

Copyright Law in European Union

Divya Prakash; Roll .No. 52

Symbiosis Law School

The **European Union (EU)** is an economic and political union of 27 member states which are located primarily in Europe. The EU traces its origins from the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) formed by six countries in the 1950s. In the intervening years the EU has grown in size by the accession of new member states, and in power by the addition of policy areas to its remit. The Maastricht Treaty established the European Union under its current name in 1993.^[8] The last amendment to the constitutional basis of the EU, the Treaty of Lisbon, came into force in 2009.

Treaty of Lisbon

Prominent changes included the move from required unanimity to *double majority* voting in several policy areas in the Council of Ministers, a more powerful European Parliament as its role of forming a bicameral legislature alongside the Council of Ministers becomes the ordinary procedure, a consolidated legal personality for the EU and the creation of a long-term President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy. The Treaty also made the Union's bill of rights, the Charter of Fundamental Rights, legally binding.)

The EU operates through a hybrid system of supranational independent institutions and intergovernmentally made decisions negotiated by the member states. Important institutions of the EU include the European Commission, the Council of the European Union, the European Council, the Court of Justice of the European Union, and the European Central Bank. The European Parliament is elected every five years by EU citizens.

Economic Importance :

The EU has developed a single market through a standardised system of laws which apply in all member states including the abolition of passport controls within the Schengen area. It ensures the free movement of people, goods, services, and capital, enacts legislation in justice and home affairs, and maintains common policies on trade, agriculture, fisheries and regional development. A monetary union, the eurozone, was established in 1999 and is currently composed of seventeen member states. Through the Common Foreign and Security Policy the EU has developed a limited role in external relations and defence.

Permanent diplomatic missions have been established around the world and the EU is represented at the United Nations, the WTO, the G8 and the G-20.

With a combined population of 500 million inhabitants, in 2010 the EU generated an estimated 28% (US\$16.106 trillion) of the global economy, or 21% (US\$14.793 trillion) when adjusted in terms of purchasing power parity.

Economic Legal Frame work:

Competition Law

The EU operates a competition policy intended to ensure undistorted competition within the single market. The Commission as the competition regulator for the single market is responsible for antitrust issues, approving mergers, breaking up cartels, working for economic liberalisation and preventing state aid.

The Competition Commissioner, currently Joaquín Almunia, is one of the most powerful positions in the Commission, notable for the ability to affect the commercial interests of trans-national corporations. For example, in 2001 the Commission for the first time prevented a merger between two companies based in the United States (GE and Honeywell) which had already been approved by their national authority. Another high profile case against Microsoft, resulted in the Commission fining Microsoft over €777 million following nine years of legal action.

European Union competition law is one of the areas of authority of the European Union. Competition law, or antitrust as it is known in the United States, regulates the exercise of market power by large companies, governments or other economic entities. In the EU, it is an important part of ensuring the completion of the internal market, meaning the free flow of working people, goods, services and capital in a borderless Europe. Four main policy areas include:

- Cartels, or control of collusion and other anti-competitive practices that effects the EU (or, since 1994, the European Economic Area). This is covered under Articles 101 of the Treaty on the Functioning of the European Union (TFEU).
- Monopolies, or preventing the abuse of firms' dominant market positions. This is governed by Article 102 TFEU. This article also gives rise to the Commission's authority under the next area,

- Mergers, control of proposed mergers, acquisitions and joint ventures involving companies that have a certain, defined amount of turnover in the EU/EEA. This is governed by the Council Regulation 139/2004 EC (the Merger Regulation).
- State aid, control of direct and indirect aid given by Member States of the European Union to companies. Covered under Article 107 of the Treaty on the Functioning of the European Union.

This last point is a unique characteristic of the EU competition law regime. As the EU is made up of independent member states, both competition policy and the creation of the European single market could be rendered ineffective were member states free to support national companies as they saw fit. Primary authority for applying EU competition law rests with European Commission and its Directorate General for Competition, although state aids in some sectors, such as transport, are handled by other Directorates General. On 1 May 2004 a decentralised regime for antitrust came into force to increase application of EU competition law by national competition authorities and national courts.

