

Kluwer Copyright Blog

EU copyright law roundup – third trimester of 2024

Alina Trapova (University College London) and João Pedro Quintais (Institute for Information Law (IViR)) · Wednesday, October 2nd, 2024

Now that the summer is formally over it is time for the third trimester of the 2024 roundup of EU copyright law. In this edition, we update you on what has happened between July and September 2024 in EU copyright law – all the way from the CJEU, through Advocate General (AG) Opinions, to important policy developments. It has been generally a quiet trimester during the summer with things heating up in September with two new preliminary references.



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You can read the previous roundups [here](#).

AG Opinions

Kwantum Nederland, AG Opinion, [C-227/23](#)

On 5 September 2024, AG Szpunar delivered his opinion in this case coming from the Netherlands, which concerned the protectability of a work of applied art – a chair designed by American designers. What is at stake here is the interpretation of [Article 2\(7\) of the Berne Convention](#), which provides for an exception to the principle of national treatment. You can read a comment on the AG Opinion by Bernt Hugenholtz [here](#), as well as the European Copyright Society's opinion on the case [here](#).

CDSM Directive implementation

It looks like we will be deleting this section from our next roundup as the [CDSM Directive](#) has finally been implemented in all Member States – [Poland finally did so on 20 September 2024](#). You can read Christina Angelopoulos' post on a comparative report of the national implementations of Art 15 and 17 [here](#).

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

Policy

AI Act – General-Purpose AI Code of Practice

The Code of Practice will detail the AI Act rules for providers of general-purpose AI (GPAI) models, including those with systemic risks. These rules will apply 12 months after the entry into force of the AI Act. The Code of Practice is particularly relevant, as providers should be able to rely on it to demonstrate compliance.

Among the rules covered by the Code of Practice there are those related to transparency and copyright-related rules for all GPAI model providers (see [Quintais 2024](#) for an analysis of these provisions).

The Code of Practice is envisioned as an inclusive and transparent approach which benefits from the input of all relevant stakeholders. After a period where stakeholders could express their interest in participating, the AI Office proceeded to an eligibility check and confirm participation to respective stakeholders.

The discussion takes place in the Code of Practice Plenary, which is structured in four Working Groups on specific topics. The Plenary kick-off meeting took place on 30 September 2024. The specific Working Groups (WGs) then will meet several times for drafting rounds between September 2024 and April 2025.

The Chairs for each of the four WGs of the Plenary, including WG1 on transparency and copyright-related rules are listed [here](#). The final version of the first Code of Practice will be presented in a Closing Plenary, expected to take place in April, and published.

One of us (João) will be part of the discussions, so expect ongoing coverage of this topic on the blog.

*European Innovation Council and SMEs Executive Agency, **Artificial intelligence and copyright: use of generative AI tools to develop new content***

In July 2024, an interesting blog post summarising some of the well-known issues in genAI and copyright was published by the European Innovation Council and SMEs Executive Agency.

*US Copyright Office, **Copyright and AI: Part 1 – Digital Replicas report***

The US Copyright Office has engaged in many [AI-related activities](#) over the past few years. The report on digital replicas, which came out in July 2024, looks at the use of digital technology to realistically replicate an individual’s voice or appearance.

*Society of Authors (UK), **Letter to generative AI developers***

In this public letter, the UK’s largest trade union for all types of authors has expressed its concerns regarding generative AI and training carried out by AI companies. It explains that “training, development and operation of AI models” using copyright-protected content is infringement and there is no permitted use applicable in these cases. It is a formal plea to the AI industry to, among other things, identify the works which have been used to date to develop these models, make suitable detailed requests for permission to use works, undertake to obtain permission before using copyright-protected works, undertake to pay appropriate remuneration (past and future), give appropriate attribution, upon request take down works used without permission.

*Creators Rights Alliance (UK), **Letter to generative AI developers – opt out***

In a similar vein, the UK’s Creators Right Alliance, which represents 500,000-plus creators issued a statement which can be construed as a public opt-out from training, development and operation of AI models.

Notable national judgments

Considering the general interest on the topic of AI and copyright, we are making an exception on covering national judgments in this roundup to note what is likely the first EU decision on the CDSM Directive’s text-and-data mining (TDM) exceptions, which relevance to AI.

On 27 September 2024, the District Court of Hamburg published its decision on the case of *Kneschke v LAION* ([Case No. 310 O 227/23](#)). In essence, the German court sided with LAION by qualifying it as a “research organization” and considering that LAION’s activities were covered by the exception for TDM for scientific purposes (under the German law transposition of Articles 2(1) and 3 CDSM Directive). Considering this conclusion, the court did not have to rule on whether and to what extent there was a relevant rights reservation or opt-out in this case, although the decision does make some references in this regard, indicating that it would consider opt-outs via natural language on terms of service as sufficient to meet the legal requirements. For early comment on this decision, see e.g. the posts of [Mirko Brüß](#) and [Andres Guadamuz](#). We will have a comment on this decision in our blog soon.

Coming soon and latest referrals

There is a lot to entertain the CJEU in the coming months and years. Communication to the public and public lending are concerns for the Court in *AKM* (C-290/21) on satellite broadcasting, as well as the *VHC 2 Seniorenresidenz* (C-127/24) on retirement homes. In addition, the [Dutch Supreme Court has just referred a number of questions to the CJEU](#) on communication and geoblocking involving the Anne Frank Foundation.

The notion of a work will be discussed in *Mio and Others* (C-580/23) and *Institutul G. C?linescu* (C-649/23). In addition, following the recent AG Opinion in *Kwantum Nederland* (C-227/23), we await the CJEU's final word in the context of national treatment and works of applied art.

Moreover, the following are still pending: *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, *DADA Music and UPFR* (C-37/24) on collective management, phonogram producers and equitable remuneration, *ThuisKopie/HP* (C-496/24) on levies, as well as *SACD and Others* (C-182/24) on joint authorship/infringement.

Finally, on 26 September 2024, the Belgian Constitutional Court dropped an 180 page *Arrêt* to [refer](#) a significant number of questions to the CJEU on the issue of fair remuneration of authors and performers on online streaming platforms under the CDSM Directive. For an early analysis, see this excellent [post](#) by Elena Izyumenko on our blog.

Stay tuned!

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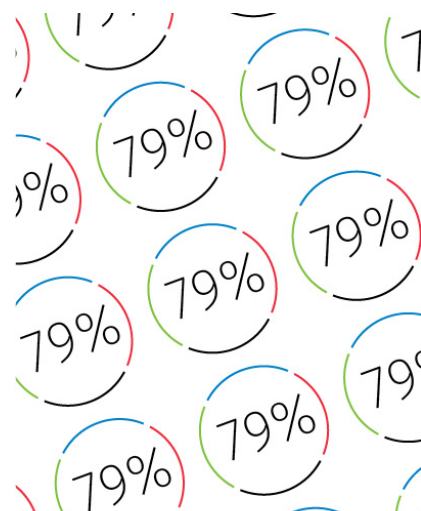
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