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# Kluwer Copyright Blog

## Conference on Freedom of Expression and Copyright: Luxembourg, 7 November 2019

Bernd Justin Jütte (University College Dublin) and João Pedro Quintais (Institute for Information Law (IViR)) · Tuesday, September 24th, 2019

The right to freedom of expression is of paramount importance for a democratic society. When balanced with other fundamental rights, Article 10 of the European Convention of Human Rights affords Member States a wide margin of appreciation. This margin is traditionally exercised by the national legislatures.

With the extensive harmonization of copyright through EU law, the European legislature has increasingly been charged with the task of striking this balance. It does so through the exercise of its legislative competence within this margin of discretion, and is bound in this exercise by the EU Charter of Fundamental Rights. The main poles between which the EU seeks to create this balance are the right to freedom of expression (Article 11 EU Charter) and copyright as a type of intellectual property (Article 17(2) EU Charter).

Since the Charter came into force in 2009, the Court of Justice of the European Union (CJEU) has increasingly relied on fundamental rights to interpret the often vague and ambiguous instruments that form the EU copyright *acquis*. This trend is represented in Figure 1 below, and it accompanies the more general trend of an increase in the number of preliminary references to the CJEU, mostly in relation to provisions in the Information Society Directive (2001/29/EC).

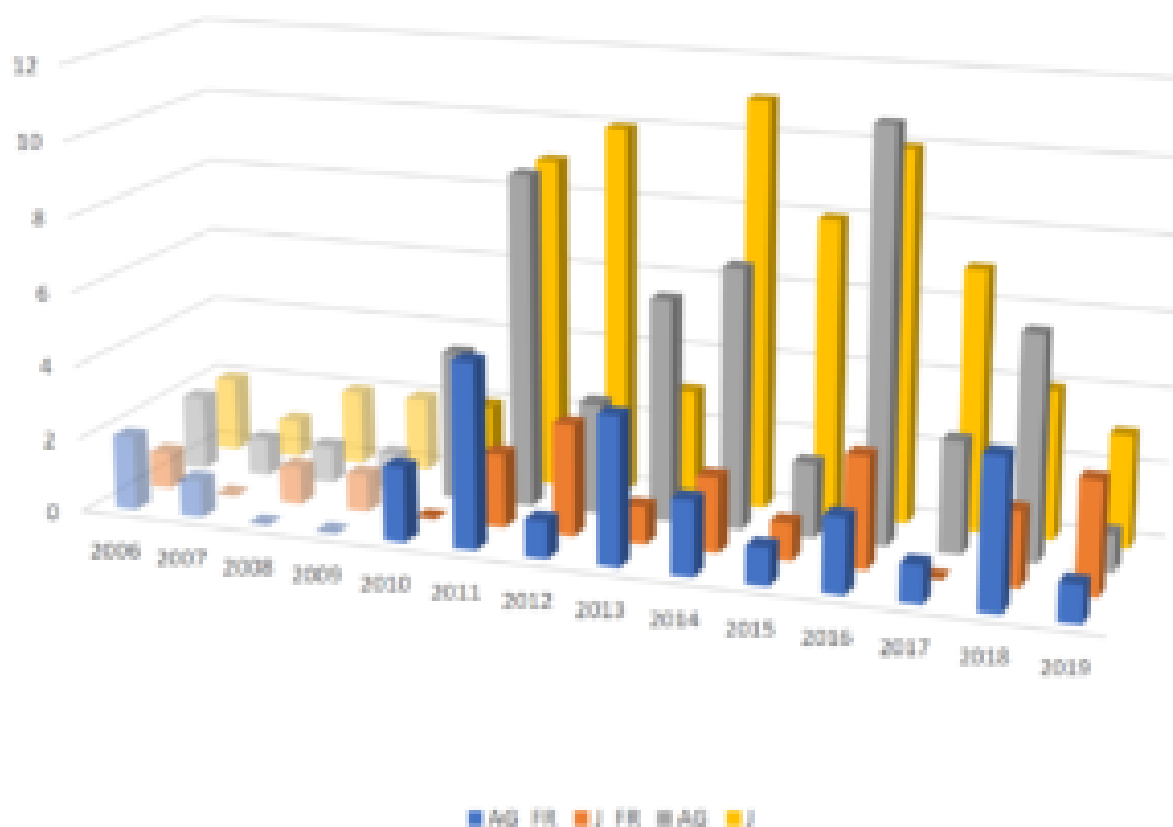


Figure 1: Number of references to fundamental rights in preliminary references (AG Opinions and Judgments) on Directive 2001/29/EC in relation to all preliminary references on the directive.

The conflict between the right to freedom of expression and copyright, as protected under the Charter, has been addressed by the CJEU in a number of cases on intermediary liability and enforcement, as well as in the interpretation of the parody and quotation exceptions. This conflict features prominently in three recent preliminary references made by the German Federal Supreme Court: *Pelham* (C-467/17), *Funke Medien* (C-469/17) and *Spiegel Online* (C-516/17). These cases have once again exposed the challenges of balancing freedom of expression against other fundamental rights in complex legal frameworks and in particular in systems of multi-level governance.

To examine this conflict and its implications from different perspectives, the Faculty of Law, Economics and Finance of the University of Luxembourg, together with the School of Law of the University of Nottingham and the Institute of Information Law (University of Amsterdam) have organized a conference on “Owning Expression and Propertizing Speech – Freedom of Expression v Copyright before the European Courts” taking place on 7 November 2019. The organizers are happy to welcome First Advocate General Maciej Szpunar (Court of Justice of the European Union) and Prof. Dr. Alexander Peukert (University of Frankfurt) as keynote speakers, as well as a number of experts in the topics under discussion (further details available [here](#)).

Attendance is free but registration is required. Please register via [this link](#).

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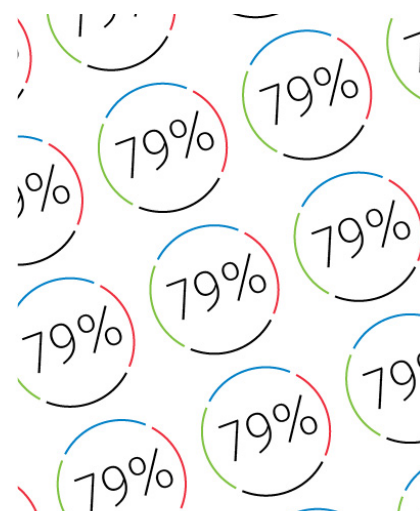
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This entry was posted on Tuesday, September 24th, 2019 at 4:11 pm and is filed under [inter alia](#), for ensuring that EU law is interpreted and applied in a consistent way in all EU countries. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law. The CJEU also resolves legal disputes between national governments and EU institutions, and can take action against EU institutions on behalf of individuals, companies or organisations.”>CJEU, Conference, European Union

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