## EXTENDED TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>List of contributors</th>
<th>xxvi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>xxv</td>
</tr>
<tr>
<td>Table of cases</td>
<td>xxv</td>
</tr>
<tr>
<td>Table of legal instruments</td>
<td>xiv</td>
</tr>
</tbody>
</table>

### INTRODUCTION

### PART I  GENERAL PRINCIPLES OF EUROPEAN COPYRIGHT

#### 1. IS THERE A CONCEPT OF EUROPEAN COPYRIGHT LAW? HISTORY, EVOLUTION, POLICIES AND POLITICS AND THE ACQUIS COMMUNAUTAIRE

1. The evolution of copyright law within the European Union 1.02
   1. The relationship between Copyright and Primary EC Law (1957–1987) 1.03
   2. The harmonisation of copyright law within the European Community (1987–2004) 1.07
   3. The increasing role of the ECJ since 2004 1.11
2. The achievement of a European copyright law? 1.14
   1. The assessment of the acquis communautaire 1.14
   2. From European common copyright principles to a genuine European copyright law 1.19
3. Conclusion 1.23

#### 2. THE PRINCIPLE OF NON-DISCRIMINATION

1. Introduction 2.01
2. The principle of national treatment in the international legal framework 2.06
3. The principle of national treatment in the European legal framework 2.11
4. Conclusion 2.19

#### 3. THE PRINCIPLE OF FREE MOVEMENT OF GOODS: COMMUNITY EXHAUSTION AND PARALLEL IMPORTS

1. Introduction 3.01
2. Consent of the IPR owner and placement on the market 3.06
3. International exhaustion 3.15

#### 4. THE ESSENTIAL FACILITIES PRINCIPLE AND OTHER ISSUES OF COMPETITION

1. Article 102 and its context 4.01
   1. Introduction 4.01
   2. Deconstructing Article 102 4.05
   3. Competition 4.16
   4. Abuse of dominance 4.21
   5. ‘A defence’ of objective justification? 4.38
II. Magill and beyond – essential facility cases relating to copyright
1. Magill
2. Tiercé Ladbroke
3. IMS
4. Microsoft

III. Some queries and observations
1. Nature of ‘essential facility’ or ‘indispensable input’ in copyright cases
2. Nature of the remedy?
3. What about interim measures?
4. Essential facilities and WTO TRIPS

PART II THE EU DIRECTIVES

5. THE SOFTWARE DIRECTIVE
I. Introductory remarks
1. Preparatory documents
2. General characteristics
Article 1: Object of protection
1. Protection as literary works (art. 1(1))
2. Protection for expression; not ideas (art. 1(2))
3. Condition of originality (art. 1(3))
4. Transitional provision (art. 1(4))
Article 2: Authorship of computer programs
1. General rules
2. Computer programs created by employees (art. 2(3))
Article 3: Beneficiaries of protection
Article 4: Restricted acts
1. Scope of the exclusive rights
2. Right of reproduction
3. Right of communication to the public
4. Moral rights not regulated
Article 5: Exceptions to the restricted acts
1. General remarks
2. Acts necessary for normal use and error correction
3. Making of back-up copy
4. Observing, studying or testing the functioning of the program
Article 6: Decompilation
1. General
2. Conditions of the exception
Article 7: Special measures of protection
1. General remarks
2. Particular remedies and sanctions
3. Seizure
Article 8: Continued application of other legal provisions
1. No prejudice to other forms of protection
2. Mandatory character of the exceptions
Article 9: Communication
Article 10: Repeal
Article 11: Entry into force
Article 12: Addressees

6. THE RENTAL AND LENDING RIGHTS DIRECTIVE
I. General remarks

Chapter I: Rental and lending right
Article 1: Object of harmonisation
1. The exclusive rights
2. Originals and copies
3. The relation to the exhaustion of the distribution right
Extended Table of Contents

Article 2: Definitions 6.23
  1. Definitions 6.24
  2. Authorship of the principal director 6.41

