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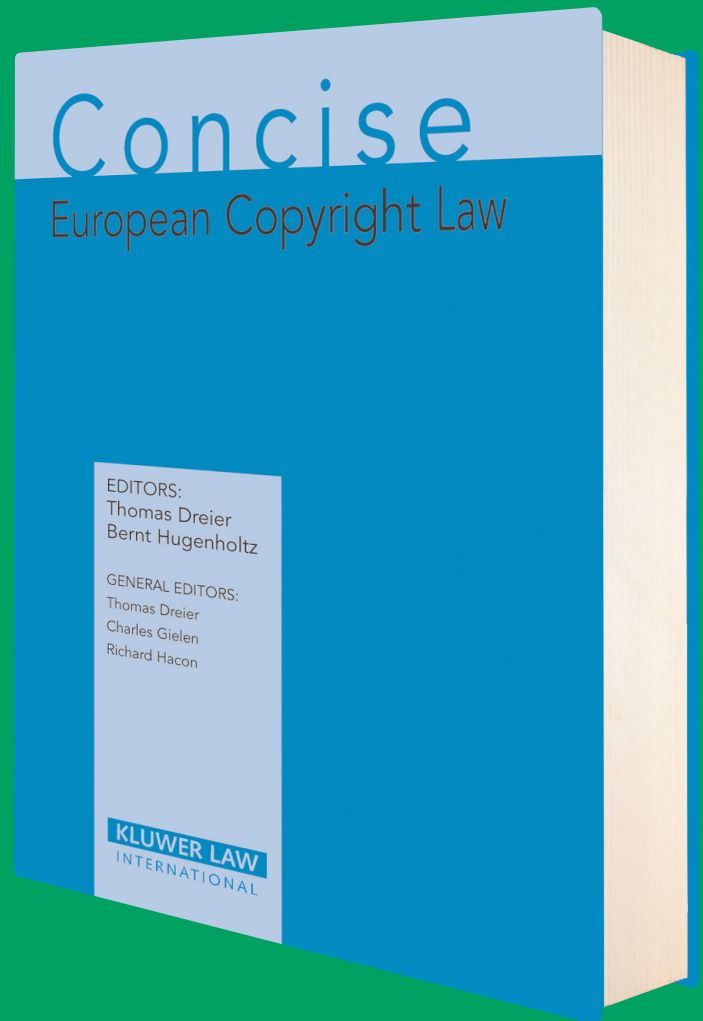
# European Copyright law

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Thomas Dreier &  
Bernt Hugenholtz

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# Concise European Copyright Law

In the rapidly expanding information society, copyright law plays a central role in the creation, production, dissemination and use of creative material.

In the past 15 years, the European Union has enacted no less than seven Directives aimed at harmonizing copyright throughout the internal market.

Concise European Copyright Law aims to offer the reader a rapid understanding of all the provisions of copyright law enacted at the European and international level and features:

- Article-by-article commentary on the relevant European directives and international treaties
- Short and straightforward explanations of the principles of law to be drawn from each provision
- Editorial from prominent EU and international copyright experts

## ABOUT THE EDITORS

### Professor Bernt Hugenholtz

Professor Hugenholtz is Professor of Law and Director of the Institute for Information Law (IViR) at the University of Amsterdam, where he teaches courses in copyright law and industrial property law. He also teaches at the Munich Intellectual Property Law Center and at Monash University (Melbourne). He is the General Editor of the Information Law Series, published by Kluwer Law International. In 1989 he received his doctorate cum laude from the University of Amsterdam. He was a member of the Amsterdam Bar from 1990 to 1998, and has been an advisor to WIPO, the European Commission, the European Parliament, the Ministry of Justice of the Netherlands and various private firms. Professor Hugenholtz has written numerous books, studies and articles on topics involving copyright and information technology, notably on the protection of databases, on copyright problems relating to the digital networked environment and on copyright contract law.

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Professor Dreier, Dr. jur. (Munich), M.C.J. (NYU), is Professor of Law at the University of Karlsruhe, Germany, where he is the Director of the Institute for Information Law, and Honorary Professor at the Law Faculty of the University of Freiburg. His main focus is copyright law and new technologies. Before joining the University of Karlsruhe, Prof. Dreier had been working at the Max-Planck-Institute for Intellectual Property Law in Munich, Germany. He has been an advisor to both the European Commission and the Council of Europe on copyright matters. Professor Dreier has also taught intellectual property as visiting professor at the New York University, School of Law. Prof. Dreier is vice-president of the Association Littéraire et Artistique Internationale (ALAI) and vice-chairman of ALAI's German national group, and he acts as Executive Secretary of the German Computer Law Society (Deutsche Gesellschaft für Recht und Informatik e.V., DGRI).

