



# THE EU LEGAL FRAMEWORK ON COPYRIGHT AND RELATED RIGHTS

GYTA BERASNEVIČIŪTĖ-SINGH  
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- **OVERVIEW OF EU´S LEGISLATIVE FRAMEWORK**
- **MODERNISED COPYRIGHT RULES**
- **PRACTICE OF THE COURT OF JUSTICE OF THE EU**





# OVERVIEW OF EUROPEAN UNION'S LEGISLATIVE FRAMEWORK ON COPYRIGHT



## OVERVIEW OF EU LEGISLATIVE FRAMEWORK

Overall goal – enable copyright protected goods and services to move freely within EU internal market

- The EU's regulatory framework on copyright (“acquis”)
  - 13 Directives
  - 2 Regulations
- Reflect MS' obligations under International Treaties



## OVERVIEW OF EU LEGISLATIVE FRAMEWORK

### The Directives of “first generation”:

- Software Directive 2009/24/EC
- Satellite and Cable Directive 93/83/EEC
- Rental and Lending Directive 2006/115/EC
- Database Directive 96/9/EC
- Term Directive 2011/77/EU (amending 2006 Directive)



## OVERVIEW OF EU LEGISLATIVE FRAMEWORK

### Horizontal approach:

- Information Society (‘InfoSoc’) Directive 2001/29/EC
  - Implements WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty
- Enforcement Directive 2004/48/EC



## OVERVIEW OF EU LEGISLATIVE FRAMEWORK

Approximation on specific issues:

- Resale Right Directive 2001/84/EC
- Orphan Works Directive 2012/28/EU
- Collective Rights Management Directive 2014/26/EU



## OVERVIEW OF EU LEGISLATIVE FRAMEWORK

### Overview of harmonisation

- Harmonised to a large part, but partial harmonization remains (respect for legal traditions)
- Most core concepts defined, but interpretations may differ
- Not harmonised: originality, authorship and ownership, works made in the course of employment, moral rights, contractual matters







# MODERNISED COPYRIGHT RULES



## MODERNISED RULES

### Objectives of copyright modernisation

- Wider access to content online and across borders
- Modernised copyright exceptions
- New rules for a better functioning copyright marketplace



## MODERNISED RULES

- Portability Regulation (EU) 2017/1128
- Directive (2017/1564) and Regulation (2017/1563) implementing the Marrakech Treaty in the EU
- Directive on Copyright in the Digital Single Market 2019/790 (amending Directives 96/9/EC and 2001/29/EC)
- Directive on Television and Radio Programmes 2019/789 (amending Directive 93/83/EEC)



## MODERNISED RULES

### Wider access to content online and across borders

- Cross-border portability of paid online content services
- Wider distribution of radio and TV programmes in EU
- Increased online availability of cultural heritage and audio-visual works
- Increased availability of books in accessible formats



## MODERNISED RULES

### New mandatory exceptions in key areas

- Research and innovation (text and data mining)
- Education (digital uses to illustrate teaching)
- Cultural heritage (copies for preservation, non-commercial uses of out-of-commerce works)
- Disabilities (making accessible copies for blind and visually impaired)



## MODERNISED RULES

### New rules for well-functioning copyright marketplace

- Neighbouring right for press publishers
- New rules on the use of protected content by online content sharing service providers
- Remuneration of authors and performers





# PRACTICE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION (CJEU)



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

# Interpretation of legal concepts by the Court of Justice of the EU (CJEU)

- Preliminary references from the national courts
- Better equipped to deal with fast paced changes, e.g. in technology





## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### EU originality

- CJEU, *Infopaq*, C-5/08, 16 July 2009
  - «Work» (art. 2(a) InfoSoc Dir.) applies to «*subject matter which is original in the sense that it is its author's own intellectual creation*»; applicable to parts of a work
  - Certain parts of sentences (11 consecutive words): suitable to convey the originality as the choice, sequence and combination of the words can be original



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### EU originality

- CJEU, *Painer*, C-145/10, 1 December 2011
  - Definition of the originality of a portrait photograph
  - “An intellectual creation is an author’s own if it reflects the author’s personality. That is the case if the author was able to express his creative abilities in the production of the work by making free and creative choices...”



