DETAILED CONTENTS

Table of Cases Table of Legislation		xliii lvii
List of Contributors		xciii
List of Abbreviations		xcvii
List of 2100160iaitons		ACVII
I. GENERAL PART		
1. Introduction		
Materials, Legal Instruments, and Bibliography		
I. Materials		
II. Legal Instruments		
III. Bibliography		
Analysis		
1. Primary and secondary Community law		1.0.1
2. Legislation in the EC		1.0.2
3. Interpretation of Community law		1.0.38
4. Legal consequences of the failure to implement Directives		1.0.53
5. EU and EEA		1.0.71
2. Principle of Non-discrimination		
Materials, Legal Instruments, and Bibliography		
I. Materials	C	
II. Legal Instruments		
III. Bibliography		
Analysis		
1. Principle of non-discrimination under the EC Treaty		2.0.1
2. Principle of non-discrimination in the field of copyright		
and related rights		2.0.5
3. The non-discrimination rule in the EEA Agreement		2.0.10
4. Impact on copyright and related rights		2.0.13
5. Scope of the principle of non-discrimination		2.0.14

2.0.19

6. Charter of Fundamental Rights of the European Union

3. Copyright, European Competition Law, and Free Movement of Goods and Services	
Materials, Legal Instruments, and Bibliography I. Materials and Legal Instruments II. Bibliography	
Analysis 1. Basic principles 2. The existence of intellectual property rights 3. The exercise of intellectual property rights 4. Summary	3.0.1 3.0.5 3.0.9 3.0.44
4. Fundamental Rights	
Legal Instruments and Bibliography I. Legal Instruments II. Bibliography	
Analysis	
 Charter of Fundamental Rights, European Constitution, and Lisbon Treaty 	4.0.1
2. Charter of Fundamental Rights and the Lisbon Treaty	4.0.5 4.0.9
 Protection of intellectual property Freedom of the arts and sciences 	4.0.9
II. DIRECTIVES ON COPYRIGHT AND RELATED RIGHTS	
5. Computer Program Directive	
Materials, Legal Instruments, and Bibliography	
I. MaterialsII. Legal Instruments	
III. Bibliography	
Article 1 Object of protection Text: Article 1 and Selected Recitals	
Commentary	5.1.1
 Introduction and legislative history Basic principles 	5.1.1 5.1.4
3. Copyright protection	5.1.6
4. Notion of originality 5. Litamore versules within the machine of the Borne Convention	5.1.8
 Literary works within the meaning of the Berne Convention Definition of computer programs 	5.1.21 5.1.25
7. Ideas and principles—content, computer program logics,	
and algorithm Adaptation, translation, and collections	5.1.33 5.1.39
8. Adaptation, translation, and collections	7.1.37

9. Computer assisted creativity	*	5.1.41
10. Provisions of transitional law		5.1.47
Article 2 Authorship of computer programs		
Text: Article 2		
Commentary		
1. Legislative history		5.2.1
2. Basic principles		5.2.8
3. Natural persons		5.2.10
4. Legal persons and collective works		5.2.13
5. Co-authorship		5.2.17
6. Works created by employees		5.2.24
Article 3 Beneficiaries of protection		
Text: Article 3 and Selected Recitals		
Commentary		
1. Legal history		5.3.1
2. Copyright approach according to Article 1(1)		5.3.5
3. Literary works		5.3.7
Article 4 Restricted acts		
Text: Article 4 and Selected Recital		
Commentary		
1. Historical background		5.4.1
2. Principles of the regulation		5.4.7
3. Reproduction		5.4.8
4. Adaptation, arrangement, translation, and other alteration		5.4.24
5. Distribution		5.4.28
Article 5 Exceptions to the restricted acts		
Text: Article 5 and Selected Recitals		
Commentary		
1. Historical background		5.5.1
2. Principles of the regulation		5.5.6
3. Use in accordance with the intended purpose by the lawful		
acquirer (paragraph 1)		5.5.10
4. Making a back-up copy (paragraph 2)		5.5.39
5. Observing, studying, and testing (paragraph 3)		5.5.43
6. Further free uses of the work		5.5.51
Article 6 Decompilation		
Text: Article 6 and Selected Recitals		
Commentary		
1. Historical background		5.6.1
2. Technical and economic background		5.6.9
3. Principles of the regulation		5.6.20
4. Term of, and conditions for, decompilation (paragraph 1)		5.6.26

5. Restriction of the use of obtained information	
(paragraph 2)	5.6.37
6. Three-step test (paragraph 3)	5.6.54
7. Annex: simple example for the decompilation process	5.6.56
Article 7 Special measures of protection	
Text: Article 7	
Commentary	
1. Legal history	5.7.1
2. Problems of interpretation	5.7.5
3. Structure and nature of the provision	5.7.8
4. Distribution of infringing copies	5.7.14
5. Possession of infringing copies	5.7.21
6. Technical protection measures	5.7.25
7. Seizure (paragraphs 2 and 3)	5.7.35
Article 8 of the Directive's Initial version—term of protection	
(abolished in the Codified version)	
Text: Article 8 and Selected Recital	
Commentary	
1. Preliminary remarks	5.8.1
2. Legal history	5.8.2
3. Basic principles	5.8.4
4. Transitional provisions and harmonization	5.8.6
Article 8 of the Directive's Codified version—continued application	
of other legal provisions	
Text: Article 8 (Codified version) and Selected Recitals	
Commentary	
1. Other legal forms of protection (paragraph 1)	5.8.10
2. Unwaivability of users' rights (paragraph 2)	5.8.13
Article 9 of the Directive's Codified version—communication	
Text	
Commentary	5.9.1
Article 10 of the Directive's Codified version—repeal	
Text	
Commentary	5.10.1
Article 11 of the Directive's Codified version—entry into force	
Commentary	5.11.1
Article 12 of the Directive's Codified version—addressees	
Text	
Commentary	5.12.1
Implementation in Member States: Country Reports And Tables	218
ampiementation in tricinol olates. Obunity iteponts indication	210

