

EXTENDED TABLE OF CONTENTS

<i>List of contributors</i>	xxi
<i>Preface</i>	xxiii
<i>Table of cases</i>	xxv
<i>Table of legal instruments</i>	xl
INTRODUCTION	0.01
PART I GENERAL PRINCIPLES OF EUROPEAN COPYRIGHT	
1. IS THERE A CONCEPT OF EUROPEAN COPYRIGHT LAW? HISTORY, EVOLUTION, POLICIES AND POLITICS AND THE <i>ACQUIS COMMUNAUTAIRE</i>	
I. The evolution of copyright law within the European Union	1.02
1. The relationship between Copyright and Primary EC Law (1957–1987)	1.03
2. The harmonisation of copyright law within the European Community (1987–2004)	1.07
3. The increasing role of the ECJ since 2004	1.11
II. The achievement of a European copyright law?	1.14
1. The assessment of the <i>acquis communautaire</i>	1.14
2. From European common copyright principles to a genuine European copyright law	1.19
III. Conclusion	1.23
2. THE PRINCIPLE OF NON-DISCRIMINATION	
I. Introduction	2.01
II. The principle of national treatment in the international legal framework	2.06
III. The principle of national treatment in the european legal framework	2.11
IV. Conclusion	2.19
3. THE PRINCIPLE OF FREE MOVEMENT OF GOODS: COMMUNITY EXHAUSTION AND PARALLEL IMPORTS	
I. Introduction	3.01
II. Consent of the IPR owner and placement on the market	3.06
III. International exhaustion	3.15
4. THE ESSENTIAL FACILITIES PRINCIPLE AND OTHER ISSUES OF COMPETITION	
ARTICLE 102 TFEU	
I. Article 102 and its context	4.01
1. Introduction	4.01
2. Deconstructing Article 102	4.05
3. Competition	4.16
4. Abuse of dominance	4.21
5. A ‘defence’ of objective justification?	4.38

II. <i>Magill</i> and beyond – essential facility cases relating to copyright	4.42
1. <i>Magill</i>	4.43
2. <i>Tiercé Ladbroke</i>	4.49
3. <i>IMS</i>	4.50
4. <i>Microsoft</i>	4.55
III. Some queries and observations	4.63
1. Nature of ‘essential facility’ or ‘indispensable input’ in copyright cases	4.63
2. Nature of the remedy?	4.67
3. What about interim measures?	4.68
4. Essential facilities and WTO TRIPS	4.69

PART II THE EU DIRECTIVES

5. THE SOFTWARE DIRECTIVE

I. Introductory remarks	5.01
1. Preparatory documents	5.01
2. General characteristics	5.02
Article 1: Object of protection	5.05
1. Protection as literary works (art. 1(1))	5.05
2. Protection for expression; not ideas (art. 1(2))	5.13
3. Condition of originality (art. 1(3))	5.31
4. Transitional provision (art. 1(4))	5.38
Article 2: Authorship of computer programs	5.40
1. General rules	5.40
2. Computer programs created by employees (art. 2(3))	5.47
Article 3: Beneficiaries of protection	5.55
Article 4: Restricted acts	5.56
1. Scope of the exclusive rights	5.56
2. Right of reproduction	5.58
3. Right of communication to the public	5.90
4. Moral rights not regulated	5.92
Article 5: Exceptions to the restricted acts	5.94
1. General remarks	5.94
2. Acts necessary for normal use and error correction	5.99
3. Making of back-up copy	5.105
4. Observing, studying or testing the functioning of the program	5.107
Article 6: Decompilation	5.110
1. General	5.110
2. Conditions of the exception	5.112
Article 7: Special measures of protection	5.128
1. General remarks	5.128
2. Particular remedies and sanctions	5.130
3. Seizure	5.137
Article 8: Continued application of other legal provisions	5.139
1. No prejudice to other forms of protection	5.139
2. Mandatory character of the exceptions	5.141
Article 9: Communication	5.142
Article 10: Repeal	
Article 11: Entry into force	5.144
Article 12: Addressees	5.146

