Towards a modern, more European copyright framework, “Beautiful” moves and “bold” inspirations in EU digital copyright law

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On December 9th 2015 the Commission issued its plans for the modernisation of copyright law. The focus is on adapting the legal framework to the technological changes and to make it more functional and user-friendly, digitising and functional in an EU digital single market. The Commission’s strategy focuses on the three key areas which have been identified by the Digital Single Market Commanders (6th May 2015): lowering orded perfectly across barriers, copyright exceptions and enforcement, where some additional areas of reform are also proposed, digitalisation and inclusion of out of commerce works, better allocation of revenues generated by online forms of content distribution, and fair remuneration for authors and performers.

A step by step approach based on a series of targeted initiatives is openly favoured in the context of a short term copyright reform schedule. At the same time, the long term vision of copyright clarification is not abandoned, but is rather vaguely shifted to the future. Still, the communication appears as an envision of "beautiful" specific digital single market driven copyright reforms accompanied by the "bold" strategy of an EU uniform copyright law.

The road ahead has been taken in respect of the question of content portability, where a legislative proposal on cross-border portability has already been adopted. The approach taken by the Commission is based naturally and primarily on market practices and consumer expectations. In this respect, the proposal for a regulator on the cross-border portability of online content services provides the opportunity for subscribers to access the services when they temporarily move to a member state other than their first state of residence. It is noteworthy that this possibility is, constructed as a sort of undesirable consumer right, since it is not certain that the service providers will have the technical means to implement the appropriate measures and, as a result, the latter will bear the responsibility of selecting those verification measures which effectively respect the privacy of the subscriber.

In the field of copyright exceptions and limitations, the emphasis is put on exceptions for the purposes of research and education, text and data mining and libraries. Furthermore, legislative initiatives have been announced which will implement the Marrakesh Treaty, while it is notable that the Commission’s action list was added the assessment of possible reforms enabling the preservation of digital content by cultural institutions and the so-called ‘panorama exception’. Nonetheless, it is not clear what the scope and form of these exceptions should be mandatory and properly guaranteed against TPMs, otherwise any reform will be meaningless.

In respect of the Commission’s newly voiced concern for achieving a well-functioning market place for copyright, or “tackling the value” approach for the commercial use as remuneration, of protected content by online platforms and news aggregators was announced. At the same time, the Commission underlined the fact that the definition of the terms of “communication to the public” and “making available” has proved to be controversial and it is necessary to examine whether action is needed in order to clarify these concepts. Nonetheless, it is noteworthy that this possibility is constructed as a sort of desirable consumer right, since it is not certain that the service providers will have the technical means to implement the appropriate measures and, as a result, the latter will bear the responsibility of selecting those verification measures which effectively respect the privacy of the subscriber.

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