Q&A

What are the legislative changes affecting 3D printing in European real estate?

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A: Additive manufacturing – more commonly called "three-dimensional printing" or simply "3D printing" – is a truly fascinating technology. While the first experiments date back to the 1960s, with the first meaningful industrial applications following in the 1980s, it is only in the past couple of years that the technology has really gained momentum.

This trend is also being seen in the real estate industry, with a number of countries considering 3D printing as a serious alternative to traditional construction methods and a way of saving time and cutting development costs.

Meanwhile, the 3D printing market as a whole is growing rapidly. The European Commission's forecast for the EU sees a business worth about €10bn by 2021. However, as is often the case with disruptive technologies, the lack of legal certainty – especially regarding intellectual property and civil liability – causes a problem.

There is a risk that the market development could be prevented from reaching its full potential. Against this background, the European Parliament has now asked the Commission to develop a legislative proposal for how a legal regime for 3D printing could look in Europe.

In February 2017, MEP Joëlle Bergeron suggested implementing a procedure on "three-dimensional printing, a challenge in the fields of intellectual property rights and civil liability". Her report was first referred to and debated within the parliament's Committee on Legal Affairs (JURI), which then unanimously adopted the draft resolution on 20 June 2018. This was followed by a plenary vote on 3 July 2018. The parliamentarians adopted the initiative with an overwhelming majority: 631 votes out of 677 in favour, 27 against and 19 abstentions. Thereby, the European Commission has been asked to come up with a proposal as to how 3D printing should be regulated in future.

Joëlle Bergeron's initial report stresses the need for a regulation coping with the risks related to intellectual property and civil liability in the domain of 3D printing. Some specific EU regulations already address related issues, such as civil liability for defective products. However, it can be difficult to identify the person responsible for 3D printed objects. There are various players involved: the manufacturer of the 3D printer, the creator of the 3D file, the producer of the printer software, the supplier of the raw materials, or the person actually creating the object. The report calls on the Commission to clearly define each player's responsibilities.

On an intellectual property level, we need to consider particularly copyright, patent, design, and 3D trademark aspects. Thus, the full range of intellectual property is potentially affected by 3D printing. Challenges include industrial-scale counterfeiting and a possible application of national exemptions for private copy. What is needed is a comprehensive framework capable of tackling the full range of legal issues and taking into account the projects currently under way, but without simply duplicating the existing rules currently applicable to 2D printing.

The vote of the European Parliament constitutes a true milestone in the progress towards 3D printing regulation and therefore the increase in legal certainty. However, it is now for the Commission to come up with a thought-through and balanced approach. With the 2019 elections already on the horizon, the immediate question is how far the Commission will get with this task. Given that there is still plenty on the current Commission's plate as regards the implementation of the Digital Single Market, it might be that this initiative must be re-introduced during the next legislative term. However, it is important that the Commission picks up the European Parliament's momentum.

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