



Recommendation 1906 (2010)¹

Final version

Rethinking creative rights for the Internet age

Parliamentary Assembly

1. The Parliamentary Assembly notes that the extraordinary development of the digital society has significantly upset the balance between the copyrights of authors of intellectual works, investors and the general public, and raises questions and issues as to the functioning of democracy, the protection of human rights and the viability of the rule of law. It also raises ethical questions and questions relating to property, particularly intellectual property.

2. The possibility of sharing written documents, music, photographs and films without respecting copyright, as well as plans for electronic libraries, are examples of this development. The consequences are manifold. The drastic decline in sales of musical and cinematographic works is a reality and the same tendency could be seen in publishing with the advent of electronic libraries. Moreover, some governments are considering enacting laws to allow for the surveillance of digital exchanges between individuals.

3. The international instruments for the protection of copyright no longer seem capable of guaranteeing creators and investors a fair return on their respective activities while ensuring the public's access to information and respect for privacy. On one hand, the very survival of creative professions is at stake; on the other, there is a danger of the emergence of police states controlling all information exchanged by their citizens.

4. "Pirate parties" are springing up throughout Europe and worldwide, rebelling against any state control over Internet communication and calling for the safeguarding of privacy and the right to information and to share music, films and other products of artistic, scientific or literary creation free of charge. The Swedish Pirate Party has a member in the European Parliament, and the German Pirate Party, until the recent elections, had a member in the Bundestag.

5. There would not appear to be any threat to the public's right of access to information and no justification for the provision of music, films and literary or scientific works free of cost. The Assembly considers that unrestricted and free access to information by no means presupposes cost-free access to the products of artistic, scientific or literary creation, even if the freedom to copy for private use must remain. The relevant exceptions in the spheres of education and research would appear to be properly safeguarded.

6. It is incumbent on the public authorities to work towards restoring the balance between the rights of the various players in the process of intellectual creation while guaranteeing respect for privacy. The Council of Europe, whose fundamental values are precisely democracy, human rights and the rule of law, has a duty to be involved in assessing foreseeable developments and in framing the standards required at European level.

7. The Committee of Ministers of the Council of Europe has stated its position in its Recommendation Rec(2001)7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment. The Assembly focused on two questions related to these matters in its [Recommendations](#)

1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 12 March 2010 (see [Doc. 12101](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Arnaut, and [Doc. 12142](#), opinion of the Committee on Economic Affairs and Development, rapporteur: Mr Lambert).



1586 (2002) on the digital divide and education and 1833 (2008) on promoting the teaching of European literature. The European Union considered the question in several directives from 1991 to 2006. However, at this stage no satisfactory solution has yet been proposed.

8. Consequently, the Assembly recommends that the Committee of Ministers:
 - 8.1. initiate a future-oriented study on copyright in the digital environment and give thought to the changes required to guarantee a flexible legal apparatus, enabling copyright to be protected despite technical, economic and social changes;
 - 8.2. initiate reflection on the system of exceptions and limitations by opening a transparent public debate, enabling each interested group to express its point of view in order to identify the exceptions and limitations essential for freedom of expression and information in a democratic society and ensure that these are fully effective, as well as identifying the exceptions and limitations which are merely incidental to this objective and propose a differentiated approach;
 - 8.3. assist and encourage – for example by drawing up model clauses – contractual initiatives to provide improved access to works of a creative nature and their content, particularly in the fields of education and research, and verify their effectiveness and implementation by means of empirical studies;
 - 8.4. initiate reflection on the legal status of certain Internet stakeholders (access providers, content-sharing platforms, search engines) with regard to compliance with copyright rules;
 - 8.5. investigate what arrangements and mechanisms might help rights holders to receive fair and equitable remuneration, on which the economic operators concerned have been consulted, for access to protected works;
 - 8.6. explore the possibility of introducing compulsory collective management systems, especially where exclusive rights are very difficult to enforce and could have adverse effects on access to information (for example, in the case of “orphan” works, which are still covered by copyright but whose owners cannot be identified or located);
 - 8.7. facilitate and propose a framework for interdisciplinary work (economic, philosophical, sociological, historical, psychological and technical) on copyright.