Copyright policy developments

discussion paper shared between Ms Helga Trüpel MEP,
Vice-Chair of the Culture and Education Committee at the European Parliament
and Philippe Rixhon, Managing Director of Philippe Rixhon Associates Ltd
from 21 April 2010 until 8 February 2013

This discussion paper –

- **reviews** very briefly few recent developments around copyright policy,
- **outlines** the compatibility between the achievements and current work of the European Commission and the innovative approach to the future of copyright in the digital era proposed by Philippe Rixhon and Associates, and
- **sketches** paths of reflection for renewed copyright policy and technology
- **summarizes** our contacts with the European Commission

Review

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Call

Review – Digital rights fair trade – 21 April 2010

Elf Thesen zur fairen Bezahlung von Künstlern in der digitalen Welt

1. Durch die technologische Revolution des Internet hat sich die Kommunikationslandschaft enorm schnell verändert. Die große Maschine des Internets verleibt sich alle Inhalte ein. Das bedeutet ungeheure Potentiale, aber auch neue Herausforderungen und Gefahren.

2. Die Kontentindustrie hat lange neue Business Modelle verschlafen. Tauschbörsen mit Inhalten, für deren Nutzung nicht bezahlt wird, haben sich schnell ausgedehnt. Für viele Verbraucher war es in den letzten Jahren normal, auf viele Informationen, Inhalte, Musik, Filme und Zeitungen kostenlos zugreifen zu können. Gerade unter den Jugendlichen hat sich ein illegales up- und downloaden auf Tauschbörsen durchgesetzt. Dieses filesharing ist vom neuen Urhebergesetz nicht gedeckt, weil es sich nicht um Privatkopien legaler Inhalte handelt, sondern um das Zurverfügungstellen von urhebergeschützten Inhalten, für die nicht mehr gezahlt wird. Das schadet sowohl der Kontentindustrie als auch den Künstlern.

3. Die Internet-affine community begreift das als großen Fortschritt an Freiheit und freien Fluss von Kultur. Sie argumentiert, dass das horizontale Web auch so bleiben müsse, und es keine Überwachung von illegalem downloaden geben solle. Ihre steile These ist, dass geistiges Eigentum im Netz zum Überwachungsstaat führe *[Or to the contrary – one could say that intellectual property leads to something which can then be accessed, beware of opinion vs. evidence]*, da die IP-Adressen überwacht werden müssten, wenn man illegales downloaden verhindern wolle *[Why not? Let's think further. Should we prevent illegal downloads or amoral profits of download enablers? Shouldn't we let this go in the sense of Article 27 §1 and split the profit between download enablers and authors/artists?]*. Deswegen möchten Piraten und andere Internet-Aktivisten auch das Urheberrecht abschaffen oder zumindest abschwächen. Sie argumentieren, dieses sei nur für die analoge Welt angemessen gewesen, aber nicht für die digitale. *[Why should a legal principle be valid for one media and not for another one? The application of the law may vary but its principle?]*.

4. Der französische Ansatz, nach zweimaliger Verwarnung den Internetanschluss nach illegalem Herunterladen ohne Richterbeschluss zu kappen, ist ein Eingriff in das GRUNDRECHT auf Informationsfreiheit und daher abzulehnen. Aber es gibt auch kein Grundrecht auf illegals downloaden. Es ist nicht alles erlaubt und auch nicht wünschenswert, was technisch machbar ist. Es gibt ja auch Geschwindigkeits-begrenzungen, auch wenn die Technologie viel schnelleres Fahren hergibt.

5. Der Ansatz der Piratenpartei, nur die Nutzerinteressen zu sehen, ist aus meiner Sicht ein falscher Ansatz, weil er die Interessen der Produzenten von kreativen Inhalten nicht berücksichtigt. Es geht aber, gerade in der Wissensgesellschaft, um eine Besserstellung und Besserbezahlung von Produzenten kreativer Inhalte. Unsere Wissensgesellschaft basiert nicht nur auf dem digitalen Markt und der digitalen Infrastruktur, der immer schnelleren Verbreitung von digitalen Daten, sondern ganz wesentlich auf neuen kreativen Inhalten. Ohne neue Inhalte gibt es auch keine Wissensgesellschaft und keine (neue) kulturelle Vielfalt. Die UNESCO Konvention zum Schutz der kulturellen Vielfalt verlangt von allen politischen Regulierungen dem Sorge zu tragen und alle Politiken an diesem Ziel auszurichten.

6. Deswegen brauchen wir neue Business Modelle *[Not only; one needs also new technology and new policy/laws]*, die Inhalte zu fairen Preisen *[Not only fair prices, but also fair profit sharing, one might say that €0.99 for a song is fair, but it doesn't help the artist if she gets only €0.000001 from that sales price]* anbieten, was die Kontentindustrie lange verschlafen hat. Die Zeit ist reif für „digital rights fair trade". Basierend auf diesen Modellen, müssen neue Plattformen *[Technology + business models + policy/law]* angeboten werden, die den Ausgleich zwischen den Nutzerinteressen auf einfachen Zugang und den Künstlerinteressen auf faire und angemessene Bezahlung sicherstellen. Aber die Marktanpassung ist nicht die einzige, dringende Aufgabe.

7. In den neuen Business Modellen soll sich die Kontentindustrie verpflichten, alle Inhalte im Internet legal zur Verfügung zu stellen. Das heißt, dass der Verbraucher auf neu geschaffenen Plattformen, Inhalte, sei es Musik, Filme, e-books, usw. legal zu fairen Preisen erwerben kann. Um keine Verbraucher von der kulturellen Vielfalt im Internet auszuschließen, muss es auch subventionierte Plattformen für sozial Schwache geben *[This would go in the direction of Article 27 §1, but would require – at the same time – control and anonymity, a technological challenge]*. Es muss sichergestellt werden, dass Künstler für ihre Arbeit entlohnt werden, und dass jeder Verbraucher einen Zugang zu kulturellen Gütern im Internet hat.