Copyright law in European Union

The **copyright law of the European Union** has arisen in an attempt to harmonise the differing copyright laws of European Union member states. It consists of a number of Directives, which the member states are obliged to enact into their national laws, and by the judgments of the Court of Justice of the European Union, that is the European Court of Justice and the General Court (formerly known as the Court of First Instance).

Attempts to harmonise copyright law in Europe (and beyond) can be dated to the signature of the Berne Convention for the Protection of Literary and Artistic Works on 9 September 1886: **all European Union Member States are signatories of the Berne Convention**, and compliance with its dispositions is now obligatory before accession. The first major step taken by the European Economic Community to harmonise copyright laws came with the decision to apply common standard for the copyright protection of computer programs, enacted in the directive on the legal protection of computer programs (91/250/EEC) in 1991.

A common term of copyright protection, *70 years post mortem auctoris* (from the death of the author) was agreed in 1993 as the directive harmonizing the term of protection of copyright and certain related rights (93/98/EEC).

The implementation of directives on copyright has been rather more controversial than for many other subjects, as can be seen by the six judgments for non-transposition of the EU Copyright Directive (2001/29/EC). Traditionally, copyright laws vary considerably between Member States, particularly between common law jurisdictions (Cyprus, Ireland, Malta and the United Kingdom) and civil law countries. Changes in copyright law have also become linked to protests against the World Trade Organization and globalization in general.

European copyright law

In the 1980s the European Community started to regard copyright as an element in the creation of a single market. Since 1991 the EU has passed a number of directives on copyright, designed to harmonise copyright laws in member states in certain key areas, such as computer programs, databases and the internet. The directives aimed to reduce obstacles to the free movement of goods and services within the European Union, such as for example in rental rights, satellite broadcasting, copyright term and resale rights. Key directives include the 1993 **Copyright Duration Directive**, Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), the 2001 InfoSoc Directive, also known as Copyright Directive, and the 2004 **Directive on the enforcement of intellectual property rights**.

The EU Directive on e-commerce restricted liability of intermediary service providers. There are three immunities provided for by the E-Commerce Directive:

1. "Mere conduit"

Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the service provider is not liable for the information transmitted, on condition that the provider: (a) does not initiate the transmission; (b) does not select the receiver of the transmission; and (c) does not select or modify the information contained in the transmission. The acts of transmission and of provision of access include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

2. "Caching"

Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Member

States shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that: (a) the provider does not modify the information; (b) the provider complies with conditions on access to the information; (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry; (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

3. Hosting

Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that: (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Directive on the enforcement of intellectual property rights

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (also known as "(IPR) Enforcement Directive" or "IPRED") is a European Union directive in the field of intellectual property law, made under the internal market provisions of the Treaty of Rome. **The directive covers the remedies that are available in the civil courts, but not criminal offenses.**

Under Article 3(1), Member States can be censured in the European Court of Justice if their civil procedures on the infringement of intellectual property rights are "unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays". Otherwise **the Directive harmonizes the rules on standing, evidence, interlocutory measures, seizure and injunctions, damages and costs and judicial publication.**

Subject-matter and scope

The Directive requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy. Thus, the purpose of the instrument is to regulate enforcement of intellectual property rights, not the rights themselves. The Directive leaves unaffected the substantive provisions on intellectual property, international obligations of the Member States and national provisions relating to criminal procedure and criminal enforcement. In short, the Directive adds extra measures on enforcement of digital copyright while leaving national law in other areas unaffected.

The subject-matter of the Directive is defined in Article 1. It applies to enforcement of intellectual property rights which include industrial property rights. The scope of the Directive is defined in Article 2. It applies to all infringements of IP rights in Community and national law, without precluding more stringent protection that the Community or national law may otherwise grant.

The general obligation in the Directive is to provide for remedies necessary to enforce intellectual property rights. These shall be “fair and equitable” and must not be “complicated or costly, or entail unreasonable time-limits or unwarranted delays”. They must furthermore be effective, proportionate and dissuasive and must not act as barriers to trade.

The persons who are entitled to apply for the remedies are primarily the holder of intellectual property right, but also any person authorized to use it, such as licensees and intellectual property rights. Collective rights management and professional defense bodies may also have the right under certain circumstances.

