EXTENDED TABLE OF CONTENTS

List of contributors xxvi
Preface xxvii
Table of cases xxviii
Table of legal instruments xl

INTRODUCTION

PART I  GENERAL PRINCIPLES OF EUROPEAN COPYRIGHT

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

   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 acquis communautaire 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
Extended Table of Contents

II. *Magill* and beyond – essential facility cases relating to copyright 4.42
   1. *Magill* 4.43
   2. *Tiercé* *Ladbroke* 4.49
   3. *IMS* 4.50
   4. *Microsoft* 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
## Extended Table of Contents

<table>
<thead>
<tr>
<th>Article 2: Definitions</th>
<th>6.23</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definitions</td>
<td>6.24</td>
</tr>
<tr>
<td>2. Authorship of the principal director</td>
<td>6.41</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 3: Rightholders and subject matter of rental and lending right</th>
<th>6.43</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Beneficiaries and subject matter of the rental and lending right</td>
<td>6.44</td>
</tr>
<tr>
<td>2. The transferability of the exclusive right</td>
<td>6.50</td>
</tr>
<tr>
<td>3. Presumptions in favour of the film producer</td>
<td>6.51</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 4: Rental of computer programs</th>
<th>6.55</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The unwaivability of the right to remuneration</td>
<td>6.58</td>
</tr>
<tr>
<td>2. The role to be played by collecting societies</td>
<td>6.64</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 5: Unwaivable right to equitable remuneration</th>
<th>6.65</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Derogation from the exclusive right</td>
<td>6.66</td>
</tr>
<tr>
<td>2. Derogation regarding beneficiaries of the right to remuneration</td>
<td>6.67</td>
</tr>
<tr>
<td>3. The consideration of cultural promotion objectives</td>
<td>6.68</td>
</tr>
<tr>
<td>4. Exemption of certain categories of establishments</td>
<td>6.71</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 6: Derogation from the exclusive public lending right</th>
<th>6.73</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Derogation from the exclusive right</td>
<td>6.75</td>
</tr>
<tr>
<td>2. Derogation regarding beneficiaries of the right to remuneration</td>
<td>6.76</td>
</tr>
<tr>
<td>3. The act of communication to the public occurs solely in one Member State (art. 1(2)(b))</td>
<td>6.78</td>
</tr>
<tr>
<td>4. Equitable remuneration</td>
<td>6.79</td>
</tr>
<tr>
<td>5. Collecting society</td>
<td>6.80</td>
</tr>
<tr>
<td>6. Authors of audiovisual works (art. 1(5))</td>
<td>6.81</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 7: Distribution right</th>
<th>6.97</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The fixation right for performers</td>
<td>6.98</td>
</tr>
<tr>
<td>2. The fixation right for broadcasting organisations</td>
<td>6.99</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 8: Broadcasting and communication to the public</th>
<th>7.05</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Communication to the public</td>
<td>7.06</td>
</tr>
<tr>
<td>2. Equitable remuneration</td>
<td>7.07</td>
</tr>
<tr>
<td>3. Beneficiaries</td>
<td>7.08</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 9: Rights related to copyright</th>
<th>7.10</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The right of performers</td>
<td>7.11</td>
</tr>
<tr>
<td>2. The right of broadcasting organisations</td>
<td>7.12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 10: Limitations to rights</th>
<th>7.13</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Duty to inform (art. 3(4))</td>
<td>7.14</td>
</tr>
<tr>
<td>2. Cable retransmission (art. 3(5))</td>
<td>7.15</td>
</tr>
<tr>
<td>3. Collecting society (art. 1(4))</td>
<td>7.16</td>
</tr>
<tr>
<td>4. Authors of audiovisual works (art. 1(5))</td>
<td>7.17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 11: Application in time</th>
<th>7.18</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Communication to the public</td>
<td>7.19</td>
</tr>
<tr>
<td>2. Equitable remuneration</td>
<td>7.20</td>
</tr>
<tr>
<td>3. Beneficiaries</td>
<td>7.21</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 12: Relation between copyright and related rights</th>
<th>7.22</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rights of performers</td>
<td>7.23</td>
</tr>
<tr>
<td>2. Rights of phonogram producers</td>
<td>7.24</td>
</tr>
<tr>
<td>3. Rights of broadcasting organisations</td>
<td>7.25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 13: Communication</th>
<th>7.26</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Duty to inform (art. 3(4))</td>
<td>7.27</td>
</tr>
<tr>
<td>2. Cable retransmission (art. 3(5))</td>
<td>7.28</td>
</tr>
<tr>
<td>3. Collecting society (art. 1(4))</td>
<td>7.29</td>
</tr>
<tr>
<td>4. Authors of audiovisual works (art. 1(5))</td>
<td>7.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 14: Repeal</th>
<th>7.31</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Repeal of limitations</td>
<td>7.32</td>
</tr>
<tr>
<td>2. Repeal of derogation</td>
<td>7.33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 15: Entry into force</th>
<th>7.34</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Entry into force of the Directive</td>
<td>7.35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 16: Addressees</th>
<th>7.37</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Addressees of the Directive</td>
<td>7.38</td>
</tr>
</tbody>
</table>

