

UPSKILLING PERFORMERS IN THE DIGITAL DATA EXCHANGE STANDARDS OF THE STREAMING PLATFORMS
2021-2-BG01-KA210-ADU-000049019

Partnering organisations:

Culture Hub Bulgaria Foundation

Aksantys

University of Istanbul

THE CURRENT LEGAL FRAMEWORK FOR EUROPEAN COPYRIGHT LAW



Co-funded by the
Erasmus+ Programme
of the European Union

Table of Contents:

1. Introduction
2. Evolution of EU Copyright Law
 - 2.1 Historical Background
 - 2.2 EU Harmonization
3. Key Directives and Regulations
 - 3.1 InfoSoc Directive (2001/29/EC)
 - 3.2 Software Directive (2009/24/EC)
 - 3.3 Digital Single Market (DSM) Directive (2019/790/EU)
 - 3.4 Database Directive (96/9/EC)
 - 3.5 Rental and Lending Rights Directive (2006/115/EC)
 - 3.6 Collective Rights Management Directive (2014/26/EU)
4. Impact and Implementation
 - 4.1 The EU Copyright Reform Package
 - 4.2 National Implementation
5. Challenges and Controversies
 - 5.1 Balancing Copyright Protection and User Rights
 - 5.2 Concerns Over Article 17 (formerly Article 13)
 - 5.3 Copyright and the Digital Single Market
 - 5.4 Cross-Border Licensing and Copyright Management
 - 5.5 Implementation and transposition of the Directives
6. The Role of the European Court of Justice (ECJ)
 - 6.1 Landmark Copyright Cases
 - 6.2 Influence on EU Copyright Law
7. International Copyright Agreements
 - 7.1 The WIPO Copyright Treaty
 - 7.2 Bilateral and Multilateral Agreements
8. Future Directions and Challenges
 - 8.1 The Impact of Artificial Intelligence
 - 8.2 Emerging Technologies and Copyright
 - 8.3 Cultural Heritage and Copyright
9. Conclusion

1. Introduction

The legal framework governing copyright within the European Union (EU) is a complex and dynamic system. To gain a deeper understanding of EU copyright law, it is imperative to explore its historical evolution, dissect the key directives and regulations that shape it, examine the challenges and controversies it faces, consider the role of the European Court of Justice, and analyze international copyright agreements. In this extended review, we embark on a comprehensive journey through the EU's current copyright framework.

2. Evolution of EU Copyright Law

2.1 Historical Background

Copyright law has a rich historical tapestry that has woven its way into the digital age. Understanding the roots of copyright helps contextualize its present form. The concept of copyright dates back to the invention of the printing press, but the evolution of copyright as a legal framework began in earnest in the 18th century. Notable developments, such as the Statute of Anne in the United Kingdom in 1710, laid the foundation for modern copyright principles that emphasize the rights of authors and creators.

Named after Queen Anne, the statute marked a pivotal shift from the traditional system of crown-granted monopolies, such as royal charters and privileges, to a more author-centric model. It introduced a 14-year copyright term, renewable for an additional 14 years if the author was still alive at the end of the first term. This revolutionary approach laid the groundwork for modern copyright principles, emphasizing the importance of rewarding authors for their creative endeavors and facilitating the dissemination of knowledge while balancing the rights of creators and the public interest. The Statute of Anne's legacy endures in contemporary copyright systems worldwide, highlighting the enduring influence of this historic legal milestone.

2.2 EU Harmonization

The EU's journey towards harmonized copyright law has its origins in the establishment of the European Economic Community (EEC) in the 1950s. However, it was with the Maastricht Treaty in 1992 that the European Union's competence in copyright matters was formalized.

Officially known as the Treaty on European Union (TEU), the Treaty is a pivotal document in the context of copyright law, even though its primary focus was on the establishment of the European Union (EU). While the treaty did not directly address copyright law, it set in motion a series of developments and institutional changes that significantly impacted copyright within the EU. Here are several key reasons why the Maastricht Treaty is significant for copyright:

