INDEX

abuse see dominance abuse

acquis communautaire

CJEU role in EU Copyright law development 20.04, 20.05, 20.06, 20.10, 20.13, 20.15, 20.16, 20.27, 20.43
compatibility concerns, piracy and Anti-Counterfeiting Trade Agreement (ACTA) 15.198–204, 15.233, 15.234
EU mandate and international stance 19.01–3
evolution of copyright law 1.14–18
harmonisation 1.14–18
Software Directive 5.03
algorithms, lack of protection, Software Directive 5.27
anonymous works and date of the author’s death rule, Term Directive 8.15
Anti-Counterfeiting Trade Agreement (ACTA)
Avaaz online petition against 17.27
compatibility of injunctions and blocking orders and fundamental rights 15.175
Digital Agenda initiative 17.17, 17.27
EU ratification call 15.27
Group of Eight (G8), and Anti-Counterfeiting Trade Agreement (ACTA), piracy, policies and actions in fight against, third countries, non-legislative actions 15.261
piracy policies see piracy, policies and actions in fight against, third countries, legislative actions, Anti-Counterfeiting Trade Agreement (ACTA) ratification call, and piracy 15.27
Anton Piller Orders 12.82
application in time
Berne Convention 2.08
Information Society Directive (Article 10) 11.173–4
Orphan Works Directive (Article 8) 13.59–60
Rental and Lending Rights Directive (Article 11) 6.103
Resale Right Directive (Article 10) 10.87
Satellite and Cable Directive (Article 7) 7.55–7
Term Directive see Term Directive, application in time (Article 10)
ARROW (Accessible Registries of Rights Information and Orphan Works) 13.42–5, 16.90–97, 16.120
artists and artworks
art galleries acquiring works directly from the author 10.29
artistic work definition, Berne Convention (Article 2) 8.11
Artists’ Collecting Society (ACS), UK 10.55
Artist’s Resale Rights Regulations, UK 10.80
Design and Artist’s Copyright Society (DACS), UK 10.55
Irish Visual Artists Rights Organisation (IVARO), Ireland 10.55
local artists, encouragement of proactive support 10.93
performing artists and producers of phonograms, related rights, WPPT 8.26, 8.29

1159
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

Resale Right Directive see Resale Right Directive, works of art to which resale right relates (Article 2)
Resale Royalty Right for Visual Artists Act, Australia 10.64
see also authorship; creative industries audiovisuals see cinematographic and audiovisual works
Australia
EU resale rights' royalties 10.64–8
Internet access blocking 15.127
Resale Royalty Right for Visual Artists Act 10.64
Austria
collective rights management 10.55
collective rights and obligation to contract with users 14.59
duration of authors’ rights 8.01
indirect reproduction 11.08
lump sum punitive damages payments 12.189
Meteodata v Bernegger Bau 11.08
Private International Law Act 18.76
resale right, term of protection 10.81
resale right transposition 10.18, 10.20, 10.77, 19.55
UPC Telekabel Wien 11.170, 15.152
authorship
art galleries acquiring works directly from author 10.29
‘author as creator’ rule 1.15
‘author’s own intellectual creation’ (CJEU) 9.13–14, 20.06, 20.09–11
computer programs see Software Directive, authorship of computer programs (Article 2)
confusion over concept (CJEU) 20.05
death of author see death of author duration of authors’ rights, Berne Convention (Article 7) 8.01, 8.13, 8.15, 8.22, 8.44–5, 8.53, 8.67
fair compensation, and harm suffered by the author (CJEU) 20.45, 20.47
Information Society Directive, distribution right (Article 4) 11.39–40
Information Society Directive, right of communication to the public (Article 3) 11.15
moral rights, author’s name on digitised work 16.75
multiple authors and owners, Orphan Works Directive (Article 2) 13.29
photographic reproduction and author verification (CJEU) 20.41–2
presumption of authorship, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED), presumption of authorship or ownership (Article 5)
principal director of cinematographic work as author 6.41–2, 8.20
Satellite and Cable Directive (Article 1) 7.33, 7.36, 8.20
Term Directive, cinematographic or audiovisual works (Article 2) 8.19–21
see also artists and artworks
back-up copies, Software Directive 5.105–6
banking documents disclosure 12.70–78, 12.107
see also financial information disclosure
Beijing Treaty on Audiovisual Performances see international stance, Beijing Treaty on Audiovisual Performances
Belgium
Belgian Association of Newspaper Editors v Google 11.12
Code of Private International Law 18.76
duration of authors’ rights 8.01
Johan Deckmyn 11.86
rental right as exclusive right 6.15
reproduction right 11.12
resale right 10.02
resale right transposition 10.20
torpedoes and cross-border litigation 18.21
transfer of property and assignment of copyright 21.36

1160
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

Berne Convention
application in time 2.08
competition by extension 4.20
computer programs as literary works (Article 1) 5.07–12
copyright protection, automatic (Article 5) 13.39
database definition 9.01
derivative works, translations and adaptations protection (Article 2) 5.66
duration of authors’ rights (Article 7) 8.01, 8.13, 8.15, 8.22, 8.44–5, 8.53, 8.67
IPRs and piracy 15.06, 15.11
literary or artistic work definition (Article 2) 8.11
models and designs 2.08
moral rights (Article 6) 1.16, 5.12, 5.93, 8.54
national treatment principle 2, 20, 1.04, 2.05, 2.08, 2.11, 2.14, 2.16, 2.17, 2.18, 5.12
official works, exemption of (Article 2) 9.34
originality assessment 5.35
piracy, policies and actions in fight against 15.06
presumption of authorship or ownership (Article 15) 12.43–6, 12.49
principal director authorship (Article 14) 6.42
prohibition on formalities (Article 5) 5.12
protection, comparison of terms of 2.08
protection of photographs (Article 2) 8.44
resale right (Article 14) 2.08, 2.17, 10.06–7, 10.25, 10.31, 10.50–51, 10.59
resale right, post mortem restrictions (Article 14) 10.50–51
resale right, reciprocity principle (Article 14) 10.59
resale right, term of protection (Article 7) 10.78–9
reservation of ten-year period regarding translations 2.08, 2.17
retaliation against back-doors protection 2.08, 2.17
satellite broadcasting right (Article 11) 7.37
three-step test (Article 9) 5.125, 11.70
transfer of rights (Article 14) 19.15
bilateral agreements, and piracy see piracy, policies and actions in fight against, third countries, legislative actions, bilateral agreements
black-box testing, Software Directive (Article 5) 5.107–9, 20.49–50
blocking orders, and Internet piracy see piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights
borders see cross-border measures
broadcasting and communication to the public see Rental and Lending Rights Directive (Directive 2006/115), broadcasting and communication to the public (Article 8)
enrypted broadcasting 3.10
ephemeral recordings of works made by broadcasting organisations for their own broadcasts, Information Society Directive 11.11, 20.43
film/audio heritage and public service broadcasters, Orphan Works Directive (Article 1) 13.08
fixation right, Rental and Lending Rights Directive (Article 7) 6.79–80
football matches, filming and broadcasting 21.15–19
graphic user interface (GUI) broadcasting, exclusion of, Information Society Directive (Article 3) 11.23
innovation, Green Paper on Copyright and the Challenge of Technology 1.07

1161
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

international protection see international stance, Draft Treaty on the Protection of Broadcasting Organisations

motion pictures, broadcasting and cable transmission (CJEU) 1.06

organisations, duration of related rights, Term Directive (Article 3) 8.30

organisations, freedom to conduct a business, Charter of Fundamental Rights (Article 16) 20.33

related rights duration, Rental and Lending Rights Directive (Article 14) 8.26

right in country of origin, Information Society Directive 7.35

Satellite and Cable Directive see Satellite and Cable Directive (Directive 93/83)

signal encryption, TFEU (Article 56) 7.22–3

Television without Frontiers Directive 7.02

transmission to public (CJEU) 7.12, 7.14

webcasting and simulcasting, inclusion of, Draft Treaty on the Protection of Broadcasting Organisations 19.27

see also cable transmission; cinematographic and audiovisual works

Brussels I Regulation

piracy see piracy, policies and actions in fight against, internal market and at external borders, civil enforcement of copyright and related rights, Brussels I Regulation

private international law see under intellectual property and EU rules on private international law

Bulgaria

counterfeit and pirated goods 15.04

resale right transposition 10.19

business community cooperation

guides for EU businesses operating in third countries, piracy policies 15.104

piracy and Anti-Counterfeiting Trade Agreement (ACTA) 15.228–9

cable transmission

motion pictures, broadcasting and cable transmission (CJEU) 1.06

performance of services and non-applicability of principle of Community exhaustion of rights 3.08–9

Rental and Lending Rights Directive (Article 8) 6.83

Rental and Lending Rights Directive, fixation right (Article 7) 6.80

retransmission right in Scandinavian countries 21.43

Satellite and Cable Directive see Satellite and Cable Directive (Directive 93/83)

see also broadcasting

caching, Internet service providers (ISPs) 11.163, 11.164

Canada

EU-Canada Comprehensive Economic and Trade Agreement (CETA) 15.240

lump sum punitive damages payments 12.189

Charter of Fundamental Rights

broadcasting organisations’ freedom to conduct a business (Article 16) 20.33

fundamental rights and principles 12.24

Information Society Directive, exceptions and limitations 11.79–80, 11.85

intellectual property rights 11.104

national treatment policy 2.11

piracy policies and failure to comply with several key provisions 15.203, 15.204

China

China IPR SME Helpdesk 15.246

counterfeit and pirated goods 15.04
Index

EU resale rights’ royalties 10.73–4
EU-China talks on IPRs 15.242
IPR2 technical assistance project 15.245
cinematographic and audiovisual works
Anti-Counterfeiting Trade Agreement (ACTA), criminal measures for the unauthorised copying (camcording) 15.224
authors, Satellite and Cable Directive definition (Article 1) 7.33, 7.36, 8.20
Beijing Treaty on Audiovisual Performances see international stance, Beijing Treaty on Audiovisual Performances
fan films 4.20
film exploitation agreements, Satellite and Cable Directive (Article 7) 7.59
film licensing, Satellite and Cable Directive (Article 9) 7.69
film performance fixation, Term Directive (Article 3) 8.35
film producers, Rental and Lending Rights Directive (Articles 3 and 9) 6.51–4, 6.100
film producers, special rule for longer protection, Term Directive (Article 3) 8.29
film/audio heritage and public service broadcasters, Orphan Works Directive (Article 1) 13.08
online dissemination of works 1.21, 1.24
Orphan Works Directive (Article 1) 13.13–16
principal director of cinematographic work as author 6.42, 8.20
Rental and Lending Rights Directive (Article 3) 6.44–6
Rental and Lending Rights Directive, definitions (Article 2) 6.35–7
rights ownership, CJEU role in EU Copyright law development 20.27–8, 20.48
Satellite and Cable Directive, acquisition of broadcasting rights (Article 3) 7.43
Term Directive see Term Directive, cinematographic or audiovisual works (Article 2)
see also broadcasting; creative industries; phonograms; sound recordings
CJEU see Court of Justice of European Union (CJEU)
co-production agreements
Satellite and Cable Directive (Article 7) 7.60–62
see also producers
code see source code
collecting societies
Artists’ Collecting Society (ACS), UK 10.55
criticism of definition 14.17
Digital Agenda initiative, realisation problems 17.24
Greece 12.39
influence, Satellite and Cable Directive (Article 10) 7.75
multi-territorial and multi-repertoire licensing, online rights in musical works 21.14
Orphan Works Directive (Article 3) 13.34, 13.48
Resale Right Directive, persons entitled to receive royalties (Article 6) 10.53, 10.57
Satellite and Cable Directive 7.31–2
Satellite and Cable Directive, cable retransmission right 7.64, 7.68, 7.71–2, 21.43
Satellite and Cable Directive definition 14.16
TFEU (Article 12) 12.40
collective licensing
Orphan Works Directive (Article 1) 13.20, 13.62
Satellite and Cable Directive (Article 3) 7.40–42
see also licensing
collective rights management
conflict avoidance, Digital Agenda initiative, realisation problems 17.24
Index


1164

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

right holder 14.18
tariff level clarification, need for 14.55
tariffs determined on basis of objective
criteria 14.54–5, 14.58
users, obligation to contract with
14.59
voluntary licensing 14.55

Collective Rights Management
Directive (Directive 2014/…) (musical works for
online use), distribution of amounts
due to rightholders (Article 12)
14.46–50
deductions granted 14.49
exploitation protection 14.48
identification and location of rights
owners 14.50
member data, importance of accurate
14.47, 14.50
time factors 14.50
transparency in pricing 14.48

Collective Rights Management Directive
(Directive 2014/…) (musical works for
online use), general principles (Article
4) 14.24–7
impact assessment report 14.25
indispensability test 14.27
obligation to act in best interests of
members 14.26
representation of rightholders 14.24–5

Collective Rights Management Directive
(Directive 2014/…) (musical works for
online use), information exchange
between competent authorities (Article
39A) 14.75–8
complaints procedures 14.77
national obligations 14.76, 14.77
prior authorisation and supervision
requirements 14.78
sanction types or measures, lack of specific
rules 14.78
subsidarity principle 14.77

Collective Rights Management Directive
(Directive 2014/…) (musical works for
online use), licensing (Article 15)
14.54–9
dominant position abuse 14.56–7
‘economic value in trade’ 14.55, 14.56
licensing negotiations conducted in good
faith 14.54

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

contract law and 'express consent' specifically for each right or category of rights 14.36–7
determination of categories of rights or types of work 14.32
flexibility in management of copyright and related rights, need for 14.33
freedom of choice 14.31
freedom to grant or withdraw rights management authorisation 14.35, 14.36
information on choices, availability on 14.34
mandatory requirements and unfair trading conditions 14.30
non-discrimination principle 14.29

exclusions 14.12
national standards 14.10
rightholders’ remuneration for derogations from the exclusive right in respect of public lending 14.12
transparency and good governance 14.09
collective works category, Database Directive (Article 1) 9.18
Comité des Sages report, cultural heritage 16.25, 16.42
commercial advantage definition, Rental and Lending Rights Directive (Article 2) 6.31–2
commercial exploitation concerns, folklore and traditional cultural protection 19.49, 19.50
commercial purposes, possession for, Software Directive (Article 7) 5.133
‘commercial scale’ definition 12.09–10, 12.13, 12.72, 12.108–9, 15.82–3
communication to the public cable retransmission 7.29
CJEU, role in EU Copyright law development 20.23–6
Database Directive (Article 5) 9.24
EU Copyright Law, working towards 21.46
graphic user interfaces (GUIs) 20.26
Information Society Directive 11.79
Information Society Directive (Article 5) 7.38, 9.24
Satellite and Cable Directive (Article 1) 7.08, 7.09–15, 7.19–20, 7.29
Community exhaustion rule free movement of goods principle 3.04–5, 3.06–9, 3.11
Software Directive see Software Directive, restricted acts (Article 4), Community exhaustion rule see also exhaustion
Community Trademark and Design Courts 21.10
compensation costs of proceedings, IPRED (Article 13) 15.54
fair see fair compensation pecuniary, IPRED 12.24, 12.171–2, 12.175, 12.176, 12.182, 12.187–8
rightholders, Orphan Works Directive 11.106, 13.54–5, 16.86
security, IPRED (Article 9) 12.134–5, 12.148
competition and competitiveness competition by extension 4.20, 4.62, 4.67
competition by imitation 4.17–18
competition by substitution 4.17–18, 4.62
competitive results, lack of, multi-territorial licensing in internal market 14.64, 14.66
and efficiency 4.16
elimination, IMS case 4.33, 4.50–54, 4.58, 4.63, 4.68
elimination, Microsoft case 4.27, 4.33, 4.40, 4.55–62, 4.63, 4.64, 4.73–4, 5.119, 5.140

Irina A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
essential facilities principle, TFEU
Article 102 4.01–3, 4.17–18, 4.20,
4.62, 4.67
freedom of goods and services rules, EU
Copyright Law, working towards
21.21
internal market, Resale Right Directive
10.08–9
legal ineffectiveness, Satellite and Cable
Directive 7.80
computer programs
and copyright databases 11.27
creative re-use possibilities 16.13–14,
16.39
download-to-own (DTO) market,
Information Society Directive
(Article 3) 11.33
elements as literary works 5.11
elements protection (CJEU) 5.28–30
exhaustion rule and intangible copies
(CJEU) 5.86–8
forms of expression (CJEU) 5.16
Legal Protection of Computer Programs
Directive see Legal Protection of
Computer Programs Directive
as literary works 1.08, 5.07–12
originality assessment 5.33
Rental and Lending Rights Directive
(Article 4) 6.55–7
rental right, WIPO Copyright Treaty
(WCT) and TRIPs 5.67
reproduction right exclusion 11.10
right of ‘making available to the public’
11.27
Software Directive see Software Directive
software distribution concept (CJEU)
20.19–21
software reproduction/adaptation (CJEU)
20.15
source codes see source codes
‘work’ concept (CJEU) 20.13
see also Software Directive
Conditional Access Directive (Directive
98/84)
broadcasting signal encryption 7.22
technical protection measures
11.108
confidentiality protection
IPRED, evidence, measures for preserving
(Articles 6 and 7) 12.62, 12.81,
12.88–9
and national law, E-Commerce Directive
12.116
see also personal data protection; privacy
protection
consumers
contracts 18.51–2
demand for downstream/facilitated
product 4.64
end-users see end-users
contracts
agreements’ preference, Technical
Protection Measures (TPMs) 11.99
consumer contracts 18.51–2
contractual freedom, Rome I Regulation
18.44–6
‘express consent’ specifically for each right
or category of rights 14.36–7
termination rights 8.37
copies see reproductions
COPIS database, piracy policies 15.122,
15.123
copyright
contract rules see EU Copyright Law,
working towards, copyright contract
rules, need for
enforcement mechanisms, Digital Agenda
initiative 17.17
exceptions and transformative fair use,
esential facilities principle 4.19
freedom of expression, Information
Society Directive 11.81–3
laws as regulatory barrier, Digital Agenda
initiative 17.06, 17.10
protection conflict, folklore and traditional
cultural expressions 19.50
protection and privacy, conflict between,
IPRED (Article 8) 12.125
protection terms, Rental and Lending
Rights Directive (Articles 11 and 12)
8.68
reforms achieved, Digital Agenda
initiative 17.11–13
Index

Rental and Lending Rights Directive
6.73–4, 8.68
validity issues, Brussels I Regulation see under intellectual property and EU rules on private international law,
Brussels I Regulation, Article 24(4) (exclusive jurisdiction rule)
Copyright Directive (Directive 2001/29)
3.11, 3.13, 12.125
collective licences 21.43
communication to the public (Article 3) 6.84, 20.26
Community exhaustion rule 5.83, 5.86
computer program elements as literary works 5.11
copyright limitation and Memorandum of Understanding (Article 5) 13.22
device 'primarily designed for the purpose of circumvention' (Article 6) 5.135
education sector exceptions (Article 5) 21.59, 21.60
exceptions and limitations and three-step test (Article 5) 20.32, 21.53
fair compensation (Article 5) 21.65
knowledge, condition of 5.132
'lawful user' and 'lawful use' requirement 5.96
moral rights of employees (Articles 79 and 81) 5.54
online rights in musical works (Articles 2 and 3) 14.22
personal data protection (Article 9) 12.125
public lending rights (Article 4) 5.71
'publicly accessible', meaning of (Article 5) 13.06
rental rights 5.68
reproduction right (Article 2) 5.60, 5.62, 6.74, 6.76, 13.50
'technological measures' definition (Article 6) 5.135
three-step test (Article 5) 21.56
Copyright and Neighbouring Rights Directive (Directive 2011/77)
entry into force considerations (Article 2) 8.71
modifications to Term Directive, and application in time 8.61–2
notification and communication obligations (Article 3) 8.66, 8.71
performers and producers of phonograms, term of protection (Article 3) 8.32–9, 8.63–4
technical adaptation, initial repeal 8.67–8
Council of Europe
Convention of Cybercrime 11.107, 15.13
and piracy see piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights, Council of Europe and the ECtHR
counterfeiting see under piracy, policies and actions in fight against
country of origin rule
Satellite and Cable Directive (Article 1) 7.16–18, 7.20, 7.34–6, 7.45, 7.87
see also national laws
Court of Justice of European Union (CJEU)
‘author’s own intellectual creation’
definition 9.13–14
autonomous notions of Community law 1.12
Border Measures Regulation 12.97, 15.73
broadcasting transmission to public 7.12, 7.14
Brussels I Regulation, ‘special jurisdiction’ rule 15.58, 15.59
‘communication to the public’ concept 11.19, 11.20, 11.22, 11.79
counterfeiting see piracy, policies and actions in fight against
computer program elements protection 5.28–30
computer program forms of expression 5.16
computer programs as literary works 5.11
confidentiality and personal data 12.116
consent of IPR owner and placement on market 3.06
copyright law evolution 1.11–13
copyright levies 21.08
copyright protection period 8.04–5

