Briefing

June 2015

European Parliament

The challenges of copyright in the EU

SUMMARY

Despite over a century of international harmonisation, copyright law remains essentially national law, even though some fundamental copyright norms are gradually converging. Today, copyright is regulated at international level mainly through the Bern Convention, the Universal Copyright Convention, and a series of other treaties administered by the World Intellectual Property Organization.

At present, national copyright laws are grounded in a handful of universal rules and principles. Exclusive rights are granted to creators for 'original' works which range from art (music, paintings) to information products (maps, databases). The rights conceded under copyright vary with national laws and legal traditions (civil law in continental Europe and common law in Anglo-American countries). However, as a minimum, exclusive rights encompass the rights to reproduce, distribute, rent, lend, or communicate a work to the public. All these rights can be transferred and/or collectively managed by specialist intermediaries (notably for music works). Most national laws also grant moral rights to protect the author's name and reputation. Other provisions – such as the term of copyright protection – differ widely on a global scale. To maintain a fair balance between the interests of users and rights-holders, legislators have foreseen a number of exceptions, allowing for limited free use of certain works.

The main European Union instrument providing a legal framework for copyright is the 2001 Copyright Directive. In May 2015, the European Commission unveiled its plans to create a Digital Single Market, aiming in this respect to present legislative proposals reducing the differences between national copyright regimes and allowing for wider online access, including through further harmonisation measures. Reactions from stakeholders were mixed. In this context, the European Parliament's Committee on Legal Affairs undertook the preparation of an own initiative report, which is due to be voted in plenary in July 2015.

In this briefing:

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Background

Origins of copyright

Before the advent of the printing press[1] in Europe in the 15th century, a document, once produced, could only be physically multiplied by the time-consuming and error-prone method of manual copying by scribes. Printing allowed for cheap, easy, and exact reproduction of works, leading in turn to a more rapid and widespread circulation of ideas and information. While governments and the church encouraged printing for the purpose of disseminating bibles and government information, they also wished to control this new technology, to suppress the spread of dissenting views and criticism. In an attempt to establish controls over printers across Europe, governments began granting official licences to trade and produce books. These licences typically gave printers the exclusive right to print particular works for a fixed period of time, and enabled them to prevent others from printing the same work during that period. Additionally, they granted rights to print in the territory of a given state, and usually prohibited the import of foreign printed works. The earliest piece of copyright legislation appeared in Great Britain in 1710, and became known as the Statute of Anne.

Since then, copyright has grown, from a legal concept regulating copying rights in the publishing of books and maps, to one with a significant effect on almost every modern industry, covering such items as sound recordings, films, photographs, software, and architectural works. It is now associated with important cultural, social and technological aspects. A public consultation on the review of the European Union (EU) copyright rules held in 2014 generated more than 11 000 messages, thus demonstrating the broad public interest surrounding the topic.

Definition and rationale

Copyright is a form of intellectual property which grants protection to the creators of original works, usually for a limited time. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights-holders. These rights (also known as 'authors' rights') secure protection of both the economic interests of authors – such as reproduction, control over derivative works, and distribution – as well as their moral interests (e.g. protection against unauthorised use of their works). In general, copyright is territorial, which means that it does not extend beyond the territory of a specific state unless that state is a party to an international agreement. While many aspects of national copyright laws have been harmonised through international copyright agreements, copyright laws in most countries have some unique features.

Major copyright law traditions

The rationale[2] behind national copyright laws is based either on utilitarianism or stems from the principles of natural right, with different countries giving different weight to the two lines of argument. Proponents of the former maintain that the economic reward for the exploitation of a work for a certain period of time constitutes an incentive for creativity. Advocates of the latter argue that everyone has a natural right of property to the products of their labour which also extends to intellectual creations. The economic argument is more prominent in Anglo-American countries, while the doctrine of natural right has greater influence in Europe and in countries with a Roman law tradition. Accordingly, two major copyright law traditions co-exist today: the Anglo-American, or common law copyright system, and the continental European, or civil law authors' rights system. While the former tends to focus on the protection of the work, the latter is rather centred on the author. However, these traditional differences are gradually converging under the influence of international harmonisation.

Harmonisation attempts globally

Technological change, and most notably the digital revolution, have led over time to shifts in the applicable treaty standards. While no creative work is automatically protected worldwide, there are international treaties which provide protection automatically for all creative works as soon as they are fixed in a medium. The relationship between existing (international or bilateral) treaties is hierarchical as well as chronological[3]. In other words, treaties situated at different hierarchical levels may apply at different points in time. However, hierarchically, of all treaty sources for literary and artistic works, the Berne Convention – first signed in 1886 – has supreme power, and as of 2015, counts 168 parties globally. The Universal Copyright Convention (1952) administered by the United Nations Educational, Scientific and Cultural Organization (Unesco), is next in the hierarchy of treaties. The Rome Convention (1961) provides specific protection to performers, producers of phonograms, and broadcasting organisations.

