Newsletter

IP / Media

2nd QUARTER - 2026

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€200 million fine imposed on Temu under the DSA

On 28 May 2026, the European Commission imposed a €200 million fine on Temu for failing to comply with its obligations to assess systemic risks under the Digital Services Act (DSA).

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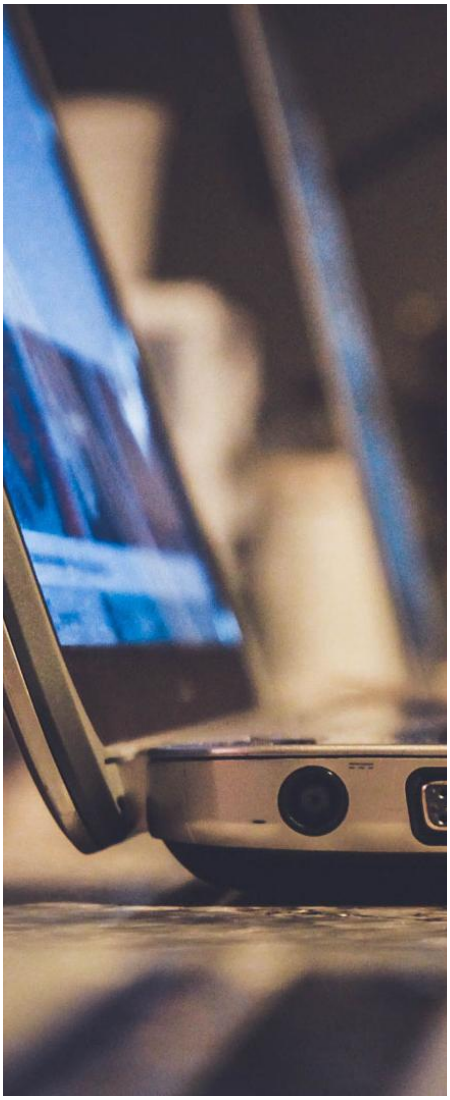
NEWS INTELLECTUAL PROPERTY

The CJEU rejects the private copying exception for copying from offline streaming services

CJEU, Stichting de Thuiskopie, 16 April 2026, C-496/24

In a judgment of 16 April 2026, the Court of Justice of the European Union ruled on the legal classification of copies made as part of the offline playback feature offered by streaming platforms and clarified how these relate to the private copying exception provided for in Directive 2001/29.

In this case, several Dutch organisations responsible for collecting private copying levies were claiming a levy from manufacturers of IT equipment, on the grounds that users of streaming services were making copies of works for private use when they downloaded content for offline viewing. The referring court asked the CJEU whether these so-called 'offline' copies could fall within the scope of the private copying exception, thereby giving rise to a right to fair compensation.



The Court points out, firstly, that the private copying exception applies only to acts of reproduction, to the exclusion of acts of communication to the public. However, in its view, making a work available via an offline download feature on a streaming platform is, in principle, to be regarded as an act of communication to the public, since it enables subscribers to access the work at a time and place of their choosing.

Furthermore, even assuming that the operation were to be classified as reproduction, the Court considers that it does not satisfy the conditions of the exception. Indeed, the copy is not made by the user themselves but by the service provider, who retains technical control over it. The user does not have free disposal of the file, as it is protected by technical measures (encryption, inability to transfer, automatic deletion).

Furthermore, the Court emphasises that the private copying exception presupposes that the individual has a copy over which they have control, which is not the case where the rightholder retains control over access to and use of the works.

In these circumstances, the CJEU concludes that copies for offline streaming do not fall within the private copying exception. They therefore do not give rise to the payment of fair compensation under that exception.

Finally, the Court clarifies that the fact that rightholders receive remuneration under a licence agreement with the platform has no bearing on the legal classification of such copies. It nevertheless confirms that where rightholders retain control over exploitation through technical measures and authorise the copies, these do not cause any harm justifying additional compensation.

NEWS INTELLECTUAL PROPERTY

The Court confirms that upcycling may constitute an infringement

Paris Judicial Court, 21 May 2026, No. 25/00621

In a judgement of 21 May 2026, the Paris Judicial Court confirmed the strict stance taken by French courts towards upcycling practices, ruling that the reuse of elements from genuine products does not preclude a finding of trade mark infringement.