Rental and Lending Rights Directive	
Materials, Legal Instruments, and Bibliography	
I. Materials	
II. Legal Instruments	
III. Bibliography	
Introduction to the Directive	
Text	
Commentary	
1. Historical background	6.0.1
2. Aim of harmonization	6.0.6
3. Discussed but not regulated issues	6.0.7
CHAPTER I: RENTAL AND LENDING RIGHTS	
Article 1 Object of harmonization	
Text: Article 1 and Selected Recitals	
Commentary	
1. Exclusive nature of the rental and lending rights	6.1.1
2. Definitions of rental and lending: parallel elements	6.1.9
3. Relation to the distribution right	6.1.33
Article 2 Right holders and subject matter of rental and lending right	
Text: Article 2 and Selected Recital	
Commentary	
1. Right holders	6.2.1
2. Subject matter	6.2.19
3. Transferability	6.2.30
4. Presumptions of transfer	6.2.34
Article 3 Rental of computer programs	
Text: Article 3 and Article 4 and Selected Recital	
Commentary	6.3.1
Article 4 Unwaivable right to equitable remuneration	
Text: Article 4 and Selected Recitals	
Commentary	
1. Historical development and general background	6.4.1
2. Structure of the Regulation	6.4.4
3. Particular issues under paragraph 1	6.4.7
4. Unwaivability of the remuneration right (paragraph 2)	6.4.17
5. Collective administration of the remuneration right	
(paragraphs 3 and 4)	6.4.20
Article 5 Derogation from the exclusive public lending right	
Text: Article 5 and Selected Recital	
Commentary	
1. General	6.5.1
2. Particular issues	6.5.7

CHAPTER II: RIGHTS RELATED TO COPYRIGHT	
Introduction to Chapter II	
Text: Recital 20	
Commentary	
1. Harmonization of related rights	6.0.12
2. Exclusive rights for performing artists	6.0.16
3. Transferability of exclusive rights	6.0.17
Article 6 Fixation right	
Text: Article 6	
Commentary	
1. Fixation right of performers (paragraph 1)	6.6.1
2. Fixation right of broadcasting organizations (paragraphs 2 and 3)	6.6.4
Article 7 Reproduction right	
Text: Article 7	
Commentary	
1. Legislative background	6.7.1
2. Right holders and subject matter protected	6.7.2
3. Reproduction	6.7.3
Article 8 Broadcasting and communication to the public	
Text: Article 8 and Selected Recital	
Commentary	
1. General remarks on Article 8 and Recital 20	6.8.1
2. Exclusive rights of performers (paragraph 1)	6.8.6
3. Remuneration right under paragraph 2	6.8.13
4. Exclusive rights of broadcasting organizations (paragraph 3)	6.8.26
Article 9 Distribution right	
Text: Article 9	
Commentary	
1. Distribution right	6.9.1
 Exhaustion of the distribution right 	6.9.9
Article 10 Limitations to rights, and Recital 19: presumptions of transfer	
Text: Article 10 and Selected Recital	
Commentary	6.10.1
1. General remarks on limitations under Article 10 and on Recital 19	6.10.1
 Particular limitations (paragraph 1) General clause (paragraph 2) 	6.10.8
4. The presumption of transfer of rights under Recital 19, first part	6.10.9
5. The presumption of transfer of rights under Recital 19, second part	6.10.17
	0.10.17
Article 11 Duration of authors' rights	
Text: Article 11	(111
Commentary	6.11.1
Article 12 Duration of related rights	
Text: Article 12	
Commentary	6.12.1

	Article 13 Application in time	
	Text: Article 13	
	Commentary	
	1. General remarks and legislative background	6.13.1
	2. Application to existing subject matter (paragraph 1)	6.13.7
	3. Application to acts of exploitation (paragraph 2)	6.13.14
	4. Protection of outlets and establishments (paragraph 3)	6.13.16
	5. Film authors (paragraphs 4 and 5)	6.13.23
	6. 'Old' contracts (paragraphs 6 and 7)	6.13.26
	7. Remuneration right (paragraphs 8 and 9)	6.13.31
	Article 14 Relation between copyright and related rights	
	Text: Article 14	
	Commentary	6.14.1
	Article 15 Final provisions	
	Text: Article 15	(15 1
	Commentary	6.15.1
	Implementation in Member States: Country Reports And Tables	356
7.	Satellite and Cable Directive	
	Materials, Legal Instruments, and Bibliography	
	I. Materials	
	II. Legal Instruments	
	III. Bibliography	
	Introduction	
	Text: Introduction and Selected Recitals	
	Commentary	7.0.1
	1. Development of cable and satellite broadcasting	7.0.1
	2. Starting point	7.0.5
	3. Genesis	7.0.12
	4. General	7.0.17
	5. Structure of the Directive	7.0.21
	6. Report	7.0.26
	CHAPTER I: DEFINITIONS	
	Article 1 Definitions	
	Text: Article 1 and Selected Recitals	
	Commentary	
	1. General	7.1.1
	2. Communications satellites and direct satellites (paragraph 1)	7.1.2
	3. Introduction of programme and place of broadcasting act (paragraph 2)	7.1.7
	4. Encrypted signals (paragraph 2 lit c)	7.1.20
	5. Subsidiary connecting factors (paragraph 2 lit d)	7.1.23
	6. Cable retransmission (paragraph 3)	7.1.29
	7. Collecting societies (paragraph 4)	7.1.36
	8. Principal director (paragraph 5)	7.1.38

