



Intellectual Property newsletter

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Introduction

Welcome to the new edition of the KPMG Intellectual Property newsletter on developments in the world of copyright, patents, trademarks, designs, domains and other Intellectual Property rights.

We have compiled a number of interesting articles from around the world that provide insights into new developments in the area of intellectual property. KPMG firms are proud of their global network of IP lawyers, business advisors and other IP experts enabling KPMG professionals to offer an international service to clients in this area.

In our first article, we provide you with an overview of the EU's AI Act, highlighting the key deadlines and requirements that businesses need to be aware of in order to comply therewith.

The new EU-Design Reform introduces significant changes to the protection of design rights and their management within the European Union. We provide a brief summary of the new regulations.

Next, we explore the domain name dispute resolution process in Vietnam, providing a detailed look at the legal framework and recent developments in this area.

Additionally, we discuss a current case at the CJEU concerning the transfer of related rights under the DSM

Directive, offering valuable insights into the implications for performers.

We conclude our newsletter with an overview of the new possibilities of IP protection for European manufacturers of craft and industrial products through "Geographical Indications" and "Traditional Specialties Guaranteed".

We hope you enjoy reading.



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Countdown to the AI Act compliance

First milestone already in February

On 2 August 2024, Regulation (EU) 2024/1689 of the European Parliament and of the Council, laying down harmonized rules on artificial intelligence (AI Act) entered into force. The AI Act provides rules for the safe, responsible, and transparent use of artificial intelligence (AI) in the EU. The first set of rules becomes applicable in a matter of days and companies using AI should act swiftly to prepare for new obligations.

The AI Act impacts a wide range of entities, from AI system providers, distributors, importers to end users. If your company develops AI systems or uses off-the-shelf (ready-made) AI solutions in its operations, you should pay close attention to the regulation.

First, companies should ask themselves whether their AI solutions meet the definition of an AI system under the AI Act. If yes, the next step should be to determine a role the companies play in the AI ecosystem and assess what level of risk the use of a particular AI system poses. The regulation classifies AI systems according to their risk level, and, generally, the higher the risk an AI system poses, the more obligations will fall upon the particular entity.

1. The first category comprises AI systems whose use poses **an unacceptable risk**. Their use and supply in the EU will be prohibited altogether. This category includes, e.g., AI systems intended for social scoring, systems designed to manipulate and circumvent free will or biometrically categorize people to infer or deduce their political opinions, religious beliefs, sexual orientation etc., and other similar systems listed in Article 5 of the AI Act that are contrary to EU core values.
2. The main objective of the new regulation is to cover the category of **high-risk AI systems**. To determine high-risk AI systems the AI Act introduces comprehensive mechanism. This category may include AI systems used in the regulated products already covered by specific harmonized regulations (regulations covering aviation safety, safety of toys, lifts, medical devices etc.). It may also include AI systems used in specific areas such as in critical infrastructure (e.g. transport industry, energy sector), access to essential services (e.g. healthcare, banking, insurance, welfare), education, employment or law enforcement. High-risk AI systems are subject to the strictest regulation and a wide range of obligations for the entities concerned because their use could threaten fundamental rights, freedoms, and security.
3. AI systems where **the risk lies in a lack of transparency** will be subject to information obligations to ensure that the subject who is exposed to an AI system interaction (e.g. chatbot, deepfake content, etc.) is informed of this fact and is thus free to decide whether to continue or stop the interaction.
4. In addition to the above categories, the AI Act also regulates **general-purpose AI models and general-purpose AI models with systemic risk**. This special category introduces an additional set of obligations and was included in the AI Act in response to the advent of large language models and the associated risks.

Companies aiming to supply AI systems to the European market or integrate them into their operations must act swiftly to ensure compliance with upcoming regulatory deadlines. The first milestone, **2 February 2025**, requires businesses to identify and prevent the use of prohibited AI systems. Failure to comply with this ban carries **strict penalties** of up to EUR 35 million or 7% of their global annual turnover. From **2 August 2025**, obligations for general-purpose AI models will enter into effect. The widest range of obligations impacting high-risk systems will enter into effect in stages, **on 2 August 2026 and 2 August 2027**.

To ensure correct and smooth implementation of the new regulation as well as overall effective governance of the AI in your company, leadership of the companies should primarily **determine who oversees AI governance in the company** and ensure proper support for this task. Without clearly defined roles, responsibilities and sufficient means, it will be difficult for companies to ensure their readiness for the regulatory demands in such a short time frame.



