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Rethinking creative rights for the Internet age

Reply to Recommendation¹: Recommendation 1906 (2010)

Committee of Ministers

1. The Committee of Ministers has examined Parliamentary Assembly [Recommendation 1906 \(2010\)](#) on “Rethinking creative rights for the Internet age” with interest. It has brought the recommendation to the attention of the member states’ governments and has also communicated it to the European Committee on Legal Co-operation (CDCJ) and the Steering Committee on Media and New Communication Services (CDMC) for information and possible comments.

2. The Committee of Ministers shares the Parliamentary Assembly’s concerns about the imbalance between protecting copyrights within the digital environment and safeguarding the respect for privacy, and agrees that the development of the digital society “raises questions and issues as to the functioning of democracy, the protection of human rights, and the viability of the rule of law”. The Committee of Ministers refers the Assembly to the various recommendations which it has adopted on these issues. It further notes that the Council of Europe was represented at the 3rd Edition of Eurodig (Madrid, 29-30 April 2010) to identify future areas of work in this field.

3. The Parliamentary Assembly recommends the Committee of Ministers to initiate a future-orientated study on copyright in the Internet age. The Committee of Ministers recalls that the Ministers responsible for Media and New Communication Services reaffirmed at their first Council of Europe Conference (Iceland, 28-29 May 2010) “the importance of copyright protection and acknowledge[d] the need to explore further, in close co-operation with relevant stakeholders, issues deriving from the use of copyrighted material or the exploitation of user-generated content by media-like services to protect and promote the freedom of expression and information”. The Committee of Ministers notes that the Steering Committee on Media and New Communication Services (CDMC) subordinate Group of Specialists on Human Rights in the Information Society (MM-S-IS) elaborated a report on emerging issues and trends in respect of the protection of intellectual property rights and the use of technical protection measures in the context of the development of new communication and information services. This report also covered the fundamental right to freedom of expression and the free flow of information, access to knowledge and education, the promotion of research and scientific development, and the protection and promotion of the diversity of cultural expressions and artistic creation.²

4. The Parliamentary Assembly further recommends the Committee of Ministers to initiate reflection on the system of copyright exceptions and limitations. The Committee of Ministers notes that exceptions and limitations to copyright are essential for balancing the interests of authors’ and artists’ creative work and those of the users and the general public. They are also fundamental for access to knowledge, education, science, culture and progress. In this regard, it notes that issues related to exceptions and limitations are being considered at international and regional fora, and that a multilateral intellectual property enforcement agreement (the Anti-counterfeiting Trade Agreement) is currently being negotiated. The Committee of Ministers also notes the protection of creative rights under Article 1 of Protocol 1 to the European Convention on Human Rights.

1. adopted at the 1101st meeting of the Ministers’ Deputies (8 December 2010)

2. MC-S-IS(2007)008rev3.



5. The Parliamentary Assembly furthermore recommends that the Committee of Ministers initiates further investigation and frameworks on copyright in the digital environment. Due to the scope and budgetary implications of such a task, the Committee of Ministers will not presently initiate such work. However, the need to realign the balance between upholding copyrights and the respect for privacy will be taken into account when modernising the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

Appendix 1 to the reply

Comments of the European Committee on Legal Co-operation (CDCJ)

1. Following the adoption by the Parliamentary Assembly, on the occasion of its Standing Committee (Paris, 12 March 2010), of [Recommendation 1906 \(2010\)](#) on “Rethinking creative rights for the Internet age”, the Committee of Ministers decided to send this recommendation to the European Committee on Legal Co-operation (CDCJ) for information and possible comments.
2. The Bureau of the CDCJ took note of the recommendation of the Parliamentary Assembly and decided to comment, within the deadline set by the Committee of Ministers, on domains which are of particular interest to the CDCJ.
3. The Bureau of the CDCJ agrees with the initial statement made by the Parliamentary Assembly which underlines that the development of the digital society “raises questions and issues as to the functioning of democracy, the protection of human rights, and the viability of the rule of law”.
4. The CDCJ has measured the importance of contributing to multi-stakeholders events on the governance of the Internet and has to this end been represented at the 3rd Edition of Eurodig (Madrid, 29-30 April) with a view to better identifying future areas of work in the field of Internet governance.
5. The borderless world of the Internet will impose the development of a global digital market for content online which will improve certainty for consumers and achieve a fair balance between the rights of each party – including creative rights – and the public's access to content and knowledge, promoting new successful business models.
6. The respect of the right to privacy and to personal data protection is inextricably linked to the issue of the full exercise of copyright and neighbouring rights. The new challenges, emerging from the Internet and new information and communication technologies, will have to be taken into account when another additional protocol, aimed at modernising the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) will be drafted.
7. The protection of property, as laid down in Article 1 of Protocol No. 1 to the European Convention on Human Rights and the question of the proportionality of the legal response to this new environment are of crucial importance.
8. Nevertheless, in the current state of budgetary restrictions which affects the CDCJ, the CDCJ is unfortunately not in a position to give a positive reply to the Parliamentary Assembly' proposals to work on this complex issue.

