

WHEN AN ORIGINAL IS NOT ORIGINAL

WHEN AN ORIGINAL IS NOT ORIGINAL

The Originality Requirement in Belgian Law

Niels VANDEZANDE



intersentia

Cambridge – Antwerp – Chicago

KU LEUVEN

CiTiP

CENTRE FOR IT & IP LAW

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland:

NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7 PP
United Kingdom
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe and all other countries:

Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
Email: mail@intersentia.be

Distribution for the USA and Canada:

Independent Publishers Group
Order Department
814 North Franklin Street
Chicago, IL60610
USA
Tel.: +1 800 888 4741 (toll free) | Fax: +1312 337 5985
Email: orders@ipgbook.com

When an Original Is Not Original. The Originality Requirement in Belgian Law

© Niels Vandezande

The author has asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as author of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Cover image © Wizemark – Stocksy

ISBN 978-1-78068-760-5

ISBN 978-1-78068-761-2 (pdf)

D/2019/7849/8

NUR 827

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

This research was conducted within the framework of a research project supported by the Flanders Research Foundation (FWO grant no. G055015N).

CONTENTS

Chapter I.

Introduction	1
1. State of the art	1
2. Objectives	1
3. Methodology	3

Chapter II.

Originality and Digitalization	7
1. Originality	7
2. Digitalization	10

Chapter III.

Originality in Civil Law	15
1. Evidence in the Belgian Civil Code	15
1.1. Evidence	16
1.2. Admissibility	18
1.3. Exceptions to the precedence of written evidence	22
1.4. Evidence in writing	24
1.4.1. Private instruments	24
1.4.1.1. Properties	25
1.4.1.2. Formalities	28
1.4.1.3. Probative value	29
1.4.2. Public instruments	31
1.4.2.1. Formalities	31
1.4.2.2. Probative value	32
1.4.3. Beginning of evidence in writing	33
1.4.3.1. Properties	33
1.4.3.2. Probative value	35
1.4.4. Other types of evidence in writing	36
1.4.4.1. Copies and transcripts	36
1.4.4.2. Account books	38
1.4.4.3. Domestic papers and registers	39
1.4.4.4. Notes upon title	39

1.4.4.5.	Correspondence	39
1.4.4.6.	Others	40
1.5.	Non-written evidence	41
1.5.1.	Witness statements	41
1.5.2.	Presumptions	42
1.5.2.1.	Statutory presumptions	42
1.5.2.2.	Factual presumptions	43
1.5.3.	Other types of non-written evidence	44
2.	The originality requirement in Belgian civil law	44
3.	Digitalization in the Belgian Civil Code	46
3.1.	Act of 20 October 2000	46
3.2.	Act of 9 July 2001	50
3.2.1.	The electronic signature	51
3.2.2.	Belgian implementation and future developments	56
3.2.3.	eIDAS Regulation	59
3.3.	Act of 11 March 2003	62
3.4.	Application of rules of evidence to electronic information	66
3.4.1.	Instruments	66
3.4.2.	Beginning of evidence in writing	69
3.4.3.	Presumptions	71
3.5.	Practical cases of application	72
3.5.1.	E-mail	72
3.5.2.	Logs	74
3.5.3.	Payment transactions	76
3.5.4.	Audiovisual electronic information	77
4.	Digitalization and the originality requirement	79
4.1.	Influence of digitalization in the Belgian Civil Code	79
4.2.	Whereto with originality?	82
5.	Conclusion	85

Chapter IV.

Originality in Administrative Law

1.	Originality in administrative law	89
1.1.	Administrative law and preservation of information	89
1.2.	Preservation and originality	90
2.	Digitalization in administrative law	93
2.1.	Digitalization and archives	93
2.2.	Original electronic information	95
2.3.	Preservation of electronic information	100
2.4.	Substitution of non-electronic information	104
3.	Conclusion	109

Chapter V.	
Originality in Fiscal Law	113
1. Originality in fiscal law	113
1.1. The invoice	113
1.2. Probative value of the invoice	115
1.3. Preservation of invoices	116
2. Digitalization in fiscal law	117
2.1. Electronic invoices	117
2.2. Legal framework on electronic invoices	118
2.3. The electronic invoice in practice	121
2.3.1. Issuing and preserving electronic invoices	121
2.3.2. Substituting paper invoices	122
2.3.3. Preserving electronic invoices	124
2.3.4. Digitalization and originality	126
3. Conclusion	127
Chapter VI.	
Blockchain	129
1. Development and technical background of blockchain	129
1.1. Background	129
1.2. Technical aspects	131
1.3. Use case developments	134
2. Blockchain and electronic signatures	135
3. Blockchain for authenticity and integrity	138
4. Conclusion	139
Chapter VII.	
Integration & Conclusions	143
1. Common elements of originality	143
1.1. Civil law and originality	143
1.2. Administrative law and preservation	147
1.3. Fiscal law and the original format	149
1.4. Commonality in the origins?	150
2. Integration and construction of definition	151
3. Conclusion	153
<i>Bibliography</i>	157

