

The EDRI papers

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# COPYRIGHT

challenges of the digital era

EUROPEAN  
DIGITAL  
RIGHTS

The European Union has been repeatedly having discussions for the past twelve years on how to cherish, develop and protect creation in the digital environment.

So far, discussions have focussed on enforcement of pre-existing legal norms and the extent to which internet providers should police and even punish their customers.

Despite all of these efforts, it appears that copyright is still not respected in the European Union. As Commissioner Kroes said, “Citizens increasingly hear the word copyright and hate what is behind it.” This is a situation where everyone loses and which demands a strong policy response.

This booklet looks at the foundations of the profound disconnect that has developed between citizens and the law.

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# INTRODUCTION

This booklet presents a simplified overview of the difficulties facing public support for copyright. Faced with the ease with which digital content can be copied in and between computers, some propose “educating” citizens that copyright is good and must be respected. However, citizens cannot be convinced that the law is good and well meaning in theory, if they see absurd, outdated and excessive copyright law in their day-to-day lives.

The next section of the booklet focusses on the restrictions that rigid and outdated copyright law - and its enforcement - can have on legitimate business. This ranges from enforcement measures ultimately prohibited by the European Court of Justice to the destruction of apparently legitimate business models by European legislation that has created, rather than removed, barriers to the market.

The final section of the booklet looks at

**“Computers and the Internet function by making copies of files. Fighting copying means reinventing the law or re-inventing computers and the Internet.”**

The document starts with a brief introduction to the logic behind granting monopoly rights on use and re-use of ideas in the market economy and the economic value of alternative approaches.

It then goes on to look at some of the reasons why the public today has difficulty respecting - in both senses of the word - copyright law. These reasons range from excessive penalties for breaching copyright law to legally-protected restrictions on the rights of citizens to use digital products that they have paid for.

the wide range of excessive enforcement measures that made the headlines in Europe and internationally, showing citizens that copyright - which is supposed to facilitate communication and creation - has deteriorated to the point that it is leading to practices that greatly resemble extortion and to legal content being deleted on the basis of very dubious accusations. ■

# 01

# KNOWLEDGE & INNOVATION



## RESPECTING COPYRIGHT

The purpose of this booklet is to ask what has led to the ubiquitous<sup>01</sup> lack of respect for the current copyright system and its implementation in the European Union.

**What is copyright?** Copyright is a bundle of exclusive and intangible rights granted to the author(s) of a literary, musical, artistic or other creative work, protecting and enabling their control over their creation.

**Why do we have copyright in the first place?** Copyright is intended to provide an added incentive for creativity and innovation, establishing certain monopoly rights. This is done for a multitude of motives. One view is that an author's work is an extension of the person and that the person should therefore be in control of it. These are so-called "moral rights".

Another concept is that an author should be entitled to reap the economic benefits of his/her work. It is also generally accepted that there is social value in having as many as possible political, scientific and cultural views expressed and published. Last but not least, our market-based economy accepts the monopoly approach taken by copyright because it is hoped that the recognised disadvantages of the monopoly rights will be offset by increased innovation and competition.

For a copyright system to be effective, it must serve the creator and society, promoting culture and facilitating access to it. Copyright systems that are excessively bureaucratic, that lock away cultural goods from society or that put the interests of intermediaries ahead of those of the author or wider society are, by definition, broken.

EDRi believes the legitimacy crisis of the current copyright system comes from problems created by the system itself. It is unable to adapt to certain immutable facts:

- Creation does not take place in a cultural vacuum, everything is built on something that someone else created.
- Funding of creation and remuneration for distribution have become separate issues and subsequently must be treated differently in policy-making.
- Creation for monetary reasons can be sustained by other business models than royalty driven ones, as research has consistently shown.<sup>[02](#)</sup>
- An undue focus on royalty-driven business models for funding of creation is not alone proving unsustainable, but is also stifling non-royalty-driven business models. ■



*Reports of the death of music have been greatly exaggerated.*

Much of the noise surrounding the “need” for more far-reaching enforcement measures comes as a reaction to “file sharing”. While the assumption often is that any download represented a lost sale, the reality is far more complicated.