Article 3: Rightholders and subject matter of rental and lending right 6.43
  1. Beneficiaries and subject matter of the rental and lending right 6.44
  2. The transferability of the exclusive right 6.50
  3. Presumptions in favour of the film producer 6.51

Article 4: Rental of computer programs 6.55

Article 5: Unwaivable right to equitable remuneration 6.58
  1. The unwaivability of the right to remuneration 6.59
  2. The role to be played by collecting societies 6.64

Article 6: Derogation from the exclusive public lending right 6.65
  1. Derogation from the exclusive right 6.66
  2. Derogation regarding beneficiaries of the right to remuneration 6.67
  3. The consideration of cultural promotion objectives 6.68
  4. Exemption of certain categories of establishments 6.71

Chapter II: Rights related to copyright 6.73

Article 7: Fixation right 6.75
  1. The fixation right for performers 6.76
  2. The fixation right for broadcasting organisations 6.79

Article 8: Broadcasting and communication to the public 6.81
  1. Communication to the public 6.84
  2. Equitable remuneration 6.89
  3. Beneficiaries 6.94

Article 9: Distribution right 6.97

Article 10: Limitations to rights 6.101

Chapter III: Common provisions 6.103

Article 11: Application in time 6.103

Article 12: Relation between copyright and related rights 6.104

Article 13: Communication 6.105

Article 14: Repeal 6.105

Article 15: Entry into force 6.105

Article 16: Addressees

7. THE SATELLITE AND CABLE DIRECTIVE

Chapter I: Definitions

Article 1: Definitions 7.01
  1. Introduction 7.01
  2. Definition of a ‘satellite’ (art. 1(1)) 7.06
  3. Communication to the public (art. 1(2)(a)) 7.09
  4. The act of communication to the public occurs solely in one Member State (art. 1(2)(b)) 7.16
  5. Encryption of signals (art. 1(2)(c)) 7.19
  6. Extension of the communication to the public definition – satellite broadcasts from outside the EU (art. 1(2)(d)) 7.24
  7. Cable retransmission (art. 1(3)) 7.26
  8. Collecting society (art. 1(4)) 7.31
  9. Authors of audiovisual works (art. 1(5)) 7.33

Chapter II: Broadcasting of programmes by satellite

Article 2: Broadcasting right 7.34
  1. An Exclusive Broadcasting Right in the country-of-origin (art. 2) 7.34

Article 3: Acquisition of broadcasting rights 7.37
  1. Acquisition by contract (art. 3(1)) 7.37
  2. Collective licensing (art. 3(2)) 7.40
  3. Cinematographic works (art. 3(3)) 7.43
  4. Duty to inform (art. 3(4)) 7.44

Article 4: Rights of performers, phonogram producers and broadcasting organisations 7.45
  1. Related rights (art. 4(1)) 7.45
2. Wireless broadcasting (art. 4(2)) 7.48
3. Presumption of transfer (art. 4(3)) 7.49

Article 5: Relation between copyright and related rights 7.51

Article 6: Minimum protection 7.52
1. Minimum harmonisation (art. 6(1)) 7.52
2. Focus on up-link country (art. 6(2)) 7.53

Article 7: Transitional provisions 7.55
1. Application in time (art. 7(1)) 7.55
2. Transitional provisions for old contracts (art. 7(2)) 7.58
3. Transitional provisions for co-production agreements (art. 7(3)) 7.60

Chapter III: Cable retransmission

Article 8: Cable retransmission right 7.63
1. Acquisition of cable retransmission rights (art. 8(1)) 7.63
2. Transitional provisions (art. 8(2)) 7.67

Article 9: Exercise of the cable retransmission right 7.68
1. Mandatory collective rights management (art. 9(1)) 7.68
2. Treatment of outsiders (art. 9(2)) 7.71
3. Statutory presumptions (art. 9(3)) 7.73

Article 10: Exercise of the cable retransmission right by broadcasting organizations 7.74
1. Broadcasters’ exception (art. 10) 7.74

Article 11: Mediators 7.76
1. Set up of a mediation system (art. 11(1)) 7.76
2. Mediation procedure (art. 11(2) and (3)) 7.77
3. Independence and impartiality of mediators (art. 11(4)) 7.78