1168

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
copyright and specific subject matter doctrine 1.05
Customs enforcement of IPRs 15.274
data collection, 'obtaining', understanding of 9.37
data extraction and re-utilisation 9.53–4, 9.59
database definition 9.01
database re-utilisation 11.25
databases, systematic or methodical arrangements 9.05
disclosure of information provisions 15.43
document of implied licence 11.90–91
dominance abuse, non-IP cases requesting access to essential facility 4.31
download-to-own (DTO) software market 11.33
'economic value of rights in trade' 14.56
encrypted broadcasting 3.10
exclusive jurisdiction rule 18.13–26
exhaustion of distribution rights and free movement of good (Article 28) 11.49
exhaustion rule 1.05, 3.12
exhaustion rule and intangible copies of computer programs 5.86–8
existence of copyright role 1.12
fair compensation right 11.104, 21.65–6
hyperlinking 11.29
increased role since in reconciling copyright and primary law 1.11–13
'-independent material' definition 9.03
information access and freedom of expression 11.96
infringement larger in scope in one country than another 18.91
intermediaries, understanding of term 15.52
international exhaustion of distribution right 3.16–17
Internet piracy 15.143, 15.146–63
IP and copyright recognition 0.02, 1.05
IP and damages 12.181, 12.185
IP and protection of the right to privacy and the freedom of expression 15.143, 15.146–63
ISP disclosure of information 12.121, 15.44
ISP illegal content awareness 15.134
ISP liability issues 11.153, 12.169
lawful user concept 5.97–8, 9.56–7
legitimate expectations, protection principle 8.60
lis pendens provisions 15.60, 15.65
mandatory limitation for transient copies 11.76
moral rights, absence of 6.05
motion pictures, broadcasting and cable transmission 1.06
multiple defendants 18.04–6, 18.07
national treatment principle 2.12, 2.14–20, 9.72, 9.73
national treatment principle, and country of origin of work 2.17
non-discrimination principle 14.29
online transactions and principle of exhaustion rule 3.12–14
originality assessment debate 5.34–5
originality concept 1.15
parallel territorial IP rights 18.02
pecuniary compensation 12.172
personality rights 15.59
portrait photography and originality 8.47
preliminary ruling requests 1.12
'presentation of database information' definition 9.41
principal director of cinematographic work as author 8.20
principle of Community exhaustion of rights 3.04–5, 3.07
private copying exception 11.105
'public', notion of 11.31
public-order legislation 18.42
publication of judicial decisions, IP rights 12.198–204
quantitative and qualitative assessment definitions 9.36, 9.48
referral on compatibility, piracy and Anti-Counterfeiting Trade Agreement (ACTA) 15.206, 15.208, 15.209
rental issue harmonisation 6.03, 6.39, 6.46
resale right 10.07, 10.13
resale right, post mortem restrictions 10.46, 10.51

1169

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
resale right, reciprocity principle 10.60
restricted acts of data extraction and re-utilisation 9.44
restrictions on the freedom of movement of goods and services 1.08
right of distribution concept 1.12
right of information 15.149–50
'sale' interpretation 5.81
sampling of work as evidence 12.63–9
signal encryption and satellite broadcasting 7.21
sound recordings, distribution rights 3.07
sound recordings, import of 1.06
'substantial and insubstantial' investment' definitions 9.49–51
transparency enhancement through harmonious interpretation, Information Society Directive (Article 5) 11.77–86
see also European Court of Human Rights (ECHR); European Free Trade Association (EFTA); individual countries
Court of Justice of European Union (CJEU), cases
ACI Adam BV 11.105
Ahmet Yıdırım v Turkey 15.170–72
Airfield 20.23
Akzo Chemie 4.14
Alessandro Tedesco v Tomasoni Fittings and RWO Marine Equipment 12.97
Amazon 11.105, 21.08, 21.62
Apis 9.44, 9.50, 9.51
Abby Donald and others v France 11.81–3, 15.173–4
BHB 9.21
Bonnier Audio 15.151
Bronner 4.02, 4.31, 4.34, 4.35, 4.38, 4.45, 4.51, 4.52, 4.54, 4.58
BRT v SABAM 14.27
BSA 20.11, 20.13, 20.26
Cassina 1.12, 1.13
CICRA v Renault 4.30
Circul Globus Bucureşti 20.23
CISAC 14.03, 14.11
Coditel 3.09, 3.10
Commercial Solvents 4.29
Commission v Germany 4.73
Commission v Ireland 6.71
Commission v Italy 6.71
Commission v Portugal 6.46, 6.71, 6.98
Commission v Spain 6.71
Compass-Datenbank 4.06, 4.33
Consten and Grundy 3.07
Daftpunk 14.30
Der Grüne Punkt Duales System v Commission 4.23
Deutsche Grammophon 307
Donner 11.36
DR 20.33, 20.43
Duijnstee v Gederhauer 18.14
eDate Advertising 15.59
Egeda 7.05
EMI Electrola 2.15
EMI v Patricia 8.03–5
ENT 4.36, 4.39
Flos 20.29–30
Football Dataco v Yahoo UK! 9.14, 9.16, 9.72, 9.73
France Télécom 4.64
Gaser 18.21
GAT v LUK 18.13–20, 18.21, 18.22, 18.23, 18.25
GEMA I 14.20, 14.26, 14.36
Hewlett-Packard Belgium 11.104
Hibi 4.25
Hoffman-La Roche 4.21
Hoffner 4.05
IMPALA 4.71
IMS 4.33, 4.50–54, 4.58, 4.63, 4.68
Innoweb 9.54
Intel 4.54
ITV Publications v Time Out 4.43
ITV v TV Catchup 20.25
La Bohème 2.16
Lagardère 6.92, 7.08, 7.09, 11.31, 18.91

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

Laserdisken 3.16–17, 11.95
Lippens 12.97
L’Oréal v eBay 9.46
LSG 11.76
Lucazeau 14.57
Lukian 20.27–8, 20.48
Magill 4.31, 4.33, 4.35, 4.43–8, 4.49, 4.51, 4.52, 4.54, 4.58
Marco Del Corso 11.31
Mars UK v Teknowledge 9.07
Martin Luksan v Petrus vander Let 6.54
MediaKabel 11.31
Metronome Musik 6.46, 6.97, 6.98
Microsoft 4.27, 4.33, 4.40, 4.55–62, 4.63, 4.64, 4.73–4, 5.119, 5.140
Ministère Public v Tournier 3.09
Netlog 11.153, 12.169, 15.44, 15.143, 15.147–8
Oracle 4.95, 5.97
Padovan 1.12, 1.13, 11.86, 20.44, 20.47, 21.08
Painer 11.84, 11.96, 18.07, 20.11, 20.16, 20.40–42, 21.07
Pammer and Hotel Alpenhof 15.59
Peak Holding v Axolin-Elinor 9.46
Peek & Cloppenburg 20.03, 20.17
Peter Pinckney v KDG Mediatech 15.59
Phil Collins 2.15, 2.20, 8.57, 10.07, 10.13, 10.60, 14.29
Philips & Nokia 15.274
PPI 6.87, 11.31, 20.44
Promusicae 11.79, 12.116, 15.143, 15.149–50, 20.03
Rambus 4.28
Roche Nederland BV v Primus 18.04–6, 18.07
St Paul Diary v Unibel 12.97
SAS Institute 5.19, 5.28–30, 5.97–8, 20.49–50
Scarlet 11.153, 12.169, 15.44, 15.143, 15.147–8
SCP v Marco Del Corso 4.74, 6.84, 6.86, 6.87, 20.24
Scaltime/Holyhead 4.68
SENA v NOS 1.12, 6.90–91
Sender Fellsberg 18.91
SGAE v Rafael Hoteles 7.05, 11.31, 20.03, 20.23, 20.24, 20.26
Shevill 18.02
Silhouette 11.61
Simulcasting 14.48, 14.52
Softwarova 5.15, 5.25, 5.34
Sol Lelos v GSK 4.29
Sportradar 11.25
Stichting de Thuiskopie 20.46–7, 20.48
STIM/Kanal 5 14.56
Svensson 11.29
Telemarketing 4.63
Tiercé Ladbrooke 4.49, 4.64
Titus Donner 20.18–19
Tournier 14.51, 14.57
Turner 18.21
TV2 Danmark A/S 11.78, 11.86
TV4 14.56
UPC Telekabel Wien 11.170, 15.152–63
UsedSoft 1.12, 3.12–14, 5.86–9, 9.25, 11.32, 11.34, 20.15, 20.19–21, 20.51
VEWA v Belgium 6.68–9, 20.22
VG Wort 21.08, 21.65
Volvo v Veng 4.30, 4.48, 4.64
Warner Brothers v Christiansen 3.09, 6.03, 6.08, 6.21–2, 6.28, 6.97
Wintersteiger 15.59

Court of Justice of European Union (CJEU), role in EU Copyright law development 20.01–52
‘author’s own intellectual creation’ precondition 20.06, 20.09–11
authorship of works, confusion over concept 20.05
ephemeral recordings of works made by broadcasting organisations by means of their own facilities 20.43
Infopaq decision effects 20.06, 20.10, see also Court of Justice of European Union (CJEU) cases, Infopaq

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

moral rights and copyright ownership 20.04
national copyright rules and Treaty freedoms, relationship between 20.02
originality/creativity standard 20.08–12
originality/creativity standard, portrait photographs 20.11
originality/creativity standard, sporting events 20.11
personal data disclosure 20.03
reproduction right, confusion over concept 20.05
rights ownership 20.27–8
rights ownership, cinematographic works 20.27–8, 20.48
term of protection 20.29–30
term of protection, and Design Directive 20.29
‘work’ concept 20.05, 20.10, 20.13
‘work’ concept and computer programs 20.13
Court of Justice of European Union (CJEU), role in EU Copyright law development, exceptions and limitations 20.31–51
ephemeral recordings of works 20.33
fair compensation 20.45–8
fair compensation, cross-border context 20.46
fair compensation, and harm suffered by the author 20.45, 20.47
interpretation principles 20.32–3
Rental Right Directive 20.44, 20.48
Software Directive 20.49–51
Software Directive, and error correction 20.51
Software Directive, testing functioning of program 20.49–50
three-step test 20.32
Court of Justice of European Union (CJEU), role in EU Copyright law development, exceptions and limitations, optional exceptions under Information Society Directive 20.34–43
exceptions for the purposes of public security (Article 5(3)) 20.40–41
photographic reproduction and author verification 20.41–2
transient reproduction of works Article 5(1) 20.34–9
Court of Justice of European Union (CJEU), role in EU Copyright law development, exclusive rights 20.14–26
communication to the public 20.23–6
communication to the public, graphic user interfaces (GUIs) 20.26
communication to the public, ‘new public’ concept 20.25
communication to the public, public performance right 20.23
distribution concept 20.03, 20.17–21
distribution concept, cross-border transactions 20.18–19
distribution concept, principle of exhaustion and software 20.19–21
public lending 20.22
reproduction/adaptation 20.15–16
reproduction/adaptation, photographic template 20.16
reproduction/adaptation and software 20.15
Creative Content Online initiative 17.23–4
creative industries
creative process, relevant persons involved in, cinematographic or audiovisual works 8.20, 8.22–3
employees (2008) 0.03
Europeana initiatives 16.46
GDP contribution 0.03, 17.09, 17.10
non-economic interests of creative people 1.22
see also artists and artworks;
cinematographic and audiovisual works
creative re-use possibilities, computer programs 16.13–14, 16.39
creativity enhancement, fair compensation, remuneration and collective management link 11.104
criminal enforcement
cybercrime see cybercrime

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
piracy and copyright see piracy, policies and actions in fight against, EU policies, criminal enforcement of copyright and related rights
unauthorised copying of cinematographic works (camcording) 15.224

see also sanctions and remedies
CRM see collective rights management
cross-border measures
access of content, Orphan Works Directive (Article 1) 13.02–3
broadcasting and communication to the public, Rental and Lending Rights Directive (Article 8) 6.92
distribution concept, CJEU role in EU Copyright law development 20.18–19
evidence preservation, IPRED (Article 7) 12.97
external borders with third countries 12.03–4
fair compensation, cross-border context, CJEU, role in EU Copyright law development 20.46
online access to orphan works, Digital Agenda initiative 13.03
online sales, problems with, Digital Agenda initiative, digital single market 17.09
pan-European licensing, Digital Agenda initiative 17.15
piracy, and Anti-Counterfeiting Trade Agreement (ACTA) 15.219–20
piracy and internal market see piracy, policies and actions in fight against, internal market and at external borders
torpedoes and cross-border litigation, Brussels I Regulation 18.21

see also territoriality
cultural aspects
cultural expression see international stance, copyright exceptions and limitations, folklore and traditional cultural expressions, protection proposals
cultural promotion objectives, Rental and Lending Rights Directive (Article 6) 6.68–70
diversity considerations, multi-territorial licensing 14.68
film/audio heritage and public service broadcasters 13.08
policy weaknesses, Resale Right Directive 10.10
cultural heritage, digitisation and copyright law 16.01–121
access facilitation 16.05
access to cultural heritage, unimpeded 16.09–12
aims and benefits 16.07–16
creative re-use possibilities and computer technology 16.13–14, 16.39
culture definition 16.02
Digital Agenda initiative 16.22
digital qualitative viewing possibilities 16.12
digitisation, meaning of 16.07–8
digitised content accessibility 16.10
economic benefits 16.15–16
‘European agenda for culture in a globalizing world’ 16.03
mass digitisation and dissemination of works as means of protection 16.04
public domain scope 16.50–53
role of culture in digital age 16.01–6
technical viability and innovation 16.15–16
time-related benefits 16.11
cultural heritage, digitisation and copyright law, digitisation of copyrighted material as special challenge 16.62–77
digital rights 16.64
economic rights 16.64–71
exceptions to reproduction rights 16.67
moral rights 16.72–7
moral rights, author’s name on digitised work 16.75
orphan works 16.62
public availability 16.69–71
public–private partnerships 16.68
reproduction rights 16.65, 16.67
right owners’ consent 16.66–7
cultural heritage, digitisation and copyright law, heritage preservation 16.17–21
definition 16.17

cultural promotion objectives, Rental and Lending Rights Directive (Article 6) 6.68–70
Index

instability of digital material 16.20
objects in virtual sphere, importance of 16.21
storage in digital file formats, benefits of 16.18–19
technological obsolescence concerns 16.20
cultural heritage, digitisation and copyright law, initiatives 16.22–49
Comité des Sages report 16.25, 16.42
Digital Agenda of the European Union 16.22
Europe 2020 strategy 16.22
European Digital Libraries Initiative 16.24
Europe’s digital agenda so far 16.22–7
Green Paper on Copyright in the Knowledge Economy 16.25
i2010 European Libraries Initiative 16.23–4
legal harmonisation 16.26–7
Orphan Works Directive 16.27

national level aggregation 16.42
online publishing programme on best practice guidelines 16.38
role in digitisation process 16.28–33
role in digitisation process, numbers of digital items available 16.32–3
role in digitisation process, scope and aims 16.29–31
Strategic Plan 2011–2015 16.34–40
user contribution 16.42
users 16.45–7
cultural heritage, digitisation and copyright law, initiatives, Europeana
accessibility and distribution 16.39
accumulation of digitised content that represents diversity of Europe’s cultural heritage 16.37
Application Programming Interface (API) 16.45
collaborations and interoperations, encouragement of 16.43
content organisation 16.41–4
copyright compliance 16.48–9
creative industries 16.46
digitisation and sustainability 16.119, 16.120–21
education-related users 16.45
general public users 16.47
ICT PSP programme funding 16.44
innovative user participation 16.40
knowledge exchange platform 16.35–6
knowledge transfer, innovation and advocacy in cultural heritage sector 16.38
launch 16.28–49
as means to drive innovation and as tool to preserve cultural heritage 16.48–9

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>comprehensive European Digital Library, need for 16.120–21</td>
</tr>
<tr>
<td>digitisation in public interest 16.117</td>
</tr>
<tr>
<td>Europeana, digitisation and sustainability 16.119, 16.120–21</td>
</tr>
<tr>
<td>orphan works, digitisation benefits 16.118</td>
</tr>
<tr>
<td>public–private partnerships, importance of 16.120</td>
</tr>
<tr>
<td>cultural heritage, digitisation and copyright law, public domain (re-)privatisation 16.54–61</td>
</tr>
<tr>
<td>distinguishing between categories of works being digitised 16.56</td>
</tr>
<tr>
<td>intellectual works sought to be registered as trademarks 16.58</td>
</tr>
<tr>
<td>photographic reproductions of two- and three-dimensional cultural objects 16.55–6</td>
</tr>
<tr>
<td><em>sui generis</em> database right 16.60</td>
</tr>
<tr>
<td>technological access barriers 16.61 through property law 16.59</td>
</tr>
<tr>
<td>customs</td>
</tr>
<tr>
<td>piracy and copyright see piracy, policies and actions in fight against, EU policies, customs enforcement of copyright and related rights</td>
</tr>
<tr>
<td>World Customs Organisation (WCO) 15.123, 15.256–8</td>
</tr>
<tr>
<td>cybercrime</td>
</tr>
<tr>
<td>European Cybercrime Centre (EC3) 15.115</td>
</tr>
<tr>
<td>plurilateral initiative (Council of Europe) 15.13</td>
</tr>
<tr>
<td>Czechoslovakia, resale right 10.02</td>
</tr>
<tr>
<td>damages</td>
</tr>
<tr>
<td>actions, IPRED 11.148</td>
</tr>
<tr>
<td>awards, assessment problems and lack of deterrence, and piracy, 15.46, 15.50, 15.53, 15.54</td>
</tr>
<tr>
<td>claims, evidence preservation measures 12.96</td>
</tr>
<tr>
<td>IPRED see Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48), damages (Article 13) and right of information 12.110</td>
</tr>
<tr>
<td>see also sanctions and remedies</td>
</tr>
<tr>
<td>data analysis development, piracy, and EU's foreign policies on IPR enforcement 15.268</td>
</tr>
<tr>
<td>data files' format and programming languages, Software Directive (Article 1) 5.28–30</td>
</tr>
<tr>
<td>data interchange systems, and piracy see piracy, policies and actions in fight against, risk-analysis tools and electronic data interchange systems</td>
</tr>
<tr>
<td>data retention E-Privacy Directive 12.116, 12.118, 12.119, 15.151</td>
</tr>
<tr>
<td>IPRED 12.119</td>
</tr>
<tr>
<td>Data Retention Directive (Directive 2006/24) 12.119</td>
</tr>
<tr>
<td>information disclosure 15.151</td>
</tr>
<tr>
<td>'notice-and-take down' mechanism 15.144</td>
</tr>
<tr>
<td>'serious crimes' definition 12.120</td>
</tr>
<tr>
<td>database</td>
</tr>
<tr>
<td>commercial digital databases with technical protection measures, Orphan Works Directive 13.38</td>
</tr>
<tr>
<td>computer programs and copyright databases, Information Society Directive (Article 3) 11.27</td>
</tr>
<tr>
<td>parallel databases, concerns over, Orphan Works Directive 13.40–41</td>
</tr>
<tr>
<td>Rental and Lending Rights Directive 9.10, 9.23</td>
</tr>
<tr>
<td>shared database identifiers, Orphan Works Directive (Article 3) 13.44–5</td>
</tr>
<tr>
<td>trade organisations, works falling outside scope of existing databases, Orphan Works Directive (Article 3) 13.35</td>
</tr>
<tr>
<td>Database Directive (Directive 96/9) 1.08, 9.01–79 application over time (Article 14) 9.75–7</td>
</tr>
<tr>
<td>beneficiaries of protection under <em>sui generis</em> right (Article 11) 9.68–9</td>
</tr>
<tr>
<td>Community exhaustion rule 5.83 database definition, Berne Convention 9.01</td>
</tr>
<tr>
<td>final provisions (Article 16), report requirements 9.79</td>
</tr>
<tr>
<td>'lawful user' and 'lawful use' 5.96</td>
</tr>
</tbody>
</table>

1175

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
sanctions and remedies (Article 12) 9.70, 11.143
see also Software Directive
Database Directive (Directive 96/9),
continued application of other legal provisions 9.71–4
licence protection 9.71
national legislation 9.72
public document access 9.71
sui generis right 9.71
trademark protection 9.71
Database Directive (Directive 96/9), lawful users, rights and obligations (Article 8) 9.55–60
extraction and re-utilisation rights 9.58–9, 9.59
insubstantial parts, use of 9.58–9
lawful user concept 9.56–7
sui generis right 9.58, 9.59
three-step test 9.59
Database Directive (Directive 96/9), object of protection (Article 3) 9.12–16
‘author’s own intellectual creation’ definition 9.13–14
data creation and collection, distinction between 9.37–9
national legislation 9.72, 9.73
sui generis right 9.12, 9.14, 9.16, 11.110
Database Directive (Directive 96/9), object of protection, sui generis right (Article 7) 9.31–54
copyright subsisting in contents 9.52
data collection, ‘obtaining’, understanding of 9.37
data recorded from nature 9.37
extraction rights 9.43–4
information presentation and verification 9.40, 9.41
Information Society Directive relationship 11.03
infringements 9.48–54, 9.67
as intellectual property right 9.31–2
investment protection 9.33–5
ownership provision, lack of 9.42
protection requirement 9.33–41
public lending right 9.47
public sector databases 9.34
quantitative and qualitative assessment, lack of definition 9.26, 9.48
re-utilisation rights 9.43, 9.45–6, 11.25
re-utilisation rights, exhaustion principle 9.46
reasons for 9.32
spin-off databases, lack of protection for 9.37
substantial investment requirement 9.35
substantial part and insubstantial part, lack of definition 9.49–51
Database Directive (Directive 96/9), restricted acts (Article 5) 9.20–26
communication to the public 9.24
distribution rights 9.23, 11.37
exhaustion of right 9.25
infringements 9.26
reproduction 9.21, 11.10
right of communication to the public 11.16
translation 9.22
Database Directive (Directive 96/9), restricted acts, exceptions (Article 6) 9.27–30
Information Society Directive relationship 11.03
lawful user concept 9.27
moral rights 9.30
private reproduction exception 9.62
reproduction 11.10
sui generis right 9.27–8
teaching and research exceptions 9.63
term of protection 9.30
three-step test 9.29
Database Directive (Directive 96/9), scope (Article 1) 9.01–8
collection definition 9.02
collective works category 9.18
consultation materials 9.08
copyright works 9.04
database authorship 9.17–19
database exclusions 9.03
dominant position abuse prevention 9.02
format of database 9.01
‘independent’ definition 9.03
individual accessibility by electronic or other means 9.06