8. Wenn man Produzenten mehr an der Verwertung ihrer Werke beteiligen will, muss auf EU- Ebene politisch ein neues Vertragsrecht geschaffen werden, das den buy-out-Verträgen für Künstler ein Ende macht und nicht nur den Verwertern entgegenkommt, sondern endlich die Künstler angemessen beteiligt.

9. Gerätehersteller wie Apple, Unternehmen wie Amazon und Internetserviceprovider verdienen Rekordsummen, ohne diejenigen, die die Inhalte schaffen, angemessen zu beteiligen. Das muss ein Ende haben. Deswegen muss politisch reguliert werden, dass diese Unternehmen gezwungen werden, die Kreativen, von deren Inhalte sie leben, fair zu bezahlen.

10. Eine gesetzlich geregelte Kulturflatrate *[A flat rate is a tax. Who would collect the tax? Who would distribute its proceeds? According to which criteria? Would the state control the artists? Reminds us of times we would like to forget!]*, wie sie von Grünen und SPD debattiert wird, hat noch viele ungelöste Probleme. Aus meiner Sicht ist klar, es kann nicht nur eine Flatrate für alle Branchen geben, sondern, wenn es zu Flatrate Modellen kommen sollte, dann für einzelne Branchen wie Musik, Film, Literatur, bildende Kunst. Es müssen Datenpakete zum Verkauf angeboten werden, so wie jetzt bei Handy Verträgen auch schon. Das spricht eher für freiwillige Flatrates verschiedener Plattformanbieter als für eine gesetzliche.

11. Es geht kein gerechter Weg an angemessener Vergütung der Autoren und Künstler vorbei, wenn es in der Gesellschaft einen Solidargedanken mit den Produzenten von kreativen Inhalten geben soll. Die "Geiz ist geil" Mentalität und die Vorstellung, Inhalte unbezahlt bekommen zu wollen, ist Ausdruck des Mangels an Wertschätzung für harte, künstlerische Arbeit. Jeder, der sein Werke unentgeltlich ins Netz stellen will, kann das tun, oder mit creative commons arbeiten. Aber die Grundidee, dass geistiges Eigentum vergütet und geschützt werden muss, ist richtig. Die gilt es zu verteidigen. Es geht um einen fairen Ausgleich zwischen Verbraucher- und Künstlerinteressen. Diesen Schritt muss die europäische Politik jetzt machen.

Helga Trüpel *[and Philippe Rixhon]*

Review – 14 December 2011

USA – the digital millennium act and the concept of "safe harbour"

The 1998 act gives "safe harbour" to Internet Service Providers (ISPs) and some online companies so they are not liable for copyright infringements based on the actions of users. The advocates of "no responsibility for the content" compared the ISPs' situation to the mail services and argued about the necessary secrecy of mail. So far so good, but they do not only carry emails. What if we compare the pipes of the Internet with the pipes of the water providers? The latter are not only responsible for the pipes but also for the quality of the content – for the common good.

USA – creative commons put the author in the driver's seat

Established in 2001, the Creative Commons copyright licenses and tools forge a balance inside the traditional "all rights reserved" setting that copyright law creates. Their tools give everyone from individual creators to large companies and institutions a simple, standardised way to grant copyright permissions to their creative work. The combination of their tools and their users is a vast and growing digital commons, a pool of contents that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.

