



CHALLENGES FOR COPYRIGHT IN THE DIGITAL ERA - COPYRIGHT FOR 2020

Presidency Background Note in view of the Informal Competitiveness Council, Dublin, 3 May 2013

The economic importance of copyright intensive sectors in the European Union is undisputed, even if robust comprehensive data is hard to come by. Nevertheless, the ‘real’ value of these sectors to EU GDP is very significant¹.

The copyright legal framework is an important element in this environment, both for offline and online economic and social development. The system, made up of rights, exceptions to rights, and the ability to enforce rights in practice, provides a framework securing the availability and accessibility of protected content such as literary works, music and broadcasts.

Digital technologies enable not only commercial users but also, increasingly, public institutions and end-users to enjoy ever greater scope to use and re-use copyrighted material for the development of new business models, new ways of providing public services, and new forms of entertainment. The spread of information and communication technology, and the connectivity offered by the internet throughout the global economy, means that copyright today, as much as ever before, is relied on as a means to earn viable returns on the

¹ See *A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe*, COM(2011) 287 of 21.5.2011, p. 4. According to this Communication, “1.4 million European SMEs operate in the creative industries. IP-based industries represent above average potential for growth and job creation. According to the European Competitiveness Report 2010, creative industries account for 3% of employment (2008) and are among the most dynamic sectors in the EU. The number of employees in the creative industries in the EU-27 was 6.7 million in 2008.”



creation and investment in digital content in the knowledge economy. It is therefore vital for the EU that the framework is fit for purpose, enabling rightholders and users to capitalise on the potential of the internet, so that it achieves its full potential as a facilitator and catalyst of creation and innovation in the digital single market.

At their meeting in June 2012, the Heads of State or Government at the European Council agreed that swift progress is required to achieve a well-functioning Digital Single Market by 2015, and, in this context, that particular priority should be given to measures aimed at further developing cross-border online trade, including the need to “modernise Europe's copyright regime and facilitate licensing, while ensuring a high level of protection of intellectual property rights and taking into account cultural diversity”.

Against this background, and in the context of the ongoing review of the copyright acquis at EU level, the Presidency would like to open a discussion amongst Ministers at the Informal Competitiveness Council in Dublin on 3 May on the following points, aiming to identify priority issues for attention at EU level.

A. TERRITORIALITY OF RIGHTS IN THE SINGLE MARKET

All Member States have their own laws on copyright that apply within their own territories, and even though copyright has to a large extent been harmonised at EU level, nonetheless there are still significant differences between Member States. In principle, the territoriality of copyright does not mean that licensing needs to be geographically limited. In practice however, territoriality is often pointed to as causing fragmentation of the market on the part of rightholders or distributors (such as broadcasters or digital service providers) along national borders. While content is made available across borders to various extents in the different content sectors, and in various ways, the still frequent restrictions on cross-border



access are increasingly hard for EU citizens to understand, conflicting as they do with the notion of a Single Market.

There are mechanisms to address territoriality. “Country of origin” was used in respect of satellite broadcasting, and a mutual recognition approach was adopted in the Orphan Works Directive. The proposal for a Directive on Collective Rights Management, currently under discussion in Council, would also take significant steps towards facilitating the granting of multi-territorial licences for online music, and thereby the provision of multi-territorial services.

Question for discussion:

- 1. What further steps should the EU take to promote the cross-border availability of copyright protected content?*

B. BALANCE BETWEEN RIGHTS AND ACCESS

Copyright and related rights consist of a number of rights concerning what is protected (e.g. literary works, phonograms), who is protected (e.g. authors, producers, performers), and which rights are provided for (e.g. the right to copy or authorise the distribution of copies, the right to authorise public performance). The capacity for Member States to impose exceptions or limitations qualifies these rights, for example by enabling the use of protected content for teaching or scientific research, or reproductions made by libraries or educational establishments. In this context, copyright law has a dual purpose: the protection of rights and the promotion of innovation and creativity. This is its essential balance.

Question for discussion:

- 2. Does the current EU framework for exceptions or limitations on exclusive rights need to be modernised and further harmonised? Do we need full harmonisation?*



The minimum term of protection for copyright and related rights is set by international conventions. For example, authors' works are protected for the lifetime of the author as well as for 50 years after death, while performers' and producers' rights in a sound recording expire in principle 50 years after a performance is made. The EU has harmonised the term of protection at levels going beyond the international norms, e.g. authors' works are protected for 70 years after death, while certain rights in sound recordings (producers', performers') have been extended to 70 years.

Question for discussion:

- 3. Should the EU find ways to facilitate the availability of content once the minimum international term of protection has expired?*

C. ENFORCEMENT

Copyright will not play its growth stimulating role if it cannot be enforced. The EU has harmonised civil redress systems to a certain degree. Many consider that the burden of enforcement now appears to fall on online intermediaries such as internet service providers. The Commission has announced that the overall EU framework for civil enforcement is currently under review. Meanwhile, responses to the public consultation on eCommerce indicated that certain stakeholders face regulatory uncertainty about whether or not they facilitate copyright infringements.

Questions for discussion:

- 4. Which aspects of IP civil enforcement urgently need to be addressed, and should future efforts focus on tackling commercial infringements?*

Dublin, 19 April 2013

