



CEPS TASK FORCE ON COPYRIGHT IN THE EU DIGITAL SINGLE MARKET

PROSPECTUS

The substance and the enforcement of copyright law in the digital environment have been among the most complex and controversial subjects of the last decade for lawmakers all over the world. Due to its potentially ubiquitous application, copyright has become much easier to infringe by the average Internet user and its modern regulation inevitably touches upon digital communication policy, from both economic and social perspectives.

As shown recently in the EU by the European Parliament's rejection of the Anti-Counterfeiting Trade Agreement (ACTA), the issue of online copyright enforcement is politically so sensitive that it can lead to unprecedented clashes between EU institutions. This has the potential to frustrate years of policy-making and international negotiations undertaken by the EU Commission. At the same time, legislative improvements in the area of online enforcement risk being useless if the conditions of licensing of copyright are not smooth and transparent for both right-holders and users of creative content in an increasingly borderless digital environment. This objective has proven hard to achieve in the EU, where copyright law is still regulated at national level, and ownership regimes and licensing practices vary considerably from one country to another, in spite of the various directives that have harmonised national laws in the last 20 years. In this regard, the directive proposal issued on 11 July 2012 by the EU Commission on collective management of copyright and related rights might constitute an important step forward in the creation of a common playing field for copyright licensors. A more efficient and transparent framework for the licensing of digital uses of copyrighted content would certainly place creator(s), creative industries and commercial exploiters in a much better position to develop new business models.

The purpose of the CEPS's Task Force on Copyright in the Digital Single Market is to develop a dialogue among stakeholders, EU institutions, consumer representatives, Internet advocacy groups and academics on the future of copyright in the EU Digital Single Market and in a fully globalised economy. CEPS's Digital Forum could not accomplish its mission if the current definition, function and impact of copyright enforcement and licensing practices on the creation of an economically sustainable and highly diversified market for digital content within the Digital Single Market were not examined and debated openly by all relevant actors. We believe that the recent debate on ACTA's "digital chapter" was too unnuanced and polarised to place EU lawmakers in a position to fairly reflect on the protection of creativity and innovation, which is a key element for Europe's economic growth in a globalised economy.

On a different front, the very recent and smooth adoption at EU level of a directive on certain uses of orphan works by institutions acting in the public interest (i.e., public libraries, archives, film heritage institutions, public broadcasters) certainly constitutes an important step towards the objective of enabling online access to wide collections of creative works. Still, this directive deals just with works whose authors and right holders cannot be identified

and solely enables non-commercial use of such works, like those allowed by a publicly funded digitisation project like *Europeana*. This directive provides no response to how the creation of viable markets for online copyrighted works should be fostered and how (i.e., to what extent and through what measures) digital copyright should be enforced in Europe.

In light of the existing challenges in the online content sector, the proposed Task Force will directly tackle **issues that affect the creation and growth of viable** (and possibly pan-European) **markets for creative works**. In particular, the Task Force's agenda will focus on certain specific issues whose complex and multi-faceted political and legal dimension has ended up weakening society's consensus around copyright.

The ultimate goal of the CEPS Task Force on digital copyright is to provide policymakers and field practitioners with **an updated and independent view of very relevant and highly debated issues** like online copyright enforcement measures, licensing rules and practices and the enforcement of copyright exceptions (including private copying levies) at both national and at European level. To this end, CEPS will publish an authoritative analysis leading to **policy recommendations**.

The **composition** and work of the Task Force will take into account, in a **balanced and objective** way, the needs and problems identified by copyright holders' representatives, industry players, advocates of Internet freedom and consumer interests, authoritative scholars and by the EU Commission officials acting in the field.