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The new EU Design Reform

The new EU Design Reform represents a significant modernization of the design protection framework and will benefit creators and businesses across Europe.

The amending regulation (**Amending Regulation**) on registered and unregistered design protection will **begin to apply on 1 May 2025**.

Time for a short recap of the main areas of change in a nutshell:

What are the main terminology and structural changes?

- The terminology of the Amending Regulation is adapted to the current wording, with all references to the Community being substituted by references to the **European Union** or, in some instances, the **Union** (European Union or Union).
- The Community Design Regulation will become the **European Union Design Regulation (EUDR)**.
- The Registered Community Design and Unregistered Community Design will become the **Registered EU Design (REUD)** and the **Unregistered EU Design (UEUD)**.
- The existing Community design applications and Community designs will automatically become EU design applications and EU designs (**EU Designs**).
- The Community Design Court will become the EU Design Court (**EU Design Court**).
- The Fees Regulation is repealed and the rules applicable to the level, structure and payment of fees are now incorporated into the amending regulation as Annex I (**Annex I of the Amending Regulation**).



The new EU Design Reform



What are the main substantive changes?

- The **definition of design** has been broadened and **encompasses animation**. Animation is a broad term and includes both movement and transition (Article 3(1) EUDR, as modified by the Amending Regulation).
- The **definition of product** has been revised and explicitly **includes non-physical items**. A product can be any industrial or handicraft item other than computer programs (Article 3(2) EUDR, as modified by the Amending Regulation).
- The **scope of the exclusive rights** conferred by a design has been **extended to 3D printing**. Now also creating, downloading, copying and sharing or distributing to others any medium or software which records the design represent infringing uses of a design (Article 19(2)(d) EUDR, as modified by the Amending Regulation).
- **New limitations** are introduced **to the exclusive rights** (Article 20 EUDR, as modified by the Amending Regulation) regarding
 - **identification and referencing** (acts carried out to identify or refer to a product as that of the design right holder), and
 - **comment, critique or parody** (actions for commenting, critiquing or making parody are permitted).
- The transitional **repair clause** becomes a permanent provision and **clarifies the exception to design protection for spare parts** used in the repair of complex products. The repair clause clarifies that there is no protection for a design which constitutes a component part of a complex product for the purpose of the repair so as to restore its original appearance (Article 20a EUDR, as modified by the Amending Regulation).
- The **design notice system** allows design holders, or third parties with their consent, **to display a design notice** on their products to raise awareness about the design registration. The design notice **consists of a letter D enclosed within a circle**, which can be used to indicate that the product is protected by design registration (Article 26a EUDR, as modified by the Amending Regulation).
- Several **changes to the filing and examination process** are introduced to improve efficiency and accessibility for users (centralized filing at the EUIPO; payment of the application fee as requirement for filing date; abolishment of submission of physical specimens; removal of unity of class requirement to facilitate multiple design applications; deferred publication is no longer subject to the payment of a publication fee; calculation of the basic period for renewal for EU designs is aligned with that of EU trademarks).
- The **changes regarding ownership** clarify that a request for a change of ownership through entitlement proceedings can be filed by the person who is entitled. These changes ensure that rightful holders can directly request a change of ownership (Articles 15 and 16 EUDR, as modified by the Amending Regulation).
- The registration and publication fees are unified **into one single application fee** and a **flat fee per additional design for multiple applications** is introduced (Annex I of the Amending Regulation).



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Domain name (.vn) dispute resolution in Vietnam

Decree No. 147/2024/ND-CP on managing, providing and using internet services and online information (“Decree 147”), replacing Decree 72/2013/ND-CP dated 15 December 2023 (“Decree 72”), taking effect on 25 December 2024 provides positive changes to the domain name “.vn” dispute resolution regime in Vietnam. It may, however, await further guidance or amendments for a more comprehensive domain name dispute resolution framework, a UDRP-like regime as committed under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”).

Clear grounds for “.vn” domain name dispute resolution

Decree 147 stipulates clearer grounds for “.vn” domain name disputes in Vietnam.^(a) Essentially, it provides the three criteria that must be fully met for a plaintiff to dispute a domain name and the specific conditions under which a defendant can be considered to have legitimate rights or interests in a disputed domain.

