

EU Copyright Doctrine: Influential, Irrelevant or Indefensible?

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Influential

Under the European Union (Withdrawal) Act 2018, section 6(2), the courts are permitted to “have regard to anything done on or after [**Brexit**] by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal.”

Warner v TuneIn [2021] EWCA Civ 441, [91]: *VG Bild* is “highly persuasive for the following reasons. First, it is one of 25 judgments on the topic of communication to the public, the other 24 of which constitute retained EU case law and which I have already concluded that this Court should not depart from. Secondly, it builds upon and further refines the CJEU's previous jurisprudence. Thirdly, it is a decision of the Grand Chamber. Fourthly, it concerns hyperlinking and therefore is directly relevant to the issues in the present case. Fifthly, it addresses the relationship between the CJEU's earlier decisions in *Svensson* and *Renckhoff*, which, as discussed below, the judge perceived to be in conflict with each other.”

Influential

Montres Breguet SA v Samsung Electronics Co Ltd [2023] EWCA Civ 1478, [98] (applying Case C-682/18, *Peterson v Google LLC*, EU:C:202:586, [107]-[108], in relation to Art 14 of the e Commerce Directive, to trade marks, to conclude that if D “uses” a trade mark then it is unlikely they can be regarded as a neutral “host”)

IDDQD Ltd v Codeberry Ltd [2025] EWHC 2561 (Ch) (HHJudge Hacon referring to Case C-762/19, *CV Online Latvia SA v Melons SIA*, EU:C:2021:434, [25]-[27] in relation to investment in obtaining/verifying/presenting data for purposes of sui generis database right)

Irrelevant

Directive 2019/790 Copyright in the Digital Single Market

No discussion of press publishers right

No discussion of Article 17 on online content-sharing service providers

Some references to Chapter 3 (contracts) in Copyright (Rights and Remuneration of Musicians, etc) Bill – transparency and contract adjustment mechanisms, as well as right to revoke contract after 20 years. But Government seems uninterested: CMS Committee, *Creator Remuneration: Government Response* (HC 293) (2024-5)

Indefensible

Copyright and Artificial Intelligence (December 2024)
– proposed that UK adopt a commercial TDM exception with opt out (paralleling Art 4 of the CDSM Directive)

Huge political campaign –
MAKE IT FAIR - by creative industry

House of Lords amended Data (Use and Access) Bill to add transparency requirement

Copyright and Artificial Intelligence (March 2026) –
Article 4 is no longer the preferred option. Government will wait and see/gather more evidence.

Conclusion

CJEU jurisprudence more influential than legislative changes

No sense that EU copyright law is tainted *because it comes from EU*

But neither does the fact that the UK's biggest trading partner operates with certain (different) laws seem especially significant