

Kluwer Copyright Blog

EU copyright law round up – second trimester of 2022

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Welcome to the second 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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CJEU judgments and AG Opinions

Polish challenge of Article 17 CDSM, C-401/19

This is perhaps one of the most awaited judgments in the history of EU copyright law. On 26 April 2022, the CJEU finally delivered its judgment, the main focus of which was the Polish challenge of Article 17 of the CDSM Directive. The CJEU upheld the provision, subject to its interpretation in light of fundamental rights. You can read up on the various aspects of the judgment [here](#), [here](#), [here](#), [here](#), [here](#) and [here](#).

CDSM Directive implementation

The implementation of the **CDSM Directive** is still far from over, despite the fact that the implementation deadline passed more than a year ago – on 7 June 2021. Many Member States

missed the deadline, so in May 2022 the Commission **issued reasoned opinions** to 13 of them.

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 AI in the Digital Age***

In the beginning of April, the European Parliament published a report on AI in the Digital Age. The report, prepared by the very well-known to the copyright audience Mr Axel Voss, stresses the importance of harmonisation and clear and transparent enforcement of IPRs. Focusing on SMEs, the report highlights that IP protection among these remains low. In addition, in order to help EU companies protect their AI with IP rights, the EU's position as a global standard-setter should be strengthened.

*European Commission and European Parliament, **Digital Services Act (DSA)***

An **agreement** was reached in April 2022 between the European Parliament and EU Member States on the Digital Services Act, which was followed by an **endorsement** by the Parliament's Internal Market Committee later in June 2022 and (although strictly not in this second trimester) the final text was **approved on 5 July**. Together with the Digital Markets Act, the DSA is now expected to be put to final vote in a plenary session in the beginning of July 2022. Read more **here**, as well as **here** for further background on the DSA and the Opinion of the **European Copyright Society** (generally on the topic, see **here**).

*European Parliament, **Study on IPR and the use of open data and data sharing initiatives by public and private actors***

In May 2022, the European Parliament published a study on IPRs and the impact on data access, portability and re-use. The study focuses more narrowly on the **Computer Programs Directive**, the **Database Directive** and the **Trade Secrets Directive** with a view to enhancing interoperability.

*Council of the EU, **Data Governance Act***

Although not strictly about copyright, readers may be interested to know that in May 2022, the Council approved the Data Governance Act, which has as its main goal the promotion of

availability of data and building a trustworthy environment to facilitate their use for research and the creation of innovative new services and products.

*Council of the EU, **Conclusions on research assessment and implementation of open science***

Published in May 2022, the conclusions consider that the authors of research publications or their institutions should retain sufficient IPRs to ensure open access, leading to broader dissemination, valorisation and reuse of results improving the fair balance of the publishing business models. In addition, data and bibliographic databases used for research assessment should, in principle, be openly accessible, while tools and technical systems should enable transparency.

*CISAC, **Annual Report***

The international body representing authors and composers published its 2022 Annual Report. While the report outlines CISAC's legislative lobbying actions in several countries to promote stronger laws protecting creators and rightsholders, it also pinpoints growing digital royalties and stronger laws safeguarding creators' rights as top priorities.

*EU Intellectual Property Office, **2022 IP Youth Scoreboard***

The EUIPO's 2022 EU-wide survey on the perception of IP among young Europeans confirms previous trends of purchasing fake products – in the last 12 months, 37% of young people bought one or several fake products intentionally.

*Max Planck Institute for Innovation and Competition, **Position Statement on the EU Data Act***

The Max Planck Institute for Innovation and Competition has published a Position Statement welcoming the EU Commission's initiative on the EU Data Act and provides a comprehensive analysis of the proposed rules. Read more [here](#).

*European Commission, **Staff Working Document on the Portability Regulation***

In June, the Commission published a report on the application of the **Portability Regulation**, according to which paid online content services are obliged to provide at no extra cost cross-border portability to subscribers when they travel or visit temporarily other Member States. The report establishes that the new rules have been functioning well for all parties involved. It states that the Regulation's impact on copyright licencing practices (introducing cross-border portability clauses into their existing agreements) was very marginal and did not lead to any significant costs.

*United States Copyright Office, **Copyright Protections for Press Publishers***

Following public consultations and roundtables with stakeholders such as authors, publishers, internet platforms, libraries and users' groups, the US Copyright Office has recommended against the introduction of a new press publishers right for the online publications (along the lines of **Article 15 CDSM Directive**). The Office emphasizes that ancillary copyright protections have not been shown to be necessary in light of publishers' existing rights, and would likely be ineffective so long as publishers depend on news aggregators for discoverability. Moreover, to the extent that any ancillary copyright protections would lack traditional copyright limitations and exceptions, they would raise significant policy and Constitutional concerns.

*UK Intellectual Property Office, **Response to public consultation on IP and AI***

Following a public consultation that closed in the beginning of this year (see [here](#) and [here](#)), the UK IP Office has now published its response. With respect to the UK computer-generated provision under **s.9(3) of the Copyright Designs and Patents Act 1988**, in view of the early stages of the current developments on AI-generated creative output, the government has decided to make no changes to this provision. As for the text and data mining exception, the government has decided to introduce a new copyright and database right exception which allows text and data mining for any purpose. Stay tuned for a detailed comment on the blog on this front in the coming weeks.

Coming soon and latest referrals

Despite the fact that the CJEU judgment in the **Polish challenge to Article 17** of the **CDSM Directive** is already out, there are still 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.

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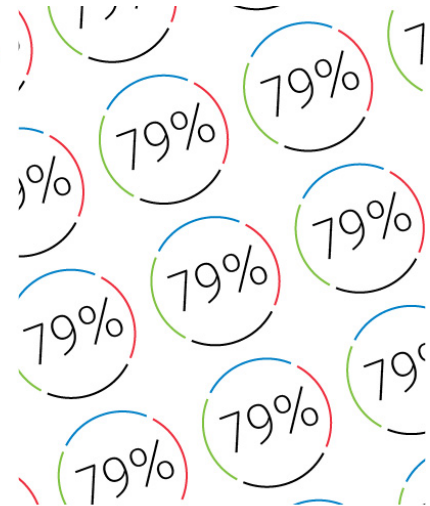
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2022 SURVEY REPORT
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This entry was posted on Thursday, July 7th, 2022 at 12:35 pm and is filed under AG Opinion, Case Law, CDSM Directive, inter alia, for ensuring that EU law is interpreted and applied 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, Digital Single Market, European Union, Legislative process, Round-up

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