

**COPYRIGHT IN THE AGE
OF ONLINE ACCESS**

Alternative Compensation
Systems in EU Law

João Pedro Quintais



Wolters Kluwer

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Abbreviations

ACS	Alternative Compensation System(s)
ACTA	Anti-Counterfeiting Trade Agreement
AG	Advocate General
ALAI	<i>Association Littéraire et Artistique Internationale</i> (International Literary and Artistic Association)
BC	Berne Convention for the Protection of Artistic and Literary Works
BGH	<i>Bundesgerichtshof</i> (the German Federal Court of Justice)
BIRPI	<i>Bureaux Internationaux Reunis pour la Protection de la Propriete Intellectuelle</i> (United International Bureaux for the Protection of Intellectual Property)
Charter	Charter of Fundamental Rights of the EU
CISAC	<i>Confédération Internationale des Sociétés d'Auteurs et Compositeurs</i> (International Confederation of Authors and Composers Societies)
CJEU	Court of Justice of the European Union (former European Court of Justice (ECJ))
CMO(s)	Collective Rights Management Organisation(s)
DRM	Digital Rights Management
ECHR	European Convention on Human Rights
ECL	Extended Collective Licence (or Licensing)
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union

Abbreviations

GEMA	<i>Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte</i> (German society for musical performing and mechanical reproduction rights)
HADOPI	<i>Haute Autorité pour la Diffusion des œuvres et la Protection des droits d'auteur sur Internet</i> . Also refers to the law that set up this authority, the Law No. 2009-669 of June 12, 2009, promoting the Dissemination and Protection of Creation on the Internet
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISP	Internet Service Provider(s)
P2P	Peer-to-Peer
RC	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPM(s)	Technological Protection Measure(s)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Law
UGC	User Created/Generated Content
UDHR	Universal Declaration of Human Rights
VCLT	Vienna Convention on the Law of Treaties
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WIPO Treaties	The WCT and WPPT
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization

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João Pedro Quintais
Amsterdam, January 2017

Note to the Readers

The research for this book was completed on 30 June 2016. Subsequent developments in the relevant law are therefore not reflected in this study, with the exception of updates relating to judgments of the CJEU and AG Opinions cited in the text and published until 31 December 2016. The book therefore does not examine in detail, and only makes cursory reference to, the European Commission's proposals on copyright reform released on 14 September 2016, most notably the proposed Copyright in the Digital Single Market Directive (COM(2016)593).

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Chapter 1

Introduction: Challenges for Copyright in the Online Environment

1.1 BACKGROUND AND PROBLEM DEFINITION

In the European Union (EU), more than 80% of households now have an Internet connection.¹ Most individuals aged between 16 and 74 years use the Internet, a number that will only rise over time.² As Internet penetration and the number of connected consumers increase, so does the importance of copyright law to the regulation of their everyday online lives. When individuals stream music, download a film, access an e-book, create a mash-up, share a video online, or (in some cases) post hyperlinks to protected content, they are usually carrying out copyright relevant acts.³

Copyright is a type of intellectual property right and, in EU law, enjoys fundamental rights protection as property. This status derives from the statement in Article 17(2) of the Charter of Fundamental Rights (Charter)

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1. Eurostat, 2015, with 'information society statistics' on households and individuals (Data extracted in June 2015).
 2. *Ibid.*, referring to numbers as from the beginning of 2014 and noting that the proportion of non-users was down to 18% in 2014 (Data extracted in June 2015).
 3. Unless specified, 'copyright' and its variations refer to copyright and related rights. Likewise, 'work' and its variations refer to subject matter protected under copyright and related rights.