1 Introduction

1.1 Background

Endeavours exploring aspects of digitalisation and law often start with a generic analysis of the multiple transformational effects that the Internet has had on our information society and how the law needs to adapt in one way or another.[1] Let me skip this part – for now – and start by posing the following question: Copyright is territorial. But is the Internet?

Country-code top-level domain names, like '.de' or '.se', provide a somewhat natural geographical delineation of the Internet. But the answer, in technological terms, is 'no'. Yet, the traditional practice of national exploitation of content by its rights holders has continued through the first two decades of the twenty-first century. This delineation, it seems, is at odds with the technological possibilities of the Internet, and even more so with the digital pendant to the internal market, the Digital Single Market, whose completion is the main harmonisation goal of the European Commission in the digital sphere.[2] So, in ten or fifteen years from now, will we still see this territorial delineation of content on the Internet? My hope is that the answer is again likely to be 'no'. What, then, stands between us, in a digital content world consisting of twenty-eight national markets and twenty-four official languages, and this vision of a common European market for online content for the more than 500 million citizens?

The starting point is relatively clear, and so is the goal: from a European Union (EU) regulatory perspective, a Digital Single Market instead of twenty-eight national markets – and, from a right holder's perspective, preserving the exploitation of national markets. But everything in between is complex. This makes for a fascinating topic with intriguing

[1] The same can be observed in the documents on digital copyright by the European legislator: see, e.g., E. Rosati, 'The Digital Single Market Strategy: Too many (strategic?) omissions' (*IPKat*, 7 May 2015), 40: http://ipkitten.blogspot.dk/2015/05/the-digital-single-market-strategy-too.html

[2] See Commission, 'Digital Single Market' (*European Commission*, 25 February 2016): https://ec.europa.eu/digital-single-market/digital-single-market

questions, devoting closer scrutiny to the regulatory framework surrounding content licensing on the Internet.

Let us turn back to the transformational effects of the Internet. The dissemination of copyright-protected content has undergone extensive developments. In recent years, digital technologies have fostered the emergence of new legal and illegal distribution channels for musical and film works, and have challenged traditional business models. According to a study performed in 2014, close to 70 per cent of EU citizens 'download or stream films for free, whether legally or illegally'.[3] Online streaming has become the dominant form of consumption, but there exist only relatively few pan-European music- or film-streaming platforms.[4]

Cross-border activities are becoming more prevalent, too: in a 2015 Eurobarometer survey[5] of 26,000 EU citizens on cross-border access to online content, 3 per cent of the participants indicated having a paid subscription for an online service and having tried to access it in a cross-border situation. Some 5 per cent of participants had, within the preceding twelve months, tried to access audiovisual content (films, TV series, etc.) via an online service that was intended for users of a different Member State. As many as 27 per cent of citizens are interested in accessing audiovisual content or music transmitted from their home country while temporarily abroad.[6] Despite the cultural and industrial fragmentation of the EU audiovisual sector,[7] 19 per cent of citizens are

[3] See Commission, 'Lack of choice driving demand for film downloads' (Press release) IP/14/120, Brussels, 6 February 2014.

[4] According to the EU Commission, more than 2,500 on-demand audiovisual services were available in the EU at the end of 2014 (Commission, 'A Digital Single Market Strategy for Europe – Analysis and Evidence Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions' (Commission Staff Working Document) SWD(2015) 100 final, Brussels, 6 May 2015, 26). This compares with estimates of 700 on-demand and catch-up services in 2010 (KEA European Affairs and Mines ParisTech, *Multi-Territory Licensing of Audiovisual Works in the European Union* (Final Report prepared for the European Commission, DG Information Society and Media 2010), 2).

[5] Commission, 'Cross-border Access to Online Content, Report' (2015) Flash Eurobarometer, 411, TNS Political & Social.

[6] Commission, 'A Digital Single Market Strategy for Europe – Analysis and Evidence Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions', 26.