Reports by the UK Media Regulator, the French copyright enforcement agency HADOPI and Dutch consultancy TNO all came to the conclusion that the financial impact of downloading has been vastly overestimated. More concerning still, all of these reports found the people who download the most content “illegally” generally spend the most money on cultural products – creating a serious risk that strict enforcement is victimising and alienating the cultural industries’ best clients.



# EXCEPTIONS AND THE PUBLIC DOMAIN AS A DRIVER FOR CREATION, INNOVATION AND FREE SPEECH

**Some rights reserved** If society creates monopoly rights for creators in the hope of generating innovation and creation, then it is worth considering what happens when these monopoly rights are not granted or are waived by the owner/creator. There is a growing number of interesting examples of large scale creation and distribution of content that is either licensed under a creative commons license or even put explicitly in the public domain.

In terms of licensing, the label 'free music'

does not necessarily mean free-of-cost or devoid of any rights restrictions, it means "some rights reserved". There are a number of licensing schemes that facilitate for artists to choose and define what rights they grant on their creation."



Jamendo.com is an online music platform where all the works are covered by either a Creative Commons or a Free Art licence. Listening to the works is free and commercial (royalty free) licences can be obtained for public places like restaurants and hotels. It has a repertoire of over 55,000 albums, offering artists the opportunity to share their art with the world... and be discovered without signing away their future to a recording company.

<http://jamendo.com>



The band Nine Inch Nails released an album, with the first nine tracks under a “Creative Commons” non-commercial sharing licence. The album has a range of other offers for the remaining content on the album. In the first week, the return was \$1.6 million from 800,000 transactions.<sup>04</sup>

<http://nin.com>



Faced with the increasing cost of school textbooks, flatworldknowledge.com publish peer-reviewed textbooks using a Creative Commons licence. The textbooks must be bought but, unlike copyrighted material, teachers can then copy and adapt the books to meet their needs and those of their pupils.

<http://flatworldknowledge.com>

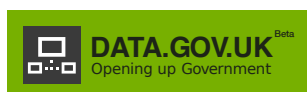


Opencorporates.org has used public information from governments to create a vast database of corporate information. The organisation makes its money out of providing access to its structured database rather than from selling the information itself.

<http://opencorporates.org>

**Open data** The British government sees such benefits from the release from copyright of government data that it is launching an “Open Data Institute” to unlock enterprise and social value from the vast amount of Open Government Data

now being made accessible. The gradual abandonment of government monopoly rights - in the UK and beyond - has already led to numerous successful businesses and services being launched:



The UK government has collected a range of interesting open data case studies at the following address:

<http://data.gov.uk/blog/open-data-case-studies>



Tekenradar.nl - a Dutch site sharing information warning people about health-endangering ticks.

<http://www.tekenradar.nl/>



Nederland van boven provides a visual historical record of changes in the Dutch landscape.

<http://nederlandvanboven.vpro.nl>



### Remix and parody - An exception to the exception

Parody has always been recognised as a culturally and societally valuable exception to the copyright monopoly. This right has been enshrined in numerous laws, as well as article 5.3.k of the Copyright in the Information Society Directive. However, voluntary, privatised enforcement is killing this right that was democratically accorded to citizens.

To identify copyright infringement, automatic systems are used to identify possibly infringing material online. If they identify content that appears to be infringing, they send an automatic “takedown” notice, which is automatically acted upon by the receiving Internet company. It is getting more and more difficult to publish audiovisual material on the Internet as parody or remix as foreseen in the Copyright in the Information Society Directive. ■

NOTE: The trademarks depicted on these pages remain property of their respective owners and their use in this booklet does not imply endorsement of any kind

# WHY THE PUBLIC HAS LOST FAITH IN THE COPYRIGHT SYSTEM

While copyright certainly has a value, the ubiquitous<sup>01</sup> infringement described by the European Commission means that the law has lost its legitimacy - society increasingly sees copyright infringement as acceptable. What is broken in the current system that needs to be fixed in order to provide durable protection and adequate access to cultural goods?

Despite awareness campaigns, there is a moral disengagement towards copyright. Copyright infringement cannot be “ubiquitous” if a large portion of the population did not view intellectual property law as so illegitimate that it may be wilfully and repeatedly ignored.<sup>05</sup> The current EU approach of ever-stronger and ineffective coercive enforcement measures creates a disrupted and increasingly hostile relationship between consumers and creators or, at least, the industries that claim to represent the creators.