CHAPTER II: BROADCASTING OF PROGRAMMES BY SATELLITE	
Article 2 Broadcasting right	
Text: Article 2	
Commentary	7.2.1
Article 3 Acquisition of broadcasting rights	
Text: Article 3 and Selected Recitals	
Commentary	
1. Contractual acquisition of rights (paragraph 1)	7.3.1
2. Outsider effect (paragraph 2)	7.3.9
3. Cinematographic works (paragraph 3)	7.3.12
4. Duty to inform (paragraph 4)	7.3.14
Article 4 Rights of performers, phonogram producers	
and broadcasting organizations	
Text: Article 4 and Selected Recitals	
Commentary	
1. Satellite broadcasting right in respect of related rights (paragraph 1)	7.4.1
2. Broadcasting by wireless means (paragraph 2)	7.4.8
3. Presumptions of transfer (paragraph 3)	7.4.10
Article 5 Relation between copyright and related rights	
Text: Article 5	
Commentary	7.5.1
Article 6 Minimum protection	
Text: Article 6 and Recital 34	
Commentary	
1. Minimum protection principle (paragraph 1)	7.6.1
2. Country-of-transmission principle (paragraph 2)	7.6.4
Article 7 Transitional provisions	
Text: Article 7 and Selected Recitals	
Commentary	771
 General Application in time (paragraph 1) 	7.7.1 7.7.2
2. Application in time (paragraph 1)3. Existing contracts (paragraph 2)	7.7.2
4. Co-production agreements (paragraph 3)	7.7.11
	/ • / • 1
CHAPTER III: CABLE RETRANSMISSION	
Article 8 Cable retransmission right	
Text: Article 8 and Selected Recitals	
Commentary 1. General	7 Q 1
 Cable retransmission and basically contractual acquisition 	7.0.1
of rights (paragraph 1)	7.8.5
3. Transitional provisions for existing statutory licences (paragraph 2)	7.8.7
Article 9 Exercise of the cable retransmission right	
Text: Article 9 and Selected Recitals	

	Commentary 1. General	7.9.1
	 Mandatory exercise of the retransmission rights by a collecting 	, .,
	society (paragraph 1)	7.9.4
	3. Outsider effect (paragraph 2)	7.9.7
	4. Alternative presumption (paragraph 3)	7.9.12
	Article 10 Exercise of the cable retransmission right by	
	broadcasting organizations	
	Text: Article 10 and Selected Recitals	
	Commentary	7.10.1
	Article 11 Mediators	
	Text: Article 11 and Recital 30	
	Commentary	
	1. Supporting measures	7.11.1
	2. Mediation facilities (paragraph 1)	7.11.4
	3. Mediation procedure (paragraph 2)	7.11.7
	4. Mediation proposal (paragraph 3)	7.11.9
	5. Independence and impartiality (paragraph 4)	7.11.11
	6. Practical application	7.11.14
	Article 12 Prevention of the abuse of negotiating positions	
	Text: Article 12 and Selected Recitals	
	Commentary	
	1. Control of abuse (paragraph 1)	7.12.1
	2. Decision-making bodies (paragraph 2)	7.12.6
	3. Transitional provision (paragraph 3)	7.12.7
	4. Practical application	7.12.9
	CHAPTER IV: GENERAL PROVISIONS	
	Article 13 Collective administration of rights	
	Text: Article 13 and Selected Recitals	
	Commentary	7.13.1
	Article 14 Final provisions	
	Text: Article 14 and Selected Recitals	
	Commentary	
	1. Time limit for implementation (paragraph 1)	7.14.1
	2. Duty of notification of the Member States (paragraph 2)	7.14.7
	3. Duty to report of the Commission (paragraph 3)	7.14.8
	Article 15	
	Text: Article 15	
	Commentary	7.15.1
	Implementation in Member States: Country Reports And Tables	472
8.	Term Directive	
	Materials, Legal Instruments, and Bibliography	

I. Materials

II. Legal instruments III. Bibliography	
General Remarks and Historical Background of the Directive	
Text: Preamble and General Recitals	
Commentary	0 0 1
1. Justification of the European harmonization of the terms of protection	8.0.1
2. Minimum and maximum protection	8.0.3
3. Legislative history	8.0.5
4. Publication and making works accessible to the public	8.0.10
Article 1 Duration of copyright	
Text: Article 1 and Selected Recitals	
Commentary	
1. Legislative history	8.1.1
2. Basic rule: 70 years after the author's death	8.1.3
3. Joint authorship	8.1.34
4. Anonymous and pseudonymous works	8.1.48
5. Legal persons, collective works, and compilations	8.1.67
6. Cinematographic works	8.1.78
7. Works published in volumes, parts, instalments, etc	8.1.79
8. Moral rights	8.1.81
9. Domaine Public Payant	8.1.83
Article 2 Cinematographic and audiovisual works	
Text: Article 2 and Selected Recital	
Commentary	
1. Legislative history	8.2.1
2. Authorship of cinematographic works (paragraph 1)	8.2.6
3. Calculation of the term of protection (paragraph 2)	8.2.20
Article 3 Duration of related rights	
Text: Article 3 and Selected Recitals	
Commentary	
1. Legislative history	8.3.1
2. Harmonized related rights	8.3.4
3. 50-year term of protection	8.3.14
4. Points of attachment for the calculation of terms	8.3.18
5. Moral rights	8.3.35
Article 4 Protection of previously unpublished works	
Text: Article 4	
Commentary 1. Legislative history	8.4.1
2. Posthumous works	8.4.4
	8.4.5
 Regimes existing hitherto Principles of protection 	8.4.9
 Principles of protection Previously unpublished works 	8.4.12
6. Publication as a prerequisite of protection	8.4.15
7. Nature and content of protection	8.4.22
8. Ownership of rights	8.4.24
O. OWINCIOIND OF HERITO	U. I.LT