[7] KEA European Affairs and Mines ParisTech, 3. The European Parliament notes that heterogeneous cultural and linguistic diversity 'should be considered a benefit rather than an obstacle to the single market': see European Parliament, 'Report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (2014/2256(INI))' – Committee on Legal Affairs, Rapporteur: Julia Reda, 24 June 2015, PE 546.580v03-00, A8-0209/2015, Recital 9.

interested in watching or listening to content from other EU countries.[8] These numbers are likely to have continued to grow. The need to create a 'seamless global digital marketplace' is also acknowledged by the World Intellectual Property Organization (WIPO) Director General Francis Gurry.[9]

The market reality looks different, though.[10] In 2012, the European Commission urged the industry 'to deliver innovative solutions for greater access to online content'.[11] According to findings published in March 2016 based on replies of more than 1,400 companies, however, 77 per cent of subscription-based and 82 per cent of publicly funded business models apply geo-blocking.[12] In respect of collective management, Commissioner Michel Barnier commented that many collective management organisations (CMOs) have not been able to meet the challenges, 'resulting in fewer online music services available to consumers'.[13] Towards this reality, in May 2015, the European Parliament urged 'the Commission (. . .) to propose adequate solutions for better cross-border accessibility of services and copyright content for consumers'.[14]

[8] Commission, 'A Digital Single Market Strategy for Europe – Analysis and Evidence Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions', 26.

[9] WIPO Director General Francis Gurry, '2013 Address by the Director General', *WIPO Assemblies* – September 23 to October 2, 2013: www.wipo.int/about-wipo/en/dgo/speeches/a_51_dg_speech.html

[10] Kalimo et al., for example, remark '[i]t seems puzzling that still in the year 2015, not all of the involved stakeholders seem convinced that the commercial possibilities of digitalization surpass what is possible with traditional distribution channels'. H. Kalimo, K. Olkkonen and J. Vaario, 'EU Intellectual Property Rights Law – Driving Innovation or Stifling the Digital Single Market?' in H. Kalimo and M. S. Jansson (eds.), *EU Economic Law in a Time of Crisis* (Edward Elgar, 2016), p. 157.

[11] Commission, 'Copyright: Commission urges industry to deliver innovative solutions for greater access to online content' (Press release) IP/12/1394, Brussels, 18 December 2012. See also economic studies by M. Batikas, E. Gomez-Herrera and B. Martens, 'Geographic Fragmentation in the EU Market for e-Books: The case of Amazon', Institute for Prospective Technological Studies, Digital Economy Working Paper [2015], 2015/13; L. Aguiar and J. Waldfogel, 'Streaming Reaches Flood Stage: Does Spotify Stimulate or Depress Music Sales?' (2015) NBER Working Paper Series, Working Paper 21653: www.nber.org/papers/w21653; E. Gomez-Herrera and B. Martens, 'Language, Copyright and Geographic Segmentation in the EU Digital Single Market for Music and Films', Digital Economy Working Paper (2015), 2015–4.

[12] See Commission, 'Geo-blocking practices in e-commerce; Issues paper presenting initial findings of the e-commerce sector inquiry conducted by the Directorate-General for Competition' (Commission Staff Working Document) SWD(2016) 70 final, Brussels, 18 March 2016, paras. 135–136.

[13] Commission, 'Commissioner Michel Barnier welcomes the trilogue agreement on collective rights management' (Press release) MEMO/13/955, Brussels, 5 November 2013.

[14] European Parliament, 'Report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain

This book deals with access to online content and the challenges of licensing copyright-protected works on the Internet: an area in which the territorial nature of copyright[15] and its traditionally national exploitation collide, given the borderless nature of the Internet.[16] Whereas the territorial exploitation of copyright in the EU is not a novel phenomenon, its associated challenges have been exacerbated. In the information society, consumers' demand for ubiquitous access (cross-border, portable, full-repertoire) to copyright-protected works has emerged. In copyright-heavy industries like the music and film business, online content service providers such as Spotify, iTunes, Netflix, Amazon and the like cannot develop business models without heavy involvement from the respective rights holders. It appears that traditional licensing mechanisms and arrangements, however, have not been able to facilitate rights clearance smoothly in the changed environment.