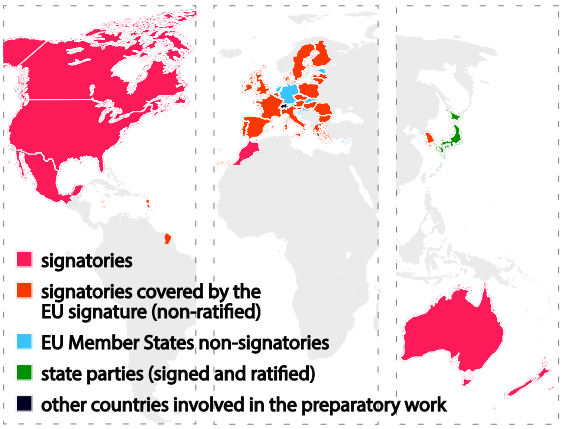
The World Intellectual Property Organization (WIPO) was created under the auspices of the United Nations in 1967 '[...] to promote the protection of intellectual property throughout the world' and currently administers 26 treaties. These include: the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) from 1994, which constitutes an Annex to the Marrakech Agreement establishing the World Trade Organization; and, most recently, the WIPO Copyright Treaty; and the WIPO Performances and Phonograms Treaty; both from 1996, and aiming to provide adequate protection for works in the digital environment.

Practitioners argue that currently, the most pressing challenge for legislators is to guarantee that copyright protection is adequately provided for and enforced in the digital environment, while at the same time not impeding legal access to works.

The Anti-Counterfeiting Trade Agreement (ACTA)

Negotiations over ACTA began in 2006, with the purpose of establishing international standards for intellectual property rights enforcement, both for physical and digital goods. It came to the fore only in 2008 – in the form of leaks rather than official disclosures – when it became apparent that ACTA was intended, among other things, to cover infringements of copyright through internet use. In 2011, the signature of the agreement by the EU and 22 of its Member States resulted in widespread protests across Europe. MEP Kader Arif (S&D, France) resigned as European Parliament (EP) rapporteur after qualifying the whole process as a 'masquerade'. Finally, the EP rejected ACTA in 2012, thus preventing the agreement from entering into force in the EU. Once it has been ratified by six signatories, its implementation will take effect. As of June 2015, it has only been ratified by Japan.

Figure 1 – ACTA: state of ratification



Source: Swiss Federal Institute of Intellectual Property, 2014.

Main copyright features and principles

Scope of copyright protection

The Berne Convention grants copyright protection[4] to 'every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression'. Therefore, what lies at the heart of copyright law is the distinction between artistic works and mere ideas. Copyright law protects only the form of expression of ideas, not the ideas themselves. Using ideas expressed in a work does not represent a copyright violation. For

copyright to be infringed, one has to copy the form in which the ideas are expressed. For example, the copyright of a Mickey Mouse cartoon restricts others from making copies or creating derivative works based on Disney's particular anthropomorphic mouse, but does not prohibit the creation of other works about anthropomorphic mice in general, so long as they are sufficiently different.[5]

Most importantly, to qualify for copyright protection, a work must be original, even though there are no universal standards on what originality means.[6] Common law countries apply the 'sweat of the brow doctrine', meaning that copyright protection can be granted based on how much labour and diligence it took to create a work, rather than, or in addition to, how original a work is. In contrast, civil law countries link originality to creativity and the display of the author's personality. It has been argued that the lack of common appreciation standards can lead to situations where some works not qualifying as original in civil law countries, due to a lack of creativity, may acquire this status in common law countries.

Orphan works

An orphan work is a copyright protected work for which rights-holders are unknown. Precise figures for orphan works are not readily available, but they have been estimated at between five and ten percent of collections in public sector institutions. Orphan works are not available for legal use by filmmakers, archivists, writers, musicians, and broadcasters. In 2012, the Council and Parliament adopted a directive allowing the use of orphan works under certain conditions.

It should be noted that copyright also protects 'derivative works' – such as translations, adaptations, and music arrangements – without prejudice to the copyright in the pre-existing work. In other words, an author of a translation needs first to obtain authorisation from the author of the work. Computer programmes are protected under the copyright laws of a number of countries, including the EU, as well as under the WIPO Copyright Treaty. The same applies to databases. Traditional cultural expressions or folklore are however not protected as such,[7] which increasingly poses the problem of their commercial exploitation without due respect to the indigenous communities who have created them. Meanwhile, new forms of protection are being explored jointly by Unesco and WIPO.

