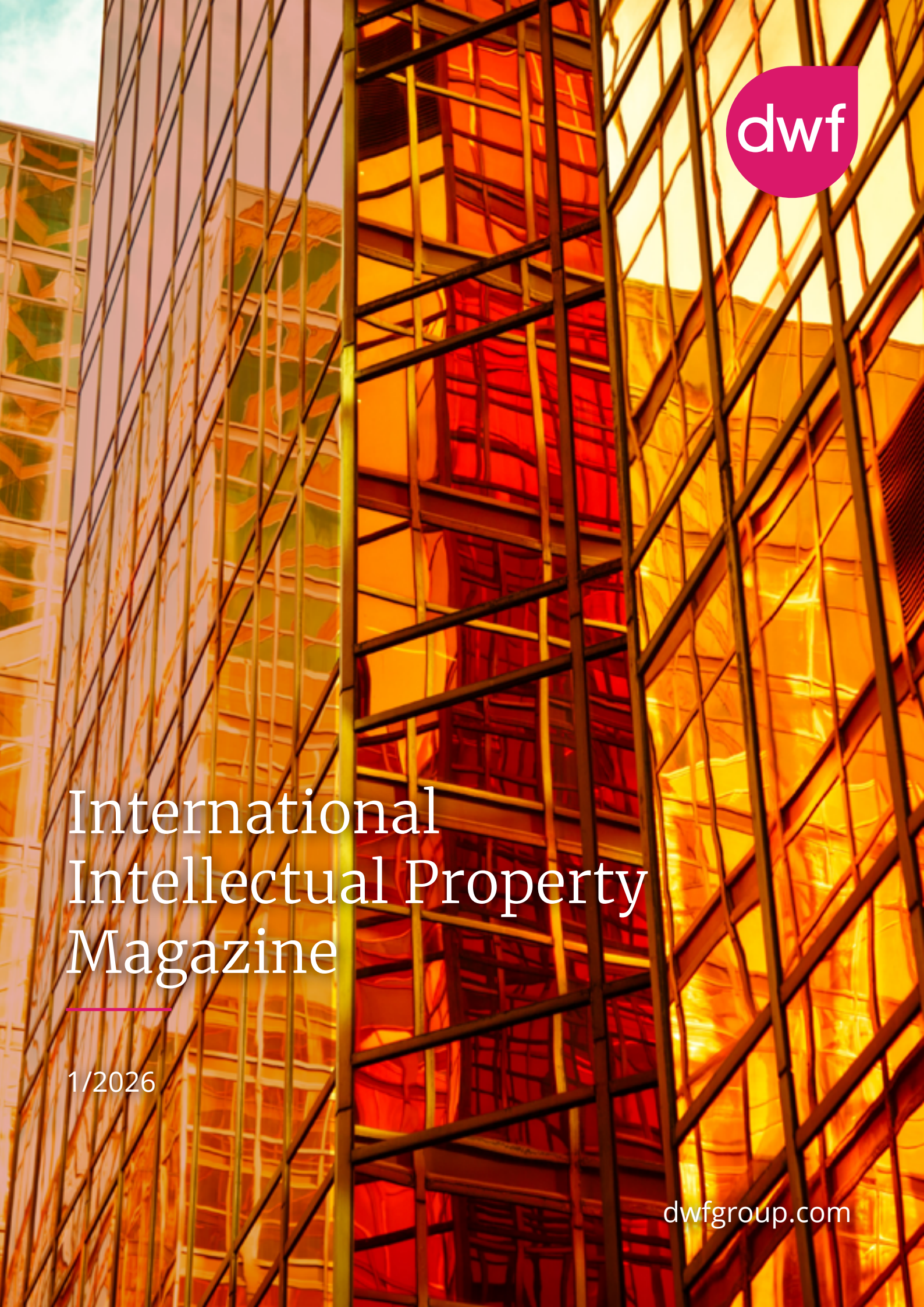

International Intellectual Property Magazine

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International Intellectual Property Magazine

Contents

Editorial

It is with great pleasure that we present the latest issue of our magazine, featuring a round-up of the most significant developments in the field of intellectual property.

In this issue, we cover important legislative initiatives as well as rulings issued by the judicial bodies of the EU and several European countries. We are confident that anyone with an interest in this field will find something of particular interest.

Topics relating to AI certainly take centre stage, but there is also plenty happening in other areas, and these developments are well worth following.

I would also like to share the news that a new UK-based lawyer has joined our international IP family. We are delighted to welcome Imogen Francis to DWF, strengthening our practice in this key jurisdiction.

Imogen is making her debut in our magazine, and I warmly encourage you to get in touch with her.

We hope this issue will help you stay informed on the most important developments in this this rapidly changing field of law.

On behalf of all our contributors, I wish you a pleasant read and, as always, invite you to share your comments and reflections.

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Partner, Poland

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Legislative Developments

Marco Annoni

IT: Greenwashing and the new EU framework: key changes following Italy's Legislative Decree No. 30/2026

In a market where sustainability and environmental awareness play an increasingly decisive role in consumers' purchasing decisions, practices associated with so-called *greenwashing* – namely, marketing strategies designed to lead consumers to believe that a product or a company's activities are more environmentally friendly or sustainable than they actually are – have long been subject to growing regulatory scrutiny. Against this background, the need for harmonised EU-level legislation aimed at ensuring that environmental information provided to consumers is clear, accurate and comparable has become increasingly apparent.

The "Empowering Consumers for the Green Transition" Directive

It is in this context that **Directive (EU) 2024/825**, known as "Empowering Consumers for the Green Transition", was adopted, with the objective of strengthening consumer protection against unfair commercial practices of an environmental nature. The Directive was transposed into Italian law by the **Legislative Decree No. 30 of 20 February 2026**, which entered into force on **24 March 2026** and sets **27 September 2026** as the deadline by which economic operators must comply with the new rules.

Amendments to the Italian Consumer Code

Legislative Decree No. 30/2026 significantly impacts the Italian Consumer Code (*Codice del Consumo*). In particular, Article 18(1) has been supplemented with new definitions, including "environmental claim", "generic environmental claim", "sustainability label" and "certification schemes". These definitions are essential for interpreting the revised framework, which expands the scope of misleading commercial practices, misleading omissions and practices that are deemed misleading in all circumstances.

Extension of misleading commercial practices

A first key amendment concerns **Article 21(1)** of the Consumer Code. The provision now expressly covers not only traditional product characteristics, but also **environmental and social characteristics** and **circularity-related aspects**, such as durability, reparability and recyclability. As a result, any commercial practice capable of misleading consumers with respect to these elements qualifies as misleading.

Article 21(2) has also been expanded through the introduction of new categories of misleading practices. These include:

- **Environmental claims regarding future performance** that are not supported by a clearly defined and independently verifiable implementation plan; and
- **Advertising of irrelevant benefits**, namely the promotion of characteristics that are common to all products within a given category and are improperly presented as environmentally distinctive.

Both categories are expressly classified as misleading under the revised framework.

Strengthening the rules on misleading omissions

Significant changes have also been made to **Article 22** of the Consumer Code. The newly introduced paragraph 5-ter provides that, in product comparison services including environmental, social or circularity-related information, certain elements are deemed essential. These include the comparison method used, the products and suppliers involved, and the measures adopted to ensure that information is kept up to date. The omission of such information constitutes a misleading omission under the Consumer Code.

Practices considered misleading in all cases

Legislative Decree No. 30/2026 further expands the list of practices that are **misleading in all cases** under **Article 23** of the Consumer Code. Most notably, this list now includes the use of sustainability labels that are not based on recognised certification schemes, as well as the use of generic environmental claims that cannot be substantiated.

Enforcement and practical implications

Enforcement of the revised rules is entrusted to the **Italian Competition and Market Authority (AGCM)**, which has been granted specific sanctioning powers and has traditionally been particularly active in combating greenwashing practices.

With the compliance deadline set for 27 September 2026, Legislative Decree No. 30/2026 represents a turning point in the regulation of corporate environmental communications. Companies are required to act promptly by reviewing their communication strategies considering the new framework, ensuring that all environmental claims are supported by verifiable evidence and, where appropriate, by recognised certifications.

From an operational perspective, it is essential for companies to carry out a comprehensive audit of existing environmental claims and to establish a permanent interdisciplinary task force – bringing together legal, marketing, compliance and sustainability functions – responsible for the prior approval and ongoing monitoring of environmental communications.

Marta Wysokińska

EU: Continued discussions regarding the Digital Omnibus on AI – simplification of EU AI rules?

According to the press release of the European Parliament's Legislative Observatory, the proposed "Digital Omnibus on AI" Regulation seeks to make the application of the EU Artificial Intelligence Act simpler and more practical. It does so while preserving the Act's core objectives. This initiative forms part of a broader EU effort to reduce unnecessary regulatory burdens. It also aims to support innovation and strengthen the EU's competitiveness. These goals are to be pursued without lowering standards for health, safety, fundamental rights, democracy, or the rule of law.

The initial proposal builds on the AI Act, which has applied since August 2024. The AI Act establishes harmonised rules for trustworthy and human-centric artificial intelligence across the EU. The draft Digital Omnibus for AI Regulation introduced targeted adjustments to make implementation of the AI rules smoother and more proportionate. Some obligations, particularly those applicable to high-risk AI systems, would be aligned with the availability of technical standards. Simplified compliance rules currently applicable to SMEs would be extended to small mid-caps (SMCs). Documentation and registration requirements would be eased in certain cases.

The initial draft also shifts responsibility for AI literacy to the Commission and the Member States. It allows greater flexibility in post-market monitoring. Oversight of certain large-scale AI systems would be simplified by centralising supervision in the AI Office. The proposal further permits limited processing of sensitive personal data for bias detection and correction, subject to safeguards. In addition, it promotes wider use of AI regulatory sandboxes (the AI Act requires Member States to establish, or take part in, at least one AI regulatory sandbox – these sandboxes are controlled settings used to test whether AI systems comply with the AI Act). It also clarifies the relationship between the AI Act and other EU legislation. Overall, the objective of the Digital Omnibus for AI is to improve legal certainty and reduce administrative complexity.

There are voices, however, arguing that the simplification currently under way will undermine the very purpose of the AI Act itself, which should be regarded as successful, precedent-setting legislation establishing good standards.

On 28 April 2026 another trilogue regarding the proposal took place. Although final resolution and agreement was expected, this did not occur; with further talks to take place in May. The fundamental issue that remained unresolved after this trilogue is the correlation between the AI Act's provisions and sector regulations. In particular, there was no agreement on how exactly the AI Act's provisions should apply to certain products already containing AI solutions for specialized applications (e.g., medical or financial). The Parliament's lead negotiator on the AI Omnibus, Michael McNamara, pointed out that overlapping rules may be difficult to handle. At the same time the negotiator mentioned that shifting AI governance into sectoral legislation could in the end be "deregulatory rather than simplifying."

The urgency of the negotiations was significant. Under the AI Act timeline, the core obligations of the AI Act for high-risk AI systems were due to apply from 2 August 2026. The primary objective of the AI Omnibus is to defer that date to 2 December 2027 for stand-alone high-risk systems, and to 2 August 2028 for high-risk systems embedded in regulated products.

Finally, in early May 2026, EU negotiators reached a provisional agreement on the Digital Omnibus on AI. The provisional agreement as it stands now postpones key "high-risk" AI requirements by roughly 16–24 months, with new application dates in late 2027 and 2028. This would give providers and deployers of AI systems more time to meet those requirements. The agreement also extends certain compliance exemptions currently available to small and medium-sized enterprises to slightly larger "small mid-cap" companies, reducing burdens on smaller innovators. To avoid duplicate regulation, the agreement also addresses overlaps with sectoral safety legislation, including the Machinery Regulation. In addition, it introduces a prohibition on AI systems that generate non-consensual intimate content or child sexual abuse material.

For the changes and new dates outlined above to take legal effect, the political agreement must be formally approved by the Parliament and Council, and the resulting regulation must be published before 2 August 2026.

Weronika Olszewska

PL: Implementation of the AI Act in Poland: draft Act on Artificial Intelligence Systems

Key information

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (**"AI Act"**) is the first comprehensive piece of legislation to regulate artificial intelligence across the EU's single market.

The principal objective of the AI Act is to improve the functioning of the internal market by establishing clear and uniform legal frameworks – especially regarding how AI systems are developed, placed on the market and used within the EU. The regulation is designed to align with the values of the EU, encouraging the spread of trustworthy, human-centric artificial intelligence. It also ensures a high level of protection for health, safety and fundamental rights, including democracy, rule of law and environmental protection. Additionally, it addresses risks and harmful effects associated with AI systems, whilst supporting innovation in this rapidly evolving field. The AI Act entered into force on 1 August 2024.