National and European authorities and legislators have created a host of – often industry- and sometimes business model-specific– initiatives, proposals and rules in order to facilitate a Digital Single Market – in part accompanying, refining or codifying industry-led solutions. The territorial delineation of markets along national borders, which has historically found support in EU courts' practice, has been challenged by the courts and the European legislator (specifically, the EU Commission as legislative initiator), who emphasises different policy goals with the aim of introducing more competition and ultimately making more content accessible for consumers – without abandoning the exclusive and territorial nature of rights, though. This is supported by the political goal of increased market integration, notably around (entertainment) content. But how are we to solve the problems of cross-border access to content and its licensing in order to enable the Digital Single Market while maintaining the incentive function of copyright? In this stress field, 'geo-blocking', 'cross-border portability' and 'multi-territorial licensing' come together. In this, despite the novel nature of Internet exploitation and business models, traditional

aspects of copyright and related rights in the information society (2014/2256(INI))', Recital 9.

[15] See Art. 5 of Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), as amended on 28 September 1979 and the ten EU Directives relating to copyright and related rights. See also Section 2.2.

[16] Or, as the EU legislator puts it in the context of music: 'While the internet knows no borders, the online market for music services in the Union is still fragmented, and a digital single market has not yet been fully achieved' (Recital 38 of Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market [2014] OJ L84/72).

stress fields, competition law and policy and copyright overlap and interfere with another.

1.2 Scope of This Book

This book, studies two phenomena: first, the licensing of – which is ultimately linked to access to – copyright-protected works on the Internet in cross-border situations. This concept of access can be looked at from at least two different viewpoints, which represents two interrelated sides of the same coin: on the one side, consumers who have access to works, and, on the other side, rights holders who make works accessible. Secondly, there is the interplay between regulatory initiatives to support cross-border access to copyrighted material. This translates into the following guiding questions, which this book will address:

> What is the regulatory framework for licensing of – and, related to this – access to online music and audiovisual content in cross-border situations?
>
> How do the different regulatory frameworks interact, what inconsistencies emerge and how could these be resolved?

This book contains expository elements, which centre on investigating the legal framework and functioning of the system of cross-border licensing and access arrangements. Given the complexity of the subject matter, the current practices in the market for collective licensing of online music are analysed and the territorial practices towards consumers, as well as in licensing agreements regarding audiovisual works, are laid out. As regards the regulatory environment, both proceedings under the general competition rules (i.e. *ex post* control by the European Commission in its function as competition authority as well as the courts[17]) and sector-specific regulation (i.e. *ex ante* legislative measures[18]) are examined.

Secondly, this book assesses how these regulatory frameworks interact. Different forms of regulation might be based on different rationales, such as competition, internal market or harmonisation considerations. But how does this interplay unfold, and to what effect? In other words, the

[17] Such as CISAC proceedings; Joined Cases C–403/08 and C–429/08, *Football Association Premier League Ltd and Others* v. *QC Leisure and Others* [2011] ECR I–9159–9245, ECLI: EU:C:2011:631; as well as the Commission's pay-TV investigation.

[18] Such as Directive 2014/26/EU, Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market [2017] OJ L168; Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC [2018] OJ L60I.

guiding questions here are what the relationship between competition law and (legislative) measures directed towards the facilitation of content licensing is, and how the EU's complementing competition and copyright-related sector-regulation routes interact and whether they support each other in achieving their goals (i.e. in overcoming licensing issues based on territoriality). In this context, the book first analyses the different arrangements and regulatory models. In order to identify potential inconsistencies in the regulatory framework, it examines the interplay between the different forms of regulatory initiatives – namely, state-induced, on the one hand, and market developments, i.e. private regulation, on the other. What is regulation, and are licensing structures regulatory instruments that help to shape the market, or are they to be seen as products of regulatory intervention? From these insights, normative considerations are derived as to whether the chosen routes reflect on the goal of EU-wide access, to what extent this has been achieved, and how some of the identified conflicts could be resolved – leading to a more coherent framework for online licensing for EU-wide purposes.