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA*, C-306/05, 7 December 2006
  - If, by means of television sets thus installed, the hotel distributes the signal to customers staying in its rooms or present in any other area of the hotel, a communication to the public takes place, irrespective of the technique used to transmit the signal



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *Marco del Corso vs. Societa Consortiel Fonografici (SCF)*, C-135/10, 15 March 2012
  - The concept of ‘communication to the public’ is not covering the broadcasting, free of charge, of phonograms within private dental practices engaged in professional economic activity, for the benefit of patients of those practices and enjoyed by them without any active choice on their part



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *ITV Broadcasting Ltd and others vs TVCatchup Ltd*, C-607/11, 7 March 2011
  - The concept of ‘communication to the public’ within the meaning of D 2001/29, must be interpreted as covering a retransmission of the works included in a terrestrial TV broadcast, where the retransmission is made by an organisation other than the original broadcaster, by means of the internet, even though the subscribers of the internet service may lawfully receive the broadcast on a TV receiver

## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, C-466/12, *Svensson*, 13 February 2014
  - Article 3(1) of Directive 2001/29/EC... [on the right of communication – and making available – to the public]... must be interpreted as meaning that the provision on a website of clickable links to works freely available on another website does not constitute an ‘act of communication to the public’



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, BestWater International GmbH v Michael Mebes and Stefan Potsch, C-348/13, 21 October 2014
  - Embedding a copyright protected work on a website through framing technology cannot be considered communication to the public according to Art. 3(1) 2001/29/EC as long as the copyright protected work is not communicated to a new public nor communicated by technical means that differ from the technical means of the initial communication



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *GS Media case*, C-160/15, 8 September 2016
  - Hyperlinking to works that have been made available on the internet *without* the rights holder(s)' authorisation; where the person acts in full knowledge of the fact that the work has been uploaded without the rights holders' consent, hyperlinking constitutes a communication to the public; when hyperlinks are posted for profit, such knowledge is to be presumed





## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *Stichting Brein v Jack Frederik Wullems*, also trading under the name *Filmspeler*, C-527/15, 26 April 2017
  - The sale of a multimedia player with pre-installed add-ons, available on the internet, containing hyperlinks to freely available websites on which protected works have been made available to the public the without right(s) holders' consent, constitutes an act of 'communication to the public'



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Scope of exclusive rights

- CJEU, *VCAST Limited v R.T.I. SpA*, C-265/16, 29 November 2017
  - Lawfulness of a commercial cloud service that allows private individuals to record copies of protected audio-visual works; these transmissions constitute communications to different publics, and each of them must be authorised by the relevant right(s) holders



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

# Scope of exclusive rights

- CJEU, Land Nordrhein – Westfalen v. Dirk Renkhoff („Córdoba” case), C-161/17, 7 August 2018
  - Re-posting of a work that is freely available on the internet; the concept of ‘communication to the public covers the posting on one website of a photograph previously posted, without any restriction preventing it from being downloaded and with the consent of the copyright holder, on another website



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Exceptions to copyright

- CJEU, *Pelham GmbH and Others v Ralf Hütter and Florian Schneider-Esleben*, C-476/17, 29 July 2019
  - ‘Sampling’ amounts to reproduction ‘in part’ in the sense of EU law; using a ‘sample’ in a modified form unrecognisable to the ear would not infringe the phonogram producer’s exclusive rights
  - Member States’ laws cannot provide for other exceptions to the rights of phonogram producers than those listed in the EU directives

## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Exhaustions of rights

- CJEU, *Vereniging Openbare Bibliotheken v Stichting Leenrecht*, C-174/15, 10 November 2016
  - The lending of digital copies and intangible objects may fall within the scope of the Rental and Lending Directive
  - During the lending period, only one copy may be downloaded, and after the lending period has expired, the user can no longer use the downloaded copy



## PRACTICE OF THE COURT OF JUSTICE OF THE EU

### Threshold of copyright protection

- CJEU, *Levola Hengelo BV v Smilde Foods BV*, C-310/17, 13 November 2018
  - The taste of a food product could not be protected by copyright under EU law; a ‘work’ consists in subject matter that is *original* in the sense that it is the author’s own intellectual creation; only *expressions* of the author’s own intellectual creation may be classified ‘works’; a ‘work’ must be expressed in a manner which makes it identifiable with sufficient precision and objectivity





**THANK YOU**



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