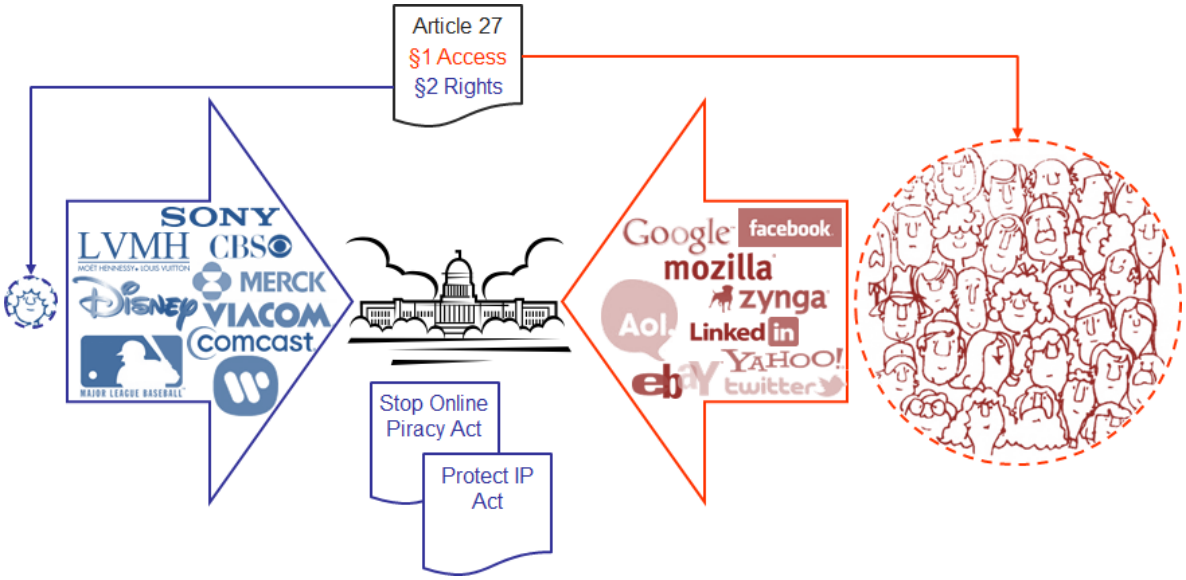
Europe – a global repertoire database

The Global Repertoire Database (GRD) Working Group is made up of eight companies – Amazon, EMI Music Publishing, iTunes, Nokia, PRS for Music, SACEM, STIM and Universal Music Publishing. The terms of reference for the Group were to agree requirements in relation to a common framework for rights ownership information for musical works and consider issuing a request for proposals, with the initial focus being on the online distribution of music. This has been documented in a Joint Statement on 19 October 2009.
The creation of a GRD can reasonably be achieved because solutions to all or part of the anticipated scope are available. There seems to be a general recognition that a tool such as the GRD is needed to allow companies operating in the music supply chain to manage aspects of their transaction processing efficiently.

USA – clash of the titans

After the adoption of the HADOPI law by the French Parliament in 2009 and of the Digital Economy Act by the British Parliament in 2010, the American Congress is discussing –

- the Stop Online Piracy Act (SOPA), also known as Bill H.R.3261 and the E-PARASITE (Enforcing and Protecting American Rights Against Sites Intent on Theft and Exploitation) Act, introduced in the United States House of Representatives on 26 October 2011 by Representative Lamar Smith and a bipartisan group of 12 initial co-sponsors;
- the PROTECT IP Act (Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011), also known as Bill S.968, introduced in the United States Senate on 12 May 2011 by Senator Patrick Leahy and a bipartisan group of 11 initial co-sponsors.



Two titanic lobby groups are fighting. One represents the right producers, the other the access providers. One side should defend the artists, authors and scientists – a minority of citizens, the other the audiences – the huge majority of citizens. One lobby group fights for Article 27 §2 of the Universal Declaration of Human Rights, the other for §1.

This approach will fail. It is top-down, trying to impose a legal answer to a technical disruption before having assessed the feasibility of a technical response. It is confused in its vocabulary; some debaters speak of censorship where the word regulation would probably be more appropriate. It is blind to the shortcomings of each camp. It is unbalanced and won't realise Article 27.

"I'm still reviewing the legislation,
but from what I've already read,
this would mean the end of the Internet as we know it,"

said Representative Zoe Lofgren from Silicon Valley.

Yes – either the top-down approach succeeds and we enter an era of criminalisation and denouncement, or a new bottom-up approach succeeds and we enter an era of regulation. Yes – realising Article 27 and the balanced objectives of the European Commission means the end of the Internet as we know it. The Internet as we know it has been designed, developed and deployed only to access and share.

France – content flat rate, not one but a spectrum of possibilities

In June 2011, following ADAMI's work, Martine Aubry proposed the introduction of a "licence globale" to be levied from ISPs. The end users would pay a fee to their ISPs for the use of copyright-protected material. This "content tax" would subsequently be transferred to rights holders. According to Ms Aubry's plans, this fee would not vary depending on how much music from the repertory the end user actually uses.

The "licence globale" – or content flat rate – is not one but a spectrum of possibilities. Who will distribute the flat-rate-collected money to the authors and artists? Which base will be used to distribute this money?

At one end of the spectrum, one could find a totalitarian regime collecting a content tax and distributing parts of it to state-authors and state-artists according to one whim or the other. At the other end of the spectrum, one could find one European Royalty Collection System collecting anonymous royalties and distributing most of them to authors and artists according to exact numbers of streams, downloads and forwards of specific songs, texts or videos. Between these two ends, there are numerous, possible, technical and commercial distribution mechanisms.

Germany – eine Piratenutopie?

A Piratenpartei entered Berlin parliament on 18 September 2011. Three questions.

Can a political programme be based on a misunderstanding? "Everyone has the right **freely** to participate in the cultural life of the community". The English language might be exceptionally weak in this case – as pinpointed by Christopher Williams, Technology Correspondent of the Daily Telegraph on 8 December 2011:

"The outlook is at least worrying for Firefox,
which like Chrome and Internet Explorer is free (as in beer) to download,
but unlike them is developed on a not-for profit basis
along free (as in speech) software principles of openness."

The French version is clearer: "Toute personne a le droit de prendre part **librement** à la vie culturelle de la communauté", "librement" not "gratuitement". And so is the German translation: "Jeder hat das Recht, am kulturellen Leben der Gemeinschaft **frei** teilzunehmen", "frei" not "kostenlos".
Then, if there is no misunderstanding, can a political programme be based on the disrespect of property in a nation which adheres to the Universal Declaration of Human Rights?

Finally, can a political programme be based on a business contradiction? The business providers of free (as in beer and as in speech) access make money if they build, store, use and sell not only the identity but also the profile of the end users – what the Piratenpartei refuses.

France – policy follows technology, sadly?

"I am very conscious that technology evolves," said President Sarkozy on 18 November 2011 in Avignon. "What counts, is the protection of authors' rights. If technology allows a new evolution [of Hadopi], then one will adapt the law". Follower or leader? That's the question. It is up to visionary leaders to call for a new technology. When Charles de Gaulle launched his appeal on 18 June 1940, he had no army; when John Kennedy sent the Americans to the Moon, he had no technology. It is up to visionary leaders to trigger the design, development and deployment of regulated, civilised digital networks – just like de Gaulle triggered the liberation of France and Kennedy the conquest of the Moon.

Review – Three myths about copyright law and where to start to fix it – 16 November 2012

This paper of the Republican Study Committee analyses current US Copyright Law by examining three myths on copyright law and possible reforms to copyright law that will lead to more economic development for the private sector and to a copyright law that is more firmly based upon constitutional principles.

