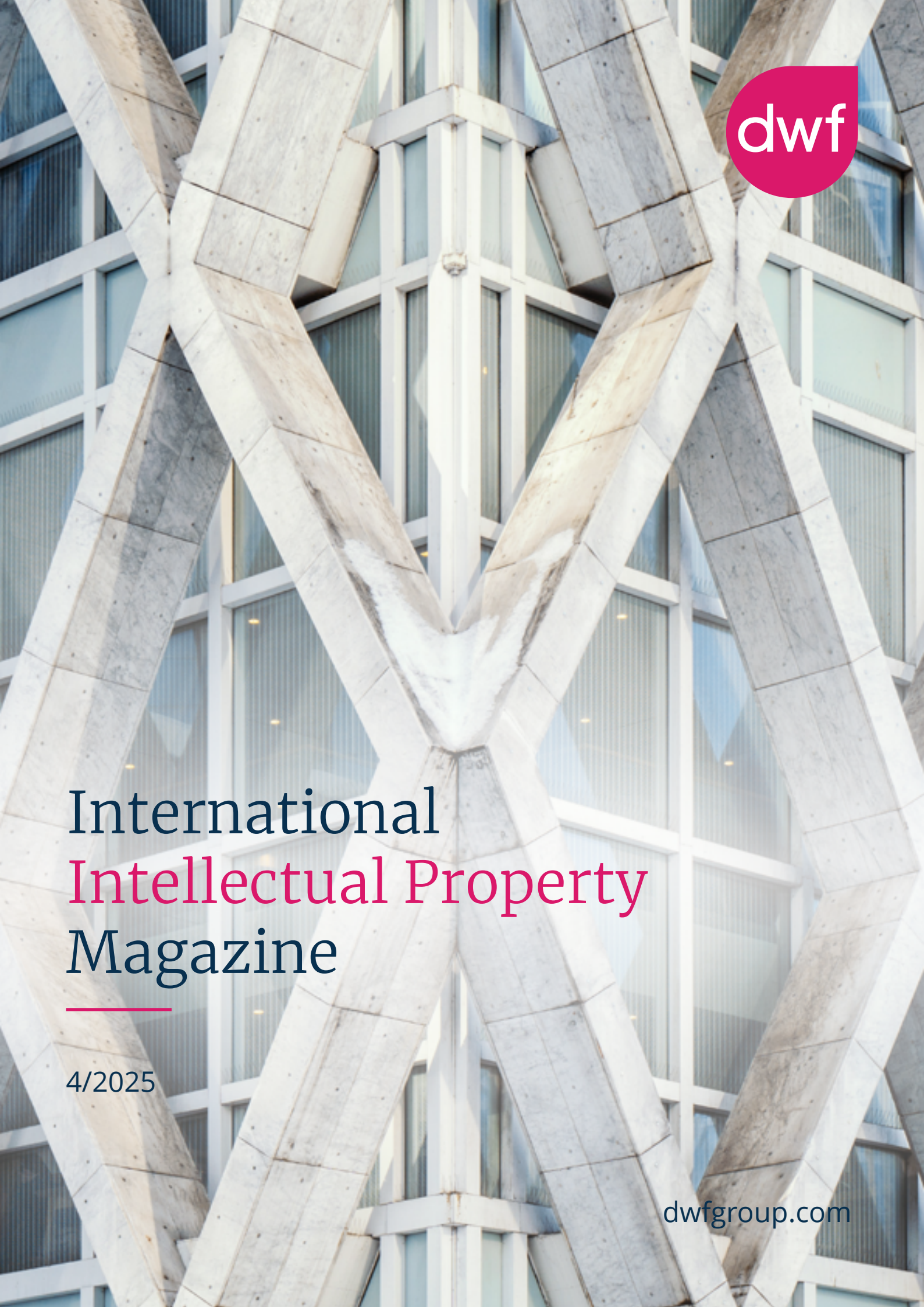


The background of the cover is a photograph of a modern building's facade. It features a complex, geometric structure made of large, light-colored concrete or stone blocks that form a series of interlocking triangles and diamonds. Behind this structure are large glass windows reflecting the sky. In the top right corner, there is a red circular logo with the white text 'dwf'.

dwf

International Intellectual Property Magazine

4/2025

dwfgroup.com

Contents

Editorial	04
Legislative Development	
EU: Consultations Relating to Transparency Requirements for AI-Generated Content	06
PL: Implementing the Data Act in Poland: Draft Act on Fair Access to and Use of Data	07
UK: Proof of Use in the UK & Protection of Comparable UK Trademarks	09
PL: Changes in Polish Legislation Regarding Digital Services in the Light of the DSA	11
IT: Amendments to the Italian Copyright Law Due to the Recent Implementation of the Italian Law on AI Systems	12
PL: Proposed Amendment to the Industrial Property Law – Better Protection of Trade Secrets in Proceedings Before the Polish Patent Office	14
Case Law	
UK: Getty Images v. Stability AI: the First major UK Ruling on Generative AI and IP Rights	17
PL: Balancing IP Rights and Market Access: Lessons from Dior v. Empik	19
DE: Balancing IP Rights and Market Access II: Distribution of Luxury Goods and Trademark Protection from the Perspective of German Case Law	21
EU: “Fight for the Crocodile: Lacoste Loses EU Opposition against EU Trademark Application for Crocodile Device Incorporating the Word TULEDUN for Footwear and Clothing” (Lacoste v. Fuzhou Kaiyi Trade Co., Ltd. Opposition No. B 3 226 341)	24

FR: The Court of Cassation Clarifies the Starting Point of the Prescription for Music Counterfeiting	27
UK: Iconix v Dream Pairs: Supreme Court Clarifies Post-Sales Confusion in landmark ruling	28
ES: Subsequent Revocation of the Opposing Trademark and its Impact on the Principle of Lis Pendens: Supreme Court Judgement of 24 September 2025	30
ES: The Distinctive Character of Numerical Trademarks: Commentary on the Supreme Court Judgment of 24 September 2025	32
EU: Dishonest Trade Mark Practices: the Invalidity of EUTMs Filed in Bad Faith Without Intention to Use – an Analysis Based on Board of Appeal Ruling R 1648/2024-1 Concerning the VACUACTIVUS (Figurative) Mark	34
FR: Towards Recognizing Blockchain as Evidence in Intellectual Property Law?	37
Other issues	
PL: From Ideas to Assets: Is Poland Ready for IP-Driven Lending?	39
UK: Don't Believe Your Eyes: Can the Law Do Anything to Combat Deepfakes?	40
DWF	46
Contacts	47

Editorial

I am delighted to welcome you to the fourth and final edition of the International Intellectual Property Magazine for this year. This publication brings together insights from colleagues across DWF's global network, reflecting the international nature of intellectual property law and the evolving challenges businesses face in protecting their ideas and brands.

As 2025 draws to a close, it is clear this has been a transformative year for IP. Generative AI dominated headlines, raising fundamental questions about copyright and inventorship. At the same time, global harmonisation initiatives advanced, and enforcement strategies adapted to an increasingly digital landscape. These developments signal a shift in how businesses must approach IP protection and strategy.

In this edition, you will find articles from our international contributors on the latest developments on intellectual property law, explored from diverse jurisdictional perspectives. We examine landmark judicial decisions and reforms in the EU and UK that are redefining how businesses protect and leverage their intellectual property.

One case that stands out is the recent UK High Court judgment in *Getty Images v Stability AI*. This landmark decision was the first in the UK to address copyright and trademark issues lined to generative artificial intelligence. The implications of this decision extend beyond the UK and could influence future approaches across Europe and globally. The case raises critical questions about how existing copyright frameworks apply to AI training and whether legislative reform is needed to balance innovation with the protection of creative works. These are not just

legal questions, but business critical issues for those using or developing AI tools and will only continue to grow in significance as generative AI continues to transform how content is created and consumed.

Looking ahead, 2026 promises further clarity on AI and copyright, continued harmonisation of IP systems, and stronger global enforcement standards. Businesses that anticipate these changes will be best positioned to protect and maximise the value of their IP assets.

As we move into the New Year, we would like to take this opportunity to thank you for your partnership and support, and to wish you a bright and successful 2026, filled with prosperity, innovation and exciting possibilities.

We hope you enjoy reading this edition and thank you for your continued engagement with our international IP network.



Asima Rana

Director, UK

E. asima.rana@dwf.law

A full-page background image of a dense, green forest. In the foreground, there are large, vibrant green trees. In the background, the forest continues up a hillside, with wisps of white mist or smoke rising from various points, creating a layered and atmospheric effect. The sky is a pale, hazy blue.

Legislative Developments

EU: Consultations Relating to Transparency Requirements for AI-Generated Content

The AI Act introduces an obligation for providers and deployers of AI systems relating to transparency. Its Article 50 addresses transparency requirements for AI-generated or AI-altered content.

Under this provision, users must be informed whenever they interact with an AI system, unless it is obvious from the context. More importantly, generative AI systems that produce synthetic audio, video, images or text will be required to mark their output in a machine-readable

format. This marking must make it possible to detect that the content was artificially generated or manipulated. The rules also extend to deepfakes and any AI-generated material intended to inform the public, such as political or news content, which must clearly disclose its artificial origin. To achieve these goals, the Act encourages the use of technical solutions such as watermarks, metadata, cryptographic provenance proofs and fingerprints. These measures aim to prevent misinformation and impersonation, while fostering trust in digital ecosystems. The transparency obligations will become legally binding on 2 August 2026.

The marking of content created with the use of AI is highly relevant to creative industries which are expected to rely on this tool in the making of their productions. The AI Act recognizes that artistic and creative works require a nuanced approach to transparency obligations. In particular, Article 50 Section 4 provides: “where the content forms part of an evidently artistic, creative, satirical, fictional or analogous work or programme, the transparency obligations set out in this paragraph are limited to disclosure of the existence of such generated or manipulated content in an appropriate manner that does not hamper the display or enjoyment of the work”.

To support the implementation of these requirements, the European Commission launched a public consultation in September 2025. This consultation sought input from stakeholders on practical aspects of marking AI-generated content. The discussion focused on technical methods for labelling, disclosure standards for deepfakes, and guidelines for informing users. The outcome of this process is the development of two key instruments: practical guidelines covering all transparency obligations under Article 50, and a dedicated Code of Practice for generative AI systems.

The Code of Practice is designed as a voluntary tool to help providers and deployers comply with the AI Act's transparency rules. Its drafting began in early November 2025 and is being coordinated by the European AI Office with the involvement of independent experts and industry representatives. The process includes workshops and consultations to ensure broad input. The timeline foresees the first draft in December 2025, a second draft in March 2026 and the final version by June 2026. This schedule allows stakeholders to prepare well ahead of the AI Act's enforcement date in August 2026.



PL: Implementing the Data Act in Poland: Draft Act on Fair Access to and Use of Data

Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 ("Data Act") entered into force on 11 January 2024 and into application on 12 September 2025. The Data Act, as a regulation, is directly applicable in all Member States, without the need for transposition into national law.

To ensure its effective enforcement at the national level, the Polish Ministry of Digital Affairs has published information about the ongoing work on a draft Act on fair access to and use of data (draft no. UC114) ("Polish Draft Act"). The Polish Draft Act aims to establish the domestic framework for the application and enforcement of the Data Act, including the designation of a competent authority and the introduction of sanctions for infringements.

European context – key takeaways from the Data Act

The Data Act forms part of the EU Data Strategy and establishes the general framework for a single market for data. Its aims are to ensure fair access and sharing of data generated by connected products and related services, foster cross-sector innovation and competition, enable portability and interoperability of data-processing services (e.g., cloud service providers), and allow public-sector access to privately held data in cases of exceptional public need.

The Data Act applies horizontally across the economy to connected products (in particular, IoT devices) and related services that collect or generate data during use. It covers both personal and non-personal data, in business-to-consumer, business-to-business and business-to-government contexts.

Among other things, the Data Act clarifies that users have the right to access and share data they generate, even when such data are held by manufacturers or service providers. Users can now access it at any time and pass it on to third parties, e.g., maintenance service providers. Data holders (manufacturers, service providers) must make such data available on fair, reasonable and non-discriminatory (FRAND) terms. Public-sector bodies may request access to data held by private entities only in cases of exceptional need, for instance to respond to a public emergency or to perform a task in the public interest, when the data cannot be obtained otherwise in

a timely and effective manner. Providers of data processing services must ensure switching and interoperability for customers. Specifically, data processing service providers must ensure switching between cloud and edge services by removing obstacles that prevent customers from terminating contracts, transferring data and achieving functional equivalence with another provider.

To enable proper application of the Data Act, each Member State must designate a competent authority (existing or new), establish penalties applicable to infringements and ensure cooperation with the European Commission and other national authorities.

Legislative work in Poland – main objectives of the Polish Draft Act

In Poland, work on the national enforcement framework is led by the Ministry of Digital Affairs. The Ministry has published information outlining the intended scope of the Polish Draft Act. In its published statement, the Ministry indicated that Polish law does not currently provide for solutions that would correspond to all the mechanisms regulated by the Data Act, and therefore it is necessary to adopt national regulations that will serve to implement the provisions of the Data Act.