It is also worth noting that the Regulation of the European Parliament and of the Council amending the AI Act and Regulation (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI) will be adopted in the coming weeks.

Implementation status

While the AI Act generally applies directly, in practice it is necessary to implement local regulations governing institutional and procedural matters. The Polish draft Act on Artificial Intelligence Systems (**"Proposed Act"**) is one of the first legislative initiatives implementing the AI Act in the EU. The Proposed Act is currently being considered by the lower house of the Polish Parliament (Sejm).

What the Polish regulations cover

The regulations addressed by the Proposed Act include:

- organization and conduct of market surveillance of AI systems and general-purpose AI models within the scope of the AI Act;

- proceedings concerning violations of the AI Act and the Proposed Act;
- conditions and procedure for the accreditation and notification of conformity assessment bodies;
- measures supporting the development of AI systems;
- rules for imposing administrative fines for violations of the AI Act.

The Proposed Act will not apply to matters related to national defence, national security (including activities of intelligence services), the activities of the Military Counterintelligence Service and the Military Intelligence Service, or to scientific research that does not involve real-world testing or the placing on the market or use of AI systems for other purposes. AI systems listed in specific provisions of the AI Act are also excluded.

The Proposed Act will apply to entities specified in the AI Act, with the exception of natural persons using AI systems exclusively for personal purposes unrelated to business activity, agricultural or other specified regulated types of activities. Certain public authorities are also excluded.

Supervisory authority

The Proposed Act appoints the Commission on the Development and Safety of Artificial Intelligence (*Komisja Rozwoju i Bezpieczeństwa Sztucznej Inteligencji*, "KRiBSI") as the supervisory authority for AI systems and a single point of contact. Members of the KRiBSI are to include representatives of:

- the President of the Office of Competition and Consumer Protection,
- the Financial Supervision Authority,

- the National Broadcasting Council,
- the President of the Office of Electronic Communications.

The Chair of KRiBSI will be appointed by the Sejm, subject to approval of the Senat. KRiBSI will be advised by the Public Council on Artificial Intelligence, which will guide its main AI initiatives to ensure diverse perspectives and social and economic interests are addressed.

KRiBSI will be responsible for communication with EU institutions and numerous national authorities, such as the Personal Data Protection Office, the Polish Patent Office or the Office for Registration of Medicinal Products. KRiBSI will monitor regulatory compliance, encourage innovation and maintain a complaints register for early risk detection. It will be authorised to issue opinions and explanations, and to present positions to courts in AI-related cases, ensuring alignment with EU law.

KRiBSI will carry out inspections according to an approved plan, information it gathers, or through ongoing monitoring. The Proposed Act specifies the procedure for initiating supervision, allowing it to begin *ex officio* or at the request of authorized bodies. To safeguard the rights of supervised entities, a principle of advance notification is introduced, although this obligation may be waived in exceptional circumstances, e.g., where there are threats to life, health or fundamental rights. The principle of conducting supervision remotely is also introduced, reflecting developments in modern technologies. If an inspection reveals minor irregularities in compliance with the AI Act, a KRiBSI decision or the provisions of the Polish act, KRiBSI may issue post-audit recommendations setting out corrective measures and deadlines for their implementation. However, if serious violations of the relevant regulations are found, KRiBSI is obliged to initiate administrative proceedings.

Proceedings before KRiBSI

The Proposed Act specifies that the maximum duration of proceedings is six months, and in situations posing a threat to health or life – up to seven days. KRiBSI may initiate proceedings *ex officio*, at the request of its members, other authorities or the Public Council on Artificial Intelligence also following an inspection or consideration of a complaint.

Complainants must provide detailed information regarding the AI system and the breach of regulations, and may be submitted electronically.

KRiBSI may issue preventive warnings, decisions regarding breaches of the law, and impose sanctions, taking into account the voluntary implementation of measures. In cases of direct risk to individuals, KRiBSI may order the cessation of the use of an AI system or its withdrawal. Appeals or complaints against KRiBSI's decisions may be lodged with the District Court in Warsaw, which suspends the enforcement of administrative financial penalties.

Additionally, an alternative method of dispute resolution has been introduced through an arrangement for extraordinary mitigation of sanctions, which may be concluded in proceedings conducted by KRiBSI.

National system for authorization, accreditation and notification

The Proposed Act designates the minister responsible for digitalisation as the notifying authority and the authority responsible for granting authorisations.

To ensure alignment with legal requirements and market practice, accreditation matters will be entrusted to the Polish Centre for Accreditation, with support for the minister for digitalisation.

Regulatory sandbox

The Proposed Act provides for the creation of a regulatory sandbox, enabling selected entities to test new technologies – particularly in the field of AI – in controlled and safe conditions. KRiBSI will grant permission for participation in the sandbox, organise project competitions, and supervise their progress, ensuring transparency and equal opportunities, including preferential terms for SMEs. Participants are required to inform others about their involvement, publish reports, and notify any changes. The Proposed Act also imposes an obligation to inform EU institutions and to set user limits. The minister for digitalisation is tasked with regulating fees, developing codes of good practice, and providing annual reports on computing resources and AI energy consumption, as well as supporting AI scientific research and related innovative projects.

Imogen Francis and Gabriella Rasiah

UK: The results of Government's Consultation on Copyright and AI

In March 2026, UK government published its long awaited Report on Copyright and Artificial Intelligence following a consultation (December 2024–February 2025) covering the themes listed in section 136(3) of the Data (Use and Access) Act 2025 and other related areas.

The headline is clear: *the government is not making immediate reforms to UK copyright law, and will wait, watch and further consult to ensure the outcome of litigation in various countries, developing technical standards such as those on the use of web crawlers and the input of technical experts in this area inform its final policy decision.*

What was the purpose of the Consultation?

The consultation sought views on proposals designed to meet the government's objectives in this area, including strengthening right holders' ability to control whether their works are used to train AI models and to receive payment for such use, improving trust and transparency between the creative and AI sectors by requiring developers to provide greater clarity about how they use copyrighted material, and ensuring that AI developers have access to high-quality data to support the training of leading AI models and drive innovation across the UK AI sector.

The Consultation paper presented four options for consideration by stakeholders:

- Do nothing and maintain the status quo: copyright and related laws remain as they are (Option 0).
- Strengthen copyright requiring licensing in all cases, including making clear that AI developers can only train on copyright works if they have an express licence to do so (Option 1).
- A broad data mining exception allowing data mining on copyright works – including for AI training – without right holders' permission, subject to few or no restrictions (Option 2).

  This follows the position on data mining in Singapore which allows an exception for this and in the US which allows this subject to "fair use".

- A data mining exception with a rights reservation mechanism, permitting text and data mining for any use by anyone, but with the ability for rights holders to opt-out some or all works (Option 3).

  This replicated the position on data mining in the EU.

Whilst AI developers and others in the technology sector said that the government's preferred proposal, Option 3, would support AI innovation in the UK, this was largely rejected by most respondents, with those from the creative industries concerned a broad exception would allow generative AI to learn from their works in direct competition with them, without compensation.

What does the Consultation say?

- **Transparency**: Right holders often cannot tell whether their works have been used or how they have been used. This makes both enforcement and licensing difficult, particularly where training takes place outside the UK and is performed by "web-crawlers". The government stops short of introducing new rules but signals that transparency is likely to be central going forward with a requirement for AI developers to disclose sources of training data at some level. This general approach was agreed upon amongst all respondents.
- **Labelling of AI and human-created content**: There are currently no legal requirements in the UK mandating the labelling of AI-generated content, although many platforms have already introduced labelling tools (for example Meta, TikTok and Google). Responses to the consultation generally showed broad support for the principle of labelling AI-generated material. However, many stakeholders emphasised the integral role of AI within the creative process, suggesting that mandatory labelling should primarily apply to fully AI-generated content, while a more relaxed approach should be taken for AI-assisted works.
- **Technical tools and standards**: These are technical measures which allow website owners and rights owners to control under what conditions their rights are used and accessed. They help to regulate mechanisms such as web crawlers and AI agents. Stakeholders across the AI, creative and wider sectors generally support the further development of such tools, but there is a need for government to determine how best to support their standardisation in line with international best practice and emerging market solutions.
- **Licensing**: The Report identifies licensing as key, ensuring creators are remunerated when their copyright is used whilst also incentivising new creative content. It acknowledges that the licensing market is still developing and the focus should be

on transparency requirements on AI developers providing greater transparency on use of copyright.

- **Enforcement**: Enforcement of copyright by rights holders is key to ensure deterrence from misuse. Whilst the UK is internationally recognised for its strong framework for enforcing intellectual property rights, AI may pose challenges to this. Respondents were particularly keen for transparency obligations on AI developers to be a prerequisite in any enforcement regime. The government will consider this and focus on ensuring that the UK's enforcement framework offers effective and accessible avenues for redress in cases of AI-related infringement.
- **Computer generated works**: The government is proposing to remove protection for computer generated works created without a human author as this is not in the spirit of copyright.
- **Digital replicas**: The Report recognises growing risks around digital replicas or 'deepfakes' (AI-generated voice and likeness), noting that existing UK law provides only fragmented protection and individuals may have limited ability to prevent misuse. In this area, the government is exploring whether to introduce a new digital replica right or broader personality rights.

What is the government's position post Consultation?

Given the rapidly changing landscape within which AI is operating both nationally and internationally, gaps in evidence on the impact of copyright on the development and deployment of AI in the UK and the strong views of stakeholders either side, the government has decided to do nothing for now. Instead, it will:

- Continue building evidence on how copyright affects AI development and deployment across the economy and how any broad data mining exception would affect licensing markets;
- Monitor litigation, regulatory interventions and market developments internationally; and
- Consider alternative approaches once the evidence base is stronger and further input has been gathered from industry experts and other voices across the economy.

What is clear is that the government wants to ensure the UK's position as a creative powerhouse is protected, rights holders are properly rewarded for use of their copyright and AI developers are much more transparent when training their models.

Final thought and practical takeaways

The UK has deliberately avoided aligning itself fully with either the EU's regulated opt-out model or the more permissive approach adopted by the US. Instead, it has chosen a measured, incremental path, centred on transparency, licensing and market evolution.

For businesses, this creates continued uncertainty, but also a window to get ahead. Organisations that invest now in data governance, licensing strategy and transparency will be best placed as the next phase of regulation emerges.

If you are an AI developer training your model, make sure you:

- Ensure lawful access to training data: Put in place robust processes to confirm that datasets are used with appropriate permission, licences, or within applicable exceptions, particularly where content is scraped or sourced from third parties.
- Monitor global regulatory developments: Given the divergence between the UK, EU, US and other countries, ensure you comply with legislation across all jurisdictions where models are trained or deployed.
- Adopt responsible data governance frameworks: Build internal policies covering dataset selection, filtering, and risk assessment, particularly for copyrighted or sensitive material.
- Respect rights reservation signals: Where right holders deploy opt-out or reservation tools, ensure systems are designed to detect and comply with them, even if standards are still maturing.

If you are a rights holder:

- Make your preferences machine-readable: use available technical tools to signal whether AI training is permitted or restricted. Even though standards are still developing, early adoption strengthens your position.
- Review and strengthen licensing strategies: Consider whether to licence content for AI training (directly or via collective schemes) and ensure contracts clearly address AI use, including scope, remuneration and downstream use.
- Monitor usage of your works: Put in place processes or tools to detect potential unauthorised use in AI training datasets, particularly if your content is widely distributed online.
- Engage with platforms and developers: Where possible, open dialogue with AI developers or intermediaries to secure licensing arrangements or clarify how your works are being used.

Barnaba Rud-Chlipalski

PL: From veto to version 2.0: Poland's revised approach to blocking illegal online content

Background and legislative context

The Digital Services Act (Regulation (EU) 2022/2065, **"DSA"**) is directly applicable across the European Union. However, it requires Member States to adopt national implementing measures in several key areas, including the designation of a Digital Services Coordinator, enforcement mechanisms, procedural rules and sanctions. Poland has faced increasing pressure from the European Commission to complete this implementation, as delays undermine consistent enforcement of the DSA at the EU level.

In December 2025, the Polish Parliament adopted a comprehensive amendment to the Act on the Provision of Electronic Services (**"PES Act"**), intended to implement outstanding DSA-related mechanisms. A central and controversial element of this amendment was the introduction of an administrative procedure for blocking access to allegedly illegal online content, based on decisions issued by public authorities.

In January 2026, the President of the Republic of Poland vetoed the adopted amendment. In the President's view, the proposed solutions raised serious constitutional concerns, particularly in relation to freedom of expression, the right of access to a court, and the principle of proportionality. The veto halted the legislative process and forced the government to reconsider its approach.