Creators’ interests need to be respected, and we have to be sure that these legal protections are coherent and defensible.

The current chaotic situation fails to defend either the rights of the citizen (who, thanks to the Internet and digital technology in general, are also increasingly “creators”

in their own right) and those of traditional creators. The key elements of this loss of functionality of the system are due to the fact that copyright law has not yet been adapted to the digital age:

- the current framework is too rigid and inflexible and acts as an obstacle to innovation;
- copyright increasingly creates needless barriers, especially in the form of effectively insurmountable transaction costs, preventing citizens access and use of what is, after all, their own culture, for example in relation to private copying, parody/remixing, licensing...

For these reasons, the market does not offer consumers attractive and competitive offerings in terms of choice, services and prices. ■

# 02

## COPYRIGHT ENFORCEMENT

### PENALTIES FOR INFRINGEMENT: PROPORTIONATE AND CREDIBLE?

The interests of creators should be protected, but should they be protected at any price? Rightsholders have acquired more and more legal tools to protect their commercial interests, but is it the right solution when nothing ever seems to be enough?

Why does it seem that an unending stream of new rights (such as copyright term extension and, more recently, ancillary copyright) and repressive measures (such as “three strikes,” access to citizens’ personal data, abandonment of the presumption of innocence and web blocking) seem to move us no closer to a solution, but serve to continually alienate citizens? Should the enforcement of copyright be strengthened, if there are more infringements after these

enforcement measures than before?

Could it be the case that sanctions for and the reactions to copyright infringement are disproportionate, to the point of being counterproductive? We have already seen in chapter 1 that studies show that enforcement measures are most likely to impact on the citizens who spend the most on cultural products.

But how serious are the enforcement measures? How can citizens respect copyright when legislators treat trivial offences as being more serious than, for example, physical violence?

The French news website Numerama<sup>06</sup> produced a list of offences which legislators in France have concluded

should be punished less severely than the exchange of copyrighted material on the Internet.

According to Article 335-2 of the

Intellectual Property Code, the unauthorised exchange of music or films on the Internet is subject to a punishment of up to three years in prison and 300,000 euro in fines. ■

The following crimes have **the same** maximum penalty as online filesharing in French law:

- Involuntary homicide
- Theft
- Fraud
- Fraudulent bankruptcy
- Online distribution of bomb-making instructions

The following offences have **lower** punishments than online filesharing in French law:

- Sexual exhibitionism in a public place (maximum 1 year)
- Sexual harassment (maximum 1 year)
- Workplace bullying (maximum 1 year)
- Animal cruelty (maximum 2 years)
- Identity theft (maximum 1 year)

# TECHNOLOGICAL RESTRICTIONS ON LEGALLY OBTAINED CONTENT (DRM)

DRM officially stands for Digital Rights Management – although is known ironically by its opponents as “Digital Restrictions Management.”

DRM is a collection of systems used to protect copyright on electronic media, such as digital music and films, as well as computer software. It is an access control technology that attempts to control the user’s ability to access, copy, transfer and convert material. In essence, it is technology that controls the use of digital content after it has been sold. The circumvention of “effective” DRM technologies is forbidden by Directive 2001/29/EC, the “Copyright in the Information Society Directive”.

For example, DRM can supposedly limit the number of computers onto which a particular file can be copied. An audio file, which has been legally bought, can therefore include information about how many times it has been saved on different devices. This can make it impossible, for example, to put a copy of a legally bought music file onto a portable music player.

Similarly, e-books usually contain DRM, which prevents the user/reader

from copying, sharing or printing the e-books. Remarkably, DRM means that technological “progress” has led to a situation where we are no longer able to share books with our friends, like we are able to do with paper copies – this is copyright protection as a hindrance to the enjoyment of cultural content that has been legally obtained.

DRM is defended as being important for rightsholders, since it is said to help to guarantee the appropriate revenue for their products and to limit the unauthorised reuse of copyright works. The problem with this logic is that unauthorised sharing continues (i.e. the problem that DRM seeks to solve remains unsolved) while DRM serves to impose ever greater restrictions on legally acquired content increasing incentives to opt for illegal, but more user-friendly, options for accessing content.

