

Kluwer Copyright Blog

EU copyright law round up – first trimester of 2022

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Welcome to the first trimester of the 2022 round up of EU copyright law!

We started this rubric back in 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 previous round-ups [here](#).



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End of 2021

Gtflix, [C-251/20](#)

The end of a calendar year is always busy. We report here on one case, issued late in December 2021, which may be of interest to our copyright readers, despite its focus on private international law. In *Gtflix*, the CJEU held that when a claim relating to the dissemination of allegedly disparaging remarks on the internet is brought, the compensation for the resulting damage from that claim in one Member State may be sought before the courts of that same Member State.

2022

CJEU judgments and AG Opinions

Austro-Mechana, [C-433/20](#)

On 24 March 2022, the CJEU issued its judgment in the *Austro-Mechana* case which tackles the private copying exception and the compensation for the reproduction and storage of copyright material in the cloud. The AG opinion was [commented previously](#) on this blog. A post on the judgment is coming soon in the blog, so watch this space.

RTL Television, AG Pitruzzella, C-716/20

On 10 March 2022, AG Pitruzzella issued his opinion in *RTL Television*. The definition of the concept of ‘cable transmission’ was at the centre of the analysis. The AG held that the notion refers to the retransmission of a primary transmission by cable distributors, who carry out such retransmission as professional operators in the context of a conventional cable network. Stay tuned as a comment on the AG Opinion is coming soon in the blog.

CDSM Directive implementation

The implementation of the **CDSM Directive** is still far from over, despite the fact that the implementation deadline passed already a while ago – in 7 June 2021. While most Member States missed the deadline, at least based on available **data** it appears that **all** Member States have at this stage made an effort to start the process.

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

UK Intellectual Property Office, UK’s future exhaustion of IPR regime

Following a **public consultation** on the topic of exhaustion, the UKIPO concluded that there is not enough available data to understand the economic impact of any of the alternatives to the UK exhaustion regime in a post-Brexit world. Thus, for the time being, no decision was made on how exhaustion will look like now that the UK has left the EU.

European Commission, Data Act

On 23 February the European Commission issued its proposal for a Regulation on harmonized rules on fair access to and use of data, ie the ‘**Data Act**’. Among many other things, the proposal seeks to clarify the application of the **Database Directive**, namely the “accidental or unintended application of the *sui generis* right to databases containing machine-generated data”. Article 35 of the proposed Regulation states that “in order not to hinder the exercise of the right of users to access and use such data [...] the *sui generis* right provided for in Article 7 of Directive 96/9/EC does not apply to databases containing data obtained from or generated by the use of a product or a related service.”

European Commission, Study on copyright and new technologies – copyright data management and artificial intelligence

In February, the Commission published a study on copyright and new technologies carried out by Technopolis Group, Philippe Rixhon Associates, the Catholic University of Louvain (UCLouvain), Crowell & Moring LLP and IMC University of Applied Sciences Krems. The first part looks into the potential use of new technologies to improve the management of data linked to copyright-protected content by the European creative industries. The second part concentrates on the copyright-related challenges raised by the use of artificial intelligence.

reCreating Europe, *Study on “AI Music Outputs: Challenges to the Copyright Legal Framework”*

In March, in the context of the reCreating Europe project, a study was published on “AI Music Outputs: Challenges to the Copyright Legal Framework”:, authored by Oleksandr Bulayenko, João Pedro Quintais, Daniel Gervais, and Joost Poort (see [here](#) and [here](#)). This report examines the application of EU copyright and related rights law to outputs generated by or with the assistance of artificial intelligence (AI) systems, tools or techniques (AI outputs), with a focus on outputs in the musical domain. The Report examines the question: How can and should EU copyright and related rights law protect AI musical outputs? The interdisciplinary (legal and empirical) research involves: (i) analyzing of the protection of AI outputs under EU copyright and related rights law; (ii) examining the attribution of authorship and ownership to (natural and legal) persons involved in the creation or production of AI outputs; (iii) proposing interpretative guidelines and policy recommendations on increasing legal certainty regarding the protection, authorship, and ownership of copyright and related rights over AI outputs, especially music outputs.

*International federation for the phonographic industry (IFPI), **Global Music Report 2021***

The Global Music Report for 2021, prepared by the IFPI came out in March. A previous trend in the music industry is confirmed – streaming is the leading revenue source in nearly all markets. Overall, streaming accounted for 65.0% of the total global recorded music revenues. The report states that the global recorded music market grew with 18.5% in 2021, with total revenues estimated at US\$25.9 billion.

*European Parliament and Council, **Digital Markets Act***

Still in March, the European Parliament and the Council came to a deal with respect to the Digital Markets Act. While not strictly related to copyright law, the Act will have serious implications when it comes to fair competition and more choices for users on markets controlled by large platforms, the so called ‘gatekeepers’. One important connection of the DMA with copyright relates to press publishers.

According to reports (e.g. [here](#)), the final version of the the DMA’s provisions on fair, reasonable and non-discriminatory (FRAND) general conditions for access for business users will be extended to apply “not only to access but also remuneration for the providers of digital content”. A consequence would be that “the gatekeeper would have to publish the general conditions for remuneration and the related methodology and respond in good faith to content providers’ request to apply them”. Some have called this “a circumvention of the Copyright Directive,” in particular the regime for the press publishers’ right in art. 15 (for an earlier report with details, see [here](#)). Once

the final version of the DMA is available, we will examine this provision on the blog.

Coming soon and latest referrals

2022 promises to be another year full of copyright developments. Most controversially, the CJEU judgment in the **Polish challenge to Article 17** of the **CDSM Directive** is scheduled to come out on 26 April 2022.

In addition, there are some interesting preliminary references to the CJEU to look out for in the new year: *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, *Castorama Polska* (**C-628/21**) on copyright enforcement and *Blue Air Aviation* (**C-775/21**) on communication to the public on airplanes.

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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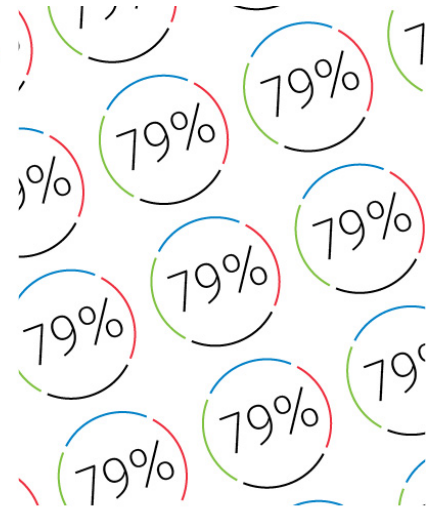
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