In response, the Ministry of Digital Affairs decided to split the previously unified amendment into two separate draft acts:

- **No. UC140**, focusing on general institutional and procedural aspects of DSA enforcement (including the Digital Services Coordinator and sanctions); and
- **No. UC141**, dealing specifically with orders to block access to illegal content and orders to restore content.

This article examines draft UC141, published on 6 February 2026 (**"Draft Act"**).

Key features of Draft Act UC141 – focus on blocking orders

The Draft Act proposes the introduction of a national system of blocking orders addressed to intermediary service providers, including access providers and hosting services. The system is designed to complement the DSA framework and applies to content considered "illegal" within the meaning of EU law.

Competent authorities

Blocking orders may be issued by:

- the President of the Office of Electronic Communications (UKE), or
- the Chairperson of the National Broadcasting Council (KRRiT), in relation to video-sharing platform services.

Scope and subject matter

The procedure applies to online content that allegedly constitutes a criminal offence under Polish law.
The catalogue of offences is specified in the Draft Act and includes, among others, offences traditionally associated with online harm (such as child sexual abuse material, harassment or fraud), as well as copyright infringement under Article 116 of the Polish Copyright Act.

Procedural model

Under the Draft Act, applications for blocking orders may be submitted by a public prosecutor, the Police, the National Revenue Administration (KAS), a holder of copyright or related rights, or the service user. The competent authority examines whether the content is illegal and, if so, may issue:

- an order to block access to the content; or
- an order to lift restrictions previously imposed by a service provider (the so-called "reinstatement" or "unblocking" procedure).

The blocking of certain websites covered by a decision is implemented through a UKE-maintained register of domains used to disseminate illegal content. Internet access providers are obliged to block access to listed domains within a short timeframe (no later than within 48 hours).

Judicial review

The Draft Act provides for judicial review of blocking decisions. The decision cannot be made immediately enforceable, and shall not be enforceable until the 14-day period for lodging an objection with a civil court has expired. The court hears the objection in non-contentious proceedings.

Does the Draft Act address the President's concerns?

A comparison between the vetoed amendment to the PES Act and the Draft Act shows that the core mechanism of administrative blocking has largely been preserved.

Freedom of expression

The President criticised the risk of overblocking and the corresponding chilling effect on public debate. The Draft

Act does not fundamentally alter the administrative nature of the decision-making process and therefore only partially addresses these concerns.

Right of access to a court

The President emphasised that decisions affecting access to information should, as a rule, be made by courts, not by administrative authorities. Under the Draft Act, courts remain involved only at the review stage, not as decision-makers of first resort.

Immediate enforceability

While certain safeguards have been adjusted, the Draft Act still allows for swift implementation of blocking measures, meaning that judicial protection remains predominantly *ex post*.

As a result, although the Draft Act restructures and clarifies some elements of the procedure, it does not fully eliminate the constitutional concerns identified in the veto.

Current status and next steps in the legislative process

The Draft Act has been published and opened for public consultation, during which numerous stakeholders – including NGOs, industry associations and rights holders – have submitted comments. The draft is now expected to proceed to the next stages of the legislative process, including review by the Council of Ministers and parliamentary work.

The final shape of the legislation will depend on whether the government decides to introduce further safeguards, particularly in response to criticism voiced during consultations.

Expected impact on businesses

The proposed regime is highly relevant for businesses operating in the digital ecosystem:

- **Online platforms and hosting providers** will face increased regulatory exposure, including obligations to implement blocking orders quickly and to engage with administrative proceedings.
- **Internet access providers** will be required to technically enforce blocking measures through DNS or other access restrictions.
- **Rights holders**, particularly in the copyright sector, gain an effective enforcement tool to protect their rights.
- **Cross-border service providers** may need to reassess their Polish compliance strategies, as national blocking orders operate in parallel with harmonised DSA procedures.

From a business perspective, the key challenges will be legal uncertainty, risk of overblocking, and potential reputational consequences associated with compliance with controversial administrative decisions.

Sources

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Draft act no. UC141 of 6 February 2026 – Act amending the Act on the Provision of Electronic Services and other acts

Official justification of the President of the Republic of Poland's veto of the December 2025 amendment to the Act on the Provision of Electronic Services and other acts

Communications of the Polish Ministry of Digital Affairs on DSA implementation (gov.pl)

Fundacja Panoptykon, Proposed amendments to strengthen freedom of expression in the draft act amending the Act on the Provision of Electronic Services and certain other acts of 6 February 2026 (*Propozycja zmian wzmacniających wolność słowa w projekcie ustawy o zmianie ustawy o świadczeniu usług drogą elektroniczną oraz niektórych innych ustaw z 6 lutego 2026 r.*), 9 March 2026.

Ewa Januszewska

PL: Poland's blank media levy reform: objectives, main issues and debated impact

On 12 May 2026, an amended regulation governing blank media and reprographic fees in connection with their sale by manufacturers and importers was published in the Journal of Laws of the Republic of Poland.[1] The changes will enter into force on 13 November 2026.

The new regulation replaces the 2003 framework, which no longer reflects current methods of copying and storing works. The Ministry of Culture and National Heritage links the reform to the EU "fair compensation" standard contained in Article 5(2)(b) of Directive 2001/29/EC and to a financial target of bringing revenues in Poland closer to levels seen in other Member States.

According to the impact assessment, the reform should raise annual revenues from approximately PLN 35.8 million to PLN 150–200 million.[2] For authors, performers and producers, this would make private copying compensation a more important component of their income, rather than a marginal addition to other collective rights.

Updating the device list and catching up with the EU

The first goal of the reform was to update the catalogue of devices subject to the fee. The new regulation:

- includes modern multipurpose devices, in particular smartphones, tablets and smart TVs;
- removes equipment that has effectively disappeared from the market, such as tape recorders, VCRs and VHS cassettes.

The legislator treats the outdated list as one reason why Polish revenues from these fees have for years been among the lowest in the EU, both in absolute terms and per capita. The Ministry indicates that blank media and reprographic fees should account for around 15–20% of all collective management income, as in Spain, Slovakia or Hungary.[3]

A key element is the introduction of a 1% levy on the sale price of smartphones and tablets with internal memories above 32 GB. This is presented as an extension of the system to devices that actually enable private copying and as a major condition for aligning Polish law with the EU requirement of "fair compensation".

Reorganising the device list

The second aim is to simplify the collection system. Today, the device list is scattered across three annexes (audio, video and reprography) comprising 65 items. The new regulation replaces these with a single consolidated table covering all devices and related blank media used to fix and reproduce works.

The new table contains 19 broader, functionally defined categories, moving away from detailed technical descriptions that become obsolete quickly, towards a more technology-neutral list.

Changes to the list of collective management organisations

At the same time, the reform introduces changes to the list of organizations entitled to collect and distribute the fees.

The list of organisations responsible for collection of the fees is notably extended by the Polish Filmmakers Association (SFP), which will be entitled to collect fees regarding the part of the fees for the "video" category on account of creators and producers of videograms.

Moreover, Polish Filmmakers Association (SFP) will now also be entitled to distribute the levies collected on account of producers of videograms – replacing the Association of Audio and Video Producers (ZPAV) in this regard.

Broader changes were also made in the part regarding "reprography". Separate lists of organizations responsible for collecting and distributing levies in the reprography category have been created. The collection of fees has now been divided between 1) the Society for the Collective Management of Copyrights of Scientific and Technical Works Creators (KOPIPOL) (in respect of fees for traditional

[1] Regulation of the Minister of Culture and National Heritage dated April 30, 2026 amending the regulation on the classification of devices and media used for the fixation of works and on the fees levied on such devices and media in connection with their sale by manufacturers and importers (Journal of Laws, item 626), text available at: https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20260000626.

[2] Statement of the Ministry of Culture and National Heritage of 30 April 2026, available at: https://www.gov.pl/web/kultura/nowelizacja-rozporzadzenia-w-sprawie-oplat-reprograficznych--aktualizujemy-liste-czystych-nosnikow.

[3] Explanatory memorandum to the regulation, available at: https://bip.mkidn.gov.pl/media/docs/2025_pliki/kons_publ/20250723_rozpo/Uzasadnienie_do_rozporzadzenia_FINAL.pdf , p. 1.

reprographic devices and items such as copiers, printers and paper), and 2) the Association of Authors and Publishers "Copyright Polska" (with regard to the remaining devices listed in the table in the annex).

Creators' reactions

Creative associations and collective management organisations largely welcomed the reform. They have long advocated for reform of the reprographic levy. They emphasized that Poland's current revenue levels are difficult to reconcile with the EU "fair compensation" criterium and that the exclusion of key digital devices has undermined the system's credibility.

The film and audiovisual sector have welcomed the changes enthusiastically. The Polish Filmmakers Association (SFP-ZAPA) and other organisations have long drawn attention to the fact that under the 2003 framework (and previous draft of the new regulation) music collective management organisations (ZAiKS, SAWP, ZPAV) had the formal power to collect levies for both audio and video device categories, while film organisations are involved mainly at the stage of allocating the "video" share. In their view, the previous model risked prioritising music repertoires in enforcement and negotiation strategies and weakened the position of film authors and producers in discussions on allocation.[4] With the new regulation, this model is set to shift – the inclusion of the Polish Filmmakers Association (SFP) among the entities responsible for collecting and distributing levies in the "video" category strengthens the institutional role of audiovisual rightsholders.

"Smartphone tax" and economic objections

Electronics and digital industry companies and associations have generally opposed the proposed changes. In public debate the planned 1% levy has been referred to as a "smartphone tax". Opponents argue that:

- smartphones, tablets and pcs serve mainly for lawful access to content via licensed services rather than for copying, so extending the levy to them is not justified by actual uses;
- the additional charge will be transferred into higher retail prices, worsening the position of Polish consumers and domestic retailers,

[4] Position of the Polish Filmmakers Association (SFP) – Authors and Audiovisual Producers Association (ZAPA) on the public consultation of the draft regulation of the Minister of Culture and National Heritage amending the regulation on the categories of devices and media subject to blank media levies, dated 22 August 2025, available at: https://legislacja.rcl.gov.pl/docs//505/12400254/13144045/13144048/dokument739192.pdf.

- competitive pressure from foreign online platforms, including major non-EU operators, will make enforcement uneven and may disadvantage Polish businesses.[5]

The effectiveness of existing redistribution mechanisms is also being questioned: reports cited in the debate point out that, in 2019–2023, collective management organisations accumulated several billion zlotys, a significant part of which has not yet reached individual artists.[6]

Overall assessment and forthcoming additional legislative changes

Overall, the reform can be generally viewed as a step towards a compensation system with genuine economic weight – moving away from what has so far been a largely residual and symbolic model of private copying compensation.

Responding in part to the concerns raised in the public debate on the discussed amendment, the Ministry of Culture and National Heritage announced that it would soon present draft amendments to:

- the Copyright and Related Rights Act
- the Act on Collective Management of Copyright and Related Rights
- the regulation specifying the content of annual reports submitted by collective management organisations.

The changes are intended to strengthen the collective management system, improve the transparency of collective management organisations' operations, and enable the Minister to assess their financial activities more effectively.[7]

[5] Open letter from Polish entrepreneurs to the Prime Minister and the Minister of Economy and Finance regarding the consequences of introducing the 'smartphone tax', available at: Apel-polskich-przedsiebiorcow-do-Premiera-i-Ministra-Gospodarki-i-Finansow-w-sprawie-skutkow-wprowadzenia-„podatku-od-smartfona.pdf and the open letter to the Minister of Culture dated 16 April 2025, signed by, among others, the National Chamber of Electronics and Telecommunications, the Polish Chamber of Information Technology and Telecommunications, the Polish Chamber of Electronic Communications, the Union of Private Media Employers and the Digital Poland Association, available at: https://cyfrowapolska.org/wp-content/uploads/2025/04/2025-04-16_Stanowisko-OZZ.pdf.

[6] See, for example, the report prepared by the law firm BLSK Kozłowski i Wspólnicy at the request of organisations representing the Polish digital, electronics and telecommunications industries analysing the financial statements of the leading collective management organisations, available at: www.czarnadziuraozz.pl.

[7] Statement of the Ministry of Culture and National Heritage available at: https://www.gov.pl/web/kultura/nowelizacja-rozporzadzenia-o-oplatach-reprograficznych-podpisana.

