



# copyright strategy

how to make copyright work  
for both creators & consumers

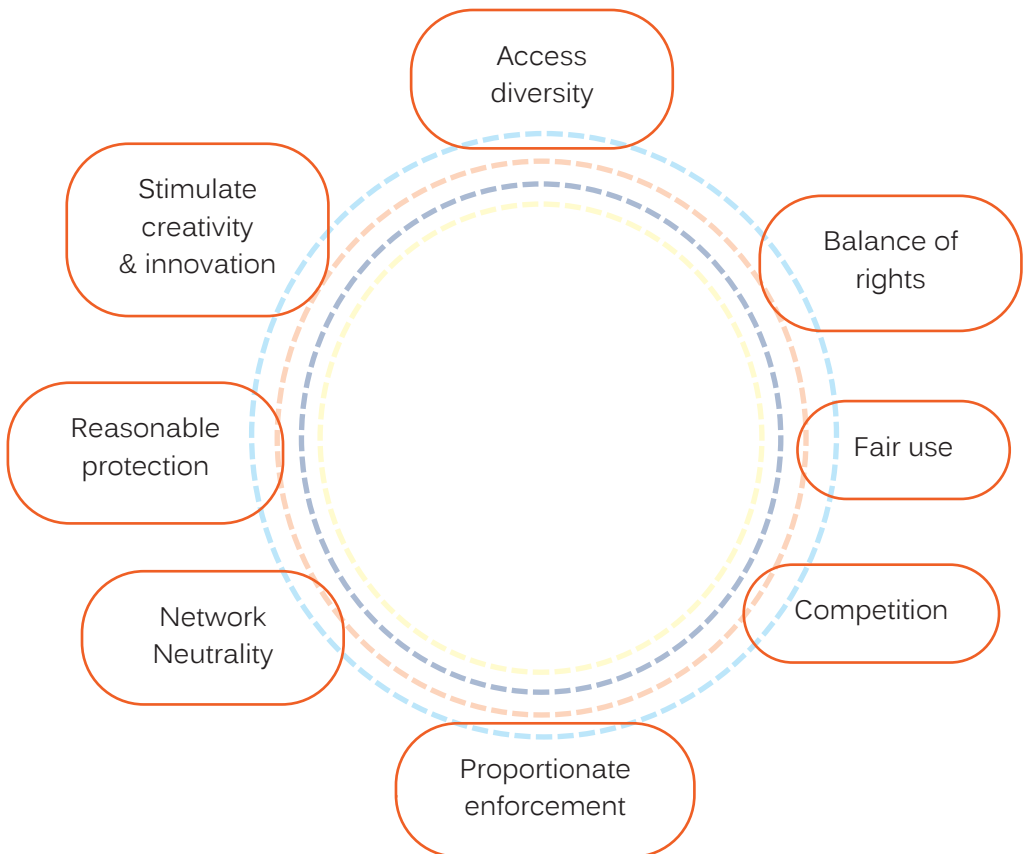


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## how to make copyright work for both creators & consumers



“Today our fragmented copyright system is ill-adapted to the real essence of art, which has no frontiers. Instead, that system has ended up giving a more prominent role to intermediaries than to artists. It irritates the public who often cannot access what artists want to offer and leaves a vacuum which is served by illegal content, depriving the artists of their well deserved remuneration.

Each day we fail to respond, we are missing out. Consumers miss out on easy, legal access to their favourite products. The creative sector misses out on new markets, new innovations, new opportunities. We all miss out on new ways to share, recognise, and appreciate our cultural heritage. And our economy overall misses out on the chance of new growth.”

***Vice President Neelie Kroes***

***European Commissioner for Digital Agenda***

“The distribution of online content across the EU is expensive, difficult, and primitive if compared to the technology we now have. In particular, we need to address the persistent market fragmentation for online rights management, which harms consumers, right-holders and everyone else in between. We need to open access to content, simplify copyright clearance and the management of cross-border licensing, make cross-border transactions straightforward, and encourage innovative methods of online payments.”