According to the Ministry of Digital Affairs, key elements of the Polish Draft Act will include:

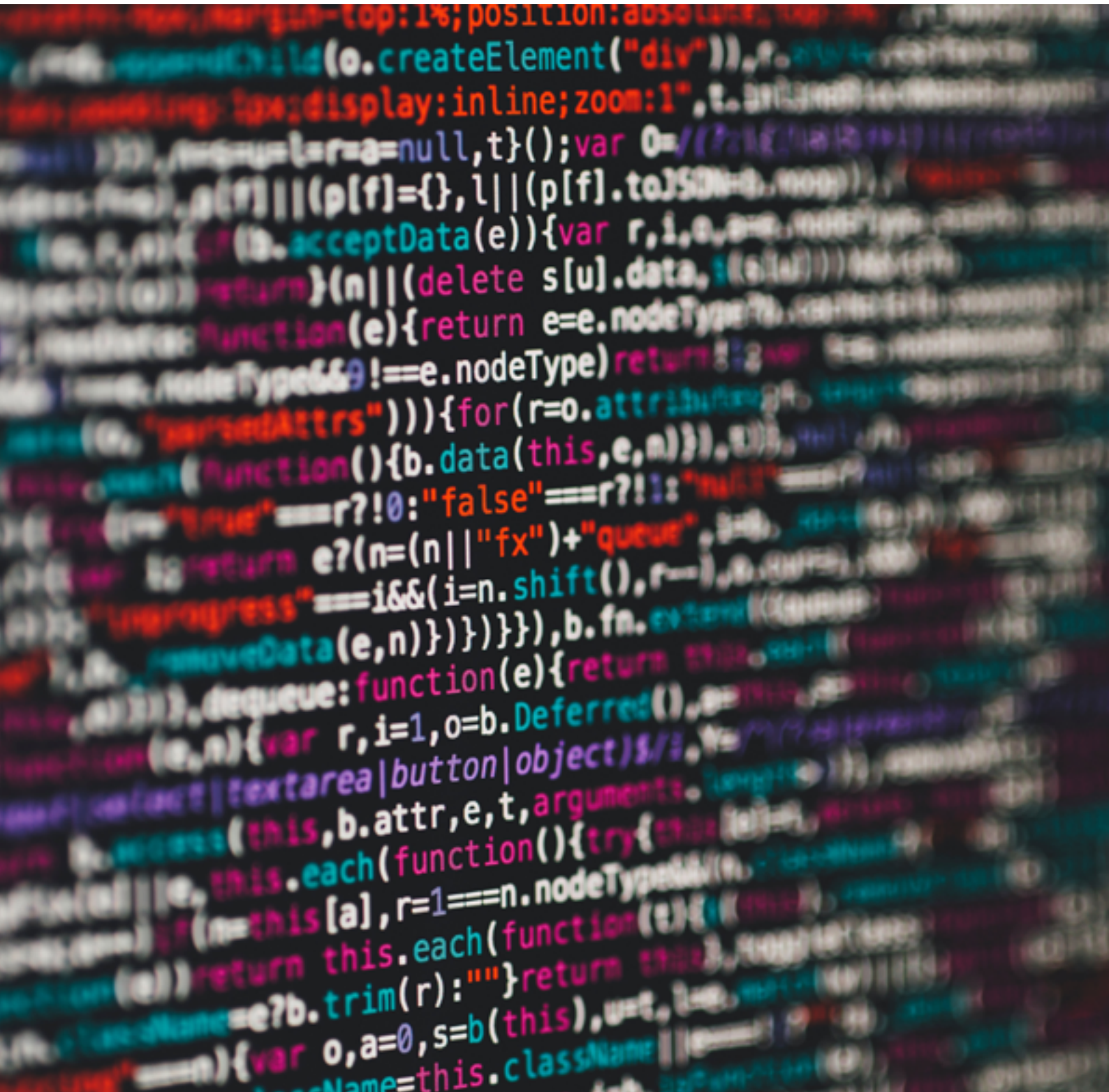
- designating the President of the Office of Electronic Communications (UKE) as the competent authority responsible for supervising compliance with the Data Act;
- introducing administrative fines for violations of the Data Act;
- providing procedural rules for handling complaints and cooperation with the European Commission and other Member States; and
- assigning information and coordination functions related to data governance at the national level.

The planned date for adoption by the Council of Ministers is Q4 2025. The Ministry of Digital Affairs is expected to publish the full text of the Polish Draft Act once the consultation phase begins.

Relevance for business practice

The Data Act applies to all entities processing data generated by connected devices or related services. This covers manufacturers of IoT devices, cloud service providers, software developers and digital platform operators. The Polish Draft Act is therefore relevant for all companies that collect or use data from connected products within Poland.

Once adopted, it will establish a national supervisory framework and sanctions system to enforce the EU rules. Businesses should monitor the legislative process and prepare to update contracts and internal procedures to ensure compliance with the new obligations on data access and sharing.



UK: Proof of Use in the UK & Protection of Comparable UK Trademarks

The clock is ticking for brand owners holding UK trademarks derived from EU registrations. From 1 January 2026, proof of use rules in the UK will tighten, ending the transitional period that allowed EU use to defend comparable UK marks. This change means that only genuine use in the UK will count when defending against non-use challenges. Unless proactive steps are taken, businesses that have relied on EU use to maintain protection risk losing trademark protection in the UK.

Current rules

On 1 January 2021, following Brexit and the UK leaving the EU, the UK Intellectual Property Office (UKIPO) automatically created standalone comparable UK trademarks, by cloning all existing EU trademark registrations. These comparable UK trademarks were recorded on the UK trademark register with the same filing and priority date as the corresponding EU trademark. This measure ensured uninterrupted protection for EU trademark owners in the UK without requiring them to file a new trademark application.

What's changing?

In the UK, a trademark owner has five years from registration to put the trademark to genuine use for the goods or services for which it is registered. After that, the trademark becomes vulnerable to revocation if there are no qualifying reasons for non-use. Any interested party may initiate such a challenge. Genuine use means real commercial exploitation of the mark, not token gestures.

Proof of use may also be required in UK proceedings, such as opposition or infringement proceedings brought by the owner of a comparable UK trademark. If the owner cannot show that the mark has been genuinely used in the course of trade for the relevant goods or services, the mark will be revoked, and the opposition or infringement action will fail.

After Brexit, the UK implemented transitional provisions to address the requirement of proving trademark "use". These rules allowed owners of comparable UK trademarks to rely on use of their marks anywhere in the European Union before 31 December 2020 in UKIPO proceedings or infringement actions, to demonstrate that the rights are valid. That grace period is coming to an end, with the ending of the transitional period on 31 December 2025.

From 1 January 2026, owners of comparable UK trademarks will no longer be able to rely on EU use to

evidence use of the mark. Owners will have to show genuine use of the mark in the UK in the last five years i.e., from 1 January 2021 to maintain and enforce their UK registered rights.

Consequences

This change can have serious consequences for owners of comparable UK trademark rights who have not used their trademarks in the UK at any time in the past five years for the relevant goods/services and relied instead on use of the mark in the EU to support their comparable UK trademark:

- **Cancellation:** From 1 January 2026, an interested third party can file an application at the UKIPO to revoke the comparable UK trademark for non-use in relation to some or all of the goods/services for which it is registered, if there has been no genuine use of the trademark in the UK over the past five years.
- **Enforceability:** Where an owner of a comparable UK trademark relies on the mark in any opposition or infringement proceedings, it may be put to proof of genuine use of the mark. If use of the trademark cannot be demonstrated in the UK from 1 January 2021, the mark may be cancelled for lack of use, resulting in the opposition or infringement claim failing.
- **Protection:** If the comparable UK trademark is revoked for non-use, the owner will lose the benefit of the cloned filing and priority date of the corresponding EU trademark and be unable to prevent later third-party UK applications.

Practical tips for brand owners

Brand owners should take proactive steps to ensure their comparable UK trade marks remain enforceable and protected. Some key actions to consider are:

1. **Audit portfolio:** Review all comparable UK trademarks, and identify those with little or no use in the UK between 2021-2025 in relation to all of the goods/services set out in the specification. This will assist in identifying any vulnerability in protection. Create an action plan for any at-risk marks.
2. **Start UK use:** Where a comparable UK trademark has not been used, take steps to use the mark in the UK as soon as possible, ensuring that this is genuine commercial use.
3. **Gather evidence:** Any UK opposition or infringement proceedings filed after 31 December 2025 relying only

on a comparable UK trademark, are likely to result in a request for proof of use. Ensure that evidence of use of the mark in the UK is ready if needed.

4. **Consider re-filing:** If UK use is not feasible, consider filing a new UK application with a narrower specification. This will reset the non-use clock and maintain protection, however the application will have a later filing date which could potentially open up the application to challenge by a third party.

Businesses should act before 31 December 2025 deadline to protect their brand and avoid losing valuable rights when the rules change.



PL: Changes in Polish Legislation Regarding Digital Services in the Light of the DSA

The Digital Services Act (DSA) is an EU regulation, and as such does not require implementation to apply in Poland. However, certain provisions of the DSA require action to be taken on the part of each Member State to secure internal control over enforcement of its provisions. These fields of regulation include appointment of a coordinator for digital services, creating an oversight mechanism for intermediary service providers (including online platforms), or determining the rules regarding penalties for violating the DSA.

As of November 2025, Poland remains one of only five European Union countries that have not fully implemented the provisions of the DSA. The European Commission is increasing pressure on Warsaw and initiated proceedings before the Court of Justice of the EU to enforce implementation. These proceedings, alongside Poland, include also Czechia, Cyprus, Spain and Portugal. The responsibility for implementing the regulations lies with the Ministry of Digital Affairs and the Council of Ministers. It is emphasized that the lack of consistent DSA enforcement in Member States weakens the EU's ability to uniformly regulate tech giants and protect citizens' digital rights.

In Poland it is the Act on Provision of Electronic Services that regulates the principles of the digital market. This law contains the implementation of the E-Commerce Directive of 2000. For this reason, the government has been working on implementation of the required DSA functionalities by way of amending the Act on Provision of Electronic Services. As mentioned above, the works are, however, delayed – the DSA requires that all necessary changes in the local law were made by February 2024.

On 29 September 2025, the draft implementation was filed with the Polish Parliament, and the works continue there, as are discussions regarding the government's proposals. Recently, a public hearing took place in the Parliament regarding the proposed provisions.

The discussions that are taking place with respect to the proposed implementation are intense since the government's draft provides for the addition of a mechanism to the Act on the Provision of Electronic Services that would allow for the blocking of online content by means of administrative decisions.

As the Ministry of Digital Affairs explains, the proposed procedure, in which the designated administrative body issues orders to block content that violates personal rights

or constitutes a prohibited act, is intended to protect the rights of individuals. The priority is to prevent prohibited acts and protect personal rights, regardless of whether violations occur online or in the real world. The procedure focuses solely on assessing the legality of the content in question, not on determining the responsibility of the internet user who published it. Its purpose is to establish whether the content is unlawful, not to punish the author (i.e., the person who published the content). At the same time, the draft provides for the protection of freedom of speech – in situations where an online platform mistakenly removes content deemed illegal, the Polish Digital Services Coordinator will be able to issue an order to restore such content. This mechanism, as the Ministry emphasizes, guarantees that freedom of speech will be appropriately safeguarded.

Despite these explanations the critiques of this proposed solution state that it should be for the courts to decide as to whether any content should be blocked or not, as there are relevant mechanisms for that. In this context it is worth referring to the provisions of Article 8.3 of the Copyright and Information Society Directive 2001/29/EC, according to which Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. On this basis and as supported by the relevant national provisions, blocking of websites infringing upon copyright or related right is ordered. The critiques also emphasize that allowing an administrative body to issue blocking decisions would be against freedom of speech. The government is of a different view, noting that freedom of speech, although crucial, cannot justify actions that infringe on the rights of others.

The final shape of the new provisions of the Act on Provision of Electronic Services remains to be agreed on in Parliament. After the Parliament passes the law, the new provisions will await the signature of the President of the Republic of Poland.

IT: Amendments to the Italian Copyright Law Due to the Recent Implementation of the Italian Law on AI Systems

On 25 September 2025, Italian Law No. 132 dated 23 September 2025, concerning “Provisions and Delegations to the Italian Government on Artificial Intelligence” was published in the Official Gazette No. 223 (Italian AI Law). The Italian AI Law entered into force on 10 October 2025.

The Italian AI Law is an important set of provisions aimed at i) identifying national strategies on artificial intelligence (AI), ii) providing provisions related to the application and adoption of AI systems, and iii) regulating their use in certain specific sectors. From a technical perspective, the Italian AI Law implements and amends the Italian Copyright Law No. 633/1941 (Italian Copyright Law), providing clarifications on the use of AI for the creation of new works, for text and data mining, and for certain cases concerning copyright infringement.

In particular, Article 1 of the Italian Copyright Law concerning creative works, has been amended by the Italian AI Law as follows (additions in bold): “Works of human ingenuity having a creative character and belonging to literature, music, figurative arts, architecture, theatre and cinematography sectors, regardless of their manner or form of expression, are protected under this law, **even when they are created with the support of artificial intelligence tools, provided that they constitute the result of the author’s intellectual work** [...]”

In light of the above, the “human” character of the work becomes essential in the definition of a work of authorship. The use of generative AI tools is permitted for creation, but only where there has been a human contribution.

This definition recalls a recent ruling by the Italian Supreme Court (No. 1107/2023), in which one of the grounds of appeal concerned the presence or absence of creativity in a work generated through the support of software. Although the Italian Supreme Court declared the appeal inadmissible on procedural grounds, it nonetheless stated that, in order to verify the actual existence of the “creativity” requirement provided by the Italian Copyright Law, it would have been necessary “to ascertain whether and to what extent the use of the software had absorbed the creative elaboration of the artist who had used it”.

The above decision is an important pillar when it comes to providing a criteria for evaluating the human creativity

of the works created by AI Systems. Therefore, it will be interesting to consider how the Italian Courts consider this new requirement in the future and what threshold of “human” creativity will be required when AI tools are involved. The spread of AI has given rise to new “hybrid” figures who master these tools through artistic and technological knowledge, sometimes without any “direct” human input on the work.

For example, there are many platforms that allow users to create music through AI Systems. Among others, the Sumo AI platform allows the user to create songs by describing the desired output in natural language, meaning that the more precise the description, the closer the output will be to the user’s “idea”. AI-generated musical works can also originate from the human creativity of users who provide their own content – such as lyrics, musical themes, audio recordings – protected by copyright.

With the entry into force of the Italian AI Law, the Italian Courts will be called upon to determine whether the “human” contribution should be assessed solely in terms of the “direct” manifestation of the work, or whether advanced use of AI tools (for example, where the human contribution consists in selecting specific parameters or values in technical software) may also contribute to the human character of the work.