Karolina Bać

EU: EU Design Reform 2024–2026: the second phase and a new era for industrial design protection

The reform of EU design law represents one of the most significant modernisations of the European intellectual property framework in more than two decades. While the Community design system established by Council Regulation (EC) No 6/2002 has long been regarded as a successful and commercially attractive mechanism for protecting product appearance across the internal market, its conceptual foundations were shaped in an era dominated by tangible products, static representations and analogue manufacturing. The legislative package adopted in 2024, consisting principally of Regulation (EU) 2024/2822 and Directive (EU) 2024/2823, seeks to recalibrate that system for a market in which industrial design increasingly encompasses digital interfaces, animated visual effects, virtual goods and technologies capable of reproducing products without traditional manufacturing chains. The amendments introduced by the Regulation apply in two phases: the first, applicable from 1 May 2025, introduced core substantive changes; the second, applicable from 1 July 2026, operationalises the new regime through codified and secondary legislation governing representation, procedure and EUIPO practice. The Directive, by contrast, requires transposition by Member States within 36 months of its entry into force, with the transposition deadline falling on 9 December 2027.

The second phase is particularly important because it transforms the reform from a set of modernised legal concepts into a functioning registration and enforcement architecture. On 1 July 2026, Regulation (EU) 2026/715 on European Union designs – a codification of the amended design regime – becomes the principal consolidated legal instrument governing EU designs, replacing the increasingly fragmented structure of Regulation (EC) No 6/2002 as amended. In parallel, Commission Delegated Regulation (EU) 2026/137 supplements the regime with detailed procedural rules for proceedings concerning registered designs, while Commission Implementing Regulation (EU) 2026/138 lays down technical and administrative rules for the implementation of the reformed system before the EUIPO. These instruments do not merely tidy up the legislative landscape; they provide the procedural grammar through which the expanded subject matter of EU design protection can be meaningfully claimed, examined, registered and contested.

At the conceptual level, the reform confirms a decisive shift from the protection of the appearance of physical articles to the protection of visual design as a technologically neutral asset. The amended framework broadens the notion of a "product" to include items regardless of whether they are embodied in a physical object or materialise in a non-physical form. This allows the system to accommodate digital objects, graphical user interfaces, spatial arrangements and other forms of design expression that are commercially valuable but not necessarily attached to a traditional manufactured article. Similarly, the definition of "design" has been expanded to include not only lines, contours, colours, shape, texture and materials, but also movement, transition and any sort of animation of those features. The result is a legal framework more closely aligned with the realities of contemporary product development, where the user's perception of design may be shaped as much by screen movement, interface transitions or virtual environments as by the shape of a physical object.

The practical significance of Phase II lies above all in the new rules on representation. Under the previous regime, EU design applicants were constrained by a highly formalised approach to visual reproduction, including the well-known limitation of seven views. Such a framework was workable for many traditional products but increasingly inadequate for complex, modular, animated or digital designs. Commission Implementing Regulation (EU) 2026/138 expressly recognises the need to permit static, dynamic and animated representations by appropriate means using generally available technology. The reform therefore opens the door to representations consisting of drawings, photographs, videos, computer imaging and computer modelling. By allowing these forms of reproduction, the EU design system moves closer to the evidentiary and commercial reality of how modern designs are created, marketed and experienced.

This development should not be underestimated. In design law, the representation is not a mere administrative formality: it defines the object of protection. The broader availability of representational formats may therefore alter not only filing practice but also the substantive assessment of infringement and validity. A design consisting of an animated interface, for example, may derive its individual character from the sequence and transition of visual elements rather than from any single static frame. Similarly, computer-generated or modelled representations may enable applicants to capture features that would previously have been difficult to disclose with sufficient precision. At the same time, the reform raises new interpretative questions. If the protected subject

matter is determined by the combined visual features disclosed in several views or dynamic reproductions, courts and offices will need to develop a coherent methodology for comparing animated, sequential or virtual designs with prior art and alleged infringements.

The second phase also brings procedural refinement. Commission Delegated Regulation (EU) 2026/137 introduces detailed rules for proceedings before the EUIPO and aligns, where appropriate, the design system with mechanisms familiar from EU trade mark law. This alignment reflects a broader policy objective: to make the EUIPO's intellectual property procedures more coherent, efficient and accessible. Among the notable changes are rules allowing applications to be amended in immaterial details and more structured procedures in invalidity proceedings. These changes are important because design filings are highly dependent on visual accuracy; minor inconsistencies in representation can have significant legal consequences. A controlled ability to correct immaterial details may reduce disproportionate procedural outcomes while preserving the fundamental principle that the subject matter of protection cannot be broadened after filing.

The reform also has a clear enforcement dimension. Phase I already expanded the rights conferred by an EU design to address digital reproduction and technologies such as 3D printing. The new framework targets not only the making, offering, placing on the market or importing of infringing products, but also certain acts relating to media or software that record the design for the purpose of enabling an infringing product to be made. This is a necessary response to the dematerialisation of manufacturing. In a world where infringement may begin with the sharing of a digital file rather than the shipment of finished goods, the law must be capable of intervening before the physical product enters the market. The reform therefore strengthens the preventive function of design rights and makes them more relevant to decentralised production models.

A further practical innovation is the introduction of a commonly accepted design notice, consisting of the symbol □, which may be used to indicate that a product is protected by a registered design. Although such a notice does not create protection in itself, it may serve an important signalling function, particularly for small and medium-sized enterprises and individual designers seeking to communicate the existence of design rights in the marketplace. In this respect, the reform is not limited to legal modernisation; it also seeks to increase the visibility and accessibility of design protection as a commercial tool.

A further structural element of the reform is the harmonisation of national design laws through Directive (EU) 2024/2823. While the EU design remains a unitary right, national design systems continue to coexist with it and remain important for applicants seeking territorial or strategic protection. The Directive, which entered into force alongside the Regulation, gives Member States 36 months to transpose its provisions, with the transposition deadline falling on 9 December 2027. Its objective is to reduce divergences between national regimes, including in relation to definitions, grounds for invalidity, representation and the protection of component parts. The Directive is therefore essential to the reform's broader constitutional logic: modernisation at the EU level would be incomplete if national systems remained insufficiently adapted to non-physical and dynamic forms of design.

One of the most politically and commercially sensitive aspects of the reform concerns spare parts and the so-called repair clause. The reform seeks to liberalise the market for visible component parts used for the repair of complex products so as to restore their original appearance, while providing safeguards intended to prevent misuse. This is particularly relevant for sectors such as automotive manufacturing, where design protection has historically intersected with competition, consumer choice and aftermarket pricing. The repair clause embodies a policy compromise: it preserves design protection as a driver of innovation and aesthetic investment, but limits its use where exclusive rights would prevent independent repair and replacement markets from functioning effectively. The Directive also provides for a transitional period in relation to existing protections, demonstrating the legislator's attempt to balance legal certainty for existing right holders with the long-term objective of market opening.

For rights holders, the practical implications are substantial. Businesses should review their filing strategies, particularly where their products include graphical user interfaces, animated features, virtual environments, configurable products or components capable of digital reproduction. The abolition of the rigid seven-view logic and the acceptance of new representational formats mean that applicants may be able to claim protection more accurately, but also that filing decisions will require greater strategic sophistication. Poorly prepared dynamic representations may create uncertainty as to the scope of protection, while overinclusive representations may expose the design to validity challenges. The reform therefore increases both opportunity and responsibility: the quality of the application will become even more central to the commercial value of the right.

From a doctrinal perspective, the reform confirms the autonomy and continuing relevance of design law within the broader intellectual property system. Digital and animated visual assets might also be protected, in certain circumstances, by copyright, trademarks or unfair competition law. However, design law offers a distinct form of protection: registration-based, relatively fast, visually defined and particularly suited to product-facing innovation. By adapting design law to non-physical and dynamic subject matter, the EU legislator reinforces its role as a key instrument for protecting market-facing creativity. At the same time, the reform may require a more nuanced understanding of the relationship between the

informed user, individual character and the perception of design in digital environments. The "overall impression" test will need to operate in contexts where the relevant impression may unfold over time rather than appear at a single moment.

The second phase of the EU Design Reform should therefore be seen not as a technical appendix to the 2024 legislative package, but as the moment at which the new system becomes practically usable. Regulation (EU) 2026/715 provides a consolidated legal basis; Delegated Regulation (EU) 2026/137 supplies procedural architecture; and Implementing Regulation (EU) 2026/138 equips the EUIPO with the tools needed to receive, process and publish modern design applications. Together, these instruments mark the transition from a design system built for the industrial economy of physical goods to one capable of supporting an economy of digital, animated, virtual and technologically mediated design.

Ultimately, the 2024–2026 reform prepares EU design law for a new era. Its success will depend not only on the text of the legislation, but also on EUIPO practice, judicial interpretation and practitioners' ability to use the new tools with precision. The reform promises broader and more technologically neutral protection, but it also demands greater care in defining the protected subject matter. For designers, manufacturers and IP professionals, Phase II is therefore both an opportunity and a warning: the EU design system has become more flexible, but flexibility must be matched by strategic clarity. In that sense, the new regime does more than modernise design protection; it redefines what industrial design protection means in the digital age.

Case Law

Imogen Francis

UK: Hadid up to here – the UK Court of Appeal sends a reminder to those drafting long-term commercial agreements

On 27 February 2026, the Court of Appeal delivered a significant judgment in Zaha Hadid Limited v The Zaha Hadid Foundation [2026] EWCA Civ 192, highlighting the importance of precise drafting in trade mark licences and clarifying the Courts' approach to inferring common-law rights to terminate on reasonable notice.

Case background

The dispute concerned the interpretation of wording in a trade mark licence between two entities established by the famous architect Dame Zaha Hadid: Zaha Hadid Limited (the "Company") and The Zaha Hadid Foundation (the "Foundation").

Under the licence, the Company was granted a right to use the 'ZAHA HADID' trade marks in return for a royalty. The Company, considering the royalty percentage overly onerous, wished to terminate the agreement on reasonable notice, with a view to renegotiating the licence.

The key point was interpretation of the following wording 'the agreement shall continue indefinitely, unless terminated earlier' which only granted the Foundation contractual termination rights. The High Court held that the clause effectively locked 'the Company into the contract forever'.

The Court of Appeal disagreed, overturning the decision and concluding that the term "indefinitely" meant that both parties, and therefore the Company was entitled to terminate the licence on reasonable notice.

Court of Appeal's Analysis

The central question was whether the agreement was intended to run in perpetuity or simply for an indefinite duration.

The Court applied the two-stage reasoning process from Winter Garden Theatre (London) Ltd v Millenium Productions Ltd:

- Did the parties intend the agreement to run in perpetuity? If so, no right to terminate on reasonable notice could be implied, unless there were express terms to the contrary.
- If the agreement was intended to be indefinite, it was expected that it would end at some point and it would be natural to infer that all parties could terminate the contract on reasonable notice.

The Court of Appeal also emphasised the importance of applying the established principles of construction to understand the intention of the parties.

Considering these principles, the Court considered that on its ordinary meaning, an "indefinite" term, rather than a "perpetual" one, denoted an arrangement without a fixed end date, not one incapable of termination, with nothing in the contract contradicted this finding.

Alongside the commercial reality, the Court of Appeal found it implausible that the parties intended to tie the Company permanently to the ZAHA HADID name, particularly in the context of a dynamic and evolving architectural and branding environment.

Court's decision

The Court of Appeal held that:

- The agreement had no fixed end date but was not intended to run in perpetuity.
- To give proper effect to the parties' intentions, the contract must allow both parties to terminate on reasonable notice.
- The Foundation's express termination right did not exclude an implied termination right for the Company.

The result overturns the High Court's interpretation and restores commercial pragmatism to the concept of "indefinite" contractual duration.

Practical implications

The use of clear and unambiguous wording is increasingly critical when addressing contractual duration and termination. There is an important distinction between "indefinite" and "perpetual". Where parties intend an agreement to run in perpetuity, that intention must be expressed in unequivocal terms.

As the Court's willingness to construct intentions is also based heavily upon the commercial reality, legal drafters must consider whether a perpetual agreement makes sense in light of the nature of the business and the market in which the parties operate. Where the commercial reality points away from permanence and the parties' desire to be perpetually bound then, again, it should be made clear in the contract why a permanent licence is key.

Finally, the case confirms that express termination rights granted to one party will not necessarily exclude inferred termination rights for the other, if the overall construction of the agreement points away from perpetuity.

Marianna Gembalczyk

PL: Inspiration or copy? Chylak v. CCC S.A.: lawsuit for copyright infringement of handbag design

Where does inspiration end and copying of another's creative work begin? In a creative world where designers operate alongside rising fashion giants, this boundary can be difficult to define. This problem appeared recently in one of the most high-profile disputes in the Polish fashion industry – Chylak v. CCC S.A. (case no. I AGa 399/22). The case concerned the protection of creative works in relation to products that combine not only everyday functionality but, above all, a distinct aesthetic layer. The rulings issued in this matter gave the question significance, setting out criteria for assessing the boundary between inspiration and copyright infringement.