Appendix 2 to the reply

Comments of the Steering Committee on Media and New Communication Services (CDMC)

1. By means of its [Recommendation 1906 \(2010\)](#) on “Rethinking creative rights for the Internet age”, the Parliamentary Assembly is making a timely contribution to this ongoing debate. For its part, the CDMC would, at this stage, make the following remarks.
2. The policy choices concerning the use of content, in particular that with cultural value, in cyberspace have to strike an important and yet difficult balance. In this respect, the Ministers responsible for Media and New Communication Services reaffirmed at their first Council of Europe Conference (Iceland, 28-29 May) “the importance of copyright protection and acknowledge[d] the need to explore further, in close co-operation with relevant stakeholders, issues deriving from the use of copyrighted material or the exploitation of user-generated content by media-like services to protect and promote the freedom of expression and information”.
3. The CDMC firmly believes in the protection of creative rights, and its corollary copyright, in particular with reference to Article 1 of Protocol 1 to the European Convention on Human Rights. There is profuse legislation on the subject, including international law, and doctrine that contributes to its application. The availability and ongoing production of quality content largely relies on its adequate remuneration which, in turn, requires the protection of intellectual property rights. The effectiveness of those rights will be significantly reinforced through education and media literacy.
4. Issues related to copyright limitations and exceptions are being considered at international and regional fora, and a multilateral intellectual property enforcement agreement (the Anti-counterfeiting Trade Agreement) is also being negotiated. There are also emerging legislative and policy measures for a graduated response to online intellectual property infringements, which may entail the suspension of Internet service for users. Debates on network neutrality and certain network management policies may also be relevant in this connection. Further, the Granada Ministerial Declaration on the European Digital Agenda³ and the Communication from the European Commission: A Digital Agenda for Europe⁴ suggest developing further the creation, production and dissemination of creative content in the digital environment and, in that context, underline the need for developing innovative intellectual property-related business models.
5. The CDMC notes the Assembly's emphasis on the importance of the protection of copyright in the digital environment. The concern for online copyright infringements is justified and should be given due consideration especially with the objective of protecting and promoting creation. This should be the overarching objective and not the preservation of possibly outdated business models which could have an adverse effect on creativity. The CDMC would recall in this context the UNESCO Convention on the protection and promotion of the diversity of cultural expressions (see also Recommendation CM/Rec(2006)3 of the Committee of Ministers).
6. The CDMC recognises that limitations and exceptions to copyright are essential for balancing the interests of creators and those of the users and the general public. They are also fundamental for access to knowledge, education, science, culture and progress and as regards democratic processes. The right to freedom of expression, information and communication on the Internet and when using other information communication technologies should be upheld in accordance with Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.
7. The opportunities for creation and development that the use and re-use of works offers are self-evident; reference might be made in this context to the development of “open source” software and “creative commons” licenses, building on existing international and European copyright law. Blogs, video and other content sharing platforms, as well as other online communities have become spaces of choice for communication, transparency and democracy. Moreover, new forms of distribution of content are giving rise to new business models which can ensure fair remuneration and foster the activity of creators.
8. The Assembly calls on the Committee of Ministers to initiate a reflection on the copyright in the Internet age. In this connection, the erstwhile CDMC subordinate Group of Specialists on Human Rights in the Information Society elaborated a report on emerging issues and trends in respect of the protection of intellectual property rights and the use of technical protection measures in the context of the development of

3. The Granada Ministerial Declaration was agreed by the Ministers responsible for the Information Society Policy of the European Union Member States on 19 April 2010.

4. COM(2010) 245 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Agenda for Europe, 19.05.2010.

new communication and information services (and the Internet) as well as the fundamental right to freedom of expression and free flow of information, access to knowledge and education, the promoting of research and scientific development and the protection and promotion of the diversity of cultural expressions and artistic creation (MC-S-IS(2007)008 rev3).

9. Should the Committee of Ministers decide that the Council of Europe is the right forum to carry this reflection forward, it would be a task exceeding the CDMC's remit which might rightly involve other steering committees, in particular those dealing with legal co-operation, culture, education and human rights.