The major problem is that DRM shifts a decision that is by its nature very contextual, for example whether exceptions to copyright (such as parody, citation/quotation, private copy) are applicable, to rigid mathematical calculations that, by their very nature, will ignore the contextual aspects. DRM removes all that is

reasonable about copyright and therefore is an impediment to its moral legitimacy.

DRM does not only circumvent the exceptions established by law in many European countries, it also gives content providers control over the digital files bought by the users. A few years ago, Amazon remotely deleted digital copy of George Orwell's *1984* from users Kindle devices after a copyright clearance mistake.<sup>07</sup>

From a consumer viewpoint, DRM also introduces severe impediments to the usability of digital works. Users have a reasonable expectation, after paying for the product, to be able to move music from one device to another. Some forms of DRM rely on online authentication and, as the online authentication will almost always end up being taken offline (due to the business changing or going bankrupt), this usually results in a massive shift to infringing copies with the DRM removed.

The evidence is mounting that DRM actually promotes infringing use<sup>08</sup> instead of respect for copyright. In one particular

case this caused the rightsholder to limit its use,<sup>09</sup> but it is still symptomatic for rightsholders answering a call for easier access to content with making it even harder. Or as Forbes Magazine put it: "piracy is a service problem".<sup>10</sup> ■

# GEOGRAPHIC RESTRICTIONS: A BARRIER TO THE CREATION OF A DIGITAL SINGLE MARKET

Most copyrighted content is licensed and distributed on the Internet on a territorial basis. This means that the availability of content differs from one country to another. In an increasingly cosmopolitan Europe, where workers are encouraged to travel and set up in home other EU countries, citizens are finding barriers to their enjoyment of cultural goods from their home country – even goods that they have already paid for, through, for example TV licences or taxation for this content.

If we take Irish workers, as an example of a particularly mobile workforce. These migrant workers will have paid for the national TV station through licence fees until they left Ireland, but will have no access when living elsewhere in Europe. Even more absurdly, the option of paying for the content (even completely “in-house” content from the national broadcaster) is unavailable. The only option is to pay for a “virtual private network” service – with revenue going to an intermediary rather than the creator, as a direct result of laws designed to “protect” that same creator. Even a huge corporation like the BBC finds that it takes years to licence content for viewing online elsewhere in the EU.

How do you explain to an Internet user that the broadcaster cannot be paid for the content, but accessing it online would be (possibly criminal) theft? How can policy-makers explain to citizens that this situation persists in 2012, when the European Commission has always claimed to promote the creation of a digital single market, but that the digital single market is no closer today than it was ten years ago?

**Spotify** Spotify is a digital service that provides access to musical content. It offers different types of accounts: some are free of charge and others require a paid memberships (the difference is the amount of music you can access).

Due to geographical restrictions, partly because of territorial licensing, the service is not available in every EU Member State – a full four years after its initial launch. Creators in those countries cannot get paid for the use of their content because, absurdly, of the laws designed to protect them.

For four years, thanks to territorial licensing in the broken European market, German citizens had to watch as citizens in neighbouring countries were able to



use Spotify, while they could not. It took four years for Spotify to branch into just 13 European markets. Compare this fragmentation to the American single market and the opportunities it offers to citizens, innovators and creators. We wonder why the big online companies are all American! The fault is European... and the solution is European, whenever (or if ever) a reform happens.

In the German market, it appears that problem arose due to the demands of the German collecting society GEMA. According to Spotify, GEMA asked for excessive fees.<sup>[11](#)</sup>

How can we create a legitimate copyright framework if rightsholders licence on a territorial basis and collecting societies create new and unacceptable barriers to cultural content? ■

# 03

## FREEDOM TO CONDUCT BUSINESS

### TURNING PAYING CUSTOMERS INTO “LAWBREAKERS”

Demands coming from rightsholders can sometimes be extreme and can have a negative effect on other businesses. These demands can force businesses to change their approach to their own consumers and can create a harmful environment for research and innovation.

**Launching a device in the UK** In the United Kingdom, the Advertising Standards Authority (ASA) asked 3GA Ltd to change the way it advertises its CD player with a hard disk because it allegedly encouraged copyright “infringement”.<sup>12</sup>

The advertisement stated that the device saves space and clutter and delivers near immediate access to an entire music

collection. The device allows the user to store all of their music content in one place.