Resale right

The resale right or ***droit de suite***, concedes authors of graphic works (e.g. paintings and sculptures) a share in the resale of their works at public auctions and in galleries. Unlike authors of literary or musical works, visual artists can only exploit the traditional economic rights of reproduction and public communication. Often, especially at the beginning of their career, such works are sold at very low prices. The resale right therefore aims to partly offset the loss from an eventual increase of the works' value. In contrast, the **first-sale doctrine** in use in the US creates an exception to the rights-holder's distribution right. Once the work is lawfully sold or transferred, the copyright owner's interest in the material object in which the copyrighted work is embodied is exhausted and the rights become the property of the new owner of the work.

Ownership

In general, the author is the natural person who has created a work, except when s/he is unknown (see box on Orphan works). However national copyright laws have different definitions of authorship. In common law countries, third parties such as corporate bodies, and legal entities may be considered authors (i.e. the employer is the copyright owner of a work created by an employee). In contrast, in the civil law tradition, only the creator qualifies as author. The employer can, however, acquire copyright through a contract.

Copyright in anonymous or pseudonymous works is owned by the publisher until the author reveals his or her identity. In the case of joint works, the contributors jointly own the rights of their creation. The substantial number of contributors to a film production is particularly challenging for copyright laws. In civil law countries, the rights usually belong to several physical persons, who have contributed to the creation of the film, while in common law countries the producer is generally the only copyright owner.

Rights under copyright

Economic rights allow rights-holders to derive financial reward from the use of protected works by others. Usually, creators entrust professionals, such as publishers or producers with the exercise of these rights. In general, economic rights are exclusive. In practical terms this means that only the rights owner can authorise the use of a protected work (and fix the conditions of use, including any remuneration). Any use outside the granted permission is considered copyright violation. The main economic rights recognised by international conventions include: the right of reproduction, the right of distribution, rental and lending rights, resale right (see box), rights of communication to the public (see box), and adaptation right (including translation).

Moral rights were first recognised in France under the expression '*droit moral*'. Only authors can enjoy moral rights – even though they may have transferred the economic rights to someone else – and contrary to economic rights, they cannot be ceded. The main moral rights cover: the right of attribution (allowing authors to decide whether or not to associate their names with the work and whether the work should be made available to the public); the right of integrity (protecting works from distortion, mutilation or derogatory action which can be prejudicial to the author's reputation); the right of disclosure (specifying whether a work can be made available to the public for the first time, and if so, in what form and under what terms); and finally, the right of withdrawal (allowing the author to withdraw a work from the market if it no longer reflects his/her intellectual or artistic views. However, since this can affect the economic interests of those who have already acquired the right to use the work, it is usually subject to an extensive range of conditions).

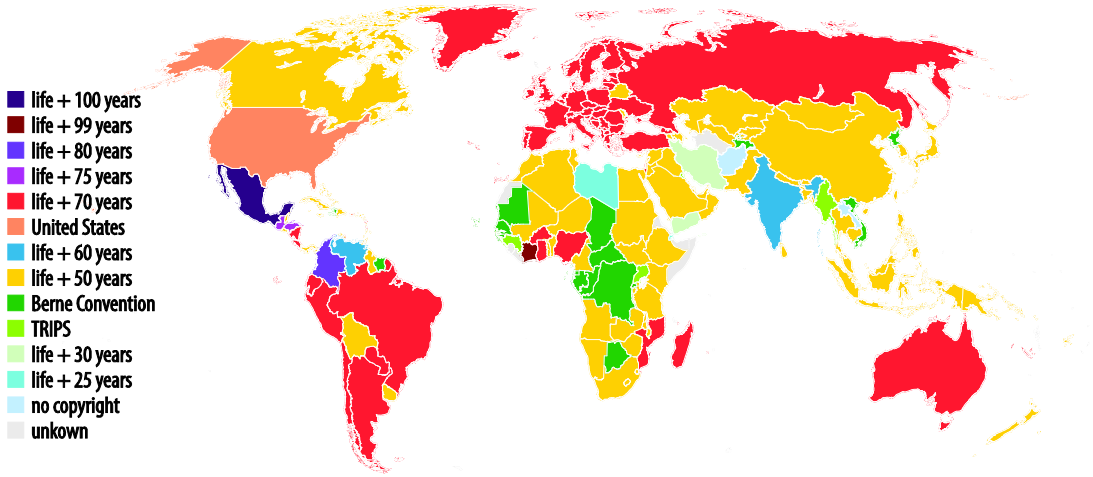
Rights to communicate to the public

The notion of 'communication to the public' comprises a wide range of activities including public performances and various forms of remote transmission. The background music used in bars and shops is a form of public performance. The rights related to this type of use are usually referred to as **'small rights'** (in contrast to the **'grand rights'** of stage shows in theatres and operas). Small rights account for a substantial share of revenue in the music business, and are usually managed by collecting societies. Remote transmission rights deal with the transmission by wireless means (radio, TV, satellite) and by wire (e.g. cable-cast), as well as of works made available online.

