International Copyright Law and Practice

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HIGHLIGHTS of Release 30

• Comprehensive coverage of International Copyright Law from noted Copyright experts and scholars worldwide including General Editor Lionel Bently of Cambridge University.

• International Copyright. The Introduction reviews jurisdictional and choice-of-law rulings on cross-border relief constraining internet services, on works protected in some countries but not where posted on the web, on self-help such as notice-and-takedown procedures and geoblocking, and on the E.U. power to conclude copyright treaties; it also analyzes how to construe treaty rights and exceptions, as under the Marrakesh VIP Treaty, indicates new E.U. laws bearing on online exploitation, and reconsiders moral rights and contracts.

Legislation:

European Union. The EU adopted legislation on the cross-border portability of online content services (which allows E.U. residents to access online content they have purchased in their home country wherever they travel in the E.U), to facilitate access to copyright works for visually impaired persons and against geoblocking. Other reforms proposed in 2016, touching on issues of exceptions, cross-border transmissions, mandatory filters, contractual regulation and a new right for news publishers, are still in the legislative process.

Belgium. Legislation dealt with the equitable remuneration for artistic performers and producers of sound recordings in respect of public performance and broadcast of such recordings.

Brazil. The Brazilian Patent Office issued regulations relating to the recordation of assignments of the economic rights in a computer program.

Germany. The new Telemedia Act excludes liability for damages for Internet access-provider, but right holders may sue WiFi-providers to block access to the infringing websites. A further revision sought
to clarify exceptions and limitations regarding teaching and the use by libraries and archives and introduced a statutory licence regarding text and data mining for scientific research and non-commercial purposes only.

**Greece.** Implemented Directive 2014/26/EU on collective management and multi-territorial licensing of musical works, adding special provisions such as establishing that a ‘Commissioner for Reorganisation’ may be appointed where a collective management organizations or independent management entity fails and on a temporary basis giving the Hellenic Copyright Organisation the powers formerly exercised by the A.E.P.I. (which is subject to an investigation).

**Israel:** The term of protection for sound recordings was increased from 50 to 70 years, and typefaces were declared to be protected by copyright rather than design law, while other legislation now regulates the length of recording and publishing contracts with musicians.

**Italy:** Introduced amendments in order to comply with the E.U Directive on collective rights management and multi-territorial licensing of rights in musical works.

**Japan:** Legislative amendments to the copyright legislation in expectation of the Trans-Pacific Partnership Agreement (TPP)—including copyright term extensions, criminalization provisions, anti-circumvention provisions and statutory damages—that were stalled due to the decision of the United States to pull out from the TPP now appear to be back on track after the remaining members of the TPP alliance have agreed to proceed with a “TPP 11” Agreement instead. Other major legislative amendments made include the introduction of a more flexible provisions on copyright exceptions and limitations, particularly in areas related to the use of information technology in education, digital archiving and facilitating access to published works for visually impaired persons.

**Poland:** Consolidated various amendments into a single text, implemented the EU Directive on Collective Management and introduced a law permitting the Minister of Justice to grant the rights to use computer programs.

**Spain:** Enacted a new regime relating to remuneration for private copying after the prior tax-funded regime had been found incompatible with EU law. As yet, Spain has not implemented expressly Directive 2014/26/EC, and in December 2017, the Commission commenced enforcement proceedings.

**Sweden:** The new Act on Collective Management of Copyright adopted in 2016 to implement the EU Directive entered into force on January 1, 2017. Additional amendments were made in relation to remuneration rights.

**Switzerland:** A definitive Bill for the Revision of the Copyright Act, with provisions relating mainly to the Internet, was accepted by the Federal Council and sent to Parliament towards the end of 2017.

**United Kingdom.** Passed legislation that will bring to an end the supremacy of EU law within the United Kingdom. An exception permitting certain cable retransmissions of broadcasts was repealed.

**Case Law:**

**European Union.** The Court of Justice issued further rulings expanding the meaning of ‘communication to the public’ in the context of indexing and search mechanisms that facilitated peer-to-peer copying, and the provision of multimedia players for installation on television sets, while at the
same time treating a retransmission of a broadcast by the same technical means as not reaching ‘a new public’; and elaborated further the interpretation of the exception covering transient copies.

In Belgium, courts considered the protectability of designs, applying the standard of creative choices, as well as the subject matter protect by copyright in computer programs, ownership of copyright in photographs and infringement of journalists’ copyright, as well as publishers’ entitlement to private copying revenues.

