



Following a question put to the European Commission on the possible adaptation of the Copyright Directive to the issues raised by AI, the European Commission has indicated that it has no intention of revising the 2019 Copyright Directive and clarifies its view on the matter.



INTELLECTUAL PROPERTY LATEST NEWS

For the European Commission, there's no need to update the 2019 Copyright Directive in the age of AI

EP, Parliamentary Question, No. E-000479/2023, Feb. 15, 2023

EP, Parliamentary Answer, No. E-000479/2023 (ASW), March 31, 2023

Member of the European Parliament Emmanuel Maurel, a founding member of the Republican and Socialist Left, put a question to the European Commission on the possible adaptation of legislation to AI-generated works, and the reinforcement of copyright protection for artists of original works.

The Commission replied on March 31, 2023, that it had no intention of revising Directive 2019/790 on copyright and related rights in the digital single market of April 17, 2019. In its view, the directive does not require any specific adaptation to AI-generated works and provides sufficient protection for original copyrighted works. Indeed, AI developers must obtain authorization from authors before using their works to teach their software, and relevant exceptions are already provided for in the case of text and data mining. A balance is thus already assured by the directive, with rights holders able to refuse to allow their content to be used for text and data mining.



The composer of a film soundtrack is not always a co-author: reminder of what is a joint work of art

_French Court of Cassation, No. 22-13.809, March 29, 2023

The French Supreme Court has ruled on the qualification of a work as a joint authorship for an audiovisual work. It points out that a collaborative work is characterized by concerted participation and a community of inspiration (L.113-3 CPI). Unless proven otherwise, the author of musical compositions is also presumed to be the co-author of a collaborative audiovisual work (article L. 113-7 CPI).

In this case, the Court noted that the work in question was an advertising film that had been commissioned and initially produced without music. The soundtrack had only been incorporated afterwards, without the composer's collaboration or participation in the conception of the pre-existing work commissioned.

In conclusion, the simple presumption of article L. 113-7 of the CPI must be set aside, as the composer in this case is not the co-author of the audiovisual work produced in collaboration with the advertising film.

Clarification of the concept of data host as defined by the French law on confidence in the digital economy (loi pour la confiance dans l'économie numérique)

French Court of cassation, No. 21-20.252, Com. April 13, 2023

Leezily is a website that enables third-party designers to create and sell T-shirts. However, some of these products infringe the rights held by Sprd.net, which is suing Teezily for infringement.

Teezily company invoked the exemption from liability for hosting providers defined in article 6, I, 2° of the French law of June 21, 2004 on confidence in the digital economy. However, the French Supreme Court points out that a web host is someone who hosts data for third parties in a strictly passive, technical and automatic manner. Teezily also manufactured and delivered T-shirts.

As a result, the Court refused Teezily the benefit of the exemption for data hosting companies, and overturned the decision of the Court of Appeal insofar as it dismissed Sprd.net's claims for infringement, unfair competition, parasitism and disparagement. The case has been referred back to the Paris Court of Appeal for retrial.

INTELLECTUAL PROPERTY LATEST NEWS



INTERNATIONAL FOCUS

Trademark revocation - Objective interpretation of the goods and services as designated at the time of filing

European General Court, No. T-794/21, April 26, 2023, Wenz Kunststoff GmbH & Co. KG v. Office of the European Union for Intellectual Property

The European General Court has ruled on the nature of the interpretation to be made of the goods covered by a trademark application in the event of revocation for lack of use. In this case, Mouldpro sought revocation of the EU trademark "MOULDPRO" owned by Wenz, for piping products in class 17. Mouldpro argued that the mark had been used to designate metal products only, whereas class 17 only includes plastic products.

The Court upheld the revocation of the "MOULDPRO" trademark, pointing out that interpretation is objective in relation to the wording: the subjective intentions of the applicant are irrelevant. In fact, the initial application was for goods in class 7, but at the instigation of the EUIPO, the applicant company eventually grouped all the goods together in a single class 17 specific to plastics. According to the Court, Wenz itself took the decision to reclassify as proposed by the EUIPO, and cannot reproach the Office for this or use it as an argument in its defense.

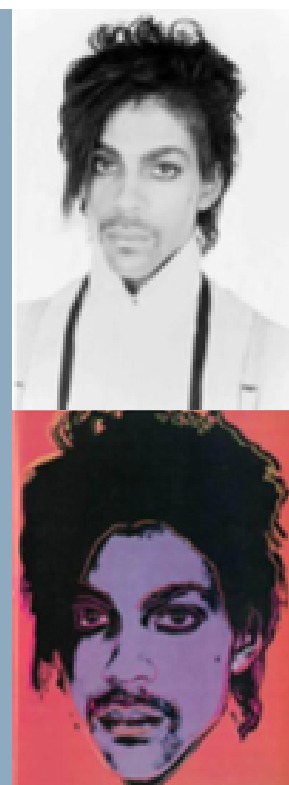
This decision is a reminder of the importance of the choice of classes and wording in trademark applications.