6. THE RENTAL AND LENDING RIGHTS DIRECTIVE

I. General remarks	6.01
Chapter I: Rental and lending right	
Article 1: Object of harmonisation	6.09
1. The exclusive rights	6.10
2. Originals and copies	6.18
3. The relation to the exhaustion of the distribution right	6.21

Article 2: Definitions	6.23
1. Definitions	6.24
2. Authorship of the principal director	6.41
Article 3: Rightholders and subject matter of rental and lending right	6.43
1. Beneficiaries and subject matter of the rental and lending right	6.44
2. The transferability of the exclusive right	6.50
3. Presumptions in favour of the film producer	6.51
Article 4: Rental of computer programs	6.55
Article 5: Unwaivable right to equitable remuneration	6.58
1. The unwaivability of the right to remuneration	6.59
2. The role to be played by collecting societies	6.64
Article 6: Derogation from the exclusive public lending right	6.65
1. Derogation from the exclusive right	6.66
2. Derogation regarding beneficiaries of the right to remuneration	6.67
3. The consideration of cultural promotion objectives	6.68
4. Exemption of certain categories of establishments	6.71
Chapter II: Rights related to copyright	6.73
Article 7: Fixation right	6.75
1. The fixation right for performers	6.76
2. The fixation right for broadcasting organisations	6.79
Article 8: Broadcasting and communication to the public	6.81
1. Communication to the public	6.84
2. Equitable remuneration	6.89
3. Beneficiaries	6.94
Article 9: Distribution right	6.97
Article 10: Limitations to rights	6.101
Chapter III: Common provisions	6.103
Article 11: Application in time	6.103
Article 12: Relation between copyright and related rights	6.104
Article 13: Communication	
Article 14: Repeal	6.105
Article 15: Entry into force	
Article 16: Addressees	

7. THE SATELLITE AND CABLE DIRECTIVE

Chapter I: Definitions	
Article 1: Definitions	7.01
1. Introduction	7.01
2. Definition of a 'satellite' (art. 1(1))	7.06
3. Communication to the public (art. 1(2)(a))	7.09
4. The act of communication to the public occurs solely in one Member State (art. 1(2)(b))	7.16
5. Encryption of signals (art. 1(2)(c))	7.19
6. Extension of the communication to the public definition – satellite broadcasts from outside the EU (art. 1(2)(d))	7.24
7. Cable retransmission (art. 1(3))	7.26
8. Collecting society (art. 1(4))	7.31
9. Authors of audiovisual works (art. 1(5))	7.33
Chapter II: Broadcasting of programmes by satellite	
Article 2: Broadcasting right	7.34
1. An Exclusive Broadcasting Right in the country-of-origin (art. 2)	7.34
Article 3: Acquisition of broadcasting rights	7.37
1. Acquisition by contract (art. 3(1))	7.37
2. Collective licensing (art. 3(2))	7.40
3. Cinematographic works (art. 3(3))	7.43
4. Duty to inform (art. 3(4))	7.44
Article 4: Rights of performers, phonogram producers and broadcasting organisations	7.45
1. Related rights (art. 4(1))	7.45

