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14 octombrie 2016

Către Serviciul Afaceri Europene, Direcția Relații Internaționale și Afaceri Europene:

Asociația pentru Tehnologie și Internet (ApTI) este o organizație neguvernamentală care acționează pentru protecția drepturilor civile digitale prin garantarea unui mediu digital liber și deschis.

Mulțumim pentru inițierea seriei de dezbateri publice în ceea ce privește reforma legislației europene privind dreptul de autor și vă rugăm să ne țineți la curent și să ne implicați în discuțiile online și față în față pe această temă de interes pentru noi.

Așa cum subliniam și în opinia anterioară propunerea Comisiei Europene, deși a promis un cadru legal modern în ceea ce privește dreptul de autor, aceasta nu servește scopului final, al unei piețe digitale unice caracterizată prin accesul la informație, protecția utilizatorilor, încurajarea serviciilor și tehnologiilor digitale inovative și susținerea activităților economice. Din contră, în loc să mărească oportunitățile pentru profesori, cercetători, instituții de protejare a patrimoniului și mediul de afaceri, propunerea de directivă este nu numai complet inadapată mediului digital, dar nici nu răspunde cerințelor actuale ale cetățenilor, favorizând exclusiv marile industrii și corporații.

Considerăm că este nevoie de o schimbare majoră de politică în ceea ce privește legislația dreptului de autor, în direcția în care creatorii, utilizatorii, profesorii și antreprenorii pot beneficia la potențial maxim de oportunitățile aduse de mediul digital.

În continuare vom enumera în limba engleză problemele majore pe care le observăm în propunerea de directivă pentru a le putea folosi în redactarea și susținerea punctului de vedere al României în procesul de negocieri.

User-generated Content Filtering on Internet Platforms

Privatised law enforcement undermines democracy and creates serious risks for fundamental rights, particularly for freedom of expression. Despite this, the current copyright reform focuses on how private companies should police the Internet, not on the need of an updated copyright framework.

The Commission proposes to introduce a requirement for Internet platforms to monitor and filter user uploads by working with rightholders and implementing content recognition technologies on their systems. Such a requirement extends above and beyond the typical responsibilities of intermediaries, and could have negative, lasting effects on nonprofit, commons-based platforms (such as Wikimedia), which have traditionally been exempted from such onerous requirements. Furthermore the proposal has the potential to severely limit the ability of citizens to communicate via commercial platforms that will now have the incentive to filter free expression of their users. In addition, the proposal is in conflict with Article 15 of the E-Commerce Directive, which prohibits general monitoring obligations for Internet platforms.

The European Commission invitation for private companies to judge which online content should or should not be taken offline leads to [censorship, abuses and over-enforcement](#). For example, [the use of copyright laws to take down contents that politicians consider “undesired”](#) threatens directly freedom of expression. It also leads to the removal of quotation and fair use rights, as a result of automatic takedown mechanisms, such as Google’s “contentID”. Indirectly, through “chilling effects”, it also leads to individuals self-censoring their online content in order to avoid possible punishments.

For example:

- ContentID being used to delete a video of a professor [calling for more copyright in relation to sport broadcasts](#).
- Sony Music takes down a lecture about [music copyright by Harvard Law Professor](#).
- University professor and copyright reform advocate Larry Lessing [sees his presentation taken down for alleged copyright infringement](#) and then sees it happen [a second time](#).

This provision should be removed from the Directive.

Geo-blocking

The fragmentation of the EU copyright market greatly limits our choice for cultural content. It discriminates citizens based on their location, and undermines the credibility of the whole copyright system. To allow people to easily and legally access copyrighted contents, solutions like affordable streaming services which can be accessed equally across the EU are needed. Trying to draw geographical borders for digital content limits the opportunities to create new markets and services. For example, it took four years for Spotify to break into the market in thirteen EU countries after being available in the United States: Definitely not the best example of a functioning Digital Single Market for EU businesses, creators or citizens.

Discrimination based on geographical location should be prohibited.

Ancillary Copyright

Sharing information has never been easier since the creation of the Internet. Individual citizens, associations, companies, institutions and governments profit from it: anyone is a publisher or a reader, depending on the context.

The Commission proposes to introduce an ancillary copyright (aka “link tax”) for press publishers to extract fees from search engines for incorporating short snippets of—or even linking to—their content. Previous experiments with ancillary copyright in Spain and Germany have not worked, as confirmed by the Commission in its impact assessment and by some Spanish press publishers in their comments in the consultation. Implementing such a right at the EU level would have a strong negative impact on all all stakeholders, including publishers, authors, journalists, researchers, online service providers, and users. The Ancillary Copyright provision would also undermine the intention of authors who wish to share without additional strings attached, including under the Creative Commons licenses.

Adding another layer of complexity in the EU’s copyright rules is guaranteed to have unforeseen consequences, in addition to what we’ve already seen in Spain and Germany. The proposals for “Google tax” could restrict authors rights, and seriously undermine access to copyright-free public domain works that are for now freely available for everyone. Many citizens are already aware of these risks; most of the nearly three thousand responses to the public consultation on ancillary copyright showed a strong opposition to this measure.