Special situations may arise when human intervention concerns only part of the elements that make up the work as a whole. For example, song lyrics written by a human author whose music is AI generated, or scripts written by a human author for a video created using AI, or books only partially produced through human ingenuity.

In this context, agreements between platforms and end users become crucial. For instance, under the terms and conditions of the aforementioned Suno AI platform, music created with free subscriptions belongs to the platform, while there appears to be no recognition for the human author’s creative contribution.

There are already examples of fictional characters entirely created with AI and used in highly successful commercial products. Recently, with the growing efficiency of video generation, an ever-increasing number of AI-generated models or actors have “emerged”, such as Tilly Norwood, the protagonist of clips entirely created using generative AI (for example, using ChatGPT to write the script). In the IT

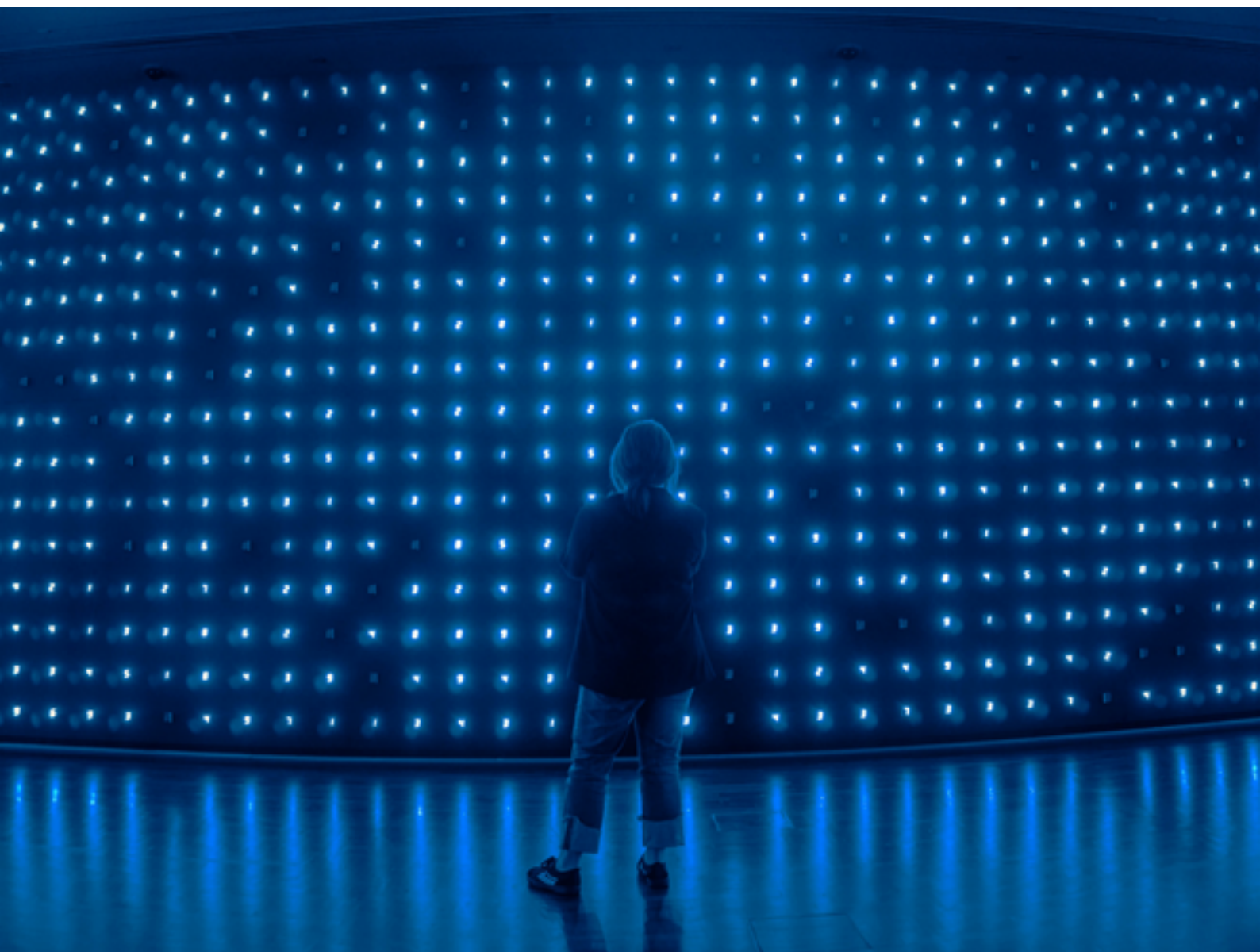
field, “Vibe coding” refers to techniques for creating code through AI, starting from natural language prompts and thus enabling software development even for those with limited technical skills.

Another innovation concerns the introduction of Article 70-septies of the Italian Copyright Law, which regulates the use of AI tools for text and data mining. The new Article states that: “Without prejudice to the provisions of the Berne Convention for the Protection of Literary and Artistic Works, ratified and implemented under Law No. 399 of 20 June 1978, reproductions and extractions from works or other materials available online or in databases to which lawful access has been obtained, for the purpose of text and data mining through artificial intelligence models and systems, including generative AI, are permitted in accordance with Articles 70-ter and 70-quarter”.

This provision allows AI systems to extract texts and data exclusively for scientific research purposes and in cases where the use of works has not been expressly reserved by the rights holder.

Text and data mining activity is therefore permitted as long as rights holders have not expressly reserved the possibility of using their content for training through the so-called “opt-out”. Extraction for scientific purposes may also take place without the rights holders’ authorisation, but in both cases, access to the works must have been lawful.

Finally, a new sanctioning provision has been added to Article 171 of the Italian Copyright Law, which sets out criminal and administrative penalties in cases of artistic plagiarism. With the introduction of letter *a-ter*) in paragraph 1 of Article 171 of the Italian Copyright Law, a penalty is provided for anyone who, without entitlement, for any purpose and in any form reproduces or extracts text or data from works or other materials available online or in databases in violation of Articles 70-ter and 70-quarter of Italian Copyright Law, including through artificial intelligence systems.



PL: Proposed Amendment to the Industrial Property Law – Better Protection of Trade Secrets in Proceedings Before the Polish Patent Office

The Polish Minister of Finance and Economy proposed a draft amendment to the Industrial Property Law (“IPL”) dated 8 September 2025. The purpose of the proposed amendment to the IPL is to introduce regulations concerning the protection of trade secrets in proceedings before the Polish Patent Office (“PPO”), to the extent that it is necessary to submit materials to prove the use of the trademark, the disclosure of which may result in the disclosure of trade secrets.

Present state

Currently, the IPL does not regulate issues related to the protection of trade secrets in proceedings before the PPO. With regard to contentious proceedings, the IPL provides for the possibility of excluding the hearing from public access if the parties invoke legally protected information, e.g., trade secrets. Such exclusion may not extend to the presence of the parties at the hearing.

Which proceedings will be affected by the changes?

The proposed changes will apply to:

- Trademark opposition proceedings and trademark cancellation proceedings based on an earlier trademark, where non-use of the earlier mark is raised;
- Trademark revocation proceedings due to non-use.

In each of the above cases, the burden of proof regarding the actual use of the trademark rests with the holder of the trademark protection right whose use is being challenged.

How will this work in practice?

A decision to restrict access to materials and evidence will require a prior request from the entrepreneur entitled to the trademark protection right, the use of which is being questioned. The entrepreneur will have to demonstrate that there are grounds for classifying certain information as a trade secret. As the IPL does not contain a definition of trade secrets, they will be interpreted in accordance with the provisions of the Act on Combating Unfair Competition of 1993. According to this Act, trade secrets mean technical, technological, organizational information of an enterprise, or other information of economic value which, as a whole or in a specific combination and collection of its elements,

is not generally known to persons normally dealing with this type of information or is not readily available to such persons, provided that the person entitled to use or dispose of the information has taken, with due diligence, measures to keep it confidential.

The request should specify precisely which information should be protected as a trade secret or other legally protected secret and why. A general statement that the information constitutes, for example, a trade secret will not be sufficient, as a relevant justification should be provided for each piece of information or category of information. In addition, it will be necessary to demonstrate that the entrepreneur has taken all steps to protect this information or category of information and that it has not been disclosed to the public. Consequently, two versions of the documentation will be submitted with the application: a confidential version and a non-confidential version, which may be delivered to the other party to the proceedings. Each attachment should include a note indicating whether it contains confidential information or whether it does not contain information that is to be restricted.

If the PPO finds the request is justified, it may issue a decision restricting access to materials and evidence; however, this restriction does not apply to information relevant to resolving the case. Concealing such information from another party would violate that party's right of defense, particularly due to the adversarial nature of proceedings before the PPO. The proposed changes permit restricting access to evidence on the grounds of protecting trade secrets only when necessary. When deciding whether to restrict access to evidence, the PPO must consider the rights of both parties, excluding the option to withhold information essential for case resolution. Because the assessment of what is relevant to the case may change during proceedings, there is an option to amend decisions

regarding restricted access to materials and evidence. Before issuing a decision to amend a decision restricting the right to inspect materials and evidence, the PPO will request the party to take a position. At that point, the party requesting that certain information be restricted will have the opportunity to comment on the relevance of that information and the validity of removing the protection.

When will the new regulations come into force?

The new regulations will affect trademark oppositions, cancellation where non-use of the earlier mark is raised and revocation for non-use requests, if filed after the

amended provisions take effect. These provisions will come into force six months after publication.

Comments

The proposed draft is a positive step toward improving the protection of companies in proceedings before the PPO. The draft is still at an early stage of the legislative process and has been submitted for review and public consultation. Although the deadline for submitting comments has passed, namely 13 November 2025, they have not yet been made public.



An aerial photograph of a rural landscape featuring various agricultural fields in shades of brown, green, and yellow. A light-colored road or path runs diagonally across the middle of the image. A white rectangular text box is positioned in the upper right quadrant, containing the text 'Case Law'.

Case Law

UK: Getty Images v. Stability AI: the First Major UK Ruling on Generative AI and IP Rights

The judgment, long anticipated to draw clear boundaries between the rights of content creators and AI providers, represents a win on points for the latter, but the story will not end there. Read our insight to find out more.

Case background

Getty Images – the Seattle-based stock photo agency – sued Stability AI in London, alleging its Stable Diffusion image generator had been “trained” on Getty’s copyrighted works without permission. Getty claimed that roughly 12 million Getty images were copied (or “scraped”) from its websites to train the AI model. The suit asserted three main infringements: that copying Getty’s images for training violated copyright; that certain AI-generated outputs allegedly reproduced Getty images (and even Getty’s watermarks); and that distributing the Stable Diffusion model in the UK (via online downloads) amounted to secondary infringement. Stability AI countered that all training took place outside the UK, so UK law did not apply, and argued that any infringement (if at all) would be attributable to end users or was protected as fair dealing.

High Court ruling

With Getty having withdrawn its primary copyright allegations, Justice Joanna Smith’s judgment of 4 November 2025 considered only the remaining issues of secondary infringement and trade marks. The court held that Stable Diffusion does not infringe Getty’s copyright, since it “does not store or reproduce any Copyright Works (and has never done so)”. In other words, the AI model itself could not be an infringing “copy” under UK law. The only partial success for Getty was on trade marks: some Stable Diffusion outputs containing Getty’s watermark infringed Getty’s registered marks. Even then, the judgment emphasised this was “both historic and extremely limited in scope”. The findings related exclusively to a very small number of outputs generated by early versions of Stable Diffusion; there was no evidence before the Court that the current versions of the system produce such watermarked images. All other claims (including a passing-off claim) were either withdrawn before trial or did not succeed at trial.

Implications and next steps

The ruling is widely seen as a mixed victory. AI companies hailed it as clarification that model training (outside

the UK) does not, by itself, breach UK copyright. Getty and its supporters view it as a warning: “copyright owners’ exclusive right to reap what they have sown has been avoided on a technicality,” as one lawyer noted. Commentators agree the overarching legal question – can using third party works to teach an AI model infringe copyrights – remains unanswered. As Justice Smith noted, the court could only decide the “diminished” case that remained and could not consider any related issues.

In practice, the decision puts further pressure on policymakers. In a post-judgment statement, Getty urged governments to impose stronger transparency rules for AI training data. The case will proceed on other fronts – Getty has a related lawsuit pending in the U.S. – but for UK IP law there are now (narrow) precedents:

Where AI-generated outputs reproduce registered trade marks, conventional principles of trade mark infringement will apply.

By contrast, if an intangible AI model does not store or reproduce protected creative works (or databases), both copyright and database infringement claims are likely to face significant hurdles; mere use of such materials for training outside the UK, alone, will not be sufficient.

Businesses and creators will be closely watching this shifting and uncertain legal landscape. Recent debates on the UK Data (Use and Access) Bill (the ‘AI Bill’) – including repeated government defeats in the House of Lords over AI data scraping – underline how contested this question now is. With Parliament, Government and the courts sending slightly different signals, the UK position on AI training and scraping remains fluid and unpredictable.

