

# NEWSLETTER

IP / MEDIA



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The famous design furniture publisher Vitra ostains that the iconic DSW chair designed by Charles and Ray Eames I be protected by copyright



# NEWS INTELLECTUAL PROPERTY

## EU Council gives final approval to design protection package

[Directive on the legal protection of designs and Regulation on Community designs](#)

On 10 October 2024, the Council of the European Union definitively adopted the Directive and Regulation amending the legal framework applicable to designs.

These measures aim to modernise the protection of industrial designs in the face of digital advances and 3D printing. The aim is to simplify the registration of designs at EU level, reduce costs and harmonise procedures between European and national systems. A "repair clause" has been introduced, allowing exemption from protection for spare parts used in the repair of complex products, such as in the automotive industry. There will be a transition period to protect existing models while the new rules are being put in place. Once adopted, the directive will be published in the Official Journal and will enter into force 20 days later, with Member States having 36 months to transpose it. The regulation, meanwhile, will enter into force 20 days after its publication and will apply four months later.



## Legal protection of software: clarification from ECJ

[ECJ, 17 October 2024, C-159/23, Sony Computer Entertainment Europe](#)

In a ruling handed down on 17 October 2024, the European Court of Justice ECJ, asked by the German Federal Court of Justice to rule on the protection of computer programs and variable data inserted into RAM when these programs are run.

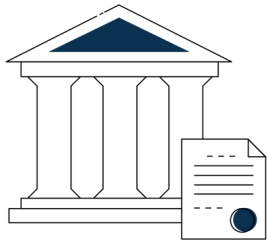


Sony, manufacturer of the PSP console, had requested a ban on the sale of Datel products that modified the games in an unintended way, deeming them to be in breach of copyright. Following contradictory decisions by the German courts, the issue was referred to the ECJ. The ECJ confirmed that copyright protection applies to the expressions of a programme, such as the source and object code, but not to the ideas or functionalities. Datel's incriminating software did not modify the source code or object code of the Sony console's computer program, but rather the content of variables that the program uses during its execution. The Court considered that these variables did not fall within the scope of copyright protection for the console program. Thus, the changes to the content of the variables did not constitute a reproduction of the program and were not protected. The aim of Directive 2009/24 is to protect against unlawful reproduction while allowing independent creation. The Court concluded that the changes to the variables made by Datel's software did not infringe the directive, leaving it to the national court to verify this.

# NEWS INTELLECTUAL PROPERTY

## ECJ strengthens the protection of works of applied art created outside the EU

ECJ, 24 October 2024, Kwantum Nederland BV and Kwantum België BV v Vitra Collections AG, C-227/23.



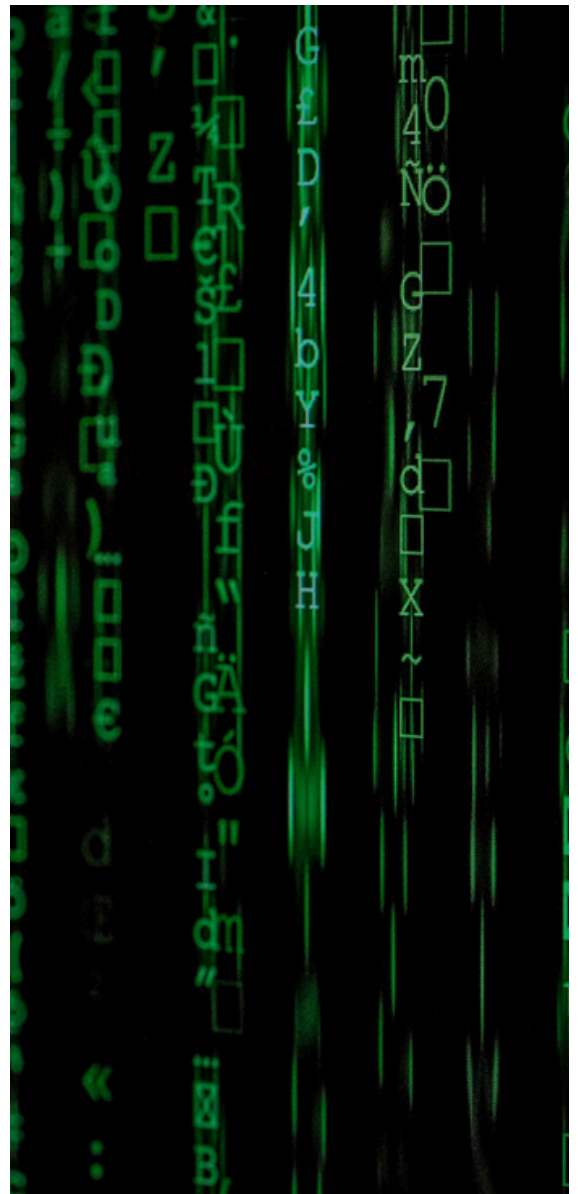
On 24 October 2024, the ECJ handed down an important ruling on the protection of works of applied art such as design objects and furniture.