This provision should be removed from the Directive.

Education Exception

The Commission proposes to introduce an exception to use copyrighted works in digital and cross-border teaching activities. The proposal is disappointing because it would permit Member States to disregard the exception if education materials are available through a licensing option. Therefore, this exception is powerless as a tool for supporting education through legal means at the European level, as member states ultimately will decide whether to provide an exception. And it’s hard to imagine that they will be willing to avoid the rule “no exception can exist if licensing options are available”. In addition, the exception would only benefit formal educational establishments, and only cover the sharing of copyright-protected works within closed online networks (such as a school’s learning management system).

The exception should be amended to allow anyone in the service of teaching and learning to use and share content online for educational purposes in accordance with

fair practice, without the additional burden of having to determine whether there is a licensing option available. Even better would be to harmonise the InfoSoc's technology-neutral teaching exception across the EU.

Text and Data Mining Exception

We live in an era where information is created and shared more than ever before. [Some studies](#) estimate that there are 60 million academic articles in circulation today, and roughly 1,5 million new ones are added every year. This vast amount of information is less useful if it cannot be analysed by automatic means, which nowadays can be done easily. This automatisation of reading and extracting the information is called “text and data mining” (TDM). Copyright law is preventing efficient use of this technology, creating unnecessary barriers to research and innovation. For example, a researcher analysed 5 000 papers on the e-coli bacterium, but was [prevented from publishing the results of his analysis](#), for copyright reasons.

Automatically analysing legally acquired but copyrighted material can be considered a copyright infringement. If there's a threat that rights holders sue the researchers for analysing copyrighted materials using text and data mining, it will often be easier to “voluntarily” abandon the research, rather than to go to court.

The Commission proposes to introduce an exception for text and data mining (TDM) available only to non-profit research organisations. This will restrict the potential for TDM discoveries and innovation because it specifically excludes the private sector. All uses that do not fall under this limited exception will need to be licensed. This will create a situation where text and data mining outside of the academic sector would be limited to data sources that are available for licensing, which includes substantial parts of the information available online. In addition, the proposal limits the scope of the TDM activity to only scientific research purposes. This constraint would decrease the potential impact of novel TDM uses, such as for journalism-related investigations, market research, or other types of activities not strictly considered scientific research. A positive aspect of the exception is that it cannot be overridden by contract, even though it would have been better to also forbid the use of technological protection measures to restrict access and use of the underlying works for purposes of TDM.

The right to read should be the right to analyse. By not clearly allowing the use of text and data mining techniques, the current EU copyright rules are creating needless barriers to innovation and research. Text and data mining in no way harms the author, and it should therefore be allowed in clear and predictable legislation.

The TDM exception should be amended to allow anyone to undertake text and data mining of all lawfully accessible materials for any purpose.

Use of out-of-commerce Works by Cultural Heritage Institutions

The Commission proposal also addresses the difficulties that cultural heritage institutions face when trying to make out-of-commerce works contained in their collections available online. The commission's proposal would require member states to pass legislation that facilitates extended collective licensing of such works. Under such a system collecting societies could also grant licenses to cultural heritage institutions for the use of works by rightsholders who are not represented by them. While such a system would make it easier for cultural heritage institutions to make available some type of works, it will not work for all types of out-of-commerce works. As a result, the proposed licensing solutions alone will not accomplish what is needed to enable online access to Europe's rich cultural heritage.

A better solution would be to introduce an exception for the use of out-of-commerce works, which would work alongside the few, well-functioning licensing or collective management solutions in use today.

Freedom of Panorama

In several Member States citizens do not enjoy the basic right to create and share images of buildings, art, and other works permanently located in a public space. The Commission's proposal does not introduce a harmonised exception for this activity.

We support the inclusion of a mandatory exception guaranteeing Freedom of Panorama, covering both commercial and noncommercial uses, as well as online and offline uses.

General exception

The current proposal lacks a general exception that can apply to specific cases not envisioned in the legislation. Modern copyright laws should be adaptable to new uses and technologies over time without the need for legislative modification. The key to enabling this attribute is the inclusion of a general exception that is open to a potential use for any purpose based on application of a flexible balancing test that complies with the international three-step test in Berne Convention Article 9. Models for such an exception include the U.S. Fair Use clause as well as [Article 5.5. of the Wittem European Copyright Code](#).

The Commission proposal does not take into account most of the feedback from the wide array of voices requesting a modern copyright law fit for the digital age and marketplace. We hope that through the national consultations and the forthcoming legislative proceedings in the European Parliament and the Council of the European Union, the Commission's proposal can be modified to include positive changes that will support all stakeholders, including creators, users, and the public interest.

Punctele de vedere exprimate mai sus corespund cu pozițiile asociațiilor [European Digital Rights](#) (ERDi) și [Creative Commons](#), puncte de vedere pe care le preluăm și le susținem în totalitate.

Rămânem la dispoziția dvs. pe tot parcursul procesului de consultare pentru a furniza comentarii sau pentru a răspunde la orice neclarități.

Cu considerație,

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