



Doc. 12142

10 February 2010

Rethinking creative rights for the Internet age

Committee Opinion¹

Committee on Economic Affairs and Development

Rapporteur: Mr Geert LAMBERT, Belgium

A. Conclusions of the committee

The Committee on Economic Affairs and Development congratulates the rapporteur, Mr Arnaut, and the Committee on Culture, Science and Education for this very important report, which it fully supports. The committee is convinced that copyright encapsulates several of the major challenges, both current and future, to contemporary society, namely the growing dominance of new technologies, increasing threats to individual freedoms and the question of fair remuneration of economic activity. Copyright needs protecting now more than ever, as it is the source of our European cultures, and their potential to help our societies and humankind as a whole to reinvent themselves is especially important in these times of economic crisis.

B. Explanatory memorandum by Mr Lambert, rapporteur

1. Introduction

1. The development of information technologies and means of communication has brought far-reaching changes for both artistic creation and access to culture. Today, if we want to listen to music, watch films or read the works of our favourite authors, we no longer have to go to a cinema, a record shop or a bookshop and pay for these various cultural products. Culture is not just a commodity that we can buy: it can now be accessed by anyone who simply clicks on their mouse. Thanks to the Internet, culture has been democratised and become universally available.

2. However, this democratisation has also been accompanied by legislative and economic uncertainties for the writers/artists who live off the fruits of their creative efforts. Most creative artists privileged enough to earn a living from their work are paid on the basis of the number of copies or tickets bought by European citizens.

3. In many economic sectors, including culture, advances in information technologies have not gone hand in hand with progress in the legal arsenal intended to protect writers/artists and guarantee them fair remuneration while at the same time promoting citizens' freedom to inform and educate themselves.

1. See [Doc. 12101](#) tabled by the Committee on Culture, Science and Education.



2. A heavily penalised economic sector

4. A large number of information-sharing systems and other file-sharing software known by the term P2P (peer-to-peer) enable films, music, programmes, software and e-books to be transferred from one computer to another and from one end of the planet to another without any payment at all being made to the writers/artists. These cultural goods, more often than not pirate copies or purchased by just one consumer, are thus acquired completely illegally and free of charge by millions of people worldwide, without the creator being paid a single euro or dollar. In 2007, IDATE (which monitors Internet, media and telecommunications issues in Europe) estimated at more than 9 million the number of people in Europe who illegally download films, music, video games and other programmes via P2P file-sharing. It reported that 55% of Internet users in France and 59% in the United Kingdom do so.

5. The resulting loss of earnings, which amounts to huge sums, penalises both the artists and authors unable to survive as economic players and entire national cultural creation industries, which are deprived of capital for the investments needed to respond to the strong global competition in this economic sector. According to the Business Software Alliance (BSA), the global association of software manufacturers, the loss of earnings in the software sector will amount to €1.96 billion in 2009. Again according to the BSA, the European countries where software piracy rates are highest are Greece (57%), Cyprus (50%) and Italy (48%), compared with rates in other states such as Luxembourg (21%) or Austria (24%).

6. Paid download services have therefore been set up on many websites for online sales of cultural goods in order to combat this economic scourge. However, entirely legal downloads are only meeting with fairly limited success. IDATE, for example, puts the percentage of French Internet users who download items online in this way at 15%. In the United Kingdom, this percentage is slightly higher, at 20%.

7. Today, copyright infringements by persons downloading illegally, resulting in financial losses, are mainly committed by young adults, many of whom do not have enough purchasing power to take up the offer of a huge range of cultural goods and to take part in a consumption binge fuelled by a social model built around the media and a dream world. In a French survey conducted in March 2009,² 58% of the under 35-year-olds questioned acknowledged that they had already downloaded or used illegal content.

3. The problem with penalties

8. Legislators face several challenges today, the main one being the need to reconcile freedom of access to culture with the fair remuneration of writers/artists. As Viviane Reding, European Commissioner responsible for the Information Society and Media, said, “we should give industry legal certainty, content creators a fair remuneration and consumers broad access to a rich diversity of content online”.³

9. There is also the question of penalties: how can users guilty of fraud by downloading a film or music item free of charge be punished? If they commit a breach of copyright, should they be subjected to financial penalties (such as fines or having their Internet connection cut off) or judicial penalties, and under what conditions? The bitter arguments about the Hadopi Law in France and the nature of the authority with power to impose penalties on Internet users have shown how complex and sensitive this issue is. A situation where penalties are imposed on consumers guilty of breaches of copyright is always on the dividing line between the exercise of individual freedoms and the commission of a criminal offence. It is also right to wonder how pertinent it would be to monitor all consumers: fitting a reporting system to every computer would be reminiscent of the darkest days of totalitarianism. Furthermore, it is very difficult to implement such penalties, and they may prove disastrous in households where the computer is the main work tool.