The ASA received a complaint that the advertising was an incitement to break the law because copying without permission (private, non-commercial copying of legally obtained content) was a breach of copyright law. The ASA agreed and said that the advertising could potentially mislead consumers into believing that they had the right to make private copies of content that they had paid for!

3GA had to stop advertising its digital music player in this way, and had to ensure in future ads that it prominently stated

that it was unlawful for customers to copy their own legally obtained material without permission of the copyright owner.

The publicity surrounding the case reinforced the view that copyright law is not adapted to the reasonable expectations of citizens, while underlining the legal uncertainty created by the chaotic European regime for exceptions and limitations of copyright.

Of course, consumers are going to keep copying content that they have paid for – the reminder will not stop them from doing this. What the reminder will do is to tell them that a nonsensical law has made them into “pirates” and “lawbreakers” for doing things that are unquestionably reasonable. If anything, it creates a notion that pirates are normal people that just happen to ignore senseless legislation. ■

# THE COURT OF JUSTICE OF THE EUROPEAN UNION AND THE FREEDOM TO CONDUCT BUSINESS

In a decision in 2011, the Court of Justice of the European Union (CJEU) underlined the necessity to take into account the freedom to conduct business when enforcing copyright demands.<sup>13</sup> SABAM (the Belgian collecting society “Société Belge des Auteurs, Compositeurs et Editeurs”) applied for interim relief against a small Internet service provider (ISP) called Scarlet. SABAM wanted the ISP to install a generalised filter for all communications going through its services and to block potentially unauthorised peer-to-peer communications. SABAM argued that the interests of rightsholders outweighed the privacy and communications rights of the citizens and the costs imposed on the Internet provider business.

The Brussels Court of First Instance concluded in favour of SABAM. The Brussels Court of Appeal brought the case to the European Court of Justice, which ruled that a filtering and blocking system for all its customers for an unlimited period, in abstracto and as preventive measure, violates fundamental rights, such as the right to privacy, freedom of communication and freedom of information. Even more important in the context of impact on commercial activity, it was ruled to breach the freedom of ISPs to conduct business.

The Court ruled that the injunction obliging ISPs to install and maintain complicated

and costly monitoring of all electronic communications at its own expense for an unlimited period in order to protect the rights of copyright holders is contrary to the freedom to conduct business recognised by Article 16 of the Charter of Fundamental Rights of the European Union. Furthermore, such an order would also have contradicted Article 3(1) of the Enforcement Directive which specified that measures to ensure the respect of IPR should not be unnecessarily complicated or costly.

In the ruling, the Court established the position of copyright and related rights in the hierarchy of rights in the European legal framework. This was a significant and important decision as more and more rightsholders are pushing for more protection at the expense of other innovations, creations and businesses.

Coincidentally, similar policies were promoted as “voluntary” measures in an earlier stakeholder “dialogue” organised by the European Commission. If the ISPs had voluntarily agreed to undertake this infringement of the right to communication and to privacy, then the court would not have been involved – and the rights of citizens would have been violated. Many of the proposals on copyright enforcement – such as in ACTA – call for voluntary measures by ISPs instead of democratically established laws. ■

# COPYRIGHT AS A BARRIER TO LEGAL USE OF CONTENT AND INNOVATION

The fragmentation of the EU copyright legal framework leaves innovators guessing as to what is legal and what is not. Virtual video recorders are a good example.

A virtual video recorder is an online digital video recorder. The technology allows users to make copies of free-to-air programmes broadcast on terrestrial television channels, in exactly the same way as they have always been able to do with domestic video recorders.

In France, Wizzgo released its first online video recording service. Users had a monthly quota of hours they could record, and the programme was only recorded if the copy was ordered before the programme started (to make sure that the use was functionally identical to traditional video recording). It was exactly the same as a traditional video recorder, except that the copy was in the provider's network. In France, users are allowed to copy for private purposes. As a private copy that was functionally identical to existing and accepted private copies, the service should have been entirely uncontroversial.

However, the digital terrestrial channels sued Wizzgo for copyright infringement.

