

# Kluwer Copyright Blog

## Top 3 posts of the summer from our IP law blogs

Kluwer Copyright Blogger · Thursday, September 8th, 2022

To ensure you don't miss out on interesting IP law developments reported on our other IP blogs, we will, on a regular basis, provide you with an overview of the most-read posts from each of our IP law blogs. Here are the most popular posts over the past few months.

### Top 3 Kluwer Copyright Blog posts



#### 1) NFTs and Copyright: Some Burning Issues by Enrico Bonadio and Rishabh Mohnot

*“Since the underlying asset in NFTs is primarily art, disputes in relation to NFTs bring up interesting questions pertaining to copyright law, the answers to which have the potential to shape the evolution and growth of NFTs as a medium to create, distribute and collect art. In this post, we briefly explore issues related to copyright infringement, intermediaries’ liability and remedies from the perspective of the general principles of copyright law”*

#### 2) The Meaning of “Additional” in the Poland ruling of the Court of Justice: Double Safeguards – Ex Ante Flagging and Ex Post Complaint Systems – are Indispensable by Martin Senftleben

*“With its landmark decision in Poland/Parliament and Council of 26 April 2022 (case C-401/19), the Grand Chamber of the Court of Justice of the European Union (CJEU) has clarified that the filtering obligations arising from Article 17(4)(b) and (c) of the Directive on Copyright in the Digital Single Market 2019/790 (“DSM Directive” or “DSMD”), are not unconstitutional per se... [t]he following analysis focuses on the fact that the Court qualified the complaint and redress mechanisms mandated by Article 17(9) DSMD as additional safeguards against content overblocking (para. 93). Hence, these ex post measures – allowing corrections of wrong filtering decisions after the harm has occurred – cannot be considered sufficient.”*

### 3) Why do only fools and horses write original material? UK court finds copyright infringement of ‘Del Boy’ character by Sean Ibbetson and Maria Ryan

*“The Intellectual Property Enterprise Court (IPEC), part of the English High Court, has ruled that copyright subsists in the character of Derek ‘Del Boy’ Trotter and that a character can be protected as a literary work under the UK’s closed list of copyright works ([2022] EWHC 1379 IPEC). That copyright was found to have been infringed by the creators of an ‘interactive dining experience’ which used Del Boy and the other main characters from ‘Only Fools and Horses’, one of the most successful British TV comedies of the 1980s and 1990s. The case is the first time a character has been found to be a protectable work under UK copyright law. It sets out a two-stage test for establishing that a character is a protectable work, following Cofemel, and looks at the rarely relied on fair dealing exceptions of parody and pastiche.”*

#### Top 3 Kluwer Trademark Blog posts



### 1) The saga of (dis)similarity between alcoholic and non-alcoholic beverages continues – EU position by Alena Fischerova

*“The Zoraya decision of the Grand BoA has reinforced the current EUIPO Guidelines in considering alcoholic and non-alcoholic beverages to be similar when comparing the category terms, but also allowing room for a finding of similarity between specific non-alcoholic and alcoholic beverages if a party is able to convincingly argue and substantiate the current situation or trend in the EU.”*

### 2) Reimbursement of the legal costs for the enforcement of IP rights in the EU: “THE WINNER TAKES IT (ALMOST) ALL” by Sara Parrello and Fabio Angelini

*“When a IP court awards the winning party the reimbursement of the costs incurred, what exactly can be included in such an award and how to determine its amount is not always obvious. Surely it is curious that the Court of Justice (CJEU) dealt with these issues in two recent decisions, both issued last April 28<sup>th</sup> and both following requests for preliminary rulings under Article 267 TFEU by German Courts, namely cases C-531/20 (NovaText GmbH v. Ruprecht-Karls-Universität Heidelberg) and C-559/20 (Koch Media GmbH v. FU).”*

### 3) Beware of Michelangelo’s David. 500 years after its carving its slingshot may still hurt... by Erica Vaccarello and Fabio Angelini

*“The Court of Florence last October 25, 2017 issued a decision prohibiting a travel agency to*

*commercially use the image of Michelangelo's David without the authorization of the "Galleria dell'Accademia", (Galleria) the museum where the sculpture is located."*

### **Top 3 Kluwer Patent Blog posts**



#### **1) UPC: Likely opening date March 2023, Milan the new London?** by Kluwer Patent Blogger

*"The first of March 2023 seems to be a likely date the Unified Patent Court will open its doors.*

*This became clear yesterday during the Unitary Patent Package Conference in Amsterdam. On the same day, the UPC Administrative Committee announced on its website that 'the timing of the start of operations of the Court can reasonably be expected to occur in early 2023'. During the conference March was repeatedly mentioned as a possible starting moment for the UPC."*

#### **2) ILOAT sees more violations of staff rights at European Patent Office** by Kluwer Patent Blogger

*"The EPO has violated the right of free association by imposing restrictions on staff's choice of members for the Appeals Committee and other statutory bodies of the EPO. The Administrative Tribunal of the International Labour Organisation ruled this in a case which was published on 6 July 2022. In another case it judged that restrictions put on the use of the internal mail system in 2013 were unlawful and must be quashed."*

#### **3) Petition for ministerial conference on European Patent Organisation** by Kluwer Patent Blogger

*"Ahead of their meeting late June, a petition calling for a conference of ministers of contracting states under Article 4a EPC has been sent to the members of the Administrative Council of the EPO.*

*The petition is an initiative of the EPO's trade union SUEPO, which has invited all staff members to sign it.*

*According to the petition: 'the development of the European Patent Organization (...) has increasingly departed from the structure and its mission as foreseen under the EPC and it appears that no appropriate countermeasures will be taken."*

Read further posts on the Kluwer Copyright Blog [here](#), the Kluwer Trademark Blog [here](#) and the Kluwer Patent blog [here](#).

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please [subscribe here](#).

## Kluwer IP Law

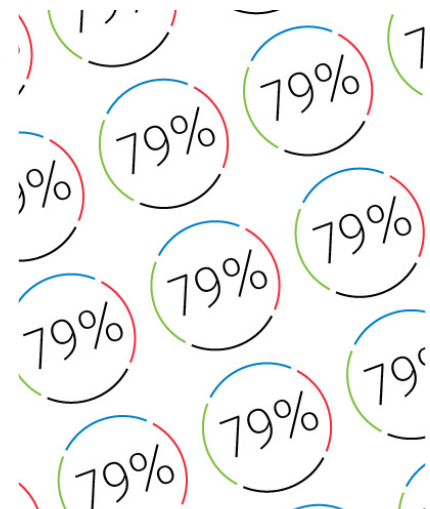
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

**Drive change with Kluwer IP Law.**

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT  
The Wolters Kluwer Future Ready Lawyer  
Leading change

This entry was posted on Thursday, September 8th, 2022 at 9:07 am and is filed under [European Union](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.