

Kluwer Copyright Blog

EU copyright law round up – fourth trimester of 2021

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Welcome to the fourth and final trimester of 2021 round up of EU copyright law!

We started this rubric in the beginning of 2021. In this series, we update readers every three months on developments in EU copyright law. This includes Court of Justice (CJEU) and General Court judgments, Advocate Generals' (AG) opinions, and important policy developments. You can read the first, second and third trimester round ups [here](#), [here](#) and [here](#).



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The end of 2021 has been particularly busy. This becomes quite evident when one looks at the number of institutional policy reports that have been issued in the past three months.

CJEU judgments

Top System SA, C-13/20

On 6 October 2021, the CJEU issued its judgment in *Top System*, where central questions revolved around computer program decompilation as per Article 5(1) of [Directive 91/250/EEC](#). The CJEU held that the lawful purchaser of a computer program is entitled to decompile all or part of that program in order to correct errors affecting its operation, including where the correction consists of disabling a function which affects the proper operation of the application of which that program forms a part. Furthermore, the lawful purchaser of a computer program who wishes to decompile that program in order to correct errors affecting its operation is not required to satisfy the requirements laid down in [Article 6 of the Directive](#). However, that purchaser is entitled to carry out such a decompilation only to the extent necessary to effect that correction and in compliance, where appropriate, with the conditions laid down in the contract with the program's rightsholder. Stay tuned as a comment on the judgment is coming soon in the blog.

CDSM Directive implementation

More than six months have now passed since the deadline to implement the **CDSM Directive** – 7 June 2021. Most Member States missed the deadline, so **the Commission started infringement procedures by sending letters of formal notice**. Countries usually have **two months to respond to and comply with the letter of formal notice**. This seems to have pushed EU Member States towards compliance – the latest examples here are the **Irish European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021** (19 November), the **Italian Decree** (published on 27 November), and the **Estonian Act implementing the Directive** (8 December).

If you are interested in tracking the implementation process, we recommend you check **CREATe's resource page** (in partnership with the **reCreating Europe** project), as well as the **COMMUNIA tracker**.

Policy

*European Parliament, **Report on the situation of artists and cultural recovery in the EU***

In a report published on 13 October, the European Parliament emphasized the essential role of cultural and creative sectors and industries (CCSI). With respect to copyright, the Parliament condemns the late implementation of the **CDSM Directive** by the Member States and calls on a transposition focusing on the protection of cultural and creative works and those creating them, but it also points out that **the Commission guidance on Article 17** was only published three days before the implementation deadline. Thus, the Parliament believes that there is a need for a regulation also covering procedural matters. The Parliament highlights the need to guarantee fair, appropriate and proportionate remuneration for authors and performers and in the context of territorial licenses points out that, before taking any follow-up measures, there is a need to consider the voices of rightsholders. Finally, the Parliament calls on the Commission to promote collective rights management in the implementation of the recently adopted directives on copyright, as well as in its forthcoming initiatives to ensure the fair remuneration of creators and wide access to cultural and creative works for the public.

*UKIPO, **Consultation on AI and IP***

The UKIPO is currently seeking views on how the UK copyright and patent systems should look in view of the challenges that artificial intelligence (AI) has brought about. Specific questions are posed with respect to computer-generated works, text and data mining, and patents. The consultation closes on 7 January 2022. The outcome will serve as a basis to decide on future legislative steps in this field. A post commenting on the consultation can be found **here**.

*European Commission, **Stakeholder dialogue on improving the access to and availability of audiovisual content across EU Member States***

Following a **roundtable which took place in late November**, the Commission set out its ambition to improve access to and availability of audiovisual content across EU Member States. The roundtable marked the beginning of stakeholder dialogues that followed in November and December. See Communia's report of the initial meeting [here](#).

*European Parliament, **Resolution on an IP action plan***

On 11 November, the European Parliament published a resolution on an IP action plan, which seeks to support the EU's recovery and resilience, in particular in view of the COVID-19 pandemic. We reported on this [here](#).

(Leaked) draft impact assessment of the Data Act

The so-called 'Data Act' seeks to facilitate access to and use of data, including business-to-business and business-to-government, while at the same times reviews the rules on the legal protection of databases. Following a public consultation that closed on 3 September 2021, in November 2021 a leaked draft impact assessment shed light on some features of the legislative proposal that have recently failed the independent review of the **Regulatory Scrutiny Board**. An interesting point is that the Commission anticipates a review of the **Database Directive** to exclude machine-generated data from the scope, making this type of data more accessible and preventing lock-in situations.

*European Parliament, **Special Committee on Artificial Intelligence in a Digital Age (AIDA), Draft Report on AI in a Digital Age***

Yet another draft policy report was issued in November, emphasising that the EU needs to become a leader in AI. The rapporteur is very well-known to all copyright enthusiasts – Mr Axel Voss. With a strong emphasis on the benefits of AI to tackle climate change, the pandemic and labour market challenges, the draft report also generally stresses the EU's key values and objectives, and in particular, the need to adopt a human-centric approach consistent with the **Charter of Fundamental Rights of the EU**.