When a plaintiff can initiate a “.vn” domain name dispute

A dispute can be initiated by a plaintiff if it fully meets the three conditions. Firstly, the disputed domain name is identical or confusingly similar to a trademark, geographical indication, trade name, or personal name that the plaintiff legally owns or has rights to. Secondly, the defendant does not have any legitimate rights or interests in relation to that domain name. Thirdly, there is a bad faith use by the defendant. In other words, the defendant has used the domain name in bad faith, taking advantage of the reputation or prestige of the plaintiff’s trademark, trade name, or geographical indication for the purpose of making an unjust profit.

Note: (a) Article 16.1 of Decree 147



Domain name (.vn) dispute resolution in Vietnam



When a Defendant is considered to have legitimate rights or interests in a “.vn” domain dispute^(b)

A defendant will be considered to have legitimate rights or interests in a disputed domain name if one of the four conditions is met: (i) the defendant has used or has clear evidence of preparing to use the domain name or a name corresponding to the disputed domain name in connection with the defendant's products, goods, or services before the dispute arose; (ii) the defendant is publicly known by the disputed domain name, even if they are not the rights holder of the trademark, name, etc.; (iii) the defendant is using the domain name lawfully, for non-commercial purposes, and without taking advantage of the reputation or prestige of the plaintiff's trademark, name, etc. for the purpose of making an unjust profit; and (iv) there is other evidence to prove the legitimacy of the defendant's interest in the domain name.

Deletion of prescriptive actions

While Decree 147 removes prescriptive actions, it is unclear if it fully embraces administrative action in line with the Vietnam Intellectual Property (“IP”) Law. Accordingly, the Vietnam Internet Network Information Center (“VNNIC”) under the Ministry of Information and Communications of Vietnam is explicitly assigned to settle domain name “.vn” disputes on basis of mediation/ conciliation results, arbitration decisions or conclusions, or court judgments or decisions.^(c) This implicates that the administrative action is not recognized for domain name “.vn” disputes. This contrasts with the Vietnam Intellectual Property (“IP”) law, under which the administrative action remains the most common route of action in settlement of IP infringements in Vietnam^(d) given it is fast, less burdensome and at low cost.

Clearer conditions for domain name freezing and transfer

During the domain name dispute proceedings, VNNIC has the authority to lock disputed domain names upon the request of relevant authorities.^(e) This power to freeze domain names during legal proceedings was previously established and governed by ministerial circulars.

After a successful domain name dispute resolution, the plaintiff is granted a grace period of 45 days to register the domain name. If the plaintiff fails to register it within this timeframe, the domain name becomes available for public registration.^(f)

These provisions aim to ensure a fair and efficient resolution process for domain name disputes while balancing the interests of both the plaintiff and the public. However, there may be a concern in implementation of these provisions. In practice, applying the court preliminary injunctive relief measures in the IP proceedings is quite burdensome in Vietnam.

Conclusion

Decree 147 represents a step forward in rounding the domain name dispute resolution in Vietnam. However, the above-discussed issues indicate that it still falls short of fully meeting the CPTPP requirements, which mandates a UDRP-like regime to resolve the domain name disputes expeditiously, at low cost and not overly burdensome.^(g) However, it is anticipated that forthcoming guidance circular(s) or amendments to Decree 147 may introduce a more comprehensive framework for domain name dispute resolution, a UDRP-like regime, which can simplify the process, explicitly resolve the disputes to promptly protect the legitimate rights and interests of the relevant parties.

- Note:
- (b) Article 16.2 of Decree 147
 - (c) Article 16.4 of Decree 147
 - (d) Articles 211, 214 of the Vietnam IP Law
 - (e) Article 16.3 of Decree 147
 - (f) Article 16.4 of Decree 147
 - (g) Article 18.28 of CPTPP



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The right to impose assignments of related rights and the CJEU

On 24 October 2024, the Advocate General at the CJEU handed down his opinion on the two prejudicial questions that the Belgian Council of State had referred on 31 August 2023^(a) regarding the right to appropriate and proportionate remuneration in the context of related rights, as enshrined in the DSM Directive. The Advocate General is of the opinion that the Belgian government was not entitled to assign such related rights via regulation when the adoption and content of that regulation do not have the prior consent of those performers or of their duly authorized representatives.

I. Background of the case

The opinion was handed down in a dispute between the musicians of a Belgian musical organization and the Belgian State about the legality of a Belgian Royal Decree that imposed a transfer of the related rights

(also known as “neighboring rights”) of these musicians as civil servants to the Belgian musical organization in return for a fixed remuneration. The Royal Decree was adopted after the failure of negotiations about such remuneration.