***Vice President Joaquín Almunia***

***European Commissioner for Competition***

“My ambition, and that of my colleagues of the European Commission, is to ensure that the great opportunities afforded by the single market can benefit all creators, all artists and with them all citizens.”

***Mr Michel Barnier***

***European Commissioner for Internal Market & Services***

“It is necessary to modernise Europe's copyright regime to facilitate access to content while upholding intellectual property rights and encouraging creativity and cultural diversity.”

***European Council***

***18/19 October, 2012***





Despite the increasing relevance of copyright law on the daily lives of consumers, they are provided with hardly any information on the subject. Copyright law should aim to encourage creativity and innovation for the benefit of the society as a whole. A certain number of exceptions and limitations to exclusive rights are permitted, while consumers do not know what they can and cannot do with copyright protected material. The current legislation is simply out of date and fails to respond to the challenges of the digital environment. EU copyright law does not currently achieve the required balance of interests. This is because private exclusive rights have been over extended at the expense of the consumer and public interest.

## DID YOU KNOW?

- The consumer is not mentioned at all in copyright legislation, but is merged into the broader notion of the “public”;
- 73% of British consumers are “Never quite sure what is legal and illegal under copyright law”.

## CONCRETE ACTIONS

- Recognise consumers as a key stakeholder in debates and discussions surrounding copyright law on equal footing as creators and copyright users;
- Assess the effectiveness of the current copyright law from the consumers' perspective;
- Strike a balance by recognising a set of clear, comprehensive and absolute consumers' rights;
- Revise the Copyright Directive 2001/29 with the aim of establishing a flexible, future-proof and consumer-friendly copyright law;
- Replace the current system of copyright exceptions and limitations with a system of user's rights.



Consumers want to have access to diverse content of good quality and at a fair price, irrespective of their nationality and their country of residence. They must be able to benefit from the establishment of a Single Market both online and offline. Currently, the territorial management of copyright, in combination with the uncertainty as to the ownership of copyright, the complex licensing mechanisms and the lack of standards regarding the governance and supervision of collecting societies result in the fragmentation of the European market for content creative content. Consumers do not always have access to content of their choice at a time and place that is most convenient to them. Despite the consumer demand for all types of creative content, the supply of legal offers remains limited.

## DID YOU KNOW?

- US market for online music is four times bigger than Europe, whereas Europe's population is bigger than the US;
- Spotify is currently available in only ten EU Member States;
- Pandora and Yahoo Music, have exited the EU market due to complex licensing systems;
- The time period between the theatre release of a film and its digital distribution may be as long as 36 months;
- 40% of the copyrighted collections of the British Library are estimated to be orphaned.

## CONCRETE ACTIONS

- Ensure compliance with and enforcement of Article 20.2 of the Services Directive that forbids territorial, discrimination in the provision of services on the basis of nationality or place of residence of consumers;
- Simplify the clearance of copyright, reduce transactional costs and facilitate the multi-territory and pan-European licensing of all types of content, including audiovisual content;
- Establish high standards as regards the governance, accountability, supervision and operation of entities entrusted with collective management of copyright;
- Create a Global Repertoire Database to include information about the ownership of copyright and establish a common system for the handling of metadata;
- Revise the current system of nationally-based release windows and eliminate the media chronology in the distribution of audiovisual content;
- Enable the digital distribution of orphan and out-of-print works;
- Ensure consumers have access to efficient, simple, secure and affordable online payment methods.

Consumers are entitled to a fair use of digital content. They must be able to enjoy content on the device of their choice, at a time and place of their choice. They are also entitled to a high level of protection when buying digital products, including the right to full and transparent information on their essential characteristics, possible use restrictions due to lack of interoperability and/or the application of Technical Protection Measures, and the right to fair contract terms.