2. Wireless broadcasting (art. 4(2))	7.48
3. Presumption of transfer (art. 4(3))	7.49
Article 5: Relation between copyright and related rights	7.51
Article 6: Minimum protection	7.52
1. Minimum harmonisation (art. 6(1))	7.52
2. Focus on up-link country (art. 6(2))	7.53
Article 7: Transitional provisions	7.55
1. Application in time (art. 7(1))	7.55
2. Transitional provisions for old contracts (art. 7(2))	7.58
3. Transitional provisions for co-production agreements (art. 7(3))	7.60
Chapter III: Cable retransmission	
Article 8: Cable retransmission right	7.63
1. Acquisition of cable retransmission rights (art. 8(1))	7.63
2. Transitional provisions (art. 8(2))	7.67
Article 9: Exercise of the cable retransmission right	7.68
1. Mandatory collective rights management (art. 9(1))	7.68
2. Treatment of outsiders (art. 9(2))	7.71
3. Statutory presumptions (art. 9(3))	7.73
Article 10: Exercise of the cable retransmission right by broadcasting organizations	7.74
1. Broadcasters' exception (art. 10)	7.74
Article 11: Mediators	7.76
1. Set up of a mediation system (art. 11(1))	7.76
2. Mediation procedure (art. 11(2) and (3))	7.77
3. Independance and impartiality of mediators (art. 11(4))	7.78
Article 12: Prevention of the abuse of negotiating positions	7.79
1. Obligation to negotiate – but not to grant a licence (art. 12(1))	7.79
2. Transitional provisions (art. 12(2) and (3))	7.82
Chapter IV: General provisions	
Article 13: Collective administration of rights	7.83
1. National rules unaffected (art. 13)	7.83
Article 14: Final provisions	7.85
1. Implementation deadline and duty of notification (art. 14(1) and (2))	7.85
2. Report of the Commission (art. 14(3))	7.86
Article 15: This Directive is addressed to the Member States	7.88
1. No direct effect (art. 15)	7.88
8. THE TERM DIRECTIVE	
Article 1: Duration of authors' rights	8.01
1. General remarks and introduction to the Directive	8.01
2. Duration of author's rights	8.09
Article 2: Cinematographic or audiovisual works	8.19
1. Authorship of cinematographic or audiovisual works	8.19
2. Calculation of the term of protection	8.22
Article 3: Duration of related rights (as modified by Directive 2011/77/EU)	8.26
1. Duration of related rights: general rules	8.26
2. Specific rules for performers and producers of phonograms. Amendments introduced by Directive 2011/77/EU	8.32
Article 4: Protection of previously unpublished works	8.40
Article 5: Critical and scientific publications	8.42
Article 6: Protection of photographs	8.44
Article 7: Protection vis-à-vis third countries	8.48
Article 8: Calculation of terms	8.52
Article 9: Moral rights	8.54
Article 10: Application in time	8.55
1. Longer terms of protection for copyright or related rights already running in a Member State	8.55
2. Application in time of the Directive	8.56
3. Application in time of the modifications introduced by Directive 2011/77/EU	8.61

Article 10a: Transitional measures	8.63
Article 11: Notification and communication (codified version)	8.65
Article 11 Technical adaptation (initial version abolished in the codified version)	8.66
Article 12: Repeal (Codified version)	8.69
Article 13: Entry into force (Article 4 of Directive 2011/77/EU)	8.70
Article 14: Addressees (Article 5 of Directive 2011/77/EU)	8.72
9. THE DATABASE DIRECTIVE	
Chapter I: Scope	9.01
Article 1: Scope	9.01
1. Paragraph 1	9.01
2. Paragraph 2	9.02
3. Paragraph 3	9.07
Article 2: Limitations on the scope	9.09
Chapter II: Copyright	
Article 3: Object of protection	9.12
1. Paragraph 1	9.12
2. Paragraph 2	9.16
Article 4: Database authorship	9.17
Article 5: Restricted acts	9.20
1. Reproduction	9.21
2. Translation	9.22
3. Distribution	9.23
4. Communication to the public	9.24
5. Exhaustion	9.25
6. Infringement	9.26
Article 6: Exceptions to restricted acts	9.27
1. Paragraph 1	9.27
2. Paragraph 2	9.28
3. Paragraph 3	9.29
4. Other copyright aspects not regulated by the Database Directive	9.30
Chapter III: <i>Sui generis</i> right	
Article 7: Object of protection	9.31
1. The nature of the <i>sui generis</i> right	9.31
2. Reasons for the <i>sui generis</i> right	9.32
3. Protection requirement: qualitative or quantitative substantial investment in the obtaining, verification or presentation of the database's contents	9.33
4. Ownership	9.42
5. The rights	9.43
6. Infringement	9.48
Article 8: Rights and obligations of lawful users	9.55
1. Concept of lawful user	9.56
2. Paragraph 1	9.58
3. Paragraph 2	9.59
4. Paragraph 3	9.60
Article 9: Exceptions to the <i>sui generis</i> right	9.61
Article 10: Term of protection	9.65
1. Paragraphs 1 and 2	9.65
2. Paragraph 3	9.66
Article 11: Beneficiaries of protection under the <i>sui generis</i> right	9.68
Chapter IV: Common provisions	
Article 12: Remedies	9.70
Article 13: Continued application of other legal provisions	9.71
Article 14: Application over time	9.75
1. Paragraph 1	9.75
2. Paragraph 2	9.76
3. Paragraphs 3, 4 and 5	9.77