Article 12: Prevention of the abuse of negotiating positions 7.79
1. Obligation to negotiate – but not to grant a licence (art. 12(1)) 7.79
2. Transitional provisions (art. 12(2) and (3)) 7.82

Chapter IV: General provisions

Article 13: Collective administration of rights 7.83
1. National rules unaffected (art. 13) 7.83

Article 14: Final provisions 7.85
1. Implementation deadline and duty of notification (art. 14(1) and (2)) 7.85
2. Report of the Commission (art. 14(3)) 7.86

Article 15: This Directive is addressed to the Member States 7.88
1. No direct effect (art. 15) 7.88

8. THE TERM DIRECTIVE

Article 1: Duration of authors’ rights 8.01
1. General remarks and introduction to the Directive 8.01
2. Duration of author’s rights 8.09

Article 2: Cinematographic or audiovisual works 8.19
1. Authorship of cinematographic or audiovisual works 8.19
2. Calculation of the term of protection 8.22

Article 3: Duration of related rights (as modified by Directive 2011/77/EU) 8.26
1. Duration of related rights: general rules 8.26

Article 4: Protection of previously unpublished works 8.40

Article 5: Critical and scientific publications 8.42

Article 6: Protection of photographs 8.44

Article 7: Protection vis-à-vis third countries 8.48

Article 8: Calculation of terms 8.52

Article 9: Moral rights 8.54

Article 10: Application in time 8.55
1. Longer terms of protection for copyright or related rights already running in a Member State 8.55
2. Application in time of the Directive 8.56
3. Application in time of the modifications introduced by Directive 2011/77/EU 8.61
9. THE DATABASE DIRECTIVE

Chapter I: Scope

Article 1: Scope
1. Paragraph 1
2. Paragraph 2
3. Paragraph 3

Article 2: Limitations on the scope

Chapter II: Copyright

Article 3: Object of protection
1. Paragraph 1
2. Paragraph 2

Article 4: Database authorship

Article 5: Restricted acts
1. Reproduction
2. Translation
3. Distribution
4. Communication to the public
5. Exhaustion
6. Infringement

Article 6: Exceptions to restricted acts
1. Paragraph 1
2. Paragraph 2
3. Paragraph 3
4. Other copyright aspects not regulated by the Database Directive

Chapter III: Sui generis right

Article 7: Object of protection
1. The nature of the sui generis right
2. Reasons for the sui generis right
3. Protection requirement: qualitative or quantitative substantial investment in the obtaining, verification or presentation of the database’s contents
4. Ownership
5. The rights
6. Infringement

Article 8: Rights and obligations of lawful users
1. Concept of lawful user
2. Paragraph 1
3. Paragraph 2
4. Paragraph 3

Article 9: Exceptions to the sui generis right

Article 10: Term of protection
1. Paragraphs 1 and 2
2. Paragraph 3

Article 11: Beneficiaries of protection under the sui generis right

Chapter IV: Common provisions

Article 12: Remedies

Article 13: Continued application of other legal provisions

Article 14: Application over time
1. Paragraph 1
2. Paragraph 2
3. Paragraphs 3, 4 and 5
10. THE RESALE RIGHT DIRECTIVE

1. The origins of resale right (droit de suite) [10.01]
2. The nature of droit de suite [10.05]
3. International regulation of the resale right [10.06]
4. Need for harmonisation and EU competence [10.08]
5. The genesis of Directive 2001/84/EC [10.10]
6. The Resale Right Directive in one glimpse [10.16]
7. Implementation in the Member States [10.17]

Chapter I: Scope

Article 1: Subject matter of the resale right [10.24]
1. Article 1(1) [10.24]

Article 2: Works of art to which the resale right relates [10.30]

Chapter II: Particular provisions

Article 3: Threshold [10.33]

Article 4: Rates [10.36]

Article 5: Calculation basis [10.43]

Article 6: Persons entitled to receive royalties [10.44]
1. Restrictions on the transmission of resale right post mortem [10.46]
2. Commentary [10.49]
3. Collective rights management [10.52]