Duration of copyright protection

The rights of the copyright owner are protected only for a given period of time, which begins when the work has been created – or, under some national laws, when it has been expressed in a tangible form – and ends sometime after the death of the author. The aim of this provision is to enable the author's successors to enjoy the economic rights of the

Figure 2 – Duration of copyright protection in the world



Data source: Public Domain Day, 2015.

exploitation of the work after the author's death. However, economic rights are set to expire after a certain period of time, so that access to works is freed in the interest of the public. In general, the copyright term provided for by national law in countries party to the Berne Convention is the lifetime of the author plus 50 years after his death. The Berne Convention also establishes periods of protection for works such as anonymous, pseudonymous, photographic, and cinematographic works, where it is not possible to base duration on the life cycle of an individual author. There is a growing trend in a number of countries toward lengthening the duration of copyright. The EU, the United States (US), and several others, have extended the term of copyright to 70 years after the death of the author. A few countries go even further (see figure 2). A work no longer protected by copyright falls into the public domain.

Some argue that increasing life expectancy accounts for the constant extension of the periods of protection. Others maintain that the copyright extension curve in the US closely follows the expiration line for the Mickey Mouse rights held by Disney. Still others claim that it is a way to protect Hollywood from having to compete with the past. All this begs the question whether copyright extension will actually ever end.

It is interesting to note that, in some countries, the term of protection applies both to economic and moral rights (mainly in common law traditions). For jurisdictions which are party to the Berne Convention, there are two options: either the protection is guaranteed only during the lifetime of the author, or there is no limit (perpetual moral rights). The latter is found mainly in the civil law tradition, in which case rights are exercised either by the heirs or by a public authority.

Exceptions and limitations

To maintain a fair balance between the interests of users and rights-holders, copyright protection is subject to two types of limitations. On the one hand, works are protected only for a certain period of time, at the expiration of which they may be used freely. On the other hand, during the term of protection, a number of exceptions and limitations, allows for copyrighted works to be used without a license from the copyright owner.

The first group of exceptions applies to the exclusion from copyright protection of certain categories of works, such as those which are not fixed in tangible form (e.g. choreography is only protected if written down or recorded). The second category of exception – called **'free use'** – concerns particular acts of exploitation, normally requiring the authorisation of the rights-holder, which may, under strict circumstances, be carried out without authorisation. Examples of free use include: quoting from a protected work, provided that the source of the quotation and the name of the author is mentioned; and use of works by way of illustration for teaching purposes and news reporting. However, free use is not to be confused with **'non-voluntary licences'**. The latter makes it impossible for rights-holders to refuse authorisation for the use of the work to third parties, but they are nevertheless entitled to receive compensation and negotiate its amount. Such situations typically arise in the field of broadcasting.

Interestingly, exceptions and limitations have not been harmonised at the international level. Indeed, the right to quote is the only mandatory exception provided for by the Berne Convention. However, all national copyright laws grant exceptions and limitations based on the notion of **'legitimate interest'** and which fall into four main categories: promotion of freedom of expression (quoting works for the purpose of criticism or parody); access to knowledge (e.g. replacement of lost or damaged copies in libraries; the production of alternative versions in large print or braille of a copyrighted work for visually impaired

persons); the requirements of justice and the functioning of the government (e.g. official texts and court rulings); and finally, private or personal use. Nevertheless, the interpretation of 'legitimate interest' and the scope of limitations may vary significantly from one jurisdiction to another.

The limitations laid down in national legislation are usually determined through an assessment process. While civil law tradition countries have adopted a restrictive set of limitations on copyright protection, others include provisions allowing specific cases of use without prior authorisation. The **'fair use'** concept in the US and the more restrictive **'fair dealing'** in the United Kingdom, Canada or Australia, are examples of the latter approach. In general, the so called **'three-step test'** introduced by the Berne Convention, serves as a basis for assessment of all exceptions to exclusive authors' rights. According to the test, limitations or exceptions should be limited to 1) certain special cases, which, 2) do not conflict with normal exploitation of the work, and, 3) do not unreasonably prejudice the legitimate interests of the rights-holder.