The dispute was between Vitra Collections AG, a company incorporated under Swiss law, and Kwantum Nederland BV and Kwantum België BV, companies operating a chain of shops in the Netherlands and Belgium selling interior design products, including furniture. Vitra accused them of marketing a chair similar to the DSW chair designed in 1948 by Charles and Ray Eames, for which Vitra holds the copyright.

The court in The Hague ruled that Kwantum did not infringe Vitra's copyrights in the Netherlands and Belgium and rejected its claims. This judgement was overturned by the Court of Appeal in The Hague. On appeal, the Dutch Supreme Court noted that the dispute concerned the applicability and scope of Article 2(7) of the Berne Convention. This article provides that works protected solely as designs in the country of origin cannot claim in another country party to the Convention any protection other than that attached to designs, such as copyright, on the basis of a criterion of material reciprocity.

The ECJ made it very clear that an EU Member State cannot derogate from EU law by applying the material reciprocity clause provided for in Article 2(7) of the Berne Convention to a work whose country of origin is outside the EU, as is the case with the United States. Member States must ensure the protection of works of applied art on their territory, regardless of their country of origin.

This ruling should lead the French courts to change their case law, even though the reciprocity criterion is still regularly taken into consideration. For example, in a ruling on 7 October 2020, the French Supreme Court refused copyright protection to the iconic Tulip chairs and armchairs by American designer Eero Saarinen, despite their registration with the US Copyright Office (appeal 18-19.441).



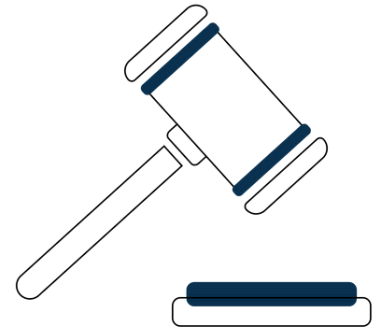
# NEWS INTELLECTUAL PROPERTY

## Chanel vs Jonak: recognised parasitism of the luxury brand's iconic pumps

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Paris Court of Appeal, Pole 5, Ch. 1, 16 October 2024, No. 22/19513, Chanel / Jonak

In a ruling handed down on 16 October 2024, the Paris Court of Appeal examined the case between Chanel and Jonak, following accusations of parasitism made by the luxury house concerning the reproduction of its iconic designs by the shoe brand. Chanel had appealed against the ruling of the Paris Commercial Court, which had partially upheld its claims. The Court overturned this ruling and found that Jonak had indeed committed acts of parasitism. It ordered the brand to pay €150,000 for economic loss and €30,000 for non-material loss, and prohibited the continued marketing of certain models, ordering their destruction.



The Court found that Chanel had demonstrated that its emblematic two-tone, beige and black 'slingback' shoe model, created in 1957, had become a central element of its collections, enjoying a strong reputation and significant economic value. Jonak had marketed similar models with the distinctive features of Chanel's slingbacks. Despite minor differences in materials and design details, such as the strap and the colour of the heel, the overall visual appearance of the Jonak models remained very close to that of Chanel. Jonak had also reproduced the concept of two-tone models in low and high heel versions, accentuating the impression of similarity.

The judgment also refers to Jonak's marketing of a model of sandals with chained straps similar to those used by Chanel for the shoulder strap of its famous 2.55 bag and various accessories. These elements are an integral part of Chanel's identity, reinforcing the argument that Jonak had unduly borrowed from Chanel's universe in its designs and communications.

# NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

## **ECJ rules that a national court may refuse to enforce a foreign court order if this would result in a manifest breach of the freedom of the press**

ECJ, 4 octobre 2024, C-633/22, Real Madrid Club de Fútbol et a. c/ Sté éditrice du Monde et a.