Evidence

Section 2 of the Directive deals with the evidence. Article 6 gives the power to the interested party to apply for evidence regarding an infringement that lies in the hands of the other party to be presented. The only requirement is for that party to present “reasonably available evidence sufficient to support its claim” to courts. In case of an infringement on a commercial scale, Member States must also take steps to ensure that “banking, financial or commercial documents” of the opposing party are presented. In both cases confidential information shall be protected.

Measures for preserving evidence are available even before the proceedings commence. Article 7 provides that such measures may be granted under the same conditions as under Article 6 and include provisional measures such as physical seizure not only of the infringing goods (such as hard drives) but also materials used in the production and distribution.

Article 6 provides that such measures may be taken *without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed*. These are interlocutory, ex parte and in personam orders known in the English and Irish jurisdictions as Anton Piller orders. They are not used outside the UK and Ireland.

Provisional and precautionary measures

At the request of an applicant, the judicial authorities may issue an interlocutory injunction to prevent an “imminent infringement” of intellectual property rights or to prevent a continuing infringement. In the latter case, the order may be followed with a recurring penalty payment or lodging of a guarantee intended to compensate the rightholder (paragraph a). An injunction can also be issued, under the same conditions, against an intermediary, but these are covered in Article 8(2) of the Information Society Directive and are, in principle, subject to national law.

Apart from the ordinary injunctions of the previous paragraph there also exist the so-called Mareva injunctions in Article 9(2). In common law, these are ex parte and in personam orders used to freeze assets (including bank accounts) to prevent abuses of process. They can be issued as worldwide injunctions, preventing worldwide dispersal. In that case, their effectiveness depends on their in personam character, as a party who is found to be guilty of disposing of assets will be held to be in contempt of court. Like Anton Piller orders, their use is confined mostly to the UK.

Article 9(2) provides that, in the case of an infringement on a commercial scale, judicial authorities may order a precautionary seizure of “movable and immovable property” which includes freezing the bank accounts and other assets. This may only be done if the applicant demonstrates that it is likely that recovery of damages will be endangered. Further to that, documents relating to banking and other financial transaction may be communicated.

Implementation

The provisions of the Directive were due to be implemented in all member states of the European Union by 29 April 2006. However, a number of states have not completed the necessary steps.

The Directive has been implemented into United Kingdom law by the Intellectual Property (Enforcement, etc.) Regulations 2006. The Directive has been implemented into Dutch law, and came into force on May 1, 2007. It has been implemented in France by the "*décret 2008-624*" of June 27, 2008. The Swedish parliament voted yes to implement the Directive on 26 February 2009, and it was implemented on April 1, 2009.

Examples of cases wherein the provisions of the Directive have been applied

In the 2007 *Princo Corporation, Ltd v Koninklijke Philips Electronics* case before the Court of Genoa, Italy, the Dutch company Philips, owner of patents on CD-R technology, requested and obtained an order of precautionary seizure over all Princo's movable and immovable

property, including its bank accounts, with a view to ensuring the recovery of damages to be awarded at the end of the liability proceedings.

Criticism

The Directive has been widely criticized on the account of its allegedly draconian approach, said by some to mimic the American Digital Millennium Copyright Act (DMCA). So strong was the criticism, in fact, in particular from telecommunications industry and parts of computer industry, that the original draft was substantially changed. A number of problems still remain in the final document, according to the international civil liberties organization IP Justice.

New Proposal for Extension in Term of Protection

Purpose of the extension

The stated purpose of the extension of the recording copyright term is to "bring performers' protection more in line with that already given to authors - 70 years after their death." The term in Directive 2006/116/EC is 50 years after publishing the performance, or 50 years after the performance if it is not published.

Argument for the proposal

The Impact of Copyright Extension for Sound Recordings in the UK (cited by the European Commission) suggested that the extension to 95 years would increase revenue by £2.2 million to £34.9 million in present value terms over the next ten year. It also suggested that there would "prices of in-copyright and out-of-copyright sound recordings are not significantly different" so that consumers would not be impacted.

Argument against the proposal

The Gowers review of Intellectual Property stated that "is not clear that extension of term would benefit musicians and performers very much in practice."

A report commissioned by the European Commission, *Never Forever: Why Extending the Term of Protection for Sound Recording is a Bad Idea*, concluded that the arguments for copyright extension were not convincing.

Regional Copyright Agreements

The European Union

The institution of the European Union have