Article 7: Third-country nationals entitled to receive royalties [10.58]
1. Australia [10.64]
2. United States [10.69]
3. China [10.73]

Article 8: Term of protection of the resale right [10.75]
1. United Kingdom [10.80]
2. Austria [10.81]
3. Ireland [10.82]
4. The Netherlands [10.83]
5. Luxembourg [10.84]

Article 9: Right to obtain information [10.85]

Chapter III: Final provisions

Article 10: Application in time [10.87]

Article 11: Revision clause [10.88]

Article 12: Implementation [10.94]

Article 13: Entry into force [10.97]

Article 14: Addressees [10.98]
Extended Table of Contents

Article 4: Distribution right
1. Introduction 11.36
2. ‘Authors’ 11.39
3. ‘Original of their works or of copies thereof’ 11.41
4. ‘By sale or otherwise’ 11.47
5. Exhaustion of rights 11.48

Article 5: Exceptions and limitations
1. Commentary 11.62
2. Method of harmonisation of Article 5 11.64
3. Effect of Article 5 11.74
4. Possible revision of Article 5 11.93
5. Fair compensation, remuneration and the link to collective management 11.104

Chapter III: Protection of technological measures and rights-management information
Article 6: Obligations as to technological measures
1. Background 11.107
2. Similar provisions in EU law 11.108
3. Effective technological measures (para. 3) 11.109
4. Circumvention (para. 1) 11.114
5. Preparatory acts (para. 2) 11.120

Article 7: Obligations concerning rights-management information
1. Background 11.129
2. Rights management information 11.130
3. ‘Adequate legal protection’ for persons ‘knowingly’ performing ‘unauthorised’ acts of ‘works or protected subject matter’ 11.132
4. Actionable acts 11.137
5. Other issues 11.141

Chapter IV: Common provisions
Article 8: Sanctions and remedies
1. Introduction 11.143
2. Article 8(1) 11.146
3. Article 8(2) 11.148
4. Article 8(3) – Injunctions against intermediaries 11.149

Article 9: Continued application of other legal provisions 11.171

Article 10: Application over time 11.173
Article 11: Technical adaptations
1. Article 11(1) 11.175
2. Article 11(2) 11.177

Article 12: Final provisions
1. Article 12(1) 11.179
2. Article 12(2) 11.180
3. Article 12(3) and (4) 11.181

Article 13: Implementation 11.183
Article 14: Entry into force 11.184
Article 15: Addressees 11.185

12. THE ENFORCEMENT DIRECTIVE
1. Introduction 12.01

Chapter I: Objective and scope
Article 1: Subject matter
1. ‘Measures, procedures and remedies’ 12.06
2. ‘Intellectual property rights’ 12.07

Article 2: Scope
1. Article 2(1) 12.09
2. Article 2(2) and (3) 12.15

Article 3: General obligation 12.22

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 05/04/2019 07:02:47AM via free access
## Extended Table of Contents

### Article 4: Persons entitled to apply for the application of the measures, procedures and remedies
1. Introduction 12.27
2. Article 4(a) and ‘holders’ of intellectual property rights 12.31
3. Article 4(b) and ‘all other persons authorised to use those rights’ 12.34
4. Article 4(c) and (d) 12.37

### Article 5: Presumption of authorship or ownership
1. Introduction 12.42
2. ‘Author’ 12.43
3. ‘On the work in the usual manner’ 12.47
4. ‘Holders of rights related to copyright’ 12.49

### Section 2: Evidence
### Article 6: Evidence
1. Introduction 12.51
2. Article 6(1) 12.53
3. Article 6(2) 12.70

### Article 7: Measures for preserving evidence
1. Introduction 12.82
2. Article 7(1) 12.83
3. Article 7(2) 12.94
4. Article 7(3) 12.95
5. Article 7(4) 12.96
6. Article 7(5) 12.98