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**Dirk Visser**, Faculty of Law, Leiden University; Klos Morel Vos & Schaap, Amsterdam

affix his or her name to the work in  
sued. The presumptions contain  
initial authorship/identity as the ma  
any succession of title, originality o  
several authors are named, it is to be  
Bora (Germany)). (d) **Proof to the**  
cable at the place where protection i  
tions which must be fulfilled in order

3. **European legislation.** In the E  
holding rights related to copyright  
Enforcement Directive on the enfo  
However, at present no harmonization  
sentation of the authors of anonymous  
nor has the EU regulated the exercise o  
works of unknown authorship (art. 15(

### [Infringing copies]

#### Article 16

- (1) **Infringing copies of a work shall**
- (2) **The provisions of the preceding**
- (3) **The seizure shall take place in acc**

I. **General.** Art. 16 BC is one of the rare  
remedies in cases of copyright infringement  
States to provide for the seizure of infringing  
right protection in the particular Member St  
obligation extends to copies which have bee  
work in question does not enjoy copyright  
already run out (principle of territoriality). A  
nizes a distribution right which is otherwise  
art. 13(3) BC explicitly contains the right of  
been manufactured abroad under a compulsory  
arts. 13(1) and (2) BC and imported without  
cerned into a country where they are treated a  
art. 16 BC does not deal with the question o  
importation, that is, where copies put on the m  
his or her consent in a foreign country are impo  
tection is sought. This much-debated question is  
has deliberately been left open in Art. 6 TRIPS

Dreier

extraction of a quantitatively subs  
extracted however does not constitu  
the part in question is substantial, a  
tively negligible part of the contents  
of obtaining, verification or presenta  
cial investment (*British Horseracing*  
value of the appropriated data is irrele  
relatively small number of data may ne  
data reflect substantial qualitative i  
infringer irrelevant. The sui generis r  
the party that has extracted or reutili  
database has subsequently invested  
(*Bankompass* (Austria)). (f) **Repeated**  
tial parts. The extraction of insubstanti  
the sui generis right. Thus, incidental  
databases, even committed by unauthor  
repeated and systematic extraction of ins  
ment (art. 7(5)). The ECJ has noted that t  
repeated acts by a user which would lea  
a whole or, at the very least, of a substanti  
(ECJ). In other words, the systematic  
amount to infringement only if the aggre  
half-sentence of art. 7(5) partly reproduc  
Posting hyperlinks to online newspaper an  
ing the headlines is not covered by art. 7(5)  
normal exploitation of the database (*Paper*

5. **Relation to copyright and other righ**  
The sui generis right applies irrespective of  
contents, for protection by copyright or by o  
sui generis right may co-exist with copyright  
base. The Initial Proposal would have excl  
protection would have applied only if the da  
art. 7(4) also underscores that the sui  
not affect underlying copyrights or neighbou

### [Rights and obligations of lawful users]

#### Article 8

- (1) **The maker of a database which is n**

Hugenholtz

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The Convention for the Protection of Producers of Phonograms

Against Unauthorized Duplication of Their Phonograms

WIPO Performances and Phonograms Treaty

Agreement on Trade-Related Aspects of Intellectual Property Rights (arts. 9–14)

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Berne Convention, Art. 16  
a particular way. (c) **Be regarded as; be pre-**  
ferred in art. 15(1) and (2) BC only concern the  
of a cinematographic work, not, however,  
or other criterion for copyright protection. If  
presumed that they are co-authors (see *Bora*  
**contrary**. It is a question for the law appli-  
is sought (*lex fori*) to determine the condi-  
to rebut the presumptions of art. 15 BC.

U, the presumptions of authorship and of  
have been harmonized by art. 5 of the  
crement of intellectual property rights.  
exists within the EU regarding the repre-  
and pseudonymous works (art. 15(3) BC).  
f rights in the case of certain unpublished  
4) BC).

**be liable to seizure in any country of**  
**protection.**  
**paragraph shall also apply to repro-**  
**the work is not protected, or has**  
**ordance with the legislation of each**

provisions in the BC which mandates  
ent. This provision obliges Member  
copies of works which enjoy copy-  
where protection is sought. This  
en produced in countries where the  
protection or where protection has  
Art. 16(2) BC thus partially recog-  
not granted by the BC. Moreover,  
seizure of recordings which have  
licensing scheme as described by  
permission from the parties con-  
infringing recordings. However,  
of exhaustion in cases of parallel  
market by the rightholder or with  
ported into the country where pro-  
not addressed by the BC, and it  
F. Regarding this issue, the ECJ