### 7. THE SATELLITE AND CABLE DIRECTIVE

#### Chapter I: Definitions

<table>
<thead>
<tr>
<th>Article 1: Definitions</th>
<th>7.01</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introduction</td>
<td>7.02</td>
</tr>
<tr>
<td>2. Definition of a ‘satellite’ (art. 1(1))</td>
<td>7.03</td>
</tr>
<tr>
<td>3. Communication to the public (art. 1(2)(a))</td>
<td>7.04</td>
</tr>
<tr>
<td>4. The act of communication to the public occurs solely in one Member State (art. 1(2)(b))</td>
<td>7.05</td>
</tr>
<tr>
<td>5. Encryption of signals (art. 1(2)(c))</td>
<td>7.06</td>
</tr>
<tr>
<td>6. Extension of the communication to the public definition – satellite broadcasts from outside the EU (art. 1(2)(d))</td>
<td>7.07</td>
</tr>
<tr>
<td>7. Cable retransmission (art. 1(3))</td>
<td>7.08</td>
</tr>
<tr>
<td>8. Collecting society (art. 1(4))</td>
<td>7.09</td>
</tr>
<tr>
<td>9. Authors of audiovisual works (art. 1(5))</td>
<td>7.10</td>
</tr>
</tbody>
</table>

#### Chapter II: Broadcasting of programmes by satellite

<table>
<thead>
<tr>
<th>Article 2: Broadcasting right</th>
<th>7.11</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. An Exclusive Broadcasting Right in the country-of-origin (art. 2)</td>
<td>7.12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 3: Acquisition of broadcasting rights</th>
<th>7.13</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Acquisition by contract (art. 3(1))</td>
<td>7.14</td>
</tr>
<tr>
<td>2. Collective licensing (art. 3(2))</td>
<td>7.15</td>
</tr>
<tr>
<td>3. Cinematographic works (art. 3(3))</td>
<td>7.16</td>
</tr>
<tr>
<td>4. Duty to inform (art. 3(4))</td>
<td>7.17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 4: Rights of performers, phonogram producers and broadcasting organisations</th>
<th>7.18</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Related rights (art. 4(1))</td>
<td>7.19</td>
</tr>
</tbody>
</table>
9. THE DATABASE DIRECTIVE

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

Article 2: Limitations on the scope

Chapter II: Copyright
Article 3: Object of protection
1. Paragraph 1
2. Paragraph 2

Article 4: Database authorship

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

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

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

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

Article 9: Exceptions to the sui generis right

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

Article 11: Beneficiaries of protection under the sui generis right

Chapter IV: Common provisions
Article 12: Remedies

Article 13: Continued application of other legal provisions

Article 14: Application over time
1. Paragraph 1
2. Paragraph 2
3. Paragraphs 3, 4 and 5
## Extended Table of Contents

**10. THE RESALE RIGHT DIRECTIVE**

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 15</td>
<td>Binding nature of certain provisions</td>
<td>9.78</td>
</tr>
<tr>
<td>Article 16</td>
<td>Final provisions</td>
<td>9.79</td>
</tr>
</tbody>
</table>

