

Overview: The Notion of Work under EU Law

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1. The legal bases in EU law

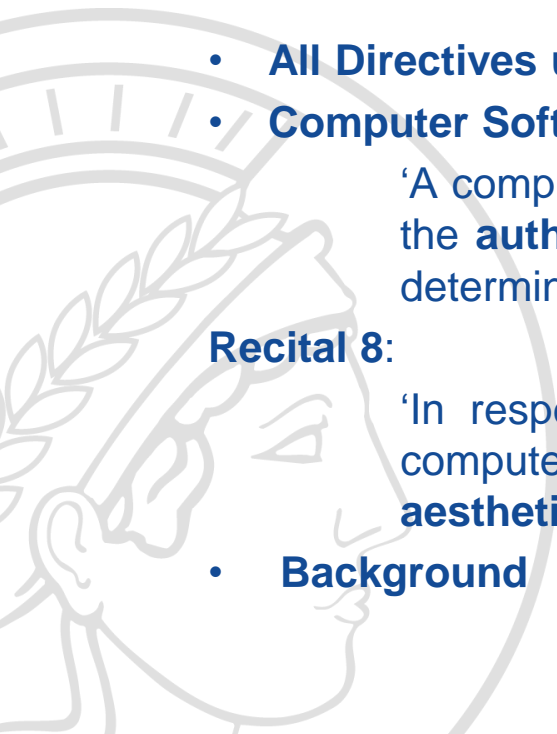
- All Directives use the term „work“, but only three define its conditions:
- Computer Software Directive 2009/24/EC, Art. 1(3):

‘A computer program shall be protected if it is **original** in the sense that it is the **author's own intellectual creation**. No other criteria shall be applied to determine its eligibility for protection.’

Recital 8:

‘In respect of the criteria to be applied in determining whether or not a computer program is an original work, **no tests as to the qualitative or aesthetic merits** of the program should be applied.’

- Background



1. The legal bases in EU law

- **Database Protection, Directive 96/9/CE, Art. 3(1):**
- 'In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.'
- (16) Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular **no aesthetic or qualitative criteria** should be applied
- **Background**

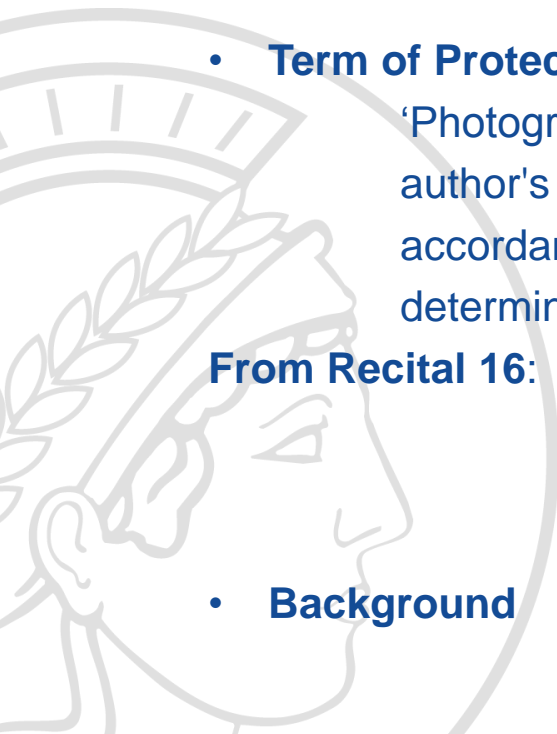
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- **Term of Protection Directive 2006/116/EC, Art. 6**

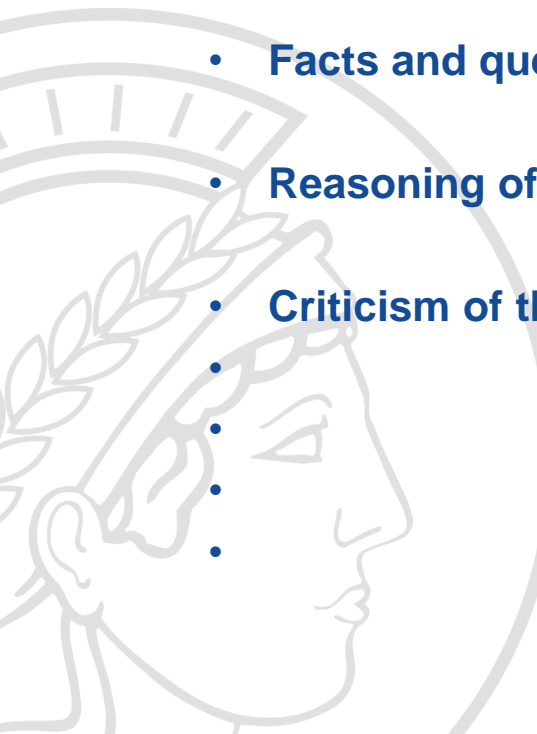
‘Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection.’

From Recital 16: ‘A photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation **reflecting his personality**, no other criteria such as merit or purpose being taken into account.’

- **Background**



2. The case law of the CJEU: Infopaq, C-5/08

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- **Facts and question**
 - **Reasoning of the Court – three above Directives and Recitals 4, 9 – 11, 20**
 - **Criticism of the judgment:**
 - **Ultra vires?**
 - **Minimum conditions only?**
 - **Court only decided on ‘partial reproduction’?**
 - **Application only to literary works under InfoSoc, and only as regards reproduction right?**

2. The case law of the CJEU after Infopaq

- **Premier League, C-403/08, 429/08: football matches are not works; no room for creativity; partial reproduction**
- **Painer, C-145/10: photo-fit worked up from photo; free creative choices possible (Art. 6 Term Directive)**
- **SAS/World Programming, C-406/10: text of user manual, partial reproduction**
- **BSA/Ministry of Culture, C-393/09: graphic user interface (InfoSoc): no creative freedom where expression is dictated by technical function**
- **Football Dataco, C-604/10: Database Directive: irrelevant: addition of important significance to database, and significant labour and skill as such**