

## **A Comprehensive Guide to the InfoSoc-Directive**

*Copyright in the Information Society - A Guide to National Implementation of the European Directive, Second Edition*

Brigitte Lindner – Ted Shapiro (eds.)

Edward Elgar, 2019

ISBN 978-1-78643-919-2, hard cover, pp. xcii. + pp. 1032.

Price: £250

Reviewed by Péter Mezei

While the history of copyright law in the European Union dates back to the early decades of the European Economic Community (EEC), this field of law has gained real significance only after legislation started at the turn of the 1980s and 1990s. The first vertical directives of the EEC and the European Union (EU) focused only on specific copyright issues (computer programs; broadcasting through satellite and cable services; certain economic rights of copyright and related right holders; term of protection; and database). The whole idea of “pan-European copyright law” was missing until the creation of the horizontal InfoSoc-Directive in 2001.<sup>1</sup> While the InfoSoc-Directive has led to intense debates, e.g. with respect to its terminology, effectiveness, its flexibilities, no one can deny that it has significantly contributed to a more uniform copyright system within the European Union.

The EU copyright regime has been constantly analysed in treatises and textbooks, like the Walter & von Lewinski commentary,<sup>2</sup> the Pila & Torremans,<sup>3</sup> Kur & Dreier,<sup>4</sup> or Seville textbooks,<sup>5</sup> just to name a few. While the Walter & von Lewinski treatise bears the closest similarity to Brigitte Lindner’s and Ted Shapiro’s book, both in its style and its length, none of the above mentioned titles can defeat the hereby reviewed book in its depth and length with respect to the InfoSoc-Directive. Indeed, according to the present reviewer’s knowledge, Brigitte Lindner’s and Ted Shapiro’s edited volume is the longest one that is dedicated to the analysis of a single copyright directive.

The book provides for both a horizontal and a vertical analysis of the InfoSoc-Directive. On the one hand, Part I, written by Brigitte Lindner, puts the directive into context, by introducing the “backbone” of the EU rules, namely, the World Intellectual Property Organisation’s Copyright Treaty (WCT) and the Performances and Phonograms Treaty (WPPT). Further, in Part II, Ted Shapiro discusses the main rules of the InfoSoc-Directive. On the other hand, in Part III, we can find detailed chapters on the national implementation of the InfoSoc-Directive by the twenty-eight Member States.

---

<sup>1</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p. 10-19. (Hereinafter InfoSoc-Directive.)

<sup>2</sup> Michel M. Walter - Silke von Lewinski: *European Copyright Law - A Commentary*, Oxford University Press, Oxford, 2013.

<sup>3</sup> Justine Pila - Paul Torremans: *European Intellectual Property Law*, Oxford University Press, Oxford, 2016: p. 243-360.

<sup>4</sup> Annette Kur - Thomas Dreier: *European Intellectual Property Law – Text, Cases & Materials*, Edward Elgar, Cheltenham, 2013: p. 241-322.

<sup>5</sup> Catherine Seville: *EU Intellectual Property Law and Policy*, Second Edition, Edward Elgar, Cheltenham, 2016: p. 7-101.

Although these national chapters vary both in length and depth, they follow the main logic of the InfoSoc-Directive. Thus, they introduce how the relevant economic rights (namely, right of reproduction, distribution and communication to the public, including making available to the public);<sup>6</sup> limitations and exceptions;<sup>7</sup> technological protection measures and rights-management information;<sup>8</sup> as well as sanctions and remedies<sup>9</sup> were implemented by the Member States. Besides the relevant statutory sections, all chapters refer to reasonable amount of other resources, including case law and academic writings. Consequently, the book provides for an up-to-date, very thorough and evidence based summary of the national approaches.