First, however, there exist several key concepts and notions that need to be refined. The scope of this book can be defined along three dimensions: (1) subject matter, (2) legal areas and (3) geographical focus.

Territorial restrictions on content are not a novel challenge, and there have been comparable issues with more traditional forms of exploitation, which are thematically connected to or comparable to those under scrutiny in this work. I have chosen not to follow a traditional past-present-future narrative, though. Instead, this book investigates the provision of so-called 'interactive on-demand services', which means that consumers can actively choose the musical or audiovisual work and the time of consumption (non-linear).[19] This limitation does not preclude drawing on learning from past experiences in different arrangements, where relevant. An exhaustive account and comparison of the different forms of consumption, however, would go far beyond the objective of this book. Other forms of consumption, for example downloads or even physical copies, may involve different arrangements and rights. Additionally, as mentioned above, interactive on-demand streaming has become the prevailing form of consumption of content in most EU Member States, with online service providers such as Spotify, Apple Music, YouTube, Netflix or online libraries of private and public TV channels. In this 'age of access'

[19] As opposed to linear services, where the content is not at the consumer's individual request. See also definition in Art. 1(1)(g) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [2010] OJ L95/1.

(Hilty and Köklu), issues of cross-border access have been exacerbated. Thus, streaming is increasingly in the cross-hairs of – otherwise technological neutral – regulatory intervention. Given the multiple differences of commercial services to public broadcasting or cultural heritage institutions, the book will only selectively look over the fence towards these services.

Thematically, this study looks at two different, yet related, industry verticals and forms of online content: audiovisual works and musical works. In the following chapters I first look at the licensor–licensee relationship between online music service providers and CMOs.[20] Secondly, I look at the licensing and contractual relationship between rights holders, online service providers and consumers[21] regarding cross-border access to audiovisual works. This correlates roughly with the differentiation of market participants in a copyright market by Watt, who distinguishes rights holders, commercial users and consumers.[22] But is this an endeavour to compare apples with apples, or apples with oranges? I argue that juxtaposing these two forms of online content is beneficial for several reasons: first, the licensing of interactive on-demand streaming and access to these services has come into the cross-hairs of regulatory activity, which makes them worthwhile studying.[23] Secondly, whereas they invoke fairly similar rights, the

[20] A word on the notion of collective management of rights and its organisations: in earlier economic and legal scholarship such arrangements have often been referred to as 'collecting societies'. Other notions used include rights management organisations (CRMOs), Collective Rights Organisations (CROs), joint copyright management (C. Handke, 'Collective Administration' in R. Watt (ed.), *Handbook on the Economics of Copyright* (Edward Elgar 2014)) or, sometimes, more broadly, intellectual property rights (IPR) exchange institutions (R. P. Merges, 'Contracting into Liability Rules: Intellectual Property Rights and Collective Rights Organizations', *California Law Review*, 84 (1996), 1293), private intellectual property rights organisations (Posner, 'Transaction Costs and Antitrust Concerns'), or intellectual property clearinghouses. For the sake of conformity, I have chosen to refer to these organisations throughout this book as collective management organisations (CMOs). This imposed unitary terminology is to be employed with care, though. Concepts may already exist (as is the case here) and similar terms may be used by different theories for different concepts. See also P. te Hacken, 'Terms and Specialized Vocabulary. Taming the Prototype' in H. J. Kockaert and F. Steurs (eds.), *Handbook of Terminology*, vol. 1 (Jon Bejamins Publishing Co., 2015), p. 4.

[21] Whereas consumers play a key role, e.g., in Regulation (EU) 2017/1128, the regulatory focus in music has been on the horizontal relationship between CMOs and the vertical licensing relationship between rights holders and online service providers.

[22] R. Watt, *Copyright and Economic Theory: Friends or Foes?* (2000), 8.