The myths

1. The purpose of copyright is to compensate the creator of the content
2. Copyright is free market capitalism at work
3. The current copyright legal regime leads to the greatest innovation and productivity

Consequences

Today's legal regime of copyright law is seen by many as a form of corporate welfare that hurts innovation and hurts the consumer. It is a system that picks winners and losers, and the losers are new industries that could generate new wealth and added value. We frankly may have no idea how it actually hurts innovation, because we don't know what isn't able to be produced as a result of our current system. But we do know that our copyright paradigm has:

- retarded the creation of a robust DJ/remix industry
- hampered scientific inquiry
- stifled the creation of a public library
- discouraged added-value industries
- penalized legitimate journalism and oversight

Potential policy solutions

1. Reform statutory damages
2. Expand fair use
3. Punish false copyright claims
4. Limit the terms for copyright heavily, and create disincentives for renewal

Conclusion

To be clear, there is a legitimate purpose to copyright (and for that matter patents). Copyright ensures that there is sufficient incentive for content producers to develop content, but there is a steep cost to our unusually long copyright period that Congress has now created. Our Founding Fathers wrote the Constitution with explicit instructions on this matter for a limited copyright – not an indefinite monopoly. We must strike this careful Goldilocks-like balance for the consumer and other businesses versus the content producers. It is difficult to argue that the life of the author plus 70 years is an appropriate copyright term for this purpose – what possible new incentive was given to the content producer for content protection for a term of life plus 70 years vs. a term of life plus 50 years? Where we have reached a point of such diminishing returns we must be especially aware of the known and predictable impact upon the greater market that these policies have held, and we are left to wonder on the impact that we will never know until we restore a constitutional copyright system.

Current copyright law does not merely distort some markets – rather it destroys entire markets.

Republican Study Committee

Comment

The myths uncovered by the Republican Study Committee are myths and the policy recommendations they make should be taken into account for a new approach of copyright in the digital era.

Of course Article 27 is broader than that; even Article 27 §2, which speaks about moral (*droit d'auteur*: parenthood and integrity) and commercial (copyright) rights. In typical and respectable Anglo-Saxon tradition, the Republican Study Committee is more focused on copyright than on *droit d'auteur*. However, in the case of fair use, the Committee touches the domain of *droit d'auteur* by listing parody and satire. Interestingly they don't – in this text – touch the issue of commercial fair use, but the issue of moral fair use.

And they put forward policy propositions without considering potential technology or business implications – which is legitimate in their case due to their political/policy role.

This is one more example of political good will; the European Commission and Parliament have shown other examples of good will. Let's hope that in a slightly more favourable political climate (looking for solutions instead of looking for positions) our new approach of copyright in the digital era will find supporters.

Philippe Rixhon

Outline – 14 December 2011

Europe – the basis for an innovative approach

The European Commission, in particular Mr Michel Barnier, European Commissioner for Internal Market and Services, aims at a balanced realisation of Article 27 of the Universal Declaration of Human Rights. It is a challenge.

We have an approach for the future of copyright in the digital era. It works at 3 levels–

> Technology – aiming at an open, interoperable, secure and reliable, technical platform which enables §1 and §2, taking into account the current and foreseeable techniques to access, copy and distribute art and science
>
> Business – aiming at a meaningful, sustainable business model which empowers §1 and §2, responding to the needs and supporting the responsibilities of audiences, authors and value-adding intermediaries
>
> Policy and law – aiming at a simple, transparent and enforceable legal framework which realises §1 and §2, fostering culture, art and science – free of constraints

and has 6 characteristics –

Bottom-up, whereby a feasible technical platform would enable sustainable business models, which would allow an enforceable legal framework

Distinctive, distinguishing between technical, commercial and legal aspects of copyright as well as between disruption of royalty collection, counterfeiting and plagiarism

Clean slate, allowing a new start, not complicating further an obsolete system, hence thinking out of the boxes of stakeholders' particular interests

Predictive, not only reacting to the last technical disruption, but anticipating and triggering the next one

Balanced, respecting all the actors of the value chains implied by Article 27

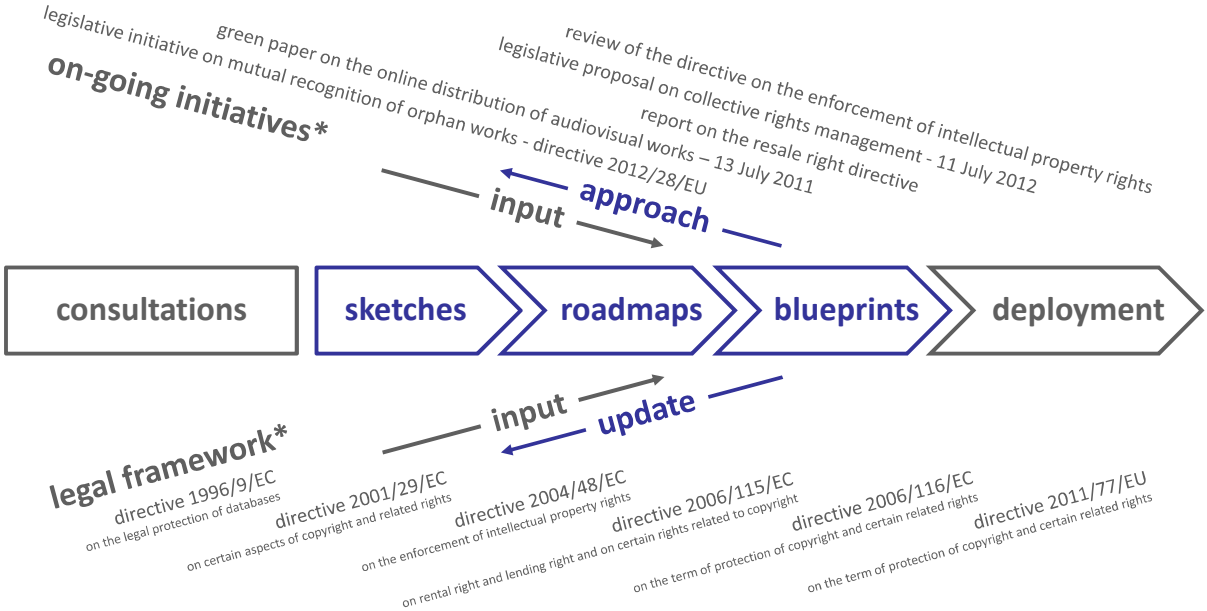
Focused, enabling Article 27 in the digital era – and nothing else.