1176

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

‘materials’ as works and data 9.04
programs used in creation of databases 9.07
systematic or methodical arrangements 9.05
Database Directive (Directive 96/9), scope limitations (Article 2) 9.09–11
rental and public lending rights 9.10
Satellite and Cable Directive, lack of mention of 9.11
Software Directive provisions, possible clash 9.09
sui generis right 9.09
Database Directive (Directive 96/9), sui generis rights, exceptions (Article 9) 9.61–4
private reproduction exception 9.62
public security or administrative or judicial procedure exceptions 9.64
teaching and research exceptions 9.63
Database Directive (Directive 96/9), term of protection (Article 10) 9.65–7
dynamic databases, perpetual protection 9.67
qualitative or quantitative changes to database 9.66
sui generis right 9.65
Davies, Gillian 19.01–61
de minimus rule
EU Copyright Law, working towards, harmonisation of private copying levies 21.53
EU rules on private international law, Rome II Regulation 18.91–2
death of author
anonymous works and date of the author’s death rule 8.15
music composer in cinematographic works 8.24
post mortem restrictions, persons entitled to receive royalties (Article 6) 10.46–51
posthumous works, duration of authors’ rights 8.12
decomposition (reverse engineering), Software Directive see Software Directive, decompilation (reverse engineering), exception conditions defendants acting in similar manner, Brussels I Regulation law 18.06 multiple, Brussels I Regulation 18.02, 18.03–7, 18.21 security compensation provisions, IPRED (Article 7) 12.94
Denmark blocking Internet access at request of right holder or law enforcement agencies 15.127 Brussels I Regulation 15.56 indirect reproductions 11.08 Newspaper Publishers’ Association v Newsbooster.com ApS 11.08 rental right as exclusive right 6.14 resale right transposition 10.20 satellite broadcasting and extended collective licensing 7.41 Derclaye, Estelle 9.01–79, 17.18 Design Directive, term of protection 20.29 destruction of goods with declarant’s or holder’s express agreement, piracy policies 15.75–7 IPRED, corrective measures (Article 10) 12.158–9, 15.55 small consignments of allegedly counterfeit or pirated goods 15.74, 15.76–7 see also seizure of goods differential pricing and discrimination, essential facilities principle 4.25–6 Digital Agenda initiative 0.05, 11.94, 17.01–32 cross-border online access to orphan works 13.03 cultural heritage digitisation 16.22 Digital Agenda Communication 17.04, 17.06, 17.07, 17.09, 17.11 digital libraries and Memorandum of Understanding 13.22 Europe 2020 strategy 17.01 Intellectual Property Strategy 0.07 piracy policies, future directions 15.277, 15.278–9
Index

Digital Agenda initiative, delays and divisions 17.14–21
Anti-Counterfeiting Trade Agreement (ACTA) 17.17
Anti-Counterfeiting Trade Agreement (ACTA), Avaaz online petition against 17.27
Collective Rights Management (CRM) Directive 17.15–17
Collective Rights Management (CRM) Directive, and European Licensing Passport 17.16
copyright enforcement mechanisms 17.17
cross-border and pan-European licensing 17.15
EU Copyright Title 17.15
European Copyright Code 17.15, 17.18–21
‘fair use’ provision consideration and increased flexibility 17.21
harmonisations to copyright law 17.15
Information Society Directive, exceptions and limitations 17.20–21
IPRED review 17.17
legislative initiatives 17.16
neighbouring rights issues 17.19
stakeholder dialogues 17.15–16, 17.18
voluntary charter option 17.19
Wittem Group draft 17.18, 17.21
Digital Agenda initiative, digital single market 17.04–13
and Collective Rights Management Directive 17.07
Communication on Innovation Union 17.06, 17.10
Communication on the Single Market for IPRs 17.06
copyright laws as regulatory barrier 17.06, 17.10
copyright reforms achieved 17.11–13
creative industries and GDP 17.09, 17.10
cross-border online sales, problems with 17.09
Europe 2020 aim 17.09–10
geographical boundaries and fragmentation 17.07
harmonisation agenda 17.05–8, 17.09
and IPRED review 17.07
obstacles 17.04, 17.07
and Orphan Works Directive 17.07, 17.12
Reuse of Public Sector Information Directive 17.13
User-Generated Content (UGC) 17.07
website, VII Pillars 17.11, 17.12, 17.13, 17.14–21
Digital Agenda initiative, realisation problems 17.22–31
Creative Content Online initiative and failure to reform CRM 17.23–4
CRM Recommendation implementation to avoid conflicts with collecting societies and right holders 17.24
economic problems and austerity measures 17.28–31
economic problems, retail trade fall 17.31
enforcement reform 17.27
European Copyright Code creation 17.26
political difficulties of copyright reform 17.25–7
digital environment
adaptation to new challenges 11.90–92
digitisation of cultural heritage see cultural heritage, digitisation and copyright law
media literacy in 15.22
technology protection, piracy policies 15.04
disclosure orders
evidence disclosure, IPRED (Article 6) 12.59
origin and distribution networks of goods or services, IPRED (Article 8) 12.105
third persons, IPRED (Article 8) 12.108
dispute resolution
Collective Rights Management Directive, musical works for online use 14.73–4
piracy policies 15.11
WTO Dispute Settlement Panel see World Trade Organisation (WTO) Dispute Settlement Panel
distribution concept, CJEU 20.03, 20.17–21
distribution rights
Collective Rights Management Directive
*see* Collective Rights Management
Directive, distribution of amounts
due to rightholders (Article 12)
Database Directive (Article 5) 9.23, 11.37
exhaustion, Rental and Lending Rights
Directive (Article 1) 6.21–2
information obligations, Information
Society Directive (Article 19) 11.138
Information Society Directive *see*
Information Society Directive,
distribution right (Article 4)
Information Society Directive (Articles 5
and 6.4) 11.68, 11.95
Rental and Lending Rights Directive
*Rental and Lending Rights Directive,
distribution right* (Article 9)
Software Directive (Article 4) 5.72–89,
11.37, 11.39, 11.43, 11.47
dominance abuse
Collective Rights Management Directive,
licensing (Article 15) 14.56–7
cost and economic power 4.13–15
essential facilities principle *see* essential
facilities principle, cases relating to
copyright and dominance abuse
evidence, measures for preserving, IPRED
(Article 7) 12.95
prevention, Database Directive (Article 1)
9.02
Satellite and Cable Directive *see* Satellite
and Cable Directive, prevention of
abuse of negotiating positions
(Article 12)
double-market structure, essential facilities
principle 4.32–3, 4.45, 4.46, 4.48, 4.52
download-to-own (DTO) software market
11.33
*see also* software
e-book development
Rental and Lending Rights Directive
(Article 3) 6.48
*see also* publishers
E-Commerce Directive (Directive 2000/31)
3.11
clocking Internet access 15.127
codes of conduct (Article 16) 12.208,
15.176
confidence and national law 12.116
freedom of information (Article 15)
15.157
intermediaries, injunctions against
12.167–8
Internet blocking orders 15.157, 15.172
Internet piracy *see* piracy, policies and
actions in fight against, Internet
piracy, legislative actions,
E-Commerce Directive
ISP liability issues 11.151–2, 11.156–7,
11.166–7, 12.138, 15.128, 15.276
ISP liability issues, limitations 11.158–65,
11.167, 12.168
personal data protection (Article 1) 12.125
processing of personal data and its free
movement 12.17
E-Privacy Directive (Directive 2002/58)
data retention 12.116, 12.118, 12.119,
15.151
‘notice-and-take down’ mechanism 15.144
EC Treaty 0.02, 1.03
copyright directives, legal basis for issuing
(Article 95) 1.09
copyright protection period (Articles 30
and 36) 8.04, 8.05
copyright understanding (Article 36) 0.02,
1.03, 1.05
cultural aspects (Article 151) 1.19
exclusivity and freedom of competition
1.05
free flow of goods and service (Article 36)
1.05, 6.21, 6.22
intellectual property rights definition
(Articles 30 and 133) 12.07
non-discrimination on grounds of
nationality (Article 12) 1.04, 1.11,
6.47
term of protection irrespective of home
country (Article 7) 8.57
territoriality and free movement of goods
and services 1.05, 1.24
ECJ *see* Court of Justice of European Union
(CJEU)
Index

economic effects  
austerity measures, Digital Agenda initiative 17.28–31

cultural heritage, digitisation and copyright law, legal challenges 16.102, 16.107, 16.109

cultural heritage, digitisation of copyrighted material as special challenge 16.64–71

direct or indirect advantage, Rental and Lending Rights Directive (Article 2) 6.31–2

piracy policies 15.03

retail trade fall, Digital Agenda initiative 17.31

Economic Partnership Agreements (EPAs), piracy policies 15.236

eContentPlus programme 16.96

education sector  
education-related users, Europeana 16.45

exceptions, Copyright Directive (Article 5) 21.59, 21.60

information and expression as guiding objectives, Information Society Directive 11.95–7

limitations and exceptions for the benefit of educational activities 19.34, 19.37

Massive Open Online Courses (MOOCs) 21.59

non-commercial education exceptions, EU Copyright Law, working towards 21.59–60

teaching and research exceptions, Database Directive (Article 6) 9.63

see also libraries

electronic data interchange systems, and piracy see piracy, policies and actions in fight against, risk-analysis tools and electronic data interchange systems

electronic print sector, Orphan Works Directive (Article 1) 13.11–12


employees, computer programs created by see under Software Directive, authorship of computer programs (Article 2)

end-users  
initiatives and technical cooperation, piracy policies 15.246

IPRED (Article 2) 12.10

see also users

enforcement  
convergence, evolution of copyright law 1.17

intellectual property rights, piracy policies 15.15, 15.16

reform, Digital Agenda initiative 17.27

Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48) 1.09, 1.17, 12.01–218, 15.15, 15.16

authorship presumption (Article 5) 5.42

codes of conduct (Article 17) 12.208–10, 15.176, 15.177

counterfeiting and piracy problem 12.02, 12.05

damages actions or injunctions 11.148

Digital Agenda initiative, digital single market 17.07, 17.17

digital infringements, lack of detail on 15.49

entry into force (Article 21) 12.218

exchange of information and correspondents (Article 19) 12.215

external borders with third countries 12.03–4

harmonisation of copyright remedies 5.129, 15.18

historical background 12.01, 12.05

implementation (Article 20) 12.216–17

information disclosure (Article 8) 15.43, 15.50, 15.51, 15.148, 15.151

ISP liability (Article 8) 11.157, 11.169, 15.128

piracy policies 12.02, 12.05, 12.68, 15.35–55, 15.81–4, 15.87, 15.145, 15.214–17, 15.275

policy reasons and timing 12.02–4

procedural steps 12.05

remedies to infringement of all intellectual property rights (Article 2) 9.70

right holder’s consent, burden of proof 11.57

sanctions by member states 12.205–7

1180

Irini A. Stamatoudi and Paul Torremans - 9781781952436

Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
sanctions and remedies (Article 2) 11.144, 11.145, 11.146
seizure provisions (Articles 7 and 9) 5.138
subject matter (Article 1) 12.06–8
subject matter (Article 1), intellectual property rights 12.07–8
subject matter (Article 1), measures, procedures and remedies 12.06
sui generis right 11.110, 15.36
infringer’s fault, dependence on 12.173
merits of case, dependency on 12.178
only applicable to intellectual property infringements 12.176
pecuniary compensation 12.171–2, 12.175, 12.176
proportionality test on impact of the corrective measures on infringer 12.174
and Anti-Counterfeiting Trade Agreement (ACTA) 12.213–14
updating 12.213
court discretion on appropriate cases 12.154–5, 12.157
destruction, reuse or modification decisions 12.158–9, 15.55
examples 12.156
materials and implements principally used in creation of goods, inclusion of 12.157
obligatory nature 12.153
proportionality principle 12.155
recall of goods from channels of commerce 12.158, 15.45, 15.55
third party measures 12.155
assessment problems 15.53, 15.54
compensation for the costs of proceedings 15.54
lack of deterrence in damage awards 15.50
lost profits 12.183, 12.184, 12.185
lump sum payments 12.186–8, 15.50
non-culpable infringement 12.191
obligatory nature, qualification of 12.180
as pecuniary damages 12.182, 12.187–8
royalty fee payments 12.186, 12.187–8
scope 12.183
slight and gross negligence, lack of distinction between 12.181
banking, financial or commercial documents disclosure 12.70–78
banking, financial or commercial documents disclosure, judicial authority order 12.77–8
banking, financial or commercial documents disclosure, as procedural measure 12.76
confidentiality protection 12.62, 12.81
disclosure orders 12.59
evidence in control of opposing party (alleged infringer) 12.57, 15.41
filtering system 12.62
in camera proceedings 12.62
infringement committed on a commercial scale 12.72–3, 15.41
nature of proceedings in context of which application is filed 12.54–5
‘party’ and ‘opposing party’ terms 12.53, 12.79
piracy and counterfeiting 12.68
preliminary or precautionary measures/proceedings 12.54
procedural measures, advantages of 12.55
reasonably available evidence sufficient to support claims 12.58–60, 12.80
sampling and expeditious destruction 12.67–8

1181
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

sampling and interlocutory injunctions (Article 9) 12.66, 12.85
sampling of work as evidence 12.63–9
sanctions 12.61
software source code disclosure (Germany) 12.56
specified evidence 12.56
‘TRIPs plus’ standards 12.61, 12.70–78, 15.38
alleged infringement cases 12.84–6
Anton Piller Orders 12.82
confidentiality of information 12.88–9
cross-border cases and Regulation 1206/2001 12.97
damages claims 12.96
defendants’ security compensation provisions 12.94
detailed description, with or without the taking of samples 12.87
fishing for evidence 12.90
goods rather than persons focus 12.88
inaudita altera parte (without the other party having been heard) 12.86, 12.91, 15.42
interlocutory injunctions 12.85
physical seizure of infringing goods 12.87
proportionality test 12.87
provisional measures 12.83, 15.42
sanctions 12.92–3
specified evidence 12.90
‘sufficient degree of certainty’ as regards infringement 12.85
time factors for institution of proceedings, and abuse prevention 12.95
witness identity protection 12.98
effective, proportionate and dissuasive measures 12.25, 12.61, 12.62, 15.39, 15.156
enforcement measures, procedures and remedies 12.23, 12.25–6, 15.39, 15.147
freedom of expression and protection of personal data 12.24
third party interests and pecuniary compensation 12.24
enforcement 12.165–6
intermediaries, injunctions against 12.167–9, 15.52, 15.140
ISP role 15.52
national law provisions 12.163, 12.164, 12.167, 15.36
as preventive injunctions 12.162
proportionality principle and ‘appropriateness’ 12.165, 15.44
recurring penalty payments 12.166
scope 12.164, 12.169
TRIPs Plus element 12.161
additional fees and expenses 12.193–4
equity as mandatory limitation 12.197
losing party bearing legal costs, conditionality 12.196
proportionality principle 12.195
Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48), persons entitled to apply for application of measures, procedures and remedies (Article 4) 12.27–41
‘all other persons authorised to use those rights’ 12.34–6
authorised third parties and applicable law 12.35
collective rights management bodies and professional defence bodies, rights enforcement 12.37–40
holders of intellectual property rights 12.31–3
related rights 12.31–2
suing for copyright infringement 12.30, 12.32, 12.35, 12.39
‘author’ definition 12.43
author’s name ‘on the work in the usual manner’ 12.47–8, 15.40
copyright works covered 12.43, 12.45
holders of rights related to copyright 12.49–50
national laws on presumption of authorship and ownership 12.48
compensation security or equivalent assurance 12.134–5, 12.148
deterrent fines 12.129
evidence requirements on rightholder and infringer 12.130
ex parte proceedings 12.132–3
infringer’s financial state, consideration of 12.146, 12.150–51
interlocutory injunction against an intermediary 12.137–8, 12.167, 15.44
intermediaries, provisional measures against 12.137–9
intermediaries, understanding of term 15.52
Internet service providers (ISPs) 12.52, 12.138
ordering precondition 12.128
penalties, recurring 12.129
proceedings on the merits, time periods 12.136
seizure of assets to secure financial claims movable and immovable property 12.149
seizure of goods 12.140–42
seizure of goods, goods within ‘channels of commerce’ 12.142
seizure of goods, inaudita altera parte (without the other party having been heard) 12.140
TRIPS Plus elements 12.143–51
Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48), publication of judicial decisions (Article 15) 12.198–204
information dissemination 12.201–3
national law provisions 12.198
non-culpable infringement 12.199
scope 12.204
as TRIPS-plus element 12.200
banking, financial or commercial documents 12.107
cases ‘acting on a commercial scale’ 12.108–9
confidentiality and personal data 12.116, 12.122
copyright protection and privacy, conflict between 12.125
damages claims 12.110
data retention 12.119
disclosure requirement, origin and distribution networks of goods or services 12.105
fundamental rights 12.121
information request directed at particular person 12.102–3
infringer, notion of 12.104–5
Internet service providers (ISPs) services 12.108, 12.117, 12.121
mandatory nature 12.101
national law provisions 12.111–16, 12.123
persons involved in production,
manufacture or distribution of goods
or services 12.109–10
proportionality 12.124
self-incrimination prohibition 12.115
'serious crimes' definition 12.120
statutory provisions, application of more
favourable 12.111–12
third persons (any other person) disclosure
requirements 12.108
TRIPs Plus provision 12.99
Enforcement of Intellectual Property Rights
Directive (IPRED) (2004/48), scope
(Article 2) 12.09–21
'any infringement' 12.09–13
'commercial scale' definition 12.09–10,
12.13, 12.72
criminal sanctions 12.19
end-consumers 12.10
general reservation term with regard to
other EU and international
obligations 12.15–19
individuals or legal entities, inclusion of
12.12
intermediaries 12.20–21, 12.138
obligatory measures 12.13
personal data processing and its free
movement 12.17
sanctions and remedies 12.19, 12.20–21
technical protection measures 12.16
ephemeral recordings of works 11.11, 20.33,
20.43
essential facilities principle 4.01–74
access conditions 4.67
compulsory licensing and anti-competitive
practices (TRIPs Agreement) 4.72
consumer demand for a
downstream/facilitated product 4.64
dominance abuse 4.02, 4.03–4
double-market structure 4.32–3, 4.45,
4.46, 4.48, 4.52
‘indispensable input’ in copyright cases
4.63–6
‘indispensable input’ in copyright cases,
fan fiction 4.20, 4.64–6
interim measures 4.68
licence refusal and dominance abuse 4.04
licensing practices (TRIPs Agreement)
4.69–71
‘new product’ for which access or licence is
required 4.20, 4.59
refusal to supply as dominance abuse 4.22
standard setting on ‘Fair, Reasonable And
Non-Discriminatory’ (FRAND) terms 4.28
three-step test for copyright limitations
and exceptions (TRIPs Agreement)
4.73
and TRIPs Agreement 4.69–74
esential facilities principle, cases relating to
copyright and dominance abuse
4.42–62
competition elimination (IMS) 4.54
competition elimination (Microsoft) 4.61
double-market structure (IMS) 4.52
exceptional circumstances (Magill) 4.45
imitation, substitution, or extension
suggestions (Magill) 4.46
IMS 4.33, 4.50–54, 4.58, 4.63, 4.68
Magill 4.31, 4.33, 4.35, 4.43–8, 4.49, 4.51,
4.52, 4.54, 4.58
Microsoft 4.27, 4.33, 4.40, 4.55–62, 4.63,
4.64, 4.73–4
‘new product’ requirement (IMS) 4.53
‘new product’ requirement (Microsoft) 4.58
refusal to supply the information and code
(Microsoft) 4.56–7
Tiercé Ladbroke 4.49, 4.64
essential facilities principle, TFEU Article
102
access conditions 4.67
competition by extension 4.20, 4.62, 4.67
competition by imitation 4.17–18
competition by substitution 4.17–18, 4.62
competition and efficiency 4.16
competition law 4.01–3
copyright exceptions and transformative
fair use 4.19
deconstructing 4.05–15
dominant copyright holder as
‘undertaking’ (engaged in economic
activity) 4.06–7
dominant position concept and economic
power 4.13–15
dominant position concept and market share 4.14
effect on interstate trade 4.05
moral rights 4.41
objective justification defence 4.38–41
relevant market dimensions 4.08–12
essential facilities principle, TFEU Article 102, dominance abuse 4.21–37
differential pricing and discrimination 4.25–6
exclusionary 4.21, 4.24, 4.27
exploitative 4.27, 4.23
limiting production, markets or technical development 4.28
non-IP cases requesting access to essential facility 4.31
predatory pricing 4.24
refusal to supply 4.29–37
refusal to supply, ‘constructive’ refusal to supply reasons 4.37
refusal to supply and indispensability claims 4.35
technical standard-setting 4.28
tying and bundling 4.27
unfair pricing 4.23–4
varieties of 4.21–9
Estonia, damage awards calculations 15.50
EU Copyright Code and Regulation, argument for 21.05, 21.22–9
Digital Agenda initiative 17.15, 17.18–21, 17.26
Information Society Directive 11.94
EU Copyright Law, working towards 21.01–69
CJEU case law, harmonising impact 21.01–2, 21.07
copyright exceptions, clarification 21.07–8
Digital Agenda initiative, delays and divisions 17.15
levies and private copying (and reprography) exceptions 21.08
EU Copyright Law, working towards, copyright contract rules, need for 21.06, 21.30–48
Cable retransmission right in Scandinavian countries 21.43
collective licensing and free movement of goods and services and cross-border licences 21.47–8
collective licensing in Scandinavian countries 21.40–44
communication to the public right 21.46
contract law variations 21.34
‘Licences for Europe’ dialogue, limitations of 21.32–3
licensing agreements in Continental Europe 21.37
licensing practices, convergence in 21.34
licensing rules, objectives of 21.34
moral rights in Continental Europe 21.35
new online business models 21.45, 21.46
orphan works and extended collective licensing (ECL) in Scandinavian countries 21.40–44
overview 21.34
Pan-European licensing in certain sectors, facilitation of 21.46–8
property transfer in Continental Europe 21.36
protective rules in Continental Europe 21.35–40
reproduction right 21.46
specific and well-informed 21.38
territoriality issues 21.30, 21.44
EU Copyright Law, working towards, EU-wide Copyright Code and Regulation, argument for 21.05, 21.22–9
borderless internet and EU borders, conflict between 21.23
CJEU input 21.25–7
harmonisation of copyright and related rights 21.24–7
optional unitary copyright title and court consideration 21.28–9
optional unitary copyright title and court consideration, EU and national titles, distinction between 21.29
EU Copyright Law, working towards, exceptions’ flexibility and harmonisation of private copying levies 21.49–69
copyright levies 21.64–9