 Term of protection Implementation of the protection of posthumous works in the Member States 	8.4.26 8.4.27
Article 5 Critical and scientific publications Text: Article 5 and Selected Recitals	0.1.27
Commentary	8.5.1
 Legislative history Critical and aciontific publications 	8.5.2
2. Critical and scientific publications	8.5.4
3. Non mandatory provision 4. Nature of special protection	8.5.6
4. Nature of special protection	8.5.7
5. Harmonization limited in scope	0.)./
Article 6 Protection of photographs	
Text: Article 6 and Selected Recital 17	
Commentary	
1. Legislative history	8.6.1
2. Development of protection in the Berne Convention	8.6.5
3. Systems of protection in the Member States	8.6.6
4. Term of protection of works of photography	8.6.7
5. Works of photography and originality	8.6.9
6. Photographs lacking originality	8.6.12
Article 7 Protection vis-à-vis third countries	
Text: Article 7 and Selected Recitals	
Commentary	
1. Legislative history	8.7.1
2. Treatment of aliens and comparison of terms of protection	
in the field of copyright	8.7.5
3. Treatment of aliens and comparison of terms of protection	
in the field of related rights	8.7.24
4. Reservation of existing regimes	8.7.40
Article 8 Calculation of terms	
Text: Article 8 and Selected Recitals	
Commentary 1. Legislative history	8.8.1
2. Rule of calculation	8.8.2
	0.0.2
Article 9 Moral rights	
Text: Article 9 and Selected Recital	
Commentary	
1. Legal traditions and the framework of international treaties	8.9.1
2. Position taken by the Directive	8.9.3
3. Moral rights outlasting economic rights	8.9.5
4. Related rights	8.9.7
Article 10 Application in time	
Text: Article 10 and Selected Recitals	
Commentary	
1. Legal history	8.10.1
2. Longer terms of protection already running (paragraph 1)	8.10.7

	3. Application in time of the Directive (paragraph 2)4. Application of the Term Directive in time and the treatment	8.10.12
	of aliens under Article 7	8.10.25
	5. General provisions of transitional law (paragraph 3)	8.10.27
	6. Film authorship (paragraphs 4 and 5)	8.10.31
	7. Extension of terms of protection and copyright	0.10.51
	contracts (Recital 26)	8.10.34
		0.10.34
	Article 11 (Codified version) Notification and communication	
	Text	
	Commentary	8.11.1
	Article 11 of the Directive's Initial version—abolished in the Codified version Technical adaptation	
	Text: Article 11 and Selected Recitals	
	Commentary	8.11.6
	Article 12 of the Codified version—repeal	
	Text: Article 12	
	Commentary	8.12.1
		0.12.1
	Article 13 Entry into force	
	Text: Article 13	
	Article 13 of the Codified version—entry into force Text: Selected Recitals Commentary	0 1 2 1
	Commentary	8.13.1
	Article 14	
	Text: Article 14	
	Commentary	8.14.1
	Annex II	
	Text	
	Annex	
	The Commission's Amendment Proposal 2008	
	Text	
	Commentary	
	1. The duration of protection of music and words	8.0.1
	2. Prolongation regarding performing artists and producers	
	of phonograms	8.0.9
	3. Further transitional law provisions	8.0.19
	4. Status of the legislative process	8.0.21
	Implementation in Member States: Country Reports And Tables	648
•	Database Directive	
	Materials, Legal Instruments, and Bibliography I. Materials	
	II. Legal Instruments	

III. Bibliography

Introduction to the Directive: historical background Commentary	9.0.1
CHAPTER I: SCOPE OF APPLICATION	
Article 1 Scope of application Text: Article 1 and Selected Recitals Commentative	
Commentary Object of protection (paragraph 1) The term 'database' (paragraphs 2 and 3) 	9.1.1 9.1.8
Article 2 Limitations on the scope Text: Article 2 and Selected Recitals	
Commentary 1. Historical background 2. Computer Program Directive 3. Rental and Lending Rights Directive	9.2.1 9.2.2 9.2.3
4. Term Directive5. Satellite and Cable Directive	9.2.6 9.2.7
CHAPTER II: COPYRIGHT	
Article 3 Object of protection Text: Article 3 and Selected Recitals Commentary	
 Protection of database works (paragraph 1) Protection of the contents of the database (paragraph 2) 	9.3.1
Article 4 Database authorship	
Text: Article 4 and Selected Recital	
Commentary	0 / 1
Historical background Natural persons and acceptable	9.4.1 9.4.3
 Natural persons and co-authorship Legal persons and collective works 	9.4.6
4. Authors working as employees or upon commission	9.4.10
Article 5 Restricted acts	
Text: Article 5 and Selected Recitals	
Commentary	
1. Historical background	9.5.1
2. General remarks	9.5.3
3. Reproduction right	9.5.7
4. Rights of translation and adaptation	9.5.9
5. Distribution right	9.5.12
6. Rights of communication, display, and performance to the public	9.5.16
7. Use of translations, adaptations, or other alterations	9.5.25
Article 6 Exceptions to restricted acts Text: Article 6 and 15, and Selected Recitals Commentary	
Commentary 1. Exceptions in favour of the lawful user (paragraphs 1 and 3)	9.6.1
2. Limitations on rights (paragraphs 2 and 3)	9.6.18

CHAPTER III: SUI GENERIS RIGHT	3:	
Introduction to Articles 7–11		
Text: Selected Recitals		
Commentary		
1. Reasons for the introduction of the sui generis right		9.0.10
2. Legal nature		9.0.13
Article 7 Object of protection		
Text: Article 7 and Selected Recitals		
Commentary 1. Object of protection and right overnors (paragraphs 1 and 5)		9.7.1
 Object of protection and right owners (paragraphs 1 and 5) Contents of protection (paragraph 2) 		9.7.25
3. Marketability (paragraph 3)		9.7.50
4. Relation to copyright protection of the database and to the		7.7.50
protection of the contents of the database (paragraph 4)		9.7.51
		1.1.1
Article 8 Rights and obligations of lawful users		
Text: Article 8, Article 15 and Selected Recitals		
Commentary		
1. Rights of the lawful user (paragraph 1)		9.8.1
2. Obligations of the lawful user (paragraphs 2 and 3)		9.8.10
Article 9 Exceptions to the sui generis right		
Text: Article 9 and Selected Recitals		
Commentary		
1. Historical background		9.9.1
2. General remarks		9.9.5
3. The individual exceptions		9.9.9
Article 10 Term of protection		
Text: Article 10 and Selected Recitals		
Commentary 1. Historical background		9.10.1
2. The basic rules (paragraphs 1 and 2)		9.10.2
3. The term of protection in case of substantial change of		7.10.2
contents (paragraph 3)		9.10.5
		7.10.7
Article 11 Beneficiaries of protection under the sui generis righ	nt	
Text: Article 11 and Selected Recital		
Commentary		0 1 1 1
1. Historical background		9.11.1
2. Beneficiaries under paragraphs 1 and 2		9.11.5
3. International agreements (paragraph 3)		9.11.18
CHAPTER IV: COMMON PROVISIONS		
Article 12 Remedies		
Text: Article 12 and Selected Recital		
Commentary		9.12.1
Article 13 Continued application of other legal provisions		
Text: Article 13 and Selected Recitals		9 1 3 1
Commentary		7.13.1