During our meeting on 15 November 2011, Commissioner Barnier stipulated four conditions for an innovative approach for the future of copyright in the digital era:

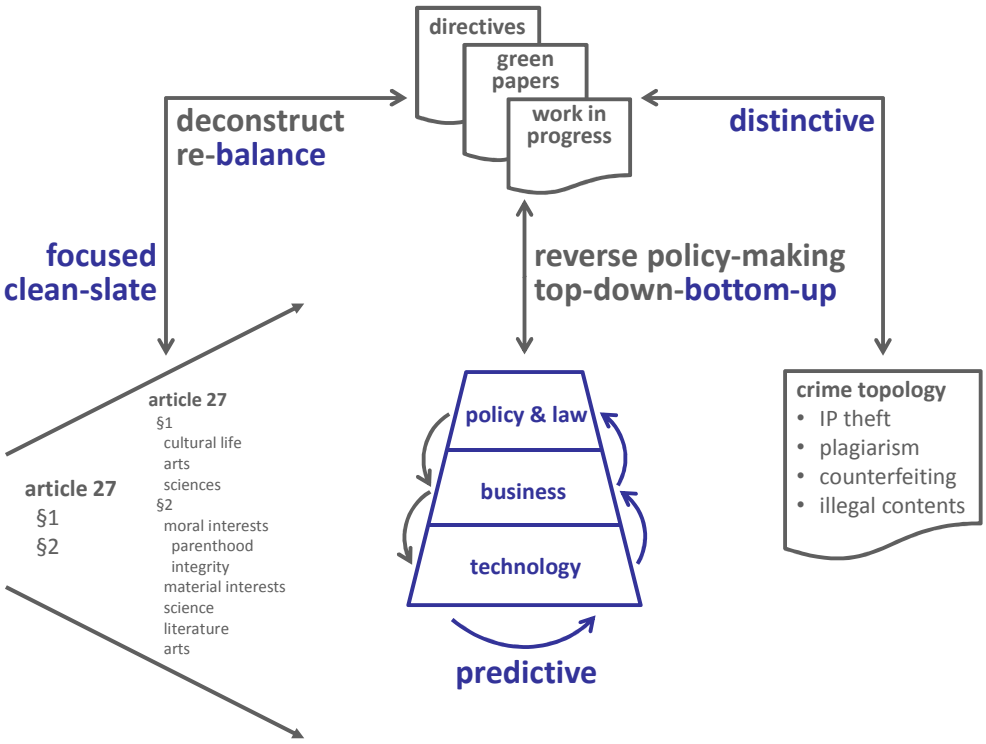
1) it has to embrace the **Internet**,
2) pass by the **European Union** (EU),
3) be **swift**, and
4) be **compatible** with the achievements and current work of the Commission.

The four conditions can be met.

Compatibility and mutual enrichment

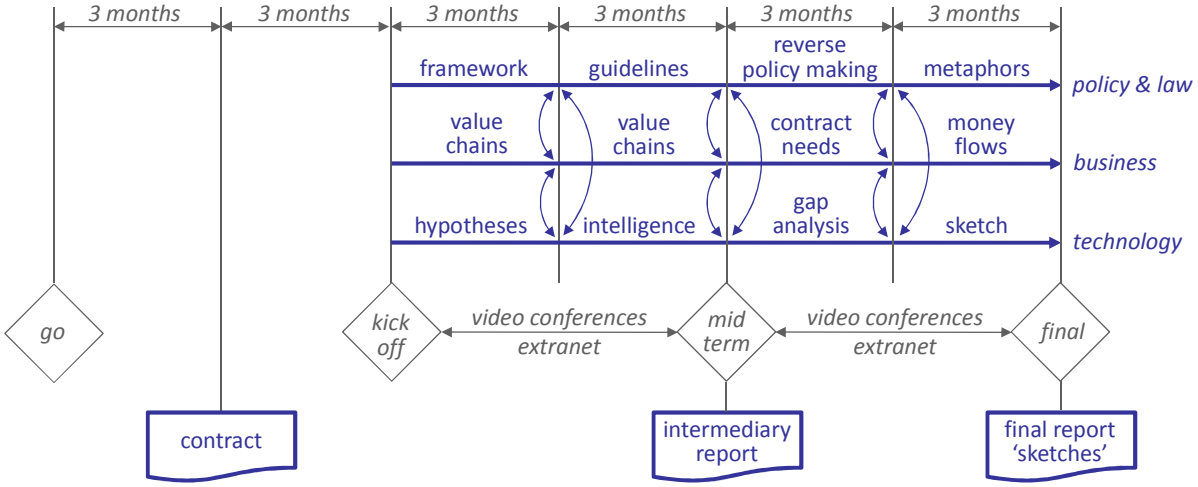


All EU directives would be inputs to be immediately considered at the policy and law level of the innovative approach. On the other hand, the final results of the innovative approach would be the base for "revamping intellectual property rights in the EU" as programmed by the Commission, i.e. the base to revamp the existing directives.