1185
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

copyright levies, and CJEU case law 21.67
copyright levies, discrepancies between 21.65
copyright levies, industry criticisms 21.64
de minimis principle 21.53
fair use clause 11.98, 21.51–2, 21.54, 21.56
flexibility clause dispute resolution and Copyright Tribunal 21.58
image-based search technology 21.51–6
non-commercial education exceptions 21.59–60
non-commercial education exceptions, Massive Open Online Courses (MOOCs) 21.59
non-commercial education exceptions, reproduction and communication to the public rights 21.59
private copying exception 21.62–3
technology-enabled uses 21.50–58, 21.59
three-step test as flexibility clause 21.56
thumbnail images 21.53–6
EU Copyright Law, working towards, territoriality issues 21.04, 21.09–21
absolute territorial exclusivity (ATE) 21.19
CJEU input 21.15–19
'country of origin' rule, lack of 21.13
ex post versus ex ante approach 21.21
football matches, filming and broadcasting 21.15–19
licensing facilitation 21.12, 21.13, 21.14
multi-territorial and multi-repertoire licensing by collecting societies, online rights in musical works 21.14
national restrictions 21.10
regulation by competition and freedom of goods and services rules 21.21
remuneration restrictions 21.11
Technology Transfer Block Exemption Regulation (TTBER), online licensing regulation 21.21
EU Telecom Package, suspension or limitation of access 11.154
EU-Canada Comprehensive Economic and Trade Agreement (CETA) 15.240
Eurojust, piracy policies 15.117
Europe 2020 Strategy 0.04–5, 0.07, 16.22, 16.84, 17.01, 17.09–10
piracy policies 15.86, 15.277
European Anti-Fraud Office (OLAF) 15.113, 15.117, 15.118, 15.119
European Copyright Society, hypertext links 11.29
European Court of Human Rights (EChHR)
Ashby Donald v France 11.81–3, 15.173–4
K U v Finland 15.167
and piracy see piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights, Council of Europe and the EChHR
Pravoye Delo Editorial Team and Shtekel v Ukraine 15.169
quotation of undisclosed works and freedom of expression 11.96
Times Newspapers v United Kingdom 15.168
European Court of Justice (ECJ) see Court of Justice of European Union (CJEU)
European Cybercrime Centre (EC3) 15.115
European Data Protection Supervisor (EDPS), Internet piracy 15.136, 15.146, 15.175
European Digital Libraries Initiative 16.24
European External Action Service (EEAS) 19.05
European Free Trade Association (EFTA) L’Oréal 11.61
piracy and enforcement of intellectual property rights 15.188–9
European Licensing Passport 17.16
European Observatory, piracy policies see piracy, policies and actions in fight against, European Observatory on infringements of intellectual property rights
European Search Warrant limitations, piracy policies 15.87
Europeana see cultural heritage, digitisation and copyright law, initiatives, Europeana
Europol, piracy policies 15.111–16, 15.259

1186
Index

- evidence protection, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED), evidence (Article 6)
- provisional measures for preserving, IPRED (Article 7) 15.42
- provisional and precautionary methods to stop infringements, IPRED (Article 9) 12.130
- evolution of copyright law 1.02–18
  - acquis communautaire assessment 1.14–18
  - 'author as creator' rule 1.15
  - common features 1.19
  - copyright contract disparities 1.18
- Copyright and Primary EC Law, relationship between 1.03–6
- ECJ role (since 2004) 1.11–13
- enforcement convergence 1.17
- moral rights 1.16
- national legislature effects 1.10
- non-economic interests of creative people 1.22
- originality concept 1.15
- Single European Act 1.07
- technical development 1.21
- three-steps test 1.14

- exceptions
  - CJEU role in EU Copyright law development see Court of Justice of European Union (CJEU), role in EU Copyright law development, exceptions and limitations
  - decompilation (reverse engineering), Software Directive see Software Directive, decompilation (reverse engineering), exception conditions
  - flexibility, EU Copyright Law, working towards see EU Copyright Law, working towards, exceptions' flexibility and harmonisation of private copying levies
  - Information Society Directive see Information Society Directive, exceptions and limitations (Articles 5 and 6.4)

- limitations and exceptions for the benefit of educational activities 19.34, 19.37
- limitations and exceptions for libraries and archives 19.41, 19.45, 19.46
- mandatory exception, cable retransmission right by broadcasting organizations 7.74–5
- reproduction rights, cultural heritage 16.67
- restricted acts, Database Directive see Database Directive, restricted acts, exceptions (Article 6)
- restricted acts, Information Society Directive (Article 5) 9.28–9, 9.63, 16.68, 16.70
- sui generis rights, Database Directive see Database Directive, sui generis rights, exceptions (Article 9)
- three-step test, Copyright Directive (Article 5) 20.32, 21.53

- exclusions
  - Database Directive (Article 1) 9.03
  - essential facilities principle, dominance abuse 4.21, 4.24, 4.27
  - on-demand services, Technical Protection Measures (TPMs) 11.102
  - specific groups, Collective Rights Management Directive (Article 20) 14.63
- exclusive jurisdiction rule, Brussels I Regulation see intellectual property and EU rules on private international law, Brussels I Regulation, Article 24(4) (exclusive jurisdiction rule)
- exclusive rights
  - CJEU, role in EU Copyright law development see Court of Justice of European Union (CJEU), role in EU Copyright law development, exclusive rights
  - freedom of competition, EC Treaty 1.05
  - Rental and Lending Rights Directive (Article 1) 6.10–17
  - Software Directive (Article 4) 5.56–7
  - transferability, Rental and Lending Rights Directive (Article 3) 6.50, 6.78
## Index

<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>exhaustion of rights</td>
<td>11.98</td>
</tr>
<tr>
<td>Community exhaustion rule</td>
<td>4.64–6</td>
</tr>
<tr>
<td>Community exhaustion rule</td>
<td>17.01–32</td>
</tr>
<tr>
<td>Database Directive, restricted acts (Article 5)</td>
<td>9.25</td>
</tr>
<tr>
<td>free movement of goods principle</td>
<td>3.01–4</td>
</tr>
<tr>
<td>Information Society Directive, distribution rights (Article 4)</td>
<td>11.48–61</td>
</tr>
<tr>
<td>Information Society Directive, right of communication to the public (Article 3)</td>
<td>11.32–5</td>
</tr>
<tr>
<td>international exhaustion, free movement of goods principle</td>
<td>3.15–17</td>
</tr>
<tr>
<td>international exhaustion, Information Society Directive (Article 4)</td>
<td>11.61</td>
</tr>
<tr>
<td>re-utilisation rights, exhaustion principle, Database Directive (Article 7)</td>
<td>9.46</td>
</tr>
<tr>
<td>Rental and Lending Rights Directive (Article 1), distribution rights</td>
<td>6.21–2</td>
</tr>
<tr>
<td>right holder consent and exhaustion of rights, Information Society Directive (Article 4)</td>
<td>11.53–7</td>
</tr>
<tr>
<td>'sale or transfer of ownership' and exhaustion of rights, Information Society Directive (Article 4)</td>
<td>11.50</td>
</tr>
<tr>
<td>extraction rights, Database Directive (Article 8)</td>
<td>9.43–4, 9.58, 9.59</td>
</tr>
<tr>
<td>fair compensation</td>
<td></td>
</tr>
<tr>
<td>CJEU role in EU Copyright law development, exceptions and limitations</td>
<td></td>
</tr>
<tr>
<td>Copyright Directive (Article 5)</td>
<td>21.65</td>
</tr>
<tr>
<td>Information Society Directive</td>
<td></td>
</tr>
<tr>
<td>Information Society Directive, exceptions and limitations (Articles 5 and 6.4)</td>
<td></td>
</tr>
<tr>
<td>rental right as exclusive right</td>
<td></td>
</tr>
<tr>
<td>rental right as exclusive right (Article 4)</td>
<td>5.80–89</td>
</tr>
<tr>
<td>‘sale or transfer of ownership’ and exhaustion of rights, Information Society Directive</td>
<td>11.53–7</td>
</tr>
<tr>
<td>'first sale' reference, Software Directive (Article 4)</td>
<td>5.80–89</td>
</tr>
<tr>
<td>Firth, Alison</td>
<td>4.01–74</td>
</tr>
<tr>
<td>fixation right</td>
<td></td>
</tr>
<tr>
<td>Rental and Lending Rights Directive</td>
<td></td>
</tr>
<tr>
<td>Rental and Lending Rights Directive, fixation right (Article 7)</td>
<td>8.33</td>
</tr>
<tr>
<td>Term Directive (Article 3)</td>
<td>8.33</td>
</tr>
<tr>
<td>folklore and cultural expression</td>
<td></td>
</tr>
<tr>
<td>international stance, copyright exceptions and limitations, folklore and traditional cultural expressions, protection proposals</td>
<td></td>
</tr>
<tr>
<td>football matches, filming and broadcasting</td>
<td>21.15–19</td>
</tr>
<tr>
<td>Frabboni, Maria Mercedes</td>
<td>13.01–62</td>
</tr>
<tr>
<td>France</td>
<td></td>
</tr>
<tr>
<td>art and antiques market share</td>
<td>10.92</td>
</tr>
<tr>
<td>collective rights management</td>
<td>10.56</td>
</tr>
<tr>
<td>copyright collective work category</td>
<td>1.15</td>
</tr>
<tr>
<td>data creation and collection</td>
<td>9.38</td>
</tr>
<tr>
<td>droit de suite (resale right)</td>
<td>10.01–3, 10.56</td>
</tr>
<tr>
<td>droit de suite (resale right)</td>
<td>10.01–3, 10.56</td>
</tr>
<tr>
<td>droit de suite (resale right), post mortem restrictions</td>
<td>10.46–8</td>
</tr>
<tr>
<td>duration of authors' rights</td>
<td>8.01</td>
</tr>
<tr>
<td>‘graduated response’ to Internet blocking</td>
<td>15.127</td>
</tr>
<tr>
<td>Hadopi Law</td>
<td>15.127</td>
</tr>
<tr>
<td>Havas Numerique SNC and Cadres On Line S.A. v Keljob</td>
<td>11.08</td>
</tr>
<tr>
<td>indirect reproductions</td>
<td>11.08</td>
</tr>
<tr>
<td>Lectiel</td>
<td>9.38</td>
</tr>
<tr>
<td>moral rights</td>
<td>1.16</td>
</tr>
<tr>
<td>Précom</td>
<td>9.38, 9.74</td>
</tr>
<tr>
<td>rental right as exclusive right</td>
<td></td>
</tr>
<tr>
<td>resale right transposition</td>
<td>10.20</td>
</tr>
<tr>
<td>saisie contravention (search orders)</td>
<td>12.82</td>
</tr>
</tbody>
</table>
sui generis right 9.38, 9.74
transfer of property and assignment of copyright 21.36
FRAND (Fair, Reasonable And Non-Discriminatory) terms, essential facilities principle 4.28
free movement of goods principle 3.01–17
Community exhaustion of rights principle 3.04–5, 3.06–9, 3.11
consent of IPR owner and placement on market 3.06–14
EU Copyright Law, working towards 21.21
exhaustion of intellectual property rights, justification 3.03–4
exhaustion of intellectual property rights, precluding IPRs from being used to partition EU territory into national markets 3.04
exhaustion of intellectual property rights, and resale rights 3.01–2
international exhaustion 3.15–17
online distribution of copyright works in non-material form 3.11
online and offline distribution of goods, criticism of distinction between 3.12–14
performance of services and non-applicability of principle of Community exhaustion of rights 3.08–9
regional exhaustion of rights 3.02
freedom of choice
Rome I Regulation see intellectual property and EU rules on private international law, legal choices, Rome I Regulation, freedom of the parties to choose the applicable law (Article 3)
freedom of expression
Information Society Directive 11.69, 11.81–3
personal data protection, IPRED (Article 3) 12.24
privacy protection and the freedom of expression, piracy policies 15.142–3
freedom of information
E-Commerce Directive (Article 15) 15.157
see also information fundamental rights
Charter see Charter of Fundamental Rights
and Internet piracy see piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights
IPRED (Article 8) 12.121
G8 (Group of Eight), and piracy see under piracy, policies and actions in fight against, third countries, non-legislative actions
G20 (Group of Twenty) participation, piracy policies 15.263–4
Gaster, Jens 9.71, 9.75, 10.01–98
Geiger, Christophe 11.62–106
Geneva Phonogram Convention 8.26, 8.34
IPRs and piracy 15.09
Germany
art and antiques market share 10.92
collective rights and obligation to contract with users 14.59
computer program originality assessment 5.33
Copyright Act, alternative measures 12.170
Copyright Act and La Bohème performance 2.16
copyright contract rules 21.36
creativity level assessment 1.15
cross-border transactions 20.18–19
data creation and collection, distinction between 9.39
databases eligible for sui generis right 9.34, 9.45, 9.46, 9.54, 9.77
document of implied licence 11.90
duration of authors' rights 8.01
Heise 11.128
Index

Hit Bilanz 9.03, 9.77
‘independent material’ definition 9.03
indirect reproductions 11.08
ISP liability 11.155
Joseph Beuys 10.13, 10.14
moral rights 1.16
Paperboy 11.08
rental right to remuneration 6.59–60
rental right to remuneration, time and place control to exploit products 6.60
resale right transposition 10.20
software source code disclosure 12.56
technological measures protection 11.128
Thumbnail I 21.53, 21.55
Thumbnail II 21.56
Titus Donner 20.18–19
Vorschaubilder 11.90
grandfather clause, Information Society Directive 11.65, 11.89
graphic user interface (GUI)
communication to the public, CJEU role in EU Copyright law development 20.26
Information Society Directive, right of communication to the public (Article 3) 11.23
lack of protection, Software Directive (Article 1) 5.24–6
Greece
collecting societies 12.39
collective rights and obligation to contract with users 14.59
counterfeit and pirated goods 15.04
duration of authors’ rights 8.01
lump sum punitive damages payments 12.189
rental right as exclusive right 6.15
Griffiths, Jonathan 17.21, 20.01–52
Guibault, Lucie 14.01–84, 17.20

Hague Convention, Choice of Court Agreements 18.27
harm levels
and fair balance test, Information Society Directive 11.104
fair compensation, and harm suffered by author 20.45, 20.47
harmonisation
acquis communautaire assessment 1.14–18
collective management, lack of 1.17
common features 1.19
common law based systems, reconciling with civil law 1.20
copyright contract disparities 1.18
copyright remedies, IPRED 5.129, 15.18
Digital Agenda initiative, digital single market 17.05–8, 17.09
enforcement convergence 1.17
EU-wide Copyright Code and Regulation, argument for 21.24–7
Information Society Directive 11.16, 11.37, 11.74–86, 14.02
legitimacy crisis 1.22
need for full 0.09
piracy policies 15.14–15, 15.18
Rental and Lending Rights Directive see Rental and Lending Rights Directive, object of harmonisation (Article 1)
Resale Right Directive 10.08–9, 10.11–12, 10.31
Satellite and Cable Directive 7.03, 7.05, 7.52
Software Directive 5.02–3
Term Directive 8.01–3, 8.06–7, 8.16, 8.19
three-steps test 1.14
within EC (1987–2004) 1.07–10
heritage see cultural heritage
Hong Kong, counterfeit and pirated goods 15.04
hosting, Internet service providers (ISPs) liability 11.162, 11.163, 11.164
hotels rooms, Rental and Lending Rights Directive (Article 8) 6.87–8, 6.93
Hungary, ISP liability 11.155
hypertext links and cloud services, Information Society Directive (Article 3) 11.28–9

i2010 European Libraries Initiative 16.23–4
image-based search technology, EU Copyright Law, working towards 21.51–6
indispensability test, Collective Rights Management Directive 14.27

Iriini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

information
access and freedom of expression,
Information Society Directive 11.96, 11.105
choices, Collective Rights Management Directive (Article 5) 14.34
confidentiality, IPRED (Article 7) 12.88–9
disclosure, Anti-Counterfeiting Trade Agreement (ACTA) 15.229
disclosure, IPRED (Article 8) 15.43, 15.50, 15.51, 15.148, 15.151
dissemination, IPRED (Article 15) 12.201–3
exchange, Collective Rights Management Directive see Collective Rights Management Directive, information exchange between competent authorities (Article 39A)
exchange, IPRED 12.215
financial information access, IPRED (Article 9) 12.150–51
freedom of information, E-Commerce Directive (Article 15) 15.157
monitoring of transmitted, E-Commerce Directive 15.130, 15.147
obligations, Collective Rights Management Directive 14.63, 14.70
presentation and verification, Database Directive (Article 7) 9.40, 9.41
protection of undisclosed, Anti-Counterfeiting Trade Agreement (ACTA) 15.215
refusal to supply, essential facilities principle 4.56–7
right of, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED), right of information (Article 8)
right to obtain, Resale Right Directive (Article 9) 10.85–6
sharing, Collective Rights Management Directive 14.61–2
Information Society Directive (Directive 2001/29) 1.09, 1.14, 6.08, 11.01–185
application over time (Article 10) 11.173–4
broadcasting right in country of origin 7.35
CJEU role in EU Copyright law development see Court of Justice of European Union (CJEU), role in EU Copyright law development, exceptions and limitations, optional exceptions under Information Society Directive commentary 11.01
communication to the public rights (Article 5) 7.38, 9.24
continued application of other legal provisions (Article 9) 11.171–2
counterfeiting and piracy problems 12.02
text continued entry into force (Article 14) 11.184
ephemeral recordings of works 20.33
establishments accessible to the public 12.159
final provisions (Article 12) 11.179–82
financial information access, IPRED (Article 9) 12.150–51
freedom of information, E-Commerce Directive (Article 15) 15.157
monitoring of transmitted, E-Commerce Directive 15.130, 15.147
obligations, Collective Rights Management Directive 14.63, 14.70
presentation and verification, Database Directive (Article 7) 9.40, 9.41
protection of undisclosed, Anti-Counterfeiting Trade Agreement (ACTA) 15.215
refusal to supply, essential facilities principle 4.56–7
right of, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED), right of information (Article 8)
right to obtain, Resale Right Directive (Article 9) 10.85–6
sharing, Collective Rights Management Directive 14.61–2

1191

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

'authors' term 11.39–40
'by sale or otherwise' 11.47
copy producer and right holder consent 11.46
exhaustion in relation to goods rather than services 11.51, 11.51–2
exhaustion of rights 11.48–61
harmonisation 11.37
international exhaustion of rights 11.61
national law implementation 11.41
'original of their works or of copies thereof', 'copy', understanding of 11.42–3
'original of their works or of copies thereof', tangible and intangible forms 11.41–7
right holder consent and exhaustion of rights 11.53–7
right holder consent and exhaustion of rights, burden of proof 11.57
right holder consent and exhaustion of rights, constraints on consent 11.58–60
'sale or transfer of ownership' and exhaustion of rights 11.50
transfer of ownership decision 11.44
Charter of Fundamental Rights of the European Union 11.79–80, 11.85
communication to the public 11.79
copyright law and freedom of expression 11.81–3
differences between 11.64
Digital Agenda initiative, delays and divisions 17.20–21
distribution right 11.68
exhaustive list of limitations 11.64–5, 11.89
flexible interpretation of limitations 11.72–3
freedom of expression or fundamental rights 11.69
grandfather clause 11.65, 11.89
harmonisation, degree of 11.74–6
harmonisation, increased convergence among the different systems 11.74–5
harmonisation, scope of exclusive rights 11.75
limit of Member States' discretion and three-step test 11.70–73
limitations as stimulus to creativity 11.63
mandatory exception 11.66
mandatory limitation for transient copies 11.76
open or closed list of limitations 11.65
optional exceptions or limitations 11.67–9, 11.74
predominantly optional limitations 11.66–9
reproduction rights 11.67
right to communicate to the public 11.67
technical processes involved in viewing copyright material on Internet 11.76
technological development assurance 11.84
three-step test 11.70–73, 11.89
transient or incidental copies limitation 11.66, 11.76
autonomous concepts 11.86
digital environment, adaptation to new challenges 11.90–92
diversity of legal traditions, respect of 11.88–9
doctrine of implied licence 11.90–91
harmonising effect of the Directive's recitals 11.78
'mitigated' principle of narrow interpretation 11.79–85
national case law flexibility 11.87–92
national courts' review authority 11.85
remuneration claims 11.92
reproduction right, Member states allowed to 'provide similarly' for exceptions 11.89
transparency enhancement through harmonious interpretation 11.77–86, 14.02

Information Society Directive (Directive 2001/29), exceptions and limitations (Articles 5 and 6.4), revisions to Article 5, possible 11.93–103 education, information and expression as guiding objectives 11.95–7 European Copyright Code suggestion 11.94 flexible fair use clause 11.98 future developments, transparent framework requirement 11.95–8 information access and freedom of expression 11.96 libraries, teaching and scientific research 11.95 Licences for Europe initiative 11.94 mandatory limitations and copyright contracts 11.97 new uses, unknown, legal framework to accommodate 11.98 quotation of undisclosed works and freedom of expression 11.96 remuneration and right of distribution 11.95 willingness to reform the EU system 11.93–4 Wittem group’s draft of European Copyright Code as example 11.95, 11.103, 11.106


