

Research Handbooks in Intellectual Property



Research Handbook on the Future of EU Copyright

Edited by **Estelle Derclaye**



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RESEARCH HANDBOOKS IN INTELLECTUAL PROPERTY

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RESEARCH HANDBOOK ON THE FUTURE OF EU COPYRIGHT

RESEARCH HANDBOOKS IN INTELLECTUAL PROPERTY

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Research Handbook on the Future of EU Copyright

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- Caravan Step II, Dist Ct of The Hague 22 Dec 2004, [2005] BIE 265–71 **504**
- Davidoff/Cigaronne, Dist Ct of The Hague 22 Dec 2004, [2005] BIE no 87, 430–37 **507**

- De NV Drukkerij 'de Spaarnestad' v Leesinrichting 'Favoriet' HR, 25 Jan 1952, [1952] NJ no 95 **539**
- De Telegraaf v NOS, The Hague CA 30 Jan 2001, [2001] Mediaforum 344 **434**
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- Fatboy bean-bag, Pres Dist Ct of The Hague 30 Sep 2005 and Dist Ct of Den Bosch 6 Jun 2007 [2007] AMI 158–9 **506**
- Howe/Casala, Dist Ct of The Hague 17 Oct 2006, unpublished **504**
- Hyster Karry Krane, 26 June 1953, [1954] NJ 90 **571**
- Kecofa v Lancôme, [2006] ECDR 26, [2006] NJ 585, Sup Ct **68**, **72**, **142**, **484**, **567**
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- Stokke Industries/Jako Trade en Hauck, Dist Ct of The Hague 4 Oct 2000 [2001] BIE 363 **504**
- Technip Benelux BV v Arier Gerhard Goossens (2007) 38 IIC 615, Sup Ct **72**, **493**
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- Wokkels Hoge Raad, 11 Nov 1983, [1986] GRUR Int 126–128, NJ 1984, 203, [1985] BIE no 9, 23 **508**
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A Schroeder Music v Macaulay
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