Transfer of rights

The laws of many countries allow rights-holders to transfer their economic rights to a third party. Moral rights however are inseparable from the author and cannot be transferred. Authors may decide to sell their rights in return for payment (usually called **royalties**), which varies depending on the use of the work. Most importantly, copyright ownership is distinct from the ownership of the physical object or support of the work. Therefore, a person who privately owns a painting, in general, does not enjoy any economic rights – such as the right to reproduce it on postcards – and must seek a transfer of rights if s/he wishes to carry out any such act. It is interesting to note that each copyright prerogative may be transferred or licensed separately. For instance, the author of a play may assign the right to publish the play to a publisher, and the right to a public performance to a producer.

Territoriality and geo-blocking

The exclusivity that a copyright confers upon its owner is, in principle, limited to the territory of the state where the right has been granted. Therefore, making a work available online potentially affects as many copyright laws as there are countries where the posted work can be accessed. The territorial limitation of copyright licences within EU Member States (so- called territoriality), allows copyright owners such as television broadcasters to prevent users from accessing material when they are based in another country (known as geo-blocking).

Transfers of copyright may take one of two forms: assignments and licences. An **assignment** is a transfer of a property right. So, if all rights are transferred, the assignee becomes the new owner of the copyright. Broadly speaking, transfer of rights by assignment is only possible in common law jurisdictions. In the civil law tradition, licensing remains the sole valid form of contractual transfer of rights. Under **licensing**, the owner of the copyright retains ownership, but authorises a third party to carry out certain acts covered by his economic rights, generally for a specific period of time and for a specific purpose. For example, the author of a novel may grant licences to a publisher and a film producer at the same time. Licences may be exclusive or non-exclusive (i.e. allowing for simultaneous use of the work). A licence, unlike an assignment, does not generally grant the right to authorise acts covered by economic rights.

Licensing may also take the form of **collective rights management**, which is particularly important in the transferring of rights for musical works. Under this type of transfer, authors and other rights-holders grant exclusive licences to a single body, which acts on their behalf to provide authorisations, to collect and distribute remuneration, to prevent and detect infringement of rights, and to seek remedies for infringement. Placing the control of

authorisations within the remit of the entity which delivers them appears as an advantage in terms of efficiency in the digital age, with multiple possibilities for unauthorised use of works.

A rights-holder may also decide to abandon their exercise of the rights, wholly or partially (i.e., posting copyright protected material on the internet for a fee, or restricting the abandonment to non-commercial use).

Free licences

The term 'free licence' and the focus on the rights of users are linked with the social and political free software movement and open-source initiative. Free licences are **copyleft** (in opposition to copyright, see symbol). In other words, its author grants permission to the work for users to reproduce, adapt, or distribute it, with the accompanying requirement that any resulting copies or adaptations are also bound by the same licensing agreement. Copyleft-type licences are a novel use of existing copyright law to ensure a work remains freely available. Examples of such licences include the GNU General Public Licence – the first and most widely used software copyleft licence – and Creative Commons licences (see symbol).

Related (neighbouring) rights

The rights granted to persons other than the authors, but who are involved in the dissemination of copyrighted works, are called related rights. They cover three main categories of beneficiaries: performers, producers of phonograms, and broadcasting organisations.[8] The rationale of neighbouring rights reflects the civil law concept of copyright, where rights unrelated to works are classified under a separate category. Concretely, in the case of a song, while copyright is granted to the lyricist and the composer, the performers, the producer, and the broadcaster will enjoy separate related rights, with respect to their contribution. In general, related rights are transferable and subject to comparable exceptions and limitations as author's rights.

Standards of protection of neighbouring rights did not follow in the wake of national legislation – as in the case of authors' rights – but were first discussed and adopted at the international level, before being gradually introduced into domestic laws.

The scope and the extent of protection of **performers** have gradually expanded to include fully-fledged exclusive rights, such as the rights of reproduction and distribution, the rental right and the 'right of making available'. In the case of collective performances involving a group of artists (such as an orchestra), most countries concentrate the exercise of these rights in the hands of an elected representative. Additionally, performers also enjoy certain moral rights which allow them, for instance, to be identified as performers, and to object to any distortion or unauthorised modification of their performances.

The related rights of **producers** include the right of reproduction and distribution, the rental right, and the 'right of making available'. For both categories, the WIPO Performances and Phonograms Treaty has extended protection to 50 years. This runs from the date of the performance's fixation or, if unfixed, from the date of the performance itself.

Broadcasters enjoy the right to authorise or prohibit the re-broadcasting of their broadcasts, as well as their reproduction and communication to the public, for a term of 20 years as of the end of the year in which the first broadcast took place.