In its judgment of 4 October 2024 in Real Madrid Club de Fútbol and AE v Société Editrice du Monde SA and EE (ECJ C-633/2022), the ECJ recalled the balance between the award of damages in defamation cases, freedom of the press and the cross-border enforcement of civil judgments.

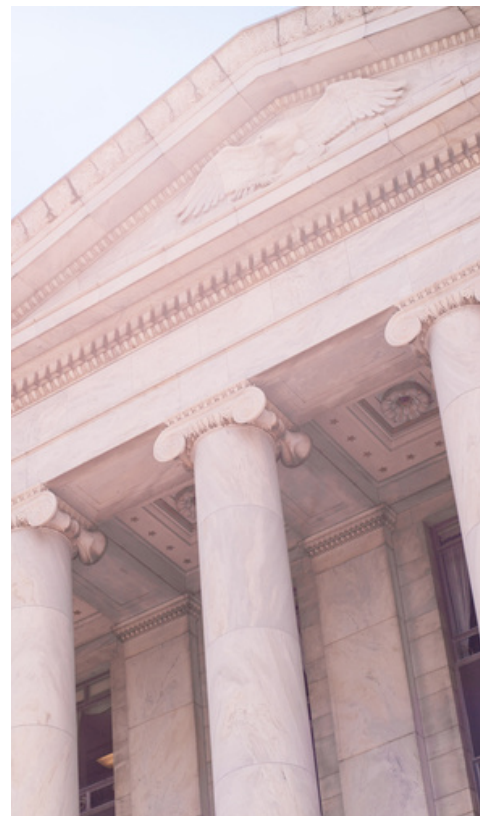
The ECJ ruled that the enforcement in France of a Spanish judgment awarding substantial damages for defamation to Real Madrid against Le Monde could infringe the freedom of the press and fundamental rights. The French courts could therefore refuse enforcement under the "public policy" exception provided for in the then applicable version of the Brussels I Regulation (now replaced by Regulation (EU) No 1215/2012).

The judgment clarifies the limits of the concept of "mutual trust" between EU Member States, approving the use of "substantial" public policy exceptions. The case originated in a defamation action brought by Real Madrid in 2006 following an article published in Le Monde about doping within the club. A Madrid court awarded damages of €330,000 in 2009. Although the decision was initially declared enforceable in France, the Paris Court of Appeal overturned it on the grounds of public policy. The Court of Cassation appealed against the ruling and referred questions to the ECJ for a preliminary ruling.

In its judgment, the ECJ reaffirmed that the public policy exception provided for in Article 34(1) of Brussels I (now Article 45, Brussels I recast) applies only where enforcement would be contrary to the fundamental legal principles of the requested Member State. This exception must concern a clear breach of essential legal rules or fundamental rights. The Court has held that the nature of the rule infringed (Community or national) does not alter this principle, as national courts must protect national and Community rights in the same way.

The ECJ noted that courts may take into account all the circumstances, including the defendant's financial situation, the seriousness of the fault and the extent of the damage, to determine whether the enforcement of a judgment would violate Article 11 of the Charter of Fundamental Rights of the European Union.

This judgment highlights the ECJ's approach to balancing fundamental rights, mutual trust and judicial cooperation, by allowing national courts to assess the proportionality and substantive impact of judgments, thereby recognising the limits of mutual trust.



# NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

## **The Court of Cassation reiterates the conditions under which trial judges must assess the good faith exception in the light of Article 10 of the European Convention on Human Rights.**

Court of Cassation, Criminal Division, 24 September 2024, No. 23-83.457

The head of a police union was brought before the criminal court on charges of public defamation of a public official for posting a leaflet criticising a police major in a police station, and non-public defamation for distributing the same leaflet by internal email. The Court of Appeal upheld the lower court's ruling, which had declared the statements defamatory and denied the defendant the benefit of good faith. According to the judges, it was not clear from the evidence in the file that the defamatory remarks had pursued a legitimate aim. They were merely a personal attack. They concluded that the four legal



conditions of good faith, which must be met cumulatively, had not been met. The Court of Cassation censured the appeal judges. It emphasised that the disputed leaflet was part of a trade union protest about the difficulties of working in the police force and therefore contributed to a debate of general interest. In these circumstances, it is up to the trial judges, in application of Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, to determine whether the statements have a sufficient factual basis, a concept which includes that of serious investigation, and then, when this second condition is also met, to determine whether the author of the statements was careful and measured in his expression and was devoid of personal animosity, these last two criteria having to be assessed less strictly. The case is therefore liable to be quashed.



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