The Court argued that no exception can be claimed when copies had an evident economic value.<sup>14</sup> The Paris Court of Appeal gave its decision on the same case repeating the Court of First Instance argument that it was not covered by any copyright exceptions, and confirmed that unauthorised online video recording was illegal.<sup>15</sup>

How can you argue that two technology devices working exactly alike do not fall under the same exception just because the storage happens at different places?

In a similar case in Germany, the Dresden Court of Appeals decided in July 2011 that such an online video recorder was protected by the German copyright law as an exception to copyright protection,<sup>16</sup> but was ultimately effectively prohibited (in the absence of authorisation) for other reasons.

This is just another example – and unfortunately not the only one – showing the current confusion which reigns in the EU regarding copyright law, showing the urgent need for modernisation and harmonisation of the copyright framework. ■

# ENFORCEMENT AS A TOOL TO SHOW ABSURDITY AND/OR HYPOCRISY OF THE LAW

## Excessive enforcement - coercive measures

1. Having gained easy access to consumer data following the principles of the EU IPR Enforcement Directive, UK law firm ACS:Law sent letters to tens of thousands of citizens. The letters demanded comparatively small amounts of money, with the threat of big court costs if the payment was not made. Although it is unclear how many people responded to the threat, over one million pounds were collected, 65% of which went to the law firm. The law firm then refused to defend its accusations in court.<sup>18</sup>
2. Inadvertently showing how difficult it is to respect copyright law, Dutch copyright enforcement organisation Brein was caught “pirating” music on one of its own anti-“piracy” videos.<sup>19</sup> Subsequently it also turned out that a board member of the Dutch collecting society BUMA/STEMRA was only willing to pursue this matter if the composer of the music was willing to give him a share of the royalties that were outstanding.
3. In December 2012, Finnish police raided the house of a nine-year-old child as a result of one unauthorised download and confiscated her “Winnie the Pooh”-themed laptop. The father of the child subsequently

paid 300 Euro for the single download, in order to prevent further “mafia” harassment of the child.<sup>17</sup>

4. In 2012, the Court of Antwerp (Belgium), ordered Internet providers to block access to The Pirate Bay website within 14 days. Within one day, a site (depiraatbaai.be) was set up to allow users to route around the block. By the time the law had caught up with that site, further alternatives had been created.

5. Google enforces US copyright law (the DMCA) globally, including in Europe. In 2012, Google received more demands for removal of sites from its search engine from Microsoft than from any other company. As well as demanding the removal of the BBC, the Huffington Post, Wikipedia and others, Microsoft also demanded the removal of Microsoft’s own search engine!<sup>20</sup>

**Excessive enforcement - removal of content** There are far too many examples of unquestionably legal content being deleted due to accusations of copyright infringements for us to be able to provide a representative sample. These are just a few of the most ridiculous examples:

1. In July 2011: MobyPicture did not respond fast enough to a notification by

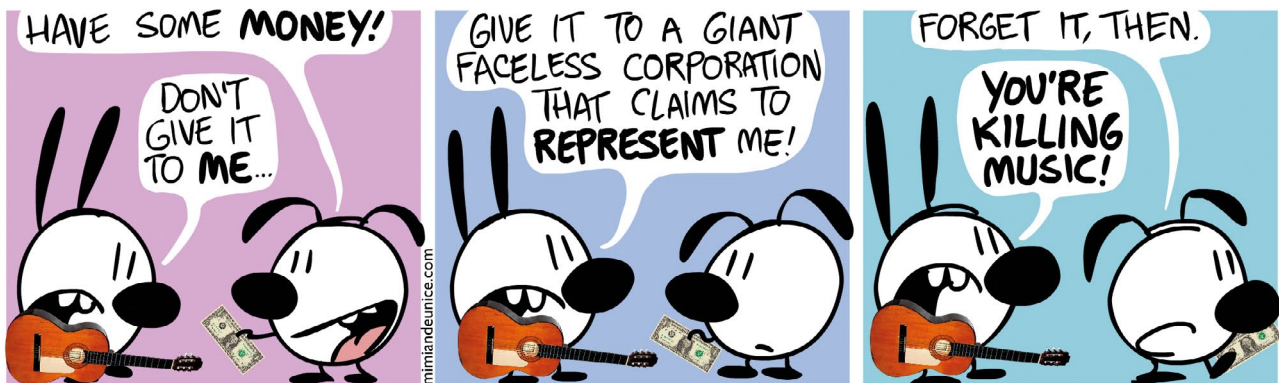
Amazon, after which Amazon changed the configuration of the site, leading to the entire site (with 500,000 customers in 2010) becoming unreachable.<sup>21</sup>