While reading the whole – more than thousand pages long – book is a great challenge, people interested in European Union copyright law can try to use this rich document in a different angle. As the national chapters are almost identically structured (differences exist regarding e.g. the analysis of the rules on orphan works – which is otherwise not an InfoSoc-Directive issue), readers might zigzag through the book by focusing on selected issues. Such an interesting question is related to the constantly debated closed list of limitations and exceptions. While Article 5 provides for multiple limitations and exceptions, it does not oblige Member States to implement all of these rules. Indeed, countries can pick and choose their favourite ones (other than the otherwise obligatory exception for temporary acts of reproduction<sup>10</sup>). Consequently, there are significant differences with respect to the exact limitations and exceptions. A notable example in this regard is parody.<sup>11</sup>

While I often criticize my own country's logic not to implement the parody exception (we Hungarians might lack any sense of humour), this is not a mere Hungarian oddity. Various other countries missed to introduce a statute-based parody exception in their laws as well. Indeed, as Guido Westkamp has noted in his earlier report on the implementation of the InfoSoc-Directive, there are five visible approaches amongst the Member States.<sup>12</sup> First, several countries explicitly provide for a parody exception.<sup>13</sup> Second, Nordic countries (Denmark, Finland, Norway and Sweden) typically permit parody under the concept of independent creation of works. Third, some countries' copyright statutes include a concept of "free use" of copyrighted materials that allows for derivative or transformative uses.<sup>14</sup> Fourth, a few countries allow parody under specific conditions. E.g. the Italian Copyright Law requires users to comply with the formalities of quotation;<sup>15</sup> fair dealing might cover parodies

---

<sup>6</sup> InfoSoc-Directive, Art. 2, 3 and 4, respectively.

<sup>7</sup> InfoSoc-Directive, Art. 5.

<sup>8</sup> InfoSoc-Directive, Art. 6 and 7., respectively.

<sup>9</sup> InfoSoc-Directive, Art. 8.

<sup>10</sup> InfoSoc-Directive, Art. 5(1).

<sup>11</sup> InfoSoc-Directive, Art. 5(3)(k).

<sup>12</sup> Guido Westkamp: *The Implementation of Directive 2001/29/EC in the Member States*, Queen Mary Intellectual Property Research Institute, February 2007 ([http://ec.europa.eu/internal\\_market/copyright/docs/studies/infosoc-study-annex\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf)). By that time Romania, Bulgaria and Croatia were not members of the EU yet, so they were not covered by the report.

<sup>13</sup> These countries and the respective section of their copyright statutes are Belgium (Art. 22, §1<sup>er</sup>, 6° and Art. 46, 5°), France (Art. 122-5, 4°), Lithuania (Art. 25), Luxemburg [Art. 10(6)], Malta [Art. 9(1)(s)], the Netherlands (Art. 18b of the Copyright Act and Art. 10i of the Neighbouring Rights Act), Poland (Art. 29 § 1) and Spain (Art. 39).

<sup>14</sup> E.g. Germany (Art. 24). Notably, however, Article 24 ("Freie Benutzung") has been recently ruled to run against the InfoSoc-Directive's closed list logic. See Case C-476/17 - Pelham GmbH and Others v Ralf Hütter and Florian Schneider-Esleben, Judgment of the Court (Grand Chamber) of 29 July 2019, ECLI:EU:C:2019:624, para. 65.

<sup>15</sup> Italy (Art. 70).

in Ireland, if the use is for purposes of criticism or review;<sup>16</sup> and the United Kingdom also amended its Copyright, Designs and Patent Act to add a fair dealing exception for parody purposes.<sup>17</sup> Finally, a group of countries misses to settle the issue at all. As already noted, Hungary missed to regulate parody in its Copyright Act. Parody might still be allowed by case law, however if the use relates to non-protected elements, like the author's style, or fits into any specific limitation or exception (especially quotation). In sum, those who are interested in the parody exception can find twenty-eight shorter or longer analysis of the parody exception in the national chapters.

Eight years passed by since the first edition of Lindner's and Shapiro's edited book came out. The second edition is more than 300 pages longer than the original version. This can be reasoned by e.g. the mere fact that Croatia, as the twenty-eighth Member State of the European Union, is added to the volume. Similarly, significant case law has been published by the Court of Justice of the European Union regarding the interpretation of the InfoSoc-Directive, and the national chapters properly reflect these novel rulings. In sum, this long but extremely valuable book allows readers (both researchers and practitioners) to dig into the deepest levels of European copyright law on a comparative basis.

---

<sup>16</sup> Ireland [Sec. 51(2)].

<sup>17</sup> The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014, 2014 No. 2356, Art. 5.