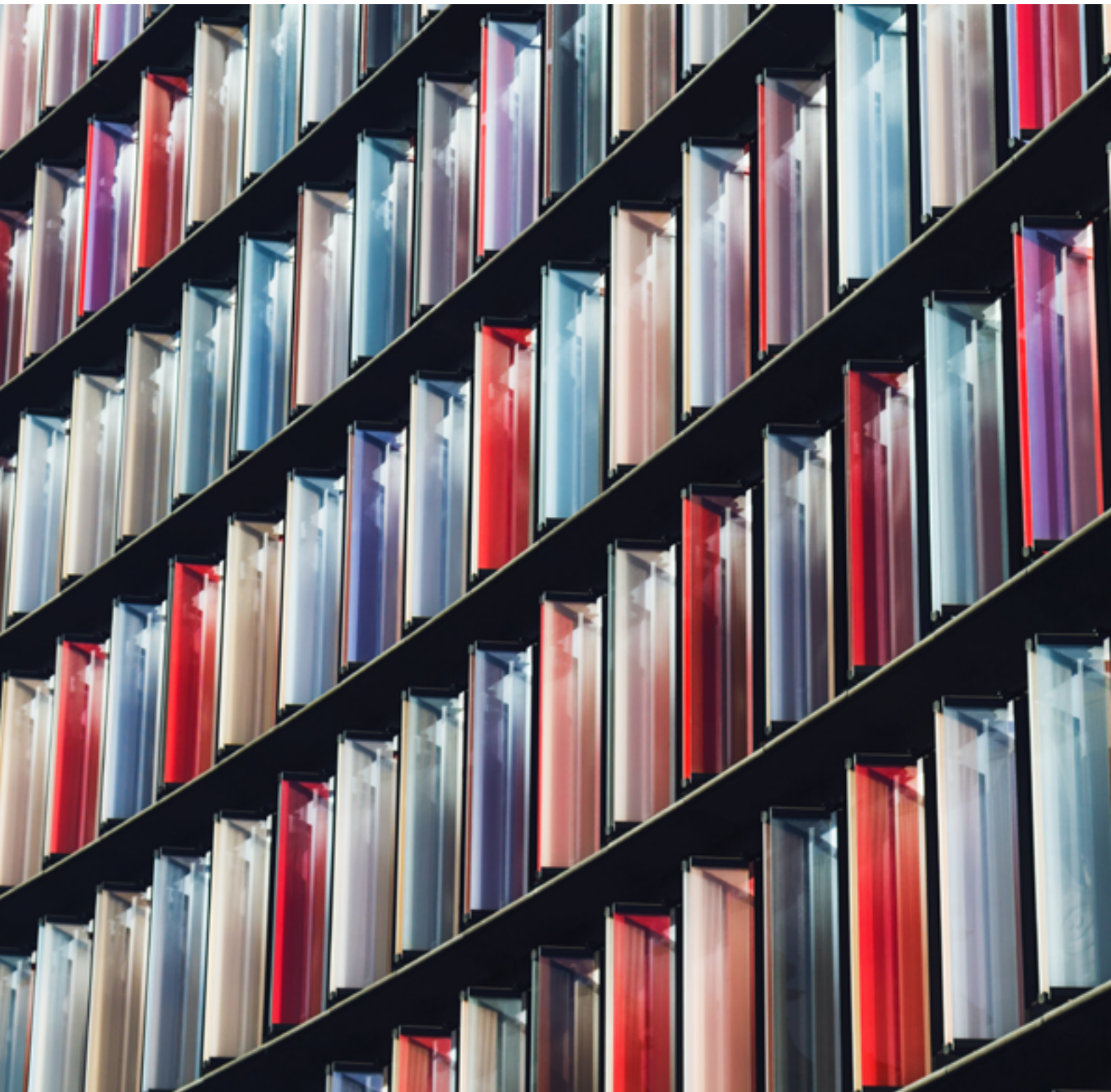
Key takeaways

- A win for Stability AI. Getty Images dropped its core copyright claims mid-trial, and the High Court ruled that Stable Diffusion’s AI “does not store or reproduce any copyright works”. In short, Getty’s attempt to treat the AI model itself as an infringing copy was rejected.
- The court found limited trade mark infringement: some AI-generated images carrying Getty’s watermark breached Getty’s marks. However, Justice Smith stressed these findings were “historic and extremely limited in scope” – affecting only early versions of the model’s outputs. All other

claims (including passing off and a secondary copyright claim) were dismissed or abandoned.

- This was not the landmark case to clarify the law that many were hoping for. With Getty's primary

claims withdrawn, the court was unable to rule on whether using copyrighted images to train an AI model within the UK infringes copyright. Commentators are calling for (and continue to await) clarity from the Courts and/or Parliament.



PL: Balancing IP Rights and Market Access: Lessons from Dior v. Empik

In July 2025, the Polish Supreme Court delivered a landmark decision in the Dior v. Empik case (II CSKP 275/23), offering important guidance on the extent of brand owners' control over sales outside authorized distribution networks in the luxury goods sector. The decision draws on Polish fair competition law, which prohibits conduct contrary to law or good market practices where such conduct threatens or infringes the interests of another entrepreneur or consumer. Among the practices deemed unlawful is so-called "parasitism", a concept not expressly defined in legislation but well established in case law.

Background

The case arose from Empik, a leading Polish retailer, selling Dior perfumes and cosmetics outside Dior's selective distribution network. Dior and its exclusive Polish distributor initiated proceedings, seeking to stop Empik from selling Dior products online. They based their claims on trademark infringement and a breach of fair competition rules. They argued that such sales undermined the "aura of luxury" associated with Dior and amounted to both trademark infringement and unfair competition.

Lower Court proceedings

The Regional Court dismissed the claims, finding no harm to Dior's trademark reputation or evidence of unfair competition. The court emphasized that Dior's trademark rights were exhausted, meaning Empik was entitled to resell genuine goods. Further, Dior failed to demonstrate that its distribution system complied with the EU principle of free movement of goods.

The Court of Appeal took a different view, holding that Empik had not proven exhaustion of trademark rights, as it could not show that the products were sourced from an authorized party or with Dior's consent. The court found that Empik infringed Dior's trademark rights and committed an act of unfair competition, namely "parasitism", and ordered Empik to cease online sales of Dior products, and withdraw them from the market.

Supreme Court ruling

On further appeal, the Supreme Court's review was limited due to procedural reasons: the cassation appeal was only

partially admitted for consideration, with some claims excluded on formal grounds. As a result, the Supreme Court focused exclusively on whether Empik's sale of Dior products outside the authorized distribution network constituted an act of unfair competition, and specifically, "parasitism."

The court analyzed the definition of "parasitism" as established in Polish case law, concluding that it requires leveraging another's reputation to promote one's own, similar products. The court noted that Empik was selling original Dior goods. As such, the conduct did not fit the established understanding of "parasitism", which is predicated on exploiting the goodwill of another to build one's own competing product.

The Supreme Court further examined whether Empik's actions could be classified as any other unnamed act of unfair competition under the general clause of the Act on Combating Unfair Competition. The court found that Empik's conduct was neither contrary to law nor to good commercial practice. The judges stressed that unfair competition law is not intended to eliminate all forms of competition or to serve as a tool for maintaining a dominant market position by authorized distributors. Instead, the law is designed to balance the interests of entrepreneurs and consumers alike.

Importantly, the Court highlighted that competition, even if it negatively affects another business's profits or market share, should generally be viewed positively, as it drives improvements in quality, price and consumer choice. The existence of competitively priced online stores may challenge traditional retailers, but this alone does not justify restricting legitimate parallel trade.



Consequently, the court overturned the decision of the Court of Appeal and referred the case for further consideration, underscoring the need to protect both fair competition and consumer access in the luxury goods market.

Key takeaways

The Supreme Court's decision draws a clear line regarding the extent of brand owners' control over their distribution networks, confirming that selective distribution cannot be used as a tool to unduly restrict competition. Importantly, the Supreme Court made it clear that the sale of genuine branded products outside authorized distribution

networks does not, in itself, amount to unfair competition. Therefore, the ruling confirms that fair competition rules in Poland are not intended to provide brand owners with an alternative means of limiting sales beyond their authorized channels.

Sources:

<https://www.sn.pl/wyszukiwanie/SitePages/orzeczenia.aspx?ItemSID=155335-6e9ffc09-7b83-4b3d-8c04-f640e774865f&ListName=Orzeczenia3&Sygnatura=II+CSKP+275%2f23>

https://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=729-b6b3e804-2752-4c7d-bcb4-7586782a1315&ListName=Komunikaty_o_sprawach

DE: Balancing IP Rights and Market Access II: Distribution of Luxury Goods and Trademark Protection from the Perspective of German Case Law

Enterprises selling luxury goods strive for exclusivity, a strong prestige image and high prices. To this end, they rely on strict brand management and fine-tuned selective distribution channels, all with the purpose of cultivating a prestigious aura around their goods that justifies premium pricing and fuels consumer desire. In this IP Bulletin, we present the decision of the Polish Supreme Court in the Dior v. Empik case (II CSKP 275/23), which provides guidance to luxury enterprises on the pitfalls of protecting their selective distribution systems in Poland. The present article explores these pitfalls from the perspective of German case law.

Protecting selective distribution systems based on unfair trade practices law

For procedural reasons, the decision of Polish Supreme Court in the Dior v. Empik case rests on Polish fair competition law, and the Polish Supreme Court held that the online sales activities of Empik did not constitute unlawful “parasitism” under Polish fair competition law. From the perspective of German law, the outcome would be the same.

Like Polish law, the German Act Against Unfair Competition (UWG) recognises the offence of unfair free riding. In line with Polish law practice, German courts only apply this concept to the imitation of a competitor’s goods or services, if additional elements of unfairness are present, such as deception of consumers regarding the commercial origin of the goods and services, or impairment of the reputation of the imitated goods or services (cf. Section 4 (3) UWG). The distribution of original products by outsiders of a selective distribution system is not covered by this concept.

Beyond the factual setting of the Dior v. Empik case, German courts have awarded luxury enterprises and participants in a selective distribution system a claim against unauthorized resellers based on the concept of unlawful obstruction of trade (violation of section 4 (4) UWG) in the following circumstances:

- The luxury enterprise or participant in a selective distribution system can prove that the outsider deliberately induced a tied distributor to supply

the luxury goods in breach of the distribution restrictions imposed on the tied distributor under the selective distribution contract.

- The luxury enterprise has applied control codes or numbers to the luxury goods in question to trace the distribution channels of these goods and the outsider has removed these codes or numbers to obstruct tracing of the goods.

It is worth noting that an unlawful obstruction of trade will not be recognized by German courts, if the initiative to sell the luxury goods came from an authorized distributor itself (or if this cannot be ruled out). Likewise, resale of the luxury goods by unauthorized resellers is not by itself considered as violating the UWG. Further, an unlawful obstruction of trade will not be recognized by German courts if the luxury enterprise or participant in the selective distribution system cannot prove that the agreed distribution ties conform to applicable antitrust law.

Protecting selective distribution systems based on trademark law

For procedural reasons, the Polish Supreme Court did not consider trademark claims in the Dior v. Empik case. However, such claims were considered in the previous court instances (Regional Court and Court of Appeals) with diverging outcomes. Based on the facts outlined in the decision of the Polish Supreme Court – and assuming the case is subject to German trademark law – it seems likely that a German court would ultimately have recognized a claim for trademark infringement of Dior against Empik.

Legal bases

Depending on whether the trademarks in dispute are national or EU trademarks, German courts would assess claims for trademark infringement under the German Trademark Act (Markengesetz – MarkenG) and/or the EU Community Trademark Regulation (CTMR) along two key principles:

- Art. 15 CTMR and section 24 (1) MarkenG codify the so-called trademark exhaustion principle, whereby the trademark owner's rights to restrict further distribution of a trademarked product are exhausted once that product has been sold within the European Economic Area (EEA) by the trademark owner directly or indirectly with consent of the trademark owner.
- By way of exception, Art. 15 (2) CTMR and section 24 (2) MarkenG provide that the trademark owner may still object against the further distribution of the trademarked goods for legitimate reasons, such as when the condition of the trademarked goods is altered or their reputation is damaged.

Burden of proof rules for trademark infringement and trademark exhaustion

In its decision of 15 October 2020 (matter I ZR 147/18) regarding parallel imports [“Querlieferungen”], the Federal Court of Justice (Bundesgerichtshof – BGH) has set a key precedent for the burden of proof rules to be applied by German courts with respect to trademark infringement and trademark exhaustion in the context of exclusive and selective distribution agreements. These rules are as follows:

- The plaintiff must initially substantiate a trademark infringement (in the case at hand: use of the identical trademark in dispute on identical goods without consent of the trademark owner).
- Trademark exhaustion will be examined by German courts only if invoked by the defendant as a defense. To this end the defendant must demonstrate that the goods were placed on the market within the EEA by the trademark owner directly or indirectly with consent of the trademark owner. As a rule, this will require the defendant to disclose the source and circumstances of supply regarding the incriminated goods.
- A modified burden of proof rule applies, if the defendant can demonstrate that the trademark owner uses an exclusive distribution or a selective distribution system with price differences between EU member states and contractual restrictions on cross-border deliveries. According to the BGH, such a setting raises a rebuttable presumption of market foreclosure. The defendant is then relieved from the burden to disclose the source and circumstances of supply of the incriminated goods, and the plaintiff must rebut the presumption of market foreclosure by showing other causes for the price differences

(e.g., differences in levels of appreciation, purchasing power, taxation) or absence of market foreclosure.

- The court stressed further that selective distribution systems do not per se have an effect of market foreclosure, and that such effect must be assessed on the merits of the individual case.

The Polish Supreme Court decision suggests that Empik had not purchased the Dior branded products from Dior directly and had not disclosed the third-party source of the Dior branded products. Pursuant to the burden of proof rules set by the BGH, a German court would examine whether Empik had presented sufficient evidence to hold that Dior had established a selective distribution system with an effect of market foreclosure. Depending on the outcome of this assessment, a German court might either have confirmed an exhaustion of Dior's trademark rights – if a market foreclosure effect was found – or a trademark infringement without exhaustion of trademark rights.

Opposition right despite trademark exhaustion

Applying German case law to the Dior v. Empik setting, it is likely that German courts would hold that Dior was entitled to oppose Empik's online sales activities even if it was to be assumed that Dior's trademark rights were exhausted.

Following the decision of the ECJ in the Copad SA v Christian Dior couture SA case (Judgment of 23 April 2009, matter no. C-59/08), German courts accept that owners of luxury brands may oppose resales activities of outsiders to selective distribution systems in cases where the luxury aura and quality standards of the trademarked goods is impaired significantly when compared with the sales practices of the selective distribution system. The significance of impairment is assessed on a case-by-case basis with varying outcomes.

