



BCC WIPO Training course 2022

General Principles of EU Copyright Law

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Copyright System

- Subsistence of copyright
 - Author/ Performer/ Owner
 - Work – author’s own intellectual creation
 - Term
 - Restricted Acts (economic and moral rights?)
 - Exceptions
- Management
 - individual
 - Collective
- Enforcement

Info: The European Copyright Framework

Relevant Copyright Directives

- Copyright in the Information Society
- Rental right and related rights,
- Satellite broadcasting and cable retransmission,
- Term of protection (as amended)
- Collective management of copyright
- Copyright in the Digital Single Market
- Implementation Marrakesh VIP Treaty

Regulations

- Portability
- Geoblocking
- Implementation Marrakesh VIP Treaty

Other Directives

- E- Commerce Directive
- Enforcement Directive

Author/ Performer/ Owner

Authorship/ Ownership/

- Authors
- Performers
- Phonogram producers
- Film producers
- Broadcasting organisations

- Presumptions

- Newspaper publishers, Art 15 Copyright in DSM

- P: Publishers
 - Hewlett Packard v Reprobel Case C 572/ 13
 - Art 16 Directive Copyright in DSM

Work

- General
 - Works
 - Performances
 - Phonograms
 - First fixation of films
 - Fixations of Broadcasts

 - Press publications

- Criteria
 - Originality/ Creativity? Compare
 - Author's own intellectual creation! Danske Dagblades v Infopaq Case C-08/05
 - Fixation?

Term

- General
 - Works – 70 years after the death of the author
 - Performances – 70 years after the performance (Generally)
 - Phonograms – 70 years after the release (Generally)

- But (Amended Term Directive 2011/77/EU)
 - A fund for session musicians
 - "Clean slate" clause to ensure extension benefits performers
 - Possibility to renegotiate contracts
 - Use it or lose it" clause
 - [co-written works]

- International

Protected Acts

- Economic rights
 - Reproduction
 - Communication to the public
 - Distribution
 - Rental and Lending
- Moral rights?
 - Recital 19 Directive 2001/29/EC
 - Berne Convention
- Equitable remuneration?

Reproduction

- Definition: copying, duplication, print, literal and non literal; duration
- [CJEU](#) Infopaq v Danske Dagblades Forening: «any material fixation of a work regardless of the function or the economic value of the copy.»
- [CJEU](#) Karen Murphy: Reproduction right protects the material act of copying, including transient copies in cache memories, satellite decoders or television screens. provided that those fragments contain elements which are the expression of the authors' own intellectual creation, ...”
- [Case C 433/20](#) Austro-Mechana v Strato: “Reproduction ... covers the saving, for private purposes, of copies of works protected by copyright on a server in which storage space is made available to a user by the provider of a cloud computing service ... “



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Communication to the Public

- Authors:
 - Broadcasting (Radio/ TV Broadcasts “Push”)
 - Making available to the public (Streaming/ Download “Pull”)
- Performers/ Phonogram producers:
 - Making available to the public (Streaming/ Download)
 - [Broadcasting (Radio/ TV Broadcasts) – Equitable remuneration]
- Special cases:
 - Hotel rooms
 - Injection
 - Hyperlinking

Info: Cases – European Union CTPP

Broadcasting – hotel rooms

- SGAE v Rafael Hoteles SA, Case C 306/05
- FAPL v QC Leisure and Others/ Karen Murphy v Media Protection Services Ltd, Cases C 403/08 and C 429/08
- Società Consortile Fonografici (SCF) v Marco Del Corso, Case C 135/10
- Phonographic Performance (Ireland) Limited v Ireland and Attorney General, Case C 162/10
- ITV v TV Catchup, C 607/11
- Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA) v Léčebné lázně Mariánské Lázně, a.s., Case C 351/12
- Rehabilitations GmbH, Case C 117/15

Info: Cases – European Union CTTT

Broadcasting - TV package providers

- Airfield Joined Cases C-431/09 and C-432/09.
- SBS Belgium Case C 325/14

Communication to the public – hyperlinking

- Svensson v Sverige Retriever Case C 466/12
- Best Water v Michael Mebes and Stefan Potsch Case C 348/13
- C More Entertainment v Sandberg Case C 279/13
- GS Media v Sanoma Case 160/15

Communication to the public – scope 2017/ 2018

- Stichting Brein v Ziggo Case C 610/15
- Stichting Brein v Filmspeler Case C-527/15
- Nord Rhein Westphalen v Renckhoff Case C 161/17

Distribution

The distribution right describes the right of the author to disseminate physical copies of the work.