Information Society Directive (Directive 2001/29), reproduction right (Article 2) 11.04–12 ‘by any means and in any form’ 11.06 computer programs and databases, exclusion of 11.10 ‘direct or indirect’ 11.08 ephemeral recordings of works made by broadcasting organisations for their own broadcasts 11.11 ‘in whole or in part’ 11.12 ‘temporary or permanent’ 11.09 three-step test 11.09

Index

as umbrella right 11.17
actionable acts 11.137–40
‘adequate legal protection’ for persons ‘knowingly’ performing ‘unauthorised’ acts 11.132–6
authorisation markings 11.142
copyright and related rights 11.133
distribution rights 11.138
international standardisation and identification systems 11.141
knowledge/intention requirement 11.136
reproductions of altered works 11.139
third country importation 11.138
appropriate sanctions and remedies’ in cases of infringements 11.146–7, 15.163
damages actions or injunctions 11.148
effective, proportionate and dissuasive measures 12.25
intermediaries, injunctions against 11.149–70, 12.21, 12.167, 15.140, 15.147
international obligations 11.145
Information Society Directive (Directive 2001/29), sanctions and remedies (Article 8), Internet service providers (ISPs) liability 11.151–70, 12.138, 15.24
access provider role only 11.160
caching 11.161, 11.163, 11.164
criminal proceedings 11.156–7
exemption through lack of actual knowledge 11.163
hosting 11.162, 11.163, 11.164
infringer details inaccessible 11.168
intermediaries, injunctions against 11.166–70
intermediate storage 11.159, 11.161
liability limitation 11.158–65
mere conduit 11.158, 11.163, 11.164
monitoring obligation, lack of 11.151–7
national systems 11.155
suspension or limitation of access 11.154
third party transmission 11.165, 11.167
without prejudice to the E-Commerce Directive 11.167
circumvention 11.114–19
circumvention, adequate legal protection 11.118
circumvention, security system research 11.119
compliance obligations 11.113
dual use cases 11.112
effective measures 11.109–13
EU law provisions 11.108
preparatory acts 11.120–28
infringements alleged infringement cases, IPRED (Article 7) 12.84–6
committed on a commercial scale, IPRED (Article 6) 12.72–3, 15.41
and connecting factor, Rome II Regulation (Article 8) 18.76–82
growth, piracy policy 15.04
infringer’s fault, dependence on, IPRED (Article 12) 12.173
infringer’s financial state, consideration of, IPRED (Article 9) 12.146, 12.150–51
infringing character of act to authorise infringement abroad, Rome II Regulation 18.88
IPRED, methods to stop see Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48), provisional and precautionary methods to stop infringements (Article 9)
ISPs, infringer details inaccessible, Information Society Directive, (Article 8) 11.168

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

multi-state and ubiquitous infringement, Rome II Regulation see intellectual property and EU rules on private international law, legal choices, Rome II Regulation, multi-state and ubiquitous infringement
non-culpable, IPRED (Articles 13 and 15) 12.191, 12.199
remedies, IPRED (Article 2) 9.70
risks, cultural heritage digitisation, orphan works 16.81
suing for copyright infringement, IPRED (Article 4) 12.30, 12.32, 12.35, 12.39
injunctions
Information Society Directive (Article 8) 11.148
injunctive relief availability, Rome II Regulation (Article 16) 18.88
interlocutory injunctions, IPRED 12.85, 12.137–8, 12.167, 15.44
intermediaries, injunctions against see Information Society Directive, sanctions and remedies (Article 8) and Internet piracy see piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights
permanent, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED), injunctions, permanent (Article 11)
sampling and interlocutory injunctions, IPRED (Article 6) 12.66, 12.85
innovation, cultural heritage sector 16.38, 16.40, 16.48–9
INTA Study, Anti-Counterfeiting Trade Agreement (ACTA) 15.201, 15.204, 15.208
intellectual property
Database Directive, sui generis right (Article 7) 9.31–2
European Observatory and fight against piracy see piracy, policies and actions in fight against, European
Observatory on infringements of intellectual property rights infringements see infringements
IPR Enforcement Strategy in Third Countries 15.87, 15.282
piracy and IP crime see piracy, policy and actions in fight against, intellectual property crime, policial and judicial cooperation
protection, folklore and traditional cultural expressions 19.50
rights definition, EC Treaty 12.07
intellectual property and EU rules on private international law 18.01–93
Brussels I Regulation 18.02–29
Brussels I Regulation, Article 8.1 (multiple defendants) 18.03–7
Brussels I Regulation, defendants acting in an identical or similar manner 18.06
Brussels I Regulation, diverging decisions not treated as contradictory 18.05
jurisdiction 18.02–29
legal choices 18.30–92
multiple defendants 18.02, 18.03–7, 18.21
parallel territorial IP rights and damage occurring in several jurisdictions 18.02, 18.07, 18.19
intellectual property and EU rules on private international law, Brussels I Regulation, Article 24(4) (exclusive jurisdiction rule) 18.08–29
copyright validity issues 18.11, 18.12–18, 18.20
copyright validity issues and consolidated cases 18.19, 18.20
copyright validity issues, inter-partes approach 18.25–9
copyright validity issues, parallel litigation 18.19
copyright validity issues, plea in objection 18.15
copyright validity issues, Zurich approach 18.17–18, 18.20
infringement action only 18.16
multiple defendants and anti-suit injunction 18.21
national procedure links 18.09

1195

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

registration process errors 18.12–13
registration restrictions 18.10
torpedoes and cross-border litigation 18.21
intellectual property and EU rules on private international law, legal choices, Rome I Regulation 18.31–63
applicable law in absence of choice 18.36–63
characteristic performance rule (Article 4(4)) 18.39–41
characteristic performance rule (Article 4(4)), protecting country link 18.40–41
consumer contracts, mandatory rules (Article 6) 18.51–2
contractual freedom 18.44–6
habitual residence law (Article 4(1) and (2)) 18.36–7, 18.51
limitations on applicable law 18.42–63
limitations on applicable law, relevant provisions 18.44–6
mandatory rules 18.42–3, 18.46
mandatory rules in international sense (Article 9) 18.53
mandatory rules or overriding mandatory provisions of the forum (Article 7) 18.54–8
mandatory rules or overriding mandatory provisions of third States (Article 9) 18.58, 18.59–61
mandatory rules which cannot be derogated from by contract (Article 3(3) and (4)) 18.47–50
public policy/ordre public emergency clause (Article 21) 18.62–3
intellectual property and EU rules on private international law, legal choices, Rome I Regulation, freedom of the parties to choose the applicable law (Article 3) 18.31–5
choice demonstrated by terms of contract 18.33
express choice of law 18.32
for part of contract 18.34
intellectual property and EU rules on private international law, legal choices, Rome II Regulation 18.64–92
characterisation issue 18.67–9
infringement and the connecting factor (Article 8) 18.76–82
infringing character of the act to authorise infringement abroad 18.88
injunctive relief availability (Article 16) 18.88
non-contractual obligations arising from the infringement of IP rights (Article 8(3)) 18.86
overriding mandatory provisions and public policy 18.87–8
scope 18.64–70
intellectual property and EU rules on private international law, legal choices, Rome II Regulation, multi-state and ubiquitous infringement 18.89–92
deo minimis rule 18.91–2
infringement much larger in scope in one country than another 18.91
single law application 18.90
intellectual property and EU rules on private international law, legal choices, Rome II Regulation, non-contractual obligation in law of country for which protection is claimed (Article 8(1)) 18.71–85
direct liability and contributory liability distinction 18.81–2
intellectual property rights exemptions 18.75
intellectual property rights in 18.74–5
issues to which applicable law applies 18.83–5
law of the country for which protection is sought approach 18.77–80, 18.91–2
licence contracts, effects of 18.85
procedural and infringement issues, distinction between 18.84–5
relationship with general rule in Article 4 18.73
validity issues 18.77
Intellectual Property Strategy 0.07, 11.94
Digital Agenda initiative 0.07
intermediaries

cultural heritage, digitisation and copyright law 16.109–11

'exporting' injunctive relief against, piracy policies 15.183

involvement, piracy policies 15.34

IPRED (Article 2) 12.20–21, 12.138

online filtering, piracy policies 15.147–8

provisional measures against, IPRED (Article 9) 12.137–9

understanding of term, IPRED (Article 9) 15.52, 15.147

intermediaries, injunctions against E-Commerce Directive 12.167–8

Information Society Directive see

Information Society Directive, sanctions and remedies (Article 8)

IPRED (Article 11) 12.167–9, 15.52, 15.140

piracy policies 15.140, 15.147

intermediate storage, Information Society Directive, sanctions and remedies (Article 8) 11.159, 11.161

international stance 19.01–61

European Commission role 19.04

European External Action Service (EEAS) 19.05

EU's mandate 19.01–3

EU’s mandate and acquis communautaire 19.01–3

TRIPs Agreement negotiations 19.02

WIPO, exclusive competence debate 19.61

WIPO involvement 19.02–3, 19.05

WIPO time frame concerns 19.58–60

see also individual organisations and treaties

international stance, Beijing Treaty on Audiovisual Performances 19.06–19

adoption 19.19

deadlock solutions 19.16, 19.17–19, 19.35

Diplomatic Conference of 2000 and aftermath 19.16, 19.18

Draft Protocol, EU position on 19.13

Protocol proposal to WPPT for audiovisual performances 19.09–11

Standing Committee on Copyright and Related Rights (SCCR), deadlock solutions 19.16, 19.17

Standing Committee on Copyright and Related Rights (SCCR), establishment of 19.11, 19.12, 19.13, 19.16

transfer of rights from performers to producers 19.14–15, 19.16, 19.17–18

WPPT Diplomatic Conference and protection of performers 19.06–8

international stance, copyright exceptions and limitations, folklore and traditional cultural expressions, protection proposals 19.47–55

copyright exploitation concerns 19.49, 19.50

copyright protection conflict 19.50

EU stance 19.49–50, 19.51

intellectual property protection 19.50

UNESCO involvement 19.47

WIPO Intergovernmental Committee (IGC) involvement 19.47, 19.48, 19.49, 19.51–4

WIPO Intergovernmental Committee (IGC) involvement, future work 19.55

WIPO Intergovernmental Committee (IGC) involvement, unresolved issues 19.53–4

international stance, copyright exceptions and limitations, proposals concerning 19.32–46


Chilean initial proposal 19.32–4

draft texts, emergence of 19.40–46

EU position 19.35

EU response 19.38–9

limitations and exceptions for the benefit of educational activities 19.34, 19.37

limitations and exceptions for libraries and archives 19.41, 19.45, 19.46
Index

three-step test 19.37, 19.38, 19.46
international stance, Draft Treaty on the
Protection of Broadcasting
Organisations 19.20–31
emergence of 19.27–31
EU position 19.24–6
existing international framework 19.20–21
future work on draft treaty, lack of
agreement on 19.30
legal framework modernisation, call for
19.26
regional consultations 19.25, 19.27, 19.28
Rome Convention protection of
broadcasting organisations 19.20–21
Satellites Convention protection of
broadcasting organisations 19.20–21
socio-economic impact of broadcasting
piracy studies 19.28
technical issues, WIPO consultations on
19.29
TRIPs Agreement protection of
broadcasting organisations 19.20–21
webcasting and simulcasting, inclusion of
19.27
WIPO Programme on the protection of
broadcasting organisations 19.22–3,
19.29
working document adoption 19.30
international standardisation and
identification systems, Information
Society Directive (Article 19) 11.141
Internet
access security, enhanced, piracy policies
15.23
blocking orders, E-Commerce Directive
15.157, 15.172
borderless internet and EU borders,
conflict between 21.23
Creative Content Online initiative
17.23–4
cybercrime see cybercrime
free movement of goods 1.21, 1.24, 3.08–9, 3.11, 3.12–14
free movement of goods principle 3.11
musical works for online use see Collective
Rights Management Directive
online licensing, Technology Transfer
Block Exemption Regulation
(TTBER) 21.21
online publishing programme on best
practice guidelines, cultural heritage
16.38
piracy see piracy, policies and actions in
fight against, Internet piracy
public-service value 15.165
as service, Information Society Directive
(Article 3) 11.34
users petition against piracy,
Anti-Counterfeiting Trade
Agreement (ACTA) 15.207
webcasting and simulcasting, inclusion of,
Draft Treaty on the Protection of
Broadcasting Organisations 19.27
Internet service providers (ISPs)
illegal content awareness, piracy policies
15.134, 15.136
IPRED (Articles 8 and 9) 11.157, 11.169,
12.52, 12.108, 12.117, 12.121,
12.138, 15.128
IPRED, injunctions, permanent (Article
11) 15.52
liability issues, E-Commerce Directive
11.151–2, 11.156–7, 11.158–65,
11.166–7, 12.138, 12.168, 15.128,
15.276
limited liability, piracy policies,
Anti-Counterfeiting Trade
Agreement (ACTA) 15.227
sanctions and remedies, Information
Society Directive see Information
Society Directive, sanctions and
remedies (Article 8), Internet service
providers (ISPs) liability
IPRED see Enforcement of Intellectual
Property Rights Directive (IPRED)
Ireland
Copyright Act and private use exception
20.44
Irish Visual Artists Rights Organisation
(IVARO) 10.55
ISP liability 11.155
resale right, term of protection 10.82
legal costs, IPRED see Enforcement of Intellectual Property Rights Directive, legal costs (Article 14)
legal framework, piracy policies 15, 278–80, 15.05, 15.274, 15.277
Libraries comprehensive European Digital Library, need for 16.120–21
digital libraries, Digital Agenda initiative 13.22
digital libraries, Orphan Works Directive (Article 1) 13.03
Europeana see cultural heritage, digitisation and copyright law, initiatives, Europeana
i2010 European Libraries Initiative 16.23–4
Information Society Directive 11.95
limitations and exceptions, international stance 19.41, 19.45, 19.46
see also education sector
Licences for Europe initiative 11.94, 21.32–3
licensing agreements in Continental Europe 21.37
collective see collective licensing
Collective Rights Management Directive see Collective Rights Management Directive, licensing (Article 15)
compulsory, and anti-competitive practices (TRIPs Agreement) 4.72
contracts, effects of, Rome II Regulation 18.85
cross-border and pan-European licensing 17.15
document of implied licence 11.90–91
European Licensing Passport, Digital Agenda initiative 17.16
facilitation, EU Copyright Law, working towards 21.12, 21.13, 21.14

1199

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

multi-territorial see Collective Rights Management Directive, multi-territorial licensing access (Article 30)
‘new product’ requirement, essential facilities principle 4.20, 4.59
practice convergence, EU Copyright Law, working towards 21.34
practices, TRIPs Agreement 4.69–71
protection, Database Directive 9.71
refusal and dominance abuse, essential facilities principle 4.04
rules, objectives of, EU Copyright Law, working towards 21.34
‘Saas’ models (Software as a Service) licences 5.89
Satellite and Cable Directive (Article 1) 7.17–18
Technology Transfer Block Exemption Regulation (TTBER) 21.21
voluntary, Collective Rights Management Directive (Article 15) 14.55
litis pendens provision, piracy policies 15.60, 15.65
literary or artistic work definition, Term Directive 8.11
logos, piracy policies 15.71, 15.72
Lucas-Schloetter, Agnès 1.01–24
Luxembourg rental right as exclusive right 6.15
resale right, term of protection 10.84
Maastricht Treaty, cultural aspects 1.19
Malta, resale right transitional period 10.18
Satellite and Cable Directive (Article 10) 7.74–5
mandatory provisions collective rights management, Satellite and Cable Directive (Article 9) 7.68–70
copyright contracts, Information Society Directive 11.97
IPRED (Article 8) 12.101
registration, Orphan Works Directive (Article 3) 13.39
Rome II Regulation 18.87–8
transient copies’ limitations, Information Society Directive 11.76
unfair trading conditions, Collective Rights Management Directive (Article 5) 14.30
markets concentration risk, Collective Rights Management Directive 14.68
internal market competitiveness, Resale Right Directive 10.08–9
and piracy see piracy, policies and actions in fight against, internal market and at external borders
share fears, Resale Right Directive (Article 11) 10.91–3
Massive Open Online Courses (MOOCs) 21.59
see also education sector media literacy in the digital environment 15.22
medicine, Pharmacrime 15.116
Minero, Gemma 8.01–72
Moldova, counterfeit and pirated goods 15.04
monitoring obligation, lack of, Information Society Directive, Internet service providers (ISPs) liability 11.151–7
transmitted information, piracy policies 15.130, 15.147
MOOCs (Massive Open Online Courses) 21.59
see also education sector moral rights author’s name on digitised work 16.75
computer programs created by employees 5.53–4
in Continental Europe 21.35
and copyright ownership 20.04
cultural heritage, digitisation of copyrighted material 16.72–7
Database Directive (Article 6) 9.30
of employees, Copyright Directive 5.54
essential facilities principle 4.41

1200
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

evolution of copyright law 1.16
Information Society Directive, Technical Protection Measures (TPMs) 11.103
Software Directive 5.92–3
Term Directive 8.54
multi-volume publications
Term Directive 8.18
see also publishers
multiple authors and owners, Orphan Works Directive (Article 2) 13.29
multiple defendants, Brussels I Regulation 18.02, 18.03–7, 18.21
multiple right holders, Orphan Works Directive 13.29–30
musical works
online dissemination 1.21, 1.24
for online use see Collective Rights Management Directive

national laws
Brussels I Regulation 18.09
CJEU role in EU Copyright law development 20.02
country of origin rule, Satellite and Cable Directive 7.16–18, 7.20, 7.34–6, 7.45, 7.87
cultural heritage, digitisation and copyright law 16.42
Database Directive 9.72, 9.73
EU Copyright Law, working towards 21.10
evolution of copyright law 1.10
Orphan Works Directive 13.02, 13.21, 13.62
piracy policies 15.25, 15.58, 15.59, 15.61
Resale Right Directive 10.40, 10.49–50
Satellite and Cable Directive 7.65–6
Term Directive 8.63–4
see also individual countries; territoriality
national treatment principle
non-discrimination see under non-discrimination principle
third country protection and treatment of aliens (Article 7) 8.49
neighbouring rights
Digital Agenda initiative 17.19
protected performance of performer,
Rental and Lending Rights Directive 6.82
Term Directive 8.02
transferability, Rental and Lending Rights Directive 6.99
Neighbouring Rights Directive see Copyright and Neighbouring Rights Directive
Nérisson, Sylvie 6.01–105
Netherlands
Internet access blocking,
‘notice-and-action’ systems 15.127
ISP liability 11.155
Private International Law Act on Torts 18.76
resale right, term of protection 10.83
resale right transitional period 10.18, 10.77
resale right transposition, collective rights management 10.55
Roche Nederland BV v Primus 18.04–6, 18.07
Stichting Pictoright 10.55
new online business models 21.45, 21.46
‘new product’ requirement, essential facilities principle 4.20, 4.53, 4.58, 4.59
new uses, unknown, Information Society Directive 11.98
New Zealand, ‘graduated response’ to Internet blocking 15.127
non-commercial education exceptions 21.59–60
see also education
non-contractual obligation, Rome II
Regulation see intellectual property and EU rules on private international law, legal choices, Rome II Regulation,
on-contractual obligation in law of country for which protection is claimed
Index

non-culpable infringement, IPRED 12.191, 12.199

non-discrimination principle 2.01–20
civil law countries 2.03
Collective Rights Management Directive 14.29, 14.52
country of origin definition 2.08
country of origin of work 2.17
material reciprocity 2.08
national treatment principle 2.04–18
national treatment principle in European legal framework 2.11–18
national treatment principle in international legal framework 2.06–10
national treatment principle, non-EU citizens’ exclusion 2.13
nationality grounds 1.04, 1.11, 6.47
and natural law philosophy 2.02, 2.04, 2.07
roots of 2.02
territoriality principle 2.07
non-members rights, Collective Rights Management Directive see Collective Rights Management Directive, non-members rights (Article 6A)
non-profit and/or non-commercial usage,
Orphan Works Directive 13.07, 13.52
Norway
extended collective licensing (ECL) 21.44
Fin Eiendom AS v Notar AS 11.08
indirect reproduction 11.08
Internet access blocking 15.127
‘notice-and-action’ (N&A) systems, piracy policies 15.127, 15.129, 15.132, 15.135–7, 15.144, 15.175, 15.179
OECD, ‘The Economic Consequences of Counterfeiting’ 15.03
Office for Harmonisation in the Internal Market (OHIM) 13.40–41, 13.45–6, 13.48, 15.96–9, 15.102
OLAF (European Anti-Fraud Office) 15.113, 15.117, 15.118, 15.119
on-demand services, Information Society Directive 11.26, 11.102 'on-the-spot' use, exclusion of, Rental and Lending Rights Directive 6.27
online services see Internet
open-source licensing systems 4.24
originality
concept 1.15
condition, Software Directive 5.31–7
manuscripts, exclusion of, Resale Right Directive 10.31
standard, CJEU 20.08–12
orphan works
cultural heritage see cultural heritage, digitisation and copyright law, orphan works
database development, piracy policies 15.107, 16.118
extended collective licensing (ECL) in Scandinavian countries 21.40–44
application in time (Article 8) 13.59–60
commercial digital databases with technical protection measures 13.58
continued application of other legal provisions (Article 7) 13.56–8
derogations to exclusive copyrights 6.66 and Digital Agenda initiative, digital single market 17.07, 17.12
end of orphan work status (Article 5) 13.48
and Europe 2020 Strategy 16.84
mutual recognition of orphan work status (Article 4) 13.47, 16.86–7
review clause (Article 10) 13.62
search criteria (Article 1) 16.85
transposition (Article 9) 13.61, 16.88
appropriate sources 13.34–6
ARROW database initiative 13.42–5
central EU database/register 13.42–6
collecting societies and collective licensing 13.34, 13.48
extraneous sources 13.38
framework 13.31–2
and good faith 13.33
grey literature sector 13.35
mandatory registration 13.39
Office for Harmonization in the Internal Market (OHIM) database 13.40–41, 13.45–6, 13.48
one-search per Member State rule 13.37–8
parallel databases, concerns over 13.40–41
recordation and public register 13.39–46
scope and effect 13.37–8
shared database identifiers 13.44–5
third-party search organisations, regulation of 13.33
works falling outside scope of existing databases or trade organisations 13.35
anonymous and pseudonymous works, effect on 13.28
definition 13.25–8
in EU context 13.26–7
multiple authors and owners 13.29
multiple right holders 13.29–30
policy background 13.25
status duration 13.30
beneficiaries 13.51–3
compensation to right holders 13.54–5, 16.86
fair remuneration and compensation 11.106, 16.86
nature of use 13.52–3
‘not-for-profit use’ principle 13.52
public interest organisations, nature of 13.51, 13.53, 13.54
public–private partnerships with commercial entities, exclusion of 13.52
reproduction right and making available 13.50, 16.86–7
scope 13.50
three-step test 13.56
beneficiaries 13.05–9
cinematographic and audiovisual works, phonograms and broadcasts 13.13–16
cinematographic and audiovisual works, phonograms and broadcasts, archival collections 13.16
collective licensing scheme, extended 13.20, 13.62
collective management and Memorandum of Understanding 13.21–4
cross-border access of content 13.02–3
digital libraries 13.03
electronic print sector 13.11–12
film/audio heritage and public service broadcasters 13.08
identification of orphan works and collective management representation 13.24
Memorandum of Understanding 13.04, 13.21–4, 13.47
national level developments 13.02, 13.21, 13.62
non-profit and/or non-commercial usage 13.07
place of publication and unpublished works 13.20
print works – writings, images and embedded works/subject-matter 13.11–12, 13.62
private institutions 13.07
public interest missions 13.09
‘publicly accessible’ institutions as beneficiaries 13.05–7
rationale and objectives 13.01–4
stand-alone photographs and images 13.17–19, 13.62
subject matter 13.10–20
voluntary agreements 13.21–3
outsider rights, Satellite and Cable Directive 7.71–2, 7.75
parallel databases, concerns over, Orphan Works Directive 13.40–41

