

**The multifaceted influence
of the Advocates-General on
the Court of Justice's
copyright case law: Legal
secretaries, literature and
language**

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Outline

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Introduction

- CJEU has enormous influence on EU copyright law
- CJEU is itself influenced by several sources: judge's professional background, their lack or not of specialisation, Member States, EC,...
- Paper examines influence of AsG on CJ because it follows them in high % of copyright cases
- More time to research, task is convincing CJ, previous research shows strong influence (70-90%)
- AsG in turn are influenced by literature, legal secretaries and languages => CJ is indirectly influenced by these; not yet done
- Extent to which CJ follows AsG in copyright cases; not yet done

Research questions

- In which cases does the Court follow the AG in full, in part or not at all? Is there a pattern (similar cases, similar AsG, gender)?
- Does the majority of AsG cite academic literature? Do they rely on it? Are AsG citing more literature in more difficult cases? Do female AsG cite more literature than male AsG and do they rely more often on the literature?
- In which languages is the literature most frequently relied on? Do AsG cite more literature in their mother tongue? Do AsG originating from small Member States cite literature from their own country? Who are the most cited authors?

Methodology

- Qualitative (content analysis and interviews) and quantitative (descriptive statistics)
- Dataset: all 'pure' copyright cases referred for a preliminary ruling from *Metronome Music* (1998) to *Brompton Bicycle* (2020) = 75 with AGO; of which 47 cases where literature is cited
- All AG opinions read together with judgments and coded according to followed in full, in part, not followed or unclear
- References to literature on which AG relied highlighted
- Use of publicly available information to find languages spoken by legal secretaries and AsG; imperfect picture as can come and go sometimes more often than annually

Why look at literature and languages?

- Languages spoken by the AsG and legal secretaries influence AGOs
- Tendency for legal secretaries to search in mother tongue and languages they can easily read
- Extremely rare that AsG request translation of an article as already no time to read those in languages they know
- CJ's working language is French, reduces candidates pool as those knowing French have obvious advantage. Many (79% if not more) legal secretaries speak French or trained in French legal tradition (BE, LUX, F) and 57,8% AsG
- So legal secretaries have a lot of influence on AsG who don't speak French. French legal tradition could have a strong, if disproportionate, influence on the shaping of EU law; e.g. in all copyright cases in our sample, there is at least one legal secretary in the team who knows French.

Findings: Following the AsG

- In 36,1% of the 47 copyright cases, CJ followed the AG's results and argumentation on all points and in 55,3% of cases, CJ followed AG in part => 91,4%
- De facto in-court specialisation of judges and AsG is confirmed in our sample. Those AsG who had the most copyright cases: Szpunar (12), Cruz Villalon (9), Trstenjak (8) and Sharpston (8) => 4 out of 18 AsG who delivered opinions in copyright cases had a big chunk of the 75 cases namely 49,3%
- These AsG have not been more followed whether in full or in part than other AsG, and the same can be said for any other AG.
- => cannot be said that some AsG are more persuasive than others. That said, in recent years, AG Szpunar has a big share of opinions (out of the 30 delivered since appointed, he had 12) and in all cases where he cited literature, he was followed either in full or in part and when in part on most questions in full => AG Szpunar exerts a considerable influence on the recent copyright case law. So de facto specialization may exert an influence on CJ

Literature

- Citations = proxy
- Only 4 out of 18 AsG do not cite any literature in any of their opinions in copyright cases
- AsG cite literature in 62,7% of the cases and rely on it in 80,8% => literature's influence is pervasive
- Trend over the 75 cases is to cite more if more questions or a new topic, BUT considerable differences between the different AsG
- Female AsG do not cite nor rely more on literature than male AsG
- Most cited author: S. von Lewinski; most cited references are written in English, German and French, some in Dutch
- AsG who cite the most: AG Trstenjak and AG Szpunar

Languages



- AsG relied on 218 academic literature sources of which 73 references were in UK (33,5%), in D (27,5%), in F (23,8%), in E (7,3%), in I (3,2%), in NL (2,3%) and in PL (2,3%) [NB: numbers count only once the same reference cited more than once in each AG opinion]
- => no literature cited in the other EU languages
- => 84,8% literature is UK, D or F (language of the source, NOT the author's nationality)
- Perfect match virtually each time between languages spoken by the legal secretaries and AG and language of sources cited
- => confirms hypothesis that languages spoken by AsG and legal secretaries are very important and influence sources on which they rely owing to lack of time to ask for translations

Languages (cont'd)



- Most references that AsG cite is not in their mother tongue and even more notable, none of AsG originating from small Member States cite literature in their mother tongue
- In the 16 cases where CJ followed the AG fully, the references relied on by the AG are mostly in F (46,5%), UK (37,9%), D (8,6%), Italian (5,2%) and E (1,7%)
- => claim that legal secretaries from francophone countries have greater influence is verified to a great extent in EU copyright law

Conclusion

- No AG dominates in terms of being more followed than others over the period
- CJ is also not following more or less an AG because of its gender, Grand Chamber case or topic
- But AsG have a strong influence on CJ in copyright cases
- Background and languages of AsG and legal secretaries clearly exert some influence on result of cases. All cabinets had at least one legal secretary (and often more) who knew French. French is also the 3rd most frequent language in literature relied on by the AsG and the first when the CJ follows the opinions in full => French legal tradition dominates

Conclusion (cont'd)

- Problem as it favours the State rather than individual liberty and tends to provide less secure property rights protection to investors (Zhang 2016), could also be other issues
- If an AG stays a long time at CJ, specialises and CJ often follows him/her, it is problematic if literature cited, and with it the languages in which it is written, is always the same
- => important that researchers from other countries write in English or French to have their voice heard and get cited + publish their research in open access or post a preprint on e.g. ssrn.com, use automated translation tools both by authors and legal secretaries/AsG => read literature from more scholars from more Member States as can only improve quality of arguments and thus solutions to EU copyright cases and more generally EU case law

Thank you for your attention

Questions?



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