



Beyond ACTA, Reform Copyright

As a result of more than three decades of expansion of informational property rights, today's copyright regime is by far too rigid and is in practice profoundly at odds with the digital environment. If our societies are to fully benefit from the Internet, lawmakers need to move away from brutal enforcement of outdated and restrictive copyright regime and demonstrate pragmatism. The overall objective of cultural policy in the digital age should go back to the founding principles of author's right: increasing access to creative content such as music, books, and movies while funding culture and fostering cultural diversity.

To achieve this, policy-makers must:

1. Reconsider Coercive and Repressive Copyright Policies

Repeal liberty-killer repressive schemes and Internet filtering. Now that even not-for-profit reproductions of works between individuals without the right-holders' authorization are subject to criminal sanctions in numerous EU countries, the vast number of individuals who practice file-sharing are outlaws. As such, they see their rights and freedoms – i.e. the right to a fair trial, protection of privacy or freedom of expression - under constant attack from laws such as HADOPI in France, the Digital Economy Bill in the UK, or Net filtering schemes in many other countries¹. Lawmakers must recognize that the fight against file-sharing necessarily harms the rights and freedoms of Internet users and has a negative impact on the Internet's architecture, and renounce to this dangerous “war on sharing”.

Ban Technical Restriction Measures. Technical controls over digital works – for instance under the form of “Technical Restriction Measures” (called by the industry “Digital Rights Management” systems, or DRMs) – hamper competition and innovation in the device market by hindering the interoperability of media files. More fundamentally, TRMs are completely at odds with digital technologies and the ability to participate in cultural and civic life (for instance engaging in quotations, remixes, mash-ups, etc). They represent a regrettable attempt to transform digital creative content in “finished goods”, designed for passive consumers². Policy-makers must seriously evaluate the impact of TRMs as well as other “contractual enclosures” on the rights of the public and on competition in the digital creative economy.

Shorten copyright terms. In 2011, the EU adopted a directive extending the term of neighboring rights (those of performers and producers) on musical works from 50 to 70 years after first publication. Such policies are completely ill-founded. Economics and copyright scholars are unanimous to consider that copyright terms extensions fail to provide incentives for the creation of new works. They deprive the public domain from a vast wealth of cultural works that can spur innovation in the creative economy³. Having long terms is sub-optimal from a socio-economic perspective.

1. These laws have been denounced by the UN rapporteur for freedom of expression in his 2011 report on Internet policy. See La Rue, Frank. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Nations Unies, 2011. <http://www.article19.org/pdfs/reports/report-of-the-special-rapporteur-on-the-promotion-and-protection-of-the-right.pdf>
2. For an example of the burdens associated with TPMs, see this analysis of the Kindle, Amazon's e-book reader: <http://www.unicom.com/blog/entry/622>
3. See a brief submitted by 17 renowned economists to the US Supreme Court in the landmark case *Eldred v. Ashcroft*: <http://eon.law.harvard.edu/openlaw/eldredvashcroft/supct/amici/economists.pdf>

2. Pave the way for a Free and Open Culture

Make the existing exceptions to copyright mandatory EU-wide. By systematically discouraging the circulation of creative content, EU law hinders the development of the knowledge economy. It also fails to take into consideration the needs of more fragile parts of the population in relation to cultural works, most notably persons with disabilities and individuals whose economic situation severely constrains their access to cultural goods⁴. The harmonization of copyright regimes across the EU requires that these exceptions – which already exist in EU law but are not adequately enforced – be made mandatory.

Create new exceptions for not-for-profit sharing and re-use of cultural works. Creating culture and knowledge, circulating and exchanging it with others; commenting on existing works, building upon them or re-contextualizing it in order to make up new content: all these activities represent a radical shift in the political economy of communications. It is not restricted to the artistic field but permeates to other fields of the informational sphere, such as political and public expression or science. In order to fully recognize the public's status not only as a consumer but also as a participant in culture, new rights must be created.

Give room to the development of new funding models. Policy-makers must understand the value of not-for-profit file-sharing for the cultural ecosystem while providing appropriate monetary rewards for artists. The creative contribution, as detailed in *Sharing*⁵, authored by Philippe Aigrain, consists in giving all individuals the right to engage in not-for-profit sharing of digitally published works with other individuals. In full respect of the international “three-step test”, this new right given to the public would come with an efficient funding mechanism under the form of a flat-rate contribution paid by all Internet broadband subscribers (and levied by Internet Service Providers)⁶. It is often argued by the defenders of today's copyright regime that the recognition of not-for-profit file-sharing would dry up the demand for commercial offerings of creative content. Such an argument relies on outdated business notions and fails to acknowledge the new economic phenomena that typify the networked society. In France, even the HADOPI agency has shown that those who share the most are the best consumers of the cultural industries⁷. New business-models compatible can and are already being developed by cultural businesses. These models must be further promoted and encouraged by policy-makers, in particular through revised licensing schemes.

See La Quadrature du Net's proposals: <http://lqdn.fr/en/proposals>

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4. See La Quadrature du Net, Comments on the Green Paper on Copyright in the Knowledge Economy, November 2008. <http://www.laquadrature.net/files/LQdNcommentsonCopyrightGreenPaper.pdf>
 5. Aigrain, Philippe. *Sharing: Culture and the Economy in the Internet Age*. Amsterdam University Press, 2012. <http://www.sharing-thebook.com/>
 6. The proposed amount, which serves as a basis for further discussions, is situated between 5€ and 7€ monthly. The total product of the contribution would therefore be between 1200 million € and 1700 million € per year in a country such as France.
 7. See and index of similar studies: [http://www.laquadrature.net/wiki/Studies_on_file_sharing#HADOPI - 2011 - January 2011 study on online cultural practices .28FR.29](http://www.laquadrature.net/wiki/Studies_on_file_sharing#HADOPI_-_2011_-_January_2011_study_on_online_cultural_practices_.28FR.29)