In view of its institutional role as copyright policymaker, the European Commission's policy orientations and initiatives will be at the centre of the discussions to be held within the Task Force. The Commissioner in charge of intellectual property and notably copyright policy, **Michel Barnier**, has kindly accepted - in the context of a publicly accessible event where CEPS will present the agenda of its Task Force - **to deliver a speech on how he sees the future and next steps of EU copyright policy**. The **DG Internal Market and Services** (DG Markt) will also be closely associated to the debate, and as the Head of DG Markt's Copyright Unit, **Maria Martin-Prat**, has accepted CEPS's invitation to take part as a discussant in three workshops that will be held.

CEPS will ensure a **fair and productive inter-institutional dialogue** by inviting officials from other DGs of the EU Commission whose competences and tasks touch upon copyright-related matters as well as the European Data Protection Supervisor, the European Observatory on Counterfeiting and Piracy and a balanced representation of the EU Parliament political groups to attend all workshops and actively contribute to the debate.

Academics and independent experts who have agreed to participate in the Task Force's workshops and who will also act as chairpersons in the various workshop roundtables include:

- Prof. **Valérie Laure Benabou** (Université de Versailles)
- Prof. **Lionel Bently** (University of Cambridge)
- Prof. **Fabienne Brison** (Vrije Universiteit Brussel, HU Brussel)
- Prof. **Severine Dusollier** (Université de Namur)
- Prof. **Jane Ginsburg** (Columbia University, New York)
- Prof. **Lucie Guibault** (University of Amsterdam)
- Prof. **Thomas Riis** (University of Copenhagen)

- Prof. **Martin Senftleben** (VU University Amsterdam)
- Prof. **Alain Strowel** (Facultés universitaires Saint-Louis, Bruxelles - Université de Liège)

Below, we provide a preliminary list of topics that will be addressed in the forthcoming workshops as well as a short description of how the Task Force will be organised.

PRELIMINARY LIST OF TOPICS

Topic 1

Improving and simplifying online copyright licensing in the EU Digital Single Market

- The EU Commission proposal on collective rights management: does the proposal improve or simplify the state of the art in the field of online music rights? Who stands to benefit from the implementation of new licensing models?
- How plausible is a Digital Single Market strategy without the application of EU-wide licenses and pan-European commercial exploitations? The state of the art in the music and the audio-visual sectors
- How to make an EU Single Market for digital content happen. What is still missing and what legislative reforms do we need at EU level?
- Reconciling the enforcement of commercial licences with that of free and not-for-profit licences: is there any way to let such different approaches coexist and develop, giving content creators and commercial exploiters the chance to decide how their content should be accessed and used online?
- Has the harmonisation of copyright's exclusive rights achieved a satisfactory level in the EU in order to facilitate and simplify online licensing?
- Should copyright law eventually be unified through an EU regulation in order to have unified markets?

Topic 2

Does Europe need to reform copyright exceptions? What is the future of copyright levies?

- Is today's punctual definition of copyright exceptions a good or a bad idea?
- Do we need more harmonisation of copyright exceptions? If so, which exceptions should be harmonised more urgently and why?
- Would the EU copyright system benefit from the introduction of an open-ended clause like 'fair use' under US law, to be added to the existing set of exceptions and limitations?

- The boundaries of the private copying exception under EU law and in the case law of the CJEU: what types of copying should trigger the application of levies?
- Do levies remain a desirable tool to subsidise creativity at national level? Are levy systems sufficiently transparent? Could levies be replaced by national funds, as happened in a few EU countries recently?
- The EU Commission's mediation process launched in April 2012: how does the Commission intend to legislate?