A court decision confirming a significant impairment is a case decided by the Higher Regional Court (OLG) Düsseldorf on 06.03.2018 (matter no. I-20 U 113/17). This case concerned a trademark dispute between the German subsidiary of a Japanese manufacturer of high-end cosmetics distributed through a strictly regulated selective distribution system. The defendant operated a large retail chain in Germany, including supermarkets and an online platform selling a wide range of products besides cosmetics. The OLG Düsseldorf found a significant risk of damaging the reputation of the trademarks in dispute. It highlighted that the selective distribution system of the plaintiff aimed at presenting the products in a manner preserving their exclusivity and luxury image, including online shops with detailed product descriptions and a focus on cosmetics alone. In contrast, the court found the defendant's website and department stores to offer the cosmetics only alongside mass-market, low-price goods in a non-exclusive, discount-oriented environment with widespread price promotions and financing options. It concluded that this presentation diminished the luxury aura and quality standards of the branded

cosmetic products, justifying the plaintiff's right to oppose trademark exhaustion.

Other court decisions did not find a substantial impairment of the luxury aura and quality standards of the goods in comparison to the sales practices of the trademark owners and other participants of the selective distribution system. Examples are:

- Resale of original "JOOP!" and "DAVIDOFF" branded perfumes by an unauthorized reseller who shipped the perfumes in cartons bearing these trademarks alongside others, including a misspelled brand ("Jean Paul Gautier" instead of "Jean Paul Gaultier") and the slogan "beauty for less": The BGH held in this case that use of the cartons did not impair the trademarks' origin function, distinctiveness, or reputation in any relevant manner (BGH decision of 28 July 2018, matter No. I ZR 221/16 – Beauty for Less).
- Resale of original "M.G." branded cosmetics by an unauthorized UK based reseller operating an online beauty product shop targeting the German market: The Higher Regional Court (OLG) Munich held in this case that the plaintiff had failed to demonstrate that the defendant's online resale activities damaged the brand as it found these sales practices, including online sales and price discounts, comparable to those of the participants to the plaintiff's selective distribution system (OLG Munich decision of 26 June 2025 – 6 U 2795/23).

The setting in the Dior vs. Empik case appears comparable to the decision by the OLG Düsseldorf on 06.03.2018

(matter no. I-20 U 113/17), as Empik operated a website that offers cosmetics only alongside mass-market goods in a non-exclusive environment. Therefore, a German court may have held that this presentation diminished the luxury aura and quality standards of the Dior branded products, justifying Dior's right to oppose trademark exhaustion.

Key takeaways

Similar to Polish law according to the Supreme Court's decision in the Dior vs. Empik case, brand management and selective distribution do not, by themselves, shield luxury enterprises against resales of branded products by outsiders to the selective distribution system under German law.

Luxury enterprises and participants in their selective distribution system may take action against outsiders based on German law on unfair trade practices, if they can prove that the outsider deliberately induced a tied distributor to supply the luxury goods in breach of the distribution restrictions imposed on the tied distributor, or if the outsider has removed control codes or numbers applied by the luxury enterprise to trace the distribution channels of the goods. Further, luxury enterprises may act against outsiders based on German or European trademark law provided they can demonstrate that the outsider's resale activities diminish the luxury aura of the branded products in a significant manner. This will require a comparison with the sales practices of the selective distribution system and an assessment on a case-by-case basis.



EU: “Fight for the Crocodile: Lacoste Loses EU Opposition against EU Trademark Application for Crocodile Device Incorporating the Word TULEDUN for Footwear and Clothing” (Lacoste v. Fuzhou Kaiyi Trade Co., Ltd. Opposition No. B 3 226 341)

Lacoste, a premium brand loved by athletes and trendsetters alike and embodying sporty elegance, was founded in 1933 by René Lacoste, a tennis champion, and André Gillier. It is the company that elevated the popular polo shirt to the status of a wardrobe must-have and was one of the first brands to place a logo on clothing – the iconic green crocodile on the chest of the shirt. Lacoste has actively protected its famous trademarks from the very beginning and has been involved in numerous intellectual property (IP) disputes, primarily concerning its distinctive and renowned crocodile logo.

The Opposition

Lacoste filed an opposition on 29 October 2025 against all the goods covered by European Union trade mark application No. 19 058 033 (figurative mark) filed by Fuzhou Kaiyi Trade Co., Ltd, namely for footwear; shoes; sports shoes; slippers; sandals; football shoes; beach shoes; half-boots; boots for sports; clothing; gloves; jerseys [clothing]; dresses; stuff jackets [clothing]; coats; wristbands [clothing]; swimsuits; socks; ski boots in Class 25.

The opposition is based on the following earlier trade marks.

- European Union trade mark registration No 2979581, (figurative mark), earlier mark 1 – and all the goods in Class 25 namely, clothing, footwear, headgear; boot uppers; footwear uppers; heelpieces for footwear; insoles; non-slipping devices for footwear; tips for footwear; welts for footwear; shirt fronts; shirt yokes; pockets for clothing.
- European Union trade mark registration No 18000666, (figurative mark), earlier mark 2 – and all the goods in Class 25 namely, dresses; raincoats; belts



[clothing]; slippers [underclothing]; hats; scarves; sweaters; boxer shorts; shirts; tee-shirts; jackets [clothing]; short-sleeve shirts; sports jerseys; skirts; brassieres; socks; casual footwear; esparto shoes or sandals; bathing trunks; blouses; polo shirts; cardigans; shoes; stockings; waistcoats; pea coats; boots; coats; suits; sashes for wear; slippers; bermuda shorts; jumper suits; overcoats; neckties; pants; caps [headwear]; pyjamas; sports shoes; blousons; bathing suits; chasubles; sandals; bonnets; sports pants; blazers; shoe soles; bath sandals; parkas; denim jeans; tights; trousers; casual shirts; bath robes; gloves [clothing]; breeches for wear; shorts; beach shoes; tops [clothing]; tank tops; dressing gowns.

Grounds for opposition

Lacoste in its opposition referred to Article 8(1)(b) EUTMR and Article 8(5) EUTMR.

Article 8(1)(b) EUTMR

In accordance with Article 8(1)(b) EUTMR, a likelihood of confusion occurs if there is a peril that the public may conceive that the goods or services in question, under the conjecture that they bear the marks in question, derived from the same undertaking or, as the case might be, from economically linked endeavours. The likelihood of misleading depends on an overall assessment of several interrelated factors, which are similarity of the signs, the similarity of the goods and services, distinctiveness of the earlier mark, distinctive and dominant elements of the conflicting signs, and the relevant public.

Article 8(5) EUTMR

Under Article 8(5) EUTMR, following an opposition filed by the proprietor of an earlier registered trade mark as defined in Article 8(2) EUTMR, a contested trade mark shall not be registered if it is identical or similar to the earlier mark.

Accordingly, the application of Article 8(5) EUTMR requires that the following conditions be satisfied:

- the signs must be identical or similar;



- the opponent's trade mark must enjoy a reputation that predates the filing of the contested mark, existing within the relevant territory and in relation to the goods and/or services on which the opposition is based;
- there must be a risk that use of the contested mark would take unfair advantage of, or cause detriment to, the distinctive character or reputation of the earlier trade mark.

The requirements which are provided above must be cumulative and the lack of any one of them will result in rejection of the opposition under Article 8(5) EUTMR.

The signs



Earlier mark 1



Earlier mark 2

Earlier trade marks



Contested sign¹

The existence of similarity or identity between the signs is a necessary prerequisite for applying both Article 8(1)(b) and Article 8(5) EUTMR.

The overall assessment of the visual, phonetic or conceptual resemblance between the marks must rely on the general impression they create, taking into account, in particular, their distinctive and dominant elements.

Visual perspective

Figurative elements are considered similar when they share a separately recognizable component or display the same or a comparable outline. The figurative part of the contested mark features a cartoon-like depiction of the head and upper torso of an alligator, lizard or dinosaur, characterized by a crest and pronounced, furrowed brows. Its mouth is closed, though a single fang and some back teeth are visible. One front claw is clearly shown, while the other is raised in a clenched fist. The entire figure is enclosed within a shield-shaped frame adorned with seven decorative stars along the upper edge, with the central star being the largest. By contrast, earlier mark 2 shows the silhouette of a crocodile viewed from an upper right perspective, with its tail curved toward the upper part of the sign, while earlier mark 1 presents a more realistic version of the same figure. The crocodile's teeth in the earlier marks are illustrated using very fine dots or lines. The contested sign further differs due to the presence of the distinctive verbal element 'TULEDUN', which has no equivalent in the earlier marks. Its typeface merely adds

¹ *Lacoste v. Fuzhou Kaiyi Trade Co., Ltd.*, Opposition No B 3 226 341, EUIPO.



slight decoration and does not distract consumers from the word element itself.

In the case, EUIPO found that the respective figurative representations of the signs display no visual resemblance. The signs do not coincide in any independently recognisable figurative elements, contours, or other distinctive features. The only point of convergence lies, at most, in the fact that both depict animals belonging to the general category of reptiles; however, these depictions are entirely dissimilar in their artistic execution and overall appearance.

Consequently, as the signs do not share any coinciding visual element, it must be concluded that they are not visually similar.

Aural perspective

Purely figurative marks cannot be evaluated phonetically. Since the earlier marks are entirely figurative, an aural comparison cannot be made.

Conceptual perspective

Conceptually, reference is made to the earlier observations regarding the meaning expressed by the marks. In this

case, the earlier marks represent the idea of a crocodile, while the contested sign conveys the notion of a stylized, cartoon-like angry alligator, lizard or dinosaur. In this context, it should be noted that the mere fact that two graphic elements fall within the same general category (in this case, reptiles) does not in itself render them conceptually similar.

Therefore, although both signs depict a reptile, their representations differ to such an extent that, when combined with the verbal element of the contested mark, they clearly eliminate any meaningful similarity between them. Since the signs share only insignificant features, they are regarded as dissimilar.

Summary

As outlined above, for an opposition to succeed under Article 8(1)(b) and Article 8(5) EUTMR, the signs must be identical or similar. EUIPO found that the signs in question are clearly dissimilar, and one of the essential requirements of both Article 8(1)(b) and Article 8(5) EUTMR is not met. Consequently, the EUIPO rejected the opposition filed by the French company Lacoste against the application to register a figurative mark.

Stéphanie Berland

FR: The Court of Cassation Clarifies the Starting Point of the Prescription for Music Counterfeiting

Court of Cassation, civil division, M. VJ et al. v. EMI Music Publishing France et al., 3 September 2025, No. 23-18.669, published in the Bulletin.

On 3 September 2025, the First Civil Chamber of the Court of Cassation handed down an important ruling on musical counterfeiting, clarifying the starting point of the prescription.

The French authors of the theme song for the animated series Code Lyoko had accused Black Eyed Peas of copying elements of their song “Un monde sans danger” in the song “Whenever,” released in 2010. A formal notice was sent in 2011, but legal action was not taken until 2018, with the plaintiffs citing the continued exploitation of the song (sales and digital diffusion).

In 2023, however, the Paris Court of Appeal ruled that the action was time-barred on the basis of Article 2224 of

the Civil Code, which provides that personal or movable property actions are time-barred five years from the date on which the holder of a right knew or should have known the facts enabling them to exercise it. The Court of Appeal had ruled that the five-year period began in 2011, when the authors became aware of the infringement. It considered subsequent acts to be a mere extension of the initial exploitation.

The Court of Cassation overturned this decision. It considered that since the distribution of the infringing work had been established within the five years preceding the action, the action was not time-barred. In so ruling, the Court of Appeal had therefore misinterpreted the provisions of Article 2224 of the Civil Code. The case was referred back to the Paris Court of Appeal with a different panel of judges.



UK: Iconix v Dream Pairs: Supreme Court Clarifies Post-Sales Confusion in landmark ruling

The UK Supreme Court recently issued a significant ruling in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & anor* [2025] UKSC 25. The decision provides important guidance for brand owners on the concept of post-sales confusion and how this is assessed in trademark infringement claims.

Case background

Iconix Brand Group (Iconix), owner of the renowned sportswear brand Umbro, initiated legal proceedings against Dream Pairs Europe Inc (“Dream Pair”) and Top Glory Trading Group Inc, alleging infringement of its registered trademarks protecting the distinctive double-diamond Umbro brand used on footwear since the 1980s:



The allegation centred on the stylised logo design featured on Dream Pairs’ footwear comprising the letters D and P in a nested square:



At first instance, Mr Justice Miles in the High Court dismissed Iconix’s claim, finding that the marks shared only a “faint similarity”. He concluded that there was no likelihood of confusion between them in the mind of the average consumer. These findings were based on a global assessment of the marks, as they would be encountered in real-world conditions, and consideration of whether this would give rise to post-sales confusion. Iconix appealed the decision.

The Court of Appeal disagreed with the High Court’s assessment, overturning the decision. Lord Justice Arnold delivered the leading judgment and found the High Court’s assessment of similarity to be “rationally insupportable”. The Court conducted its own assessment of the similarity of the marks and concluded that the marks shared

a “moderately high level” of visual similarity, particularly when viewed from different angles (rather than side by side), as they would be in a post-sales context. He emphasised that when viewed in real-world conditions (such as from above when looking down on footwear worn by someone else), the similarity was more pronounced. The Court of Appeal went on to reconsider the question of confusion and decided that there was a likelihood of confusion between the marks amongst a significant proportion of consumers.

Dream Pairs appealed to the Supreme Court, who considered the following issues relevant to trademark infringement under section 10(2) of the Trade Marks Act 1994:

- what is the correct approach to assessing visual similarity between trademarks?
- how should post-sales confusion be treated in trademark infringement claims?
- to what extent can appellate courts interfere with factual findings made by trial judges on similarity and confusion?

The Supreme Court judgment

Assessing similarity

The Supreme Court held that when assessing whether marks are similar, and if so the degree of similarity, “realistic and representative post-sale circumstances” can be taken into account. Similarity can be assessed on how the marks appear in the real world, including the angle at which a sign would typically be viewed in the post-sales environment. The real-world context must, however, be realistic and representative and not speculative or uncommon.