A company holding several trade marks accused Kamad Reworked of marketing jewellery comprising charms stamped with its distinctive signs, presented as having been created through the upcycling of second-hand products.

The court noted that the disputed signs, affixed directly to the jewellery and used in its promotion, constituted use as a trade mark in the course of trade. It found, in the case of the semi-figurative trademarks, a high degree of visual, phonetic and conceptual similarity, leading to a likelihood of confusion in the minds of the public. As regards the word marks, their identical reproduction for identical products is sufficient to constitute infringement by reproduction, without it being necessary to demonstrate a likelihood of confusion.

The court also rejected the argument based on the exhaustion of rights. It considered that, even assuming that the elements used originated from genuine products, their transformation through upcycling results in the creation of new products, which have not been placed on the market by the trade mark proprietor.

Furthermore, the statements appearing on the website or the provision of certificates of authenticity do not rule out the likelihood of confusion, as these elements are such as to suggest the existence of an economic link with the original trade mark.

The court therefore found that acts of infringement had taken place and awarded provisional damages of 75,000 euros, citing in particular damage to the brand’s image and the luxury positioning of the products.

It also classified the provision of certificates suggesting that the marketing was lawful as a misleading commercial practice, whilst refusing to award separate compensation on that ground.

This decision follows on from a judgement of the Paris Judicial Court of 10 April 2025 (Hermès), which had already held that upcycling cannot constitute an exception to the obligation to respect intellectual property rights, even when it forms part of a creative or environmental initiative (IP/Media newsletter, May–June 2025).

Thus, the case law confirms that the reuse of authentic items, even those sourced from the second-hand market, does not exempt one from trademark law where such use infringes the functions of the trademarks, in particular their function as an indication of origin and their brand image.

NEWS INTELLECTUAL PROPERTY

Decathlon's claim against Intersport for infringement and unfair competition dismissed

Paris Judicial Court, Decathlon v Intersport, 8 April 2026, No. 20/00364

In a judgment of 8 April 2026, the Paris Judicial Court dismissed all of Decathlon's claims against Intersport and its German supplier Phoenixgroup, the manufacturer of TecnoPro full-face diving masks, both on the grounds of infringement of a Community design and on those of unfair competition and free-riding.

Decathlon alleged that Intersport had been marketing, since 2019, two new models of TecnoPro masks (ref. 289410 and 289440) that replicated the features of its famous Easybreath mask, protected by a Community design registered in 2014.

On the issue of infringement, the court identified the protectable features of the design, notably the ovoid shape of the frame, the complete transparency of the lens and the straight shape of the snorkel, but concluded that the differences between the two masks were sufficiently substantial not to produce the same overall visual impression on an informed user. The survey produced by Decathlon, according to which 82 per cent of respondents would have associated the TecnoPro mask with Decathlon, was dismissed as legally irrelevant.

On the issue of free-riding, the court considered that the Easybreath mask had 'pioneered a new category' which Decathlon could not claim as its own, given that numerous competing masks were already on the market in May 2019. The defendants' intention to capitalise on Decathlon's success was not established.

Decathlon is ordered to pay €30,000 to Intersport and €10,000 to Phoenixgroup pursuant to Article 700 of the Code of Civil Procedure.

Rejection of a patent application relating to an automated management system

Paris Court of Appeal, 10 April 2026, No. 24/18237

In a judgment of 10 April 2026, the Paris Court of Appeal upheld the INPI's rejection of a patent application relating to an 'automated VAT management system', filed in 2012 by a private individual.

The claimed invention consisted of fully automating VAT collection by enabling businesses to declare their invoices via their accounting software, allowing tax authorities to verify and authorise deductions, and enabling banks to make direct transfers to the Treasury, thereby eliminating the need for any manual VAT declarations.

The INPI had rejected the application on the grounds that the subject-matter of the claims did not constitute an invention within the meaning of the Intellectual Property Code, but was merely a method in the field of economic activities. The applicant contested this analysis, arguing that his claims referred to technical IT means.

