

Editorial

by **Miquel Peguera***

© 2018 Miquel Peguera

Everybody may disseminate this article by electronic means and make it available for download under the terms and conditions of the Digital Peer Publishing Licence (DPPL). A copy of the license text may be obtained at <http://nbn-resolving.de/urn:nbn:de:0009-dppl-v3-en8>.

Recommended citation: Miquel Peguera, Editorial, 9 (2018) JIPITEC 111 para 1.

- 1 It is always a pleasure to present a new issue of JIPITEC, the Journal of Intellectual Property, Information Technology and E-Commerce Law. This Autumn issue is full of interesting and insightful pieces, touching upon different hot topics, including internet jurisdiction, online advertising, trade secrets, and, last but certainly not least, copyright.
- 2 Jurisdictional issues regarding internet-related activities is still a hotly debated issue, which has been particularly exacerbated in the wake of the General Data Protection Regulation (GDPR), which became fully applicable last May. Two of the articles published in this issue deal with the external reach of EU law, in a context heavily influenced by the global nature of the internet. First, *Dan Jerker B. Svantesson* explores three recent developments in EU law that illustrate the current trends in the field of internet jurisdiction; namely, the territorial scope of the GDPR, that of the proposed e-evidence Directive and Regulation and, finally, the CJEU judgment in the *Bolagsupplysningen OÜ* case. The author puts forward a framework that illustrates the core jurisprudential principles underpinning jurisdiction, and that can also be used as a tool to analyse whether some jurisdictional claims have deviated from those principles. The analysis of the selected developments leads the author to conclude that they fail to appropriately follow the principles embodied in that jurisprudential framework, and thus are liable to aggravate the negative trend of hyper-regulation. To counter this trend, he suggests recognizing those core principles as incorporated in the EU's foundational treaties.
- 3 In another piece, *Adèle Azzi* focuses specifically on the extraterritorial scope of the GDPR, particularly on the application of the GDPR to the processing of data carried out by controllers or processors who lack an establishment in the EU. The GDPR applies to the processing of personal data of data subjects who are in the EU carried out by a controller or processor not established in the EU, provided that the processing activities relate to the offering of goods or services to such data subjects in the EU, or to the monitoring of their behaviour as far as their behaviour takes place within the Union [art. 3(2) GDPR]. The author examines the legitimacy and legal basis of such an extraterritorial claim and finds that it can be deemed legitimate and indeed in line with a global trend of extending the reach of data protection laws. She also examines whether it will be feasible to enforce such a broad application of the GDPR and points to a number of tools - including indirect enforcement means - that may prove effective for that purpose.
- 4 Member States' deadline for implementing the Trade Secrets Directive, which provides for a minimum harmonization on the field, expired last June, though many of them have not transposed it yet. Regarding the transposition process currently taking place in Germany, *Tomas Hoeren* examines the key elements of the Directive and compares them with the current provisions in Germany that deal with

* Associate Professor of Law, Universitat Oberta de Catalunya (Barcelona, Spain). E-mail: mpeguera@uoc.edu. Editor-in-charge for this issue of JIPITEC.

the protection of trade secrets, highlighting the important differences between both regimes and suggesting approaches regarding the Directive's implementation.

- 5 Social media advertising plays a relevant role in internet marketing. The fine line between sponsored and non-sponsored messages promoting brands by social media influencers is addressed in a study presented by *Sophie C. Boerman, Natali Helberger, Guda van Noort and Chris J. Hoofnagle*. Different legal and self-regulatory measures seek to obtain full disclosure of sponsored endorsement of brands in blog posts, so that advertising to consumers is recognizable as such. The empirical and comparative research analyses 200 posts published in the 40 most popular blogs in the Netherlands and the US to test disclosure practices in brand-endorsing blog posts. The results show how compliance with the disclosure requirements is far from satisfactory, both regarding the number of disclosures and their quality. They also reflect the difficulties for monitoring compliance. The authors put forward theoretical and policy implications that reinforce the need of focusing on advertisers regarding compliance oversight.
- 6 Finally, EU copyright law is again in the spotlight, particularly due to the reform envisaged by the proposed Directive on Copyright in the Digital Single Market, which is currently the subject of triologue negotiations, after the Parliament agreed on its text on the 12th of September. The reform process reflects a very complex debate, encompassing many different approaches and perspectives. *Ananay Aguilar* explores how the claim of fairness has been sustained in the discourses for EU copyright reform, focusing on the Fair Internet for Performers Campaign as a case study. The article examines the views from the relevant stakeholders, including performers, featured artists, collective management organisations, authors, producers, digital services providers, and consumers, considering how their respective concept of fairness is very much dependent on their relative bargaining power.
- 7 In addition to the proposed Directive, other recent developments within the Digital Single Market strategy warrant attention, such as the Regulation on cross-border portability of online content services in the internal market (Portability Regulation), which became applicable on 20 March 2018. The Portability Regulation, which seeks to ensure that consumers have access to online content they have subscribed to, not only in their Member State of residence, but also when they are temporarily in another Member State, is examined in this issue by *Sebastian Engels and Jan Bernd Nordemann*. The authors provide a thorough analysis of the Regulation's provisions and offer insights regarding their interpretation and the conceptual difficulties it raises.

- 8 Still in the field of copyright, *Charis Tsigou* analyses the notice-and-take-down procedure recently enacted in Greece, which sets out an administrative system of enforcement regarding online copyright infringement. The new scheme establishes sanctions, which may be imposed by the Committee on Internet Violations of Intellectual Property against access providers, hosting service providers, and website owners who fail to comply with the notice-and-take-down procedure.

I hope you will enjoy reading this issue.

Miquel Peguera