



# ***ReCreating Europe Rethinking Digital Copyright Law for a Culturally Diverse, Accessible, Creative Europe***

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Copyright law has been under the spotlight of the EU legislator and of policy debates for almost a decade now. This renewed interest in the subject has been followed by a new hype in the production of studies and academic publications focusing on different challenges raised by digitisation and the fast-paced advent of new technologies. Such phenomena have reinvigorated the impact of four parallel features characterising copyright law, which traditionally hinder the effectiveness of effective policy and lawmaking in the field.

The first is copyright complexity. Technological, sociological and legal changes have transformed digital copyright law into a regulatory instrument having a direct impact on a wide array of policy goals, rights and freedoms, far beyond the strict copyright sphere. Copyright complexity challenges the predictability of the impact of regulation and the reliability of evidence-based policymaking, requiring a more articulated interdisciplinary analysis to produce all-encompassing results. It increases the difficulty of reaching a consensus on the level and focus of harmonisation. It broadens the range of stakeholders involved, steepening the road to finding a balance. Moreover, it creates coordination problems within the EU's multi-level competence structure, since not all policy areas touched upon by copyright fall under the competence of the EU legislator.

The second is copyright relinquishment. Where regulation fails to meet societal needs, it systematically triggers the adoption of alternative coping strategies that develop outside, without, and sometimes against copyright, both on the side of consumption (e.g. piracy and circumvention of copyright) and on the side of creation (e.g. technical protection measures and copyleft). Despite of their significance, which weakens copyright's regulatory weight and impact on content creation and use, these phenomena are rarely mapped and analysed holistically in connection with policy reforms.

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The third is copyright knowledge gap. Although our knowledge about creative processes and consumption practices has improved, important gaps remain, underlining the need for more evidence on copyright impact, and for an analysis that could clarify the principles underlying copyright, and the standards for delineating exclusive rights and exceptions as informed by those principles, making copyright law and the use of copyrighted works more transparent, consistent and evidence-based. The copyright knowledge gap undermines the capability of the EU legislator to prioritise effectively its actions, establish the most appropriate level of harmonisation, and consider the necessary interplay between copyright and other regulatory branches and policy measures.

The fourth is copyright awareness gap. Despite the efforts made to address the problem, the level of awareness of copyright regulation and its impact appears to be consistently low across the entire spectrum of stakeholders. This is particularly true for end users and individual authors and performers, and contributes to impairing the effectiveness of copyright law in fulfilling its institutional goals.

In response to the great need for further research to support evidence-based decision-making and for stakeholders' engagement, nine research centers across Europe<sup>1</sup> and LIBER – the European Association of Research Libraries – joined forces for three years (January 2020 – March 2023) to carry out an ambitious research project funded by the European Commission's Horizon 2020 framework programme, under the umbrella name of *ReCreating Europe* (“Rethinking Copyright Law for a Culturally Diverse, Accessible, Creative Europe”).

Compared to previous studies, one of *reCreating Europe's* main strengths was the parallel, comprehensive focus on five key groups of stakeholders (end-users, cultural and heritage institutions, individual authors and performers, creative industries, and intermediaries), whose needs were assessed along intertwined research patterns, and through a cross-disciplinary approach that innovatively merged different methodologies within the framework of a participatory research strategy. This stakeholder-based analysis was vital to capture the complexity of the phenomena and questions posed by EU copyright law. *Inter alia*, (a) it provided the possibility to look at oft-neglected subjects, such as vulnerable users and niche cultural/creative communities and sectors, offering a cross-cutting picture of the effects of EU copyright law on access to culture and the creation of cultural and creative value; (b) it helped to make a contextual assessment of the factors influencing access, creation and dissemination of content, avoiding the usual limitation of the analysis to a single discipline, stakeholder or legal domain; and (c) it placed emphasis on alternative coping strategies adopted by stakeholders to fulfil their access, (re)creation and dissemination needs, analysing the innovative and positive contribution of such responses instead of simply treating them as distortions to be corrected by policy reforms.

To move beyond the state of the art and tackle the knowledge gap, *reCreating Europe* coupled the comparative (EU and Member States) mapping of regulatory

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<sup>1</sup> Scuola Superiore Sant'Anna (Pisa); Institute of Information Law (IViR), University of Amsterdam; CREATE – University of Glasgow; Von Humboldt Center for Internet and Society, Berlin, later by University of Bremen; Maynooth University; University of Tartu; University of Trento; University of Szeged; and the University of Copenhagen.

solutions, stakeholders' perceptions and coping strategies with the collection of a wide range of data sets portraying the impact of digitisation and EU copyright on patterns of consumption, creation and dissemination of cultural and creative content, their qualitative and quantitative evaluation, and the development of innovative analytical and measurement solutions.

