
Intellectual Property, Media and IT

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I. The Directive on copyright and related rights in the digital single market

On March 26, 2019, the European Parliament approved the Directive on copyright and related rights in the digital single market, which amends Directives 96/9/EC and 2001/29/EC.

This directive appears in the wake of the need to adapt, at European Union level, the exceptions and limitations already laid down in the different national copyright regimes to the the digital and transnational context. The new measures are thus intended to contribute to the proper functioning of the internal market, stimulating innovation, creativity, investment and production of new content, in the digital market as well.

This directive also appears in the light of the rapid technological evolution that continues to change the way works and other protected materials are created, produced, distributed and exploited, seeking to respond to this evolution, and orienting new legislation for the future.

The difficult process of adoption of this directive was marked by several criticisms and by the fear of the Internet becoming a less free space, covered with filters that would call into question freedom of expression and free access to information by its users.

The major changes in the copyright system involved the creation of mandatory exceptions and of limitations that should allow:

- The prospection of texts and data carried out by research organisations for the purpose of scientific research, so as not to hinder the development of digital-based educational activities and distance learning. Article 3 thus provides an exception to reproduction rights and to the right to prohibit the extraction or re-utilisation of all or a substantial part of the databases for scientific-research purposes;
- That institutions responsible for cultural heritage make copies of protected works or other protected materials that are part of their permanent collection, to the extent necessary to preserve them. Article 6 therefore establishes a mandatory exception to the right of reproduction in such a manner that these conservation measures may be permitted;
- The adjustment of remuneration, ensuring that authors and holders of rights over protected works receive a fair share of the value generated by the use of their works and other protected material. An obligation of transparency is also determined, in the light of the weaker contractual position of the authors and performers at the time of granting licences or transferring their rights. Thus, the directive allows them to request relevant information on the exploitation of the rights in order to be able to correctly assess the economic value of their rights;



- The grant of a new right for press publishers to facilitate the online licensing of their publications, the recovery of their investment and compliance with their rights, providing publishers with rights of reproduction and of making them available to the public. It should be noted, however, that publishers may not invoke this protection against the authors and rights holders.
 - In this matter, it should be said that this protection does not cover the use of hyperlinks, since it does not constitute an act of communication to the public. Similarly, simple facts reported in press publications are also not covered. Periodicals having scientific or academic purposes are also not covered by this protection.

- Fostering the obtaining of permits/licences from rights holders to share content online. Online services are a means of enlarging access to works, thus constituting a challenge when it comes to controlling the uploading of protected content without the authorisation of the holder. Thus, the famous Article 13 (now 17) provides for the obligation of online content-sharing service providers to i) use copyright-protected content recognition technologies and ii) obtain authorisation of the holder of the rights in question, in particular through a licensing agreement. It was therefore considered appropriate to provide a specific mechanism of responsibility of these service providers in cases where authorisation has not been granted.
 - The definition of online content-sharing services does not cover services whose primary purpose is not the permission for their users to upload and share protected content for profit, such as cloud services providers. Also excluded are open-source software development platforms and sharing platforms, non-profit scientific or educational repositories and non-profit online encyclopaedias;
 - In order to protect new European start-ups, new service providers whose annual turnover is less than 10 million euros, whose average monthly number of singular visitors of the Union does not exceed 5 million, and have existed for less than three years in the European digital space are also excluded;
 - Lastly, it must also be noted that the directive determines that users of these platforms should be able to upload and provide content for specific purposes of citation, criticism, analysis, caricature or parody, and this possibility is important in ensuring the balance between fundamental rights, such as freedom of expression, freedom of the arts and the right to property, including intellectual property.

This directive enters into force on the twentieth day following that of its publication in the Official Journal of the European Union, Member States having 2 years to transpose the directive into their national systems.



II. National Legislation

Decree-law No. 7/2019

Updates the rules applicable to wine entitled to the “Port” designation of origin.

Regulation No. 85/2019

Amending regulation to Regulation No. 257/2018 of May 8 (amendment to the Portability Regulation).

Law No. 14/2019

Alters the working and framework of bodies responsible for the extrajudicial settlement of consumer disputes, introducing the second amendment to Law No. 144/2015 of September 8.

Law No. 21/2019

Governs the transfer, by air carriers, of the passenger identification records data, as well as the processing of such data, transposing Directive (EU) 2016/681 of the European Parliament and of the Council of April 27, 2016, and introducing the third amendment to Law No. 53/2008 of August 29, enacting the Internal Security Law.

III. Case Law

Judgement of the Lisbon Court of Appeal in Lisbon of January 10, 2019, Case No. 301/17

Registration of a brand must be refused that, while not being graphically and/or phonetically mistakable for another prestigious one, takes advantage of the image of the latter to cause consumers to make an association between them and thus enhance its own benefits.

IV. Regulation, Resolutions, Recommendations, Opinions and Others

Delegated Regulation (EU) 2019/33 of the Commission of October 17, 2018, supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the opposition procedure, the restrictions on use, the changes to product specifications, cancellation of the protection and labelling and presentation.

Implementing Regulation (EU) 2019/34 of the Commission of October 17, 2018, laying down rules on the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council, as regards protection of designations of origin, geographical indications



and traditional terms in the wine sector, the opposition procedure, changes to product specifications, registration of protected names, cancellation of the protection and use of symbols, as well as of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to a suitable system of controls.

Amendment 2019/C 11/06

Amendment of the Passenger Name Record (PNR) – List of Member States that have decided the application of the PNR Directive to intra-EU flights as referred to in article 2 of Directive (EU) 2016/681 of the European Parliament and of the Council on the use of data of the passenger name records (PNR) for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (if they decide to apply this directive to intra-EU flights, Member States shall notify the Commission in writing). Member States may make or revoke such notice at any time. The Commission publishes that notice or a possible withdrawal thereof in the Official Journal of the European Union) (OJ C 196, 8.6.2018).

Information of the Council of the European Union

Information 2019/C 24/05

Council conclusions on the EU Customs Action Plan to combat infringements of intellectual property rights for 2018-2022.

Information of the Member States:

Information 2019/C 75/04

Electronic identification systems notified under article 9(1) of Regulation (EU) No. 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market.



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