Article 15: Binding nature of certain provisions	9.78
Article 16: Final provisions	9.79
10. THE RESALE RIGHT DIRECTIVE	
1. The origins of resale right (<i>droit de suite</i>)	10.01
2. The nature of <i>droit de suite</i>	10.05
3. International regulation of the resale right	10.06
4. Need for harmonisation and EU competence	10.08
5. The genesis of Directive 2001/84/EC	10.10
6. The Resale Right Directive in one glimpse	10.16
7. Implementation in the Member States	10.17
Chapter I: Scope	
Article 1: Subject matter of the resale right	10.24
1. Article 1(1)	10.24
Article 2: Works of art to which the resale right relates	10.30
Chapter II: Particular provisions	10.33
Article 3: Threshold	10.33
Article 4: Rates	10.36
Article 5: Calculation basis	10.43
Article 6: Persons entitled to receive royalties	10.44
1. Restrictions on the transmission of resale right post mortem	10.46
2. Commentary	10.49
3. Collective rights management	10.52
Article 7: Third-country nationals entitled to receive royalties	10.58
1. Australia	10.64
2. United States	10.69
3. China	10.73
Article 8: Term of protection of the resale right	10.75
1. United Kingdom	10.80
2. Austria	10.81
3. Ireland	10.82
4. The Netherlands	10.83
5. Luxembourg	10.84
Article 9: Right to obtain information	10.85
Chapter III: Final provisions	
Article 10: Application in time	10.87
Article 11: Revision clause	10.88
Article 12: Implementation	10.94
Article 13: Entry into force	10.97
Article 14: Addressees	
11. THE INFORMATION SOCIETY DIRECTIVE	
Chapter I: Objective and scope	
Article 1: Scope	11.02
1. Scope (para 1)	11.02
2. Relationship with other Directives (para 2)	11.03
Chapter II: Rights and exceptions	
Article 2: Reproduction right	11.04
Article 3: Right of communication to the public of works and right of making available to the public other subject matter	11.13
1. Introduction	11.13
2. The right of communication to the public	11.15
3. The right of 'making available to the public'	11.24
4. Hypertext links and cloud services	11.28
5. The notion of 'public'	11.30
6. Exhaustion of rights	11.32

Article 4: Distribution right	11.36
1. Introduction	11.36
2. 'Authors'	11.39
3. 'Original of their works or of copies thereof'	11.41
4. 'By sale or otherwise'	11.47
5. Exhaustion of rights	11.48
Article 5: Exceptions and limitations	11.62
I. Commentary	11.62
II. Method of harmonisation of Article 5	11.64
III. Effect of Article 5	11.74
IV. Possible revision of Article 5	11.93
V. Fair compensation, remuneration and the link to collective management	11.104
Chapter III: Protection of technological measures and rights-management information	
Article 6: Obligations as to technological measures	11.107
1. Background	11.107
2. Similar provisions in EU law	11.108
3. Effective technological measures (para. 3)	11.109
4. Circumvention (para. 1)	11.114
5. Preparatory acts (para. 2)	11.120
Article 7: Obligations concerning rights-management information	11.129
1. Background	11.129
2. Rights management information	11.130
3. 'Adequate legal protection' for persons 'knowingly' performing 'unauthorised' acts of 'works or protected subject matter'	11.132
4. Actionable acts	11.137
5. Other issues	11.141
Chapter IV: Common provisions	
Article 8: Sanctions and remedies	11.143
1. Introduction	11.143
2. Article 8(1)	11.146
3. Article 8(2)	11.148
4. Article 8(3) – Injunctions against intermediaries	11.149
Article 9: Continued application of other legal provisions	11.171
Article 10: Application over time	11.173
Article 11: Technical adaptations	11.175
1. Article 11(1)	11.175
2. Article 11(2)	11.177
Article 12: Final provisions	11.179
1. Article 12(1)	11.179
2. Article 12(2)	11.180
3. Article 12(3) and (4)	11.181
Article 13: Implementation	11.183
Article 14: Entry into force	11.184
Article 15: Addressees	11.185

