

Contents

Preface	v
Part I. Implementation of the Contract Provisions in the DSM Directive	1
The Belgian Implementation of the Rules on Copyright and Related Rights Contracts in the Digital Single Market Directive	3
<i>Alain Strowel and Solène Festor de Suremain</i>	
I. The European acquis: remuneration, fairness, and contractual freedom	6
A. Remuneration in the EU copyright framework	6
B. Article 18: a general principle of appropriate and proportionate remuneration for all contractual dealings	8
II. Transposition of Chapter 3 CDSMD into Belgian law	9
A. Article 18 of the Directive on the principle of “appropriate and proportionate remuneration”: its transposition in Article 167/1 ELC and in the three unwaivable and non-transferable remuneration rights	11
1. The three unwaivable and non-transferable remuneration rights	12
2. Interpretation of “appropriate” and “proportionate” remuneration	15
3. Lump-sum payments	16
B. Transparency: Article 19 of the Directive – Articles XI.167/2 and XI.205/2 ELC	17
C. Contract adjustment mechanism: Article 20 of the Directive – Articles XI.167/3 and XI.205/3 ELC	19
D. Right of revocation: Article 22 of the Directive – Articles XI.167/4 and XI.205/4 ELC	20
III. Conclusions	21

Dutch Copyright Contract Law	23
<i>Dirk J.G. Visser</i>	
A. Copyright Contract Act 2015	23
B. Case law	24
C. DSM Directive	25
D. Scope of application	25
E. Fair compensation	27
“Appropriate and proportionate”?	27
F. Duty of transparency	28
I. Main rule	29
II. Legal successors and licensees	29
III. Exception	31
IV. Practical approach	31
G. Bestseller	31
Who does end up with the claim?	33
H. Non-usus	33
Multiple authors and multiple rights non-usus	35
I. Unreasonable clauses	36
J. Film copyright law	37
K. Application in time	37
L. Perceived risk of blacklisting and legal certainty for operators	37
M. Future amendments	38
Implementation of the DSM Directive’s Contract Provisions into German Law	39
<i>Patrick Zurth</i>	
I. Introduction	39
II. Principles of German Copyright Contract Law	39
III. Background and Trajectory	41
A. Original Copyright Act from 1966	41
1. Remuneration	41
2. Right of revocation	42
a. Conditions of entitlement	42
b. Compensation	43
c. Licence chains	44
B. Copyright Reform 2002	45
1. Remuneration ex ante (§ 32 UrhG)	45
2. Remuneration ex post (§ 32a)	47

3.	Modification of the agreement (§§ 32(1) sent. 3, 32a(1) sent. 1 UrhG)	49
4.	Authors in employment or service (§ 43 UrhG)	49
C.	Copyright Reform 2017	50
1.	Right to information (§§ 32d, 32e UrhG)	50
2.	Remuneration	51
3.	Promotion of JRAs	51
IV.	DSM Directive's contract provisions	52
A.	Overview	52
B.	German role model?	52
V.	Implementation: Reform of 2021	55
A.	Remuneration	55
1.	Remuneration ex ante (§ 32 UrhG)	55
2.	Remuneration ex post (§ 32a UrhG)	56
B.	Right to information	57
1.	Prerequisites and exclusion (§ 32d(1), (2) UrhG)	57
2.	Deviation in JRAs (§ 32d(3) UrhG)	57
3.	Application in time	58
4.	Information from third parties in a licence chain (§ 32e UrhG)	59
C.	Mediation and out-of-court dispute resolution (§ 32f UrhG)	59
D.	Representation by associations (§ 32g UrhG)	60
E.	Right of revocation (§ 41 UrhG)	60
1.	Prerequisites and exclusion (§ 41d(1)–(5) UrhG)	60
2.	Compensation (§ 41d(6) UrhG)	61
3.	Sub-licences in a licence chain	61
F.	Performers	62
G.	Computer programs	62
H.	Cinematographic works	62
VI.	Conclusions	62
Contractual Protection of Authors and Performers in France after the CDSM Directive		63
<i>Séverine Dusollier and Léo Pascault</i>		
I.	The context of the French transposition	63
A.	The law and practice of contractual protection of authors and performers	63
B.	The process of implementing the CDSM Directive	65
II.	Fair remuneration for authors and performers	67
A.	An existing rule of proportional remuneration solely for authors	67
B.	The preservation of the existing rule for authors and the adoption of a new standard for performers	69