### Article 8: Right of information
1. Introduction 12.99
2. Article 8(1) 12.102
3. Article 8(2) 12.110
4. Article 8(3) 12.111
5. Conflicts between copyright protection and privacy in the light of the case law of the CJEU concerning ISPs 12.125

### Article 9: Provisional and precautionary measures
1. Introduction 12.126
2. Provisional measures against ‘intermediaries’ 12.137
3. Seizure of goods 12.140
4. Precautionary seizure of assets to secure financial claims 12.143

### Article 10: Corrective measures

### Article 11: Injunctions
1. Introduction 12.161
2. Enforcing an injunction 12.165
3. Injunctions against intermediaries 12.167

### Article 12: Alternative measures

### Section 6: Damages and legal costs
### Article 13: Damages
1. Introduction 12.170
2. Article 13(1) 12.179
3. Article 13(2) 12.181

### Article 14: Legal costs
12.191

### Section 7: Publicity measures
### Article 15: Publication of judicial decisions
12.198

### Chapter II: Sanctions by Member States
### Article 16: Sanctions by Member States
12.205

### Chapter III: Codes of conduct and administrative cooperation
### Article 17: Codes of conduct
12.208
### Article 18: Assessment
12.211
### Article 19: Exchange of information and correspondents
12.215

### Chapter IV: Final provisions
### Article 20: Implementation
12.216
13. THE ORPHAN WORKS DIRECTIVE

Chapter I: Objective and scope
Article 1: Subject-matter and scope
1. Rationale and objectives
2. Beneficiaries
3. Subject matter
4. Collective management and the Memorandum of Understanding on out-of-commerce works

Article 2: Orphan works
1. Defining an orphan work
2. Multiple right holders

Article 3: Diligent search
1. Summary of 'diligent search' rules
2. 'Diligent search' and 'good faith'
3. ‘Appropriate sources’
4. Extent and effect of diligent search
5. Recordation and public register

Article 4: Mutual recognition of orphan work status
Article 5: End of orphan work status
Article 6: Permitted uses of orphan works
1. Scope of permitted use
2. Beneficiaries
3. Compensation to right holders

Article 7: Continued application of other legal provisions
Article 8: Application in time
Article 9: Transposition
Article 10: Review clause
Article 11: Entry into force
Article 12: Addressees

14. COLLECTIVE RIGHTS MANAGEMENT DIRECTIVE

Introduction

Title I: General provisions
Article 1: Subject matter
Article 2: Scope
Article 3: Definitions

Title II: Collective management organisations

Chapter 1: Representation of rightholders and membership and organisation of collective management organisations
Article 4: General principles
Article 5: Rights of rightholders
Article 6: Membership rules of collective management organisations
Article 7: Rights of rightholders who are not members of the collective management organisation
Article 8: General assembly of members of the collective management organisation
Article 9: Supervisory function
Article 10: Obligations of the persons who effectively manage the business of the collective management organisation

Chapter 2: Management of rights revenue
Article 11: Collection and use of rights revenue
Article 12: Deductions
Article 13: Distribution of the amounts due to rightholders
Extended Table of Contents

Chapter 3: Management of rights on behalf of other collective management organisations
   Article 14: Rights managed under representation agreements 14.51
   Article 15: Deductions and payments in representation agreements

Chapter 4: Relations with users
   Article 16: Licensing 14.54
   Article 17: Users' obligations 14.60

Chapter 5: Transparency and reporting
   Article 18: Information provided to rightholders on the management of their rights
   Article 19: Information provided to other collective management organisations on the management of rights under representation agreements
   Article 20: Information provided to rightholders, other collective management organisations and users on request
   Article 21: Disclosure of information to the public
   Article 22: Annual transparency report 14.61

Title III: Multi-territorial licensing of on-line rights in musical works by collective management organisations
   Article 23: Multi-territorial licensing in the internal market 14.64
   Article 24: Capacity to process multi-territorial licences
   Article 25: Transparency of multi-territorial repertoire information
   Article 26: Accuracy of multi-territorial repertoire information
   Article 27: Accurate and timely reporting and invoicing
   Article 28: Accurate and timely payment to rightholders 14.67
   Article 29: Agreements between collective management organisations for multi-territorial licensing
   Article 30: Obligation to represent another collective management organisation for multi-territorial licensing
   Article 31: Access to multi-territorial licensing 14.69
   Article 32: Derogation for online music rights required for radio and television programmes 14.72

