

European Intellectual Property Review

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MARTIN KRETSCHMER AND
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Getting Creators Paid: One More Chance for Copyright Law 279

This opinion argues that copyright law must benefit creation. Rights reversion to primary creators, in particular if works are not sufficiently used, is an under-appreciated tool to achieve this aim. Rights will be held where works can be put to their most productive use. Warehousing of copyright assets is discouraged. This opinion introduces an Open Letter signed by a group of leading academics in the context of the implementation of the Directive on Copyright in the Digital Single Market. The letter to the European Commission and the relevant authorities of EU Member States advocates taking the "right of revocation" under Article 22 seriously as a "use-it-or-lose-it" provision.

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Interpreting EU Reversion Rights: Why "Use-it-or-lose-it" Should Be the Guiding Principle 283

This article presents the findings from a comprehensive mapping of copyright reversion provisions which are currently or were historically a part of the laws of EU Member States. The analysis identifies patterns and argues for a "use-it-or-lose-it" guiding principle that should govern the whole term of creator contracts. This principle is being made explicit within EU copyright law by a new revocation right provided by art.22 of the Directive on Copyright in the Digital Single Market. Whereas the current reversion rights landscape is fragmented, Member States' preference for use-based provisions is clear. The understanding of "use", especially in the digital context is, however, vague. This article proposes a way to address those shortcomings while bringing all reversion rights under a "use-it-or-lose-it" umbrella during the implementation process of the Copyright in the Digital Single Market Directive.

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With reversion rights on the legislative agenda of EU Member States (owing to art.22 Copyright in the Digital Single Market Directive) this article uncovers the legislative history of reversion in the UK Copyright Act 1911 (which applied also to the British Empire). Reversion related to controversies surrounding the significant increase in the copyright term in 1911 (to the author's life plus 50 years). A significant post-mortem term was intended to enable authors to make meaningful provision for their families but this would be undermined if "rich publishers" could take an assignment for the full term. Accordingly, reversion was an essential part of the legislative package which facilitated significant term extension in 1911. The 1911 debates were also the occasion for the consideration of a proposal for reversion in the event of an assignee's bankruptcy. This article concludes by reflecting on the implications of the debates of 1911 for how we think about reversion and copyright policy today.

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This article critically explores the two new Text and Data Mining (TDM) exceptions that have been introduced in the Copyright in the Digital Single Market Directive. After a critical analysis of the new provisions, this article argues that they still present several flaws that risk stifling AI developments in Europe. Thus, the contribution outlines an interpretative framework, based on the analysis of the infringement test, to rethink the rights of reproduction and extraction in line with the economic rationale of copyright and the database right. Furthermore, this article makes suggestions to improve the TDM exceptions at national level. In conclusion, it points out the remaining challenges of private ordering and trade secrets for research and AI innovation.

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On 12 November 2020, a 4:3 majority of the High Court of Australia delivered a key decision departing from over 100 years of jurisprudence and enshrining the doctrine of patent exhaustion in Australian law. The decision comes at the end of the long-running patent infringement battle between OEM printer cartridge supplier Seiko Epson and cartridge re-manufacturer, Calidad, and represents a major win for re-manufacturers by providing a clear statement that the rights of a patentee to control a product which embodies their invention are completely exhausted on the first sale of the product to a consumer.

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