## DID YOU KNOW?

- When there is a problem with the quality of the music that you have legally downloaded, you are not entitled to a refund or repair;
- Content providers tend to limit and/or exclude their liability for any malfunctioning of the digital content through technical and complex terms and conditions;
- A copyright levy for private copying is paid on for any device and/or media with a storage capacity in the vast majority of EU Member States, even if not used for private copying, i.e. mobile phone and digital cameras;
- The copyright levy on the same MP3 player may be almost 900% higher in Austria compared to Germany.

## CONCRETE ACTIONS

- Make consumer protection legislation fit for digital products, namely in terms of information requirements, legal guarantees and fairness of contract terms;
- Introduce a new right to data portability to allow consumers to transfer data from one device to another;
- Reform the current systems of copyright levies in place in 24 EU Member States, to reflect the actual use of devices by consumers, in line with the ECJ ruling on the Padawan case. No copyright levies shall be due when the economic harm is only minimal (back up copies, private storage purposes).
- Recognise consumers' right to interoperability and promote the use of open standards;
- Ensure that permitted uses under copyright law cannot be overridden by contractual clauses;
- Introduce an exception to enable visually impaired people to have access to content and ensure that technological protection measures do not hinder access to people with disabilities;
- The digitisation of works already in the public domain should not create new exclusive rights.
- Extend the principle of exhaustion to digital products, bought online, thus allowing consumers to transfer and resell digital products, the same way as with physical goods on the off-line environment.



# REASONABLE TERM OF PROTECTION

Copyright grants a monopoly for a limited time in order to encourage creativity. In doing so, it temporarily restricts competition and imposes conditions on consumers' access and use of copyrighted works. The term of protection should be optimal and reasonable, not extended beyond what is necessary for the creators.

## DID YOU KNOW?

- Copyright in artistic works lasts until 70 years after the death of the author.
- Copyright on films and audiovisual content lasts until 70 years after the death of the last surviving major contributor (director, composer, screenwriter).

## CONCRETE ACTIONS

- The term of protection needs to reflect sound economic and legal considerations and carefully assess the costs and benefits for society as a whole;
- Exclusive rights should be granted only for the time necessary to recoup investment in creativity;
- Any proposal to extend the term of protection cannot be justified and should be rejected;
- Public domain needs to be protected as an essential tool of access to knowledge, information and content.



Digital technologies have fundamentally changed the traditional structures for the production, distribution and consumption of creative content. Creators are entitled to receive fair compensation for the use of their works. The Internet allows creators to reach new audiences beyond national borders and secure additional revenues. It also enables experimentation and allows creators and consumers to take on roles historically reserved for copyright industries.

## DID YOU KNOW?

- Artists receive less than less than €0.001 cent in levies per album sold (Source: Younison.eu);
- About two thirds of professional creators have earnings from a second job (Source: SABIP);
- The top 10% of authors receive 60-70% of the total income of the sector (Source: SABIP).

## CONCRETE ACTIONS

- Encourage the participation of consumers in the creation and dissemination of knowledge by introducing a new exception for non-commercial use of creative, transformative or derivative works;
- Ensure that creators receive the royalties collected by entities charged with the collective management of copyright, after deduction of administration costs;
- Reform the current system of copyright levies in those EU Member States with a system in place and launch a discussion for their progressive phasing-out and the development of alternative models for fair compensation;
- Introduce the “use it or lose it” and the “bestseller clause” in contracts negotiated between authors and publishers; such clauses would protect authors from unfair practices by publishers;
- EU institutions to ensure appropriate funding to enable creative industries to adapt their business models to the digital environment, including through the MEDA programme, FP8 and the European Investment Bank.





Intellectual Property Rights protection confers monopoly privileges that can only be justified by compensating public benefits, through the promotion of innovation and creativity. However, too much protection can stifle innovation and economic development, distort markets and impose costs on consumers. Consumers have are entitled to benefit from a competitive Internal Market and get access to the content of their choice at the best quality and at a fair price.