The musicians requested before the Belgian Council of State (an administrative court having competence to annul legislative acts or administrative decisions) the annulment of this Royal Decree because this Decree does allegedly not comply with article XI.205, § 4 of the Belgian Economic Code, providing that when a performer provides a performance under an employment contract or a statute, the related rights arising from that performance

Note: (a) A question was also addressed to the Belgian Constitutional Court but given the global nature of this newsletter, this aspect will not be discussed further.



The right to impose assignments of related rights and the CJEU

may be transferred to the employer insofar as that transfer of rights is expressly provided for and insofar as the performance falls within the scope of the employment contract or statute. That provision was implemented into Belgian law from Articles 18 to 23 of Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the “DSM Directive”).

The musicians argued that the transfer of such rights is only possible via consent and that the unilaterally imposed Royal Decree could not be based on the aforementioned provision in the Belgian Code of Economic Law, as construed under the DSM Directive.

II. Prejudicial questions

Since the litigious provision in the Belgian Royal Decree was based on the DSM Directive, the Belgian Council of State decided to stay the national proceedings and to ask the CJEU the following prejudicial questions regarding the interpretation of articles 18-23 of the DSM Directive:

- Are these articles to be interpreted as precluding the transfer by law of the related rights of statutory employees for services performed in the context of the employment relationship?
- If so, should the terms “acts performed” and “rights acquired” in Article 26(2) DSM Directive be interpreted as including, in particular, the transfer of related rights through legislation enacted before 7 June 2021?

The second question relates to the applicability *ratione temporis* of the Directive and the national legal provisions based thereon, since in this particular case most musicians were already working at the Belgian musical organization and had already made performances prior to the adoption of the Belgian Royal Decree that operated the transfer of their related rights retroactively.

III. The approach of the Advocate General

In his opinion of 24 October 2024, the Advocate General recommends first of all that the prejudicial question of the Belgian Council of State should be re-formulated in that there is not only clarification needed about articles 18 to 23 of the DSM Directive, but also of other provisions in other community law instruments such as in Directive 2001/29 of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the Information Society and in Directive 2006/15 of 12 December 2006 on rental rights and lending rights and on certain rights related to copyright in the field of intellectual property that also deal with related rights of performers.

The Advocate General therefore recommends that the CJEU should examine whether each of these community law provisions – that according to him cannot be interpreted in isolation from each other – preclude the assignment by regulation, in favor of the employer, of the related rights of performers who are statutory agents, for performances carried out in the context of the employment relationship.

This recommendation is important because it illustrates that although many Community laws emphasize in their introductory recitals that they do not impact or alter previously existing Directives or Regulations, this appears afterwards incorrect and even unavoidable. Especially in the field of copyright, several EU-legislative texts have been adopted during the past two decades and these texts must be interpreted together and not separately. This is certainly not the only occasion where this principle will need to be applied in the EU copyright field.

Applicability *ratione personae*: no distinction between employees and public servants

The Advocate General observed further that by using the neutral term “performers” – which must be interpreted uniformly throughout the European Union – the European legislator did not make the applicability of these Directives dependent on the performer’s situation of employment. Hence, the distinction as to whether performers are employees or public servants is irrelevant.

This conclusion is positive because the opposite would have left all public authorities in the European Union that employ public servants who exercise and generate related rights in a legal vacuum. This conclusion seems also to have a general reach and is not limited to the specific facts of this case at hand. It is useful that the CJEU confirms this conclusion in its future ruling.

Application *ratione temporis*

The second question to the CJEU relates to the applicability *ratione temporis* of article 26(2) of the DSM Directive. On this point, the Advocate General recommends that the Directive can only apply to rights existing on the date that the Directive took into effect and to related rights that existed already at that time, i.e. performances carried out since 7 June 2021. It does according to him not apply to performances carried out before that date, nor to future performances to be carried out after that date, or after the coming into force of the Belgian Royal Decree. A Member State could not rely on any “acquired rights” in order to thwart the effectiveness of the Directive.

