THE CODIFICATION OF INTELLECTUAL PROPERTY LAW: THE LEGACY OF E.M. MEIJERS AND RECENT TRENDS IN EUROPE

This short contribution is dedicated to the 10-year anniversary of the E.M. Meijers Institute of Legal Research. The Institute was founded upon the legacy of exceptional achievements and values of the legendary Prof. Eduard Maurits Meijers (1880-1954), who still today continues to be a source of inspiration for the research programs and faculty members at Leiden University.

Meijers’ proposal
Although Meijers is mostly remembered for his efforts for the codification of book 1–8 of the Dutch Civil Code, his work is also associated with intellectual property law, especially with regard to his proposal in 1953 and 1954 to integrate all Dutch intellectual property law(s) in a single statute and incorporate this in the Dutch Civil Code as well.9 Meijers reserved book 9 of the Civil Code for the re-codification of IP law and proposed to include the follow IP legislation: (I) Copyright, (II) Patents, (III) Designs, (IV) Trade Marks,

(V) Trade Names. 10 Despite the fact that the government actually officially approved Meijers’ proposal, the project never materialized, following Meijers’ death in 1954.

Dutch dismissal

It was only 40 years later, in 1993 and 1994, that the Dutch government properly considered Meijers’ proposal by instructing Prof. J.J. Brinkhof to investigate the possibilities of incorporating Dutch legislation regarding intellectual property in a single charter in the Dutch Civil Code. Although Prof. Brinkhof did sympathize with Meijers’ initial proposal, he quickly decided that incorporating all Dutch IP laws in the Dutch Civil Code was neither feasible nor desirable.11 Instead of full codification, Prof. Brinkhof suggested to opt for a less ambitious plan by only aiming for codification of common rules on proprietary aspects of IP rights such as legal status, transfer, licensing etc, as well as on procedural rules concerning the enforcement of IP rights. However, after the resignation of Prof. Brinkhof in 1997 and despite the government’s promise to continue its investigations and publish a legislative proposal in 1998, the plan of partial codification was basically ditched and is now (almost) forgotten.

One can agree or disagree with the decision of the Dutch government and Brinkhof not to opt for a full re-codification of Dutch IP laws. Dutch literature is divided in this regard, with Gerbrandy, De Vries and Snijders opposing and Cohen Jehoram, Hartkamp, Holzhauer and Van Nispen favouring full re-codification of Dutch IP law in a single charter.12 Obviously, apart from the

10 Van Zeben 1962, p. 35. It was originally envisaged to put the codification of IP law in ‘book 8’, but after the inclusion of law of succession in book 4, this was subsequently re-numbered into ‘book 9’.
feasibility, the desirability and necessity of such codification should also be considered. With regards to the necessity, it must be stressed that many key jurisdictions in Europe such as the United Kingdom and Germany do not have a single code of intellectual property, and legal practice seems to manage quite well without it. Consequently, an urgent need for a single IP code is not (yet) apparent. On the other hand however, recent developments across Europe do indicate that an increasing number of national legislators have decided to opt for a partial unification of industrial property law, indicating that such codification is both desirable and feasible.

From Portugal to Poland: recent trends
Despite the Dutch decision in 1997 not to opt for the creation of a single code, important examples of the various possibilities of such unification could be found in the Code de la Propriété Industrielle of France of 1992 and also in the old Codigo da Propriedade Industrial of Portugal of 1995. Furthermore, recent examples are to be found in the Polish Prawo wlasnoœci przemyslowej of 2000 and in the Slovenian Zakon o industrijski lastnini of 2001, as well as in the Portuguese revision of their Codigo da Propriedade Industrial in 2003. This trend towards the codification of separate IP laws in a single charter, is only further confirmed by the recent enactment of the Italian Codice dei Diritto di Proprietà Industriale in 2005.13

A number of conclusions can be inferred from the developments mentioned above. First, it must be observed that none of the EU member states decided to incorporate its legislation in their Civil Code, as originally envisaged by Meijers. Second, all legislation mentioned above is limited to the unification of industrial property laws (patents, trade marks, designs etc.) and, contrary to Meijers’ original suggestion, does not include other intellectual property rights such as copyrights. However, this does not take away from the fact that there is a clear trend in Europe towards incorporating all industrial property legislation into a single statute.

From Russia with love: recent recognition of Meijers’ proposal
Recently, full recognition of Meijers’ proposal can be found in Russia. In the autumn of 2006, the fourth and final part of the Russian Civil Code was adopted, containing a full codification of all intellectual property legislation into a single charter in the Civil Code and thereby fully adopting Meijers’ original plan. This is however, no coincidence, since drafting the Russian Civil Code happened in close consultation with several law professors of Leiden University, such as Prof. F.J.M. Feldbrugge and, with regard to intellectual property law, prof. mr. D.W.F. Verkade.

Back to the Netherlands: the 2007 implementation of the Enforcement Directive
It has already been suggested by Verkade that the achievement of the Russian Federation may cause new inspiration in the Netherlands as well. I certainly hope so. In addition to the recent trends abroad, other domestic developments in the Netherlands are also relevant in this regard. The fact that in 2007 several procedural rules of the IP Enforcement Directive were implemented in a single chapter in the Dutch Code of Civil Procedure could indicate that the Dutch legislator might be willing to reconsider its position with regard to incorporating other common rules of IP law under the Dutch Civil Code as well. Such common rules could pertain to the subjects which were already studied and proposed in the 1997 Brinkhof report, such as the legal status, transfer and licensing of IP rights, as well as common provisions concerning typical claims in IP disputes such as claims for damages, destruction and loss of profits etc. With regard to the latter, it must be stressed that the Dutch legislator did not seize the opportunity to propose such common provisions as yet, and instead opted for fragmentarized implementation in each separate IP law. However, the Explanatory Memorandum also acknowledged that most

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14 Dutch literature was rather critical about Russian IP law, 14 years earlier: see C. Prins, ‘Handhaving van nieuwe intellectuele eigendomsrechtregeling laat Russe vooralsnog Siberisch koud’, AMI 1994, p. 23.
15 Part IV of the Russian Civil Code is called ‘Rights for intellectual activity’s results and means of individualization’ and is scheduled to enter into force on January 1, 2008.
claims typical to IP disputes (such as injunction, cancellation, damages, claim for profits, seizure, destruction, disclosure of information, recall and rectification) all originate in article 3:296 and 6:162 of the Dutch Civil Code, which only confirms Meijers’ view in 1953 and provides a promising starting point for further legislative proposals in the future.¹⁸

Conclusion

Although after Meijers’ proposal in 1953 the chances of creating a single charter of industrial property law in the Netherlands have diminished because of the fact that the majority of Dutch industrial property law (trade marks and designs) is now governed by uniform Benelux law precluding any legislative changes on a national level, incorporating a single charter on the aforementioned common rules in the Dutch Civil Code is certainly a feasible possibility. In that regard, and given recent developments in the EU and Russia, the legacy and ground-breaking proposal of E.M. Meijers will remain as important as ever.

Ik zou het zo weer doen
Terugblikken op proefschriften uit het tienjarige bestaan van het E.M. Meijers Instituut

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