10. In a number of countries, particularly in Scandinavia, many people defend the right to free downloading and object strongly to penalties, which they regard as an infringement of freedoms. This libertarian outlook has found its political embodiment in the Pirate Party, founded in Sweden in 2006, whose aim is both to reform intellectual property rights and to strengthen rights related to the protection of privacy. The party has been progressing steadily, gaining a seat at the European elections in June 2009 and striking a chord in both France and Germany.

11. Penalisation of illegal downloading is not, however, universal in the various European laws on the subject. In Spain, for example, the Pamplona Criminal Court delivered a judgment in May 2009 in which it did not treat downloading from the Internet as an offence, thereby confirming a precedent set in November 2006. The court considered that the defendant had not derived any financial benefit from the download, although he

2. *Les Français et le téléchargement illégal sur internet* (27 February and 2 March 2009), TNS Sofres / Logica.

3. European Commission press release, 3 January 2008, IP/08/5.

had, in a way, deprived the creative artists of that same benefit. Moreover, Section 31 of the Spanish Law on Intellectual Property regards downloading as a right to make a private copy in exchange for the fee charged on audiovisual media. Everyone must be allowed to make private copies of their favourite works without risking penalties. Spain has thus chosen to combine freedom to download items with a tax levied at source (a sort of “cultural VAT”).

12. The European Union has begun important work in this area. Following the adoption in May 2001 of the directive on the harmonisation of certain aspects of copyright and related rights in the information society, several initiatives have emerged, beginning with the Green Paper on copyright in the knowledge economy, which was adopted by the European Commission in July 2008 and proposes opening a structured debate on the long-term future of copyright policy in knowledge-intensive areas. In October 2009, the European Commission also considered the question of the digitisation of libraries following Google’s initiative in this area.

13. With its virtual library project launched in 2004, Google plans to digitise several tens of millions of books that have fallen into the public domain, as well as academic books submitted by some major libraries and 1.8 million works submitted by around 25 000 American publishers. However, at the end of 2008 the American courts asked Google to amend this agreement to comply with copyright. Chancellor Angela Merkel has said she is against this project if it does not respect copyright. In France, publishing group La Martinière (Le Seuil, L’Olivier, Points) is claiming €15 million from Google for breach of copyright following the search engine’s digitisation of nearly 8 000 titles from its catalogue.

4. Conclusion

14. Today, the economic challenge in the area of copyright should above all enable writers/artists to be paid for the fruits of their work. As far as the piracy of cultural goods is concerned, the ideal solution is yet to be found, as the prohibition on the downloading of content via the P2P system is still very difficult to put into practice. Services offering legal downloads of music and films against payment of a subscription or at a price lower than that charged in shops still have to be made more attractive. The question that the Assembly must address today is how each individual’s freedom can be reconciled with fair remuneration for artistic creation. A way has to be found to distinguish private individuals downloading for their personal use from cybercriminals acting for profit. Rather than imposing legal frameworks which provide only a partial response to the problem, we will have to find more flexible solutions based on consultation with economic operators themselves, who are the main bodies concerned and very often the chief victims of abuses.

C. Proposed amendments

On the committee’s behalf, the rapporteur proposes that the following amendments should be added to the draft recommendation in the report of the Committee on Culture, Science and Education ([Doc. 12101](#)):

Amendment A (to the draft recommendation)

In paragraph 5, after the words “cost-free access to the products of artistic, scientific or literary creation”, add the words “even if the freedom to copy for private use must remain”.

Amendment B (to the draft recommendation)

In paragraph 8.3, after “assist and encourage”, add “ – for example by drawing up model clauses – ”.

Amendment C (to the draft recommendation)

After paragraph 8.4. add the following new paragraph:

“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”.

Reporting Committee: Committee on Culture, Science and Education

Committee seized for opinion: Committee on Economic Affairs and Development

Doc. 12142 Committee Opinion

Reference to committee: Reference3360 of 25 June 2007

Draft opinion unanimously approved by on 22 January 2010

Secretariat of the Committee: Mr Newman, Ms Ramanauskaite, Mr de Buyer and Mr Pfaadt