idee? i-DEPOT!

[i-DEPOT indienen](#) →

Met een i-DEPOT kun je snel en eenvoudig vastleggen dat jij een product, dienst, proces of bedrijf hebt ontwikkeld. Erg nuttig als er bijvoorbeeld een conflict ontstaat over wie als eerste een bepaalde creatie heeft gemaakt. Je kunt een i-DEPOT voor verschillende doelen gebruiken en voor verschillende intellectuele eigendomsrechten.



# Infringement criteria

- Hoge Raad, 22 February 2013, ECLI:NL:HR:2013:BY1529, Stokke/H3  
“...to what extent the **overall impressions** of the allegedly infringing work and the allegedly adapted or imitated work correspond. The **copyright-protected features** or elements of the latter work are decisive in this respect, on the understanding that a **collection or specific selection** of elements that are not protected in themselves may also constitute an (original) work...” [3.4(e)]
- convergence of copyright and industrial design criteria?

# Current challenges





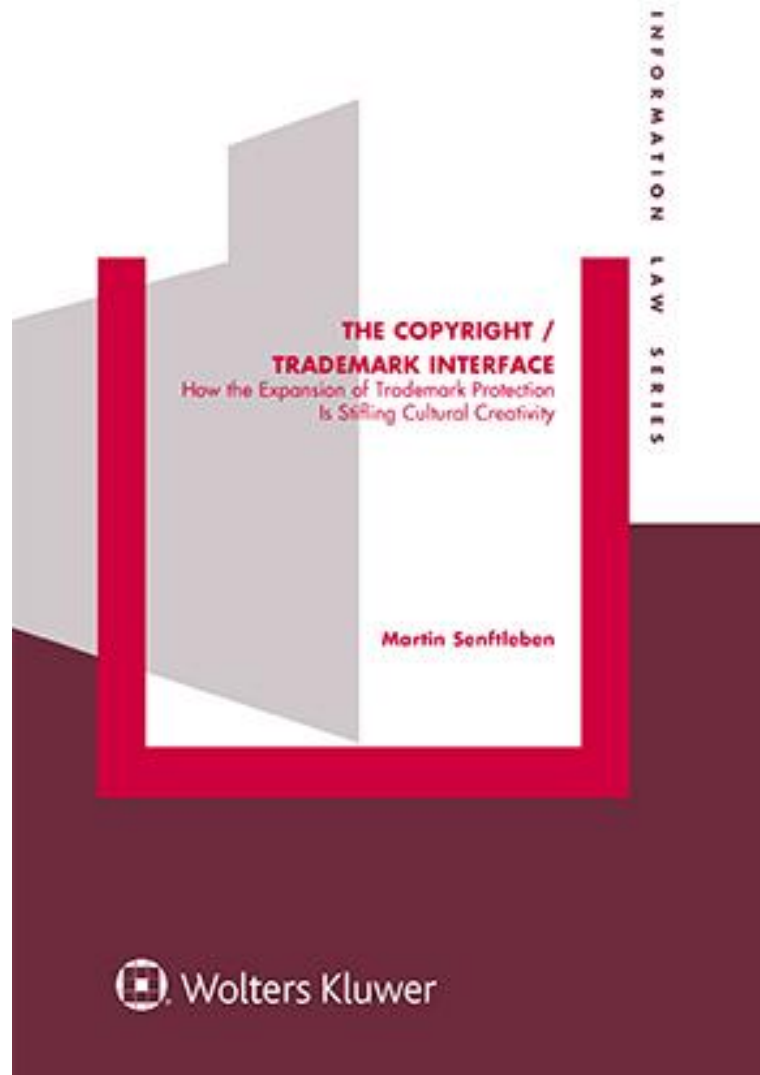
# Limitations applicable across © and design law?

- exhaustion rules congruent?
- **design law:** referential use?
  - “...carried out for the purpose of identifying or referring to a product as that of the design right holder.” (Art. 20(1)(d) Designs Regulation)
- reproduction for making citations?
- **copyright law:** quotation? Pastiche?
  - “...for the purpose of caricature, parody or **pastiche.**”  
(Art. 5(3)(k) Information Society Directive)

# Best of both (or even three) worlds?



# Senftleben, Copyright/Trademark Interface 2020



- double rights = double burdens
- obligation to ensure proper functioning of all protection systems involved
  - “Instead of paving the way for a maximization of benefits, the cumulation of intellectual property rights must lead to a minimization of protection that is readily available.” (p. 550)
- reducing attractiveness of cumulative protection



The end. Thank you!

Questions? Comments?

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