All on-going initiatives could be considered as quick wins of the programme to fundamentally revamp intellectual property rights in the EU. All of them would be inputs of the innovative approach. On the other hand, all of them would benefit from the application of the six characteristics of the innovative approach. See "PRA Ltd - Approach to copyright in the digital era - Europe.pdf". These compatibility and mutual enrichment can be discussed with Mr Barnier's cabinet.

The swift, first iteration



The modus operandi of an eventual collaboration can be discussed with Mr Barnier's cabinet.

Policy sketch – 7 February 2012

Warning – This sketch only lists some paths of reflection for a renewed copyright policy. The paths are not solutions, they do not pre-empt any solution. This list is by no means exhaustive and its only purpose is to launch a discussion.

Balancing the value chain between authors/artists and consumers

Discussing the future of copyright in the digital era, at policy and law level and in the spirit of both paragraphs §1 and §2 of the Article 27 of the Universal Declaration of Human Rights, can be envisaged as balancing the value chain between authors/artists and consumers with all the due respect owed to value-adding intermediaries. Few paths of reflection emerge based on the review of recent developments and on the technical and business conditions for a renewal of copyright.

Business incentive, theft disincentive

An interdisciplinary development is needed at technical, business, policy and law levels in order to incentivize ISPs' respect of intellectual property and un-incentivize theft of intellectual property. Respecting IP must become a **lucrative business**. Stealing IP must become unattractive.

Convergence copyright/patent/trademark

Convergence between policies about copyright, patent and trademark should be considered, not only **in policy making but also in policy enforcement** (see The Office of Harmonization for the Internal Market (OHIM) which registers the Community Trade Mark in the European Union).

Evolution, from a natural to a registered right

The Western tradition of copyright stipulates that it is a natural right which does not need to be **registered**. The Creative Commons are based on the authors' declaration of the type of licence they grant to the community. The common licence is "registered". The European Global Repertoire Database is a "registry" of works. The Chinese consider the management of "registered" copyrights linked to their commercial exploitation. Both patents and trademarks need to be "registered".
The registration appears necessary for the future of copyright in the digital era at technical and at business levels. This development could be discussed further.

Length of protection

Balancing consumers' access rights with authors/artists' moral and material rights will lead to a reconsideration of the **length of protection** of the latter rights. Both patents and trademarks enjoy shorter lengths of protection than copyright. They may be linked to their proven exploitation. They may be renewed or not. This analogy could be discussed further.

Responsibility of the authors

The Creative Commons requires the authors to choose the destiny of their works. The choice could encompass all legal variations of exploitation, from the most restrictive usage to the fullest open source. This **choice** makes the author responsible. The practice of **assigning copyright** to a third party could be reconsidered, in principle and in application; in particular the length of assignment and the conditions for the renewal of such assignments.

Responsibility of the value-adding intermediaries

Basically, the permanent commercial fight between the right producers and the access providers cannot foster an optimum relationship between the authors/artists and their audiences. Obviously, both consumers' and authors' rights come short out of this situation. Developing a policy allowing the necessary right producers and access providers to innovate, invest and flourish in a more **harmonious collaboration** appears to be necessary. The **safe harbour** concept could be revisited. It might be a valid concept in some situations but an invalid one in others. Revisiting the concept of safe harbour would require taking into account the need for **privacy** and the **technical feasibility** of a responsible content management, hence our suggested bottom-up approach.

Simplification

The copyright policy and its enforcement should be **drastically simplified** – it must become effective and efficient.

What kind of Internet freedom do we want? – 10 February 2012

If not ACTA, then what exactly? Sections of the Internet community have a very one-sided understanding of 'freedom', but freedom without responsibility undermines cultural diversity. Internet activists like to paint a drastic picture, so for their 'Stop ACTA' campaign they adopted the image of a giant octopus with its tentacles round the world. The 'monster' with the world in its clutches is ACTA, the Anti-Counterfeiting Trade Agreement, which aims to establish international standards against product piracy and copyright infringements.

Yet it is high time to distinguish between sheer alarmism and necessary criticism. This will entail grappling with issues like the openness of the Internet, the organisation of copyright law, the willingness to pay for copyright-protected digital content and the topic of sustainable data protection.

Let me make this perfectly clear: ACTA is utterly the wrong approach. Having a trade agreement cobbled together without democratic processes and concealed from public scrutiny almost harks back to the secretive politics of the 19th century. But anyone now raising the spectre of the downfall of the free Internet should also point out that Germany will have no need to implement ACTA because it already complies with the law. Nevertheless, it is significant that civil society is mounting a major protest and also that both Poland and the Czech Republic have stopped the ratification process for the time being. For ACTA is an agreement that would have prevented and stalled urgently-needed debate on how our digital culture should be organised.

A Europe-wide conflict

All of Europe is plagued by this conflict. The way the Internet has evolved over the past decade, many users now take for granted the free availability of both public-domain and copyright-protected content. And 'free' here means not only non-politically-censored, but also free of charge.

This development should – and indeed does – deeply upset creative individuals, artists and media professionals' intent on living off their innovative thought processes and artistic output. It is perfectly alright for artists to decide to work with Creative Commons and offer free downloads of their works or stream them, but it is totally out of order when this happens against the originator's wishes. Core elements of copyright law are now being called into question not only by Internet activists, but also in Google-sponsored research and even by figures like European Commissioner Neelie Kroes. Another reason for the dwindling acceptance of copyright law is the excessive culture of threats and warnings issued to clamp down on consumers to an unwarranted extent.