12. THE ENFORCEMENT DIRECTIVE

1. Introduction	12.01
Chapter I: Objective and scope	
Article 1: Subject matter	12.06
1. 'Measures, procedures and remedies'	12.06
2. 'Intellectual property rights'	12.07
Article 2: Scope	12.09
1. Article 2(1)	12.09
2. Article 2(2) and (3)	12.15
Article 3: General obligation	12.22

Article 4: Persons entitled to apply for the application of the measures, procedures and remedies	12.27
1. Introduction	12.27
2. Article 4(a) and ‘holders’ of intellectual property rights	12.31
3. Article 4(b) and ‘all other persons authorised to use those rights’	12.34
4. Article 4(c) and (d)	12.37
Article 5: Presumption of authorship or ownership	12.42
1. Introduction	12.42
2. ‘Author’	12.43
3. ‘On the work in the usual manner’	12.47
4. ‘Holders of rights related to copyright’	12.49
Section 2: Evidence	
Article 6: Evidence	12.51
1. Introduction	12.51
2. Article 6(1)	12.53
3. Article 6(2)	12.70
Article 7: Measures for preserving evidence	12.82
1. Introduction	12.82
2. Article 7(1)	12.83
3. Article 7(2)	12.94
4. Article 7(3)	12.95
5. Article 7(4)	12.96
6. Article 7(5)	12.98
Article 8: Right of information	12.99
1. Introduction	12.99
2. Article 8(1)	12.102
3. Article 8(2)	12.110
4. Article 8(3)	12.111
5. Conflicts between copyright protection and privacy in the light of the case law of the CJEU concerning ISPs	12.125
Article 9: Provisional and precautionary measures	12.126
1. Introduction	12.126
2. Provisional measures against ‘intermediaries’	12.137
3. Seizure of goods	12.140
4. Precautionary seizure of assets to secure financial claims	12.143
Article 10: Corrective measures	12.152
Article 11: Injunctions	12.161
1. Introduction	12.161
2. Enforcing an injunction	12.165
3. Injunctions against intermediaries	12.167
Article 12: Alternative measures	12.170
Section 6: Damages and legal costs	12.170
Article 13: Damages	12.179
1. Introduction	12.179
2. Article 13(1)	12.181
3. Article 13(2)	12.191
Article 14: Legal costs	12.192
Section 7: Publicity measures	
Article 15: Publication of judicial decisions	12.198
Chapter II: Sanctions by Member States	
Article 16: Sanctions by Member States	12.205
Chapter III: Codes of conduct and administrative cooperation	
Article 17: Codes of conduct	12.208
Article 18: Assessment	12.211
Article 19: Exchange of information and correspondents	12.215
Chapter IV: Final provisions	
Article 20: Implementation	12.216

Article 21: Entry into force	12.218
Article 22: Addressees	
13. THE ORPHAN WORKS DIRECTIVE	
Chapter I: Objective and scope	
Article 1: Subject-matter and scope	13.01
1. Rationale and objectives	13.01
2. Beneficiaries	13.05
3. Subject matter	13.10
4. Collective management and the Memorandum of Understanding on out-of-commerce works	13.21
Article 2: Orphan works	13.25
1. Defining an orphan work	13.25
2. Multiple right holders	13.29
Article 3: Diligent search	13.31
1. Summary of 'diligent search' rules	13.31
2. 'Diligent search' and 'good faith'	13.33
3. 'Appropriate sources'	13.34
4. Extent and effect of diligent search	13.37
5. Recordation and public register	13.39
Article 4: Mutual recognition of orphan work status	13.47
Article 5: End of orphan work status	13.48
Article 6: Permitted uses of orphan works	13.50
1. Scope of permitted use	13.50
2. Beneficiaries	13.51
3. Compensation to right holders	13.54
Article 7: Continued application of other legal provisions	13.56
Article 8: Application in time	13.59
Article 9: Transposition	13.61
Article 10: Review clause	13.62
Article 11: Entry into force	
Article 12: Addressees	
14. COLLECTIVE RIGHTS MANAGEMENT DIRECTIVE	
Introduction	14.01
Title I: General provisions	14.09
Article 1: Subject matter	14.09
Article 2: Scope	14.13
Article 3: Definitions	14.15
Title II: Collective management organisations	14.23
Chapter 1: Representation of rightholders and membership and organisation of collective management organisations	14.23
Article 4: General principles	14.24
Article 5: Rights of rightholders	14.28
Article 6: Membership rules of collective management organisations	
Article 7: Rights of rightholders who are not members of the collective management organisation	14.38
Article 8: General assembly of members of the collective management organisation	14.41
Article 9: Supervisory function	
Article 10: Obligations of the persons who effectively manage the business of the collective management organisation	14.44
Chapter 2: Management of rights revenue	
Article 11: Collection and use of rights revenue	
Article 12: Deductions	
Article 13: Distribution of the amounts due to rightholders	14.46