**1. The origins of resale right (droit de suite)**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The origins of resale right (droit de suite)</td>
<td>10.01</td>
</tr>
<tr>
<td>2</td>
<td>The nature of droit de suite</td>
<td>10.05</td>
</tr>
<tr>
<td>3</td>
<td>International regulation of the resale right</td>
<td>10.06</td>
</tr>
<tr>
<td>4</td>
<td>Need for harmonisation and EU competence</td>
<td>10.08</td>
</tr>
<tr>
<td>5</td>
<td>The genesis of Directive 2001/84/EC</td>
<td>10.10</td>
</tr>
<tr>
<td>6</td>
<td>The Resale Right Directive in one glimpse</td>
<td>10.16</td>
</tr>
<tr>
<td>7</td>
<td>Implementation in the Member States</td>
<td>10.17</td>
</tr>
</tbody>
</table>

**Chapter I: Scope**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1</td>
<td>Subject matter of the resale right</td>
<td>10.24</td>
</tr>
<tr>
<td>1</td>
<td>Article 1(1)</td>
<td>10.24</td>
</tr>
<tr>
<td>Article 2</td>
<td>Works of art to which the resale right relates</td>
<td>10.30</td>
</tr>
</tbody>
</table>

**Chapter II: Particular provisions**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 3</td>
<td>Threshold</td>
<td>10.33</td>
</tr>
<tr>
<td>Article 4</td>
<td>Rates</td>
<td>10.36</td>
</tr>
<tr>
<td>Article 5</td>
<td>Calculation basis</td>
<td>10.43</td>
</tr>
<tr>
<td>Article 6</td>
<td>Persons entitled to receive royalties</td>
<td>10.44</td>
</tr>
<tr>
<td>1</td>
<td>Restrictions on the transmission of resale right post mortem</td>
<td>10.46</td>
</tr>
<tr>
<td>2</td>
<td>Commentary</td>
<td>10.49</td>
</tr>
<tr>
<td>3</td>
<td>Collective rights management</td>
<td>10.52</td>
</tr>
</tbody>
</table>

**Chapter III: Final provisions**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 10</td>
<td>Application in time</td>
<td>10.87</td>
</tr>
<tr>
<td>Article 11</td>
<td>Revision clause</td>
<td>10.88</td>
</tr>
<tr>
<td>Article 12</td>
<td>Implementation</td>
<td>10.94</td>
</tr>
<tr>
<td>Article 13</td>
<td>Entry into force</td>
<td>10.97</td>
</tr>
<tr>
<td>Article 14</td>
<td>Addressees</td>
<td></td>
</tr>
</tbody>
</table>

**11. THE INFORMATION SOCIETY DIRECTIVE**

**Chapter I: Objective and scope**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1</td>
<td>Scope</td>
<td>11.02</td>
</tr>
<tr>
<td>1</td>
<td>Scope (para 1)</td>
<td>11.02</td>
</tr>
<tr>
<td>2</td>
<td>Relationship with other Directives (para 2)</td>
<td>11.03</td>
</tr>
</tbody>
</table>

**Chapter II: Rights and exceptions**

<table>
<thead>
<tr>
<th>Article 16</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 2</td>
<td>Reproduction right</td>
<td>11.04</td>
</tr>
<tr>
<td>Article 3</td>
<td>Right of communication to the public of works and right of making available to the public other subject matter</td>
<td>11.13</td>
</tr>
<tr>
<td>1</td>
<td>Introduction</td>
<td>11.13</td>
</tr>
<tr>
<td>2</td>
<td>The right of communication to the public</td>
<td>11.15</td>
</tr>
<tr>
<td>3</td>
<td>The right of ‘making available to the public’</td>
<td>11.24</td>
</tr>
<tr>
<td>4</td>
<td>Hypertext links and cloud services</td>
<td>11.28</td>
</tr>
<tr>
<td>5</td>
<td>The notion of ‘public’</td>
<td>11.30</td>
</tr>
<tr>
<td>6</td>
<td>Exhaustion of rights</td>
<td>11.32</td>
</tr>
</tbody>
</table>
Article 4: Distribution right
1. Introduction 11.36
2. ‘Authors’ 11.39
3. ‘Original of their works or of copies thereof’ 11.41
4. ‘By sale or otherwise’ 11.47
5. Exhaustion of rights 11.48

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

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

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

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

Article 9: Continued application of other legal provisions 11.171
Article 10: Application over time 11.173
Article 11: Technical adaptations
1. Article 11(1) 11.175
2. Article 11(2) 11.177