Article 14 Application over time Text: Article 14 and Selected Recital Commentary	
	9.14.1
1. Historical background	9.14.3
2. Application in time of copyright protection (paragraphs 1 and 2)	
3. Application in time of the sui generis right (paragraphs 3 and 5)	9.14.6
4. Concluded acts and acquired rights (paragraph 4)	9.14.9
Article 15 Binding nature of certain provisions Text: Article 15	
Commentary	9.15.1
Article 16 Final provisions	
Text: Article 16	
Commentary	9.16.1
Implementation in Member States: Country Reports And Tables	796
10. Resale Right Directive	
Materials, Legal Instruments, and Bibliography	
I. Materials	
II. Legal Instruments	
III. Bibliography	
General Remarks	
Text: General Recitals	
Commentary	
1. The droit de suite discussion	10.0.1
2. Need for harmonization and Community competence	10.0.2
3. Legal structure and concern of the resale right	10.0.5
4. Approaches to the resale right	10.0.10
5. Social impact of the resale right?	10.0.17
6. Legislative history of the Resale Right Directive	10.0.18
CHAPTER I: SCOPE	
Article 1 Subject matter of the resale right	
Text: Article 1 and Selected Recitals	
Commentary	
1. Legal structure and justification of the resale right	10.1.1
2. Unwaivability and inalienability	10.1.1
3. Resale price regime	10.1.3
	10.1.4
4. Scope of application	
5. Non-mandatory exception in favour of 'promotional galleries'	10.1.12
6. Liability for payment	10.1.16
7. Exports	10.1.17
Article 2 Works of art to which the resale right relates Text: Article 2 and Selected Recitals	
Commentary	
1. Original manuscripts	10.2.1
2. Original works of art	10.2.3
2. 01.5 or are	10.2.

3. Works of applied art4. Works of photography	10.2.9
CHAPTER II: PARTICULAR PROVISIONS	
Article 3 Threshold	
Text: Article 3 and Selected Recital	
Commentary	10.3.1
Article 4 Rates	
Text: Article 4 and Selected Recitals	
Commentary	
1. Legislative history	10.4.1
The resale right as laid down in the final version of the Directive	10.4.6
3. Evaluation of the harmonized rates	10.4.0
4. Implementation in the Member States	10.4.11
Article 5 Calculation basis	
Text: Article 5	
Commentary	
1. Deductible taxes and customs duties	10.5.1
2. Other costs and expenses	10.5.2
3. Accessories of the work	10.5.3
Article 6 Persons entitled to receive royalty	
Text: Article 6 and Selected Recitals	
Commentary 1. Succession in title	10.6.1
2. Social and cultural commitment of the resale	10.0.1
right royalty	10.6.4
3. Collective management of the resale right royalty	10.6.6
Article 7 Third-country nationals entitled to receive royalties	S
Text: Article 7 and Selected Recitals	
Commentary	
1. The international background	10.7.1
 Material reciprocity under the Resale Right Directive Phil Collins and the resale right 	10.7.6 10.7.14
4. Transborder sales	10.7.11
5. The future of the resale right on the international level	10.7.18
Article 8 Term of protection of the resale right	
Text: Article 8 and Selected Recital	
Commentary	
1. Term of protection	10.8.1
2. Domaine Public Payant	10.8.2
3. Delayed application to the author's heirs	10.8.4
Article 9 Right to obtain information	
Text: Article 9 and Selected Recital Commentary	10.9.1
Commentary	10.7.1

	CHAPTER III: FINAL PROVISIONS	
	Article 10 Application in time Text: Article 10 Commentary	10.10.1
	Article 11 Revision clause	
	Text: Article 11 and Selected Recital Commentary	10.11.1
	Article 12 Implementation Text: Article 12 Commentary	10.12.1
	Article 13 Entry into force Text: Article 13 Commentary	10.13.1
	Article 14 Addressees Text: Article 14	
	Commentary	10.14.1
	Implementation in Member States: Country Reports And Tables	895
11.	Information Society Directive	
	Materials, Legal Instruments, and Bibliography I. Materials II. Legal Instruments III. Bibliography	
	Historical background of the Information Society Directive Text: General Recitals Commentary	
	 Preparatory work Legislative process 	11.0.1 11.0.28
	CHAPTER I: OBJECTIVE AND SCOPE	
	Article 1 Scope Text: Article 1 and Selected Recital Commentary	
	 Harmonization of exploitation rights prior to the Information Society Directive 	11.1.1
	2. Relationship to other Directives	11.1.3
	CHAPTER II: RIGHTS AND EXCEPTIONS	
	Article 2 Reproduction right Text: Article 2 and Selected Recital Commentary	
	1. Article 2 and corresponding provisions in other Directives	11.2.1
	2. Fixation, reproduction, and representation of sounds and images	11.2.5
	 Elements of definition Authors and holders of related rights 	11.2.14 11.2.24

