



The actual status of the EU Copyright Reform and the Digital Single Market Strategy

By Sebastian Felix Schwemer, PhD, Centre for Information and Innovation Law (CIIR), University of Copenhagen

Abstract

Copyright is territorial. But is the Internet? The Internet has changed the way we consume copyright-protected material. Yet, territorial segmentation of online content is a reality in the 28 EU Member States. Licensing and access practices do not reflect the digital reality, in which end-users demand ubiquitous access. The territorial nature of copyright, and business models traditionally based on national exploitation collide with the borderless nature of the Internet. This is argued to hamper the development of new business models as well as the goal of the European lawmaker to complete the Digital Single Market (DSM).

National and European authorities and legislators have created a host of – often industry- and sometimes business model-specific – initiatives, proposals and rules in order to facilitate the DSM and reconcile it with the territorial nature of copyright and its business practices; in part accompanying, refining or codifying industry-led solutions. In this – despite the novel nature of Internet uses and business models – traditional stress field, competition law and policy and copyright overlap and interfere.

This presentation probes the different regulatory (legislative and non-legislative) initiatives, which support the facilitation of multi-territorial licensing and cross-border access to content. It investigates the regulation of two online markets, which have recently been subject to scrutiny by the EU institutions: the audiovisual and the music sector, both addressed by ex ante sector specific legislation and ex post control under competition law. Examples of these are Directive 2014/26/EU, the proposed geo-blocking and portability regulations, as well as the CISAC saga, Premier League and Murphy or the pay-TV investigation.

The contribution argues – regarding both multi-territorial licensing and cross-border access but to a varying degree – that the interplay between harmonisation efforts and competition proceedings has been helpful in mitigating the effects of licenses based on territoriality and thereby enabling cross-border dissemination. The speaker, however, reveals and criticises that this interplay has not always been coherent.

The presentation suggests that more coherent measures are necessary in order to reduce frictions in the licensing arrangements and to enable cross-border access, and furthermore that the regulatory interventions to date may have been more driven by a competition and subsidiary a harmonisation agenda than a focus on the consumers and innovative service providers.

Keywords: Digital Single Market, CRM Directive 2014/26/EU, Portability, Geo-blocking, Pay-TV, Premier League and Murphy, CISAC saga