Background

The dispute was initiated by Zofia Chylak, founder of the Polish brand Chylak, which specialises in the production of leather handbags. Chylak filed a lawsuit against CCC S.A. – a major Polish company active in the footwear and leather goods sector – alleging infringement of copyright in the design of one of its products. According to the claimant, CCC S.A. copied the visual aspects of a Chylak handbag model, which, in her opinion, reflected its original creative concept.

The proceedings were initiated before the District Court in Poznań in 2021, which upheld the claim, thus, the court stated that the handbag constitutes a work within the meaning of the Act on Copyright and Related Rights. Thereafter CCC S.A. lodged an appeal with the Court of Appeal, which went on to upheld the findings of the court of first instance.

The fundamental question for proper resolution of the case was whether a handbag design composed of already known elements could be regarded as a work within the meaning of the Polish Act on Copyright and Related Rights, and consequently, whether it could benefit from the protection afforded under law?

Court ruling

The District Court was faced with the task of determining whether the design possesses creative and individual characteristics, or whether it is merely a technical product composed of elements commonly used in the craft of leather goods manufacturing.

In the court's opinion, the fact that a product is a compilation of elements that already exist on the market does not exclude the possibility of recognizing it as a work within the meaning of copyright law. This circumstance does not deprive such a product of its originality or individual character. Moreover, the case law has established the view that the requirement of objective novelty is not a necessary premise for creativity as a manifestation of human intellectual activity. In the court's opinion, the assessment of whether a given combination of elements constitutes a manifestation of creativity requires specialist knowledge.

With this in mind the court relied on expert evidence, in which an expert compared the disputed handbag with other handbags available on the market, focusing in particular on aspects of individuality and originality. According to the expert opinion, the Chylak product displayed individual character, and its innovativeness manifested itself in the selection and combination of classic elements, which together gave the handbag a novel overall appearance.

The District Court held that the product offered by CCC S.A. did not constitute permissible inspiration but rather exceeded its acceptable limits. In comparing the two products, the fact that they were highly similar prevailed, such that, from the perspective of an average consumer, the differences were of secondary importance. The District Court stressed that originality may arise from the author's individual selection and combination of known elements, as objective novelty is not required.

Furthermore, a key factor in the court's assessment was the fact that the defendant had previously attempted to cooperate with the claimant, making the invocation of inspiration doubtful. Moreover, in the course of the proceedings, it was shown that the defendant was familiar with the claimant's product offer. Therefore, in the court's opinion, the defendant had an easier opportunity to verify its own product, and the omission in this regard was a manifestation of gross negligence.

Court of Appeal

In its appeal, CCC S.A. challenged the possibility of recognising the claimant's handbag as a work, arguing that the product was the result of combining well-known and commonly used features in leather goods manufacturing. The defendant consistently maintained that the subject of the dispute was not distinctive and lacked a creative element. In the defendant's view, the District Court's

finding that the Chylak handbag constituted a work within the meaning of copyright law was wrong.

The Court of Appeal upheld the findings of the court of first instance and thus dismissed the defendant's appeal. It noted that, contrary to the defendant's assertions, the fact that the disputed handbag is the result of a combination of already known designs does not exclude its classification as a work within the meaning of copyright law.

The court stressed that creativity is manifested in the manner in which elements are selected, arranged and shaped; and that decisive importance should be attached to the overall set of features demonstrating the originality and uniqueness of the product. Creative activity consists in the author's independent choices, which reflect the author's personal creative concept.

Key takeaways

The courts confirmed that the use of commonly used features does not, in itself, exclude a product from copyright protection. The key factor is the final result, in particular the recognisability and originality of the creative concept.

On the basis of the courts' rulings, clear boundaries can be drawn between inspiration and copyright infringement. Inspiration from another's design must not lead to the appropriation of all its characteristic elements, which undoubtedly reflect the originality of the work in question.

The Chylak v. CCC S.A. case constitutes an important point of reference regarding inspiration as an integral part of the creative process. Particularly in the artistic and design sectors, creators are vulnerable to numerous infringements of their rights. It is worth noting that the proceedings not only resulted in a significant copyright law ruling but also shed light on the practices of influential market players operating within the fashion design industry. The courts noted that the limits of permissible inspiration are exceeded when the similarity between the product serving as inspiration and the new product is such that an average person is unable to distinguish between them.

Stéphanie Berland

FR: No limitation period for actions to invalidate a trademark

In a judgment of 28 January 2026, the Court of Cassation clearly sets out the rules applicable to trademark invalidity proceedings following the reform of 22 May 2019, known as the 'Pacte Law'.

The dispute was between VF (notably the proprietors of the Napapijri trademark) and Artexyl, the operator of the "Geographical Norway" trademarks. VF alleged, in particular, fraudulent trademark registrations as well as unfair and parasitic competition practices.

Firstly, the Court reiterates a key principle arising from the Pacte Law, namely that actions for the invalidity of trademarks in force as at 24 May 2019, the date on which the Pacte Law came into force, are in principle not subject to any limitation period.

By overturning the Court of Appeal's decision, which had declared certain claims inadmissible on the grounds that they were time-barred, it confirms a major development in trademark litigation, strengthening the ability of rights holders to take action without any time limit, except in cases of *res judicata*.

The Court also criticises the analysis carried out by the trial judges regarding bad faith at the time of trademark registration. It emphasises that this concept must be assessed holistically, taking into account all relevant circumstances, such as knowledge of an earlier trademark, the applicant's intention, or their commercial conduct. However, by limiting itself to a partial analysis, the Court of Appeal failed to provide sufficient grounds for its decision.

The Court of Cassation quashed and set aside the judgment of the Paris Court of Appeal, in particular in so far as it declared the claims of the VF companies inadmissible on the grounds of limitation and in so far as it dismissed the VF companies' claims for the invalidity of the registration of Artexyl's trademarks, and referred the parties back to the Paris Court of Appeal sitting in a different composition.

Court of Cassation, Commercial Chamber, VF v Artexyl, 28 January 2026, No. 24-14.760

Aleksandra Kuc-Makulska

PL: When AI speaks in a human voice: insights from a Polish court case

Introduction

In Poland, a professional narrator has filed a lawsuit, alleging that his voice was unlawfully cloned using artificial intelligence and subsequently used in commercial advertising without his consent. The case is Poland's first major legal challenge involving the use of AI-generated voice content and has attracted significant attention from both the legal and creative communities.

Beyond the individual dispute, the case has triggered a broader response from voice professionals, who have launched a coordinated initiative under the slogan "My Voice. My Property." The campaign highlights the need for clear legal frameworks governing the use of human voices in AI-driven technologies, and draws attention to the wider implications of technological development and the protection of personal and economic rights.

Background

At the centre of the dispute lies the alleged unauthorised use of the voice of Jarosław Łukomski, a well-known Polish narrator, in advertising materials generated with the assistance of AI. According to the claims, the narrator recognised his distinctive voice in a commercial campaign he had never recorded, prompting legal action against the company responsible for using the AI-generated voice.

The proceedings are currently pending before a circuit court in Warsaw, with a hearing scheduled for June 2026. At this stage, only limited information about the claimant's allegations is publicly available. It has nonetheless been reported that the court has decided to appoint a forensic phonetics expert to determine whether the voice used in the advertisement can be attributed to the narrator and, if so, to assess the degree of similarity to his authentic voice.

Importantly, the lawsuit is directed not against AI technology as such, but against the entity that used the AI generated voice for commercial purposes. The claimants seek compensation corresponding to the market remuneration that would have been payable for the lawful use of the narrator's voice, as well as monetary damages for infringement of his personal rights.

The defendant, by contrast, maintains that it was misled itself and argues that it did not knowingly use the narrator's personal data, voice or image.

Is the voice protected under law?

Current Polish regulations do not provide explicit rules governing the protection of voice, let alone the use of a person's voice generated by AI models. As a result, protection of voice may currently be sought under existing legal frameworks, primarily through civil law provisions on the protection of personal rights.

Under the Polish Civil Code, personal rights constitute a non-exhaustive category of values connected with an individual's identity and dignity. Courts have long recognised a person's image as a protected personal right. Distribution of an image requires authorisation of the person presented by that image under Polish Copyright Law. Whether a person's voice falls within this sphere of protection is now being directly tested in judicial practice. The claimant argues that a voice, particularly in the case of professionals whose livelihood depends on it, functions as an identifying personal attribute.

Separately, the use of AI-generated voice may also be relevant from a data protection perspective. Under the GDPR, a voice may constitute personal data where it enables the identification of a natural person.

In the case at hand the court will assess whether the voice generated by AI can in fact identify the narrator.

Industry response

This legal dispute has prompted collective action by organisations representing artists' rights. The Polish Union of Stage Artists (ZASP), the Trade Union of Dubbing Creators (ZZTD) and the Trade Union of Polish Actors (ZZAP) have jointly launched the campaign "My Voice. My Property." One of its core elements is an appeal for stronger legal protection of creators against the use of their voices by AI tools and their users.

In particular, the organisations call for the introduction of an obligation to obtain individual and documented consent each time a voice is used in AI training processes or content generation. They also advocate for greater transparency regarding training data and for a right to request the removal of voice data from AI systems.

Conclusion

The Polish dispute over the commercial use of AI-generated voices illustrates, once again, that

legal frameworks tend to lag behind technological developments. While the issue is currently being tested before Polish courts, it is by no means unique to Poland. Similar debates are emerging in other jurisdictions, particularly in countries with strong dubbing and voice-over markets.

At the EU level, the AI Act provides an initial regulatory framework and introduces transparency obligations for certain categories of AI-generated content. However, a number of questions remain outside its scope, including the treatment of voice identity and related interests. These matters are, therefore left, to a significant extent, to national law.

In the rapidly evolving landscape of synthetic speech, further development of the legal framework may be seen as the voice of reason.

Xavier Fàbrega

ES: The descriptive use of well-known trademarks and its limits: an analysis of Supreme Court Judgment No. 1505/2025 – the "Donut" case

Introduction

The protection of well-known trademarks is one of the most significant areas within trademark law, particularly where third parties use identical or similar signs claiming merely descriptive use. The legal difficulty arises where a trademark has become so established in the market that its name begins to be used in everyday language to describe a product, raising the question of whether such widespread use reduces, or eliminates, the legal protection afforded to the sign.

This issue came before the Spanish Supreme Court in Judgment No. 1505/2025 of 28 October 2025, a ruling of particular interest because it clarifies the limits of descriptive use in relation to well-known trademarks and analyses the effect that the incorporation of a trademark into common language, or even into dictionaries, may have on its legal protection.

Background and Legal Issue

Bakery Donuts Iberia, S.A.U. owns several Spanish trademark registrations for bakery goods consisting of or incorporating the signs "DONUT", "DONUTS" and other variants, some of which are well-known in the Spanish market.

The company Atlanta Restauración Temática, S.L. sold bakery products (doughnuts) under the name "REDONDOUGHTS" and, furthermore, used the term "donut" to describe its products on its website and in promotional material.

Bakery Donuts brought an action for trademark infringement and unfair competition, arguing that such use infringed its exclusive rights, took unfair advantage of the reputation associated with its trademarks and eroded their distinctiveness.

The Madrid Commercial Court No. 9, at first instance, and the Madrid Provincial Court, at second instance, dismissed the claim brought by Bakery Donuts and the company's subsequent appeal. Both courts held that the term "Donut" had acquired a descriptive character in the market and that the defendant's use of the term neither gave rise to a likelihood of confusion nor constituted trademark infringement.

In response to these rulings, Bakery Donuts lodged an extraordinary appeal before the Supreme Court on grounds of procedural irregularity, along with a cassation appeal on points of law.

The key legal issue was to determine whether a third party may use a well-known trademark for allegedly descriptive purposes where the term has become widely used in commercial and everyday language.

Supreme Court's reasoning

The crux of the ruling lies in the interpretation of Article 37(b) of the Spanish Trademark Law, which sets certain limits to the proprietor's exclusive right.

The Supreme Court draws on the case law of the European Union Court of Justice to reiterate that the descriptive use of another party's trademark can only be considered lawful where two cumulative conditions are met: that the use has a genuine descriptive purpose and that it is carried out in accordance with fair trade practices.

Although the Court acknowledges that the term 'Donut' may have acquired a certain descriptive use in the market to identify a type of doughnut, it considers that this circumstance does not automatically legitimise its use by third parties.