Article 3 Right of communication to the public of works and right of making available to the public of other subject-matter Text: Article 3 and Selected Recitals Commentary	
 Introduction The concept of the WIPO Treaties 	11.3.1 11.3.5
3. The concept of the Information Society Directive	11.3.19
4. Exclusion of the exhaustion principle (paragraph 3)	11.3.39
5. The notion of public	11.3.43
Article 4 Distribution right	
Text: Article 4 and Selected Recitals	
Commentary	
1. The distribution right in the international treaties	11.4.1
2. The distribution right in the earlier EC Directives	11.4.4
3. Legal structure of the distribution right under Article 4	11.4.5
4. Importation	11.4.15
5. Exhaustion of the distribution right	11.4.16
6. Implementation in the Member States	11.4.59
Article 5 Exceptions and limitations	
Text: Article 5 and Selected Recitals	
Commentary	11 - 1
1. Historical background	11.5.1
2. The structure and scope of application of Article 5	11.5.8
3. Mandatory exception regarding temporary acts of reproduction	11.5.12
(paragraph 1) 4. Exceptions and limitations under paragraph 2	11.5.12
5. Exceptions and limitations under paragraph 3	11.5.25
6. Distribution right (paragraph 4)	11.5.74
7. Three-step test	11.5.77
CHAPTER III: PROTECTION OF TECHNOLOGICAL	
MEASURES AND RIGHTS-MANAGEMENT INFORMATION	
Article 6 Obligations as to technological measures	
Text: Article 6 and Selected Recitals	
Commentary 1. Listopiael healtonound and numeros	11.6.1
Historical background and purpose Effective technological massures (paragraph 2)	11.6.1
 Effective technological measures (paragraph 3) Circumvention (paragraph 1) 	11.6.7
4. Preparatory acts (paragraph 2)	11.6.8
5. Relation to exceptions and limitations	11.6.10
Article 7 Obligations concerning rights-management information	
Text: Article 7 and Selected Recitals	
Commentary	11 7 1
Historical background The investment of the second of the secon	11.7.1
2. The situation to be regulated 3. The individual present divious	11.7.2
3. The individual pre-conditions	11.7.4

CHAPTER IV: COMMON PROVISIONS	
Article 8 Sanctions and remedies Text and Selected Recitals of the Information Society Directive Text and Selected Recitals of the E-Commerce Directive	
Commentary 1. Introduction	11.8.1
 The general obligations under paragraphs 1 and 2 	11.8.1
3. Injunctions against intermediaries	11.8.7
4. Limitation of liability under Articles 12–14 of the	11.0./
E-Commerce Directive	11.8.13
Article 9 Continued application of other legal provisions	
Text: Article 9 and Selected Recital	
Commentary	11.9.1
Article 10 Application over time	
Text: Article 10	
Commentary	11.10.1
Article 11 Technical adaptations	
Text: Article 11 and Selected Recital	
Commentary	11.11.1
	11.11.1
Article 12 Final provisions	
Text: Article 12	11.12.1
Commentary	11.12.1
Article 13 Implementation	
Text: Article 13	11 12 1
Commentary	11.13.1
Article 14 Entry into force	
Text: Article 14	
Commentary	11.14.1
Article 15 Addressees	
Text: Article 15	
Commentary	11.15.1
Implementation in Member States: Country Reports And Tables	1100
III. COLLECTIVE MANAGEMENT	
Collective Rights Management in Europe—Practice and Legal Framework	
Materials, Cases, and Bibliography	
I. Materials	
II. Cases III. Bibliography	
III. Bibliography	
Analysis	100
1. Collective rights management in practice	12.0.1
2. European primary law and its application to collective rights management	12.0.19

	3. Collective rights management in secondary Community law: Directives	12.0.38	
	4. Challenges of the digital era	12.0.73	
	5. Developments under the Commission after November 2004	12.0.85	
	6. Observations on the Commission's copyright policy after		
	November 2004	12.0.101	
	IV. ENFORCEMENT OF RIGHTS		
3.	Enforcement Directive		
	Materials, Legal Instruments, and Bibliography		
	I. Materials		
	II. Legal Instruments		
	III. Bibliography		
	General remarks and historical background of the Directive		
	Text: General Recitals		
	Commentary		
	1. Introduction	13.0.1	
	2. Legislative history	13.0.5	
	3. Legal basis	13.0.27	
	CHAPTER I: OBJECTIVE AND SCOPE		
	Article 1 Subject matter		
	Text: Article 1 and Selected Recital		
	Commentary		
	1. Background and legislative history	13.1.1	
	2. Intellectual property rights concerned	13.1.5	
	3. Necessary measures, procedures, and remedies	13.1.10	
	Article 2 Scope		
	Text: Article 2 and Selected Recitals		
	Commentary		
	1. Background and legislative history	13.2.1	
	2. Principle of favourability and scope of the Directive	13.2.4	
	3. The safeguard clauses of Article 2(2) and 2(3)	13.2.6	
	CHAPTER II: MEASURES, PROCEDURES, AND REMEDIES		
	SECTION I: GENERAL PROVISIONS		
	Article 3 General obligation		
	Text: Article 3 and Selected Recitals		
	Commentary		
	1. Legislative history	13.3.1	
	2. General obligation to ensure enforcement	13.3.4	
	Article 4 Persons entitled to apply for the application of the measures,		
	procedures, and remedies		
	Text: Article 4 and Selected Recital		
	Commentary		
	1. Legislative history	13.4.1	
	2. General remarks	13.4.5	

3. Capacity to sue of initial right owners	13.4.8
4. Capacity to sue of third parties (licensees)	13.4.11
5. Capacity to sue of collective rights management and professional	
defence bodies	13.4.15
Article 5 Presumption of authorship or ownership	
Text: Article 5 and Selected Recital	
Commentary	
1. Background and legal history	13.5.1
2. General remarks	13.5.3
3. The presumption of authorship	13.5.6
4. Presumption of ownership with regard to related rights	13.5.9
5. Minimum protection	13.5.11
SECTION 2: EVIDENCE	
Article 6 Evidence	
Text: Article 6 and Selected Recitals	
Commentary	
1. Legislative history	13.6.1
2. Stage of proceedings: procedural or substantive provision	13.6.6
3. Means of evidence and persons obliged to production	13.6.9
4. Requirements	13.6.11
5. Sanctions	13.6.16
6. Protection of confidential information	13.6.18
7. Production of samples as evidence	13.6.21
8. Production of bank, financial, and commercial documents	13.6.23
Article 7 Measures for preserving evidence	
Text: Article 7 and Selected Recital	
Commentary	
1. Legislative history	13.7.1
2. The British and French models	13.7.6
3. Procedural or substantial claim and stage of proceedings	13.7.10
4. Taking or preserving evidence	13.7.12
5. Means of evidence and persons subject to obligation	13.7.15
6. General requirements	13.7.19
7. Further procedural requirements: balance of interests	13.7.21
8. Sanctions	13.7.31
 Confidential information Availability of measures in cross-border cases 	13.7.32
10. Availability of fileasures in cross-border cases 11. Steps to protect witnesses' identity	13.7.39
SECTION 3: RIGHT OF INFORMATION	
Article 8 Right of information	
Text: Article 8 and Selected Recitals	
Commentary 1. Legislative history	13.8.1
 Legislative instory Mandatory provision and proportionality 	13.8.6
3. Substantive or procedural character of the claim	13.8.8
J. Gabbanin of procedural character of the claim	10.0.0