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

Article 13: Implementation
Article 14: Entry into force
Article 15: Addressees

12. THE ENFORCEMENT DIRECTIVE
1. Introduction 12.01

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

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

Article 3: General obligation
### Extended Table of Contents

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

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

**Section 2: Evidence**

**Article 6:** Evidence  
1. Introduction  
2. Article 6(1)  
3. Article 6(2)  

**Article 7:** Measures for preserving evidence  
1. Introduction  
2. Article 7(1)  
3. Article 7(2)  
4. Article 7(3)  
5. Article 7(4)  
6. Article 7(5)  

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

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

**Article 10:** Corrective measures

**Article 11:** Injunctions  
1. Introduction  
2. Enforcing an injunction  
3. Injunctions against intermediaries

**Article 12:** Alternative measures

**Section 6: Damages and legal costs**

**Article 13:** Damages  
1. Introduction  
2. Article 13(1)  
3. Article 13(2)  

**Article 14:** Legal costs

**Section 7: Publicity measures**  
**Article 15:** Publication of judicial decisions

**Chapter II: Sanctions by Member States**

**Article 16:** Sanctions by Member States

**Chapter III: Codes of conduct and administrative cooperation**

**Article 17:** Codes of conduct

**Article 18:** Assessment

**Article 19:** Exchange of information and correspondents

**Chapter IV: Final provisions**

**Article 20:** Implementation
13. THE ORPHAN WORKS DIRECTIVE

Chapter I: Objective and scope
Article 1: Subject-matter and scope
  1. Rationale and objectives
  2. Beneficiaries
  3. Subject matter
  4. Collective management and the Memorandum of Understanding on out-of-commerce works
Article 2: Orphan works
  1. Defining an orphan work
  2. Multiple right holders
Article 3: Diligent search
  1. Summary of ‘diligent search’ rules
  2. ‘Diligent search’ and ‘good faith’
  3. ‘Appropriate sources’
  4. Extent and effect of diligent search
  5. Recordation and public register
Article 4: Mutual recognition of orphan work status
Article 5: End of orphan work status
Article 6: Permitted uses of orphan works
  1. Scope of permitted use
  2. Beneficiaries
  3. Compensation to right holders
Article 7: Continued application of other legal provisions
Article 8: Application in time
Article 9: Transposition
Article 10: Review clause
Article 11: Entry into force
Article 12: Addressees

14. COLLECTIVE RIGHTS MANAGEMENT DIRECTIVE

Introduction
Title I: General provisions
  Article 1: Subject matter
  Article 2: Scope
  Article 3: Definitions
Title II: Collective management organisations
  Chapter 1: Representation of rightholders and membership and organisation of collective management organisations
  Article 4: General principles
  Article 5: Rights of rightholders
  Article 6: Membership rules of collective management organisations
  Article 7: Rights of rightholders who are not members of the collective management organisation
  Article 8: General assembly of members of the collective management organisation
  Article 9: Supervisory function
  Article 10: Obligations of the persons who effectively manage the business of the collective management organisation
  Chapter 2: Management of rights revenue
  Article 11: Collection and use of rights revenue
  Article 12: Deductions
  Article 13: Distribution of the amounts due to rightholders
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
Chapter 4: Relations with users
   Article 16: Licensing
   Article 17: Users' obligations
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

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
   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
   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
   Article 32: Derogation for online music rights required for radio and television programmes

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

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

PART III EU POLICIES AND ACTIONS

15. THE EU POLICIES AND ACTIONS IN THE FIGHT AGAINST PIRACY
   I. Introduction
   II. From the Berne Convention to the WIPO Internet Treaties
   III. The awakening of the European Union to the problem of piracy
      1. Genesis and development of the EU policies and actions in the fight against piracy
      2. The EU approach to the fight against piracy in a nutshell
## IV. The fight against piracy in the internal market and at the EU's external borders

1. Legislative actions 15.30
2. Non-legislative actions 15.88

## V. The fight against piracy on the internet

1. Legislative actions 15.124
2. Non-legislative actions 15.176

## VI. The fight against piracy in third countries

1. Legislative actions 15.181
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

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

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

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

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

### VI. The legal challenge: finding the right balance in the digital age

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

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?

1. Actions not yet achieved: CRM and copyright enforcement, the (ever) on-going processes 17.14
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

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
xviii
## Extended Table of Contents

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

Index............................................................ 1159