- **Creation of the European Union (EU):** The Maastricht Treaty paved the way for the formation of the European Union, which is now a major player in the harmonization of copyright laws among its member states. The EU's role in copyright regulation has grown substantially since the treaty's adoption.
- **Introduction of the "Single Market" Concept:** The Maastricht Treaty aimed to establish a single market within the EU, where goods, services, capital, and people could move freely across borders. This single market concept extended to the digital realm, including copyrighted works. As a result, it became necessary to address copyright issues that could hinder the free flow of digital content within the single market.
- **Subsequent EU Treaties and Directives:** Following the Maastricht Treaty, several other EU treaties and directives have been adopted to further integrate the single market, stimulate cross-border trade, and enhance copyright protection. Notable among these is the Treaty of Amsterdam in 1997, which recognized the importance of intellectual property rights, including copyright, as well as the Treaty of Lisbon in 2009, which expanded EU competence in intellectual property matters.
- **EU Copyright Harmonization:** The EU has worked to harmonize copyright laws across its member states, with initiatives like the Information Society Directive (2001) and the Digital Single Market Directive (2019). These directives sought to create a more consistent legal framework for copyright, especially concerning digital technologies, to promote cross-border access to content and protect creators' rights.
- **European Court of Justice (ECJ) Rulings:** The Maastricht Treaty indirectly led to the ECJ's influence in copyright matters, as the EU expanded its legal authority and jurisdiction. The ECJ has issued rulings that significantly impact copyright enforcement and interpretation, shaping the EU's copyright landscape.

- **Cross-Border Licensing and Access:** The Maastricht Treaty's vision of a single market required addressing cross-border licensing and access to copyrighted works. EU copyright directives have aimed to simplify these aspects, enabling consumers to access digital content regardless of their location within the EU.

In summary, while the Maastricht Treaty itself did not address copyright law directly, it laid the foundation for the EU's evolving role in copyright harmonization and regulation. The treaty's focus on creating a single market and facilitating the free flow of goods and services across borders prompted subsequent legal and regulatory developments that significantly impacted copyright within the European Union.

This gave rise to a series of directives and regulations aimed at harmonizing copyright laws among member states. Harmonization has been essential in providing a level playing field for creators and rights holders throughout the EU, fostering cross-border cultural exchange and commerce.

3. Key Directives and Regulations

3.1 InfoSoc Directive (2001/29/EC)

The InfoSoc Directive, adopted in 2001, forms the backbone of EU copyright law. The Infosoc Directive has been a milestone in the field of copyright, a domain in which the EU was not conferred a high degree of competences by the Member States. It was passed under the “pressure” of the 2000 Lisbon Agenda to adapt legislation on copyright and related rights to technological developments and to transpose in the then Community law the main obligations arising from the international treaties adopted in the framework of the World Intellectual Property Organisation (WIPO) in 1996.¹

It introduced pivotal concepts such as exclusive rights for authors and creators, exceptions and limitations to copyright, and the liability of online service providers. The InfoSoc Directive has been instrumental in adapting copyright law to the digital age, facilitating cross-border access to digital content and promoting technological advancements while safeguarding the rights of creators.

3.2 Software Directive (2009/24/EC)

As the software industry expanded, the Software Directive of 2009 aimed to harmonize the protection of computer programs and databases within the EU. This directive recognizes the

¹ The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market - Department of Legal Studies, University of Bologna, Via Zamboni 27-29, 40100, Bologna, Italy Federico Ferri

intellectual property rights of software developers, providing legal protection while allowing for interoperability, reverse engineering, and legitimate use.

3.3 Digital Single Market (DSM) Directive (2019/790/EU)

In 2015, the European Commission, led by its then President Jean-Claude Juncker, unveiled a strategy to realize a digital single market (DSM) in the EU. Achieving such an objective would allow the EU to maintain its leading position in the digital economy and favor the growth of European companies on a global scale.² The DSM Directive, adopted in 2019, ushered in substantial changes to EU copyright law. It addresses key issues in the digital single market, including copyright protection for press publications and the liability of online content-sharing service providers (formerly Article 13, now Article 17). The directive also focuses on enhancing cross-border access to cultural heritage and out-of-commerce works.