2. A Romanian lawyer published a copy of all laws from 1990 until 2011 on his website (texts of laws are in the public domain). The Romanian Official Journal claimed to have a copyright on the format of how the laws are published and filed a complaint against the lawyer. In parallel, the Journal had asked the hosting provider to take down the content, based on a simple letter sent via a bailiff. The hosting provider took down the content and suspended the entire

hosting account, which included several unrelated websites.

3. In August 2010, the German collecting society GEMA successfully demanded the removal of 4 videos on the platform Vimeo - Although the owner of the material had uploaded the content himself.<sup>22</sup>

4. Even though Microsoft is one of the biggest issuers of takedown notices in the world,<sup>23</sup> an artist whose material was made available on Microsoft Stores finds it impossible to persuade Microsoft (or iTunes or Google) to remove the content.<sup>24</sup> ■



source: <http://mimiandeunice.com>

## MARKET FAILURE

International companies tend to ask the same prices world wide, regardless of the ability of consumers to pay. In emerging economies people have much lower incomes. In countries like Bulgaria, most people depend on illegal media copies. Here, strong enforcement does not solve any problem, but only increases societal costs.<sup>25</sup>

At the same time, the perceived “victim” of the “theft” of copyrighted material may be

suffering less than they claim. Bill Gates (founder of Microsoft) explained that it is important for companies like Microsoft to get a foothold in developing markets, which will become profitable when people subsequently gain the ability to pay.” He explained that, “as long as they’re going to steal it, we want them to steal ours. They’ll get sort of addicted, and then we’ll somehow figure out how to collect sometime in the next decade.”<sup>26</sup> ■





# CONCLUSION

Citizens are frequently reminded of the failures of the current legal framework for copyright and copyright enforcement. They also see the ever-growing innovation being built on public domain cultural goods, open government data, open source software and Creative Commons licences.

They see themselves being told that they cannot make copies of content that they have already paid for, they see parodies or remixes that they make being automatically censored by computer programmes that decide that they are infringing copyright and, even when democratically elected policy-makers rule that private copying is permitted, they see this right being removed by built-in digital restrictions measures (DRM).

They see innovation being stifled by unpredictable rules on exceptions and limitations to copyright, they see innovation being restricted by geographical licensing restrictions. They see themselves unable to pay creators for online cross-border TV services and forced to use technical intermediaries instead.

The result is an environment that is unpredictable for creators, unmanageable for innovators and impossible for citizens. In the midst of all of this, the citizens' relationship with creators is undermined by disproportionate enforcement

measures, ad hoc privatised enforcement by Internet companies and a lack of innovative offers providing the right content, under the right conditions at the right price. One hundred companies providing identical services at identical prices is not a functioning market.

This situation cannot be resolved by more enforcement or seeking to “educate” citizens that all of this does not exist or does not matter. Respect cannot be manufactured by propaganda or enforcement. Respect must be re-earned, with a copyright system that is fit for purpose, that is flexible and that is credible. ■

# NOTES

- 01 European Commission report on the application of the IPR Enforcement Directive (2004/48/ec) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0779:FIN:EN:PDF> (last visited 5 December 2012)
- 02 Joe Karaganis, "Piracy in emerging economies". <http://piracy.americanassembly.org/the-report/> (last visited 5 December)
- 03 See [http://www.laquadrature.net/wiki/Studies\\_on\\_file\\_sharing](http://www.laquadrature.net/wiki/Studies_on_file_sharing) for numerous studies that all come to similar conclusions.
- 04 [http://journals.culture-communication.unimelb.edu.au/platform/resources/includes/cc/PlatformCC\\_Foong.pdf](http://journals.culture-communication.unimelb.edu.au/platform/resources/includes/cc/PlatformCC_Foong.pdf)
- 05 [http://europa.eu/rapid/press-release\\_SPEECH-11-777\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-11-777_en.htm)
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