Post-sales confusion

The court also confirmed that post-sales confusion is relevant when assessing trademark infringement. It agreed



with the Court of Appeal, that even if there is no likelihood of confusion at the point of sale, the use of a sign can give rise to a likelihood of confusion in the post-sales environment. In doing so, it rejected Dream Pair's argument that the assessment of post sales confusion should be restricted to when the relevant public are entering into a sale or transaction for the goods or services in questions.

Interference with factual findings by a trial judge

Despite the Supreme Court agreeing with the Court of Appeal's legal reasoning on both the similarity and confusion issue, it went on to restore the High Court's decision finding that there was no trademark infringement. It held that the first instance judge had applied the right test, by considering the similarity of the marks from different angles. Therefore, its decision that there was a low level of similarity and that there was no likelihood of confusion could not be criticised. The Supreme Court found no error in the trial judge's finding that would justify an appeal. It criticised the Court of Appeal for substituting its own assessment of similarity and confusion for that of the trial judge, and reaffirmed that the appellate courts should not interfere in factual findings unless they are clearly wrong or irrational.

Key takeaways from the judgment

The judgment offers several important clarifications on how UK courts approach trademark infringement, particularly in relation to post-sale confusion:

1. courts may consider post-sales scenarios when assessing the existence and degree of trademark similarity, as long as those scenarios reflect typical consumer experience. Even marks that appear different side by side may be seen as similar in real world use;
2. post-sales confusion alone can constitute trademark infringement, even if no confusion arises at the point of purchase; and
3. appellate courts should only overturn the trial judge's findings on similarity and likelihood of confusion if they are clearly wrong or irrational – not simply because they would have decided differently.

Implications for businesses

The Supreme Court's decision provides valuable guidance for businesses navigating trademark enforcement claims in the UK:

1. Real-world use matters: The courts will assess trademark similarity in infringement claims based on how consumers actually see and experience products in use. It is important to focus on how marks appear in real life – not just in side-by-side comparisons.
2. Post-sales confusion: the Supreme Court has confirmed that even if there is no likelihood of confusion at the point of sale, there can be in the post-sale environment. When asserting post-sales confusion in infringement claims, brand owners must ensure that they provide the court with evidence covering all realistic and representative contexts in which the marks are experienced in everyday use.
3. Brand clearances: It is important to consider post-sales confusion in brand clearance processes. A low degree of similarity in a side-by-side comparison does not necessarily equate to a low risk of infringement. The manner in which the brand will be used and experienced in real-world scenarios could increase the likelihood of confusion and risk of infringement.
4. Legal strategy and enforcement: The strongest evidence and arguments should be presented before the trial judge. The appellate courts will only overturn a first instance judge's findings on similarity and likelihood of confusion if they are plainly wrong, even if they may disagree with them.

ES: Subsequent Revocation of the Opposing Trademark and its Impact on the Principle of Lis Pendens: Supreme Court Judgement of 24 September 2025

Introduction

The ruling is particularly relevant because it analyses how the subsequent revocation, during the judicial proceedings, of the trademark that had been successfully invoked as an earlier right in an opposition, affects the principle of lis pendens, and how this circumstance may affect the loss of legitimate interest in continuing the proceedings, in accordance with Article 413.1 of the Civil Procedure Act (LEC).

Background and disputed issue

The conflict arose when Granados 52 Inversiones S.L. applied to the Spanish Patent and Trademark Office (OEPM) to register the figurative trademark 'WILD CARNAL STEAK HOUSE' to identify restaurant services.

During the opposition proceedings, Pizza Market S.L. opposed the application on the basis of its earlier trademark 'CARNAL', registered for identical services, and arguing that there was a risk of confusion between the two signs.

The OEPM upheld the opposition and refused the contested application, arguing that the coincidence in the verbal element 'CARNAL' could mislead the average consumer as to the commercial origin of the services.

Dissatisfied with this decision, Granados 52 Inversiones S.L. lodged a lawsuit with the Provincial Court of Barcelona, arguing that the compared signs presented sufficient conceptual, graphic and denominative differences, and that the opposing trademark 'CARNAL' lacked the distinctive force necessary to prevent registration. However, the Provincial Court dismissed the lawsuit and confirmed the OEPM's decision.

During the proceedings, and before a final judgment was handed down, Granados 52 Inversiones S.L. informed the Court that it had filed a revocation action against the opposing trademark 'CARNAL' before the OEPM, arguing that it had not been put to genuine use, and that such action was upheld. Despite the fact that the trademark 'CARNAL' had been revoked and was no longer in force, the Provincial Court considered that the revocation did not affect the analysis of the opposition, given that the

proceedings had to be resolved in accordance with the situation existing at the time the lawsuit was filed.

In response to this refusal, Granados 52 Inversiones S.L. lodged a cassation appeal before the Supreme Court, alleging infringement of Articles 411 and 413.1 of the LEC, on the grounds that the contested judgment had ignored a legally decisive fact — the subsequent revocation of the opposing trademark — which rendered the continuation of the litigation unjustified.

The controversial issue was therefore whether the court should take into account the fact that the earlier trademark (which was in force when the OEPM upheld the opposition) was subsequently revoked while the judicial proceedings were still ongoing or whether, on the contrary, the principle of lis pendens, which establishes the subject matter of the proceedings at the time the claim was initially filed, should prevail.

Legal grounds of the Supreme Court

The Supreme Court upheld the cassation appeal and ordered the registration of the trademark "WILD CARNAL STEAK HOUSE" on the basis of three main arguments:

1. The principle of lis pendens (Art. 411 LEC)

Lis pendens means that, once the claim has been filed, the fundamental elements of the proceedings are fixed: the jurisdiction of the court, the parties entitled to bring the action and the subject matter of the dispute. Its purpose is to ensure procedural stability and avoid alterations to the proceedings. However, the Court clarifies that this principle is not absolute and may give way to supervening events that render the dispute meaningless or without purpose. In such cases, continuing the proceedings would constitute a violation of the right to effective judicial protection (protected by Art. 24 of the Spanish Constitution).

2. The exception in Article 413.1 LEC

This provision allows the judge to take into account circumstances subsequent to the filing of the claim when these determine the loss of legitimate interest in the action. In the case analysed, the revocation of the opposing

trademark eliminates the prior right of its owner, so that the legal reason justifying the opposition disappears and, with it, the legitimate interest in maintaining the dispute.

3. Consequences for the administrative decision

With the legal basis for the opposition no longer existing, the Court concludes that there is no longer any obstacle preventing the registration of the trademark applied for, thus revoking the lower court's ruling.

The Supreme Court clarifies that this solution does not violate the principle of *lis pendens*, but rather constitutes a reasonable application of Article 413.1 LEC, which seeks to adapt the judicial decision to the legal reality in force at the time of the ruling.

Doctrinal assessment

This ruling consolidates the doctrine according to which the subsequent expiry or revocation of the opposing trademark during legal proceedings entails the loss of the

legitimate interest of its owner and allows the court to assess this circumstance even at the appeal stage.

The Supreme Court adopts a teleological and flexible interpretation of the trademark process, aimed at guaranteeing effective judicial protection and legal certainty, and avoiding pointless litigation.

Conclusion

The judgment constitutes an important precedent in the field of intellectual property and civil procedure. It confirms that the revocation of an opposing trademark extinguishes its legal effectiveness and deprives the opponent of legitimate interest, justifying the registration of the contested trademark application.

With this ruling, the Supreme Court balances the principle of *lis pendens* with those of effectiveness and procedural economy, emphasising that the law should not support the continuation of proceedings once their legal basis has disappeared.



ES: The Distinctive Character of Numerical Trademarks: Commentary on the Supreme Court Judgment of 24 September 2025

Introduction

Supreme Court Judgment No. 1297/2025 of 24 September 2025 is of particular interest in the field of trademark law, as it rules on the admissibility and distinctive character of numerical trademarks.

The case concerns the following figurative trademark, which was filed by Industria de Diseño Textil, S.A. (Inditex), owner of the well-known brand “ZARA”, before the Spanish Patent and Trademark Office (OEPM) in classes 3, 9, 18, 21, 24, 25, 26, 27 and 28:

26 1 18 1

The OEPM rejected this trademark application on absolute grounds, arguing that it lacked distinctive character in accordance with Article 5.1.b) of Law 17/2001, of 7 December, on Trademarks.

Background and legal issue

Following the dismissal of the administrative appeal by the OEPM, Inditex filed a lawsuit before the Provincial Court of Madrid, which upheld the previous decision on the grounds that a combination of numbers did not allow the commercial origin of the goods to be identified.

Inditex lodged a cassation appeal before the Supreme Court, arguing that the Provincial Court had applied an excessively restrictive criterion with regard to the distinctive character of numerical trademarks and did not adequately assess the overall impression of the sign. In particular, Inditex claimed that the numerical combination “26 1 18 1” follows the order of the letters forming the trademark “ZARA” in the English alphabet, which confers inherent distinctiveness to the sign.

Legal grounds of the Supreme Court

The Supreme Court upheld the cassation appeal and recognised Inditex’s right to register the trademark applied for. The essential grounds of the judgment can be summarised as follows:

- The Supreme Court recalls that, in accordance with the case law of the Court of Justice of the European

Union (CJEU), the distinctive character of a sign must be assessed in relation to the specific goods or services for which the trademark has been applied for, and from the perspective of the average consumer. The distinctiveness of numerical marks cannot be excluded a priori, as what is relevant is that the sign allows the goods or services of one company to be distinguished from those of others.

- The Supreme Court emphasises that Spanish trademark law, in line with Directive (EU) 2015/2436 and Regulation (EU) 2017/1001 on the European Union trademark, does not prohibit the registration of numeric trademarks, provided that they are able to fulfil an identifying function. The old doctrinal reservations regarding their lack of memorability or generic nature have been overcome by the evolution of economic traffic and modern marketing, in which numbers are used as distinctive signs with their own meaning.
- In the case at issue, the sign “26 1 18 1” cannot be considered arbitrary, as it combines a specific numerical sequence with a unique graphic presentation, creating an overall impression sufficient to give it distinctive character. The Supreme Court rejects the Provincial Court’s argument that the sign is unintelligible or difficult to remember, stating that the simplicity of a trademark does not equate to a lack of distinctiveness.

Doctrinal assessment

This judgment is a significant ruling in Spanish case law on unconventional trademarks, as it reinforces the flexible interpretation of the concept of distinctiveness.

The judgment harmonises Spanish law with the doctrine of the CJEU, recognising that the distinctive character of numerical trademarks must be assessed on a case-by-case basis, taking into account their specific configuration and not abstract or formal criteria.

From a practical point of view, the ruling provides legal certainty for companies that use branding strategies based on numbers, codes or graphic sequences, which are very common in sectors such as fashion, cosmetics and technology.

It also warns the OEPM and lower courts that they should not apply stricter criteria when assessing this type of signs, as the requirement of Article 5.1.b of the Spanish

Trademark Law is satisfied provided that the relevant public can associate the sign with a specific business origin.

Conclusion

The Supreme Court reaffirms that numerical trademarks can be distinctive and, therefore, registrable, provided that their visual or conceptual configuration allows the average

consumer to identify the commercial origin of the goods or services.

The Supreme Court thus consolidates a European trend that promotes a material and non-formalistic interpretation of distinctiveness, contributing to the modernisation of trademark law and the adaptation of its application to new market realities.



EU: Dishonest Trade Mark Practices: the Invalidity of EUTMs Filed in Bad Faith Without Intention to Use – an Analysis Based on Board of Appeal Ruling R 1648/2024-1 Concerning the VACUACTIVUS (Figurative) Mark

On 22 July 2025 the First Board of Appeal (Board) issued a decision dismissing the appeal of the EUTM proprietor on the grounds that the contested European Union Trade Mark (EUTM) was applied for in bad faith in accordance with Article 59(1)(b) EU Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR) and the Cancellation Division declared the contested EUTM invalid in its entirety.

The ruling provides important guidance on the concept of bad faith in trademark law, especially in the context of defensive filings and business relationships.

The EUTM proprietor filed an application on 10 May 2022 in order to register the figurative mark for the following goods and services:



Class 10: Computer controlled training apparatus for therapeutic use; Apparatus for use in toning muscles for medical rehabilitation; apparatus for use in exercising muscles for medical use; weight training apparatus adapted for medical use; physical exercise apparatus for medical purposes; physical exercise apparatus for therapeutic use; exercising apparatus for medical rehabilitative purposes; apparatus for the therapeutic stimulation of the muscles; apparatus for achieving physical fitness [for medical use]. Class 28: Exercise pulleys; sports equipment; indoor fitness apparatus; body training apparatus [exercise]; body toner apparatus [exercise]; body-building apparatus [exercise].

An application was registered on 1 September 2022 and the Cancellation Applicants claimed in an application for declaration of invalidity of the EUTM based on Article 59(1)(b) EUTMR, that the EUTM proprietor was acting in bad faith.

The Cancellation Applicants argued that they had prior rights to the “VACUACTIVUS” sign, including a US trademark registration and domain name. They claimed the EUTM proprietor was fully aware of their rights and filed the EU mark solely to block their business activities.

In response, the EUTM proprietor contended that the Cancellation Applicants’ US registration was itself in bad faith, and that any use of “VACUACTIVUS” required their authorisation. The proprietor admitted the EU trade mark was filed as a defensive measure, not with the intention of genuine use.

The parties presented evidence documenting their long-standing business relationship dating back to 2013 with the EUTM proprietor manufacturing the goods and the Cancellation Applicants distributing them exclusively in North America and Oceania.

Evidence consisted of contracts, emails and marketing materials which demonstrated EUTM proprietor’s awareness of the Cancellation Applicant’s use of identical sign ‘VACUACTIVUS’ before the contested EUTM was filed.