While the rights of performers and producers were updated by the WIPO Performances and Phonograms Treaty, discussion on the updating of the international protection of broadcasters is ongoing. Some elements, such as the inclusion of internet services (e.g. 'web-casting'), as well as the concrete scope and duration of rights, remain controversial.

EU legal basis and framework

Background

Experts[9] argue that it is technically incorrect to refer to the copyright law of the EU, since it does not have a supranational copyright system. When such reference is made, this invokes the EU's attempts at harmonisation of nationally existing rights, and the jurisprudence of the Court of Justice of the EU. Prior to the Treaty on the Functioning of the EU (TFEU), the Union did not possess an explicit law-making competence in the field of intellectual property. An alternative legal basis was therefore found in Article 95 EC (currently Article 114 TFEU), which offered the possibility to adopt measures for the approximation of provisions relating to the functioning of the internal market.

Copyright and lobbying

Academics have repeatedly criticised EU copyright policies with regard to the processes by which they are transformed into legal instruments, focusing notably on the role of the copyright industry in influencing policy-making through lobbying. It has also been argued that the increasing influence of lobbyists accounts for the development of EU copyright law as an approximation, rather than a unification, of laws.

The main EU instrument providing an EU legal framework for copyright is the 2001 **Copyright Directive**, adopted under internal market provisions. This aimed to adapt legislation on copyright and related rights to reflect technological change and to transpose the main international obligations arising from the two 1996 World Intellectual Property Organization treaties into Community law. In addition, the Directive harmonised the rights of reproduction, distribution, communication to the public, the legal protection of anti-copying devices and the collective rights management systems. It introduced a mandatory exception for technical copies on the internet under strict circumstances; the concept of fair compensation for rights-holders – a mechanism to secure the benefit for users for certain exceptions where anti-copying devices are in place – and an optional list of exceptions and limitations to copyright, which includes private copying.

Additionally, various **thematic directives** have addressed specific issues within copyright such as resale right, rental and lending right, the protection of computer programs, term of protection and related rights, orphan works, and collective management and multi-territorial licensing of online musical works.

It should be noted that since the entry into force of the TFEU, the EU has acquired a new competence under Article 118, empowering the European Parliament and Council to establish measures for the 'uniform protection of intellectual property rights'.

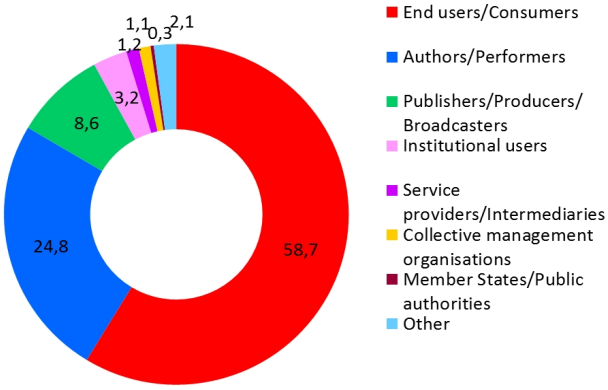
Recent developments

The initiative to modernise the EU copyright was launched in 2011, via the European Commission's **strategy** on A Single Market for Intellectual Property Rights and its Digital Agenda for Europe. In December 2013, the European Commission initiated a **public consultation** on the review of EU copyright rules, focusing on issues such as harmonisation and territoriality in the internal market, limitations and exceptions in the digital age, fragmentation of the EU copyright market, and the fair balance between enforcement and access. In reply, it received over 9 500 contributions (see figure 3) and more than 11 000 questions and comments, not least due to initiatives such as fixcopyright.eu (targeting end users) and creatorsforeurope.eu (focusing on authors and performers). The results of the consultation reflected a wave of polarised opinions. While authors, collective management organisations, publishers and producers seemed to back the status quo, end users and institutional users – such as libraries, archives, and universities – pleaded for a profound reform of the existing EU legal copyright framework (see figure 4). Experts analysing the outcome of the consultation argue that the contrasting views expressed indicate that

current copyright rules are relatively imbalanced and require a more harmonised and flexible system of exceptions and limitations.

In May 2015, the European Commission unveiled its **plans** to create a Digital Single Market, aiming, among other things, to end unjustified geo-blocking and to bring forward legislative proposals reducing the differences between national copyright regimes and allowing for wider online access to works across the EU, including through further harmonisation measures.