In terms of its substantive provisions, the Digital Single Market (DSM) Directive encompasses a wide array of measures aimed at addressing various facets of the digital and cross-border landscape. These measures can be categorized into three main objectives:

- **Adapting Exceptions and Limitations:** The Directive responds to the challenges posed by the digital and cross-border environment by introducing mandatory exceptions or limitations in specific areas. These include provisions for text and data mining (TDM), enabling the use of works and other subject matter in digital and cross-border educational activities, and the preservation of cultural heritage.
- **Enhancing Licensing Practices and Expanding Content Access:** Another key focus is to improve licensing practices while ensuring broader access to creative content. This involves establishing a framework that enables cultural heritage institutions to utilize out-of-commerce works, streamlining collective licensing procedures, enhancing access to audiovisual works on video-on-demand platforms, and addressing works of visual art in the public domain.
- **Fostering a Dynamic Copyright Marketplace:** The DSM Directive endeavors to create a well-functioning marketplace for copyright by introducing various mechanisms. These include the introduction of a related right for press publishers, granting them rights pertaining to the online utilization of press publications. Member states may also enact regulations enabling publishers to receive a portion of the compensation derived from the use of third-party works under specific exceptions or limitations. The directive further establishes a framework governing certain applications of protected content by online services and mandates the assurance of fair remuneration within exploitation contracts for authors and performers.

² Copyright in the Digital Single Market: a taster - Eleonora Rosati, Professor of Intellectual Property Law and Director of the Institute for Intellectual Property and Market Law, Stockholm University, Sweden

These diverse provisions collectively reflect the comprehensive nature of the DSM Directive, aiming to address the multifaceted challenges and opportunities presented by the digital and cross-border realm of copyright.

However, the saga of the Digital Single Market (DSM) Directive is one fraught with complexity, mirroring the intricacies of its provisions and the subsequent national transposition efforts. Yet, the narrative of this legislative work did not draw to a close upon its adoption; in fact, it has only commenced. In the forthcoming years, the legal landscape will witness a series of litigations revolving around the implementation of national provisions aimed at transposing the DSM Directive, likely leading to multiple referrals for preliminary rulings at the Court of Justice of the European Union (CJEU). As history has shown with prior EU copyright directives, the CJEU will also grapple with the task of addressing the varied inconsistencies and errors that may arise during the transposition process.

3.4 Database Directive (96/9/EC)

The Database Directive of 1996 introduced sui generis rights for the makers of databases, reinforcing the importance of database protection in an increasingly data-driven world. This directive strikes a balance between incentivizing investments in database creation and preserving competition and access to data.

3.5 Rental and Lending Rights Directive (2006/115/EC)

This directive aims to ensure that creators receive equitable remuneration when their works are rented or lent to the public. It acknowledges the economic rights of authors and creators, harmonizing the treatment of such rights among EU member states.

3.6 Collective Rights Management Directive (2014/26/EU)

Collective rights management plays a vital role in the protection and monetization of copyrighted works. The Directive 2014/26/EU was designed with the overarching goal of enhancing the efficiency of collective management organizations (CMOs) throughout the European Union and streamlining the multi-territorial licensing of rights for online utilization of musical works. The primary aim was to foster a thriving internal market. This directive brings about harmonization in several key areas, encompassing the governance, financial management, and transparency regulations governing CMOs. Furthermore, it incorporates provisions intended to facilitate the growth of cross-border online music services.

5-years after the transposition deadline, the European Commission has concluded that the application of the Collective Rights Management Directive has had a positive effect on

rightsholders and the licensing market. Therefore, there is no need for a review, said the Commission.³

4. Impact and Implementation

4.1 The EU Copyright Reform Package

The EU Copyright Reform Package, including the DSM Directive, is a response to the challenges posed by the digital age. It seeks to address issues such as the "value gap" between creators and online platforms, enabling press publishers to negotiate with platforms for the use of their content, and enhancing copyright enforcement.

4.2 National Implementation

The implementation of EU copyright directives is carried out at the national level by EU member states. This process has resulted in varying approaches to compliance and enforcement, leading to disparities in copyright law application. National implementation challenges have necessitated collaboration and coordination to ensure a unified approach to copyright protection throughout the EU.

5. Challenges and Controversies

5.1 Balancing Copyright Protection and User Rights

One of the fundamental challenges in EU copyright law is striking a balance between the protection of creators' rights and the interests of users and consumers. The debate over the scope of copyright exceptions and limitations continues, particularly in the context of education, research, and cultural preservation.

5.2 Concerns Over Article 17 (formerly Article 13)

Article 17 of the DSM Directive, which addresses the liability of online content-sharing service providers, has sparked significant controversy. The requirement for these platforms to prevent the uploading of copyrighted content without authorization has raised concerns over potential censorship and the need for automated content filtering systems.