## DID YOU KNOW?

- Collecting societies enjoy a statutory monopoly in many EU Member States;
- A single collecting society is authorised to operate in their respective countries for each type of right and work;
- The royalties collected by SGAE in Spain pending distribution at the end of 2008 amounted to €164.3 million (Source: Spanish Competition Authority);
- IT society SIAE lost in excess of €30 million through bad investments. This money should have been distributed to creators;
- 75% of the music market is controlled by four big labels (Warner, Sony BMG, EMI and Universal).

## CONCRETE ACTIONS

- EU and national competition authorities should closely monitor the development of legal offers for content online and intervene in case of anti-competitive price fixing agreements;
- Introduce competition among collecting societies on royalty rates and management costs and the ability for any collecting society to provide a blanket agreement for the entire European repertoire on a multi-territory basis;
- Adopt regulatory measures regarding the transparency, accountability and governance of collecting societies and ensure their strict supervision by independent bodies, i.e. competition authorities;
- Revise the principle of Community exhaustion of trademarks to allow consumers benefit from price competition;
- Revise state aid rules to support the digitisation of national cinematographic works;
- Closely monitor the vertical integration between network providers and content providers that may result in content being prioritised or degraded.



Enforcement measures need to be proportionate and fully comply with consumers' fundamental rights, namely the right to presumption of innocence, the right to a fair trial, the right to privacy and the right to the confidentiality of communications. Legislative proposals treating consumers as criminals need to be rejected.

## DID YOU KNOW?

- A study by the Harvard Business School revealed that file-sharing can only be blamed for 20% of the reduction in music sales;
- According to U.S Congress Government Accountability Office, the numbers that had previously been circulated regarding the economic impact of counterfeiting and piracy were erroneous;
- A study for the WIPO Advisory Committee on Enforcement concluded that estimated revenue losses by software producers are "bound to be overestimated".

## CONCRETE ACTIONS

- European Commission to distinguish between counterfeiting of physical goods and copyright infringements online;
- A further clear distinction needs to be made between commercial-scale copyright infringements by entities operating for financial gains and unauthorised use of copyright-protected material by individual consumers for their own private use;
- European Commission to clarify and harmonise the notion of commercial scale with the aim of linking it to financial benefits, profit or commercial motive;
- No revision of the IPRED before a critical overall economic analysis of the impact on innovation and the development of the information society is carried out (as is required by the Directive 2004/48);
- European Commission to clarify the infringing nature of mere downloading acts and clarify the limits of the private copying exceptions;
- Any proposal for enforcement of IPR needs to treat IP address as personal data and ensure that personal information about online users must only be disclosed to public law enforcement authorities;
- The promotion of codes of conducts in the field of fundamental rights must be rejected.



Net Neutrality is one of the fundamental principles of the internet and has significantly enhanced citizens' participation in society and access to knowledge and diversity, while promoting innovation, economic growth and democratic participation. The European Union and its Member States have a special interest in ensuring the openness of the internet, cultural diversity and consumers' access to the content, services and applications of their choice.

## DID YOU KNOW?

- In 2012 BEREC provided overwhelming evidence that network operators block the transmission of data, prioritise their own services at the expense of their competitors, restrict the use of certain applications or charge online service providers a premium to guarantee fast delivery of their content;
- The EU allows operators to engage in traffic management as a default rule;
- The Netherlands has become the first EU Member State to guarantee net neutrality in law.

## CONCRETE ACTIONS

- The European Commission to adopt a binding legislative instrument to safeguard net neutrality;
- Consumers should always be able to access and choose content without any restrictions or limitations raised by exclusive agreements between content service providers and network operators;
- Consumers are entitled to an internet connection of the speed and reliability advertised to them;
- Consumers are entitled to an internet connection that enables them to:
  - a) Send and receive content of their choice
  - b) Use the services and run applications of their choice
  - c) Connect hardware and use software of their choice which do not harm the network
  - d) Use any communication method to reach any destination from any point on the internet without restrictions.
- Consumers are entitled to an internet connection free from discrimination with regard to the type of application, service, or content or based on sender or receiver address;
- Consumers are entitled to competition among network, application, service and content providers;
- Consumers are entitled to know what network management practices are deployed by their network providers.

# digitalrights

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