

Kluwer Copyright Blog

EU copyright law round up – fourth trimester of 2023

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Dear readers,

Happy new year!

Welcome to the fourth (and last) round up of EU copyright law for 2023! In this edition, we update you on what has happened in the last three months of 2024 in EU copyright law. The end of the year was busy for both the courts and the policy makers. 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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CJEU judgments

Seven.One, CJEU, C-260/22

Coming from Germany, this preliminary reference concerned broadcasting organisations and their entitlement to fair compensation as a result of private copying. The German law in question excluded broadcasting organisations from the right of fair compensation since they may also sometimes be entitled to a fair compensation as film producers. This was an issue under discussion since broadcasting organisations either do not acquire film producers' rights or do so only to a very small extent. Following [AG Collins' opinion](#), the CJEU held that a general exclusion of this kind is not justified in so far as those organisations suffer potential harm which cannot be classified as 'minimal'. We will have a blogpost soon on this important decision.

Telia Finland, CJEU, C-201/22

In November, the CJEU had to deal with questions of standing and collective rights management organisations (CMOs), when seeking civil enforcement measures under the Enforcement Directive. The CJEU held that recognising the status of CMOs to seek enforcement measures is subject to them having direct interest in the defence of the rights, as well as the standing of those organisations to bring legal proceedings for the purposes of defending intellectual property rights, which may result from a specific provision to that effect or from general procedural rules. Furthermore, the Court ruled that, according to current EU law, Member States are not obliged to acknowledge that CMOs have a direct interest in pursuing enforcement measures in their own name, unless such a direct interest in defending the rights in question concerning those organizations is explicitly outlined in the relevant national legislation.

Google Ireland, CJEU, C-376/22

In 2021, Austria enacted a law requiring communication platform providers to establish mechanisms for reporting and verifying potential illegal content, with provisions for regular transparency reports, and allowing administrative fines of up to €10 million for non-compliance. Google, Meta, and TikTok, based in Ireland, argued that the law contradicts Article 3 of the [e-Commerce Directive](#), the so-called internal market clause, according to which Member States may not restrict the freedom to provide information society services from another Member State. In November 2023, the CJEU ruled that the Austrian law, by imposing general and abstract obligations on communication platform providers from other Member States, is contrary to the e-Commerce Directive, which seeks to facilitate the unrestricted movement of such services among Member States. Specifically, the Austrian law were found to violate the country-of-origin principle in Article 3 of the Directive.

CDSM Directive implementation

The [CDSM Directive](#) implementation is almost over. [With Bulgaria implementing](#) the directive towards the end of 2023, Poland is the last Member State missing.

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

CISAC, Global report 2023

The International Confederation of Societies of Authors and Composers (CISAC) issued its annual collections report for the 225 CMOs it represents worldwide. One highlight from the report is that global collections for creators reached a new historical record of €12.1 billion in 2022, growing 26.7% to fully recover from the pandemic.

*EUROJUST, **Generative AI – impact on intellectual property crimes***

In November, the EU Agency for Criminal Justice Cooperation (EUROJUST) published a study on the manners in which criminals utilize generative AI to infringe intellectual property rights (IPRs). It discusses interesting aspects of the generative AI training process and the room for IPR violation.

*European Parliament, **Report on cultural diversity and the conditions for authors in the European music streaming market***

In November, the European Parliament published a report on cultural diversity and the conditions for authors in the EU music streaming market. The report stressed once again the need for transparency when generative AI is involved in the creation process, especially as regards the training process. Echoing the discussions in the AI Act, the report urges providers of such AI generative systems to document and make publicly available a sufficiently detailed summary on the use of such training data, regardless of where such training took place, in order to allow for the proper application of the EU text and data mining exception (in Article 4 CDSM Directive).

*European Parliament, **Report on policy implications of the development of virtual worlds – civil, company, commercial and IP law issues***

In an own initiative report, in November the European Parliament's Legal Affairs Committee adopted a report on virtual worlds, which covers inter alia IP law issues. The report stresses that liability rules should fully apply to virtual worlds and that it is key to ensure that providers of virtual goods and services can be identified and held liable for any harm caused by their products.

*European Parliament, the Council of the European Union and the European Commission (Trilogue), **AI Act***

Shortly before the end of the calendar year, the European Parliament, the Council of the European Union and the European Commission reached a long awaited provisional agreement on the AI Act. You can read a first take on the copyright relevant provisions [here](#).

European Audiovisual Observatory, *Fair remuneration for audiovisual authors and performers in licensing*

In December, the European Audiovisual Observatory issued a report focusing on the audiovisual value chain and rights-licensing process, as well as the economic rights of audiovisual authors and performers, and an overview of the exploitation contracts and remuneration issues.

Coming soon and latest referrals

There is a flood of copyright cases pending before the CJEU, here's a list:

- *AKM* (**C-290/21**) on communication to the public and satellite broadcasting;
- *Citadines* (**C-723/22**) on communication to the public in hotel and fitness rooms,
- *La Quadrature du Net and Others* (**C-470/21**) on the French HADOPI law and the processing of personal data for purposes related to fighting copyright infringement (see the Opinion by AG Szpunar [here](#));
- *GEMA* (**C-135/23**) on communication to the public in apartment buildings.
- *Sony Computer Entertainment Europe* (**C-159/23**) on game consoles and cheat software,
- *Mylan* (**C-473/22**) concerning enforcement and compensation,
- *Reprobel* (**C-230/23**) on fair remuneration,
- *Kwantum Nederland and Kwantum België* (**C-227/23**) concerning works of applied art,
- *Mio and Others* (**C-580/23**) on applied art and originality,
- *Pelham* (**C-590-23**) on the notion of pastiche.
- *USM Haller* – in late December, the German Federal Court of Justice submitted questions to CJEU concerning concept of “works” as used in copyright law, specifically in connection to works of applied art (background information available [here](#)).

Finally, the CJEU has received its first preliminary references on the CDSM Directive.

- In *ONB and Others* (**C-575/23**), a preliminary reference from Belgium, the Court will have to tackle the remuneration provisions and the contractual conditions of the musicians of the Belgian National Orchestra.
- The Italian implementation of the press publishers' right is also currently under review (the reference is still not listed on the Curia website but helpful background is provided on the [IPKat](#)).

All in all, 2024 promises to be an exciting year for EU copyright law. Stay tuned!

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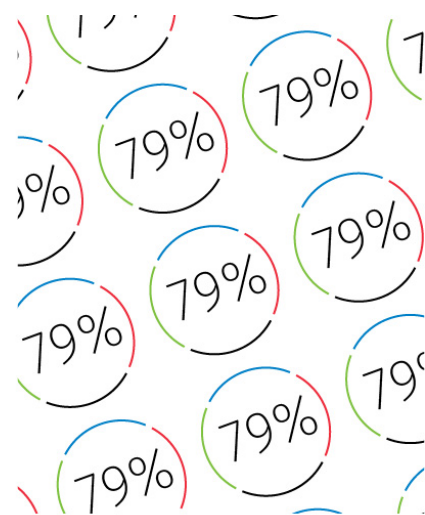
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