³ The Collective Rights Management Directive: a positive assessment of the action of CMOs - Society of Audiovisual Authors

5.3 Copyright and the Digital Single Market

The digital single market is a cornerstone of EU policy, aimed at promoting cross-border access to digital content and services. Copyright law plays a critical role in achieving this objective, but achieving a harmonious balance between territorial licensing and cross-border access remains a challenge.

5.4 Cross-Border Licensing and Copyright Management

The cross-border nature of the digital environment presents unique challenges in licensing and managing copyright works. Copyright holders, especially in the creative and music industries, face complexities in licensing and managing their rights across multiple EU member states. Streamlining this process is essential to promoting a unified market for cultural works.

5.5 Implementation and transposition of the Directives

On 15th of February, 2023 the European Commission decided to refer 11 Member States to the Court of Justice of the European Union for failing to notify the Commission of transposition measures under two Directives with respect to copyright. The Commission decided to refer Bulgaria, Denmark, Finland, Latvia, Poland and Portugal to the Court of Justice of the EU following their failure to notify complete transposition measures on copyright and related rights in the Digital Single Market ([Directive \(EU\) 2019/790](#)).

Secondly, with regard to a more specific EU Directive on copyright and related rights applicable to certain online transmissions ([EU Directive 2019/789](#)), the Commission is referring Bulgaria, Finland, Latvia, Poland and Portugal to the Court of Justice for not notifying complete transposition of EU rules to the Commission. (https://ec.europa.eu/commission/presscorner/detail/en/ip_23_704)

This is emphasizing the challenges faced by lawmakers in keeping up with the rapid pace of technological advancement. As technology evolves swiftly, it becomes increasingly difficult for legislation to match this speed, leading to delays and legal inconsistencies. This disconnect between the evolving digital landscape and the legal framework underscores the need for agile and responsive regulatory practices in the realm of copyright and related rights to ensure a harmonious and effective adaptation to the ever-changing digital ecosystem.

6. The Role of the European Court of Justice (ECJ)

6.1 Landmark Copyright Cases

The European Court of Justice (ECJ) has played a pivotal role in shaping EU copyright law through its rulings in landmark cases. Notable decisions include the *UsedSoft* case, which addressed the resale of software licenses, and the *Svensson* case, which clarified the concept of hyperlinking and copyright.

6.2 Influence on EU Copyright Law

The ECJ's rulings have had a profound influence on EU copyright law, impacting areas such as copyright exceptions, the liability of online platforms, and the harmonization of copyright protection within the EU. The ECJ's interpretation of EU directives has been instrumental in shaping the legal landscape.

7. International Copyright Agreements

7.1 The WIPO Copyright Treaty

The WIPO Copyright Treaty (WCT) is a significant international treaty that was adopted on December 20, 1996, as a response to the challenges posed by the digital age to copyright protection. The treaty is administered by the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations responsible for promoting and protecting intellectual property worldwide.

The WCT introduced a range of provisions to address the digital environment and to strengthen the protection of authors and creators in the context of digital works. Some of the key aspects of the WCT include:

- **Protection of Digital Works:** The treaty explicitly recognizes the importance of protecting works in the digital environment. It extends copyright protection to digital works, ensuring that the rights of authors and creators are safeguarded in the digital realm.
- **Anti-Circumvention Measures:** The WCT includes provisions related to technological protection measures (TPMs) and rights management information (RMI). It requires

countries to provide legal protection against the circumvention of TPMs used by copyright owners to control access to their works. Additionally, it mandates the protection of RMI that is associated with copyrighted content.

- **Rights of Distribution:** The treaty clarifies the rights of authors and creators regarding the distribution of their works. It ensures that authors have the exclusive right to authorize the making available of their works to the public, particularly in the online environment.
- **Rights of Rental:** The WCT recognizes the rights of authors and creators to control the rental of their works. This provision is especially relevant in the context of digital content, such as e-books and computer programs.
- **Public Performance and Communication to the Public:** The treaty extends the rights of authors to control the public performance and communication to the public of their works. This is essential in the digital age, where content is often made available to the public through various online platforms.
- **Databases and Compilations:** The treaty provides protection for databases and other compilations, ensuring that the rights of those who have invested substantial efforts in creating these resources are acknowledged and protected.
- **Limitations and Exceptions:** While the WCT strengthens copyright protection, it also allows member countries to provide certain limitations and exceptions to copyright, particularly for educational, research, and library purposes. These exceptions should not conflict with the normal exploitation of the work and should not unreasonably prejudice the legitimate interests of the author.
- **Obligations of Protection:** Member countries of the treaty are required to implement these provisions into their national laws, ensuring that creators and copyright owners receive the protection they are entitled to under the treaty.