Exhaustion of rights

- The Exhaustion or First Sale doctrine (U.S.) states that the author cannot prevent further distribution of a particular physical copy of a work put on the relevant market with his consent.
- No digital exhaustion:
- Tom Kabinet v NUV Case C 263/ 18, but
- UsedSoft v Oracle Case C 128/ 11

Exceptions

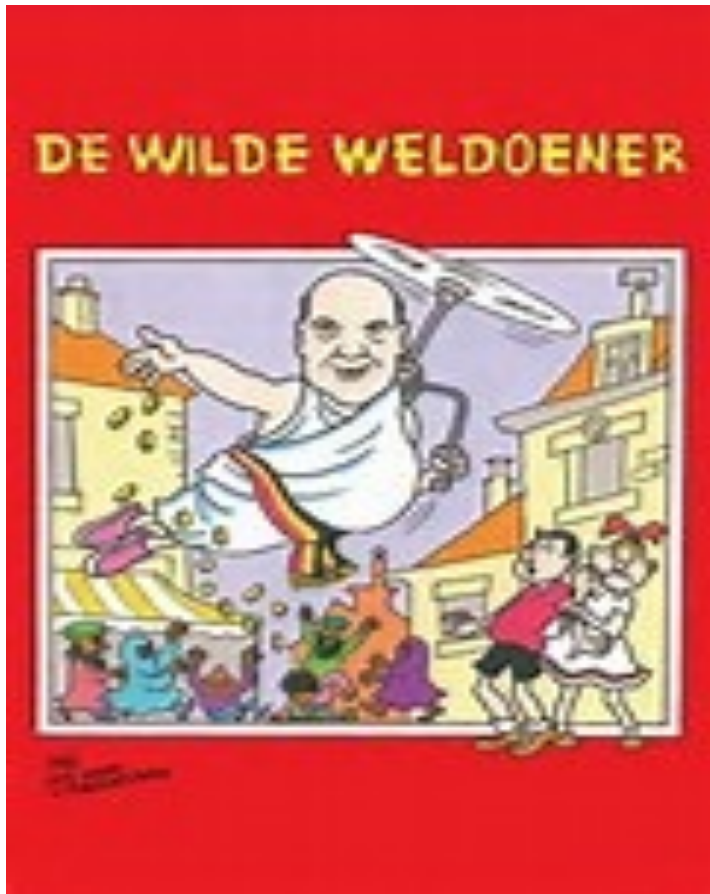
Examples:

- Mandatory: Visually Impaired people; Temporary copies; Text/ Data mining; Education
- Optional: Parody, Private copying, Library copying, Education
- Three Step Test
- CJEU cases

Exceptions II

- “Berne” Three Step Test – Art 5 (5) InfoSoc Dve
- Exceptions to be limited to
 - certain special cases, provided that such reproduction does
 - not conflict with a normal exploitation of the work and does
 - not unreasonably prejudice the legitimate interests of the author

Exceptions - examples



Management

- Individual contracts
 - “sell”: Transfer legal ownership “assignment”
 - “rent”: Issue licences – exclusive or non-exclusive
 - No European Contract Law but Directive Copyright in the Digital Single Market 2019 (Transparency/ Contract Adjustment/ Revocation, Articles 18-23)
- Collective rights management

Directive Collective Rights Management 2014
CJEU Cases: Competition law

Info: Collective Rights Management cases

- EU cases (Articles 101 and 102 TFEU):
 - GEMA Commission decision 1970 – (focus on members)
 - Ministere Public v Tournier and Lucazeau v SACEM (focus on users)
 - Banghalter & de Homem Christo v SACEM
 - Santiago and Simulcasting decisions
 - CISAC decision 2013
 - AKKA v Latvian competition authority (Case 177/ 16)
 - SABAM v Weareone (case C 372/19)
- Agreements
 - Santiago
 - Barcelona
 - IFPI Simulcasting