*European Commission, **Recommendation for a Common European Data Space for Cultural Heritage***

Also in November, the Commission published a recommendation on a common European data space for cultural heritage, the aim of which is to accelerate the digitisation of cultural heritage

assets. We reported on this [here](#).

UKIPO, G7 Heads of IP Offices: Joint Statement

Under the Presidency of the UK, leaders of IP Offices signed a joint statement which strongly emphasises the need for cooperation with respect to public health, digital technologies and IP enforcement.

UK Parliament, Copyright (Rights and Remuneration of Musicians, Etc.) Bill

A new UK bill focusing on various aspects related to musicians and other related right holders was published in November. The bill tackles issues such as equitable remuneration for streaming, contract adjustment, right of revocation and transparency. The bill however met with some backlash and in early December was rejected by the British Parliament. As things stand, it is unlikely that the proposal will progress.

European Parliament and Council, Agreement on the Data Governance Act

Towards the end of November, following trilogue meetings, the Parliament and Council reached a provisional agreement on the Data Governance Act – a proposed Regulation promoting the availability of data and seeking to build a trustworthy environment to facilitate its use for research and the creation of innovative new services and products. In December, the agreement was **also approved by the Council's Permanent Representatives Committee (Coreper)**.

European Commission, Protecting Fundamental Rights in the Digital Age – 2021 Annual Report on the Application of the EU Charter of Fundamental Rights

It has been a very busy year for fundamental rights and copyright law and unsurprisingly in its Annual Report on the application of the Charter with respect to Fundamental Rights in the Digital Age, the Commission places a strong emphasis on online content moderation, safeguarding fundamental rights in the age of AI and digital surveillance, among many other things. On the copyright side, the following concerning themes emerge: the use of copyright law to silence voice online, procedures in tackling copyright infringing content, as well as the **Article 17 CDSM** safeguards.

Council of the EU, Conclusions on increasing the availability and competitiveness of European audiovisual and media content

On 13 December, the Council published its conclusions on the availability and effective accessibility of European audiovisual and media content. It stresses that further action is necessary when it comes to cultural diversity, promotion and prominence of European content and

sustainability.

*European Union Intellectual Property Office, **Report on Online Copyright Infringement in the EU***

In December, the European Union Intellectual Property Office issued a report on online copyright infringement in the EU with a specific focus on music, films and TV covering the period 2017-2020. We reported on this [here](#).

*European Audiovisual Observatory, **Mapping report on national remedies against online piracy of sports content***

In December, the European Audiovisual Observatory published a report on the national remedies against online piracy of sports events. The report looks at the scope of protection of audiovisual sports content in the legislative frameworks of the 27 EU Member States and the UK. Stay tuned as a comment on the study is coming soon in the blog.

Coming soon and latest referrals

The end of 2021 has been very busy. And yet there are some interesting preliminary references to the CJEU to look out for in the new year: *Austro-Mechana* (**C-433/20**) on cloud services and levies (you can read a blog on the AG's Opinion [here](#)), *RTL Television* (**Case C-716/20**) regarding cable retransmission in hotel rooms, *Gemeinde Bodman-Ludwigshafen* (**C-256/21**) and *Ametic* (**C-263/21**) on the InfoSoc Directive's sanctions and private copying, *AKM* (**C-290/21**) on communication to the public by satellite broadcasting, *Ocilion* (**C-426/21**) on communication to the public and the private copying exception and *Castorama Polska* (**C-628/21**) on copyright enforcement.

On the copyright/trade mark front at the EUIPO, a case on the registrability of the marks '**ANIMAL FARM**' and '**1984**' is still pending before the EUIPO's Grand Board of Appeal. The copyright in these two titles expired at the beginning of 2021.

Stay tuned!

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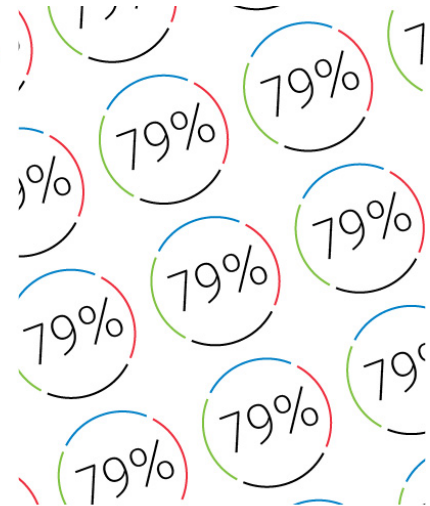
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This entry was posted on Monday, December 27th, 2021 at 8:13 am and is filed under Artificial Intelligence (AI), Case Law, inter alia, for ensuring that EU law is interpreted and applied in a consistent way in all EU countries. If a national court 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, European Union, Jurisdiction, Legislative process, Private copying, Round-up

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