



Shaping Internet Policy in the EU

Towards an ambitious EU Copyright Framework

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Advances in digital and Internet technologies have allowed for the promotion of digital cultural content like never before, reaching audiences across Europe and beyond.

For the EU to fully benefit from such potential the EU copyright framework must foster creativity and innovation and leverage the widespread adoption of digital opportunities by consumers, businesses and creators to enhance Europe's cultural diversity and economic competitiveness.

EDiMA believes that in order to achieve this the EU needs an ambitious approach to copyright conducive to the digital environment and economic growth, a belief echoed by Commission President Juncker on his priorities for the next five years. This can be achieved with the following principles in mind:

Recognise the technology sector's contribution and importance to European creativity and cultural diversity:

EU digital policy should focus on fostering the innovation and opportunities for creativity and cultural growth that the Internet and digital environment provide. The best way to generate more revenues for creators, enhance consumer welfare and encourage the growth of legal markets is to encourage innovation and the development of legal offers of digital content in Europe as is evident from the growth of the online legal music market, for example.

Ensure copyright rules meet basic consumer expectations:

An unprecedented number (over 5,000) consumers and end-users responded to the Commission's copyright consultation in 2014, pointing to difficulties in accessing content, expressing their desire to continue to have the right to link to content and browse the Internet, and expressing their frustration with private copying levies and double payments.

Leverage copyright for growth and innovation as part of the Digital Single Market:

At a time when digital innovation is occurring so rapidly while providing an important source of growth and jobs, the copyright framework should foster greater innovation, models, uses, and behaviours to help grow revenues for creators instead of giving rise to arbitrary new claims on activities that only act to decelerate the development of digital innovation and services in Europe.

To deliver on those goals, the European Institutions should:

- Prioritise enforcement of Digital Single Market rules in relation to copyright;
- Create an innovation-friendly well-functioning and flexible market-based licensing regime;
- Promote a modern, balanced and flexible framework of exceptions and limitations.

1. Properly enforce single market rules in relation to copyright:

The Commission should commit to enforcing existing single market and copyright rules to ensure the proper functioning of the Digital Single Market.

The EU should chart a path towards the phasing out of levies across Europe and make a concerted effort to eliminate double payments resulting from the broken levies system. It should also recognise that national disparities, which lead to the creation of new remuneration claims or new IPRs, create obstacles to cross-border services and harm the single market. These obstacles must be phased out. For example:

Private copying levies, the creation or implementation of new rights and remuneration claims at national level, are clear, immediate barriers to an integrated Digital Single Market: National disparities may also infringe the current copyright acquis. The current device-based levy system is applied arbitrarily and removed from the notion of demonstrable harm, which does not constitute an effective mechanism for rewarding creators. The fragmented nature of the levies system, the continued ambiguity around repertoire transparency and necessary payments in the licensing system has resulted in consumers still too often being required to pay twice (or more) for the same content.

No Copyright on linking and browsing: The Internet is built and developed on the ability to link and browse. A hyperlink is nothing more than a reference or footnote and referring to publicly accessible information is a fundamental right of free speech. From a legal point of view, this approach has recently been endorsed further by the CJEU in its *Svensson* judgment. Browsing sites or using online services involves the creation of multiple temporary copies in a form of web caches, allowing reduced bandwidth requirements and related quicker access and reduced cost for consumers (cost per bit), in line with Article 5(1) of the Copyright Directive. **The European Commission should recognise that copyright on linking and browsing has no conceptual foundation and would be a threat to both the digital economy and users' rights. It should monitor and safeguard those rights and ensure they remain implemented across the EU.**

Text and data mining is not, and should not be, subject to copyright protection: Facts and ideas cannot be protected by copyright, whether for commercial or non-commercial purposes. Mining is a non-expressive use that presents no legally cognisable conflict with the statutory rights or interests of the copyright holders. **The Commission should ensure that any possible new limitations for research do not affect the principle that facts, ideas, expression, or news of the day are not protected by copyright and do not require a license.**

2. Create and improve licensing across borders via an innovation-friendly, well-functioning and flexible licensing regime:

Slow, out of date or fragmented licensing infrastructure leads to increased transaction costs, less payments to creators and the slower and incomplete roll out of new digital services to consumers across the EU. Licensing needs to be fast, efficient and flexible so that right holders and services can provide consumers with the services they want, when they want them. Licensing, however, is no alternative to limitations and should not encroach on perfectly legitimate consumer activities that do not harm right holders, such as linking, browsing or format shifting.

Promote full repertoire transparency - markets cannot function without reliable information on who owns what, and copyright is no different. There can be no excuse for not making this information open and transparent to all users. Lack of information makes licensing cumbersome, raises transaction costs and results in artists not getting paid accurately and the slow roll out of new services. The Global Rights Database has reportedly stalled after years of investment. The Commission should encourage, including through regulatory incentives, full transparency on ownership of rights and closely monitor implementation of the CRM Directive.

Remove ‘double licensing’ of overlapping rights and ‘double payments’ for consumers - This increases transaction costs, the costs of administering licenses, and slows down the roll-out of services to EU consumers.

Language versioning and subtitling can raise additional complications in rolling out services across the EU. The Commission should investigate language versioning and subtitling of AV content with a view to facilitating the creation of a true Digital Single Market.

3. Promote a modern, balanced and flexible framework of exceptions and limitations:

The EU institutions should recognise that new unforeseen developments appear regularly in the digital world, as the rise of copy-reliant technologies leads to unpredictable and dynamic innovation. In many cases these innovations do not take value away from the market for the original work or from creators and do not cause any harm to rightholders.

In fact, such innovation often grows markets for digital creative content, in turn growing revenues for rightholders. It is also equally important for the EU to grow a strong and competitive digital economy across the single market to meet consumer expectations and to recognise the fundamental rights and values which underpin exceptions. A well-devised policy should strike a balance between flexibility and moving closer to the completion of the Digital Single Market:

Flexibility should be recognised and encouraged:

for example, by encouraging Member States to make use of existing flexibilities to accommodate innovation and consumers’ expectations. Where such exceptions are within the EU rules, have a limited impact on the single market, and cause no harm to rightholders, national rules should evolve with time.

Exceptions and limitations that cause no harm to right holders, conform with consumer expectations and encourage innovation and creativity should neither be questioned nor subject to arbitrary compensation claims.

The need for further harmonisation of exceptions should be assessed on a case by case basis:

taking into account whether (1) there is a detrimental impact on the internal market; (2) whether fundamental rights and/or the public interest are a strong justification for the exception; and (3) whether an underlying policy (i.e. economic or innovation policy) is better achieved at the EU level.

Levies should not be extended further to the digital environment and should be phased out.

Levies are an archaic and inefficient mechanism which acts as a tax on consumers and on innovation. The best way to generate more revenues for creators, enhance consumer welfare and encourage growth of a legal market is to encourage innovation and the development of legal offers in Europe, not the extension or application of levies, which significantly hinders developments of such offerings.

EDiMA is convinced that reviewing the copyright legal framework in light of the above principles could contribute to unlocking the potential of the Digital Single Market for the benefit of consumers and right-holders alike in Europe. We are ready to work with all stakeholders to adapt the current copyright rules and business models to the digital era and to the Single Market.