Figure 3 – Participation by different stakeholder groups

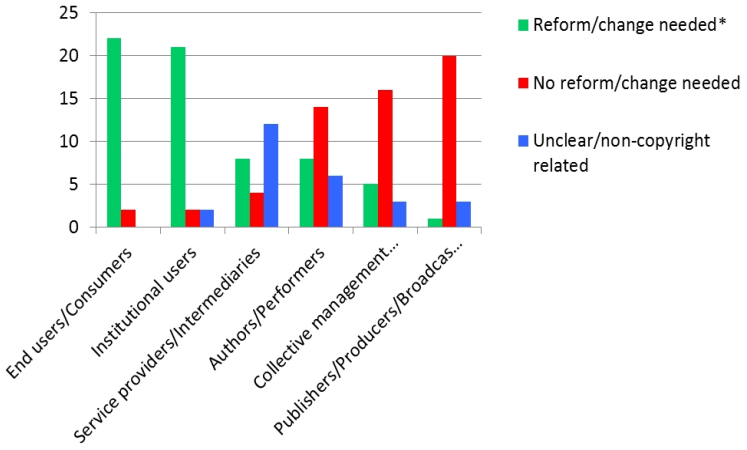


Data source: European Commission, Report to the public consultation, 2014.

European Parliament

The European Parliament (EP) has consistently supported through its resolutions (e.g. on private copying levies, the promotion of cultural and creative industries, the completion of the digital single market, and online distribution of audiovisual works), the reform and modernisation of the EU copyright framework, insisting in particular on: the need to develop a harmonised EU copyright system; to address the impact of copyright territoriality; to further simplify procedures; to find efficient ways of enforcing copyright while fully respecting fundamental rights; as well as to guarantee fair remuneration for rights-holders.

Figure 4 – Stakeholder orientation towards the need for copyright reform, by number of issues



Note: *Reform proposals may be contradictory

Data source: Governance across borders, 2014.

The Transatlantic Trade and Investment Partnership (TTIP) and copyright

The EU position paper on intellectual property (March 2015) reveals that it seeks to address three main issues: remuneration rights for broadcasting and communication to the public (i.e. public performance) for performers and producers in phonograms; a full right of communication to the public for authors in bars, restaurants and shops; and a resale right for creators of original works of art.

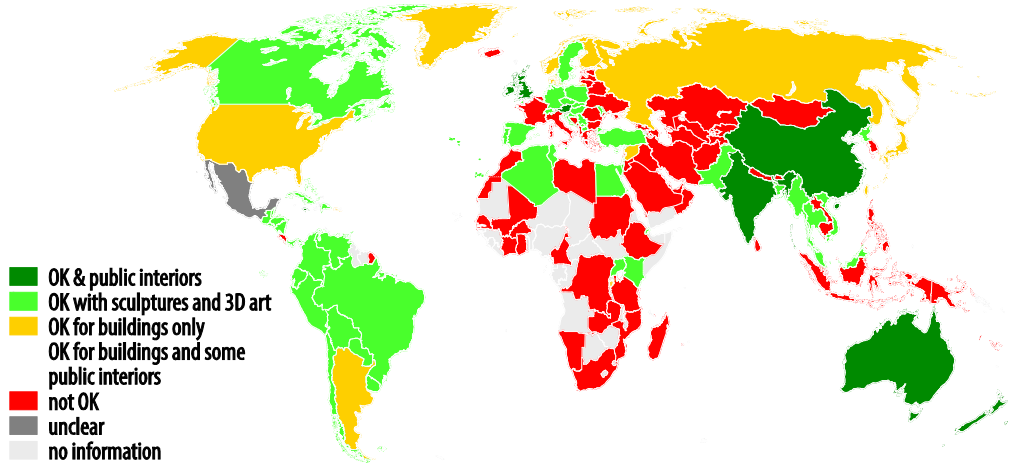
Indeed, the US does not require radio stations to pay royalties to performers when their performances are played on air; only the composers receive royalties. Similarly, in the US composers do not receive royalties when their songs are played in bars or restaurants. The same applies for payments to visual artists on the resale of their works, with respect to the US 'first sale doctrine.'

The EU already grants protection in all three areas, and it is therefore important to obtain reciprocal treatment in the US to that currently available in the EU for US rights-holders. For its part, the EP's Legal Affairs Committee considers in its opinion that intellectual property rights should not be dealt with in the framework of the TTIP.

Freedom of panorama

Freedom of panorama, derived from the German term *Panoramafreiheit*, is a provision in the copyright laws of many countries allowing photography, video recordings, or creation of other images (such as paintings) of public buildings and monuments, to be published without infringing any copyright laws. Panorama freedom is typically addressed through copyright, although other laws related to trademarks or national security may also restrict public photography. National provisions on the freedom of panorama differ widely in their interpretation of the principle. For instance, while it is legal to take a picture of the Eiffel Tower (Paris) during the day (because copyright has expired), that is not the case at night, since its light show is protected by an independent copyright. In the EU, the Copyright Directive provides for the possibility (not obligation) for Member States to have a freedom of panorama clause in their copyright laws. Editors from Wikimedia have started a campaign at the EP for universal freedom of panorama.