4. Origin and distribution of goods and services	13.8.12
5. Persons obliged to provide information	13.8.13
6. Scope of information to be provided	13.8.20
7. Relationship to other legal provisions	13.8.23
8. Right of information, confidentiality of information,	
and data protection	13.8.28
9. The notion of processing personal traffic data	13.8.34
10. The problem of data retention	13.8.36
11. Summary	13.8.41
SECTION 4: PROVISIONAL AND PRECAUTIONARY MEASURES	
Article 9 Provisional and precautionary measures	
Text: Article 9 and Selected Recitals	
Commentary	
1. Legislative history	13.9.1
2. Provisional measures	13.9.4
3. Prerequisites of application	13.9.10
4. Procedural safeguard provisions	13.9.12
5. Provisional measures against an intermediary	13.9.15
6. Seizure and taking goods out of commerce	13.9.20
7. Precautionary measures to secure recovery of financial claims	13.9.28
SECTION 5: MEASURES RESULTING FROM A DECISION	
ON THE MERITS OF THE CASE	
Article 10 Corrective measures	
Text: Article 10 and Selected Recitals	
Commentary	
1. Legislative history	13.10.1
2. General remarks	13.10.6
3. Corrective measures concerned	13.10.9
4. Compensation and costs	13.10.14
5. Proportionality and rights of third parties	13.10.17
Article 11 Injunctions	
Text: Article 11 and Selected Recitals	
Commentary	
1. Legislative history	13.11.1
2. General remarks	13.11.3
3. Procedures	13.11.6
4. Interlocutory and preventive injunctions	13.11.8
5. Fines and recurring fines	13.11.9
6. Injunctions against intermediaries	13.11.11
7. Safeguard clauses	13.11.13
Article 12 Alternative measures	
Text: Article 12 and Selected Recital	
Commentary	
1. Legal history	13.12.1
2. General remarks	13.12.1
 General remarks Prerequisites to apply for alternative measures 	13.12.5
J. I rerequisites to apply for afternative incasures	10.14.7

4. Scope of the provision	13.12.10
5. Pecuniary compensation6. Procedure	13.12.13 13.12.15
	13.12.17
SECTION 6: DAMAGES AND LEGAL COSTS	
Article 13 Damages	
Text: Article 13 and Selected Recital	
Commentary 1. Legislative history	13.13.1
2. General remarks	13.13.6
3. Standard of fault	13.13.9
4. The calculation of damages	13.13.11
5. Acting in good faith	13.13.20
Article 14 Legal costs	
Text: Articles 14, 45, 48	
Commentary	101/1
 Legislative history General remarks 	13.14.1 13.14.3
 General remarks Costs and expenses 	13.14.5
4. General rule and equity reservation	13.14.8
SECTION 7: PUBLICITY MEASURES	
Article 15 Publication of judicial decisions	
Text: Article 15 and Selected Recital	
Commentary	
1. Legislative history	13.15.1
2. General remarks	13.15.4
3. Modalities and media of publication	13.15.8
CHAPTER III: SANCTIONS BY MEMBER STATES	
Article 16 Sanctions by Member States	
Text: Article 16 and Selected Recital	
Commentary	
1. Legislative history and perspectives	13.16.1
2. Reservation of criminal sanctions 3. The follow up. Directive on criminal measures	13.16.5 13.16.9
3. The follow up: Directive on criminal measures	13.10.7
CHAPTER IV: CODES OF CONDUCT AND ADMINISTRATIVE	
COOPERATION	
Article 17 Codes of conduct	
Text: Article 17 and Selected Recital	
Commentary 1. Legislative history	13.17.1
2. Codes of conduct	13.17.1
Article 18 Assessment	
Text: Article 18 and Selected Recital	
Teat. In there is and selected receitar	

13.18.1
13.18.2
13.19.1
13.19.2
13.20.1
13.21.1
Tables 1330
plans
14.0.1
14.0.1
14.1.1
14.1.3
14.1.5
14.2.1
14.2.3 14.2.5
14.2.9
14.2.11

Article 3 Exclusion of applicability Text: Article 3 and Selected Recital	
Commentary 1. Parallel imports 2. Travellers' personal baggage	14.3.1 14.3.7
CHAPTER II: APPLICATIONS FOR ACTION BY THE CUSTOMS AUTH	ORITIES
SECTION I: MEASURES PRIOR TO AN APPLICATION	
FOR ACTION BY THE CUSTOMS AUTHORITIES	
Article 4 Ex officio action Text: Article 4 and Selected Recital Implementation Regulation 2004 Commentary	
1. Introduction	14.4.1
2. No mandatory ex officio action under the TRIPs Agreement	14.4.3
3. Precondition for ex officio action	14.4.4
4. Procedure	14.4.5
SECTION 2: THE LODGING AND PROCESSING OF APPLICATIONS FOR CUSTOMS ACTION	
Article 5	
Text: Article 5 and Selected Recital Implementation Regulation 2004 Commentary	
1. Introduction	14.5.1
2. Competent customs department	14.5.3
3. Application for customs action	14.5.4
4. Procedure	14.5.9
Article 6 Declaration of liability	
Text: Article 6	
Commentary 1. Introduction	14.6.1
 Declaration of liability 	14.6.1
 Cases of liability 	14.6.8
Article 7 Renewal	
Text: Article 7	
Commentary	14.7.1
SECTION 3: ACCEPTANCE OF THE APPLICATION FOR ACTION	
Article 8	
Text: Article 8	
Commentary	
1. Duration of the application's grant	14.8.1
2. Forwarding of applications	14.8.4
3. Applications based on Community rights	14.8.6
4. Expiry of rights	14 8 10

