

INTRODUCTION

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Intellectual property rights play a pivotal role in the advance of technology, the sustainability of creativity and the flourishing of the economy in the European Union (EU). Copyright forms an important part of intellectual property (IP), especially if one considers that it is closely linked to culture, knowledge, digitisation projects, online markets and new technologies. Copyright has to face a dual challenge. On the one hand, it needs to provide sufficient protection to authors and right holders and on the other hand, it needs to accommodate the needs of the information society and the public, which are mostly concerned with access to content. **0.01**

Copyright has changed shape through the years depending on copyright's weight in the EU and the single market. When the Treaty of Rome was drafted (1957) copyright was not an issue. The reason for that was that the aims and targets of a European Economic Community seemed to be unrelated to IP and even more to copyright. In the whole of the Treaty of Rome one could find just one reference to IP and this was only to 'industrial and commercial property'. This reference was inserted as an exception to the general rule for the free movement of goods (Art. 36 EC Treaty). At a later stage the Court of Justice of the European Union (CJEU) applied this exception by analogy to copyright. The case law developed on the basis of this provision was considerable and touched upon aspects that one could not even conceive at the early stages. The importance of copyright (as well as IP rights) was only realised when this right (because of its absolute and exclusive character as well as because of its territorial constraints) was used by entrepreneurs as a tool to sidestep provisions on the free movement of goods and try to charge different prices for the same product in different EU Member States through the prevention of parallel imports. The CJEU's case law restored the balance and set the principles. **0.02**

The creative industries proved to be a backbone for the EU's economy. New technologies and the internet rendered copyright even more important and dictated specific legislative solutions and initiatives on the part of the EU.

It is estimated that creative industries based on copyright, such as the software industry, book publications and newspapers, the phonographic and film industry contributed 3.3 per cent to EU GDP in 2006, representing about 8.5 million jobs. Employment in sectors of the 'knowledge economy' has increased by 24 **0.03**

per cent between 1996 and 2006 compared to 6 per cent in other sectors.¹ There were 1.4 million small businesses related to intellectual property and particularly to the book, newspapers, music and movie sector, which represented 3 per cent of the labour market in 2008 and were among the most dynamic sectors in the EU. The number of employees in the creative industries in the EU-27 was 6.7 million in 2008.² According to a 2013 study by the European Patent Office and OHIM,³ during the period 2008–2010 IPR-intensive industries generated almost 39% of total economic activity (GDP) in the EU, worth €4.7 trillion. They also accounted for most of the EU's trade with the rest of the world, with design-intensive, copyright-intensive and GI-intensive industries generating a trade surplus.

- 0.04** On 19 May 2010 the EU introduced the Europe 2020 Strategy, which is its plan for the advancement of the economy. This strategy sets out five key targets⁴ to be achieved by the end of 2020 through seven 'flagship initiatives', which among others include innovation and the digital economy.
- 0.05** The Digital Agenda presented by the European Commission forms one of the seven 'flagship initiatives'.⁵ It aims to better exploit the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress. Actions relating to IP rights were scheduled to be concluded by 2014 and aimed to adjust existing IP rights to the digital world. The Europe 2020 Strategy was published in the form of a Communication.⁶
- 0.06** In April 2011 the Commission published another Communication known as 'The Single Market Act' (Single Market Act I).⁷ This Act aimed at delivering 12 projects on the basis of which the single market would be reinforced for 2012. Amongst these projects two were dedicated to Intellectual Property Rights and the Digital Single Market. In October 2012⁸ the Commission

1 European Commission, Internal Market and Services, Revamping Intellectual Property Rights in the European Union, http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/booklet_en.pdf.

2 European Competitiveness Report 2010.

3 <[http://documents.epo.org/projects/babylon/eponet.nsf/0/8E1E34349D4546C3C1257BF300343D8B/\\$File/ip_intensive_industries_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/8E1E34349D4546C3C1257BF300343D8B/$File/ip_intensive_industries_en.pdf)>

4 These targets cover employment; education; research and innovation; social inclusion and poverty reduction; and climate/energy.