Figure 5 – Freedom of panorama in the world



Data source: Wikimedia Commons, 2014.

In the context of the EP's assessment of current EU copyright legislation, the Committee on Legal Affairs approved, in June 2015, by a large majority (23 to 2) an own initiative report, prepared by Julia Reda (Greens/EFA, Germany). This was, however, substantially modified by over 550 amendments and notably no longer calls for all exceptions to be mandatory across the EU. The report urges the Commission to consider a wide variety of measures to bring copyright rules into line with digital realities and improve cross-border accessibility of services and copyrighted content. However, it also stresses the importance of territorial licences, particularly for financing audiovisual and film production and enabling 'each Member State to safeguard the fair remuneration principle'. In addition, Members acknowledge that creative work needs legal protection and 'fair and appropriate remuneration for all categories of rights-holders'. They also call for improvements to the contractual position of authors and performers in relation to other rights-holders and intermediaries. More importantly, Parliament asks for minimum standards for the rights of the public, which are enshrined in a list of exceptions to copyright, and stresses that the use of these exceptions may not be hindered by restrictive contracts. Other proposals include: creating a Single European Copyright Title (after assessing its likely impact on jobs, the interests of authors and rights-holders, and consumer access to cultural diversity); clarifying that digitisation does not grant new copyright protection to works from the public domain; and introducing an exception for lending e-books.[10] No consensus was found on shortening copyright terms to the permissible minimum under the Berne Convention (i.e. lifelong plus 50 years); instead the Committee rejected any further extensions. On technological protection, a compromise states that the right to make private copies may not be limited technically. However, there was no majority for introducing an open norm based on the international standard three-step-test. Works

created by governments will still be subject to copyright, but the Commission is asked to simplify their re-use. On the 'freedom of panorama' principle (see box), the text indicates that the commercial use of such reproductions should require authorisation from the rights-holder. The Committee also narrowly rejected an amendment that called for extension of the 'quotation right' to cover all forms of cultural expression (e.g. audiovisual works).

Recent stakeholder reactions to copyright review

In March 2015, French Minister for Culture and Communication Fleur Pellerin and German Minister for Justice and Consumer Protection Heiko Maas signed a joint statement on copyright. It particularly highlights the remuneration of creators, the economic models of the cultural and creative industries, and access to creative works by optimising use of digital resources. In April 2015, some 20 European film directors called for the European Commission to allow better circulation of European works and the protection of copyright. In reply, the European Commissioner for the Digital Economy, Günther Oettinger, indicated that the Commission does not intend to change the principle of territoriality of rights or to impose pan-European licences. The future review will aim instead to ensure that legally acquired content is portable, to promote better access to creative works, while fully respecting the foundations of their financing, to clarify how copyrighted material is used by online intermediaries, and to harmonise copyright exceptions across Europe. Fellow Commissioner Tibor Navracsics also provided assurances that the future review seeks 'to ensure the right balance between the protection of rights holders and access for users'. In May 2015, 11 audiovisual sector associations published a joint press release to express their concern at some policy options for the Digital Single Market and to insist on the preservation of the notions of territoriality and exclusivity. For the Society of Audiovisual Authors the remuneration of authors should be at the centre of copyright reform, as highlighted in their White Paper on the same topic. A similar concern is echoed by the Fair Internet Campaign, bringing together organisations representing the rights of artists, actors and musicians, to defend fair remuneration for online performers.

Endnotes

1 E. Eisenstein, The printing press as an agent of change, Cambridge University Press, 1979.
2 P. Goldstein, P. Hugenholtz, International copyright: principles, law, and practice, Oxford University Press, 2013, pp. 6-8.
3 *Ibid*, p. 49-53.
4 Unless otherwise indicated, the general information in this chapter is based on Unesco, The ABC of copyright, 2010 and World Intellectual Property Organization (WIPO), Understanding copyright and related rights.
5 S. Stokes, Art and copyright, Hart Publishing, 2001, pp. 48-49.
6 E. Rosati, Originality in EU copyright, Edward Elgar, 2013, pp. 54-96.
7 However, may be protected under related rights as performances.
8 Some national law provisions include the protection of photographs, databases, and designs.
9 B. Farrand, Networks of power in digital copyright law and policy, Routledge, 2014, pp. 31-32.
10 The Rental and Lending Directive does not cover e-books, making libraries dependent on e-lending services offered by publishers, which may require subscription to their entire catalogue instead of allowing the purchase of single works.

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