USA - Supreme Court recognizes copyright protection of Lynn Goldsmith's photo of Prince used by Andy Warhol

US Supreme Court, May 18, 2023, No. 21-869

A photograph of Prince by Lynn Goldsmith, published in Newsweek in 1981, had been used by Andy Warhol for one of his works in 1984, which was then published in 2016 on the cover of Vanity Fair Magazine. After more than seven years of legal battle between the photographer and the Andy Warhol Foundation, the Supreme Court ruled in favor of the photographer.

According to the American judges, Andy Warhol's work constitutes a derivative work that is not sufficiently innovative in relation to the photograph from which it is inspired, and is therefore covered by the Copyright of Lynn Goldsmith's original work. Unauthorized use of this derivative work is therefore prohibited by copyright and requires the authorization of the original author if the conditions of "Fair Use" are not met. In this case, however, the high American court considered that the two works had the same object and nature (they both depict Prince in a magazine article and are of a commercial nature), thus excluding the application of the "Fair Use" doctrine.



MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Google ordered to pay 300,000 euros in damages for supplying Google Ads with illegal content

Paris Court of Appeal, section 5 ch. 1, March 29, 2023, No. 21/00704, Google Ireland Ltd & Google France v. Prodiss

Prodiss (national union of music and variety show producers, broadcasters, festivals and venues) took legal action against Google after noticing advertisements on the search engine linking to ticket sales sites not authorized by show producers.

Article 313-6-2 of the French Criminal Code prohibits the regular sale of tickets for shows without the prior authorization of the organizer or producer. The Paris Court of Appeal points out that this provision also applies to persons who regularly exhibit or provide the means for the sale of tickets to a show. Thus, Google, via its Google Ads, allowing the purchase of the keywords "purchase", "sale", "tickets", "show" and "concert" by unauthorized advertisers falls within the material scope of the infringement. The company should have obtained prior written authorization from the producer of the show concerned.

As a result, the court ordered Google to pay 300,000 euros in damages for harming the collective interest of the entertainment industry. Google has not yet indicated whether it intends to appeal.



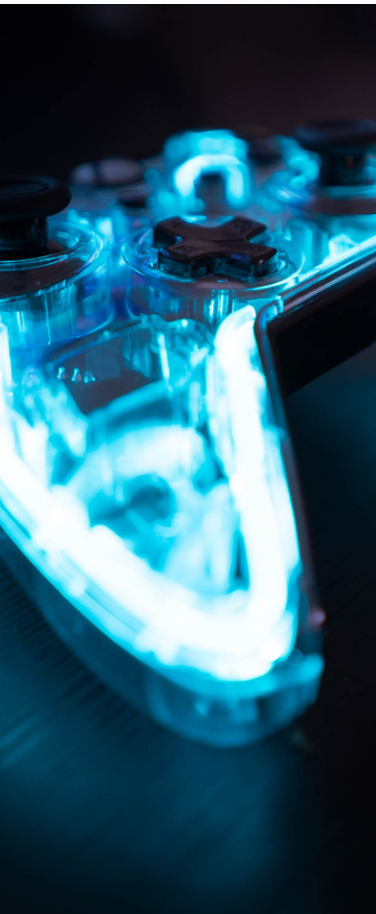
Almost half a million in damages awarded for illegal hosting of online video games

Paris Court of Appeal, April 12, 2023, No. 21/10585

Nintendo had sent a lawyer's cease and desist letter requesting Dstorage, an online content hosting company, to remove illegal download files infringing its intellectual property rights on video games.

The Court of Appeal ordered Dstorage to pay €442,750 for failing to remove the illegal content reported by Nintendo quickly enough. According to the French law on confidence in the digital economy ("loi pour la confiance dans l'économie numérique") of June 21, 2004, the host of online content which does not promptly remove the illegal and sufficiently reported content, incurs liability. The claims that there had been no prior use of the reporting interface set up by the host itself, or that there had been no prior court decision, were not relevant.

Nintendo welcomes this decision. It is not known whether Dstorage has lodged an appeal in cassation.



MEDIA, ENTERTAINMENT AND ADVERTISING LATEST NEWS

Adoption of the bill to combat scams and frauds by influencers on social networks

Text prepared by the Joint Committee, March 25, 2023

In our December 2022 to January 2023 issue, we reported on the will of members of parliament to regulate the influencer sector on social networks. On March 30, 2023, the French National Assembly unanimously passed the first reading of a bill aimed at combating scams and frauds by influencers on social networks. This bill, which was adopted by the government following the accelerated procedure, was transmitted to and amended by the Senate on March 30, 2023.

The amendments were aimed in particular at reinforcing the rigor of the text. For example, were introduced these obligations and interdictions:

- Banning the promotion of sports betting subscriptions, nicotine sachets and therapeutic abstention;
- Obligation to display a banner reading "forbidden to under-18s" for the promotion of gambling;
- Removal of the threshold conditioning the obligation to subscribe to a written contract;
- etc.

A joint committee was convened on May 10, resulting on May 25 in the drafting of a joint text on the provisions still under discussion. The Parliament and the Senate must now approve it.

To be continued...



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