

Kluwer Copyright Blog

Winds of Change or Delusional Optimism?

Ana Ramalho (Maastricht University) · Tuesday, November 22nd, 2011



Copyright policy strategies at the EU level have been criticized by many, mainly academics. Critiques include, but are not limited to, the fact that copyright legislation tends to favour more the intermediaries and less the individual creator; or that the interests of users have been lost somewhere along the way. However, a couple of recent developments might indicate that the scepticism is working its way into EU institutions.

First there was the [Resolution](#) on the EU-US Summit of 28 November 2011, adopted by the European Parliament on 17 November 2011. There, at point 26, the Parliament stresses “the need to protect the integrity of the global Internet and freedom of communication by refraining from unilateral measures to revoke IP addresses or domain names.” As noted by [some commentators](#), this stands for an outwardly opposition to the US “Stop Online Piracy Act” ([SOPA](#)). This overarching Bill would allow for blocking access to copyright infringing websites, preventing search engines from linking to such websites or taking control of worldwide domain names. In short, the SOPA considerably broadens the scope and tools for copyright enforcement – and the EU Parliament is voicing its opposition against it.

It can of course be argued that the Parliament is mainly worried with questions of extraterritorial jurisdiction of the US and the political consequences that could come with it. Very understandably, extraterritorial jurisdiction – that is, exercising jurisdiction beyond national borders – is not the most well received mechanism among the international community, as it undermines other countries’ national sovereignty. Be that as it may, the end result is that the Parliament is raising its voice against strengthening copyright enforcement tools.

Second, Neelie Kroes, Vice-President of the European Commission, gave a very inspiring [speech](#) last 19 November. She rightly pointed out that the copyright system is failing the one it should primarily protect: the creator. And she stressed the need to “go back to basics and put the artist at the centre, not only of copyright law, but of our whole policy on culture and growth,” while calling for a flexible legal framework.

Taken at face value, these developments are definitely good news. Hopefully, they mean that the EU institutions are becoming aware of the fact that copyright legislation is betraying copyright’s rationales. This is certainly a first necessary step down the path to copyright reform: Brussels’ awareness that copyright isn’t really working.

Only time will tell whether these are really winds of change or whether this interpretation is optimistic but wrong. Surely it's not enough to point the finger at copyright and say it is not fulfilling its job. For instance, it's also necessary to find ways to control the influence of industry lobbying on copyright legislation, since placing the creator at the heart of copyright, as eloquently put by Ms. Kroes, might mean taking the industry out of there.

Perhaps more importantly, it will be essential to address competence issues correctly. The Lisbon Treaty opens up new possibilities in that realm. But the normative depth of those possibilities will probably have to be given by a perceptive policy strategy – one which is modernized, integrated, and aware that the EU non-economic values and policies, such as the respect for cultural diversity and fundamental rights, ought to be reflected in copyright legislation.

No, it is not enough to point the finger at copyright. But that is certainly a good start.

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