Chapter 3: Management of rights on behalf of other collective management organisations	
Article 14: Rights managed under representation agreements	
Article 15: Deductions and payments in representation agreements	14.51
Chapter 4: Relations with users	
Article 16: Licensing	14.54
Article 17: Users' obligations	14.60
Chapter 5: Transparency and reporting	
Article 18: Information provided to rightholders on the management of their rights	
Article 19: Information provided to other collective management organisations on the management of rights under representation agreements	
Article 20: Information provided to rightholders, other collective management organisations and users on request	
Article 21: Disclosure of information to the public	
Article 22: Annual transparency report	14.61
Title III: Multi-territorial licensing of on-line rights in musical works by collective management organisations	
Article 23: Multi-territorial licensing in the internal market	14.64
Article 24: Capacity to process multi-territorial licences	
Article 25: Transparency of multi-territorial repertoire information	
Article 26: Accuracy of multi-territorial repertoire information	
Article 27: Accurate and timely reporting and invoicing	
Article 28: Accurate and timely payment to rightholders	14.67
Article 29: Agreements between collective management organisations for multi-territorial licensing	
Article 30: Obligation to represent another collective management organisation for multi-territorial licensing	
Article 31: Access to multi-territorial licensing	14.69
Article 32: Derogation for online music rights required for radio and television programmes	14.72
Title IV: Enforcement measures	
Article 33: Complaints procedure	
Article 34: Alternative dispute resolution procedures	
Article 35: Dispute resolution	14.73
Article 36: Compliance	
Article 37: Exchange of information between competent authorities	14.75
Article 38: Cooperation for the development of multi-territorial licensing	
Title V: Reporting and final provisions	
Article 39: Notification of collective management organisations	14.79
Article 40: Report	
Article 41: Expert group	14.80
Article 42: Protection of personal data	14.82
Article 43: Transposition	
Article 44: Entry into force	
Article 45: Addressees	14.83

PART III EU POLICIES AND ACTIONS

15. THE EU POLICIES AND ACTIONS IN THE FIGHT AGAINST PIRACY

I. Introduction	15.01
II. From the Berne Convention to the WIPO Internet Treaties	15.06
III. The awakening of the European Union to the problem of piracy	15.14
1. Genesis and development of the EU policies and actions in the fight against piracy	15.14
2. The EU approach to the fight against piracy in a nutshell	15.28