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

'passport' route, Collective Rights Management Directive 14.66, 14.69, 14.70
pecuniary compensation, IPRED 12.24, 12.171–2, 12.175, 12.176, 12.182, 12.187–8
see also compensation penalties
IPRED 12.129, 12.166, 15.81–4, 15.87
see also enforcement
performers
fixation right, Rental and Lending Rights Directive (Article 7) 6.76–8
national treatment principle 2.09
performance fixation, Term Directive 8.33 and producers of phonograms, specific rules, Term Directive (Article 3) 8.32–9
protected performance of performer in context of neighbouring rights, Rental and Lending Rights Directive (Article 8) 6.82
remuneration shared between performers and producers, Rental and Lending Rights Directive (Article 8) 6.94
rights, Satellite and Cable Directive see Satellite and Cable Directive, rights of performers, phonogram producers and broadcasting organisations
see also producers
Personal Data Processing Directive (Directive 95/46) collective rights management 14.82
data retention 12.118
national law 12.116
personal data protection
CJEU role in EU Copyright law development 20.03
Collective Rights Management Directive (Article 41) 14.82
Copyright Directive (Article 9) 12.125
E-Commerce Directive 12.125
and freedom of expression, IPRED (Article 3) 12.24
piracy policies 15.59, 15.151
processing and its free movement, IPRED (Article 2) 12.17
see also confidentiality protection; privacy protection
Pharmacrime 15.116
phonograms
Copyright and Neighbouring Rights Directive (Article 3) 8.32–9, 8.63–4
Geneva Convention see Geneva Phonogram Convention
national treatment principle 2.09
Orphan Works Directive (Article 1) 13.13–16
Rental and Lending Rights Directive (Article 14) 8.26
Satellite and Cable Directive see Satellite and Cable Directive (Directive 93/83), rights of performers, phonogram producers and broadcasting organisations
Term Directive (Article 3) 8.32–9, 8.34
WIPO Treaty see WIPO Performance and Phonogram Treaty (WPPT)
see also cinematographic and audiovisual works
photographs
originality/creativity standard, portrait photographs, CJEU role in EU Copyright law development 20.11
protection, Term Directive (Article 6) 8.44–7
publication for commercial purposes, piracy policies 15.173–4
reproduction and author verification, CJEU role in EU Copyright law development 20.41–2
reproduction/adaptation, photographic template, CJEU role in EU Copyright law development 20.16
reproductions of two- and three-dimensional cultural objects 16.55–6
piracy, policies and actions in fight against 15.01–282
Berne Convention 15.06

1204
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
counterfeiting and piracy, differences between 15.02
cybercrime plurilateral initiative (Council of Europe) 15.13
digital technology protection 15.04
dispute settlements 15.11
economic effects 15.03
Information Society Directive 12.02
IPR infringements growth 15.04
legal framework and enforcement, need for 15.05
overview 15.01–5
piracy concept 15.01–2
Product Piracy Regulation see Product Piracy Regulation
TRIPS Agreement 15.05, 15.10–12
WIPO Internet Treaties 15.12
piracy, policies and actions in fight against, EU policies, criminal enforcement of copyright and related rights 15.78, 15.80–87, 15.222
commercial scale, lack of definition in IPRED2 15.82–3
counterfeiting among top revenue sources for organised crime networks 15.80
deterrent criminal sanctions 15.81
Europe 2020 Strategy 15.86
European Search Warrant limitations 15.87
IPR Enforcement Strategy in Third Countries 15.87
legally binding acts, adoption of 15.85
penalty level harmonisation (IPRED2) 15.81–4, 15.87
piracy, policies and actions in fight against, EU policies, customs enforcement of copyright and related rights 15.67–79
Border Measures Regulation 15.68–9, 15.71–3
Customs Action Plan 15.79
Customs cooperation reinforcement 15.68
Customs enforcement regime 15.17, 15.19–21
Customs seizures 15.04
destruction of goods with declarant’s or holder’s express agreement 15.75–7
destruction of small consignments of allegedly counterfeit or pirated goods 15.74, 15.76–7
EU Customs Action Plan 15.68
extension of border measures to larger number of IPR infringements 15.70
free circulation of counterfeit goods, measures to prohibit 15.67
goods suspected of infringing certain intellectual property rights 15.67
goods in transit 15.73
logos, instructions for use, guarantee documents, packaging materials bearing a counterfeit trademark 15.71, 15.72
moulds and matrices for manufacture of goods infringing IPRs 15.71
right holders’ application forms to request border measures 15.72
Union application 15.72
World Customs Organisation (WCO) IPM platform 15.123
piracy, policies and actions in fight against, EU policies, emergence of 15.14–29
Anti-Counterfeiting Trade Agreement (ACTA), call for ratification of 15.27
‘Communication on a New Industrial Property Rights Strategy for Europe’ 15.21
Comprehensive European Anti-Counterfeiting and Anti-Piracy Plan 15.21
copyright issues requiring immediate action (1988) 15.15, 15.16
Customs enforcement regime 15.17, 15.19–21
damaging effects of piracy, recognition of 15.16
enforcement of intellectual property rights 15.15, 15.16
‘Enhancing the Enforcement of Intellectual Property Rights in the Internal Market’ 15.25
EU approach to the fight against piracy 15.28–9
free market principle 15.17

1205
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>harmonisation of civil-law legislation</td>
<td>15.18</td>
</tr>
<tr>
<td>harmonisation of national substantive laws, limitations of 15.14–15</td>
<td></td>
</tr>
<tr>
<td>Internet access security, enhanced 15.23</td>
<td></td>
</tr>
<tr>
<td>legislative instruments 15.29</td>
<td></td>
</tr>
<tr>
<td>‘Making the Internal Market work better’</td>
<td>15.24</td>
</tr>
<tr>
<td>media literacy in the digital environment</td>
<td>15.22</td>
</tr>
<tr>
<td>national anti-counterfeiting and anti-piracy strategies, call for development of 15.25</td>
<td></td>
</tr>
<tr>
<td>policy development 15.14–27</td>
<td></td>
</tr>
<tr>
<td>public awareness campaigns 15.27</td>
<td></td>
</tr>
<tr>
<td>‘Recommendation on Measures to Improve the Functioning of the Single Market’ 15.24</td>
<td></td>
</tr>
<tr>
<td>SMEs, consideration of specific problems of 15.26</td>
<td></td>
</tr>
<tr>
<td>‘Strategy for the Enforcement of Intellectual Property Rights in Third Countries’ 15.19</td>
<td></td>
</tr>
<tr>
<td>piracy, policies and actions in fight against, European Observatory on infringements of intellectual property rights 15.25, 15.79, 15.90–109, 15.179, 15.281, 15.282</td>
<td></td>
</tr>
<tr>
<td>counterfeit medicines conference 15.116</td>
<td></td>
</tr>
<tr>
<td>Counterfeiting and Piracy 15.95</td>
<td></td>
</tr>
<tr>
<td>future awareness campaigns 15.104</td>
<td></td>
</tr>
<tr>
<td>guides for EU businesses operating in third countries 15.104</td>
<td></td>
</tr>
<tr>
<td>Legal Sub-group 15.93, 15.107</td>
<td></td>
</tr>
<tr>
<td>Office for Harmonisation in the Internal Market (OHIM) involvement 15.96–9, 15.102</td>
<td></td>
</tr>
<tr>
<td>Online Copyright Infringements Sub-group 15.107</td>
<td></td>
</tr>
<tr>
<td>orphan works database development 15.107</td>
<td></td>
</tr>
<tr>
<td>public awareness, raising 15.94, 15.107</td>
<td></td>
</tr>
<tr>
<td>public consultation results 15.101–2</td>
<td></td>
</tr>
<tr>
<td>public–private partnership (PPP) 15.100</td>
<td></td>
</tr>
<tr>
<td>restructuring 15.96–102</td>
<td></td>
</tr>
<tr>
<td>scope, scale and impact of IPR infringements, RAND method of data collection 15.95, 15.106</td>
<td></td>
</tr>
<tr>
<td>Stakeholders’ Dialogues 15.89</td>
<td></td>
</tr>
<tr>
<td>statistics 15.95</td>
<td></td>
</tr>
<tr>
<td>study on contribution of intellectual property intensive industries to the economy 15.104</td>
<td></td>
</tr>
<tr>
<td>Sub-groups 15.92–5, 15.107</td>
<td></td>
</tr>
<tr>
<td>technical cooperation programmes in non-EU countries (ECAP III and IP Key) implementation 15.104</td>
<td></td>
</tr>
<tr>
<td>piracy, policies and actions in fight against, future directions 15.270–82</td>
<td></td>
</tr>
<tr>
<td>‘Digital Agenda for Europe’ 15.277, 15.278–9</td>
<td></td>
</tr>
<tr>
<td>enforcement treaty, need for 15.271, 15.273</td>
<td></td>
</tr>
<tr>
<td>‘Europe 2020 Strategy’ 15.277</td>
<td></td>
</tr>
<tr>
<td>institutional framework improvements 15.281</td>
<td></td>
</tr>
<tr>
<td>‘IP Perception’ survey and tolerance of IPR infringements 15.282</td>
<td></td>
</tr>
<tr>
<td>IPRED and future bilateral agreements 15.275</td>
<td></td>
</tr>
<tr>
<td>legal framework for enforcement of IPRs, loopholes in 15.274</td>
<td></td>
</tr>
<tr>
<td>legal framework modernisation 15.277, 15.278–80</td>
<td></td>
</tr>
<tr>
<td>online infringements 15.276</td>
<td></td>
</tr>
<tr>
<td>private rights and public interest balance 15.282</td>
<td></td>
</tr>
<tr>
<td>piracy, policies and actions in fight against, intellectual property crime, policial and judicial cooperation 15.110–21</td>
<td></td>
</tr>
<tr>
<td>customs cooperation 15.118</td>
<td></td>
</tr>
<tr>
<td>European Anti-Fraud Office (OLAF) involvement 15.113, 15.117, 15.118, 15.119</td>
<td></td>
</tr>
<tr>
<td>European Cybercrime Centre (EC3)</td>
<td>15.115</td>
</tr>
</tbody>
</table>

1206
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
and Europol 15.111–16
intellectual property crime project 15.113
interstate cooperation, need for 15.110
and IPR Center task force 15.116
judicial cooperation and Eurojust 15.117
mutual assistance instruments 15.119–21
mutual assistance instruments, Convention on Mutual Assistance in Criminal Matters 15.119
mutual assistance instruments, Operations ‘Gomorrah’, ‘Flashpoint’ and ‘Fox’ 15.120
Pharmacrime 15.116
private sector partnership 15.114
Project Cyber Monday 3 15.116
Serious and Organised Crime Threat Assessment (SOCPA2013) 15.116
piracy, policies and actions in fight against, internal market and at external borders 15.30–123
‘breaking bulk’ techniques 15.34
Directorate General role 15.30
indirect (or contributory) infringement 15.34
intermediaries, involvement of 15.34
legislative actions 15.31–87
piracy, policies and actions in fight against, internal market and at external borders, civil enforcement of copyright and related rights 15.31–66
Infosoc Directive 15.31–4
Infosoc Directive, sanctions and remedies (Article 8) 15.33–4
Infosoc Directive, technological measures’ protection (Articles 6 and 7) 15.32
piracy, policies and actions in fight against, internal market and at external borders, civil enforcement of copyright and related rights, Brussels I Regulation 15.56–66
Commission assessment 15.60
cross-border collection of evidence 15.66
cross-border enforcement of judicial decisions, simplification 15.63–6
foreign judgments, declaration of enforceability (exequatur) (Article 38) 15.62, 15.63
foreign judgments, recognition and execution (Articles 33 and 34) 15.62
lis pendens provision (Article 27) 15.60, 15.65
national jurisdiction provisions 15.58, 15.59, 15.61
personality rights (Article 5) 15.59
related actions provision (Article 28) 15.60
scope 15.57
‘special jurisdiction’ rule (Article 5) 15.58, 15.59
piracy, policies and actions in fight against, internal market and at external borders, civil enforcement of copyright and related rights, IPRED 15.35–55
commercial scale, lack of definition in IPRED2 15.82–3
costs of proceedings, recovery of (Article 14) 15.47
damage awards, assessment problems 15.53, 15.54
damage awards, lack of deterrence in 15.50
damages payments (Article 13) 15.46, 15.50, 15.53, 15.54
digital infringements, lack of detail on 15.49
disposal of infringing goods (Article 10) 15.55
evidence in control of opposing party (Article 6) 12.68, 15.41
evidence, provisional measures for preserving evidence (Article 7) 15.42
and future bilateral agreements 15.275
information disclosure (Article 8) 15.43, 15.50, 15.51
interlocutory and permanent injunctions (Articles 9 and 11) 15.44
intermediaries, understanding of term (Articles 9 and 11) 15.52, 15.147
ISP role (Articles 9 and 11) 15.52
penalty level harmonisation (IPRED2) 15.81–4, 15.87
presumption of authorship where name appears ‘in the usual manner’ (Article 5) 15.40

1207
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

procedures and remedies necessary to ensure the enforcement of IPRs (Article 3) 15.39
recall of goods from channels of commerce 15.45
piracy, policies and actions in fight against, Internet piracy 15.124–80
blocking access at request of right holder or of law enforcement agencies 15.127
‘graduated response’ to Internet blocking 15.127
Infosoc Directive 15.31–4
mandatory licensing 15.127
personal identity data, problems in obtaining 15.126
Telecom Package, ‘three-strikes’ solution rejection 15.138
piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights 15.127, 15.131, 15.140–80
CJEU case law 15.143, 15.146–63
CJEU case law, Bonnier Audio 15.151
CJEU case law, Promusicae 11.79, 12.116, 15.143, 15.149–50, 20.03
CJEU case law, Scarlet and Netlog 11.153, 12.169, 15.44, 15.143, 15.147–8
CJEU case law, UPC Telekabel Wien 11.170, 15.152–63
European Data Protection Supervisor (EDPS) and Anti-Counterfeiting Trade Agreement (ACTA) 15.175
filtering by online intermediaries 15.147–8
fundamental rights, impact on IPR enforcement 15.142–6
internet monitoring legitimacy 15.175
IPRED implementation and application 15.145
‘notice-and-action’ (N&A) systems 15.144
personal data protection 15.151
privacy protection and the freedom of expression 15.142–3
right of information 15.149–50
piracy, policies and actions in fight against, Internet piracy, legislative actions, compatibility of injunctions and blocking orders and fundamental rights, Council of Europe and the ECtHR 15.164–74
Ahmet Yıldırım v. Turkey 15.170–72
Ashby Donald and others v. France 11.81–3, 15.173–4
case law of ECtHR 15.166–74
Committee of Ministers’ Recommendations 15.165
internet filters 15.165
K U v. Finland 15.167
photograph publication for commercial purposes 15.173–4
Pravoye Delo Editorial Team and Shtekel v Ukraine 15.169
public-service value of the internet, promotion of 15.165
Times Newspapers v. United Kingdom 15.168
piracy, policies and actions in fight against, Internet piracy, legislative actions, E-Commerce Directive 15.129–37
blocking orders, lack of 15.131
counter-notices 15.133
European Data Protection Supervisor (EDPS) support 15.136, 15.146, 15.175
hosting of websites, understanding of 15.133, 15.135
information society service providers, obligation to inform of illegal activities 15.131
injunctions against intermediaries 15.140, 15.147
ISP illegal content awareness 15.134, 15.136
monitoring of transmitted information (Articles 12–14) 15.130, 15.147
‘notice-and-action’ (N&A) systems 15.127, 15.129, 15.132, 15.135–7, 15.144, 15.175, 15.179
public consultation on future of e-commerce 15.132, 15.133, 15.135
Staff Working Paper 15.136
terminology problems (Article 14) 15.132–3

1208
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
unjustified or abusive notices, dealing with 15.136
piracy, policies and actions in fight against, Internet piracy, non-legislative actions 15.176–80
codes of conduct 15.176–7
‘notice-and-action’ (N&A) systems and counterfeit goods 15.179
Stakeholder Dialogues 15.178–80
piracy, policies and actions in fight against, risk-analysis tools and electronic data interchange systems 15.122–3
COPIS database 15.122, 15.123
European Observatory ACIST (Anti-Counterfeiting Intelligence Support Tool) proposal 15.122
European Observatory Enforcement Database 15.122, 15.123
World Customs Organisation (WCO) IPM platform 15.123
piracy, policies and actions in fight against, third countries 15.181–269
DG TRADE involvement 15.181
‘exporting’ injunctive relief against intermediaries 15.183
‘IPR Enforcement Strategy in Third Countries’ 15.282
online IPR infringements and legal framework adaptation requirements 15.184–5
‘priority countries’ list 15.182
‘Strategy for the Enforcement of Intellectual Property Rights in Third Countries’ 15.182
‘Trade Growth and World Affairs’ policy 15.182
‘TRIPS plus’ protection standards 15.185
piracy, policies and actions in fight against, third countries, EU’s foreign policies on IPR enforcement, assessment of 15.266–9
data analysis development 15.268
effective implementation, factors affecting 15.266
EU Observatory on IPR Infringements as single point of contact 15.268
IP Dialogues, promotion of 15.268, 15.269
recommendations 15.268
stakeholder involvement, importance of 15.268, 15.269
technical cooperation projects 15.267, 15.268, 15.269
piracy, policies and actions in fight against, third countries, legislative actions 15.185, 15.187–240
European Free Trade Association (EFTA) and enforcement of intellectual property rights 15.188–9
piracy, policies and actions in fight against, third countries, legislative actions, Anti-Counterfeiting Trade Agreement (ACTA) 15.175, 15.190–234, 15.261
acquis compatibility concerns 15.198–204, 15.233, 15.234
border measures section (Article 13) 15.219–20
business community cooperation (Article 27) 15.228–9
civil enforcement section 15.217–18
CJEU referral on compatibility 15.206, 15.208, 15.209
commercial-scale infringements, understanding of 15.222–3
contradictory stances on impact of 15.234
criminal enforcement section 15.222
criminal measures for the unauthorised copying of cinematographic works (camcording) (Article 23) 15.224
digital chapter and three-strikes policy 15.226, 15.228
Doha Declaration principles 15.220
EU negotiations 15.190–210
failure to comply with several key provisions of ECHR and EU Charter of Fundamental Rights 15.203, 15.204
information disclosure to right holder (Article 27) 15.229
institutional framework section 15.232
INTA Study 15.201, 15.204, 15.208
international cooperation section 15.231
internet users petition against 15.207
Index