[23] Van Gestel and Micklitz accuse legal researchers of 'herd behaviour' regarding scholarly work on policy, where 'researchers choose to follow "hot topics" and trends' (R. van Gestel and H.-W. Micklitz, 'Revitalizing Doctrinal Legal Research in Europe: What About Methodology?' in U. Neergaard, R. Nielsen and L. Roseberry (eds.), *European Legal Method – Paradoxes and Revitalisation* (DJØF Publishing, 2011),

situation regarding rights holders and their organisation, as well as the licensing relationship, look quite different for the respective subject matters. Still, some important insights might be gained by opposing these two: economists Liebowitz and Watt have noted that developments in the music industry are seen as 'a likely harbinger of most forms of entertainment, such as movies, computer software, videogames and the like'.[24] In both verticals, streaming is becoming the predominant form of consumption, and in both cases territorial delineation constitutes a prime hurdle towards the establishment of a Digital Single Market. At the same time, rights clearance for online music and audiovisual streaming respectively differ significantly, and solutions may not be 'one size fits all'.

Related to this, another dimension of comparing these two forms is how the concepts 'multi-territorial licensing' and 'cross-border access' are related. This will be explored in depth in Chapter 2. The debates in online music have been dominated by 'cross-border' and 'multi-territorial' notions, whereas the more recent debates regarding audiovisual content have been dominated by the notions of 'cross-border portability' and 'geo-blocking'. Whereas these notions are often used to describe similar phenomena, it is necessary to refine them: 'geo-blocking' refers to the use of technologies to limit the accessibility of a content service to certain geographical areas.[25] From a 'copyright-related perspective', this technical practice can be used to limit access to online content services to areas 'where the content owners have licensed the

pp. 38–41). At first glance, my research also falls into this trap of 'pre-programmed research' – seduced by a hot topic – whereas are territorial access restrictions just a luxury problem involving EU officials who are missing access to their favourite TV shows from back home? For example, Commissioner for Competition, Margrethe Vestager, noted in a speech: 'I, for one, cannot understand why I can watch my favourite Danish channels on my tablet in Copenhagen – a service I paid for – but I can't when I am in Brussels. Or why I can buy a film on DVD back home and watch it abroad, but I cannot do the same online.': see Commissioner for Competition, Margrethe Vestager, 'Competition policy for the Digital Single Market: Focus on e-commerce' (Bundeskartellamt International Conference on Competition, Berlin, 26 March 2015): http://europa.eu/rapid/press-release_SPEECH-15–4704_en.htm. However, as is noted above, consumer behaviour has shifted and has put the regulatory framework under pressure. Underneath lie many issues that regard the transition of the legal framework in the new reality, which can justify such research endeavour.

[24] S. J. Liebowitz and R. Watt, 'How to Best Ensure Remuneration for Creators in the Market for Music? Copyright and its Alternatives', *Journal of Economic Surveys*, 20 (2006), 513, 514.

[25] See, e.g., P. Ibáñez Colomo, 'Copyright Licensing and the EU Digital Single Market Strategy', LSE Law, Society and Economy Working Papers 19/2015 (2015), 2: http://ssrn.com/abstract=2697178; M. Trimble, 'The Territoriality Referendum', *World Intellectual Property Organization Journal* [2014], 89, 90.

commercial exploitation of their work'.[26] Cross-border portability, on the other hand, refers to the possibility of a consumer's accessing the content of its service provider from its resident Member State, while being temporarily present in another Member State. The European legislator defines a 'multi-territorial licence' in Article 3(m) of Directive 2014/26/EU tautologically, as a licence that covers the territory of more than one Member State.[27] When taking cross-border licensing as starting point, this can refer to two situations: the licensing of foreign content and licensing domestic content abroad. Suffice it for this section to state that, ultimately, both forms impact on the availability of content for consumers, but with different tools in the downstream relationship. Thus, on a broader level, the concepts can also be seen as two sides of the same coin.

