

# Kluwer Copyright Blog

## Top 10 Posts on the Kluwer Copyright Blog in 2021

Kluwer Copyright Blogger · Monday, January 10th, 2022

As we enter a new year, we would like to take this opportunity to pass on our best wishes for 2022 to all of our readers, as well as reflect on developments in copyright over the past year. Despite its challenges, last year was another busy one in the copyright world, with ongoing European copyright reform, a number of landmark CJEU decisions and notable developments in a number of jurisdictions.

Here is a quick look back at our 10 most-read posts last year:

1. [The Rise of Non-Fungible Tokens \(NFTs\) and the Role of Copyright Law – Part II](#) by Peter Mezei, João Pedro Quintais, Alexandra Giannopoulou and Balázs Bodó

2. [The Rise of Non-Fungible Tokens \(NFTs\) and the Role of Copyright Law – Part I](#) by Peter Mezei, João Pedro Quintais, Alexandra Giannopoulou and Balázs Bodó

*From relative obscurity only a few months back, public awareness of non-fungible tokens (NFTs) has risen dramatically. This has come about following their use in connection with the transaction of different types of digital content (including artworks), often for exorbitant amounts. Because much of the digital content linked to NFT transactions relates to creative expression, the question arises of how to consider NFTs from the perspective of copyright law, in particular the EU copyright acquis.*

*This two-part post addressed this question. Part I introduced the recent emergence of NFTs and proceeded to explain what they are. Part II analysed some of the copyright law implications of NFTs.*

3. [YouTube/Cyando – an Important Ruling for Platform Liability – Part 1](#) by Felix Reda and Joschka Selinger

*The European Court of Justice (CJEU) ruling in joined cases C-682/18 (YouTube) and C-683/18 (Cyando), concerning platform liability for copyright-infringing user uploads under Art. 3 (1) InfoSoc Directive, has been eagerly awaited for a long time.*

*This blog post explains why the judgment is still highly significant, coming at a time when the fundamental rights compatibility of Art. 17 DSM Directive is acutely in question, very few Member States have implemented the DSM Directive and the legislative process on the Digital Services Act (DSA), attempting to modernize EU law on platform regulation, is in full swing.*

#### 4. [European Commission back-tracks on user rights in Article 17 Guidance](#) by Felix Reda and Paul Keller

*The European Commission has published its long overdue guidance on the application of art. 17 of the Directive on Copyright in the Digital Single Market (CDSMD), a mere three days before the implementation deadline. The final version of the guidance makes it clear that the Commission has abandoned the position it held before the CJEU that art. 17 is compatible with fundamental rights as long as only manifestly infringing content can be blocked.*

*This blog post provides a critical assessment of the guidance, a Communication that the European Commission was required to issue according to art. 17(10) following an extensive stakeholder dialogue.*

#### 5. [YouTube Copyright Transparency Report: Overblocking is real](#) by Paul Keller

*For anyone interested in the discussions about automated content filtering, Christmas came early this week: On Monday YouTube published the first edition of its Copyright Transparency Report. The report that covers copyright enforcement actions on the platform for the period from January to June of this year provides much needed insights into how YouTube's various copyright management systems function. In publishing this report YouTube is finally bringing some empirical evidence to the discussion about the automated content filtering that is being fuelled by the ongoing implementation of Article 17 of the Copyright in the Digital Single Market (CDSM) directive.*

#### 6. [The Challenge to Article 17 CDSM, an opportunity to establish a future fundamental rights-compliant liability regime for online platforms](#) by Christophe Geiger and Bernd Justin Jütte

*The Directive on Copyright in a Digital Single Market (CDSM Directive) is due to be implemented by the Member States of the European Union by 7 June 2021. The 27 Member States have struggled with transposing the CDSM Directive and have so far produced various transposition drafts, many of which differ greatly. This is the case in particular with regard to the implementation of Article 17, the most contested and debated provision of the CDSM Directive, which significantly reshapes the rules for the liability of platforms for uploads of their users.*

#### 7. [It's 23 April 2021, so where is the Advocate General opinion in Case C-401/19 Poland v Parliament and Council?](#) by Paul Keller

*In May 2019 right after the adoption of the Copyright in the Digital Single Market Directive, the Polish Government initiated a legal challenge before the Court of Justice of the European Union (CJEU) requesting the annulment of (parts of) Article 17. The Polish challenge claims that the application of the filtering obligations contained in Article 17 will lead to censorship and will limit the freedom of expression and the freedom to receive and impart information guaranteed in Article 13 of the EU Charter of Fundamental Rights.*

*Last week Thursday the CJEU announced that the AG opinion would be postponed by almost 3 months and would now be delivered on the 15th of July. This delay means that the opinion will be published more than a month after the implementation deadline for the DSM directive on the 7th of June, precluding Member States of an initial indication how they should reconcile the conflicting obligations contained in Article 17 of the Directive.*

## 8. Divergence instead of guidance: the Article 17 implementation discussion in 2020 – Part 1 by Paul Keller

*It is less than five months until the implementation deadline for the 2019 Copyright in the digital single market directive (DSM Directive). So far, the pace of implementation has been relatively slow (no doubt at least in part due to the massive challenges that governments and the cultural sector are facing as a result of the pandemic). Still, with the implementation deadline in sight it seems worth summarising where the discussion about implementing Article 17, which continues to be the most controversial aspect of the DSM Directive, stands and how the discussion has evolved over the course of 2020.*

## 9. Article 17: (Mis)understanding the intent of the legislator by Paul Keller

*Today, the French Government presents the second report on content recognition tools on digital sharing platforms commissioned by the Conseil Supérieur de la Propriété Littéraire et Artistique (High Council for literary and artistic property – CSPLA). The new CSPLA report, authored by Jean-Philippe Mochon (who had also authored the previous report on content recognition tools), focuses on “proposals for the implementation of Article 17 of the EU copyright directive” and marks an important and timely contribution to the discussion about the implementation of Article 17. It provides further insights into the positions taken by France throughout the discussion.*

## 10. AG’s opinion on Peterson/ YouTube: Clarifying the liability of online intermediaries for the violation of copyright-protected works? by Zoi Krokida

*On the 16 July 2020, the Advocate General (AG) Saugmandsgaard Øe delivered his much-awaited opinion on the case of Peterson v YouTube (joined cases C-682/18 and 683/18), referred to the CJEU by the German Federal Court of Justice. Having explicitly precluded the consideration of provisions of the Copyright in the Digital Single Market (DSM) Directive due to its ongoing implementation into EU Member States, the AG offered a clarification with regard to the application of Article 3(1) of the InfoSoc Directive, construed the scope of Article 14(1) of the e-Commerce Directive and set forth a list of requirements for issuing blocking injunctions under Article 8(3) of the Enforcement Directive. His interpretation is controversial, while at the same time leaving many unanswered questions.*

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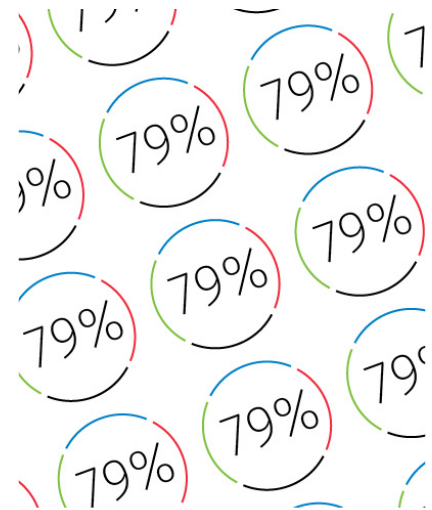
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