Title IV: Enforcement measures
   Article 33: Complaints procedure
   Article 34: Alternative dispute resolution procedures
   Article 35: Dispute resolution 14.73
   Article 36: Compliance
   Article 37: Exchange of information between competent authorities 14.75
   Article 38: Cooperation for the development of multi-territorial licensing

Title V: Reporting and final provisions
   Article 39: Notification of collective management organisations 14.79
   Article 40: Report
   Article 41: Expert group 14.80
   Article 42: Protection of personal data 14.82
   Article 43: Transposition
   Article 44: Entry into force
   Article 45: Addressees 14.83

PART III EU POLICIES AND ACTIONS

15. THE EU POLICIES AND ACTIONS IN THE FIGHT AGAINST PIRACY
   I. Introduction 15.01
   II. From the Berne Convention to the WIPO Internet Treaties 15.06
   III. The awakening of the European Union to the problem of piracy 15.14
      1. Genesis and development of the EU policies and actions in the fight against piracy 15.14
      2. The EU approach to the fight against piracy in a nutshell 15.28
IV. The fight against piracy in the internal market and at the EU’s external borders 15.30
1. Legislative actions 15.31
2. Non-legislative actions 15.88

V. The fight against piracy on the internet 15.124
1. Legislative actions 15.129
2. Non-legislative actions 15.176

VI. The fight against piracy in third countries 15.181
1. Legislative actions 15.187
2. Non-legislative actions 15.241
3. Assessment of the EU’s foreign policies on IPR enforcement 15.266

VII. Conclusion: Where do we stand and where are we going? 15.270

16. EUROPEANA, ARROW AND ORPHAN WORKS: BRINGING EUROPE’S CULTURAL HERITAGE ONLINE

I. The role of culture in the digital age 16.01

II. Digitisation and preservation of Europe’s cultural memory: a key aspect of the EU information policy 16.07
1. Digitisation of cultural heritage: aims and benefits 16.07
2. Preserving cultural heritage 16.17

III. The launch of Europeana and other European actions and initiatives on the digitisation, on-line accessibility and preservation of European cultural material 16.22
1. Europe’s digital agenda so far 16.22
2. Europe’s cultural heritage for all: the launch of Europeana 16.28

IV. Digitisation and copyright law: a tension with consequences 16.50
1. Digitisation of public domain content 16.50
2. The digitisation of copyrighted material as a special challenge 16.62

V. The orphan works issue 16.78
1. Cost and time-consuming rights clearance as an obstacle to digitisation and preservation 16.78
3. ARROW: Accessible Registries of Rights Information and Orphan Works 16.90

VI. The legal challenge: finding the right balance in the digital age 16.98
1. Tensions between creators, intermediaries and the public: an interest analysis 16.102
2. Interest implications 16.115

VII. Policy conclusion 16.116

17. THE DIGITAL AGENDA FOR EUROPE, THE ECONOMY AND ITS IMPACT UPON THE DEVELOPMENT OF EU COPYRIGHT POLICY

I. Introduction 17.01

II. The Digital Agenda and the facilitation of the digital single market 17.04
1. A harmonising agenda: fixing the fragmented digital market 17.05
2. ‘It’s the economy, stupid’: the main driver of Europe 2020 and the Digital Agenda 17.09
3. No longer an orphan? Copyright reforms achieved under the auspices of the Digital Agenda 17.11

III. Difficulties, delays and divisions: harmonisation stalled, and unification overlooked? 17.14
1. Actions not yet achieved: CRM and copyright enforcement, the (ever) on-going processes 17.15
2. A European Copyright Code and copyright flexibilities: the untouched issues of the Digital Agenda? 17.18