The WCT, in conjunction with the WIPO Performances and Phonograms Treaty (WPPT), has played a pivotal role in harmonizing international copyright standards, especially in the digital age. By addressing the challenges posed by digital technologies and the internet, these treaties have contributed to the global recognition of the importance of intellectual property rights and have facilitated the cross-border exchange of creative works. The protection and enforcement of copyright are essential not only for the economic well-being of creators but also for the preservation and dissemination of cultural and creative content worldwide. The WCT serves as a vital framework to achieve these objectives and adapt to the ever-evolving digital landscape.

7.2 Bilateral and Multilateral Agreements

In addition to the WIPO Copyright Treaty, the EU has engaged in bilateral and multilateral agreements with other countries and regions. These agreements serve to extend copyright protection to EU works internationally, promote cultural exchange, and protect EU works abroad.

8. Future Directions and Challenges

8.1 The Impact of Artificial Intelligence

The proliferation of artificial intelligence (AI) and machine learning technologies presents a new frontier for copyright law. Issues such as AI-generated content, copyright infringement by AI, and the impact of AI on creative processes pose unique challenges that require legal adaptation.

8.2 Emerging Technologies and Copyright

Technological advancements, including virtual reality, augmented reality, and blockchain, have the potential to transform the creation and distribution of copyrighted content. As these technologies evolve, they will necessitate amendments to copyright law to address novel issues.

8.3 Cultural Heritage and Copyright

Preserving and digitizing cultural heritage materials is a significant endeavor for EU member states. Copyright law should evolve to facilitate access to and preservation of cultural heritage while respecting the rights of creators and rights holders.

9. Conclusion

In navigating the complex and ever-evolving landscape of European Union (EU) copyright law, it becomes evident that this legal framework is a reflection of the digital age's rapid transformations. This extended review has traced the historical evolution of EU copyright law, from its roots in the Statute of Anne to the significant role played by the Maastricht Treaty in shaping a harmonized EU copyright regime.

The Maastricht Treaty's establishment of the European Union marked a turning point that indirectly influenced copyright law, focusing on creating a single market for goods, services, and digital content. Subsequent treaties and directives, including the Information Society Directive and the Digital Single Market Directive, aimed to ensure a consistent and adaptable legal framework for copyright within the digital single market.

However, the journey of the Digital Single Market (DSM) Directive, with its multifaceted provisions, is far from over. The legal landscape is poised for numerous litigations as national provisions transposing the DSM Directive are tested, leading to potential referrals for preliminary rulings at the Court of Justice of the European Union (CJEU). These challenges underscore the difficulties faced by lawmakers in keeping pace with the rapid advancement of technology, as the legal framework strives to adapt while protecting creators' rights and users' interests.

The European Court of Justice (ECJ) has played a pivotal role in shaping EU copyright law through landmark rulings that influence copyright exceptions, online platform liability, and the harmonization of copyright protection. The ECJ's decisions serve as guiding principles in the interpretation and enforcement of copyright laws in the EU.

On the international front, the WIPO Copyright Treaty (WCT) has emerged as a key response to the digital age's challenges, promoting the protection of digital works and the rights of creators. This treaty, administered by the World Intellectual Property Organization (WIPO), has set global standards for copyright protection in the digital era.

Looking to the future, the impact of artificial intelligence, emerging technologies like virtual reality and blockchain, and the preservation of cultural heritage present new challenges that copyright law must address. As technology evolves, copyright law must evolve with it, striking a delicate balance between protecting intellectual property and fostering innovation and access.

In summary, the path of EU copyright law is ongoing and responsive to the evolving digital landscape. As it adapts to meet the changing needs of creators, consumers, and the broader cultural sphere, it underscores the enduring importance of copyright in shaping the future of the digital world. The narrative of EU copyright law remains a dynamic and evolving story in the digital age.