

Kluwer Copyright Blog

EU copyright law roundup – first trimester of 2024

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Welcome to the first trimester of the 2024 roundup of EU copyright law (though with a slight delay)! In this edition, we update you on what has happened between January and March 2024 in EU copyright law. Interestingly enough, in this issue you will find quite a bit of UK policy reports.



As our regular readers know, this roundup series includes Court of Justice (CJEU) and General Court judgments, Advocate Generals' (AG) opinions, and important policy developments. You can read the previous roundups [here](#).

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CJEU judgments and AG Opinions

LEA, CJEU, C-10/22

Collective management in Italy (and not only) has been a challenging and problematic topic for years. In March, the CJEU held that Italian law, prohibiting independent management entities established in another Member State from offering their services within Italy is incompatible with the freedom to provide services as per [Article 56 TFEU](#) read in conjunction with [Directive 2014/26](#). Read more about the case [here](#) and stay tuned for a forthcoming comment on this blog.

GEMA, AG Opinion, C-135/23

In February, AG Szpunar delivered his opinion in GEMA tackling the question of whether the installation of TV sets with indoor antennas (capable of receiving broadcasts) by an operator of a

rental apartment building is a communication to the public. The AG concludes that this outcome is due to the fact that the act of installation constitutes a “deliberate intervention by the user concerned with the aim of giving access to protected works to persons who would be unable to enjoy them without that intervention”; as such, this act of installation is “an act of communication” to the public

CDSM Directive implementation

Every trimester we hope to delete this section from the roundup, only to find out that the topic of the **CDSM Directive**’s implementation persists. As readers probably know, Poland is presently the only Member State that has not implemented the directive. Earlier this year the new Polish government proposed controversial implementation of some aspects of the CDSM, namely the TDM provisions (see more [here](#)). Maybe things will change in three months.

If you are interested in tracking the implementation process, please check the **COMMUNIA DSM Implementation Portal**.

Policy

*UKIPO, **UK voluntary code of good practice on transparency in music streaming***

In January, the UKIPO issued a code of practice with a commitment to standards of good practice in relation to music streaming. Central to the code is a continued dialogue and “clear and transparent sharing of relevant information” when it comes to methods of calculating and reporting revenues and royalties. Some of the signatories include the British Photographic Industry (BPI), the Association of Independent Music (AIM), the Phonographic Performance Limited (PPL) and PRS for Music.

*GEMA and SACEM, **Joint scientific analysis of the music sector: AI and music***

On 30 January, the German composers, lyricsists publishers collecting society (GEMA) and the French authors, composers and publishers collecting society (SACEM) published a commissioned study on genAI and music. The study sheds light on the impact of genAI in Germany and France and was carried out by the research institute “Goldmedia”.

*UK House of Lords, **Large language models and generative AI***

In February, the House of Lords released a report calling on the UK government to address the issue of generative AI. On the copyright front, the report stresses that the application of the law to LLM processes is complex, but the principles remain clear, namely “copyright is to reward creators for their efforts, prevent others from using works without permission, and incentivise innovation”.

The report highlights that “the current legal framework is failing to ensure these outcomes occur and the Government has a duty to act. It cannot sit on its hands for the next decade until sufficient case law has emerged.”

*UKIPO, **A pro-innovation approach to AI regulation: government response***

As previously reported, the UK has been contemplating a code of practice on copyright and AI, focusing on the input issues. In 2023, the UKIPO convened a working group made up of rights holders and AI developers. In this government response to the general issue of AI regulation, it appears that while the working group has provided a valuable forum for stakeholders to share their views, in February 2024 it has eventually been dissolved as it was not able to agree an effective voluntary code.

*UKIPO, **Emerging public perceptions of intellectual property in UK media***

In February, the UKIPO published a report on the public perception of IP in UK media, which was carried out by Hayleigh Boshier (Brunel University London). The main takeaway appears to be that there is an emerging trend in the use of social media in a strategic way and namely as “backlash” against IP rights holders’ enforcement initiatives.

*UKIPO, **Metaverse reports – IP and Metaverse and An analysis of the Metaverse IP landscape***

In March 2024, the UKIPO issued two reports on the metaverse. The first paints the general picture of the increasing popularity of the metaverse, which in itself is reflected in IP trends. These IP trends can be a useful evidence base to track emerging technologies. The second gets more specific about the various IPRs (including infringement, licensing and enforcement issues when it comes to copyright). It was prepared by Dr Gaetano Dimita, Dr Yin Harn Lee, Dr Michaela MacDonald, Dr Anthony Michael Catton, Zeynep Kubra Kavcar Penbegullu, and Juan Alberto Pulido Lock.

*European Commission, **Recommendation on measures to combat counterfeiting and enhance the enforcement of intellectual property rights***

In March, the European Commission issued a recommendation on measures to combat counterfeiting and enhance enforcement of IPRs. The general theme of the recommendation revolves around encouraging all involved actors (from national authorities, rightholders, intermediaries and others) to take effective, appropriate and proportionate measures to combat IP infringing activities. Among other things, it encourages fostering cooperation through voluntary measures, designating a single contact point for IP enforcement, fostering ADR procedures, making the most of the new technologies to fight IP-infringing activities and others.

European Parliament, *AI Act* – adopted

The AI Act was finally adopted by the European Parliament in March 2024. The final text and numbering of provisions is still not available, although what we assume to be a near final version can be checked [here](#) under Amendment 808.

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, *GEMA* (**C-135/23**) on apartment buildings, as well as the **latest German referral** on retirement homes.

A few cases are pending on the notion of a work: *Kwantum Nederland and Kwantum België* (**C-227/23**) concerning works of applied art and the Charter, *Mio and Others* (**C-580/23**) on applied art and originality and *Institutul G. Călinescu* (**C-649/23**) on the concept of a work.

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, *Reprobel* (**C-230/23**) on fair remuneration and, *ONB and Others* (**C-575/23**) on copyright exploitation contracts under the **CDSM Directive**, *Pelham* (**C-590/23**) on pastiche, and *DADA Music and UPFR* (**C-37/24**) on collective management, phonogram producers and equitable remuneration.

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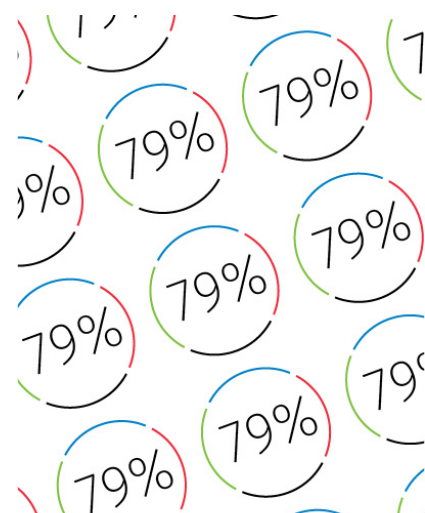
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