

Kluwer Copyright Blog

EU copyright law round up – fourth trimester of 2022

Alina Trapova (University College London) and João Pedro Quintais (Institute for Information Law (IViR)) · Friday, January 13th, 2023

Welcome to the fourth (and last) trimester of the 2022 round up of EU copyright law (even though slightly overdue)! While in the last three months of 2022 the CJEU was relatively quiet, the various EU policymakers have been very productive.



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](#).

Photo by Markus Spiske on Unsplash

CJEU judgments and AG Opinions

Grand Production, AG Opinion, C-423/21

On 20 October 2022, AG Szpunar issued his Opinion in *Grand Production*. This is a preliminary reference from the Austrian Supreme Court, concerning the right of communication to the public. At issue in this case is whether the operator of a streaming platform authorized to communicate to the public works in a certain territory might be liable if its users located in non-authorised territories resort to VPN to circumvent geo-blocks and access the platforms' content. According to the AG, streaming platform operators should not be held directly liable for communicating works to the users in unauthorized territories unless they have intentionally applied ineffective geo-blocks. In addition, the AG also examines the directly liability of an entity that is associated to the operator of the streaming platform at issue, which advertises that platform, enters into contracts with customers relating to the operator's service, and provides assistance to those customers, but has no influence or in the contents made available on the platform or in the access restrictions to the same. In the AG's view, such an associated entity is not directly liable for communicating

works to the public if there is no direct link (“lien direct”, “rechtstreekse verband” or “nexo diretto”) between their activity and the availability of the works on the platform. This entity may, however, be subject to accessory liability under national law. The Opinion is not yet available in English but readers can find an English language analysis in the [IPKat](#).

Castorama Polska, AG Opinion, C?628/21

This case concerns the articulation of Article 8(1) of the [Enforcement Directive](#), on the “Right to Information” with Article 4 of the same instrument, on “Persons entitled to apply for the application of the measures, procedures and remedies”. The core question of this case is whether Article 8(1) must be interpreted as meaning that, in the context of an action relating to infringement of an intellectual property right (IPR), the applicant must prove that she is the holder of the IPR at issue or whether it is sufficient that she “lends credence to the fact” of her ownership, in particular where the request for information precedes the assertion of claims for compensation on account of an infringement of the IPR. On this issue, AG Rantos advised the CJEU to rule that the applicant must lend credence, by submitting sufficient evidence, to the fact she is the holder of the IPR in question, “in particular where the request for information precedes the assertion of claims for compensation on account of the infringement of the [IPR]”. Furthermore, the AG adds, the “national court must also assess the merits of that request and take due account of all the objective circumstances of the case, including the conduct of the parties, in order to ascertain, in particular, that the applicant has not abused that request.”

CDSM Directive implementation

More than one year and a half after the implementation deadline (7 June 2021) of the **CDSM Directive** has passed now. As readers know, many Member States missed the deadline, so in May 2022 the Commission **issued reasoned opinions** to 13 of them. According the [recent data](#), most (but still not all) Member States have now transposed the Directive into their national laws.

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 DSM Implementation tracker](#).

Policy

Council, [The DSA is approved \(as well as the DMA\)](#)

Proposed back in December 2020, the well-known Digital Services Act (DSA), which regulates intermediaries by updating the E-Commerce Directive and topping up the regime with certain specific obligations for various types of services, finally received the Council's approval on 4 October 2022.

The DSA *enters into force* on the twentieth day following that of its publication in the Official Journal of the European Union, and generally *applies* as from 17 February 2024. However, certain provisions – mostly related to very large online platforms and search engines – apply from from 16 November 2022 (see Article 93 DSA). On the articulation of the DSA with the copyright *acquis*, see e.g. [here](#) and [here](#).

EUIPO, Automated content recognition: discussion paper – phase 2 – ‘IP enforcement and management use cases’

The EUIPO's Observatory issued the second phase of its report on automated content recognition (ACR), where it turned specifically to several use cases for IP enforcement and management. It analysed solutions to detect IP-infringing listings on e-commerce marketplaces, smartphone solutions to detect genuine or counterfeit products, solutions to recognise 3D printing files and 3D-printed products, solutions to protect and manage copyright and neighbouring rights on content-sharing services, and solutions to identify live streams of IP-protected content.

European Commission, 2023 work programme

In October, the European Commission adopted its work programme for 2023, where two important copyright-related points stick out. Within the policy objective focused on ‘virtual worlds’, in the second quarter of 2023 the Commission will be working on an ‘Initiative on virtual worlds, such as metaverse’. When it comes to the fight against piracy, a ‘Recommendation on piracy of live content’ building on the Parliament's resolution on the ‘Challenges of sports events organisers in the digital environment’ seems to be in the pipeline.

European Parliament, eSports and video games resolution

In November, the Parliament adopted a resolution seeking to acknowledge the strong growth and innovation potential of the EU video game ecosystem and to develop an European long-term video game strategy. The resolution stresses that eSports are essentially driven by private entities, with the IP rights belonging to the game publisher, while the rights to organize competitions go either to the game publisher or are arranged on a contract-by-contract basis.

European Parliament, Intellectual Property Rights and Distributed Ledger Technology with a focus on art NFTs and tokenized art

On 15 November 2022, the European Parliament issued a study on ‘Intellectual Property Rights and Distributed Ledger Technology with a focus on art NFTs and tokenized art’. Starting from the technical specifications of NFTs, the study looks into the various IP (and related) implications such as copyright, trade mark and trade secrets.

*European Commission, **Industrial design public consultation***

In view of updating its industrial design laws, the European Commission is currently carrying out a public consultation seeking to modernise, clarify and strengthen design protection by making it more accessible and affordable across the EU and ensuring EU and national rules governing design protection are more compatible. More specifically, the consultation turns to the rules on design protection for repair spare parts. The consultation closes on 31 January 2023.

*WIPO, **Collective Management of Copyright and Related Rights***

In December 2022, the WIPO published the third edition of the book on “Collective Management of Copyright and Related Rights”, written by Dr. Mihály Ficsor – an indispensable source in the field.

*European Commission, **Staff working document on counterfeit and piracy watchlist***

In December 2022, the Commission published its Counterfeit and Piracy Watchlist – an initiative it started back in 2018. The list is a selection of marketplaces and service providers reported by stakeholders. It includes a short summary of the allegations of the reporting stakeholders and, where provided, a summary of the response of the mentioned marketplace or service provider to those allegations.

Coming soon and latest referrals

2023 promises a lot with several pending cases before the CJEU: *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, *Blue Air Aviation* (**C-775/21**) on communication to the public on airplanes, *HADOPI* (**C-470/21**) on the French HADOPI law, *Mylan* (**C-473/22**) concerning enforcement and compensation, as well as *Telia Finland* (**C-201/22**) on CMOs and standing.

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!

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please [subscribe here](#).

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.
The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Friday, January 13th, 2023 at 8:04 am and is filed under 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, Collective management, Communication (right of), Design

Rights, Digital Single Market, Enforcement, European Union, Liability, NFTs, Round-up

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.