Applying this criterion to the specific case, the Court concludes that the use made by Atlanta Restauración Temática created an inevitable association with the Bakery Donuts trademarks and constituted an indirect exploitation of the economic and reputational value built up by the claimant over decades.

One of the most significant aspects of the judgment is the analysis of the inclusion of the term "dónut" in the Dictionary of the Royal Spanish Academy, where this word appears with an accent mark and expressly mentions that the term proceeds from the registered trademark "Donut®". Contrary to the approach taken by the Provincial Court, the Supreme Court rules that the incorporation of a term into everyday language or a dictionary does not necessarily imply a loss of distinctiveness or the legal genericization of the trademark.

The Supreme Court distinguishes between lexicalisation, understood as the incorporation of a term into general

language, and vulgarisation, which requires the actual loss of the trademark's distinctive character. According to the Court, the fact that the dictionary includes the term "dónut" and even acknowledges its trademark origin precisely excludes the notion of automatic loss of protection.

On this basis, the Supreme Court partially upholds the cassation appeal and finds that there has been trademark infringement.

Doctrinal assessment

This judgment strengthens the protection of well-known trademarks and confirms the doctrine that trademark protection is not limited solely to preventing a likelihood of confusion, but also extends to preventing the exploitation of the sign's reputational value.

Secondly, the ruling establishes a particularly relevant criterion regarding descriptive use of a trademark. The Court makes it clear that it is not sufficient for a term to have a certain descriptive meaning; its use must also respect the legitimate interests of the proprietor and must not involve the exploitation of the prestige associated with the trademark.

Of particular relevance is the distinction between lexicalisation and vulgarisation. The Court states that the mere linguistic popularisation of a trademark does not automatically result in a loss of exclusive rights.

From a practical standpoint, this doctrine will have a direct impact on sectors where certain trademarks have become terms of everyday use.

Xavier Fàbrega

ES: Interim relief for historic trademarks and the limits of *fumus boni iuris*: an analysis of the ruling by Alicante Commercial Court No. 4 in the "Houdini" case (AJM Alicante No. 775/2025, 17 November 2025)

Introduction

Trademark disputes involving historical names or figures in the public domain raise some of the most complex debates within trademark law.

It is against this background that Order No. 775/2025, of 17 November 2025, handed down by Commercial Court No. 4 of Alicante in the "Houdini" case, should be understood. The ruling is particularly significant because it addresses, in interim proceedings, the protection of a European Union trademark incorporating the name of the famous magician Harry Houdini, against its use in the title of a musical show staged in Spain.

The legal significance of the case lies not only in the trademark dispute itself, but also in the way the court examines the *prima facie* case (*fumus boni iuris*), the proportionality of the interim measures and the potential weakness of the trademark registration where there are issues regarding its legitimacy.

Background and legal issue

The dispute arises from the request for a preliminary injunction filed by Houdini Heritage KFT, the proprietor of the European Union trademark "Houdini", registered in 2017 for promotional, entertainment, education and advertising services, among others.

The claimant initially was granted *ex parte* preliminary injunction against the companies Letsgo Entertainment, Circus Spectacular and Beon Entertainment, the producers of the theatrical and musical show entitled "Houdini: A Magical Musical" (based on the life of the well-known magician), ordering the cessation of use of the sign "Houdini" and the withdrawal of any advertising and promotional materials within the European Union.

The defendants opposed the preliminary injunction, arguing that there was no *prima facie* evidence of infringement, no likelihood of confusion, and that the trademark was potentially invalid due to its descriptive nature and possible bad faith in its registration. They also argued that maintaining the interim measure would be economically disproportionate in relation to a show that had already been launched in Spain.

Court's reasoning

The Court notes that the granting of a preliminary injunction requires the fulfilment of several conditions: sufficient evidence of infringement (*fumus boni iuris*), risk of harm caused by delay (*periculum in mora*), proportionality and the provision of adequate security.

The judgment initially acknowledges that the claimant is formally the proprietor of a valid and registered European Union trademark. However, after examining the documentary evidence submitted by the parties, the Court identifies various circumstances that question the legitimacy of the trademark and the chain of family authorisations invoked to justify its registration.

In particular, the Court notes that a large part of the documentation evidencing authorisations was formalised several years after the trademark was registered, which casts doubt on the claimant's entitlement to register the trademark "Houdini" in the European Union.

Secondly, the Court notes that the sign "Houdini" is used by the defendants in the context of a fictional musical and theatrical work, and finds that consumers are likely to perceive the term as a reference to the historical figure rather than as an indication of the commercial origin of the services. Finally, the expert evidence shows that changing the name of the show and withdrawing the entire advertising campaign would result in financial loss exceeding €200,000, and would also affect advertising investments, theatre contracts, media campaigns and commercial commitments already entered into.

In these circumstances, the Court concludes that maintaining the preliminary injunction, that had originally been granted *ex parte*, would be disproportionate in relation to the weakness of the legal grounds for infringement.

Consequently, the Court upholds the defendants' opposition and sets aside the interim measures initially adopted, allowing the show "Houdini" to continue.

Doctrinal assessment

From a legal perspective, the ruling is of considerable interest for several reasons.

First, the order confirms that, in interim proceedings, formal ownership of a trademark registration does not automatically guarantee injunctive relief where there are reasonable grounds that question the substantive validity of the right.

Secondly, the case raises a particularly interesting issue regarding signs linked to historical figures or names in the public domain. In this respect, the Court appears to assume that, where a name is used primarily to describe or identify a figure within a narrative context, the risk of commercial confusion may be significantly reduced.

Marta Matkowska

PL: Artistic freedom under scrutiny: rap music and the limits of medicinal product advertising

Can a rap song qualify as advertising of a medicinal product? A recent decision issued by the Polish Chief Pharmaceutical Inspectorate ("Authority") appears to suggest that the line between the right to artistic expression and commercial communication may be less clear, particularly where public health considerations are involved. However, such an approach also raises questions about the appropriate limits of regulatory intervention in artistic discourse.

The case concerned a widely distributed song 'I FELL IN LOVE NEXT TO A PHARMACY' ("Zakochałem się pod apteką"[1]), released in December 2025, by Taco Hemingway, a Polish raper, containing references to a codeine-based medicinal product, which, according to the Authority, contributed to increased consumer interest and purchasing behaviour.

At the beginning of February 2026, the Authority informed the artist that proceedings had been initiated in connection to alleged breaches of the Polish Pharmaceutical Law. The alleged breaches concerned, in particular, provisions prohibiting the dissemination to the general public of advertising for medicinal products containing narcotic drugs and psychotropic substances, as well as provisions governing advertising by marketing authorisation holders and the mandatory elements required in such advertising.

To understand the nature of the dispute, it is necessary to consider both the song excerpt that caught the Authority's attention and the definition of advertising of medicinal products under the Polish Pharmaceutical Law. The song contains lyrics in which the narrator visits a pharmacy to obtain Solpadeine, referred to in the song as "Solpa". The pharmacist refuses to sell it, pointing to the strength of the product and the fact that the narrator had purchased it just a few days earlier. At that point in the song, a woman standing in the queue buys the medicine for the narrator, after which the narrative shifts to reflections on the relationship between the two characters. It is important to note that Solpadeine is a pain relief medicinal product indicated for the short-term treatment of acute moderate pain that is not relieved by milder analgesics. The concerns in this case arise from its codeine content, codeine being a weak opioid.

Under Article 52 of the Polish Pharmaceutical Law, the advertising of a medicinal product is defined as any activity consisting in informing about or encouraging the use of a medicinal product, with the aim of increasing the number of prescriptions issued, as well as the supply, sale or consumption of medicinal products.

During the ongoing proceedings, the artist's legal representative argued that the song constituted an exercise of constitutionally protected freedom of artistic expression and should not be assessed under the rules governing medicinal product advertising. In the representative's view, the lyrics merely portrayed a stylised or fictional reality, in which the reference to a specific product could serve to reflect everyday life realistically, without exceeding the bounds of artistic freedom.

It was further argued that the song does not contain and promotional or persuasive elements, which are essential for classifying a communication as advertising under the Pharmaceutical Law.

The artist's counsel also stressed that the artist had acted independently, without any cooperation with the marketing authorisation holder and without receiving any remuneration or other benefit for referencing the product. References to branded products were described as a common feature of artistic works, serving a descriptive and realism-enhancing function rather than a promotional one. Finally, it was noted that the artist does not engage in commercial endorsements, particularly with respect to sensitive products such as medicines, alcohol or tobacco. The artist's legal representative therefore requested that the proceedings be discontinued in their entirety.

The Authority rejected the legal representative's arguments, finding that the song could not be regarded as a neutral artistic depiction. In the Authority's view, the references to the medicinal product, considered in light of their context, tone and form, carried persuasive significance and were capable of promoting the product, even in the absence of explicit encouragement.

This assessment was reinforced by evidence indicating that the song had in fact influenced consumer behaviour, resulting in an observable purchasing trend, especially among the young consumers. The Authority also stressed that the lack of cooperation with, or remuneration from, the marketing authorisation holder did not preclude the classification of the communication as advertising, since third-party messaging may likewise fall within the relevant regulatory framework.

[1] The song "Zakochałem się pod apteką", performed by Taco Hemingway (feat. Rumak and Livka), appears on the album *Latarnie wszędzie dawno zgasły* (2025), released by the label 2020.

While acknowledging the constitutional protection of artistic freedom, the Authority nevertheless emphasised that it is not absolute and may be restricted on public health grounds. It placed particular emphasis on the risks associated with medicinal products containing narcotic substances, finding that the song normalised or romanticised their non-medical use.

The Authority further noted that the product was presented in a lifestyle-oriented, non-medical context, without any reference to its proper use or therapeutic purpose, thereby reinforcing the promotional nature of the communication. Finally, the artist's status as a well-known public figure was considered to amplify the message's impact on the audience.

The Authority, in its decision of 2 April 2026, found that the case involved unlawful advertising of a medicinal product, required the discontinuation of the non-compliant advertising, and granted the decision immediate enforceability, which consequently required the artist to modify the lyrics of the song by muting the product name. Furthermore, the Authority found that the song had become sufficiently popular to generate a trend among young people of purchasing the product.

The artist's record label issued a statement condemning the decision and announcing that it would take appropriate legal action.

A key question is whether the criteria set out in Article 52 of the Pharmaceutical Law were in fact met. The Authority's reasoning does not explain in detail why it concluded that the song fulfilled those criteria. Nevertheless, the case also raises a broader issue concerning freedom of artistic expression, which will be addressed in the following part of the article.

In this context, it is worth noting that Polish constitutional doctrine regards artistic creation as a particular form of expression, encompassing the communication of views, experiences and emotions, and therefore as an important component of a democratic system. Within this framework, freedom of artistic expression includes not only the act of creation itself, but also the ability to choose the subject matter, form and method of expression, as well as to disseminate the resulting work. Artistic activity is thus defined primarily by its expressive purpose: the intention to convey ideas or experiences through a chosen medium.

At the same time, the constitutional protection afforded to artistic expression requires its scope to be assessed with due regard to the specific nature of artistic activity, rather than by reference to categories typical of other regulatory areas. In this sense, the inclusion of elements drawn from everyday reality in an artistic work does not, in itself, determine its legal qualification, since such references may serve a broader expressive or narrative function. Any assessment of such works should therefore consider their overall character as expressive acts, rather than focusing exclusively on isolated elements that may be open to alternative interpretation.

Freedom of artistic creation is, of course, not absolute. This freedom may be limited in the interests of state security, territorial integrity or public safety, where necessary to prevent disorder or crime, as well as for the protection of health and morals, for the protection of the reputation and rights of others, the prevention of the disclosure of confidential information, or the safeguarding of the authority and impartiality of the judiciary.

The decision is not final; the artist may file a request with the Authority for reconsideration of the case or alternatively bring a complaint directly before the Province Administrative Court where the decision may be annulled.

The key question is whether, on appeal, the court will uphold the Authority's reasoning, or instead conclude, having regard to the broad protection afforded to artistic expression, that the artist acted within the limits of that protection.

The case attracted considerable attention in the Polish media, and several commentators remain unconvinced by the Authority's reasoning, particularly it's finding that the artist intended to increase demand for the medicinal product. It remains to be seen how the case will develop. The case is a reminder that medicinal product advertising rules may reach into unexpected areas of popular culture, raising difficult questions about the boundary between regulatory control and artistic freedom.

Source:

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Ewelina Madej

EU: Pastiche in copyright law: the CJEU clarifies when sampling is legal

One of the most significant EU rulings on sampling – the use of short excerpts from existing recordings in new musical works – has now been handed down. The Court of Justice of the European Union (CJEU) has clarified the long-uncertain concept of pastiche and reaffirmed that copyright protection must coexist with artistic freedom. As a result, creators may draw more freely on existing cultural material, provided they do so in a creative and recognizable way.

