Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2110 (2016)[1]

Intellectual property rights in the digital era

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the fact that, thanks to the Internet, authors of creative works and holders of intellectual property rights are able to offer their works globally and users can access creative works instantly – and through inexpensive fixed or mobile access devices – anywhere in the world. The Assembly notes with concern, however, a decrease in the production and diversity of creative works as a result of geographical imbalances and shifts in their production, leading to the emergence of a few excessively dominant market players and a concentration of creative industries in a few parts of the world.

2. The Assembly is also concerned by a *de facto* erosion of intellectual property rights in the digital era, which has been facilitated by legislative reforms weakening intellectual property rights. Intellectual property is an important cultural value and economic asset in Europe and an erosion of intellectual property rights would have a significant negative impact on Europeans.

3. The Assembly recalls that intellectual property is protected under Article 1 of the Protocol to the European Convention on Human Rights (ETS No. 9); the effective exercise of this human right may require member States to adopt positive protection measures against interference by others.

4. The Assembly reaffirms that digital services do not take place in an imaginary borderless cloud, but are real services combining real producers, distributors and customers, all of which are based in countries with their own specific legal systems. It is therefore necessary and legitimate for States to apply their laws to such services, including laws on intellectual property, consumer protection and taxation. The geographical location of digital services and content, as well as their possible geo-blocking, are therefore an appropriate way to prevent the circumvention or violation of national laws, because the territorial application of intellectual property rights is also applicable online.

5. The Assembly values the growth in human communication resulting from the use of Internet-based social networks and platforms with user-generated content; it recalls that users are the rights holders of their creative works uploaded on such networks and platforms, as well as of their personal data, unless they expressly waive such rights. Users are likewise primarily responsible for respecting the intellectual property rights of others, especially if they play an active role in content dissemination. Recalling the case law of the European Court of Human Rights, the Assembly emphasises that Internet service providers are also liable for intellectual property rights violations, if they knowingly benefit commercially, or otherwise, from such violations by their users.

6. The Assembly acknowledges that open licensing of creative works can be an option for the respective copyright holders in order to voluntarily share their work with others. As this option is easier for financially well-established individuals, institutions or companies, its potentially limiting impact on the pluralism of creative works should be taken into account. The Assembly also considers that, by offering technological solutions to combat the *de facto* erosion of intellectual property rights, the private sector can play an important role in avoiding stricter legislation and stricter case law by competent courts.

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1. *Assembly debate* on 20 April 2016 (15th Sitting) (see Doc. 14009, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Axel E. Fischer). *Text adopted by the Assembly* on 20 April 2016 (15th Sitting).
See also Recommendation 2089 (2016).

7. Having regard to the current legislative initiatives within the European Union by its Commission and Parliament, and referring to the protection of intellectual property rights under Article 17.2 of the Charter of Fundamental Rights of the European Union, which binds all organs of the European Union, the Assembly stresses that:

7.1. national transpositions and applications of European Union law must comply with the European Convention on Human Rights and in particular Article 1 of its Protocol;

7.2. the European Patent Office, and Directive 2004/48/EC on the enforcement of intellectual property rights, should be strengthened in the framework of Article 118 of the Treaty on the Functioning of the European Union, which calls for measures for the creation of European Union-wide intellectual property rights and for the setting-up of centralised European Union-wide authorisation, co-ordination and supervision arrangements;

7.3. the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (ETS No. 178), which entered into force in the European Union on 1 January 2016, should be used for strengthening the protection of intellectual property rights;

7.4. efforts to create a digital single market within the European Union should not favour online services over offline print media, film and cinema or terrestrial audiovisual services, but avoid a distortion of competition by taking due account of the possible dominance of the gatekeepers of online services and their impact on the pluralism of creative work and cultural expression;

7.5. Europe-wide licensing arrangements should be supported in order to facilitate the cross-border portability of online content and services.

8. The Assembly therefore recommends that member States:

8.1. promote public awareness, especially among Internet users, of the human right to the protection of intellectual property and the importance of this right for the cultural diversity and the economic well-being of our societies;

8.2. promote the electronic identification of intellectual property rights on the Internet by supporting widely accessible technical facilities for this purpose and raising awareness among authors of creative works;

8.3. adopt such legislative and other measures as may be necessary to establish as criminal offences under domestic law the infringement of intellectual property rights;

8.4. adopt dissuasive measures towards operators of Internet-based social networks and platforms with user-generated content which benefit financially from illegal content posted on their sites;

8.5. promote procedures to lodge complaints online with law-enforcement authorities as well as user hotlines by Internet service providers to report violations of intellectual property rights on their services;

8.6. devise online dispute resolution procedures for online violations of intellectual property rights, in accordance with Assembly Resolution 2081 (2015) on access to justice and the Internet: potential and challenges;

8.7. reinforce in an open and transparent manner their multilateral work on international co-operation in the field of intellectual property rights;

8.8. ensure that Article 1 of the Protocol to the European Convention on Human Rights is respected in law and in practice when negotiating and implementing international treaties affecting intellectual property rights, including free-trade agreements such as the Transatlantic Trade and Investment Partnership (TTIP);

8.9. ensure that the protection of trade secrets, for example under Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), does not unduly limit the public's right to access information under Article 10 of the European Convention on Human Rights.

9. The Assembly calls on authors of creative works, rights holders, collective rights agencies and licensing agencies, as well as on Internet service providers, including social networks and platforms with user-generated content, to use technical facilities for the identification of intellectual property rights online, such as digital rights management technologies for providing necessary information to users and preventing unauthorised action on their part. Social networks and platforms with user-generated content should empower their users in this respect by providing such identification automatically by default. The Assembly also calls on them to adhere to the self-regulatory "Principles for User-Generated Content Services" established in 2007 to combat illegal user-generated content.