The Court rejected this reasoning, pointing out that a patent application must make a technical contribution in order to be patentable. However, the problem solved is purely economic, as it aims to facilitate tax collection, and the IT means employed are entirely generic, comprising standard accounting software, an internet connection and a database. The mere fact of automating, via a computer, a process that is excluded from patentability does not confer any technical character upon it.

The Court therefore dismisses the application for annulment.

NEWS INTELLECTUAL PROPERTY

Trade mark infringement through the humorous use of distinctive signs

Versailles Court of Appeal, Commercial Chamber 3-1, Hermes International and Hermes Sellier v Sherine Orient, 25 March 2026, No. 24/00326

In a judgment of 24 March 2026, the Versailles Court of Appeal clarified that the use and exploitation of well-known trade marks in humorous expressions affixed to products may constitute infringement.

In this case, Hermès International and Hermès Sellier had discovered that Sherine Orient was marketing bags bearing inscriptions such as 'Waiting for my Birkin' or 'My Hermès is at home'. Taking the view that these inscriptions infringed their word marks 'BIRKIN' and 'HERMÈS', they brought an action for infringement.

At first instance, the Nanterre Judicial Court had dismissed the claim of infringement of the word marks, holding that the disputed signs should be assessed as a whole, within complete sentences, which reduced the likelihood of confusion.

On appeal, the Court adopted a markedly different analysis. It noted that the terms 'Hermès' and 'Birkin', although embedded in sentences, retain their own distinctive and appealing character, particularly due to their reputation in the handbag sector.

The judges considered that the disputed expressions would inevitably be perceived by the public as referring to Hermès handbags, thereby establishing a direct link between the protected signs and the goods being marketed. This association is all the more evident given that the goods in question are identical to those covered by the trademarks relied upon.

The Court further emphasises that, even though the humorous nature of the messages rules out any risk of confusion as to the origin of the goods, the use of these signs is intended to take unfair advantage of the reputation of the Hermès trade marks. It therefore finds that there has been an infringement of the economic functions of the trade marks, in particular their advertising and investment functions.

In this context, the Court of Appeal ruled that the addition of words or the incorporation of the sign into a sentence cannot prevent it from being classified as infringement where an identical sign is used for identical goods and retains its power of attraction.

Consequently, it sets aside the judgment at first instance on this point and concludes that the marketing of bags bearing the disputed markings constitutes acts of infringement of the 'HERMÈS' and 'BIRKIN' trade marks.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

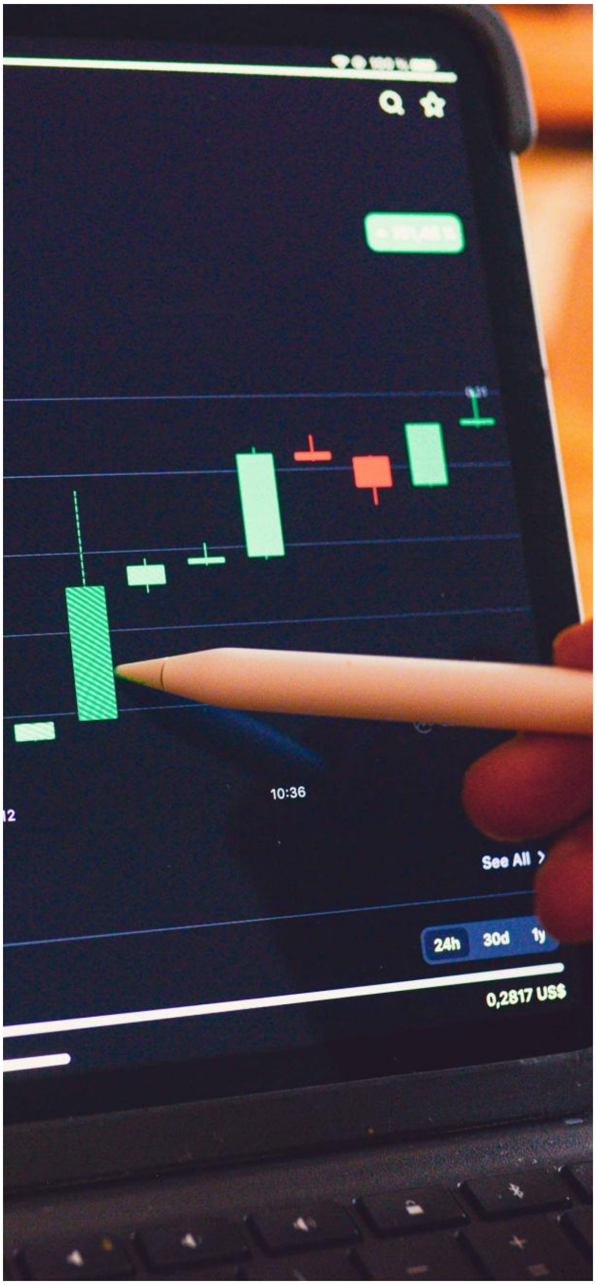
Google ordered to pay M6 €22.69 million in damages for abuse of a dominant position in online advertising