Whereas the Internet freedom depicted in the campaigns against the Stop Online Piracy Act (SOPA) and ACTA is indeed rightly directed against a measure that would block the Internet, be susceptible to political abuse and prone to exploitation if copyright was infringed, it must be said that some elements within the Internet community seem to have a very one-sided concept of freedom.

Theirs is the freedom of users who do not want to pay, who are unwilling to pay Web-based companies and Internet service providers a (fair) price for content they need. The campaign to dilute copyright law is not merely a politically motivated appeal for freedom: it is also being driven by the strong commercial interests of major new Internet companies like Google and Facebook.

Does the shutdown of Megaupload constitute censorship?

When Megaupload was shut down by the public prosecutor's office, Eva Joly, the Green Party candidate in the French Presidential race, criticised the move as censorship. But is it political censorship when an illegal business is provisionally shut down? Is that not rather a constitutional approach to dealing with violations of the law? Sure, we must counter political censorship, say in China, Iran or here in Europe; but when the fundamental right to copyright protection is under attack, we need to distinguish between freedom of information on the Internet and copyright. Internet data protection cannot be allowed, per se, to topple copyright protection.

Yes, Internet blocks should not be permitted; yes, Internet neutrality has to be defended; and yes, collecting societies must be made more transparent. And yet, a completely irresponsible and untenable concept of Internet freedom is a misguided notion of freedom. Should copyright fall by the wayside, in the medium term there will be less cultural diversity and fewer creative professionals.

The Convention on Human Rights of 1948 states in article 27, paragraph 1 that everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Paragraph 2 of that Article also provides, however, that copyright should be protected. In addition, freely available does not mean in vain, but that there must be access without censorship. The central direction of green cultural policy must include the willingness to reward the creators.

ACTA's opponents have a duty to find new ways of preventing Internet piracy, for example by banning advertising on illegal portals or by promoting a willingness to pay for the consumption of digital, copyright-protected content. Contributing to greater cultural diversity by paying people to be creative is a sustainable, value-based approach for markets peddling digital culture, in keeping with the motto: "Credit the creators".

Helga Trüpel

Technology sketch – 16 February 2012

Review of the SAA contribution to the European Commission's Green Paper on the online distribution of audio-visual works: opportunities and challenges towards a digital single market

SAA's suggestion (Question 9, pages 7 and 8) is worth investigating. It lists different things: metadata, digital watermarking, digital fingerprint and databases.

Let's take a video and define the metadata as the identifying description of this video. You have 3 options –

1. You can *glue* the metadata to the video and upload the video on the Internet. Poor solution, if it has been *glued* by someone, it can be *un-glued* by someone else.
2. You can *weave* the metadata within the video (various techniques of digital watermarking) and upload the video on the Internet. Better solution, because it is much more difficult to *un-weave* than to *un-glue*.
3. You can keep the metadata in a database, incl. the digital fingerprint of the video, and upload the video – without metadata – on the Internet. Even better solution, because the tracking of the video becomes independent from the video file.

Challenges/opportunities –

1. Digital fingerprint is more cumbersome than digital watermarking, we need technologies to make it easier and more affordable.
2. Digital fingerprint can be combined with digital watermarking (might even be necessary for forensics), we need technologies to do this effectively and efficiently.
3. We still face the plagiarism issue. By combining digital fingerprint, digital watermarking and anti-plagiarism detection systems, one can technically approach the problem. But one also needs policy/legal guidelines to differentiate legal artistic appropriation from illegal plagiarism.
4. It would be good if the Global Repertoire Database would include the digital fingerprint of the itemised music pieces.

One research hypothesis

One of the hypotheses (this is research, one starts with hypotheses which have to be validated or rejected) is that in order to distribute to authors and value-adding intermediaries the money which is made on the Internet (hardware, access, advertising…) fairly, one needs to track all presence and movements of Intellectual Property on the Internet through a gigantic ***radar system*** and to do this **without breaching privacy**.

The *radar system* would identify an IP object by its digital fingerprint. The SAA thinking goes in the same direction. If this hypothesis is validated, one would need to build this gigantic *radar system* in a way which is open, interoperable, secure, reliable and affordable.

Then, one would need to build a ***defence system*** to fight illegal copies.

Finally, the combination of *radar system* and *defence system* added to the current Internet would *re-invent* the Internet. It remains to be proven (by research) that it could be technically feasible, that it could support fair and sustainable business models, and that it could be politically and legally introduced and enforced. Therefore, I suggest a thrice-iterative research approach at three levels (whereby each iteration includes itself sub-iterations at the three interrelated levels of technology, business and policy/law).

The generations of the Web

Here is another way to describe what we are looking for, based on *Web generations*.

Web 1.0 = network (hardware) and publication (software). Web 1.0 enables access, §1 of Art. 27, but does not protect intellectual property, §2 of Art. 27.

Web 2.0 = interaction (software). Web 2.0 is fully deployed and enables eCommerce and social networks, incl. the publication of user-generated content; intellectual property lost almost all protection.

Web 3.0 = ubiquity (hardware, sometimes called *Internet of Things*) and intelligence (software, sometimes called *Semantic Web*). Web 3.0 is under construction. Ubiquity is when the Web is not only present on a computer but also on a smartphone, tablet, TV set, car, fridge, medical equipment, smart building, etc. Intelligence is for example applied in automatic translation.