5 Digital Agenda for Europe (COM (2010) 245).

6 Communication from the Commission Brussels, 3.3.2010, COM (2010) 2020 final.

7 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions Single Market Act twelve levers to boost growth and strengthen confidence; working together to create new growth; Com/2011/0206 final (Single Market Act I).

8 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Towards a Single Market Act. For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another. Brussels, 11.11.2010. COM (2010) 608 final/2.

proposed a second set of actions (12 priority actions) (Single Market Act II) to further develop the Single Market and ‘exploit its untapped potential as an engine for growth’. These actions included the Digital Economy.

On 24 May 2011 the EU introduced the Intellectual Property Strategy, which was complementary to and an essential element of the Europe 2020 Strategy, the Single Market Act and the Digital Agenda for Europe.⁹ This strategy contained a map of initiatives in the area of copyright, most of which will be concluded before this book reaches the market. **0.07**

According to Internal Market Commissioner Michel Barnier the aim: **0.08**

is to get the balance between these two objectives right for IPR across the board. To make Europe’s framework for intellectual property an enabler for companies and citizens and fit for the online world and the global competition for ideas.

These initiatives (mainly legislative in nature) will facilitate considerably the protection, licensing and offering of works. Yet, they will remain only part of the bigger puzzle: they will only constitute bits and pieces of a larger action required for copyright. Some (or even many) think that copyright urgently needs a holistic ‘retouch’ or else a full harmonisation as it touches on too many products (aiming at) circulating freely within the single market and therefore it brings up far too many financial aspects, which no longer allow EU Member States to abide by their original traditions in the field. This is even more so given the fact that issues that were originally thought of as being components of separate (and incompatible) legal traditions, such as the concept of originality or civil procedure law matters, seem to have worked well so far after their (partial) harmonisation.¹⁰ **0.09**

On 5 December 2013 the European Commission launched a Public Consultation on the review of the EU copyright rules. The deadline (after extension) was set to 5 March 2014. The Hellenic Presidency of the Council (January to June 2014)¹¹ initiated a discussion on issues contained in the Public Consultation. As this book goes to press, discussions are on-going and the debate is open.

This book aims to cover all matters pertaining directly to ‘EU copyright law’ and at the same time offer a commentary to the relevant legislative instruments **0.10**

⁹ See also the Annual Growth Survey 2011 (COM (2011) 11) and the Innovation Union (COM (2010) 546).

¹⁰ E.g. the concept of originality for in the area of software, databases and photographs and civil procedure law matters under the Enforcement Directive.

¹¹ During the Hellenic Presidency of the Council of the EU Irini Stamatoudi has acted as a President.

including those under construction. It also aims to approach 'EU copyright law' from the perspective of the international developments that currently take place in WIPO and look into trends and needs for the future.

The book is divided in four main parts. The first part deals with the general principles of copyright law in the EU. It offers a general view on the *acquis communautaire*, on the notion of 'EU copyright law' and presents the principles of non-discrimination, free movement of goods and the 'essential facilities' doctrine. The second part constitutes the main corpus of the book and it is a commentary to all EU copyright directives including the new collective management directive. Once the hard law picture is set, the book moves on to Part III to discuss general EU policies and actions in key areas such as copyright enforcement and potential clashes with privacy, digitisation projects, such as Europeana, and the Digital Agenda for Europe as well as what this agenda encompasses for copyright. Part III also deals with private international law issues, especially with regard to the internet's multi-territorial nature. The fourth part of the book discusses issues relating to the present and future of copyright. This is done from the perspective of the developments in the World Intellectual Property Organization (WIPO), from the perspective of the role of the CJEU as well as from the point of view of those advocating the need for a total (or more substantial) harmonisation.

- 0.11** Although the book aims at being comprehensive it is not exhaustive since there are many more legislative instruments, initiatives or aspects which, although they do not relate directly to copyright, are still relevant to it. Being exhaustive would be an almost unattainable task, which would require a lot more effort, time and work and would perhaps render this book an unworkable tool for those aiming to use it in practice.