Paris Court for Economic Activities, 10 March 2026, No. 2024009992

By a judgment of 10 March 2026, the Paris Court for Economic Activities ordered Google LLC, Google Ireland Ltd and Alphabet Inc. to pay €22.69 million to M6, in compensation for the damage suffered by the group on its online advertising revenues between 2014 and 2022. The action, brought by M6 on 29 September 2023, relies on Decision No. 21-D-11 of the French Competition Authority of 7 June 2021, which had established that Google favoured its ad exchange platform, AdX, within the operation of its publisher ad server, used by website publishers to organise competitive bidding among space buyers, thereby reducing competition between platforms and publishers' revenues.

The Court dismissed Google's application to stay proceedings, based on its pending appeal against a similar decision of the European Commission of 5 September 2025 : the French Competition Authority's decision is final and binding under domestic law. The Court then applied the irrebuttable presumption set out in Article L. 481-2 of the French Commercial Code, under which an anticompetitive practice already established on a final basis is deemed proven before the civil courts; Google could therefore no longer dispute either the existence of the practice or the resulting harm to publishers, as already identified by the Authority. What remained was to assess the consequences for M6 over the period from 2014 to 2022.

The damages were assessed at €22.69 million, broken down into €19.65 million in lost revenue, €1.36 million in additional commission charged by AdX, and €1.68 million in lingering effects lasting until 2026. Google, Google Ireland and Alphabet must pay this amount to M6, together with €230,000 under Article 700 of the French Code of Civil Procedure (costs), with provisional enforcement.



NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

The CJEU upholds the fair remuneration model for press publishers

CJEU, Meta Platforms Ireland Ltd v Autorità per le Garanzie nelle Comunicazioni (AGCOM), 12 May 2026, C-797/23

In a judgment of 12 May 2026, the Court of Justice of the European Union, sitting as the Grand Chamber, ruled on the interpretation of Article 15 of Directive 2019/790 on copyright in the digital single market, in the context of a dispute between Meta Platforms Ireland and the Italian Communications Regulatory Authority (AGCOM).

The case concerned Italian legislation introducing a 'fair compensation' mechanism for press publishers in respect of the online use of their publications by digital platforms and search engines. In particular, this legislation requires information society service providers to enter into negotiations with publishers, to provide certain data relevant to determining remuneration, and prohibits any restriction on the visibility of press content during negotiations. It also confers on AGCOM powers to monitor, impose sanctions and set the amount of such compensation in the event of a breakdown in negotiations.

Meta contested the compliance of this provision with Article 15 of Directive 2019/790, as well as with the freedom to conduct a business guaranteed by the Charter of Fundamental Rights of the European Union. In particular, the company argued that the European legislation provided only for an exclusive right of reproduction and making available to the public for the benefit of press publishers, and not a genuine right to remuneration regulated by an administrative authority.

The CJEU points out that Article 15 of the Directive aims to strengthen the economic protection of press publishers against the digital use of their content by major platforms. It emphasises that Member States have a margin of discretion regarding the arrangements for implementing this related right, subject to compliance with the principles of EU law and fundamental rights.

The Court therefore considers that EU law does not, in principle, preclude a national mechanism providing for fair compensation for press publishers, nor the involvement of an independent administrative authority responsible for overseeing negotiations and determining certain calculation criteria. It also considers that the obligations on platforms to provide data and to negotiate may be justified by the objective of restoring a balance in the economic relationship between digital platforms and press publishers.

