

Patents, pirates and fair play

Today the internet is at the heart of the new digital society. It is a communication tool but it can also be used to offer and to access online a vast range of commercial and cultural services or content. Policy-makers are trying to clarify the respective rights and obligations of consumers, creators of content and intermediaries who interact on the internet, and to make sure that innovation and fair competition can flourish.

Patents in the high-tech industry: innovation and competition

Patents are an engine for innovation...

Today, we chat online, we play online, we buy online and we learn online. The development of the internet and of connected devices has created a new [digital world](#) where consumers can access, use and exchange a vast range of services and content, including music, video and games, online. For this purpose, **high-tech companies** like [Microsoft](#), [Google](#), [Apple](#), and [Spotify](#) develop **devices, software and operating systems** (e.g. Windows, Android), which are used to offer consumers online services and content.

Many such products and services are based on **patented technologies**. A [patent](#) is an **exclusive right** granted to someone for an invention, i.e. a product or a process that provides a new way of doing something or offers a new technical solution to a problem. A patent gives inventors the right to receive income from those using their inventions (patent fees) and prevent people from making, using or selling the invention without permission. Inventors and investors take risks and patent protection ensures they get a return on their investment. Patents are therefore [considered](#) an **engine of innovation** and European businesses are increasingly [registering](#) patents.

...but patents are also a risk to fair competition

Patent holders can use their patents to [prevent](#) competitors from having access to technology. Consumers risk being **obliged to use** a specific technology when a patent becomes a [standard](#) essential for providing a service. This [raises](#) some concerns for innovation and for fair competition, especially in the high-tech sector. European competition authorities are therefore increasingly [investigating](#) high-tech companies to make sure they **do not abuse** their rights, granted through patents, to **disrupt fair competition**.

To ensure competition is taking place and to allow more innovation, supporters of the **open patent movement** like the [Free Software Foundation](#) propose that patented inventions should be **more freely licensed** so that, for instance, anyone can study the basic program (i.e. the source code), modify it, and share it with others.

Copyright in the digital world: open access policies, piracy and fair remuneration

Copyright protection

Music, video and other types of content and services provided online (even if available for free) are subject to copyright protection. [Copyrights](#) are **exclusive intellectual property rights** that protect the authors' (or creators') original literary, scientific or artistic works and the interests of other rights-holders such as publishers and broadcasting organisations who contribute to making the works available to the public.

As a matter of principle, **copyright protection** ensures that those who have created (such as composers, writers, film directors, musicians, and software developers) or invested in the creation of works (book and newspaper publishers, film and record producers, broadcasters, etc.) can determine how these works can be reproduced, distributed or communicated to the public. Copyright confers on the author non-economic rights (i.e. moral rights such as the rights of paternity) and also economic rights such as the right to get **fair remuneration** (i.e. copyright fees) for the use of their work.

This note has been prepared for the [European Youth Event](#), taking place in Strasbourg in May 2016.



Open access policies

The internet can be used to distribute open access articles, and generate more interaction between researchers, scholars and citizens. But the fact that copyright protection can **unduly restrict the right to use scientific and academic works** and, more generally, access to knowledge is debated.

The [Open Access movement](#) aims to remove barriers to **research** and to organise **open access to knowledge**. Open access generally refers to documents and content that can be accessed for free and without copyright licence restrictions. Tools like **open licences** also [allow](#) to share (and re-use) authors' work online and to bring information and knowledge to lots of people. Associations of scientists also [argue](#) for shifting the current paid-for-based publication model to open-access models. Studies have [shown](#) that although open access policies may have a significant impact on the profits of traditional publishers (who will be less able to market their publications through asking people to pay copyright fees), there are clear **benefits** for schools, universities and research in general.

Piracy

Piracy on the internet, i.e. the practice of illegally copying works like music or video and passing them on to other people is a growing concern in today's digital world, where the use of technical means like [peer-to-peer \(P2P\)](#) and [virtual private networks \(VPN\)](#) allow end-users to exchange digital content directly. Recent [studies](#) show that the youngest generation is particularly inclined to engage in piracy practices, with for example **42% of young people aged from 15 to 24 years old in the EU considering illegal downloading or accessing copyright-protected content as acceptable**. Piracy has a strong [impact](#) on the creative industry (e.g. the DVD film market is disappearing because of pirate copies) and affects the remuneration of authors and rights-holders, who may receive less money for their creation.

Different approaches to fighting online piracy are used in the EU. Public authorities have firstly set **administrative procedures** to stop and sanction **end-users' piracy practices** in some countries (e.g. the HADOPI Act in France). But more recently the growing role of [technical intermediaries](#) like internet service providers (ISPs) and search engines (like Google) in making available illegal content on the internet has been highlighted. However, under current EU law, those intermediaries, in principle, hold only [limited responsibility](#) for the piracy practices of their customers, since they only convey technically the illegal content. Policy-makers have therefore pushed for **industry self-regulation** and the adoption of **voluntary codes of conduct** so that intermediaries limit the possibility for their customers to access, use and share digital services and content without authorisation of the authors and creators.

Recent [studies](#), however, argue that those **antipiracy measures are not functioning efficiently** and that EU legislation should be adapted. To that end, policy-makers are trying to develop new approaches. Some argue that permitting customers to access content offered in respect of copyright law more widely may help to fight piracy. To that end, the European Commission has proposed **new legislation** to foster the [cross-border](#) provision of online content services, so that end-users can lawfully access some content offered throughout the EU (via services like [Netflix](#) for instance). Some associations of authors and rights-holders also [ask](#) that new legislation impose on online intermediaries a **greater responsibility** in the management of their networks and systems to fight piracy. However, intermediaries [warn](#) that any increased legal obligations on them could, in particular, have a **negative effect on innovation**.

Fair remuneration

Inventors' creativity must be rewarded. As a matter of principle, creators like artists should receive copyright fees for the use and sale of their works. But in the digital world, ensuring fair remuneration for them has become quite challenging. Creators and those commercialising their works, like publishers, are therefore asking that the benefits of the online use of creative works are more **fairly shared**.

Authors' associations [stress](#) that, in addition to fighting strongly against online piracy, a number of measures should be adopted in the EU in order to **guarantee a fair level of remuneration**. For instance, authors of films should be paid for their audiovisual work, whatever the platform consumers use to watch their films. Also, some publishers are [asking](#) that new laws be adopted for instance to **'tax' hyperlinks**, i.e. to make aggregators of online information (such as Google) pay when they make available links to content (for instance articles) protected by copyright. However, this proposal has been [criticised](#), especially since it would make it harder for **small news publishers** to reach their readers online, and would **reduce the choice and diversity** of the information available to consumers.