The right to impose assignments of related rights and the CJEU

Limitations and exceptions to the exclusive rights of performers

The rights of performers are exclusive, and their use requires in almost every case the performer's consent. There are only a limited number of exceptions that can be qualified as compulsory licenses where the performer does not need to give his consent but needs only to receive an equitable remuneration. The most notable example is that of broadcasting and communication to the public of performances that have been previously recorded on a phonogram and that have been published for commercial purposes. This exception was already contained in the Rome Convention of 1961 and in the Performances and Phonograms Treaty adopted by WIPO in Geneva in 1996 and maintained in the EU-legislation. The Advocate General reminds that the specific exceptions in the EU Directives cannot result in turning all the exclusive rights of a category or of a group of performers into a right of remuneration via such compulsory assignments.

Meaning of the terms "contract" and "consent"

The Opinion also points out that the consent needed for the transfer or exploitation of related rights does not need to be given in a specific licensing or assignment contract related to such rights but can also be contained in more general agreements such as employments agreements that offer remuneration in return for the required consent. It states that the DSM Directive takes such situation as a given and that the word "contract" must therefore be understood as referring to any licensing or exploitation or transfer of exclusive rights, including related rights and including employments agreements or agreements with public servants.

The Advocate General also observed that there could be no "implicit" or "implied consent" in this case that deals with the general assignment of the related rights of a group of performers, since earlier decisions of the CJEU emphasize that the conditions for implicit consent are very strictly defined. In the case at hand, implicit consent was impossible or hypothetical.

Conclusion of the Advocate General

Since the exceptions to the general principle should therefore be narrowly construed and are listed exhaustively, the Advocate General concluded that the broad transfer of the related rights of the musicians working at the Belgian musical organization – as imposed by the Belgian Royal Decree – was not compliant with article 26(2) of the DSM Directive.

To understand his conclusion, it is important to read the other considerations that led the Advocate General to reach his opinion. He observed that the Belgian Royal Decree is akin to a compulsory assignment that was decided, as it were, by the Belgian Government for its own benefit, that was opposed by the musicians with whom no collective agreement could be reached, and that applied even retro-actively to musicians who were already member of the Belgian musical organization long before the Decree was adopted.

These three factual circumstances help to understand why the Belgian Royal Decree was found not to be compliant with the aforementioned Directives. The conclusion of the Advocate General must therefore be read against this specific background.

IV. Further news expected from the CJEU

It is now up to the CJEU to decide on the matter and to give its binding interpretation. The decision from the CJEU can have consequences for other types of national regulations where transfer of related rights was organized by lack of consensus amongst the various stakeholders. But it seems that there is no reason to worry that the specific role and function of a public servant as performing artist could play a role in this discussion, as was feared when this case started.



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“Geographical Indications” and “Traditional Specialties Guaranteed” in a nutshell

The Regulation EU 2023/2411 will fully apply this year from 1 December 2025 and introduces a new industrial property right for producers of craft and industrial products. This is a significant expansion of the existing Geographical Indications at the EU level. Time for a short recap of “Geographical Indications” and “Traditional Specialties Guaranteed” in the EU in a nutshell:

What are “Geographical Indications”?

- Geographical Indications are logos used to identify products that have a specific geographical origin and have features or reputations that are unique to that origin.
- Geographical Indications assist producers to market their products more effectively and help consumers to trust and differentiate quality products.
- Geographical Indications were previously only available for agricultural products and foodstuffs, wine and spirits. The protection of geographical Indications will be extended to include crafts and industrial products.

What are “Traditional Specialties Guaranteed”?

- Traditional Specialties Guaranteed are not tied to a geographical area.
- Traditional Specialties Guaranteed are names of products, registered and protected across the EU to safeguard traditional methods of production and recipes.

What logos can be used?

- Protected Designation of Origin (PDO)



PDOs are granted to items that have the strongest ties to the place where they are manufactured.

This means that the entire production process takes place in a single region.

Example: “Allgäuer Sennalpkäse” (cheese)

- Protected Geographical Indication (PGI)



PGIs highlight the link between a certain geographic region and the product's name.

This means that at least one stage of production takes place in the designated region.

Example: “Thüringer Rostbratwurst” (sausage)

- Traditional Specialties Guaranteed (TSG)



TSGs emphasize traditional elements of the product.

This means that the manufacturing process or composition is relevant, without being tied to a specific geographical region.

Example: “Kräuterhefe” (herbal yeast)

What are the protections?

- Protection against commercial exploitation of the protected name by comparable products that do not conform to the product specification.
- Protection against any misuse, imitation or evocation of the protected name.
- Protection against any other false or misleading indication as to the provenance, origin, nature, or essential qualities of the goods.
- Protection against any other practice liable to mislead the consumer as to the true origin of the product.



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