

# Kluwer Copyright Blog

## EU copyright law round up – second trimester of 2023

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Welcome to the second trimester of the 2023 round up of EU copyright law! In this series, every three months we update you on what has happened 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

*Blue Air Aviation, CJEU, C?775/21 and C?826/21*

On 20 April 2023, the CJEU delivered its judgment in *Blue Air Aviation*, where it once again turned to the right of communication to the public, but this time in the context of broadcasting on a plane and a train. It ruled that broadcasting music on these two transportation modes is a communication to the public, but installing the relevant equipment to carry out the communication is not. You can read a comment on the cases [here](#).

*LEA, AG Opinion, C-10/22*

AG Szpunar took on another copyright case in his opinion issued on 25 May 2023 which focused on the delicate collective rights management situation in Italy. The central question in the case is the legality of the Italian legislation which reserves copyright management activities to collective management organisations listed by the Italian legislation (here, the LEA), to the exclusion of independent management entities established in other Member States (here, Jamendo incorporated

in Luxembourg). The AG is of the opinion that such national legislation is precluded by EU law and in particular by Article 3(2) of [Directive 2000/31](#) , as well as Article 16(1) and 2(d) of [Directive 2006/123](#). For a blog post detailing the hearing before the court see [here](#).

*Public.Resource.Org and Right to Know, AG Opinion, C-588/21 P*

According to AG Medina in her opinion in this case issued on 22 June 2023, European Harmonised Technical Standards must be freely available without charge due to their particular legal nature as acts that form part of EU law.

As such, she proposes that the Court set aside the judgment under appeal and annul a Commission decision refusing access to the requested harmonised technical standards. For the purposes of EU law in general and for the access to EU law in particular, and, given indispensable role of these standards in the implementation of EU secondary legislation and their legal effects, they should, in principle, not benefit from copyright protection. According to the AG, it follows from Article 297 TFEU that EU law is, in principle, not capable of benefiting from copyright protection. Furthermore, even if these standards could be protected by copyright, free access to the law has priority over copyright protection.

### **CDSM Directive implementation**

The **CDSM Directive** implementation is still far from over. As readers know, many Member States missed the deadline, so in February 2023 the [Commission referred 11 of them to the CJEU for failure to fully transpose the Directive](#). Almost all EU member states have implemented the Directive into their national laws. Portugal was the latest Member State to do so. For a summary analysis of the Portuguese implementation, see [here](#).

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 Portal](#).

### **Policy**

*European Commission, Recommendation on combating online piracy of sports and other live events*

On 4 May 2023, the European Commission issued a recommendation on combating online piracy of sports and other live events. While sports events, as such, are not protected by copyright and related rights, the organisers of these events may benefit from specific protection under national

law. That said, the recommendation focuses on three aspects: (i) prompt treatment of notices related to live events; (ii) blocking injunctions; and (iii) commercial offers and awareness. It introduces the deadline of 17 November 2025 until which the Commission together with the EUIPO Observatory will monitor the effects of the recommendation. This date coincides with the deadline by which the Commission will evaluate the way the [Digital Services Act](#) interacts with other legal acts, including copyright legislation.

#### *European Commission, Guidelines for staff on the use of online available generative Artificial Intelligences tools*

On 30 May 2023, the European Commission issued internal guidelines on the use of generative AI tools. The document is available on the institution's internal system. The general message of the guidance is to caution against potential risks stemming from disclosures of sensitive and personal data; wrong or biased answers; and, most interestingly of our readers, potential IP-related issues linked to the lack of transparency since copyright protected works may be used in the training process without this being clear.

#### *Council of the EU, Competitiveness Council – Conclusions adopted in meeting 22-23 May 2023*

At its meeting on 22-23 May 2023, the Council of the EU agreed on important points related to scholarly publishing. In particular, the Council adopted conclusions on 'high quality, transparent, open, trustworthy and equitable scholarly publishing' where it calls for immediate and unrestricted open access in publishing research involving public funds. To that end, it [welcomed](#) the introduction of secondary publication rights by a number of Member States into their national copyright legislation, enabling open access to scholarly publications involving public funds and thus, [encouraged the Commission](#) to examine and propose measures at EU level aiming at removing barriers to access to and reuse of publicly funded research results, as well as publications and data for research purposes, while guaranteeing the author's consent.

#### *UKIPO, Video Games Research Framework*

On 30 May 2023, the UKIPO published a framework with a best-practice supporting tool for research into video games to shed light on how video games have impacted individuals, consumers, communities, industries and societies, and to support researchers to deliver shared research objectives. On the copyright side, it stresses that some of the sources used to research the sector may be subject to copyright and database rights and as such it warns against infringement with an important focus on exceptions.

#### *European Parliament, AI Act – negotiation position adopted*

On 14 June 2023, the European Parliament adopted its [negotiating position on the AI Act](#). In addition to the different rules for the different risk levels from AI, when it comes to generative AI and copyright, there is now a strong emphasis on transparency whereby providers will be obliged to disclose that the content was generated by AI, design the model to prevent it from generating illegal content, as well as publish summaries of copyrighted data used for training (see previous analysis [here](#)). The next step in the legislative process are the trilogue meetings between the Commission, the European Parliament and the Council to agree on a final text. The aim is to reach an agreement by [the end of this year](#).

### Coming soon and latest referrals

The number of pending cases before the CJEU on copyright is far from low: *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, *REPROBEL* (C-230/23) on fair remuneration, *Castorama Polska* (C-628/21) on copyright enforcement, *Citadines* (C-723/22) on communication to the public in hotel rooms and fitness rooms, *GEMA* (C-135/23) on communication to the public in apartments, *HADOPI* (C-470/21) on the French HADOPI law, *Mylan* (C-473/22) concerning enforcement and compensation, *Telia Finland* (C-201/22) on CMOs and standing, *Kwantum Nederland and Kwantum België* (C-227/23) on works of applied art and the Charter, as well as *Sony Computer Entertainment Europe* (C-159/23) on game consoles and cheat software.

Stay tuned!

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This entry was posted on Friday, June 30th, 2023 at 8:08 am and is filed under [AG Opinion](#), [Artificial Intelligence \(AI\)](#), [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](#), [Round-up](#)

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