C.	General modalities of the remuneration principle	71
D.	Minimum remuneration for performers in music streaming	72
III.	Obligations of transparency and reporting	72
A.	The existing reporting obligations	72
B.	The general transparency obligation	73
IV.	Contract adjustment mechanism	75
A.	Pre-existing provisions for the revision of authors' remuneration	75
B.	The French transposition of Article 20 CDSM	76
V.	Alternative dispute resolution procedures	78
VI.	Right of revocation	80
A.	Overview of pre-existing French provisions	80
B.	Transposition of Article 22 CDSM into French law	82
VII.	The mandatory status of contractual protection	84
VIII.	Conclusion	85
	 The Copyright Contracts of Tomorrow: A British Point of View	 87
	<i>Paul Torremans and Alina Trapova</i>	
I.	Introduction	87
II.	The politics in the UK and the DSM Directive	90
A.	The adoption of the DSM Directive	90
B.	The implementation of the DSM Directive	91
III.	The Hague Convention 2005	92
A.	Where does it fit in?	92
B.	The provisions of the Hague Convention	93
C.	Little use is made of it	95
D.	Overriding mandatory rules to protect the weaker party	95
1.	The problem	95
2.	Evolving mandatory rules	96
3.	An important step forward in France	98
4.	The UK	100
C.	Mandatory rules and the 2005 Hague Convention	101
IV.	TDM	102
A.	The UK Intellectual Property Office consulting widely	102
B.	Right holders vs users	103
C.	The consultation outcome on TDM	104
D.	The DSM Directive exceptions	105
E.	All-purpose TDM? Not so fast.	106
V.	Conclusion	107

Part II. Copyright Contracting in the Digital Context 109

What is *Normal Use* that Consumers Can *Reasonably Expect*?
Data law and copyright as yardsticks to interpret the conformity
requirements in the Digital Content Directive and the unfulfilled
potential of lawful use exceptions 111
Simon Geiregat

I.	Introduction	112
II.	Yardsticks for consumer expectations	115
	A. Analogue products	116
	B. The market	117
	C. The law	119
	1. Data law	120
	2. Copyright & neighbouring rights law	125
III.	Unfulfilled potential of lawful use exceptions	128
	A. Legislative proceedings	129
	B. CJEU interpretation	134
	C. Aptness as a source of consumer expectations	140
IV.	Conclusions	142

The Ambiguity of Purchasing Digital Music in the Streaming Era:
EU Digital Consumer Contract Law to Limited Avail? 145
Liliia Oprysk

I.	Introduction	145
II.	Buying digital music in 2023	148
	A. Market for the sale of digital music	148
	B. Buying music on the iTunes Store in 2023	151
	C. Contractual restrictions on music purchased on the iTunes Store	154
III.	iTunes Store music and its functionality	156
	A. File format, DRM protection, and convertibility	157
	B. Access through different applications	158
	C. Transfer of copies to other devices	159
IV.	Buying digital music on the iTunes Store and the EU regulatory landscape	160
	A. Consumer protection instruments	160
	B. Digital Content Directive and reasonable consumer expectations	163
	C. Digital music from the iTunes Store and reasonable expectations	165
V.	Conclusion	167

AI as a Vehicle for Creativity in Video Games – Any Room for Flexibility via
Contracts? A case study on *AI Dungeon* 171
Alina Trapova

I.	Introduction	171
II.	Video games and copyright law	172
	A. Video games as a high profitable copyright industry	172
	B. Video games as a complex subject matter	174
III.	Video games as a vehicle for creativity	176
	A. Successive creativity	176
	B. In-game creativity	177
IV.	Video games, generative AI, and contractual arrangements	181
	A. Generative AI	181
	B. <i>AI Dungeon</i> and its Terms of Service (ToS)	182
	1. <i>AI Dungeon</i> and Stability AI	182
	2. Terms of Service	184
V.	Conclusion	188

Copyright Contracts at the Frontiers: A Closer Consideration from
a Conflict of Laws Perspective 189
Jozefien Vanherpe

I.	Introduction	189
II.	Applicable law	192
	A. General	192
	B. Choice of law	193
	C. No choice of law	196
	D. Limitation of effects of choice of law	197
	1. Mandatory provisions	197
	2. Overriding mandatory provisions	199
	3. Public policy of the forum	204
	E. Regimes for employees and consumers	204
	F. Non-contractual context	206
III.	Jurisdiction	207
IV.	Conclusion	212