Topic 3

Online copyright enforcement and the role of intermediaries

- The future of copyright enforcement in Europe after the EU Parliament's rejection of ACTA: what will be the impact of such rejection at the political level? Possible strategies and lessons for the future
- Enforcement measures targeted at Internet Service Providers (ISPs) and search engines: the state of the art at national level and future prospects in the EU
- Online copyright enforcement from the perspective of small- and medium-size content producers
- How to make copyright enforcement more Internet-friendly: alternative approaches
- The interplay between copyright enforcement and data protection law in the case law of the Court of Justice of the European Union: should the interface between privacy and digital copyright protection be clarified and unified at EU level?
- Can online intermediaries be legally forced to cooperate with right-holders irrespective of the intermediary's direct or indirect liability? The implementation of Art. 8(3) of Directive 2001/29 (EU Copyright Directive) at national level and its interplay with the safe-harbour provisions under the e-Commerce Directive
- The Commission's review of Directive 2004/48 ("IPRED"): should the directive be re-opened or it can remain as it stands?

ORGANISATION AND GOVERNANCE

- CEPS will host a launch event on 7 November 2012 (from 16.30 to 18.00 hrs) where CEPS will publicly present the task force initiative and its agenda. The keynote speaker at the launch event will be **Michel Barnier**, Commissioner responsible for copyright, who will talk about how he sees the future of digital copyright policy in Europe.
- CEPS proposes to structure the debate over three workshops to be held on:

- Wednesday, 14 November 2012 (Topic 1)
 - Thursday, 13 December 2012 (Topic 2)
 - Wednesday, 16 January 2013 (Topic 3)
-
- The **First Part** of each workshop - from 10.00 to 13.00hrs - will be devoted to presentations through which stakeholders, academics and representatives of EU institutions will express their views and make proposals on each of the above-mentioned topics. CEPS will select speakers to ensure a **balanced representation of all interests** at stake.
 - Perspective participants are kindly requested to inform CEPS, and in particular the Task Force Rapporteur, about their willingness to make a 15-minute presentation about one or more topics.
 - The **Second Part** of each workshop - from 14.00 to 17.00hrs - will be dedicated to roundtables in which participants will debate openly, having a CEPS researcher or an academic as chairperson. Chairpersons will propose the themes for each roundtable on the grounds of the main findings of the morning presentations and discussions.
 - In roundtable discussions, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed, in order to encourage openness and sharing of information.
 - The Rapporteur of the Task Force will be **Dr. Giuseppe Mazziotti**, CEPS Research Fellow and Co-Manager of the Digital Forum.
 - CEPS will produce a synthesis report for each meeting.
 - At the end of the Task Force, CEPS will publish and circulate among EU and member state policy circles **policy recommendations** together with a **Background Report**, which will be also formally published in the CEPS Task Force Report Publication Series. The Background Report will be based on discussion in the meetings, supplemented by research carried out by the Rapporteur and CEPS' research team.

CONDITIONS FOR PARTICIPATION

The CEPS Task Force is principally designed for CEPS Corporate Members but participation is open to non-members as well.

The fee covers participation in all workshops, documentation and lunches.

Fee Structure

Participation fee for

CEPS Corporate Members: Free of charge

Non-members: EUR 3,000 + VAT for companies
EUR 1,000 + VAT for industry associations and non-profit organizations

To register, please use the Registration Form in the Appendix of this document.

About CEPS

The Centre for European Policy Studies, based in Brussels, was launched as an independent research institute in 1983 to encourage the study and discussion of public affairs in Europe. It aims:

- to provide decision-makers, inside and outside government, with authoritative and independent analysis of European affairs;
- to contribute to the public debate about European institutions and policies through sound research and judgement; and,
- to create a network of leaders and thoughtful individuals who are committed to working together to enhance the development of European integration and co-operation.

CEPS is funded by corporations, public bodies, membership fee dues and income from activities.

If you have any questions regarding the enrolment in the Task Force group, please contact:

Staffan Jerneck

Director & Director of Corporate Relations

e-mail: staffan.jerneck@ceps.eu

For questions concerning the programme of the Task Force events, please contact:

Giuseppe Mazziotti

Research Fellow and Task Force Rapporteur

e-mail: giuseppe.mazziotti@ceps.eu

Lorna Schrefler

Research Fellow

Email: Lorna.schrefler@ceps.eu