In Brazil, the High Court of Appeals recognised that webcasting and simulcasting constitute public performance. Other courts considered copyright protection for landscape photographs, works of unknown authorship, how far an author’s right of integrity is affected by partial reproduction, whether gratuitous performances in public places infringes rights in material performed, as well as the liability of Internet-service providers which hosted copyright infringing materials.

In Canada, courts considered originality of photographs and compilations of data, protection of ideas for television programmes, the legality of devices allowing third-party software to operate on proprietary video game consoles, how far educational copying fell within the fair dealing exceptions and the application of the fair dealing exceptions to a parodic website.

In China, reported decisions of copyright disputes have involved unusual subject matter, including the design of musical fountains, floral arrangements and video game adaptations of copyright-protected works. Copyright registration fees no longer payable for software from 1 April 2017, and the total number of registrations in 2017 has reached 2,747,652, of which 745,387 registrations are for software, a 36.86% increase over 2016. There were also several criminal cases involving online technologies that were used in the dissemination of infringing copies of video games and novels.

In France, the Supreme Court considered how courts should manage litigation involving multiple work, the requirements for valid author contracts, proportionate limitations on moral rights in relation to architecture, whether publication right arose in prehistoric frescoes and jurisdiction based on accessibility of works in France.

In Germany, the Federal Supreme Court has submitted three references to the C.J.E.U., relating to national flexibilities in relation to exceptions and the impact of fundamental rights on their interpretation and application, and a further reference on the scope of the communication to the public right. The Supreme Court also considered liability for linking, the nature of obligations in relation to remuneration of authors, the “bestseller” clause, as well as the concept of reproduction in relation to designs and the application of an author’s right of integrity to political use of works. Lower courts consider copyright protection of a photographic reproduction of an art work in the public domain as well as tweets.

In Greece, the Supreme Court considered originality in relation to facts, the formal requirements for copyright contracts as well as multiple damages awards for infringement. Lower courts ruled on hyperlinking, as well as remuneration for private copying in relation to smartphones, and granted orders blocking specific domain name.

In India, a number of issues arose in the context of the Indian film industry, from the protectability of plots and movie titles, to the residual rights of movie script authors.
and the appropriate species of damages for copyright infringement.

In Israel, the Supreme Court ruled on the protection of lectures (including ‘innocent infringement’), the relationship between copyright and design law, and made observations in relation to the right of attribution. Other courts considered protectability of body art, of architectural plans, software, as well as television formats; contributory infringement by selling decoders; statutory damages for non-attribution; as well as rejecting a claim against ISPs for failing to block allegedly infringing sites.

In Italy, the Supreme Court considered the protectability of newspapers titles, characters, Christmas sculptures, the protection of designs by copyright, the rules on copyright transfers and the application of the term of protection to foreign works.

In Korea, the Supreme Court encountered copyright disputes in a divergent range of contexts—reality television show formats, a non-author misidentified as an author with the consent of the real author, works based on historical narratives, temporary reproductions of computer programmes run on computers and editable online electronic databases.

In the Netherlands, courts made preliminary references to the C.J.E.U asking if a taste can qualify as a work and on whether the online sales of books exhausts rights in those copies. Lower courts have granted blocking orders against ISPs.

In Poland, the Supreme Court held that the selection and combination of types of insurance previously offered separately into a package was protected by copyright, while a court of appeal held that the making of “press clippings” might fall within the quotation exception.

In Spain, the Supreme Court consider copyright protection of catalogues, authorship of architectural works, as well as a claim that the Spanish Administration was liable for losses occurring from the compensation system for private copying. Lower courts considered the protection of the idea of a webpage, TV formats, as well as building designs; works made for hire and copyright contracts (including proportionate remuneration, transfer of future works, and limitations of contract term) as well as liability of peer-to-peer sites and webpages carrying links.

In Sweden, the Supreme Court considered that the combined sale of two articles might be subject to the obligation to pay remuneration for private copying, even where neither would if sold independently.

In Switzerland, the court clarified that the exception for private use is inapplicable when a commercial profit is made.

In the United Kingdom, lower courts extended blocking orders to cover the blocking of access to streaming servers, offered guidance on when television formats might be eligible for protection and on prison sentences for criminal infringement.

In the United States, the Supreme Court held that design elements can be protected by copyright if they can be separately perceived and would independently qualify as pictorial, graphic, or sculptural works, and, in a patent case, implicitly affirmed the doctrine of international exhaustion. Lower courts considered liability in the US of a non-US broadcaster, found that embedding Tweets could be infringing display, and rejected a fair use claim for commercial use of computer code, specifically application programming interfaces.
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