The case, C-590/23, stems from a decades-long dispute between members of the band Kraftwerk and the music producer Pelham GmbH. In 1999, Kraftwerk sued hip-hop producers Moses Pelham and Martin Haas for using a short rhythmic fragment – a two-second sample – from the band's 1977 track *Metall auf Metall* in rapper Sabrina Setlur's 1997 song *Nur mir*. Pelham had looped the sample throughout the track. The central question was whether this use infringed the rights of the phonogram producer.

In 2021, Germany introduced an exception allowing the use of works for caricature, parody, or pastiche. Because this exception is rooted in EU law, the German Federal Court of Justice asked the CJEU to clarify what exactly constitutes a "pastiche" and whether this exception could render Pelham's sampling lawful.

The CJEU held that pastiche covers works that refer to one or more existing works while remaining clearly distinct from them. Such works may incorporate characteristics, copyright-protected elements – including samples – if they create a recognizable artistic dialogue with the original. This dialogue may take many forms: stylization, imitation of style, homage, humorous reference, or critical engagement.

Crucially, the CJEU emphasized that pastiche is not limited to humor or parody. It is a broad, flexible category designed to balance copyright protection with the freedom of artistic expression.

For musicians and artists, this means that fragments of existing works may be used without permission, provided the resulting work meets the criteria for pastiche. What matters is that the audience can recognize the reference – whether as a tribute, a stylistic echo, or a creative confrontation.

For producers and rights holders, the ruling confirms that copyright protection remains robust, but it does not prohibit creative reinterpretation. Not every use of a sample amounts to infringement; the purpose and character of the new work are decisive.

As for the Kraftwerk vs. Pelham dispute, the CJEU did not determine whether *Nur mir* qualifies as a pastiche. That assessment now returns to the German court. However, the CJEU noted that earlier findings suggest the sample is recognizable and that the track *Nur mir* may indeed constitute an artistic confrontation with the original.

Source:
https://curia.europa.eu

Emmanuel Durand and Benjamin Templé

FR: The unauthorized use by the "Printemps" department store of content linked to the Roland-Garros tournament does not constitute trademark infringement, but is punishable as economic free-riding

Due to the use of audiovisual clips from previous editions of the Roland Garros tennis tournament, as well as visual and textual references related to this sporting event, as part of a marketing campaign conducted on its website and social media in June 2023, Printemps was held liable by the Tribunal Judiciaire of Paris (February 12, 2026, No. 23/15958) for infringing on the French Tennis Federation's exclusive exploitation rights and engaging in parasitic conduct.

In June 2023, during the Roland Garros tennis tournament, S.A.S. Printemps (**"Printemps"**), the operator of the famous 'Printemps' department store in Paris, launched a 'live shopping' campaign called 'Jeu, Set & Match' ('Game, Set & Match'). As part of this digital campaign, inspired by the world of tennis, Printemps notably posted video clips of matches from the 2014 and 2015 editions of the Roland Garros tournament on its website and social media platforms.

The Roland-Garros tournament is organized by the French Tennis Federation (**"FFT"**), which, pursuant to Article L.331-1 of the French Sports Code, is, as such, the owner of its exploitation rights. However, it turns out that Printemps never sought authorization from the FFT in connection with its commercial campaign.

Faced with such conduct, the FFT, following an unsuccessful formal notice, sued Printemps before the Tribunal Judiciaire of Paris (**"Tribunal"**) for infringement of its exclusive exploitation rights, unfair competition and trademark infringement, seeking a total of more than € 600,000 in damages.

In a judgment dated February 12, 2026, the Tribunal **found that FFT's exclusive rights were actually infringed** and ordered Printemps, on that basis, to pay a total of € 50,000 to the FFT.

The Tribunal thus found that the broadcast on Printemps's e-commerce site and social media platforms of two video clips — one from the women's final (2014 edition), the other from the men's final (2015 edition) — of the Roland-Garros tournament, exactly at the time of the 2023 edition of said tournament, was used as vehicles for attracting and retaining customers, without any authorization from the rights holder.

Since Printemps was unable, in this case, to invoke a legal exception (in particular the exception for informational purposes provided for in Article L. 333-7 of the Sports Code), the Tribunal considered that such broadcast necessarily infringed upon the FFT's exclusive exploitation rights and ordered Printemps to pay the FFT the sum of € 12,000 as damages on that ground.

The Tribunal also held that Printemps **was guilty of free-riding** — a practice consisting, in the terms of a formulation traditionally adopted by French case law and reiterated in the decision, "of following in the wake of another in order to unduly profit from their efforts, know-how, acquired reputation, or investments made" – and consequently ordered Printemps to pay the FFT the sum of € 18,000 as damages on that ground.

In the Tribunal's view, even beyond the broadcast of games' highlights, Printemps, by using several visual elements likely to identify the Roland-Garros tournament (clay court, a hostess dressed as a tennis player, tennis balls and rackets, etc.) in its promotional content necessarily took undue advantage of the reputation of this Grand Slam tournament without providing any financial contribution.

It must, however, be noted that the amounts ultimately awarded to the FFT regarding the infringement of its exclusive rights and free-riding, as described above, are significantly lower than the sums sought by the FFT on these two grounds (€ 300,000 and € 200,000 respectively), as the judges found (in particular) that the FFT had not

sufficiently substantiated the amounts claimed for each of these two practices.

Another noteworthy aspect of this decision is that the Tribunal chose **not to grant another FFT claim**, which was based on Article L. 713-3 of the Intellectual Property Code, **for trademark infringement**.

In essence, the FFT, owner of the semi-figurative trademark No. 4290616 "RG ROLAND GARROS," argued that Printemps's use of the hashtag "#RG" in two posts published on its Instagram account, without the FFT's authorization, constituted trademark infringement.

In its statement of defence, Printemps denied any act of infringement, arguing that the use of the hashtag "#RG" was not intended as a trademark but merely as an illustrative reference to the Roland-Garros tournament, with no risk of confusion with the FFT's activities.

On this specific point, the Tribunal ruled in favour of Printemps, holding that the use of a hashtag on a given social media platform does not, in and of itself, constitute use as a trademark. The determination of whether an act constitutes trademark infringement is thus contingent upon an analysis by the courts of the specific use of the hashtag in each given situation.

In this case and based on such principle, the Tribunal found that the posts incorporating the disputed hashtag did not refer to the purchase or promotion of a specific product but were actually used as a contextual reference to the Roland-Garros tournament. In this context, the Tribunal held that the use of the hashtag "#RG" could not constitute use as a trademark. As a result, a finding of trademark infringement was precluded.

Jörn Albrecht

DE: GEMA v OpenAI: Munich Regional Court hands down Germany's first landmark decision on AI and copyright infringement

By its judgment dated 11 November 2025, in case no. 42 O 14139/24, Munich Regional Court I ruled that OpenAI infringed copyright in song lyrics through the services offered via ChatGPT models GPT-4 and GPT-4o. The judgment is a landmark decision at the intersection of AI and copyright law, as it is the first decision to treat both the training and output of large language models as acts of reproduction for the purposes of copyright law. It further establishes that operators of AI systems are liable for copyright infringements in connection with both the training and output of their AI chatbots.

Background

The plaintiff, GEMA, is a leading German collecting society managing exclusive rights for composers, lyricists and music publishers. It sued the defendants, two OpenAI affiliates, for infringement of copyright in nine song lyrics, including well-known titles such as "Atemlos", "36 Grad" and "Über den Wolken", through the use of OpenAI's ChatGPT services based on GPT-4 and GPT-4o models, which had been made available to German users from end of April 2025.

It was undisputed that the models underlying OpenAI's chatbot had been trained on large volumes of data, including text collected from publicly accessible websites, and that the song lyrics at issue had formed part of that data.

The plaintiff alleged, among other things, that the chatbot generated reproductions of this training data on a significant scale: first during the algorithmic transformation of the data, including the so-called memorisation of content and, second, upon regurgitation of the output made perceptible to chatbot users.

In support of this allegation, the plaintiff submitted screenshots of chat histories for the song lyrics. The plaintiff further alleged that the song lyrics at issue were stored in the model in their entirety and without alteration. To the extent that the chatbot's output showed alterations to the lyrics, those were not attributable to the model or the information it contained, but rather to randomization mechanisms to generate artificial variance, referred to as "decoding".

The defendants disputed, as a matter of fact, that their model stored or copied specific training data. In essence, they argued that their language model operated based on statistical probabilities, without any identifiable dataset embodying the song lyrics in dispute. They further disputed that their technology used a decoding algorithm subordinate to the model. From a legal perspective, the defendants contented, among other things, that any reproductions and modifications of the disputed song lyrics were covered by the text and data mining exceptions under the German Copyright Act, and that they could not be held responsible for outputs generated by the chatbot, as such were created by users through their respective prompts.

The court's assessment – a deep dive into AI technology

The decision includes a detailed analysis of current legal literature on AI in Germany and beyond.

Based on this analysis, the court distinguished three basic operating phases of AI chatbots:

Phase One	Extraction of data from the internet and conversion of such data into a machine-readable format to create a training dataset
Phase Two	Analysis of the training dataset and enrichment with metadata, including training of the model and potential memorization of training data
Phase Three	Subsequent use of the trained AI model through user prompts and outputs generated by the AI chatbot

Reproduction of copyright-protected material in the AI chatbots at issue

As explained by the court, the concept of reproduction under the German Copyright Act is to be interpreted broadly, in line with Article 2 of the EU InfoSoc Directive, so as to cover not only identical copies, but also fixations of a work in a modified form. This includes the digitisation of an analogue work, storage in a compressed file format such as MP3 or in a reduced version. In line with case law of the German Federal Supreme Court [*Bundesgerichtshof*], the court further stated that any physical fixation of a work "that is capable of making the work perceptible to the human senses in any way, either directly or indirectly", is to be regarded as a reproduction within the meaning of section 16(1) UrhG.

By comparing the song lyrics with the very simple prompt outputs presented as evidence by the plaintiff (cited as "What are the lyrics to [song title]?", "Who wrote the lyrics?", "What is the chorus of [song title]", "Please also tell me the first verse", and "Please also tell me the second verse"), the court went onto conclude that the song lyrics in question were clearly identifiable in the outputs provided and that this could not be attributed to chance or statistical regularities. Drawing a parallel to the conversion of images into JPEG format, the court mentioned that breaking down song lyrics into parameters did not compromise their physical structure and that the physical fixation did not require identification of discrete datasets for as long as fragmented parameters are copied to or stored in the model.

The court found that the AI chatbots at issue reproduced the disputed song lyrics both in Phase Two and Phase Three of AI operation.

Exclusion of text and data mining exception

The court held further that the reproduction carried out in the models was not covered by the exceptions relating to text and data mining or relating to minor incidental elements under the German Copyright Act.

- The text and data mining exception under section 44b(1) of the German Copyright Act aligns with the definition in Article 2(2) of the EU DSM Directive (Directive 2019/790), and permits the automated analysis of digital or digitised works in order to extract information about patterns, trends and correlations. The court states that this analysis of works, as such, does not affect the author's exploitation interests. The statutory provision permits the reproduction of works for conversion into another (digital) format or storage in working memory for the creation of training material in Phase One of AI operation. However, reproductions of copyrighted work in the AI model as part of Phase Two of AI operation were held not to

constitute text and data mining, as the court found these not to serve any further data analysis but rather to infringe upon the author's exploitation rights.

- The exception for incidental elements under section 57 of the German Copyright Act is based on Article 5(3)(i) of the EU InfoSoc Directive and permits the reproduction of works where they are to be regarded as incidental elements in relation to the main subject matter of the reproduction. The court rejected the defendants' argument that the song lyrics were merely incidental in relation to the entire training dataset of the AI chatbot. It held that the defendants had failed to demonstrate that the training dataset itself constitutes a copyright-protected work. The mere fact that the training data had been collected via Common Crawl, without any specific content focus was held to be insufficient for the training data to be classified as a copyright-protected work.

Liability for Outputs

The court held the defendants directly liable for the reproductions, as they controlled the AI model architecture, training and provision of the chatbot. It rejected the defendants' arguments that the outputs were triggered by chatbot users, stressing that the infringements at issue were not merely user-generated content, but resulted from the defendants' system design and control.

No Consent

The court found that the plaintiff's copyright-protected rights had been unlawfully infringed. Whilst such an infringement could be precluded by the rights holder's simple implicit consent, the court held that no such consent had been given in the case at hand. While the court expressed doubts that the song lyrics at issue were freely accessible, it ultimately left this question open. It held that, even if the rights holder had made the works freely accessible to users, such consent would extend only to customary acts of use that the rights holder could reasonably anticipate, and that generation of outputs by AI chatbots did not fall within such customary forms of use.