Enforcement

- Mainly national provisions – administrative law (civil and criminal) – not harmonised
- Right of information
- Injunctions
- Publication of judgements
- Website Blocking (c.f. Art 8 (3) InfoSoc Dve)

Limitations of liability Service providers

- Legislation
 - Mere conduit: Article 12 e-Commerce Directive
 - Caching: Article 13 e-Commerce Directive
 - Hosting: Article 14 e-Commerce Directive
 - No Monitoring obligation: Article 15 e-Commerce Directive
- *Cases*
 - L'Oreal v eBay Case C-324/09
 - Eva Glawischnig-Piesczek v Facebook Ireland Limited Case C 18/18;
 - Peterson v YouTube Case C 682/18)

Info: Peterson v YouTube Case C [682/18](#)

1. Operator of a file-sharing/ hosting platform for user upload content (illegal): no communication to the public', "unless it contributes, beyond merely making that platform available, to giving access to such content to the public in breach of copyright".
2. Operator of an online platform: hosting exemption provided that it does not play an active role of such a kind as to give it knowledge of or control over the content uploaded to its platform"
3. Limitation of injunction (website blocking) if "that operator [has] no knowledge or awareness of that infringement, within the meaning of Directive 2000/31.

Relation to Directive 790/2019/EU (Copyright in the DSM) Article 17?

Info: Digital Services Package

December 2020: Commission proposal Digital Services Package; two legislative initiatives:

- Digital Services Act (DSA) presenting a common set of rules on intermediaries' obligations and accountability across the single market
- Digital Markets Act (DMA) addressing the role of some large online platforms act as "gatekeepers" in digital markets.

Info: Article 17 Directive Copyright in the DSM 790/2019/EU

Para 1

- Communication to the public or making available to the public
- Authorisation under Article 3 Directive Copyright in the IS

Para 2

- Including acts carried out by users of the services not acting on a commercial basis or their activity does not generate significant revenues.

Para 3

- Hosting defence not applicable

Info: Article 17

Para 4

If no authorisation granted liability unless (Cumulatively)

- Best efforts to obtain an authorisation,
- Best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information (in accordance with high industry standards of professional diligence,)
- Acted expeditiously, upon receiving a sufficiently substantiated notice by the rightholders, to remove from their websites or to disable access to the notified works and subject matters, and made best efforts to prevent their future uploads
- Limited for new services (less than three years) annual turnover below EUR 10 million and different regime if less than 5 million monthly unique visitors

Info: Article 17

Para 7

- The cooperation between online content service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users which do not infringe copyright and related rights, including where such works or subject matter are covered by an exception or limitation.
 - quotation, criticism, review
 - use for the purpose of caricature, parody or pastiche.

Also

- Stakeholder dialogues to discuss best practices for the cooperation between the online content sharing service providers and rightholders.
- Guidelines for implementation

Info: Articles 18 - 23

- Article 18 Principle of appropriate and proportionate remuneration
- Article 19 Transparency obligation
- Article 20 Contract adjustment mechanism
- Article 21 Alternative dispute resolution procedure
- Article 22 Right of revocation
- Article 23 Common provisions

Thank You

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IRIS
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Freude, schöner Götterfunken

(Friedrich von Schiller)

Für Frauen- oder Jugendchor und Klavier
(Orgel) oder a cappella

Ludwig van Beethoven
(aus der 9. Symphonie)
Satz: Hermann Ophoven

Freudig bewegt (Tempo I)

I. u. II. Stimme

III. Stimme

Klavier (Orgel) ad. lib.

(nicht zu schnell)

mf

rit.

Breit (Tempo II)

Freu - de!

Freu - de, Freu - de, Freu - de!

Freu - de, Freu - de, Freu - de!

10 Tempo I

1. u. 3. Freu-de, schö-ner Göt-ter-fun-ken, Toch-ter aus E-ly-si-um, wir-

1. u. 3. Freu - de, schö - ner Göt - ter - fun - ken,

Eigentum für alle Länder

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