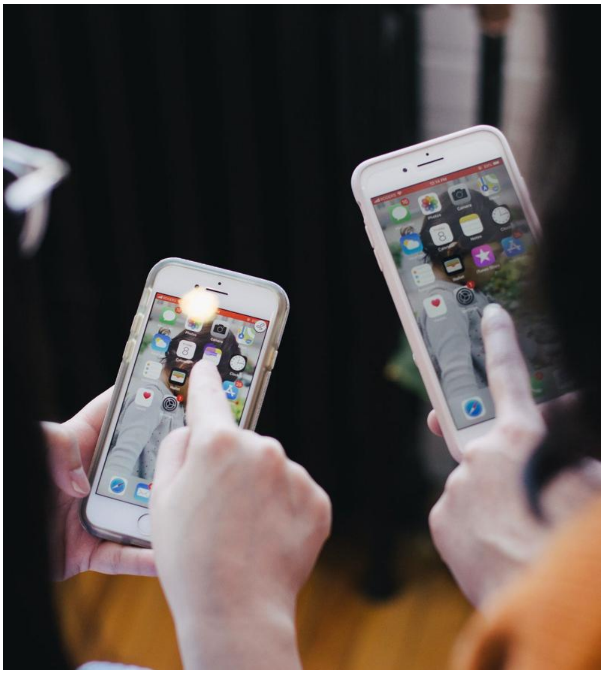
As regards the freedom to conduct a business invoked by Meta, the CJEU points out that this freedom is not absolute and may be subject to proportionate restrictions pursued in the general interest, such as the protection of intellectual property and the preservation of media pluralism. The Court notes in this regard that Directive 2019/790 specifically pursues the objective of ensuring the economic viability of the press sector and preserving pluralistic and high-quality news coverage.

The Court specifies, however, that the national measures adopted must comply with the principle of proportionality. It will therefore be for the Italian court to assess in concrete terms whether the powers conferred on AGCOM and the obligations imposed on platforms remain strictly necessary and proportionate to the objectives pursued.

NEWS MEDIA, ENTERTAINMENT AND ADVERTISING

The French Constitutional Council puts an end to the stacking of sanctions in electronic direct marketing

Constitutional Council, Decision No. 2026-1210 QPC, Orange SA, 25 June 2026



Seised of a priority preliminary ruling on constitutionality (QPC) brought by Orange SA, joined by Groupe Canal Plus as an intervening party, the French Constitutional Council ruled on the constitutionality of the provisions of Article L. 34-5 of the French Postal and Electronic Communications Code governing sanctions applicable to direct marketing carried out without the prior consent of the individuals concerned.

In this case, those provisions allowed three separate administrative authorities to sanction the same breaches: the CNIL (French data protection authority); ARCEP (French electronic communications regulator); and the administrative authority responsible for competition and consumer affairs. The claimant company argued that this framework breached the constitutional principle of the necessity of offences and penalties by allowing a stacking of proceedings and sanctions for identical facts.

The Constitutional Council upheld this argument. It found that all three authorities have jurisdiction to punish the same facts, characterised in an identical manner, by means of administrative sanctions of the same nature, pursuing a common objective of protecting the privacy of users against unwanted commercial solicitation. Such a framework breaches the principle of the necessity of offences and penalties guaranteed by Article 8 of the 1789 Declaration of the Rights of Man and of the Citizen. The challenged provisions were therefore declared unconstitutional.

However, in order to avoid an immediate and wholesale disruption of ongoing proceedings, the Council postponed the repeal of the provisions until 31 October 2027. In the meantime, it ruled that proceedings may not be brought or continued by one of the three authorities where proceedings concerning the same facts, against the same person, have already been brought before another of them, or where a final sanction has already been imposed for those same facts. Decisions issued before the publication of this ruling, however, cannot be challenged on this basis.

This decision illustrates the central role of the QPC mechanism in reviewing punitive frameworks. The Constitutional Council reaffirmed that, even in heavily regulated fields such as personal data protection and electronic communications, the legislature cannot establish multiple punitive regimes that result in sanctioning the same facts.

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