

Copyright in the Digital Single Market by Eleonora Rosati [OUP, 2021, ISBN: 978-0-19-885859-1, 491pp, £145, h/bk and ebook]

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The EU legislature adopted Directive 2019/790 on copyright in the Digital Single Market in 2019. The implementation of this Directive by Member States has become one of the most significant advances in recent EU copyright history and continues to be at the centre of the discourse whilst the provisions continue to be debated, transposed, and disputed. Likewise, once the Directive has been fully transposed across the EU, there is wide anticipation as to its practical implications. Professor Eleonora Rosati is the leading EU copyright expert and has provided in her book, *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790*, a detailed and exhaustive vade mecum for those engaging with the provisions.

The book begins by setting out the origin and objectives of the DSM Directive, whilst contextualising its place within the broader EU copyright architecture and its reform. From the evolution of the discussions around the harmonisation of copyright in the late 1970s, and the concerns specified by the then Commission of the European Communities (now, the Commission) in its 1988 Green Paper on Copyright and the Challenge of Technology—Copyright Issues Requiring Immediate Action in light of the internal market-building objective, we learn – or are reminded of – how these initiatives led to EU and international developments in copyright, for example in the shape of the Information Society Directive 2001/29. After something of a hiatus in ambition, the harmonisation agenda gained notable momentum again in 2015 with renewed policy impetus around copyright, in the form of the Digital Single Market Strategy. It was against this background that the proposal for a Directive on copyright in the Digital Single Market was made in 2016.

Rosati informs us that the Directive turned out to be ‘significantly more detailed and complex than the proposal’ but its motivations remained in line with the harmonisation agenda, as ‘it is premised on an internal market-building rationale.’ The author goes on to explain that these include to: guarantee a high level of protection for rightsholders; streamline rights clearance; and create a level playing field for the exploitation of works and other protected subject matter. The objectives are linked to the establishment and functioning of the EU internal market, as well as to both an incentive-based view of copyright and the Union’s objective to respect and promote culture and cultural diversity. On top of this, it also takes into account the need to: remedy the interpretative uncertainties raised by technological advancement and the emergence of new business models and actors, as well as the objective of ensuring that the former is not unduly restricted as a result of such uncertainties; and guarantee a well-functioning and fair marketplace for goods incorporating, and services based on, copyright works and other protected subject matter.

As the title specifies, the book then proceeds to take each of the Articles of the Directive in turn to provide systematic analysis of their history, objectives and content, as well as their relationship to other provisions of the Directive and the pre-existing *acquis* where relevant. Thereby, Rosati provides a deeply thoughtful and thoroughly researched explanation of the Directive, both as a whole and of its specific contents. The details of these sections are

encyclopaedic in their coverage. The historical context and rationale provide a narrative that allows the text to be readable whilst also providing specific direction, such as in the form of analysis and definitions, thus, satisfying both the scholarly and practical reader. For example, in discussing the meaning of 'best efforts' in Article 17, Rosati states:

"It should be also noted that the phrase 'best efforts' has not seemingly been translated accurately in the various language versions of the Directive, with some suggesting more of a qualitative dimension of the required efforts (the type of efforts that could be expected from the specific OCSSP [online content service provider] at hand) and others favouring an approach based on the objective dimension of the efforts made (the type of efforts that could be expected from OCSSPs like the one at hand). In reality, it appears that the notion of 'best efforts' entails both a subjective and an objective appreciation, subject to an overarching proportionality assessment, the fundamental freedom to conduct a business, and the obligation under Article 17(9)."

This book sets out to provide an article-by-article commentary to all the provisions of the Directive, which it achieves. Since the book was published before the Directive was transposed it does not deal with the more recent developments concerning the implementation of the Directive. That said, it provides a detailed and complete coverage for those engaging with the provisions of the DSM Directive, and it will be of interest to both academics and practitioners, including legislators and courts across the EU with an interest in EU copyright harmonisation, reform and the DSM Directive