

Kluwer Copyright Blog

EU copyright law round up – third trimester of 2023

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Welcome to the third trimester of the 2023 round up of EU copyright law! In this edition, we update you on what has happened between July and September 2023 in EU copyright law. The autumn has started with full speed – the courts and the policy makes have been very active. This round up series 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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General Court judgments

Valve Corporation v European Commission, [T-127/21](#)

On 27 September 2023, the General Court in its extended composition delivered a judgment concerning geoblocking, the video game platform Steam and competition law. In this case, the video game publishers are the copyright holders for the video games in the entire EU and EEA. The court held that geoblocking of Steam activation keys infringed EU competition law. The publishers' copyright did not preclude the application of competition law and thus the geoblocking was contrary to competition law. For an early comment on this case, check [here](#).

CJEU judgments and AG Opinions

Ocilion, CJEU, [C-426/21](#)

In July, the CJEU delivered its judgment in the *Ocilion* case, which related to the right of communication to the public and the private copying exception. You can read a commentary on the

case [here](#).

Seven.One, AG Opinion, C-260/22

This is yet another preliminary reference on the private copying exception and broadcastling. Coming from Germany, it concerned whether broadcasting organisations are entitled to fair compensation stemming from private copying. In addition, the CJEU was asked to assess whether broadcasting organisations can be excluded from the right of fair compensation since they may also sometimes be entitled to a fair compensation as film producers. The permissibility of such a general exclusion was under discussion since broadcasting organisations sometimes either do not acquire film producers' rights or do so only to a very small extent. AG Collins grappled with the German transposition of the [InfoSoc Directive](#) and suggested that a general exclusion of an entire category of reproduction rightholders from the right to fair compensation under national law is not justified if those rightholders suffer more than minimal harm from the copying activities in question. To that end, "the fact that broadcasting organisations may receive fair compensation in respect of private copying of films they produce is also irrelevant."

HADOPI, AG Opinion, C-470/21

This is a particularly contentious case on the question of balancing of data protection and copyright in the context of the French HADOPI law. AG Szpunar suggests that the French graduated response mechanism is compatible with the EU law requirements in the field of personal data protection. In particular, the retention of, and access to, civil identity data linked to the IP address used should be allowed in cases where those data are the only means of investigation that make it possible to identify the perpetrators of copyright infringements committed exclusively on the internet. The AG underlines that the IP address, the civil identity of the person having a right of internet access and the information relating to the potentially infringed copyright work in question do not make it possible to draw precise conclusions about the private life of the person presumed to have infringed copyright. AG Szpuner carefully stressed that this is not a departure of the existing case-law on the topic, but a "pragmatic development of that case-law, making it possible to achieve a nuanced solution in particular and very narrowly defined circumstances" which takes into account the need to balance various interests involved in accordance with the proportionality principle.

CDSM Directive implementation

The [CDSM Directive](#) implementation is still not over! As readers know, many Member States missed the deadline, so earlier this year the [Commission referred 11 of them to the CJEU for failure to fully transpose the Directive](#). This seems to have had an effect on all Member States aside from Bulgaria and Poland, who have still not implemented 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 Portal.

Policy

UKIPO, The government's code of practice on copyright and AI – terms of reference and working group

Following the UK government's paper on 'A pro-innovation approach to AI regulation' published in March this year, on 29 June 2023 the UKIPO issued a statement updating the public on the government's ongoing programme of work to develop a code of practice on copyright and AI. The government established a working group which started meeting this summer. Read more [here](#).

UK House of Commons, The governance of artificial intelligence: interim report

On 31 August 2023, the UK's House of Commons issued a report with recommendations on various legal issues (including copyright) and AI. On the copyright front, the report underlined the infringement and text and data-mining issues when AI models are used in the creative industries. The government has until 31 October 2023 to respond to these recommendations.

US Copyright Office, Notice of Inquiry on Copyright and AI

Similar to the UK, the US Copyright Office is undertaking a study of the copyright law and policy implications of generative AI. The goal is to collect factual information and relevant views to advise Congress on national and international issues on the topic.

Publishing and Journalism Organisations, Global Principles on Artificial Intelligence

In August 2023, various European publishing and journalism organisations united in releasing global principles on AI. The principles, among other things, stress the following IP related points: (i) developers, operators, and deployers of AI systems must respect IP rights; (ii) publishers are entitled to negotiate for and receive adequate remuneration for use of their IP; (iii) copyright and ancillary rights protect content creators and owners from the unlicensed use of their content; (iv) existing markets for licensing creators' and rightsholders' content should be recognised.

French National Assembly, Bill on regularizing AI through copyright – proposal

On 12 September, the French National Assembly presented a very ambitious bill focused on the

regulation of AI and copyright law. The proposal requires a licence/authorization from the rightsholders for the integration and exploitation of copyright works in and by AI. Further, it states that the copyright holders of AI-generated works would be the authors or rightsholders of the works instrumental in designing the AI-generated creation. Then, when a work is created with AI, an explicit statement of its involvement is required together with the names of the original authors who inspired such a creation. Finally, the bill introduces a taxation system applicable in instances where AI creates works derived from untraceable origins, to benefit the relevant collective management organization. More on this proposed bill in the blog soon.

*International Authors Forum, **Principle for AI and authorship***

This is yet another attempt to introduce principles of generative AI and authorship. These seek to provide guidance for discussions and policymaking, acknowledging that a broad legal framework that includes copyright, privacy, data protection, and competition and consumer protection laws will be required to regulate the responsible use of AI technologies.

Coming soon and latest referrals

Several copyright cases on communication to the public are still pending before the CJEU: *AKM* (C-290/21) on satellite broadcasting, *Citadines* (C-723/22) on hotel and fitness rooms, *HADOPI* (C-470/21) on the French HADOPI law, *Seven.One* (C-260/22) on private copying, *GEMA* (C-135/23) on apartment buildings. In addition, the CJEU will still have to have its final say on the following: *Sony Computer Entertainment Europe* (C-159/23) on game consoles and cheat software, *Mylan* (C-473/22) concerning enforcement and compensation, *Telia Finland* (C-201/22) on CMOs and standing, *Reprobel* (C-230/23) on fair remuneration and *Kwantum Nederland and Kwantum België* (C-227/23) concerning works of applied art and the Charter.

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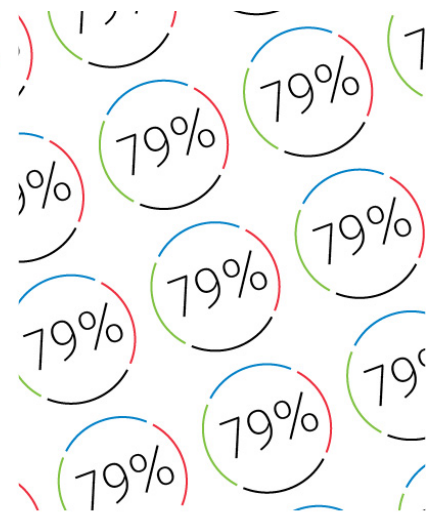
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