

Kluwer Copyright Blog

Ten years InfoSoc: a small note from a biased attendee to the conference

Ana Ramalho (Maastricht University) · Tuesday, January 17th, 2012



Last Friday, 13 January 2012, the conference “InfoSoc @ Ten: Ten Years after the EU Directive on Copyright in the Information Society” took place in the European Parliament. The conference, organized jointly by the [IViR](#) (University of Amsterdam) and the [CRIDS](#) (University of Namur), had an ambitious goal: to evaluate the achievements of the Information Society Directive and to discuss the next steps towards fostering creativity in the digital age (more details on the programme can be found [here](#)).

There were too many interesting (and opposite) views being discussed, and the space available in a blog post can hardly begin to report on those. Some issues, however, are worthy of note. This is the case, for instance, of how one sees the *acquis*. In particular, the question of exceptions or limitations to copyright continues to raise some controversy. Some speakers were of the opinion that article 5 of the InfoSoc Directive is not the most perfect piece of legislative drafting, to put it mildly. Qualifiers included unclearness and lack of flexibility. Others, on the other hand – notably, Ms. Maria Martin-Pratt, Head of Unit Copyright from the DG Internal Market and Services – seemed to be less critical of the current framework and didn’t believe that the full harmonization of exceptions was necessary.

Regardless of the stance taken, it is probably possible to subscribe to the opinion of one of the speakers: according to Professor Geiger, the European copyright *acquis* has a predominant economic focus. And in fact, if one takes into account (a) the *travaux préparatoires* of the Directives in the field of copyright, where economic objectives mainly prevail over social or cultural considerations; and (b) the fact that the economic competences of the EU were (and are) stronger than the non-economic ones, that should come as no surprise. As rightly stressed by both Professor Geiger and Professor Hughes, the EU copyright harmonization policy has focused mainly on the “protection” aspects, leaving largely aside the limits to that protection. The result of this “economic harmonization”, if you will, has been criticized by many over the years and by some participants at the conference: a body of laws that fails to preserve the balance that copyright seeks to provide between authors, right holders and the general public.

So in short: the *acquis* has flaws. Where do we go from here? Again, there are divergent views on that subject. Professor Hughes made a good point by saying that the harmonization project needs to identify the most important areas where action is needed. Going back to the question of

exceptions or limitations, he reminded the audience that some exceptions require more harmonization than others (private copy for example would be in less need of harmonization than other type of exceptions that favour innovation). Professor Dusollier held that the regime of protection should be simplified by focusing on the notion of exploitation, rather than on the definition of technical acts.

These are all extremely valid suggestions. A more pessimistic or cynical approach, however, would point out that criticisms to the harmonization endeavour (highlighted by Professor Hugenholtz) still stand. The EU legislative process favours lobbying and there is not really much regular participation from users or independent experts. I would dare to add that the scheme of competences granted to the EU partly favours such status quo. Regulating copyright through the lenses of the internal market is sometimes at odds with copyright's rationales and the end result might be displaced vis-à-vis copyright's aims.

It is therefore to be applauded that a group of copyright academics decided to create the European Copyright Society, which was launched at the end of the conference. The ECS will have a Board composed of 5 prominent academics (Professors Bently, Dusollier, Geiger, Hilty and Hugenholtz), each one representing one major European institute, plus 15 members. The idea of this society is exactly to counteract the drawbacks of the European legislative process, by providing a forum for, and a voice to, independent scholarly debate on copyright fundamental matters. More details on the ECS will follow shortly on this blog and other media.

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