IPRED comparison 15.214–17
ISPs, limited liability 15.227
lack of ratification 15.205, 15.209–10, 15.240
legal opinions on compatibility 15.204
nature and scope 15.211–34
neutrality on substantive protection of IPRs (Article 3) 15.213, 15.225, 15.230
‘Opinion of European Academics on Anti-Counterfeiting Trade Agreement’ 15.200
protection of undisclosed information 15.215
stakeholders’ associations support for 15.207
transparency, lack of, in negotiations 15.195
TRIPS concerns 15.196, 15.204, 15.212, 15.220, 15.223
piracy, policies and actions in fight against, third countries, legislative actions, bilateral agreements 15.235–40
Economic Partnership Agreements (EPAs) 15.236
EU approach to FTAs 15.235–9
EU-Canada Comprehensive Economic and Trade Agreement (CETA) 15.240
‘Global Europe – Competing in the World’ 15.235, 15.237
Partnership and Cooperation Agreements (PCAs) 15.236
‘Protection of Intellectual Property in Free Trade Agreements’ 15.238
‘TRIPS Agreement, most-favoured-nation (MFN) clause 15.239
‘TRIPS-plus’ protection standards 15.137, 15.238–9
unbalanced IPR provisions, accusations of 15.238
piracy, policies and actions in fight against, third countries, non-legislative actions 15.241–6
Customs cooperation 15.242
EU-China talks on IPRs 15.242
EU-US IPR Working Group 15.243
Group of Eight (G8), and Anti-Counterfeiting Trade Agreement (ACTA) 15.261
Group of Eight (G8), ‘Heiligendamm Process’ 15.261
Group of Eight (G8) participation 15.260–62
Group of Eight (G8), ‘Reducing IPR Counterfeiting and Piracy’ statement 15.261
Group of Twenty (G20) participation 15.263–4
Group of Twenty (G20), World Intellectual Property Litigation Court 15.264
Intellectual Property Dialogues 15.241–4
International Criminal Police Organisation (Interpol) participation with Europol 15.259
international fora participation 15.247–65
technical cooperation 15.245–6
technical cooperation, end-user initiatives 15.246
United Nations Interregional Crime and Justice Research Institute (UNICRI) participation 15.265
World Customs Organisation (WCO) participation 15.256–8
World Customs Organisation (WCO) participation, public–private partnership 15.257
World Trade Organisation (WTO) participation 15.247
piracy, policies and actions in fight against, third countries, non-legislative actions, WIPO participation 15.248–55
Advisory Committee on Enforcement (ACE) 15.249–50, 15.252, 15.254–5
‘Building Respect for IP’ division 15.252
‘Global Congress on Combating Counterfeiting and Piracy’ 15.253
scope and activities 15.251–2
Strategic Goals 15.254
Poland collective rights and obligation to contract with users 14.59
resale right 10.02
Index

resale right, collective rights management 10.56
resale right transposition 10.20
policial cooperation, piracy policies see piracy, policies and actions in fight against, intellectual property crime, policial and judicial cooperation
political difficulties of copyright reform, Digital Agenda initiative 17.25–7
Portugal
rental right as exclusive right 6.14
resale right transposition 10.20
posthymous works see death of author
principal director of cinematographic work as author 6.41–2, 8.20
print works, Orphan Works Directive (Article 1) 13.11–12, 13.62
privacy protection
copyright protection and privacy, conflict between, IPRED (Article 8) 12.125
and the freedom of expression, piracy policies 15.142–3
private rights and public interest balance, piracy policies 15.282
private use limitations, Information Society Directive, Technical Protection Measures (TPMs) 11.101
private use, Rental and Lending Rights Directive (Article 2) 6.26, 20.44
see also confidentiality protection; personal data protection
private copying see reproductions
private sale exemption, Resale Right Directive (Article 1) 10.26, 10.29
private sector partnership piracy policies 15.114
public-private partnerships 13.52, 15.257, 16.68, 16.120
producers
co-production agreements, Satellite and Cable Directive (Article 7) 7.60–62
performers and producers of phonograms, specific rules, Term Directive (Article 3) 8.32–9
remuneration shared between performers and producers, Rental and Lending Rights Directive (Article 8) 6.94
see also performers
Product Piracy Regulation
border measures 12.05
effective, proportionate and dissuasive measures (Article 18) 12.25
sanctions and remedies (Article 18) 11.143, 11.146
seizure of goods 12.140
see also piracy
property right, Information Society Directive 11.104
property transfer in Continental Europe 21.36
proportionality principle
and ‘appropriateness’, IPRED (Article 11) 12.165, 15.44
corrective measures, IPRED (Article 10) 12.155
corrective measures test, IPRED (Article 12) 12.174
effective, proportionate and dissuasive measures, IPRED (Article 3) 12.25, 12.61, 12.62, 15.39, 15.156
evidence preservation, IPRED (Article 7) 12.87
legal costs, IPRED (Article 14) 12.195
right of information, IPRED (Article 8) 12.124
protective rules in Continental Europe 21.35–40
public
availability, cultural heritage 16.47, 16.50–61, 16.69–71, 16.112–14
awareness campaigns, piracy policies 15.27, 15.94, 15.107, 15.132, 15.133, 15.135, 15.582
communication to see communication to the public
distribution rights, Software Directive (Article 4) 5.73
document access, Database Directive 9.71
interest, Orphan Works Directive 13.09, 13.51, 13.53, 13.54
lending right see Rental and Lending Rights Directive
performance 11.18, 20.23

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

policy/ordre public emergency clause, Rome I Regulation 18.62–3
register, Orphan Works Directive (Article 3) 13.39–46
right of communication to see communication to the public sector databases 9.34
security 9.64, 20.40–41, 20.42
service broadcasters 13.08
public-private partnerships 13.52, 15.100, 15.257, 16.68, 16.120
public-service value of Internet 15.165
publication delays, Term Directive (Directive 93/98), duration of authors’ rights (Article 1) 8.17
publication of judicial decisions, IPRED see Enforcement of Intellectual Property Rights Directive (IPRED) (2004/48), publication of judicial decisions (Article 15)
‘publicly accessible’ institutions as beneficiaries, Orphan Works Directive (Article 1) 13.05–7
‘publicly accessible’, meaning of (Article 5), Copyright Directive 13.06
publicly funded (non-profit) interests, cultural heritage, digitisation and copyright law, legal challenges 16.110–11
publishers and publishing
country of origin definition 2.08
e-book development, Rental and Lending Rights Directive (Article 3) 6.48
exclusive authors’ rights publishing contracts, Rental and Lending Rights Directive (Article 5) 6.61
multi-volume publications, Term Directive 8.18
transfer of rights, Collective Rights Management Directive (Article 3) 14.18, 14.39
unpublished works see unpublished works
quotations, exceptions for 20.40–41
re-utilisation rights, Database Directive (Article 7) 9.43, 9.45–6, 11.25
recall of goods from channels of commerce, IPRED (Article 10) 12.158, 15.45, 15.55
reciprocal agreements
third country protection and treatment of aliens, Term Directive 8.48
refusal to supply, essential facilities principle 4.22, 4.29–37, 4.56–7
related rights
duration, Information Society Directive 8.29
duration, Rental and Lending Rights Directive (Article 12) 8.26, 11.180
Satellite and Cable Directive, rights of performers, phonogram producers and broadcasting organisations 7.45–7
Term Directive see Term Directive, duration of related rights (Article 3)
remedies see sanctions and remedies
remuneration
claims, Information Society Directive 11.92
and distribution right, Information Society Directive 11.95
equitable, Rental and Lending Rights Directive (Article 8) 6.89–93
Information Society Directive see Information Society Directive, exceptions and limitations (Articles 5 and 6.4), fair compensation, remuneration and collective management link
public lending, Rental and Lending Rights Directive (Article 3) 6.47
restrictions, EU Copyright Law, working towards 21.11
right, Resale Right Directive 10.05, 10.25
Satellite and Cable Directive (Article 3) 7.39, 7.54
supplementary right, Term Directive (Article 3) 8.38
unwaivable rental right see Rental and Lending Rights Directive, unwaivable rental right to equitable remuneration (Article 5)

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)) 6.01–105, 11.123

application in time (Article 11) 6.103

CJEU role in EU Copyright law development, exceptions and limitations 20.44, 20.48

copyright program rental (Article 4) 6.55–7

copyright protection terms (Articles 11 and 12) 8.68

copyright, rights related to (Article 6) 6.73–4

databases 9.10, 9.23

harmonisation goals 6.02–3, 6.08

limitations to rights (Article 10) 6.101–2

related rights duration (Article 12) 8.26, 11.180

related rights duration, phonograms and broadcasting organisations (Article 14) 8.26

relation between copyright and related rights (Article 12) 6.104

repeal (Article 14) 6.105

tangible products restriction 6.08

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)), broadcasting and communication to the public (Article 8) 6.81–96, 7.48, 20.24

beneficiaries 6.94–6

beneficiaries, preventive right 6.96

beneficiaries, remuneration shared between performers and producers 6.94

beneficiaries, transferability right 6.95, 7.49–50

cable retransmissions, exclusion of 6.83

compensatory nature 6.85

cross-frontier communications and territoriality principle 6.92

protective remuneration 6.89–93

hotels rooms 6.87–8, 6.93

protected performance of performer in context of neighbouring rights 6.82

'public' concept 6.87, 6.102

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)), definitions (Article 2) 6.23–42

authors, performers and producers 6.38–40, 7.33, 7.36, 7.45–7, 7.55–7, 8.20, 11.175–7

direct or indirect economic or commercial advantage 6.31–2

establishments accessible to the public 6.33–4

film 6.35–7

making available for a limited period of time 6.25–30

'on-the-spot' use, exclusion of 6.27

principal director authorship 6.41–2

regulatory requirements 6.29–30

rental outlet development issues 6.28

transfer of ownership 11.47

undefined concepts 6.38–40

‘use’ as ‘private use’ 6.26, 20.44

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)), derogation from exclusive lending right (Article 6) 6.65–72, 20.22

cultural promotion objectives 6.68–70

derogation regarding beneficiaries of the right to remuneration 6.67, 6.72, 14.12

exemption of certain categories of establishments 6.71–2

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)), distribution right (Article 9) 6.97–100, 11.37

film producers 6.100

first sale coverage 6.97

neighbouring rights transferability 6.99

Rental and Lending Rights Directive (Directive 2006/115 (formerly 92/100)), fixation right (Article 7) 6.75–80

broadcasting organisations 6.79–80

cable operators, exclusion of 6.80
Index

Information Society Directive relationship 11.03
performers 6.76–8
reproduction rights 11.04
Rental and Lending Rights Directive
(Directive 2006/115 (formerly 92/100)), object of harmonisation (Article 1) 6.09–22
exclusive rights 6.10–17
exclusive rights, droit de destination theory 6.16–17
exhaustion of distribution right 6.21–2
originals and copies 6.18–20
prohibition option and timely distribution of works 6.12
Rental and Lending Rights Directive
(Directive 2006/115 (formerly 92/100)), rightholders and subject matter (Article 3) 6.43–54
audiovisual works 6.44–6
beneficiaries 6.44–7
derogation for buildings and works of applied art 6.49
e-book development 6.48
film producer, presumptions in favour 6.51–4
public lending right 5.71, 6.47
subject matter 6.48–54
transferability of exclusive right 6.50, 6.78
video-on-demand systems 6.48
Rental and Lending Rights Directive
(Directive 2006/115 (formerly 92/100)), unwaivable rental right to equitable remuneration (Article 5) 6.58–64, 20.48
book publishers and exclusive authors’ rights publishing contracts 6.61
collective management 6.64
sound and video recordings 6.62–3
rental rights
Copyright Directive (Directive 2001/29) 5.68
Information Society Directive 6.08, 6.22, 6.27
public lending, Database Directive (Article 2) 9.10
Software Directive (Article 4) 5.67–70
reproductions
altered works, Information Society Directive (Article 19) 11.139
CJEU role in EU Copyright law development 20.15–16
Copyright Directive (Article 2) 5.60, 5.62, 6.74, 6.76, 13.50
cultural heritage, digitisation and copyright law 16.65, 16.67
Database Directive 9.21, 9.62, 11.10
Orphan Works Directive 13.50, 16.86–7
private copying 9.62, 11.105
private copying levies see EU Copyright Law, working towards, exceptions’ flexibility and harmonisation of private copying levies
Rental and Lending Rights Directive 6.18–20, 11.04
Software Directive (Articles 4–6) 11.10
temporary acts, Information Society Directive, Technical Protection Measures (TPMs) 20.34–9
transient copies see transient copies
resale right, exhaustion of intellectual property rights, free movement of goods principle 3.01–2
Resale Right Directive (Directive 2001/84) 6.18, 10.01–98
application in time (Article 10) 10.87
cultural policy weaknesses 10.10
entry into force (Article 13) 10.97–8
Explanatory Memorandum 10.12, 10.14
genesis period 10.15
harmonisation and EU competence, need for 10.08–9, 10.11–12, 10.31
implementation (Article 12) 10.17–23, 10.94–6

1214

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

and internal market competitiveness 10.08–9
international regulation 10.06–7
minimum sale price threshold and royalties (Article 3) 10.33–5
original manuscripts, exclusion of 10.31
origins (droit de suite) 10.01–4
remuneration right 10.05
right to obtain information (Article 9) 10.85–6
sale calculation basis (Article 5) 10.43
term of protection (Article 8) 10.75–84
third-country nationals entitled to receive royalties (Article 7) 10.58–74
transitional period for some countries 10.18
Resale Right Directive (Directive 2001/84), persons entitled to receive royalties (Article 6) 10.44–57
collective rights management 10.52–7
collective rights management, collecting societies 10.53
collective rights management, reciprocal rights agreements 10.57
national laws of succession and post mortem rights 10.49–50
post mortem restrictions 10.46–51
post mortem restrictions, lack of legal heirs 10.51
post mortem restrictions, term of protection 10.51
local artists, encouragement of proactive support 10.93
market share fears 10.91–3
stakeholder dialogue proposal 10.90
cap 10.38–9, 10.42
criticism of tapering scale 10.41
national rates prior to Directive 10.40
sale price manipulation concerns 10.41
acquisition time limits 10.27, 10.29
art galleries acquiring works directly from the author 10.29
price restriction 10.27, 10.29
private sale exemption 10.26, 10.29
remuneration right 10.25
royalty payments 10.28
Resale Right Directive (Directive 2001/84), works of art to which resale right relates (Article 2) 10.30–32
numbered copies 10.32
original manuscripts, exclusion of 10.31
restricted acts
Database Directive see Database Directive, restricted acts (Article 5)
Information Society Directive (Article 5) 9.28–9, 9.63, 16.68, 16.70
Software Directive see Software Directive, restricted acts (Article 4)
Reuse of Public Sector Information Directive, Digital Agenda initiative, digital single market 17.13
reverse engineering (decompilation), Software Directive see Software Directive, decompression (reverse engineering), exception conditions
rightholders
application forms to request border measures, piracy policies 15.72
cinematographic works, CJEU role in EU Copyright law development 20.27–8, 20.48
cultural heritage, digitisation and copyright law 16.66–7, 16.78–82
Information Society Directive 11.53–7
IPRED 11.57, 12.130
Rental and Lending Rights Directive see Rental and Lending Rights Directive, rightholders and subject matter (Article 3)
Satellite and Cable Directive 7.63–6
Software Directive 5.78
see also transfer of ownership; users
| Rights Management Information Obligations | Information Society Directive see Information Society Directive, sanctions and remedies (Article 8) |
| Rights Management Information Obligations (DRMs) (Article 19) | IPRED 12.19, 12.20–21, 12.61, 12.92–3, 12.205–7 |
| Romania, Resale Right Transposition 10.19 | Software Directive 11.143 see also criminal enforcement; damages |
| Rome Convention | Sappa, Cristina 2.01–20 |
| Broadcasting Organisations’ Protection 19.20–21 | Satellite and Cable Directive (Directive 93/83) 1.24, 7.01–88 |
| Compulsory Licenses (Article 15) 7.47 | Broadcasting Right in Country of Origin (Article 2) 7.34–6 |
| Copyright and Related Rights, relation between (Article 1) 7.51 | Broadcasting to the Public (Article 4) 11.13, 20.23 |
| Equitable Remuneration (Article 12) 6.89 | Collecting Society Definition 14.16 |
| IPRs and Piracy 15.08 | Collective Administration of Rights, national rules unaffected (Article 13) 7.83–4 |
| National Treatment Principle 2.08, 2.09, 6.77 | Copyright and Related Rights, relation between 7.51 |
| Performance Fixation (Article 3) 8.34 | Country-of-Origin Principle 7.87 |
| Related Rights Protection (Article 1) 11.180 | Final Provisions (Article 14) 7.85–7 |
| Transfer of Rights (Article 19) 19.15 | Final Provisions (Article 14), implementation deadline and duty of notification 7.85 |
| Rome II Regulation, Intellectual Property see Intellectual Property and EU Rules on Private International Law, Legal Choices, Rome II Regulation | Mediators (Article 11) 7.76–8 |
| Rosén, Jan 7.01–88 | Right of Communication to the Public 11.16 |
| Royalties | Territorial Market Fragmentation 7.86 |
| IPRED (Article 13) 12.186, 12.187–8 | see also Rental and Lending Rights Directive, Broadcasting and Communication to the Public (Article 8) |
| Rupp, Hajo 16.01–121 | Acquisition by Contract 7.37–9 |
| ‘Saas’ Models (Software as a Service) Licences 5.89 | Cinematographic Works 7.43 |
| Sampling, IPRED 12.66, 12.67–8, 12.85 | Duty to Inform 7.44 |
| Sanctions and Remedies | Extended Collective Licensing 7.41–2 |

1216

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

collecting societies 7.64
national laws 7.65–6
rights acquisition 7.63–6
transitional provisions 7.67
Satellite and Cable Directive (Directive 93/83), cable retransmission right by broadcasting organizations (Article 10) 7.74–5
collecting society influence 7.75
mandatory exception 7.74–5
outsider rights 7.75
Satellite and Cable Directive (Directive 93/83), exercise of (Article 9) 7.68–73
collecting societies 7.68, 7.71–2, 21.43
film licensing 7.69
mandatory collective rights management 7.68–70
outsiders, treatment of 7.71–2
revenue issues 7.71–2
statutory presumptions 7.73
transferable rights 7.70
Satellite and Cable Directive (Directive 93/83), definitions (Article 1) 7.01–33
authors of audiovisual works 7.33, 7.36, 8.20
broadcaster 7.12, 7.25
cable retransmission 7.26–30
cable retransmission, communication to the public 7.29
cable retransmission, initial transmission 7.27–9
cablecasting 7.28
collecting society 7.31–2
collective management 6.64
communication to the public 7.08, 7.09–15, 7.19–20, 7.29
communication to the public in one Member state (country of origin rule) 7.16–18, 7.20, 7.34–6, 7.45
communication to the public, satellite broadcasts from outside the EU 7.24–5
harmonisation 7.03, 7.05
licensing from rights holders 7.17–18
retransmission considerations 7.11–12, 7.27–9
satellite 7.06–8
signal encryption 7.19–23, 7.29
Satellite and Cable Directive (Directive 93/83), minimum protection (Article 6) 7.52–4
minimum harmonisation 7.52
remuneration issues 7.54
up-link country focus 7.53
Satellite and Cable Directive (Directive 93/83), prevention of abuse of negotiating positions (Article 12) 7.79–82
competition law, ineffectiveness of 7.80
negotiation obligation 7.79
transitional provisions 7.82
Satellite and Cable Directive (Directive 93/83), rights of performers, phonogram producers and broadcasting organisations 7.45–50
country-of-origin principle 7.45
presumption of transfer 7.49–50
related rights 7.45–7
wireless broadcasting 7.48
Satellite and Cable Directive (Directive 93/83), transitional provisions (Article 7) 7.55–62
application in time 7.55–7
co-production agreements 7.60–62
film exploitation agreements 7.59
old broadcasting licence contracts 7.58–9
territorial copyrights 7.62
Satellites Convention protection of broadcasting organisations 19.20–21
Scandinavia
cable retransmission 21.43
collective licensing 21.40–44
see also individual countries
Schönherr, Franciska 11.62–106
scientific publications 8.42–3
seizure of goods 5.137–8, 12.140–42
see also destruction of goods
self-incrimination prohibition, IPRED 12.115
shared database identifiers, Orphan Works Directive (Article 3) 13.44–5
signal encryption, Satellite and Cable Directive 7.19–23, 7.29