In its decision the Cancellation Division held that:

- Mere knowledge of a similar or identical sign is insufficient to establish bad faith; additional elements such as dishonest intent or unfair conduct are required.
- The key issue is the EUTM applicant’s intention at the time of filing.
- Bad faith involves a subjective, dishonest motive, which must be demonstrated through objective evidence.
- Bad faith arises when the applicant’s conduct conflicts with accepted standards of honest or ethical business behaviour, for example by attempting to misappropriate a partner’s mark or hinder their business.
- The existence of a business relationship contractual, pre-contractual, or otherwise is an important factor in assessing bad faith.
- Such relationships impose mutual duties of fair play; breaching these duties, including by



registering a partner's mark without proper notice or justification, may amount to bad faith.

According to the Cancellation Division's decision, the EUTM proprietor did not provide any plausible or convincing explanations for the filing, and his arguments did not justify the filing of an identical trade mark without any business logic other than to harm the Cancellation Applicants.

The EUTM proprietor filed a notice of appeal and introduced additional evidence at the stage of appeal proceedings; however, the Board took only parts of the submission into a consideration due to the fact that the other part of submitted evidence was not clearly and directly related to the grounds invoked by the EUTM proprietor.

The Board stated that since the notion of "bad faith" in Article 59(1)(b) EUTMR is not defined by the EU legislature, it must be interpreted according to its ordinary meaning, while taking into account its legal context and the objectives of the EUTMR. The Board expressed that although in everyday language, "bad faith" implies a dishonest intention, in trade mark law it must be

understood in the context of fair competition within the internal market, which the EUTM system is designed to support.

For that reason, the Board affirmed that bad faith is present when consistent and relevant indicia show that the applicant sought registration not to compete fairly, but to undermine the interests of third parties, or to obtain an exclusive right for purposes unconnected with the functions of a trade mark, in particular its essential origin-indicating function. Furthermore, the Board outlined that considering the situations identified in EU case-law, an applicant may act in bad faith not only when targeting a specific third party, but also when seeking to misuse the trade mark system itself.

In the matter at hand the Board's decision was based on several key factors which taken into account altogether indicated bad faith of the EUTM proprietor. The EUTM proprietor openly admitted that the trade mark was filed not with the intention to use it but to prevent the Cancellation Applicants from registering or using the mark in the EU – thus, it was a purely defensive trade mark application with the aim of preventing the cancellation



applicants from filing trade marks before the European Union Intellectual Property Office.

Evidence showed that the EUTM proprietor was fully aware of the Cancellation Applicants' prior use and registration of the "VACUATIVUS" mark in the United States and due to the parties' longstanding business relationship confirming this knowledge in this regard. The EUTM proprietor was aware of one of the Cancellation Applicant's plans regarding securing an international trade mark registration with European Union designation. According to the Board – even if one of the Cancellation Applicants intended to seek protection for the sign by designation the EU territory in an international registration, the EUTM proprietor's actions would still be regarded as being in bad faith. Additionally, The Board underlined that the fact that the EUTM

proprietor has at least one Polish trade mark registration and de facto did not have to apply for the contested EU trade mark does not change the fact that his actions had no bearing in the matter at hand.

The Board conducted an overall assessment, considering both the objective circumstances (the facts and evidence) and the subjective intention (the proprietor's motive). The combination of these elements led to the conclusion that the application was abusive and inconsistent with honest commercial practices. This decision reinforces the principle that trade marks must be filed with genuine intent to use and in accordance with fair business practices. Business entities should ensure that their IP strategies respect the letter and the spirit behind the trade mark law, especially when longstanding business relationships are involved.

Florence Karila

FR: Towards Recognizing Blockchain as Evidence in Intellectual Property Law?

In a landmark ruling on March 20, 2025 (First Civil Chamber, No. 23/00046), the Judicial Court of Marseille acknowledged a company's ownership of copyright on original designs based on two blockchain timestamp records – a first in France.

In this case, AZ Factory brought a copyright infringement action against VALERIA MODA, a wholesale clothing and footwear company. To prove its exclusive intellectual property rights over its silk pajama designs titled "Hearts from X" and "Love from X", AZ Factory relied on blockchain anchoring of sketches and images through the BlockchainyourIP solution, certified by a Judicial Officer.

The Court held that "the ownership of the economic copyright related to the garments Hearts from X and Love from X in favor of AZ FACTORY is established by the two blockchain timestamp records (...)". It further noted that the disputed creations had been disclosed under the European trademark AZ FACTORY through social media advertising (Instagram, YouTube). Consequently, the Court confirmed AZ Factory's copyright ownership and found VALERIA MODA liable for infringement.

This decision demonstrates that blockchain timestamp records, combined with other evidence such as social media advertising, can establish copyright ownership and attest to the prior existence of a work.

For several years, blockchain – defined by the CNIL as a "technology for storing and transmitting information, transparent, secure, and operating without a central authority" – has offered creators a way to secure their works. The recognition of blockchain as admissible evidence in a civil copyright dispute marks a significant step forward. However, the Court did not rely solely on blockchain timestamps; it also considered trademark filings and social media disclosures. Therefore, this ruling does not elevate blockchain to the status of perfect proof of ownership but rather acknowledges it as a legitimate piece of evidence.



An aerial photograph of a turbulent ocean. The water is a deep, vibrant turquoise color, with intricate patterns of white foam and spray created by the churning waves. The perspective is from directly above, looking down into the water.

Other issues

PL: From Ideas to Assets: Is Poland Ready for IP-Driven Lending?

The Polish Patent Office has launched an expert working group dedicated to exploring intellectual property (IP)-backed financing. This initiative brings together key stakeholders from public administration, the banking sector, employers' organizations and the academic community. The group's inaugural meeting fostered open dialogue on the necessity and potential benefits of introducing IP-based financial instruments to support innovation in Poland. A follow-up session is scheduled for later this year, with plans to assess demand among Polish start-ups and spin-offs and to engage their representatives in the ongoing discussion.

In today's knowledge economy, where global competition is driven by innovation, valuing intellectual property is increasingly vital for commercial success. Intellectual property is becoming an increasingly important component of corporate asset portfolios, yet leveraging it as collateral for credit or debt financing continues to present substantial challenges.

Like many other countries, Poland does not yet have dedicated regulations governing the use of intellectual property as collateral for financing. Valuing IP requires the expertise of professionals with robust knowledge in finance, accounting, and law, along with a nuanced understanding of intangible assets. Compliance with international valuation standards and best practices remains critical to ensuring credibility and consistency. Poland currently lacks regulations governing the valuation of intellectual property as financial collateral. There is a clear need to develop best practices that ensure reliable and consistent IP valuation – similar to the standardized procedures used by banks for real estate assets.

At present, business financing in Poland is most commonly secured by industrial property rights such as patents, trademarks and designs registered under the Industrial Property Act. These assets are publicly verifiable and carry lower legal risk, making them more attractive to lenders. In contrast, copyright-backed financing is less prevalent due to the complexities of ownership verification under Copyright Law. Nonetheless, universal copyrights—such as those for music, films and software—hold significant promise as collateral, given their diverse licensing and revenue streams. Know-how and trade secrets are seldom accepted as security, and while alternative assets like cryptocurrencies have emerged, their relevance in this context remains limited.

Start-ups and small to medium-sized enterprises (SMEs) are poised to be the primary beneficiaries of IP-backed financing in Poland. These entities often possess valuable intellectual property but may lack the tangible assets or credit history required for conventional bank loans. IP-backed instruments offer a viable solution to bridge this financing gap. A notable trend is the emergence of specialized lenders and investors equipped to assess IP value, thereby facilitating broader access to capital for innovation-driven businesses.

Representatives from the Polish Patent Office observe that European financial institutions tend to be more risk-averse than their U.S. counterparts when it comes to IP-based investments, favouring lower-risk ventures. In contrast, the US market demonstrates greater appetite for high-risk, innovation-led projects. To mitigate risk in Poland, it has been proposed that IP-backed loans be linked to a guarantee fund, potentially administered by the national development bank (Bank Gospodarstwa Krajowego – BGK). Additionally, advanced financial models—such as secondary IP markets—could enhance loan repayment mechanisms and bolster confidence among banks and investors.

Source:

<https://www.pb.pl/>

<https://www.wipo.int/>

UK: Don't Believe Your Eyes: Can the Law Do Anything to Combat Deepfakes?

"You are young yet, my friend," replied my host, "but the time will arrive when you will learn to judge for yourself of what is going on in the world, without trusting to the gossip of others. Believe nothing you hear, and only one half that you see."
Edgar Allan Poe, from "The System of Dr. Tarr and Prof. Fether."

President Zelenskyy announcing Ukraine's surrender to Russia. Joe Biden forgetting the words to the US National Anthem and singing Baby Shark instead. Joe Rogan lauding a libido-boosting male supplement on The Joe Rogan Experience podcast. Tom Cruise revealing a secret relationship with Paris Hilton via social media. Donald Trump flying a fighter jet emblazoned with "King Trump" and dumping a dubious looking substance onto protestors to a soundtrack of Kenny Loggins's "Danger Zone."

All of the above were videos which have circulated online during last the couple of years, but none of them actually happened in reality: rather, they were 'deepfakes'.

What are deepfakes?

The term 'Deepfake' is a portmanteau of 'deep learning' and 'fake'. Deepfakes are artificially created video or audio clips in which artificial intelligence (or AI) is used to replicate and manipulate the voice and/or image of a subject so that, ostensibly, the subject appears to say or do whatever the creator wishes. Deep learning is a form of AI. In deepfake AI, the deep learning algorithms teach themselves how to solve problems with large data sets, and are then used to swap faces in videos, images and other digital content in order to make the fake appear real. Think 'Photoshop' for moving video or audio, and with the computer doing most of the work rather than you.

Whilst this kind of technology has been in development since the 1990s, the term 'deepfake' was coined on Reddit in 2017, and it is really during the last seven years that the technology (both in terms of its sophistication and general availability) and prevalence of deepfakes has really taken a huge leap forward.

Initially, as with much on the internet, the focus was on pornography, and the grubbier denizens of the net spent much of their time swapping celebrities' faces into pornographic video clips. In a 2019 study, the AI firm Deepttrace found 15,000 deepfake videos online as at September 2019, which represented a near doubling of the total deepfakes online since the start of that year. Of that 15,000, a pretty staggering 96% of them were pornographic

in nature, and 99% of those 96% mapped faces from female celebrities on to adult-film performers.

People were and are rightly concerned of the potential that, as this technology becomes more readily available and accessible by unskilled users, it has become possible for just about anyone to make reasonably convincing Deepfakes using just a handful of photographs of the desired subject. It has taken this technology out of the realm of "committed specialists" (to describe them diplomatically), people who are mainly interested in public figures, and the tech now represents a threat to anyone who someone else wishes to make the subject of "revenge porn", whether they have ever actually been filmed themselves or not. Danielle Citron, a professor of law at Boston University, summarised her concern that: "Deepfake technology is being weaponised against women."

Since 2019, however, and increasingly so in the last few years, the use of deepfakes has diversified into a wide range of less controversial contexts. Indeed, since 2022, deepfakes have really hit the mainstream, when they have been the key plot point or hook for a number of popular TV shows and movies, including:

- The parody comedy show Deepfake Neighbour Wars which aired on ITV in the UK in 2023, and featured deepfaked celebrities like Stormzy, Kim Kardashian and Harry Kane, all appearing to live on the same street in Essex and going about banal daily activities. It was pithily reviewed as 'a bizarre show for bizarre times' by The Guardian.
- A deepfake start-up called Metaphysic.ai reached the final of America's Got Talent in 2023 with their musical act, which transposed the faces of the judging panel, Elvis Presley and others, in real time onto big video screens as singers performed live on stage.
- The second series of The Capture aired on BBC in the UK in 2022. Whereas in 2019's series one involved a story revolving around video manipulation, series two focused squarely on deepfake technology, with a Government minister seemingly endorsing

a sinister AI company live on Newsnight when in reality he had been trying to criticise them. This series was in some respects a premonition of the direction that American politics would take during and after the 2024 Presidential election.

Deepfakes in the creative arts

There has also been much discussion in recent years about how deepfakes could be used in the creative arts in the future.

For example, Tom Hanks has spoken about how this technology could extend the careers of actors beyond their lifetimes. Despite being in his 60s, he could now pitch multiple movies to be created simultaneously with him appearing to be in his early 30s, with much of the 'work' (in inverted commas) being done by AI. Such a possibility won't end when he dies either.

He said, "Anybody can now recreate themselves at any age they are by way of AI or deep fake technology. I could

be hit by a bus tomorrow and that's it, but performances can go on and on and on and on." He continued: "Outside the understanding of AI and deepfake, there'll be nothing to tell you that it's not me and me alone. And it's going to have some degree of lifelike quality. That's certainly an artistic challenge but it's also a legal one." He said how "all of the guilds, all of the agencies, and all of the legal firms" are currently in discussion on "the legal ramifications of my face and my voice and everybody else's, being our intellectual property." He added, "Without a doubt people will be able to tell [that it's AI], but the question is will they care? There are some people that won't care, that won't make that delineation."

So by the sounds of it, we may all look forward in due course to "Forrest Gump, The College Years", The Terminal being remade into a 10 episode TV-series, and infinite Dan Brown adaptations.

Podcasters with a global audience won't need to be limited in the future to reading adverts in English about Squarespace, Better Help or Hello Fresh, but rather their





back catalogue now facilitates their voices being utilised, replicated and translated into authentic sounding, geotargeted adverts in the native language of the listener for local, indigenous businesses. And the podcaster doesn't need to be involved at all. And indeed the podcasts themselves are able to be replicated and translated in the host's voice to whatever language they wish, and sent to every corner of the earth in order to open up new markets to their content. Will we even see a day where your favourite movie review or sports podcast hosts do not need to actually watch new releases or this weekend's matches, and instead AI can learn from hundreds of hours of previous content and produce new episodes based on how the programme predicts they would respond to new movie releases?