Key takeaways and outlook

The decision is likely to serve as an important reference point for the legal assessment of copyright infringements involving AI chatbots under German law. Factually, a key element of GEMA's success was that it was able to present AI prompts and outputs showing that the song lyrics at issue had been reproduced in identical or largely identical form. As AI models continue to develop at pace, it remains to be seen whether these bases for claims against AI providers will give rise to litigation at scale. From a legal perspective, the dispute is unlikely to end here: the judgment is not yet final and has reportedly been appealed by both sides to the Munich Higher Regional Court. A referral to the Court of Justice of the European Union also remains possible.

Wiktoria Kossakowska-Wojdaszka

PL: Collective management organizations' claims for information – request for a preliminary ruling in Case C-601/25

In September 2025, the Circuit Court in Gdańsk asked the CJEU for guidance to clarify the rules on information claims brought by collective management organizations ("CMOs") against rights users. The case examines whether EU law permits national law to be interpreted as allowing CMOs to request information about copyright infringements outside court proceedings concerning those infringements.
The Polish court also asked if under EU law CMOs applying for a court order relating to the information claim, must prove, or at least make plausible, that the copyright holders whom they represent are entitled to statutory or contractual remuneration, or that the information is necessary to distribute and pay the amounts owed to those copyright holders.

Applicable domestic law

Article 48 of the Act on Collective Management of Copyrights and Related Rights **("Collective Management Act")** allows CMOs to request rights users to provide information and grant access to documents necessary to determine the amount of due remuneration and fees.

Before the Collective Management Act entered into force in 2018 as a consequence of implementation of EU Directive 2014/26/EU, the same provision was present in the Act on Copyright and Related Rights (**"Copyright Act"**). During that time, the prevailing interpretation of the courts was that the provision not only constituted a legal basis to a claim for information on statutory or contractual remuneration but was also applicable to copyright infringements. Most CMOs believe that the existing jurisprudence remains valid under the new regulation. This view is also shared by many legal scholars.

An information request relevant for claims for damages for copyright infringement can also be made under the Code of Civil Procedure (**"CCP"**), where provisions of Directive 2004/48/EC were transposed. This latter right to information is vested in any party, not just CMOs. Based on Article 479113 et seq. of the CCP, a court might order provision of information only if the requesting party is able to plausibly demonstrate that an infringement occurred. If the court approves the request for information before infringement proceedings are initiated under the provisions of the CCP, the party who obtained information is obliged to bring an action on its merits within a fixed term. If it fails to do so, or if the action is unsuccessful, the party against whom the order was issued can seek damages caused by the provision of information.

Proceedings before the Polish court

The case was brought before the Circuit Court in Gdańsk by SAWP – a CMO managing the rights to performances of musical and literary-musical works.

Based on Article 48 of the Collective Management Act, the CMO wants to obtain a court order that would require the defendant – a cable television operator – to:

a. provide information on the musical and literary-musical works that it retransmits
b. provide revenue it generated from retransmission the above works
c. provide the number of subscribers of its services.

The CMO intends to use the above information to support a potential claim for payment of damages for infringement of rights to performances, as well as potential claims for payment of statutory remuneration in connection with retransmission by means of a copy placed on the market, or in connection with exploitation of a performance within audiovisual work.

The CMO did not provide any evidence that the performers it represents are entitled to any of the above claims. In SAWP's view, which is based on the prevailing jurisprudence, there is no need to do so, since the mere

possibility of the existence of a legal ground is sufficient to obtain the information from the company.

In response to the motion, the defendant explained that it did not enter into an agreement with SAWP, as it only retransmits audiovisual works – not musical and literary-musical works or their performances. The company pointed out that pursuant to Article 87 of the Copyright Act, as a rule, it is the producer of an audiovisual work who has the rights to use performances contained therein, unless agreed otherwise in a contract. Therefore, the defendant does not use the rights of the performers without their consent, and so there is no infringement of the rights managed by SAWP. Moreover, during the period covered by the claim, Article 70 of the Copyright Act did not provide performers with statutory remuneration for retransmissions of the work. Nor does the defendant retransmit performances by means of a copy placed on the market. In consequence, SAWP is not entitled to any claims in respect of the defendant's activities.

Because of that, the defendant believes that CMO's information request should not be approved by the court, as it is not based on the right to statutory or contractual remuneration. Moreover, the information request under the Collective Management Act does not relate to claims for damages arising from copyright infringement.

The scope of requested information

The key issue stems from the fact that Polish regulations do not specify the scope of information that could be requested by the CMO beyond indicating that it must be necessary for the purpose of establishing the amount of due remuneration. Therefore, in some cases, the requested information might be vital to the functioning of the obliged entity – it may include business secrets and other sensitive data. Because of that, according to the referring court, the obtained information should be only used to assert infringement claims. Otherwise, it could lead to instrumental use of the information by the CMOs to gain an unfair advantage in licensing negotiations. This is especially true given that, according to the jurisprudence, the obliged entity cannot effectively invoke trade secrets to escape enforcement of the order.

Referring court's analysis

Given the circumstances, the Polish court must establish if an information request relating to copyright infringement should be based on Article 48 of the Collective Management Act, or on the provisions of the CCP. Moreover, in cases where the sector provisions are the correct legal basis, another question arises, namely whether CMOs should demonstrate before a court that the entities represented by it have contractual or statutory claims against the rights users.

Since both provisions transpose EU legislation, the court concluded that these issues must be interpreted according to the objectives of relevant EU law provisions.

According to the referring court, EU law grants CMOs two separate powers. The first one arises from Article 17 of Directive 2014/26/EU, which gives CMOs a special right to request users to provide information necessary for the collection of the contractual or statutory remuneration owed to the rightholders represented by the organization. This does not apply to the infringement of copyright. The validity of such claim is subject to court verification. If court proceedings are initiated, the interested CMO must prove that the rightholders it represents have claims for statutory or contractual remuneration and that the requested information is indeed necessary for the purpose.

Article 8 of Directive 2004/48/EC on the other hand is a remedy that can be ordered by the court in the event of IP infringement. In the view of the referring court, this provision cannot be applied to contractual or statutory claims, unless they are connected to IP infringement. Provision of information must be set in the "context of proceedings concerning an infringement of IP rights", which means that a CMO must bring such action before a court, or at least plan to do so.

Therefore, the referring court wishes to ascertain if provisions of EU law do in fact concern measures of a distinct nature. If this position was adopted by the CJEU, Polish regulations implementing these provisions would have to be understood in accordance with the interpretation of the directives.

Conclusion

Although the case is still at an early stage, it is clear that all market participants dealing with CMOs will be awaiting its outcome with considerable interest. If the CJEU agrees with the analysis proposed by the referring court, the ruling may force significant changes in the practices of CMOs, with clear benefits for rights users.

Other issues

Oskar Tułodziecki

PL: Approval of tariffs for the screening of films in cinemas by the Copyright Commission

By a decision dated 26 March 2026, the Copyright Commission approved the remuneration tables proposed by collective management organisations representing audiovisual performers.

The Copyright Commission is a body appointed by the Minister of Culture and National Heritage, comprising arbitrators distinguished by their knowledge of copyright law and the market for copyright-protected content. Half of its members are appointed by so called users of copyright works, and half by authors' or performers' organisations. The task of the individual three-member adjudication panels selected from among the Commission's members is to approve the tariffs submitted by collective management organisations, i.e., the so-called 'remuneration tables'.

The remuneration tables, once approved, have a semi-normative force, meaning that they set out the minimum rates applicable in the market for a given form of exploitation of works or artistic performances. The parties may agree on higher remuneration, but they may not set remuneration at a level lower than that resulting from the finally approved remuneration tables.

The proceedings concluded by the aforementioned decision concerned the screening of audiovisual works in cinemas and the remuneration due to audiovisual performers. Under the Polish Act on Copyright and Related Rights, audiovisual authors and performers are entitled to additional remuneration for the forms of exploitation of films listed therein, including proportional remuneration for the screening of films in cinemas. Such remuneration is to be paid by the users of audiovisual works; in the case of film screenings, these are cinema operators.

The applicants were three organisations, namely ZASP, STOART and SAWP. The first of these mainly represents film and stage actors, whilst the other two represent musical performers, i.e., vocalists and instrumentalists. The distribution of royalty revenues among these organisations was set at 50%, 25% and 25% respectively

The total remuneration for all these organisations was set at 0.44% of screening revenue. The definition of revenue was very broad and includes ticket sales, other forms of admission to screenings, revenue from the sale of 3D glasses and the provision of premium seating. Interestingly, the definition of revenue also includes income from advertisements shown before screenings.

The tables are final and take effect upon delivery to all parties to the proceedings. However, it is to be expected that numerous participants in the proceedings representing users will challenge them before the administrative court, which may either dismiss the complaint or overturn the decision of the Copyright Commission. We can therefore expect the matter to be on-going for some time to come.

James Griffiths and Imogen Francis

UK: Commercialising identity: an intellectual property perspective

Jo Malone's use of her name in a Zara fragrance collaboration may breach rights sold to Estée Lauder, echoing past cases where founders were barred from commercially using "confusingly similar" name branding.

Introduction

In March 2026, it was reported that British perfumier Jo Malone is the subject of litigation by Estée Lauder, relating to the use of her own name.

The proceedings raise interesting questions about what can happen when a brand owner sells the commercial and legal rights to their own name.

Background

Estée Lauder bought Malone's perfume business, Jo Malone Limited, in 1999, including all associated trademarks and the right to use the words "Jo Malone" for specified commercial purposes. As part of the sale agreement, Ms Malone agreed to refrain from using her own name, "Jo Malone", in certain commercial contexts, including in connection with the marketing of fragrances.

The dispute places focus on how that contractual restriction should be interpreted. High Court proceedings were issued on 11 March 2026 by Estée Lauder Europe and Jo Malone Limited against Malone personally, Jo Loves (a brand launched by Malone in 2011) and ITX Limited (which trades as Zara), with whom Jo Loves has a fragrance collaboration.

The wording used by Zara on its packaging to describe the fragrances within its collection is: "Creation By: Jo Malone CBE, founder of Jo Loves". One of the issues in the case is whether this wording constitutes commercial use of the "Jo Malone" name for the marketing of new fragrance products and whether this violates the original sale agreement.

Sale of rights to own name

A similar situation arose between Karen Millen and her brand Karen Millen Fashions Ltd (KMF) in 2016, which she had sold to a third party in 2004. Millen sold the brand under a Share Purchase Agreement (SPA), which contained restrictive covenants that put limitations on the use she could make of her own name for business purposes in the future.

After alluding to launching a new brand under the name "Karen", the new owners of KMF commenced litigation, asserting that the contemplated branding would breach contractual restrictions in the SPA governing her use of the name. A settlement resolved the UK and European position, but not those in the US or China.

Millen subsequently brought her own proceedings, seeking negative declarations that specific actions would not breach the SPA. KMF brought a counterclaim, alleging breach of the SPA.

The main take away from the case is that the restriction on using the name "Karen Millen" was interpreted broadly, thereby preventing Millen from using the name or any "confusingly similar name" in relation to clothing or similar goods. Therefore, the contemplated commercial use of "Karen" would have breached the SPA and encroached upon the protected brand identity.

Such matters consistently attract significant media attention, as often the individuals involved have a prominent public or business profile. We saw a glimpse of that again a few weeks ago when there was publicity about an apparent dispute between Brooklyn Beckham and the rest of the Beckham family, and it was revealed that Victoria Beckham owns registered trademarks in the "Brooklyn Beckham" name. It remains to be seen whether this reported family dispute will develop into a trademark dispute.

How is the Jo Malone case likely to play out?

Estée Lauder has alleged trademark infringement, passing off and breach of contract. The proceedings have only just commenced, but one can infer from the Courts' previous consideration of similar issues, that the interpretation of the meaning and effect of the precise contractual terms will be of key importance to how the case is ultimately decided.

The dispute underscores the legal risks that founders and designers face when they sell the commercial rights to their own name, even years after the deal.

Equally, we have seen a number of cases in recent years where businesses have understood themselves to have acquired exclusive use of a brand name which, because it features an individual's actual name, has ultimately led to costly and expensive litigation. Therefore, it is crucial that both parties to any sort of transaction which involves the transfer or licensing of rights to an individual's name fully understand the rights that they are acquiring or giving up.

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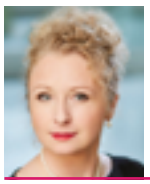

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