Besides licensing, i.e. copyright-exertion related motives, there exist a variety of other legal and commercial aspects that might hinder the cross-border accessibility of content. These can be common to all online activities (e.g., VAT regime, consumer protection, business decisions) or specific to online content (e.g., release windows, piracy).[28] These causes are outside the scope of this book. Closely related to the study of licensing and access to copyright-protected works is the lack of legitimate access to content and its relation to piracy.[29] This theme has been subject to substantial academic research by both legal scholars and economists.[30]

[26] G. Mazziotti, 'Is Geo-blocking a Real Cause for Concern?', *European Intellectual Property Review*, 38 (2016), 365.

[27] Correspondingly, in Art. 1(d) of Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services [2005] OJ L276/54.

[28] See, e.g., Commission, 'A Digital Single Market Strategy for Europe – Analysis and Evidence Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions', 28.

[29] See, e.g., Recital 40 of Directive 2014/26/EU, in which the European legislator expresses its expectation that the development of legal music streaming services contributes to the fight against piracy.

[30] Thomes, for example, studies the link between piracy and streaming services and finds 'that an increase in copyright enforcement shifts rents from consumers to the monopolistic provider, and moreover that a maximal punishment for piracy will be welfare-maximizing' (T. P. Thomes, 'An economic analysis of online streaming: How the music industry can generate revenues from cloud computing', ZEW-Centre for European Economic Research, Discussion Paper No. 11-039 (2011): http://ftp.zew.de/pub/zew-docs/dp/dp11039.pdf). Danaher and Waldfogel look at the audiovisual sector in the United States and suggest that 'delayed legal availability of the content abroad may drive the losses to piracy' (B. Danaher and J. Waldfogel, 'Reel Piracy: The Effect of Online Film Piracy on International Box Office Sales', University of Minnesota and NBER (2012): http://ssrn.com/abstract=1986299). Barker suggests that 'P2P downloads have a strong negative effect on legitimate music purchases' (G. R. Barker, 'Assessing the Economic Impact of Copyright Law: Evidence of the Effect of Free

Again, this book takes its starting point exclusively as construing the arrangements around access to content, which is why endeavours regarding piracy- and enforcement-related questions lie outside the scope of this work.

The theme of this book – licensing of and cross-border access to content – touches upon different fields of law, such as copyright law, contract law, competition law and rights of associations, as well as EU law and fundamental freedoms. There exists a plurality of intersections between these different legal domains and their equivalents in economic research and other disciplines. The focus of this book is on copyright and competition law. Within the broader copyright framework, the focus is on arrangements around the exercise of rights. Thus, the aim of this book is to address not the substantive norms of copyright, but the clearance of those rights. Therefore, I will not go into the relevant rights harmonised by the InfoSoc Directive[31] and the respective exceptions and limitations, or the intriguing questions around exhaustion in the digital landscape. Whereas it covers contractual arrangements, contract law as such is not part of this book. Also, licensing arrangements regarding orphan works[32] and for creative uses such as remixes are outside the scope of this work.

Finally, the geographical focus of this work is at the EU level. Cross-border licensing is inherently of an international dimension and has moved into the focus of EU legislative initiatives in order to enable a European Digital Single Market. Whereas copyright legislation is national and whereas I will not cover issues of national implementation, at times, I will resort to national samples as supportive or anecdotal evidence, when needed as examples or for rendering the situation more precisely.[33] As the reader will discover, some of the European (regulatory and market) developments can also be construed in a United States–

Music Downloads on the Purchase of Music CDs'. Centre for Law and Economics, ANU College of Law Working Paper No. 2 (2012)). For a comprehensive overview of the earlier literature, see also M. Peitz and P. Waelbroeck, 'An Economist's Guide to Digital Music', CESifo Working Paper No. 1333 (2004): cesifo.oxfordjournals.org/content/51/2-3/359.full.pdf

[31] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10 (InfoSoc Directive).

[32] Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works [2012] OJ L299/5. See also Commission, 'Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market' COM/2016/0593 final – 2016/0280 (COD), Brussels, 14.9.2016 (Orphan Works Directive).

[33] For example, the incorporation of EU rules into national law in Germany, the United Kingdom and the Scandinavian countries. The selection is largely guided by the author's knowledge of languages and does not follow a specific methodology.