Web 4.0 = civilisation (software). Web 4.0 has to be defined. I suggest that civilisation is when the Universal Declaration of Human Rights and other major global initiatives such as the UN Global Compact are supported by and enforced on the Web. This would – among others – enable access and protect intellectual property, i.e. balance §1 and §2 of Art. 27. To the contrary of the 3 first Web generations which have been designed, developed and deployed by the Web actors only, the 4th Web generation cannot be designed, developed and deployed without the triangular collaboration technology/business/policy.

Call for action – 4 March 2012

The European Commission is currently following a top-down, confused, reactive, unfocused, restricted development path.

- **top-down**: they are still on the *legislate* instead of *innovate* track, trying to find a legal answer to a technical disruption > we suggest ***bottom-up***
- **confused**: they are still muddling the issues of copyright, plagiarism, counterfeiting, privacy and illegal contents > we suggest ***distinctive***
- **reactive**: not only they want to rely on technologies which have already been proven obsolete, but they take for granted technologies which have not yet been validated or are still unaffordable, and they have no vision for the Internet of 2025 > we suggest ***predictive***
- **unfocused**: they have too many projects touching copyrights in too many cabinets and DGs (= the copyright projects are covering not only copyright but other matters) and these projects are poorly integrated or coordinated > we suggest ***focused***
- **restricted**: they focus on the intermediary industries of access and property > we suggest ***truly balanced*** i.e. to consider the unrestricted value chain *authors/artists > property industry > access industry > consumers/citizens*
- **development**: they discuss with current stakeholders (access industry, property industry, collection agencies…) from which one can expect developments but not research > we suggest a ***clean-slate research*** approach

Now that Karel De Gucht spoke about ACTA, Viviane Reding about privacy and Michel Barnier, Nelly Kroes and Androulla Vassiliou are respectively in charge of Intellectual Property, Digital Agenda and Education and Culture, it becomes obvious that all these voices – legitimate because the Web and intellectual property are everywhere – have an urgent need of coordination. Who else than José Manuel Barroso could coordinate the various commissioners, cabinets and DGs?

Summary of our contacts with the European Commission

13 April 2011	Discussion with the Vice-Chair of the Committee on Culture and Education (European Parliament)
1 June 2011	Presentation to the cabinet of Ms Nellie Kroes, Vice-President of the European Commission and Commissioner for the Digital Agenda
1 June 2011	Panel discussion at the European Parliament
15 November 2011	Meeting with Mr Michel Barnier, Commissioner for the Internal Market and Services
7 February 2012	Meeting with the cabinet of Mr Michel Barnier
	Mr Michel Barnier requests a discussion about copyright in the digital economy at the College of the Commission
5 December 2012	The European Commission agrees way forward for modernising copyright in the digital economy
6 December 2012	Meeting with the cabinet of Mr José Manuel Barroso, President of the European Commission

Promising developments

Commission agrees way forward for modernising copyright in the digital economy

At the initiative of President Barroso, the European Commission has today held an orientation debate on content in the digital economy.

The digital economy has been a major driver of growth in the past two decades, and is expected to grow seven times faster than overall EU GDP in coming years. Online, there are new ways of providing, creating and distributing content, and new ways to generate value. This represents a challenge and an opportunity for all the creative industries, authors and artists and other actors in the digital economy.

The Commission's objective is to ensure that copyright stays fit for purpose in this new digital context. Good progress has been made in implementing the May 2011 Intellectual Property Rights Strategy, but there remain a series of issues which need to be addressed to ensure an effective single market in this area.

The Commission will therefore work for a modern copyright framework that guarantees effective recognition and remuneration of rights holders in order to provide sustainable incentives for creativity, cultural diversity and innovation; opens up greater access and a wider choice of legal offers to end users; allows new business models to emerge; and contributes to combating illegal offers and piracy.

Today the Commission has agreed on two parallel tracks of action:

1) Immediate issues for action: launch of stakeholder dialogue

A structured stakeholder dialogue will be launched at the start of 2013 to work to address six issues where rapid progress is needed: cross-border portability of content, user-generated content, data- and text-mining, private copy levies, access to audio-visual works and cultural heritage. The discussions will explore the potential and limits of innovative licensing and technological solutions in making EU copyright law and practice fit for the digital age.

This process will be jointly led by Michel Barnier, Neelie Kroes and Androulla Vassiliou. By December 2013 the College will take stock of the outcome of this dialogue which is intended to deliver effective market-led solutions to the issues identified, but does not prejudge the possible need for public policy action, including legislative reform.

2) Medium term issues for decision-making in 2014

This track will include the completion of the relevant market studies, impact assessment and legal drafting work with a view to a decision in 2014 whether to table legislative reform proposals. The following four issues will be addressed together: mitigating the effects of territoriality in the Internal Market; agreeing appropriate levels of harmonisation, limitations and exceptions to copyright in the digital age; how best to reduce the fragmentation of the EU copyright market; and how to improve the legitimacy of enforcement in the context of wider copyright reform. Based on the outcomes of this process the Commission will decide on the next steps necessary to complete its review of the EU copyright framework.

European Commission – MEMO/12/950 – 5 December 2012

The Onlife Initiative

Concept Reengineering: rethinking public spaces in the digital transition. The Onlife Initiative - Concept Reengineering Exercise intends to explore the extent to which the digital transition impacts societal expectations towards policy making. The Onlife Initiative is open to anyone interested in participating. Join the debate! Contact: Nicole Dewandre, Directorate General for Communications Networks, Content and Technology.

The discussion around the *Onlife Manifesto* is a very promising foundation for the *policy and law* track of our *Innovative approach to the future of copyright in the digital era.*

8 February 2013

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