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Database Dir., art. 8  
stantial part. The intrinsic value of the data  
ite a relevant criterion for assessing whether  
evaluated qualitatively. Even so, a quantita-  
of a database may in fact represent, in terms  
tion, significant human, technical or finan-  
*Board* (ECJ)). In other words, the market  
evant, but the extraction or reutilization of a  
nevertheless amount to infringement if those  
investment. (h) **Further investment by**  
ight may be invoked regardless of whether  
ed a substantial part of the contents of the  
substantially in the derivative database  
**and systematic extraction of insubstan-**  
al parts of the database does not infringe  
browsing and piecemeal copying from  
ized users, are lawful acts. However the  
substantial parts may amount to infringe-  
he purpose of this provision is to prevent  
to 'the reconstitution of the database as  
al part of it' (*British Horseracing Board*  
extraction of insubstantial parts will  
gate parts are substantial. The second  
the three-step test (see art. 6, note 4).  
icles collected in a database by copy-  
5), because there is no conflict with a  
boy (Germany)).

**ts in contents of database (para. 4).**  
the eligibility of the database, or its  
ther rights (art. 7(4)). In other words,  
is or neighbouring rights in the data-  
ded such cumulation; sui generis  
atabase were not protected by copy-  
generis right in the database shall  
ring rights in its contents.

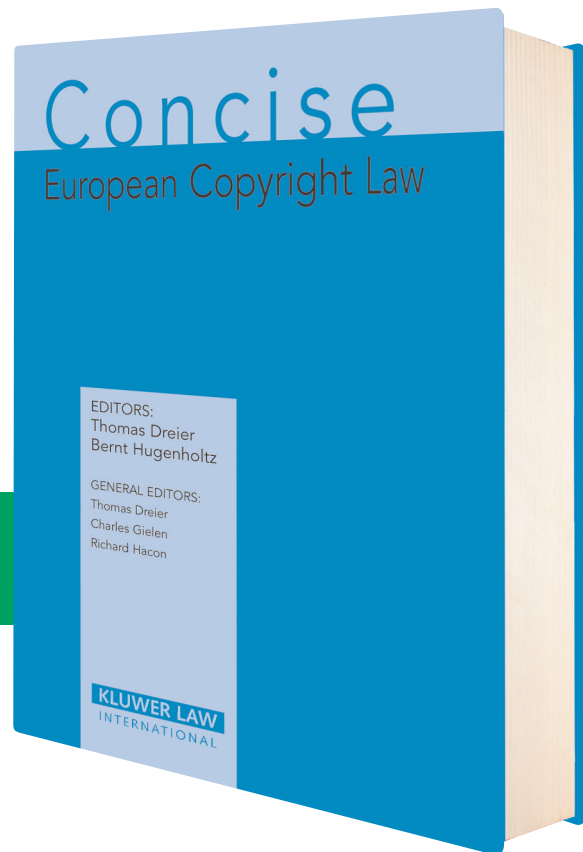
**made available to the public in**  
**ul user of the database from**  
**parts of its contents, evaluated**  
**urposes whatsoever. Where the**  
**e-utilize only part of the data-**  
**part.**

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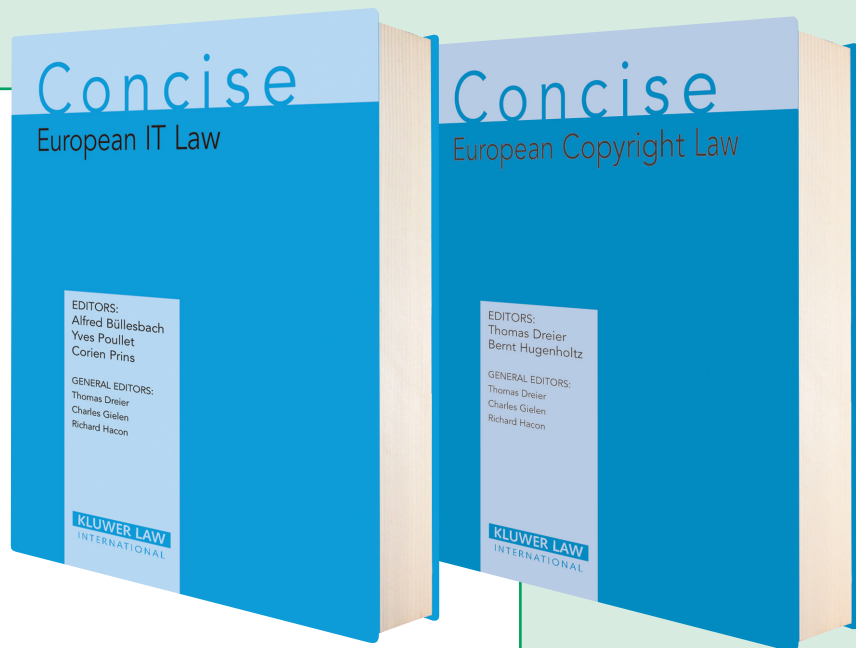
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