While some music artists such as The Weeknd and Drake have objected to their voices being used on deepfaked tracks, other artists are embracing the technology. For example, rapper Grimes (the ex-wife of Elon Musk, as it happens) has openly made her voice available for use by fans on the basis of a revenue split of any royalties which might follow from the deepfaked tracks. She tweeted, "I'll split 50 per cent royalties on any successful AI-generated song that uses my voice. Same deal as I would with any artist I collab with. Feel free to use

my voice without penalty. I have no label and no legal bindings."

While we may doubt whether people will really embrace artificially created artistic content, the reality is that Hollywood and tech companies are already investing heavily in this technology, and time will tell as to what extent the public will embrace it. However, the early signs are that it is not being rejected altogether: in recent weeks it was announced that three AI-generated songs had topped Spotify and Billboard's Viral music charts. AI-generated music is becoming an increasing feature on music streaming platforms, with Deezer estimating that 50,000 AI-generated songs are uploaded to its platform every day (just over 1/3 of all music submitted).

A threat to public discourse?

Whilst some uses of deepfake technology are upfront about their parodic or deceptive nature and are simply for entertainment purposes, there is a more sinister side to deepfakes and what they might be used for. Beyond their use in pornography, the scope for misinformation and deception of the public at large, particularly in the context of politics and elections, should be concerning to all.

In 2023, amidst discussion about whether and to what extent AI ought to be regulated, Brad Smith, the president of Microsoft, said that his biggest concern around artificial intelligence was deepfakes. He said, "We're going to have to address the issues around deepfakes. We're going to have to address in particular what we worry about most foreign cyber influence operations, the kinds of activities that are already taking place by the Russian government, the Chinese, the Iranians," he said.

"We need to take steps to protect against the alteration of legitimate content with an intent to deceive or defraud people through the use of AI."

Smith also called for licensing for the most critical forms of AI with "obligations to protect security, physical security, cybersecurity, national security".

"We will need a new generation of export controls, at least the evolution of the export controls we have, to ensure that these models are not stolen or not used in ways that would violate the country's export control requirements," he said.

Although early commentary on deepfakes often focused on their theoretical risks, the past five years have produced a series of high-profile incidents demonstrating their practical impact on politics, democratic discourse and public trust. These examples highlight both the sophistication of current generative technologies and the increasing vulnerability of decision-makers to manipulated audio-visual content:

- One of the most widely cited political deepfakes emerged during the first months of Russia's invasion of Ukraine. A fabricated video, distributed via hacked Ukrainian news outlets and social media platforms, showed President Zelensky calling on Ukrainian troops to lay down their arms. Although the quality was relatively poor, it appeared at a moment of acute national crisis, illustrating how even rudimentary deepfakes can be weaponised to sow confusion and undermine morale. The clip was swiftly debunked, but its circulation demonstrated the value hostile actors place on digitally forged statements from heads of state.
- Several UK MPs have reported receiving or being referenced in deepfaked audio purporting to capture them making inappropriate remarks or endorsing fabricated policy positions. In 2024, a number of council leaders and parliamentary candidates were targeted with AI-generated voice messages that appeared to show them insulting constituents or colleagues. While none were of sufficient quality to cause lasting political damage, the episodes underscored how cheaply and quickly cloned voices can now be produced, particularly from publicly available speech recordings.
- Prior to the Labour Party winning the UK General Election in 2024, widely shared audio circulated online appearing to depict Sir Keir Starmer verbally

abusing staff and discussing policy in crude terms. Independent analysts confirmed the audio was AI-generated, but not before it reached significant engagement on platforms such as X (formerly Twitter) and TikTok. The case demonstrated the challenge of "first-impression bias": even after debunking, initial exposure to a false clip may colour public perception.

- In early 2024, New Hampshire voters received a robocall containing a sophisticated deepfake of President Joe Biden's voice, urging them not to vote in the primary. The state attorney general described it as a clear attempt at voter suppression facilitated through synthetic media.
- Public figures outside politics have also been targeted. Deepfakes of technology CEOs, including Elon Musk and Jeff Bezos, have been used in fraudulent investment ads, while several UK broadcasters and journalists have had their likeness used without consent in fabricated endorsements. Although these incidents are often commercially rather than politically motivated, they demonstrate how individuals with extensive public audio-visual footprints are particularly vulnerable.

By contrast, Donald Trump and the MAGA movement in the United States have positively embraced the impact that deepfakes can have as both a political weapon and a means to control the narrative. He has shared AI-generated images of political opponents and amplified supporter-created deepfake videos portraying him heroically. He has also claimed that recordings or statements which might have been perceived as damaging to him are "AI fakes," regardless of provenance. This dual strategy allows him to harness the virality of manipulated content while simultaneously undermining the credibility of authentic evidence. In doing so, Trump exemplifies a broader political trend: using deepfakes not only to persuade but to create systemic doubt about what can be trusted in the public sphere.

In the run up to the US presidential election last year, Google raced ahead of government regulators by mandating that any political adverts on its platforms must include a written disclosure if it uses AI-generated images, video or audio, but doubt remains over the extent to which most viewers of such content note that the videos are inauthentic.

The legal toolkit

As it stands, UK laws make very little provision for deepfakes and so they are essentially unregulated. Anybody affected by a deepfake who might wish to take action against the creator of the work therefore has to patch together a case, using a mishmash of existing laws designed to protect other legal rights. That position has begun to shift slightly with the Online Safety Act and subsequent Criminal Justice Bill reforms introduced in 2024 and 2025, which now criminalise the sharing and soon, the creation, of sexually explicit deepfakes.

For example, defamation laws might be utilised where the untrue content of the deepfake causes harm to the subject's reputation. Legal action could potentially be taken against the creator and any distributor of the video, in the event that they are able to be identified, which is not always straightforward in the context of the internet. Malicious falsehood can be utilised where content is untrue, damaging and been published with an improper motive.

Intellectual property laws are likely to be of some use, particularly in cases where someone's image or original footage have been used without their consent. Copyright infringement is likely to have occurred where original video or still photographs have been appropriated and adapted without the owner's consent. This is the approach that some of the record labels in America are taking in order to try to prevent their artists being deepfaked into new tracks that they have nothing to do with. In the United States, this issue has now moved up the legislative agenda, with the reintroduced NO FAKES Act and the newly enacted TAKE IT DOWN Act giving affected individuals strengthened takedown rights, subpoena powers and criminal penalties in cases involving non-consensual intimate deepfakes.

In 2023, a new song by Drake and The Weeknd called "Heart on my Sleeve" briefly went viral, before swiftly disappearing from all of the music streaming services when their record label, Universal, made complaints based on unauthorised use of their IP rights. Universal were saying that, in order for the AI to learn what a Drake and The Weeknd song would sound like, all of their previous music had to be fed into and copied by the AI algorithm, which the creator of the AI was not permitted to do. Universal released a statement saying that this issue had high stakes for the music industry, and they asked "which side of history all stakeholders in the music ecosystem want to be on: the side of artists, fans and human creative expression, or on the side of deep fakes, fraud and denying artists their due compensation."

If registered trade marks appear in a deepfaked video, depending on the content, it is possible that there might be a potential action for trade mark infringement. The law of passing off will assist persons in the UK with a public profile who find themselves being depicted as falsely endorsing products or services. This law was used, albeit in the context of still images rather than deepfakes, by Rihanna in litigation against Topshop and by Northern Irish F1 driver Eddie Irvine in a claim against talkSPORT, a radio station. So if you see a video of a celebrity providing an endorsement for goods or services that turns out to have been deepfaked, they would have a potential claim arising from the unauthorised use of their image and their association with a business that they may not have agreed to advertise in reality.

In certain circumstances, depending on the content of what is being said and what "background" footage is being used and manipulated to form the deepfake, it is possible

that laws relating to privacy (such as misuse of private information, breach of confidence, and the right to private life enshrined under Article 8 of the European Convention on Human Rights) and data protection may be violated. However, these causes of action to try to counteract deepfakes have not been tested in the UK Courts, and any person seeking to utilise them will face challenges, such as whether the original content or footage were captured at a time when there was a reasonable expectation of privacy, and issues such as identifying the data controller and balancing a countervailing right to freedom of expression in the context of data protection. Elsewhere in Europe, the regulatory landscape is moving faster: the EU AI Act requires deepfakes to be clearly labelled, and the Commission is already consulting relevant industries on a code of practice. Denmark has also recently proposed a novel approach which would grant individuals copyright over their own likeness, enabling them to demand platform removal where deepfaked content is shared without permission.

In cases with a nefarious or intimidatory angle, assistance may be derived from statutes with more of a criminal focus, primarily designed to combat harmful conduct like malicious communications online or the publication of intimate images without consent, or harassment. In Northern Ireland, where the author is based, this includes the Malicious Communications (Northern Ireland) Order 1988 (which makes it an offence to send or deliver a letter, electronic communication or article of any description which conveys a message to another person for the purpose of causing distress or anxiety); the Protection from Harassment (Northern Ireland) Order 1997 (where there are two or more instances of a person causing another person alarm or distress); or the Computer Misuse Act 1990 (for example, where someone sets up a false social media account for the purpose of committing fraud). As noted above, the UK Government has also now created specific criminal offences for sharing intimate deepfakes without consent, and has announced plans for a further offence targeting the very creation of sexually explicit deepfakes.

Often, given the challenges presented by identifying creators of deepfakes online, the best practical step is to seek that the host, assuming it is one of the major social media platforms, takes down the footage as a violation of their terms and conditions, although this can be impracticable once footage has gone viral across multiple platforms, or in cases where material is distributed via text channels such as WhatsApp. These takedown debates are increasingly playing out internationally: the United States' TAKE IT DOWN Act now obliges platforms to remove non-consensual intimate deepfakes within 48 hours of notification, while China's updated Deep Synthesis Regulation imposes some of the world's strictest duties on platforms to verify, label and remove synthetic media that risks causing harm.

The UK Government has shown some tentative willingness to legislate against deepfakes, such as the late amendments to the Online Safety Act which have made it easier to prosecute those who share manipulated pornographic content (including deepfakes) without consent. However, as it stands, this only applies to England and Wales, and not Northern Ireland where I am based. Recent developments suggest a gradual move towards a more comprehensive framework, but the UK still lags behind the EU, US and China in adopting systemic rules governing deepfake labelling, consent and platform duties.

Therefore, deepfakes are, quite rightly, a growing concern, and there is undoubtedly a need for a more comprehensive legal framework to govern their creation,

distribution and use. This has become especially apparent as their use has proliferated in recent years, and the underlying technology becomes more widely accessible. Whilst we do currently have some legal mechanisms available to us which can be applied to deepfakes, it is undeniable that more targeted and specific laws are needed to effectively address the legal and social implications of this technology.

Given the wider conversations around use and regulation of AI, this is inevitably going to be a subject which will become more prominent in the months and years to come, and the imperative to find a workable and balanced system of dealing with deepfakes will only become more pressing the longer they remain unregulated.



DWF

Our vision is to deliver integrated legal and business services on a global scale, through our three offerings.

DWF is a leading global provider of integrated legal and business services, operating across eight key sectors in over 35 global locations with over 5,000 people. Our purpose is to deliver positive outcomes with our colleagues, clients and communities.

The legal market has changed profoundly in the last decade and the speed of change continues to increase. There is a clear and growing desire for legal services to be delivered in an easier and more efficient way. So we've listened to our clients and designed a range of services to meet these needs.

Our vision is to deliver integrated services on a global scale through our three offerings; Legal Services, Legal Operations and Business Services. Our ability to seamlessly combine any number of these services to deliver bespoke solutions for our clients is our key differentiator. This Integrated Legal Management approach delivers greater operational efficiency, price certainty and transparency for our clients. Without compromising on quality or service.



Legal Services

Premium legal advice and excellent client service. Our teams bring commercial intelligence and industry sector relevant experience.



Legal Operations

Outsourced and process led alternative legal services which standardise, systematise, scale and optimise legal workflows.



Business Services

Products and business services that enhance and complement our legal offerings.



Contacts



Oskar Tułodziecki

Partner, Poland

E. oskar.tulodziecki@dwf.law



Jörn Albrecht

Partner, Germany

E. joern.albrecht@dwf.law



Marco Annoni

Partner, Italy

E. marco.annoni@dwf.law



Emmanuel Durand

Partner, France

E. e.durand@dwf.law



Stéphanie Berland

Partner, France

E. s.berland@dwf.law



Florence Karila

Partner, France

E. f.karila@dwf.law



Xavier Fàbrega

Partner, Spain

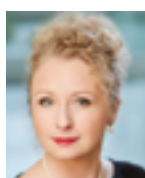
E. xavier.fabrega@dwf-rcd.law



Asima Rana

Director, UK

E. asima.rana@dwf.law



Marta Wysokińska

Partner, Poland

E. marta.wysokinska@dwf.law



Anne-Sylvie Vassenaix-Paxton

Partner, France

E. as.vassenaix-paxton@dwf.law



Sam Hodgson

Director, UK

E. sam.hodgson@dwf.law



James Griffiths

Director, UK

E. james.griffiths@dwf.law



Aleksandra Kuc-Makulska

Counsel, Poland

E. aleksandra.kuc-makulska@dwf.law



Ewelina Madej

Counsel, Poland

E. ewelina.madej@dwf.law



[dwfgroup.com](https://www.dwfgroup.com)

© DWF, 2025. DWF is a global legal services, legal operations and professional services business operating through a number of separately constituted and distinct legal entities. The DWF Group comprises DWF Group Limited (incorporated in England and Wales, registered number 11561594, registered office at 20 Fenchurch Street, London, EC3M 3AG) and its subsidiaries and subsidiary undertakings (as defined in the UK's Companies Act 2006). For further information about these entities and the DWF Group's structure, please refer to the Legal Notices page on our website at www.dwfgroup.com. Where we provide legal services, our lawyers are subject to the rules of the regulatory body with whom they are admitted and the DWF Group entities providing such legal services are regulated in accordance with the relevant laws in the jurisdictions in which they operate. All rights reserved. This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein. DWF.LLP.455