IV. The fight against piracy in the internal market and at the EU's external borders	15.30
1. Legislative actions	15.31
2. Non-legislative actions	15.88
V. The fight against piracy on the internet	15.124
1. Legislative actions	15.129
2. Non-legislative actions	15.176
VI. The fight against piracy in third countries	15.181
1. Legislative actions	15.187
2. Non-legislative actions	15.241
3. Assessment of the EU's foreign policies on IPR enforcement	15.266
VII. Conclusion: Where do we stand and where are we going?	15.270
16. EUROPEANA, ARROW AND ORPHAN WORKS: BRINGING EUROPE'S CULTURAL HERITAGE ONLINE	
I. The role of culture in the digital age	16.01
II. Digitisation and preservation of Europe's cultural memory: a key aspect of the EU information policy	16.07
1. Digitisation of cultural heritage: aims and benefits	16.07
2. Preserving cultural heritage	16.17
III. The launch of Europeana and other European actions and initiatives on the digitisation, on-line accessibility and preservation of European cultural material	16.22
1. Europe's digital agenda so far	16.22
2. Europe's cultural heritage for all: the launch of Europeana	16.28
IV. Digitisation and copyright law: a tension with consequences	16.50
1. Digitisation of public domain content	16.50
2. The digitisation of copyrighted material as a special challenge	16.62
V. The orphan works issue	16.78
1. Cost and time-consuming rights clearance as an obstacle to digitisation and preservation	16.78
2. The Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works	16.83
3. ARROW: Accessible Registries of Rights Information and Orphan Works	16.90
VI. The legal challenge: finding the right balance in the digital age	16.98
1. Tensions between creators, intermediaries and the public: an interest analysis	16.102
2. Interest implications	16.115
VII. Policy conclusion	16.116
17. THE DIGITAL AGENDA FOR EUROPE, THE ECONOMY AND ITS IMPACT UPON THE DEVELOPMENT OF EU COPYRIGHT POLICY	
I. Introduction	17.01
II. The Digital Agenda and the facilitation of the digital single market	17.04
1. A harmonising agenda: fixing the fragmented digital market	17.05
2. 'It's the economy, stupid': the main driver of Europe 2020 and the Digital Agenda	17.09
3. No longer an orphan? Copyright reforms achieved under the auspices of the Digital Agenda	17.11
III. Difficulties, delays and divisions: harmonisation stalled, and unification overlooked?	17.14
1. Actions not yet achieved: CRM and copyright enforcement, the (ever) on-going processes	17.15
2. A European Copyright Code and copyright flexibilities: the untouched issues of the Digital Agenda?	17.18
IV. Why effective realisation of the Digital Agenda is difficult to achieve: previous failures, resistance, and external factors	17.22
1. Creative content online: the failed attempt to reform CRM in the EU	17.23
2. The political difficulties of copyright reform: resistance, reluctance and rupture	17.25

3. 'It's the economy (redux)': why copyright reform alone may not lead to growth and prosperity	17.28
V. Concluding remarks	17.32
18. INTELLECTUAL PROPERTY AND THE EU RULES ON PRIVATE INTERNATIONAL LAW: MATCH OR MISMATCH?	
I. Introduction	18.01
II. Jurisdiction	18.02
1. The starting point	18.02
2. Article 8.1 Brussels I (recast)	18.03
3. Article 24(4)	18.08
III. Choice of law	18.30
1. The Rome I Regulation	18.31
2. The Rome II Regulation	18.64
IV. Conclusion	18.93

PART IV PRESENT AND FUTURE OF COPYRIGHT IN THE EUROPEAN UNION

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

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

I. Introduction	20.01
II. Originality/creativity	20.08
III. The 'Work'	20.13
IV. Exclusive rights	20.14
1. Reproduction / adaptation	20.15
2. Distribution	20.17
3. Public lending	20.22
4. Communication to the public	20.23
V. Ownership of rights	20.27
VI. Term of protection	20.29
VII. Exceptions and limitations	20.31
1. Principles of interpretation	20.32
2. Article 5(1)	20.34
3. Optional exceptions and limitations under the Information Society Directive	20.40
4. Exceptions and limitations under the Rental Right Directive	20.44
5. 'Fair compensation'	20.45
6. Exceptions and limitations under the Software Directive	20.49
VIII. Conclusion	20.52
21. TOWARDS A EUROPEAN COPYRIGHT LAW: FOUR ISSUES TO CONSIDER	
I. Introduction	21.01
II. The territoriality issues: what can be done? What are the problems?	21.09
III. The argument for a EU-wide copyright title and a regulation	21.22
IV. The need for EU rules on copyright contracts	21.30
1. Overview of the rules on copyright contracts in the EU	21.34
2. Example of protective rules in continental Europe	21.35
3. Extended collective licensing in the Scandinavian countries	21.40
4. The need for new rules with regard to the new online business models	21.45
5. The facilitation of pan-European licensing in certain sectors	21.46
V. The flexibility needed for copyright exceptions and the need for harmonising private copying levies	21.49
1. The need to take technology-enabled uses into account	21.50
2. The need to revisit the exceptions applicable in the field of non-commercial education	21.59
3. Alignment of the private copying exception with the reasonable expectations of users and harmonisation of copyright levies	21.61
22. CONCLUSION	1155
<i>Index</i>	1159