1217
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
Index

'situatedness', cultural heritage, digitisation and copyright law, legal challenges 16.105
SMEs, consideration of specific problems of, piracy policies 15.26
acquis communautaire 5.03
addressees (Article 12) 5.146–7
beneficiaries of protection (Article 3) 5.55
CJEU role in EU Copyright law development 20.49–51
code availability 4.56
communication (Article 9) 5.142–3
continued application or other legal provisions (Article 8) 5.139–41
continued application or other legal provisions (Article 8), mandatory character of the exceptions 5.141
continued application or other legal provisions (Article 8), without prejudice clause 5.139–40
convergence of content formats, transmission media and platforms 5.03
copyright and related rights legislation (Article 7) 12.16
counterfeiting and piracy problems 12.02
distribution right (Article 4) 11.37, 11.39, 11.43, 11.47
duration of authors' rights (Article 1) 8.01
entry into force (Article 11) 5.144–5
error correction, CJEU role in EU Copyright law development 20.51
harmonization, enhanced but still inconsistent 5.02–3
Information Society Directive relationship 11.03
lawful user concept 9.27, 9.56, 9.57
lex specialis character 5.04, 5.86, 5.91
originality conditions (Article 1) 8.47
preparatory documents 5.01
preparatory documents, computer program concept 5.06
reproduction right (Articles 4–6) 11.10
sanctions and remedies (Article 7) 11.143
technical protection measures 11.108
term of protection (Article 8) 8.67
testing functioning of program, CJEU role in EU Copyright law development 20.49–50
transfer of ownership (Article 4) 11.47
transient copying limitation 5.03
see also computer programs; Database Directive
Software Directive (Directive 2009/24), authorship of computer programs (Article 2) 5.40–54
collective works 5.43, 9.18–19
computer programs created by employees 5.47–54
computer programs created by employees, economic rights transfer mechanism 5.47–9
computer programs created by employees, moral rights not transferred to employer 5.53–4
computer programs created by employees, normal duties or specific instructions, determination of 5.50–52
initial ownership 5.40–43
joint ownership 5.44–6
Software Directive (Directive 2009/24), decompilation (reverse engineering), exception conditions (Article 6) 5.110–27
acts performed by a licensee or other legitimate user 5.117
decompilation of necessary parts only 5.120
information not obtained for other purposes 5.121–4
interoperability aim 5.114
interoperability aim, independently created program 5.116
interoperability aim, indispensable and necessary acts 5.115
limited acts of reproduction 5.113
necessary information is not readily available 5.118–19
three-step test 5.125–7
Software Directive (Directive 2009/24), object of protection (Article 1) 5.05–39
algorithms, lack of protection 5.27
any form of expression of a computer program 5.16–17
computer program concept 5.05–6
computer program definition, lack of 5.05
computer programs are literary works within the meaning of the Berne Convention 5.07–12
computer programs, functional nature 5.14
data files’ format and programming languages 5.28–30
expression protection, not ideas 5.13–30
graphic user interfaces, lack of protection 5.24–6
idea/expression dichotomy application 5.13–15
idea/expression dichotomy application, merger doctrine 5.15
interfaces, lack of protection 5.23
originality condition 5.31–7
originality condition, computer program elements application 5.36–7
originality condition, unified test to assess originality, problems with 5.33–5
particular elements of computer program 5.18–30
preparatory design material 5.21–2
source and object code 5.18
transitional provision 5.38–9
user manual and other users’ documentation, lack of protection 5.19–20
communication to the public rights 5.90–91
distribution rights 5.72–89
distribution rights, distribution ‘to the public’ 5.73
exclusive rights 5.56–7
moral rights, lack of regulation 5.92–3
public lending right exclusion 5.71
rental right 5.67–70
rental right, rental and sale, distinction between 5.70
reproduction by any means and in any form 5.58–62, 5.100
reproduction by any means and in any form, permanent or temporary 5.59–60
reproduction right 5.58–89
source code reproduction 5.62
translations, adaptations alterations 5.63–6
‘first sale’ reference 5.80–89
intangible copies of computer programs 5.84–9
rightholder consent 5.78
‘Saas’ models (Software as a Service) licences 5.89
and sales 5.77
updates and upgrades of software 5.87
acts necessary for normal use and error correction 5.99–104, 20.51
back-up copies 5.105–6
exhaustive character, restrictive interpretation 5.94–5
‘lawful acquirer’ or ‘person having a right to use’ 5.96–8
program function, studying and testing (black-box testing) 5.107–9, 20.49–50
possession for commercial purposes 5.133
protection for technological protection measures 5.134–6
putting into circulation 5.130–32
remedies 9.70
seizure provisions 5.137–8
sound recordings 3.07, 6.62–3
see also cinematographic and audiovisual works
source codes
availability, Software Directive 4.56
protection, TRIPs Agreement 5.18
refusal to supply, essential facilities principle 4.56–7
Index

reproduction, Software Directive 5.62
see also computer programs
South Korea, ‘graduated response’ to Internet blocking 15.127
Spain
blowing Internet access at request of right holder or of law enforcement agencies 15.127
collective rights and obligation to contract with users 14.59
collective work category 1.15
damage awards calculations 15.50
data creation and collection, distinction between 9.39
duration of authors’ rights 8.01
ISP liability 11.155
rental right as exclusive right 6.14
resale right, collective rights management 10.56
resale right transposition 10.21–2
Ryanair v Atrapalo 9.39, 9.74
sui generis right 9.39, 9.74
‘special jurisdiction’ rule, piracy policies, Brussels I Regulation 15.58, 15.59
sport
football matches, filming and broadcasting 21.15–19
originality/creativity standard, CJEU role in EU Copyright law development 20.11
stakeholder dialogues
Digital Agenda initiative 17.15–16, 17.18
Resale Right Directive 10.90
Stamatoudi, Irini 0.01–11, 11.01–185, 12.01–218
Strowel, Alain 21.01–69
subsidiarity principle 1.09
Collective Rights Management Directive 14.07, 14.77
sui generis right
application over other legal provisions, Database Directive 9.71
application over time, Database Directive (Article 14) 9.75, 9.77
beneficiaries of protection, Database Directive (Article 11) 9.68–9
cultural heritage, public domain (re-)privatisation 16.60
exceptions, database Directive see Database Directive, sui generis rights, exceptions (Article 9)
IPRED 11.110, 15.36
lawful users, Database Directive (Article 8) 9.58, 9.59
object of protection, Database Directive see Database Directive, object of protection, sui generis right
restricted acts, Database Directive (Article 6) 9.27–8
scope limitations, Database Directive (Article 2) 9.09
term of protection, Database Directive (Article 10) 9.65
Suthersanen, Uma 13.01–62
Sweden
doctrine of implied licence 11.91
Internet access blocking 15.127
ISP liability 11.155
resale right transposition 10.20
Svensson and Others 11.91
Switzerland, Private International Law Act 18.76
Taiwan, ‘graduated response’ to Internet blocking 15.127
teaching see education sector
technical issues
access barriers, cultural heritage, public domain (re-)privatisation 16.61
adaptations, Copyright and Neighbouring Rights Directive 8.67–8
adaptations, Information Society Directive (Article 11) 11.175–8
cooperation projects, piracy policies 15.104, 15.245–6, 15.267, 15.268, 15.269
development 1.21
development assurance, Information Society Directive 11.84
digital technology protection, piracy policies 15.04

1220
Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM
via free access
innovation 1.07, 16.15–16
Internet viewing of copyright material, Information Society Directive 11.76
obsolescence concerns, cultural heritage preservation 16.20
protection measures, IPRED (Article 2) 12.16
protection measures, Orphan Works Directive 13.58
protection measures, Software Directive 5.134–6
Software Directive 11.108
standard-setting, essential facilities principle 4.28
Technical Protection Measures (TPMs), Information Society Directive see Information Society Directive, exceptions and limitations, Technical Protection Measures (TPMs)
'technological measures' definition, Copyright Directive (Article 6) 5.135
technological measures obligations, Information Society Directive see Information Society Directive, technological measures obligations (Article 6)
Technology Transfer Block Exemption Regulation (TTBER) 4.33, 21.21
technology-enabled uses, EU Copyright Law, working towards 21.50–58, 21.59
WIPO consultations 19.29
Telecom Package, 'three-strikes' solution rejection 15.138
Television without Frontiers Directive 7.02 see also broadcasting
temporary acts of reproduction
mandatory exception, Information Society Directive, Technical Protection Measures (TPMs) 20.34–9
see also reproductions
Term Directive (Directive 93/98) 8.01–72
authors of audiovisual works, (Article 2) 7.33
calculation of terms (Article 8) 8.52–3
critical and scientific publications (Article 5) 8.42–3
temporary acts of reproduction
entry into force considerations 8.70–71
moral rights (Article 9) 8.54
national transitional measures (Article 10A) 8.63–4
notification and communication (Article 11) 8.65–6
protection of photographs (Article 6) 8.44–7
protection of photographs (Article 6), originality conditions 8.46–7
protection of previously unpublished works (Article 4) 8.40–41
third country protection and treatment of aliens (Article 7) 8.48–51
third country protection and treatment of aliens (Article 7), national treatment principle 8.49
third country protection and treatment of aliens (Article 7), reciprocity treatment 8.48
Term Directive (Directive 93/98), application in time (Article 10) 8.55–62, 8.65
Copyright and Neighbouring Rights Directive modifications 8.61–2
longer terms of protection already running 8.55
protection in at least one Member State 8.56
retroactive action not applicable 8.59
third parties' acquired rights and principle of legitimate expectations 8.60
Term Directive (Directive 93/98), cinematographic or audiovisual works (Article 2) 8.19–25
authorship 8.19–21
death of composer of music 8.24
harmonisation need 8.19
principal director as author 8.20
protection term calculation 8.22–5
relevant persons involved in the creative process 8.20, 8.22–3
underlying works, lack of coverage 8.25
## Index

Term Directive (Directive 93/98), duration of authors’ rights (Article 1) 8.01–18
anonymous works and date of the author’s death rule 8.15
duration details 8.09
harmonisation, lack of 8.01–3, 8.06–7, 8.16
initial ownership, lack of harmonisation and national legislation 8.16
international influence 8.10
joint authorship 8.13–14
literary or artistic work definition 8.11
multi-volume publications 8.18
neighbouring rights 8.02
posthumous works 8.12
publication delays 8.17

Term Directive (Directive 93/98), duration of related rights (Article 3) 8.26–39, 8.65
broadcasting organisations 8.30
‘clean slate’ provision 8.39
contract termination rights 8.37

Copyright and Neighbouring Rights Directive, amendments introduced by 8.32–9, 8.63–4
date of performance 8.28
film performance fixation 8.35
film producers, special rule for longer protection 8.29
general rules 8.26–31
granting of further related rights to other persons 8.31

Information Society Directive relationship 11.03
performance fixation 8.33
performers and producers of phonograms, specific rules 8.32–9
phonogram, understanding of 8.34
supplementary remuneration right 8.38
term of protection

CJEU role in EU Copyright law development 20.29–30

Database Directive see Database Directive, term of protection (Article 10)
Design Directive 20.29

irrespective of home country, EC Treaty 8.57
Resale Right Directive 10.75–84
Software Directive 8.67
territoriality

Collective Rights Management Directive (Article 20) 14.63
EC Treaty 1.05, 1.24
EU Copyright Law see EU Copyright Law, working towards, territoriality issues

and free movement of goods and services 1.05, 1.24
non-discrimination principle 2.07
parallel IP rights and damage occurring in several jurisdictions 18.02, 18.07, 18.19

Rental and Lending Rights Directive (Article 8) 6.92

Satellite and Cable Directive 7.62, 7.86
see also cross-border measures; individual countries; national laws

TFEU (Treaty on the Functioning of the European Union)
broadcasting signal encryption (Article 56) 7.22–3
collecting societies (Article 12) 12.40
collective management of copyright and related rights (Articles 50, 53 and 60) 14.06
competition rules (Articles 101 and 102) 14.11, 14.29, 14.30, 14.51, 14.72
counterfeiting and piracy problems (Article 14) 12.02
criminal cases and adoption of minimum rules (Article 83) 15.85
cultural diversity considerations (Article 107) 14.68
cultural policy incentives (Article 167) 10.10, 14.06
dominance abuse (Article 102) 2.15
dominance abuse, limiting production or technical development, and refusal to supply (Article 101) 4.28
essential facilities principle (Article 102)

see under essential facilities principle, TFEU Article 102

exhaustion of distribution rights and free movement of good (Article 28)
11.48, 11.58

free movement of goods and services (Articles 34 and 56) 3.10, 21.47

freedom, security and justice as shared competence (Article 4) 15.85

fundamental rights (Article 6) 15.142

industrial and commercial property rights as exceptions to free circulation of goods and services (Article 36) 2.12

internal market functionality (Articles 26 and 114) 10.09

international agreements, binding nature of (Article 216) 11.71

Member States' choices of forms and methods (Article 288) 11.64, 11.74

national treatment principle 2.11, 2.12

new product requirement (Article 102) 4.59

non-discrimination principle (Article 18) 2.12, 2.14, 2.15, 2.20, 10.07, 14.29

principle of Community exhaustion of rights (Article 345) 3.05

quantitative restrictions on imports (article 36) 3.04, 3.05

restriction to trade of goods and cultural products among EU Member States (Article 34) 3.04, 3.05, 3.16

restrictive agreement regulation (Article 101) 4.03, 4.26, 4.27

state duties to affirmatively protect competition (Article 106) 4.06

third countries

external borders with, IPRED 12.03–4

importation, Information Society Directive (Article 19) 11.138

and piracy see piracy, policies and actions in fight against, third countries

protection and treatment of aliens, Term Directive (Article 7) 8.48–51

third parties

acquired rights and principle of legitimate expectations, Term Directive (Article 10) 8.60

authorised third parties and applicable law, IPRED (Article 4) 12.35

corrective measures, IPRED (Article 10) 12.155

disclosure requirements, IPRED (Article 8) 12.108

interests and pecuniary compensation, IPRED (Article 3) 12.24

Internet service providers (ISPs) liability 11.165, 11.167

search organisations, regulation of, Orphan Works Directive (Article 3) 13.33

three-step test

CJEU role in EU Copyright law development 20.32

Copyright Directive (Article 5) 20.32, 21.53, 21.56

Database Directive 9.29, 9.59

essential facilities principle 4.73

evolution of copyright law 1.14

as flexibility clause, EU Copyright Law, working towards 21.56

harmonisation 1.14

Information Society Directive 9.59, 11.09, 11.70–73, 11.89, 11.104

international stance, copyright exceptions and limitations 19.37, 19.38, 19.46

Orphan Works Directive (Article 6) 13.56

Software Directive (Article 6) 5.125–7

time factors

application in time see application in time


cultural heritage, digitisation and copyright law 16.11

proceedings institution, IPRED 12.95, 12.136

Rental and Lending Rights Directive (Article 1) 6.12

Torremans, Paul 0.01–11, 11.01–185, 18.01–93

1223

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

Trademark Directive, ‘consent’ definition
11.57
transfer of ownership
Information Society Directive (Article 4)
11.44
Rental and Lending Rights Directive 6.50, 6.78, 11.47
Satellite and Cable Directive (Article 9) 7.70
Software Directive (Article 4) 11.47
see also rightholders
transient copies
CJEU role in EU Copyright law development 20.34–9
Information Society Directive 11.66, 11.76
Software Directive 5.03
see also reproductions
translations 5.63–6, 9.22
transparency requirements
Collective Rights Management Directive
see Collective Rights Management Directive, annual transparency report (Article 20)
Information Society Directive 11.77–86, 14.02
piracy policy negotiations 15.195
Treaty on the Functioning of the European Union see TFEU (Treaty on the Functioning of the European Union)
TRIPs Agreement
broadcasting organisations protection 19.20–21
civil and administrative procedures and remedies (Articles 42–9) 15.10
‘commercial scale’, lack of definition for 15.82
compulsory licensing and anti-competitive practices (Article 31) 4.72
computer program rental right (Article 11) 5.67
computer programs as literary works (Article 10) 5.07
computer software source and object code protection (Article 10) 5.18
copyright protection, automatic 13.39
corrective measures (Article 46) 12.152
Customs enforcement 15.17
damages and IP infringements (Article 45) 12.179
database definition 9.01
dispute settlement mechanism 15.11
essential facilities doctrine 4.69–74
fair and equitable enforcement (Article 41) 12.23, 12.26
harmonisation of the criminal laws (Article 61) 12.205
idea/expression dichotomy (Article 9) 5.13
information sharing on suspected goods in transit (Article 69) 15.73
IP rights, alternative measures (Article 44) 12.170
licensing practices (Article 40) 4.69–71
most-favoured-nation clause (MFN) (article 4) 2.13, 15.239
national treatment principle 2.05, 2.08, 2.10, 2.13
negotiations, international stance 19.02
originality assessment 5.35
permanent injunctions (Article 44) 12.161
personal data protection 12.125
piracy problems 12.02, 12.05, 15.05, 15.10–12, 15.222, 15.239
piracy problems, Anti-Counterfeiting Trade Agreement (ACTA) 15.196, 15.204, 15.212, 15.220, 15.223
preclusion of international exhaustion (Article 6) 3.17
provisional measures (Article 50) 12.126, 15.10
right holders access to procedures (Article 42) 12.29
right of information in national laws (Article 47) 12.100, 12.125
sanctions and remedies (Articles 41–61) 11.145, 12.19, 12.61
technical and financial cooperation to developing countries (Article 67) 15.245
Index

three-step test for copyright limitations and exceptions (Article 13) 4.73, 4.74, 11.70–71, 21.56
time factors for institution of proceedings, and abuse prevention (Article 50) 12.95
‘TRIPs-plus’ standards 15, 238–9, 3.17, 12.61, 12.70–78, 12.99, 12.143–51, 12.161, 12.200, 15.38, 15.137, 15.185
Turkey, counterfeit and pirated goods 15.04
‘type B agreements’, end of, Collective Rights Management Directive (Article 14) 14.52

UAE, counterfeit and pirated goods 15.04
Ubertazzi, Benedetta 3.01–17
UK
Anton Piller Orders 12.82
art and antiques market share 10.92
Artists’ Collecting Society (ACS) 10.55
Artist’s Resale Rights Regulations 10.80
computer program originality assessment 5.33
Design and Artist’s Copyright Society (DACS) 10.55
Digital Copyright Exchange 13.41
Digital Economy Act 11.155, 15.144
dominance abuse, non-IP cases requesting access to essential facility 4.31
EI du Pont de Nemours 4.31
essential facilities principle 4.33, 4.43
exclusive jurisdiction rule 18.16, 18.22
freezing injunction (Mareva injunction) 12.143
‘graduated response’ to Internet blocking 15.127
Hargreaves Report 11.75, 21.48
Intel Corp v Via Technologies Inc 4.33
ISP liability 11.155
ITV Publications v Time Out 4.43
Knorr-Bremse Systems v Haldex Brake Products (Patents Court) 18.16
moral rights 1.16
orphan works licensing 13.60
private copying exception 21.63
rental right as exclusive right 6.14
resale right and minimum sale price threshold 10.35
resale right, term of protection 10.80
resale right transitional period 10.18, 10.77
resale right transposition, collective rights management 10.55
Research in Motion UK Ltd v Visto Corporation 18.22
‘skill and labour’ test 1.15
technical processes involved in viewing copyright material on Internet 11.76
UNESCO
folklore and traditional cultural expressions, protection proposals 19.47
Intergovernmental Copyright Committee, royalty rate tapering scale criticism 10.41
Recommendation on the Safeguarding of Traditional Culture and Folklore 19.47
United Nations Interregional Crime and Justice Research Institute (UNICRI) participation, piracy policies 15.265
United Nations Office on Drugs and Crime (UNODC), counterfeiting and organised crime 15.80
Universal Copyright Convention (UCC), IPRs and piracy 15.07
Universal Declaration of Human Rights (UDHR)
non-discrimination principle 2.02
protection of moral and economic interests of creators 2.03
unpublished works
country of origin definition 2.08
Term Directive (Article 4) 8.40–41
see also publishers and publishing
up-link country focus, Satellite and Cable Directive (Article 6) 7.53
updates and upgrades, Software Directive 5.87
Uruguay, resale right 10.02

1225

Irini A. Stamatoudi and Paul Torremans - 9781781952436
Downloaded from Elgar Online at 03/04/2019 07:57:14AM via free access
Index

US
California Resale Royalty Act (CRRA) 10.69–71
copyright exceptions and transformative fair use 4.19
Copyright Extension Act 8.10
digital environment, adaptation to new challenges 11.92
Digital Millennium Copyright Act (DMCA) 15.127
EU resale rights’ royalties 10.69–72
EU–US IPR Working Group 15.243
fair use clause 11.98, 11.104, 17.21, 21.51–2, 21.54, 21.56
idea/expression dichotomy application, merger doctrine 5.15
Kelly v Arriba Soft Corp 21.51
lump sum punitive damages payments 12.189
Perfect 10 v Amazon.com 21.52, 21.54
Verizon v. Trinko 4.19

users
contribution, cultural heritage, Europeana 16.42, 16.45–7
Database Directive see Database Directive, lawful users, rights and obligations (Article 8)
end-users see end-users
manual and other users’ documentation, lack of protection, Software Directive (Article 1) 5.19–20
User-Generated Content (UGC), Digital Agenda initiative 17.07
see also rightholders

video-on-demand systems, Rental and Lending Rights Directive (Article 3) 6.48
voluntary agreements
Digital Agenda initiative 17.19
Orphan Works Directive (Article 1) 13.21–3
Vrins, Olivier 15.01–282
webcasting and simulcasting, inclusion of, Draft Treaty on the Protection of Broadcasting Organisations 19.27
WIPO Copyright Treaty (WCT) 1.09
‘anti-circumvention devices’ 15.12
audio-visual fixation 6.35
computer program rental right (Article 7) 5.67
computer programs as literary works (Article 4) 5.07
database definition 9.01
distribution right (Articles 6 and 7) 11.36, 11.41, 11.50
exclusive competence debate, international stance 19.61
idea/expression dichotomy (Article 2) 5.13
Intergovernmental Committee (IGC) involvement, folklore and traditional cultural expressions, protection proposals 19.47, 19.48, 19.49, 19.51–4
Internet Treaty 15.12
licence refusal 4.04
minimum infringement threshold 18.91
national treatment principle 2.08
originality assessment 5.35
and piracy see piracy, policies and actions in fight against, third countries, non-legislative actions, WIPO participation
protection of photographs (Article 9) 8.44
right of communication to the public (Article 8) 11.13
rights management information (Article 12) 11.129
sanctions and remedies (Article 14) 11.145
technical protection measures (Article 11) 11.99, 11.107, 15.32
three-step test (Article 10) 11.70–71
time frame concerns, international stance 19.58–60
see also Berne Convention; Rome Convention
WIPO Performance and Phonogram Treaty (WPPT) 1.09
‘anti-circumvention devices’ 15.12
copyright and related rights, relation between (Article 1) 7.51
Diplomatic Conference and protection of performers, Beijing Treaty on Audiovisual Performances 19.06–8
distribution rights 11.50
Internet Treaty 15.12
national treatment principle 2.08
performance fixation 8.34
performing artists and producers of phonograms, related rights (Article 18) 8.26, 8.29
Protocol proposal audiovisual performances, Beijing Treaty on Audiovisual Performances 19.09–11
related rights protection (Article 1) 11.180
right of communication to the public (Article 14) 11.13
rights management information (Article 12) 11.129
sanctions and remedies (Article 23) 11.145
technical protection measures (Article 18) 11.99, 11.107, 15.32
wireless broadcasting, Satellite and Cable Directive 7.48
witness identity protection, IPRED (Article 7) 12.98
Wittgen Copyright Code 1.23, 11.95, 11.103, 11.106, 17.18, 17.21, 22.03
‘work’ concept, CJEU role in EU Copyright law development 20.05, 20.10, 20.13
World Customs Organisation (WCO), piracy policies 15.123, 15.256–8
World Intellectual Property Organisation see WIPO headings
World Trade Organisation (WTO) Dispute Settlement Panel
Irish Music 15.247
TRIPs Agreement see TRIPs Agreement
US v. China 15.82, 15.223