CHAPTER III: CONDITIONS GOVERNING ACTION BY THE CUSTOMS AUTHORITIES AND BY THE AUTHORITY COMPETENT TO DECIDE ON THE CASE Article 9 Action of customs authorities Text: Article 9 Commentary 1. Introduction 14.9.1 14.9.2 2. Suspension from release or detention 14.9.3 3. Information provided by the customs authority 14.9.6 4. Inspection and samples 14.9.7 5. Remedies Article 10 Application of national law Text: Article 10 and Selected Recital Commentary 1. Introduction 14.10.1 14.10.2 2. Rules of substantive law and procedural law 3. Broadening of restricted acts by the Product Piracy Regulation? 14.10.6 Article 11 Simplified procedure Text: Article 11 and Selected Recital Commentary 14.11.1 1. Introduction 2. Simplified procedures option for the Member States 14.11.3 3. Agreement or non-objection by the involved parties 14.11.4 4. Destruction of goods under national legislation 14.11.9 14.11.11 5. Other penalties Article 12 Use of information Text: Article 12 Commentary 1. Introduction 14.12.1 2. Use of the information obtained 14.12.3 14.12.7 3. Sanctions Article 13 Duration of suspension Text: Article 13 and Selected Recital Commentary 1. Introduction 14.13.1 14.13.4 2. Notification in time 3. Proceedings to determine infringement 14.13.9 4. Plaintiffs and defendants 14.13.13 5. Release of goods on failure of notification in time 14.13.16 Article 14 Release against security Text: Article 14 Commentary 1. Introduction 14.14.1 14.14.3 2. Persons to rely on release against security 14.14.4 3. Prerequisites to be met 14.14.5

4. Sufficient security

5. Reservation of other legal remedies	14.14.7
Article 15 Conditions of storage	
Text: Article 15	
Commentary	14.15.1
CHAPTER IV: PROVISIONS APPLICABLE TO GOODS FOUND TO	
INFRINGE AN INTELLECTUAL PROPERTY RIGHT	
Article 16 Inadmissible treatment or use of goods	
Text: Article 16	
Commentary	
1. General rule	14.16.1
 Inadmissible treatment Problems of interpretation 	14.16.3 14.16.4
	14.10.4
Article 17 Remedies	
Text: Article 17 and Selected Recital Commentary	14.17.1
	1 1.1/.1
CHAPTER V: PENALTIES	
Article 18	
Text: Article 18	14.18.1
Commentary	17.10.1
CHAPTER VI: LIABILITY OF THE CUSTOMS AUTHORITIES	
AND THE RIGHT HOLDER	
Article 19	
Text: Article 19 Commentary	14.19.1
	17.17.1
CHAPTER VII: FINAL PROVISIONS	
Articles 20 and 21	
Text: Article 20 and 21 and Selected Recital Implementation Population 2004 Article 11	
Implementation Regulation 2004 Article 11 Commentary	14.20.1
Article 22	
Text: Article 22	
Implementation Regulation 2004 Article 8	
Commentary	14.22.1
Article 23	
Text: Article 23 and Selected Recital	
Commentary	14.23.1
Article 24	
Text: Article 24 and Selected Recital	
Implementation Regulation 2004 Articles 9 and 10	
Article 25	
Text: Article 25	
Implementation Regulation 2004 Article 11	
Implementation in Member States: Country Reports And Tables	1438

15. Access Control Directive	
Materials and Legal Instrument	
I. Materials	
II. Legal Instrument	
Text: Articles 1–9 and Selected Recitals	
Commentary	15.0.1
V. STATUS OF HARMONIZATION AND OUTLOOK	
16. Status of Harmonization and Outlook	
Bibliography	
I. Introductory remarks	16.0.1
II. Vertical and horizontal harmonization	16.0.3
III. Prerequisites of copyright protection: originality	16.0.5
IV. Initial attribution of authorship	
1. Introduction	16.0.9
2. Principle of creatorship	16.0.10
3. Joint authorship	16.0.14
4. Legal persons and collective works	16.0.15
5. Cinematographic works	16.0.16
6. Further harmonization?	16.0.19
V. Rights of authors	16.0.21
1. Moral rights	16.0.22
2. Economic rights	16.0.24
3. Conclusions	16.0.45
VI. Limitations of rights	16.0.46
VII. Related rights	
1. Achievements protected	16.0.53
2. Preconditions of protection	16.0.58
3. Exploitation rights	16.0.60
VIII. Term of protection	
1. Status of harmonization	16.0.66
2. Gaps of harmonization and Berne Convention	16.0.72
IX. Provisions on individual and collective management	
Bibliography	
Analysis	
1. Introduction	16.0.75
2. The individual issues	16.0.77
3. Résumé	16.0.108
X. International copyright	
Materials	

	Legal Instruments Analysis	16.0.112
XI.	Private international law	
	Bibliography	
	Text: Rome I and Rome II Regulation	
	Analysis	
	1. Introduction	16.0.118
	2. Laws applicable to substantive copyright and related rights	16.0.119
	3. Laws applicable to contracts related to copyright and related rights	16.0.123
XII.	Outlook	
	Bibliography	
	Analysis	
	1. Introduction	16.0.126
	2. Consolidation of the acquis	16.0.129
	3. Extending vertical to horizontal harmonization	16.0.134
	4. Possible further development	16.0.135
	5. The Commission's further initiatives	16.0.141
	6. Conclusions: European Copyright Code?	16.0.147
ndex		1525