IV. Why effective realisation of the Digital Agenda is difficult to achieve: previous failures, resistance, and external factors 17.22
1. Creative content online: the failed attempt to reform CRM in the EU 17.23
2. The political difficulties of copyright reform: resistance, reluctance and rupture 17.25
3. ‘It’s the economy (redux)’: why copyright reform alone may not lead to growth and prosperity 17.28
V. Concluding remarks 17.32

18. INTELLECTUAL PROPERTY AND THE EU RULES ON PRIVATE INTERNATIONAL LAW: MATCH OR MISMATCH?
I. Introduction 18.01
II. Jurisdiction 18.02
1. The starting point 18.02
2. Article 8.1 Brussels I (recast) 18.03
3. Article 24(4) 18.08
III. Choice of law 18.30
1. The Rome I Regulation 18.31
2. The Rome II Regulation 18.64
IV. Conclusion 18.93

PART IV PRESENT AND FUTURE OF COPYRIGHT IN THE EUROPEAN UNION

19. THE EU STANCE IN INTERNATIONAL MATTERS
I. Introduction 19.01
1. The EU’s mandate in international matters 19.01
2. The role of the European Commission 19.04
3. A new EU player on the IP scene – The European External Action Service (EEAS) 19.05
II. The Beijing Treaty on audiovisual performances 19.06
1. The follow-up to the WPPT 19.06
2. Proposal for a Protocol concerning audiovisual performances 19.09
3. The establishment of the SCCR in 1998 19.12
4. Position of the EU on the draft Protocol 19.13
5. Transfer of rights 19.14
6. The Diplomatic Conference of 2000 and its aftermath 19.16
7. The breaking of the deadlock 19.17
III. The draft treaty on the protection of broadcasting organisations 19.20
1. The existing international framework for the protection of broadcasting organisations 19.20
2. WIPO programme on the protection of broadcasting organisations 19.22
3. The position of the EU 19.24
4. The emergence of a draft treaty 19.27
IV. Proposals concerning exceptions and limitations to copyright 19.32
1. The initial proposal from Chile 19.32
2. The position of the EU 19.35
3. EU proposal for a recommendation on access to works by persons with print disabilities 19.36
4. Other proposals 19.37
5. The EU response 19.38
6. Emergence of draft texts on limitations and exceptions 19.40
V. Proposals for the protection of folklore (traditional cultural expressions) 19.47
1. Background 19.47
2. EU stance on folklore 19.49
3. Ongoing work in the IGC on folklore 19.51
4. Issues still to be resolved 19.53
5. Future work 19.55
VI. Conclusions 19.56

20. THE ROLE OF THE COURT OF JUSTICE IN THE DEVELOPMENT OF EUROPEAN UNION COPYRIGHT LAW
I. Introduction

II. Originality/creativity

III. The ‘Work’

IV. Exclusive rights
   1. Reproduction / adaptation
   2. Distribution
   3. Public lending
   4. Communication to the public

V. Ownership of rights

VI. Term of protection

VII. Exceptions and limitations
   1. Principles of interpretation
   2. Article 5(1)
   3. Optional exceptions and limitations under the Information Society Directive
   4. Exceptions and limitations under the Rental Right Directive
   5. ‘Fair compensation’
   6. Exceptions and limitations under the Software Directive

VIII. Conclusion

21. TOWARDS A EUROPEAN COPYRIGHT LAW: FOUR ISSUES TO CONSIDER

I. Introduction

II. The territoriality issues: what can be done? What are the problems?

III. The argument for a EU-wide copyright title and a regulation

IV. The need for EU rules on copyright contracts
   1. Overview of the rules on copyright contracts in the EU
   2. Example of protective rules in continental Europe
   3. Extended collective licensing in the Scandinavian countries
   4. The need for new rules with regard to the new online business models
   5. The facilitation of pan-European licensing in certain sectors

V. The flexibility needed for copyright exceptions and the need for harmonising private copying levies
   1. The need to take technology-enabled uses into account
   2. The need to revisit the exceptions applicable in the field of non-commercial education
   3. Alignment of the private copying exception with the reasonable expectations of users and harmonisation of copyright levies

22. CONCLUSION

Index