The focus of the mapping exercise was, *inter alia*, on the comparative state of the art of copyright flexibilities in EU and national sources, with an additional focus on end-user license agreements (EULAs); legal barriers to access to culture for vulnerable groups; the treatment of AI-generated content by EU copyright law and its pros and cons; the impact of EU copyright law on the development of AI applications and training models; the current effects of copyright territoriality on cross-border uses; the governance and implementation of processes of intellectual property management within cultural heritage institutions; EU and national laws and EULAs having an impact on content moderation and removal rules and policies by intermediaries, and their effect on digital access to culture and the creation of cultural value; and, finally, current practices and structures of copyright content moderation and removal on key platforms for sharing and using creative cultural works.

Parallel to this, *reCreating Europe* engaged in the empirical measuring of specific phenomena through modelling, stakeholders' surveys, focus groups and other forms of participatory research strategies. Examples range from the presence of economic and technological barriers to access to culture for people with disabilities and minorities; the income development of authors and performers and their experience with regard to the unbalanced bargaining power with publishers and platforms; the impact of digitisation and COVID-19 on piracy; the effects of AI-generated content on creators; the case of IP-negative spaces, to understand the behaviours of market players in sectors where IP is not used to protect creativity; the role of digitisation in changing business models in creative industries, with a focus on digital born start-ups, non-profit cultural and creative activities and producers, mixed cultural and creative activities and city-based creative hubs; the consequences of digitisation on cultural diversity, preservation and access to culture in cultural heritage institutions; and the effects and uses of the digitisation of art, architecture and cultural heritage in place-making, with the aim of enhancing access to culture and cultural cohesion.

These research activities produced more than 70 products, from reports and studies to datasets, publicly available databases and websites (e.g. [www.copyrightuser.eu](http://www.copyrightuser.eu) and [www.copyrightflexibilities.eu](http://www.copyrightflexibilities.eu)) and scientific publications.

To tackle copyright complexity, all the research activities conducted by *reCreating Europe* were inspired by full interdisciplinarity, with joint work from lawyers, economists, management scholars, geographers of innovation, communication and media scholars, in order to provide a 360° account of all the forces and variables influencing copyright-based dynamics in the EU digital single market and society.

To tackle the copyright awareness gap and relinquishment, *reCreating Europe* widely used participatory research tools and involved stakeholders at all stages of the research, also co-developing with them best practices via deliberative exercises

and related follow-ups to ensure the greatest uptake possible of its results, with the goal of understanding stakeholders' coping strategies and providing them with the most up-to-date tools to take the best out of copyright law and the leverages it provides for creators, users, industries and intermediaries. More specifically, best practices were built on *reCreating*'s findings and aimed at providing stakeholders with useful guidance to navigate EU and national copyright laws both from the side of consumption/reuse and from the side of creation, production and distribution of protected content, with the aim of democratising access to culture and fostering access for vulnerable groups such as people belonging to ethnic or linguistic minorities and people with disabilities, while effectively sustaining the growth and competitiveness of rich and diverse cultural and creative industries. Based on its findings, *reCreating Europe* also developed five sets of policy recommendations addressing regulatory gaps and pitfalls, and advancing reform proposals touching upon the needs of all stakeholders involved, backed by the research outputs produced throughout the project and freely available online.<sup>2</sup>

This Special Topic Issue aims at offering snapshots of some of *reCreating Europe*'s results on key challenges for the current EU copyright policymaking, raising at the same time proposals and questions for future scientific debates. Caterina Sganga reports on the findings of the mapping of EU and national legal sources on copyright flexibilities, offering an overview of the state of the art of harmonisation in the field and advancing a number of proposals for reform. Moving to cultural heritage institutions, Giulia Dore and Pelin Turan offer a contribution on the transposition of Art. 14 CDSMD and its interplay with national provisions from cultural heritage laws, which may constraint the opportunity of access and reuse of works in the public domain. Mireille van Eechoud comments on the findings of the mapping and assessment of the effects of copyright territoriality, emphasising its impact on the effectiveness of EU copyright harmonisation and supporting on this basis the renewed claim for a unitary EU copyright title. Delia Ferri reports on the assessment of the national implementations of the Marrakesh Treaty and Directive on copyright and disability, reflecting on their practical impact, while Thomas Margoni and Martin Kretschmer present the three case studies developed via desk research and interviews with key players on ownership issues in training data. Sebastian Schwemer reflects on the challenges raised by the uneven quality of automated content moderation algorithms, analysing potential remedies in the current legislative framework, and sketching gaps which may require further intervention. Finally, Joao Quintais et al. conclude with an overview of the state of the art of copyright content moderation in the EU, and advance a number of policy recommendations to inspire the way forward.

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<sup>2</sup> *ReCreating Europe* Final Conference Booklet, available at [https://zenodo.org/records/7774557/files/reCreating%20-%20Booklet\\_Final%20Conference.pdf?download=1ITA](https://zenodo.org/records/7774557/files/reCreating%20-%20Booklet_Final%20Conference.pdf?download=1ITA) (accessed 17 November 2023).