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# For a coherent development of authors' rights
# The authors' viewpoint

A wave of concern is sweeping over authors and the creative world. The European authorities recently announced a plan to reform copyright in the information society. This plan reveals a general criticism of authors' rights.
The President of the European Commission describes copyright as a "barrier". His mission letter to the Commissioner in charge of the digital economy and copyright states that "copyright rules should be modernised, during the first part of this mandate, in the light of the digital revolution, new consumer behaviour and Europe's cultural diversity".
Does the "modernisation" referred to here mean in fact that authors' rights are to be devalued as a legal tool, that the ability of European authors to create works and make a living from their authorship is to be curtailed and that the European cultural industries are to be impeded in their contribution to the real economy?
The European cultural industries represent an economic force and a range of entities that generated a combined revenue of almost €540bn in 2012. They provide jobs to over 7 million people.
Apart from the Internet giants (GAFA), no one would have anything to gain from an economy in which culture and creation, including the richness of linguistic diversity, were increasingly absent.
Authors' rights are the engine of creativity. For over two centuries, they have demonstrated their capacity to adapt to technological progress. Had they not been essential, authors' rights would not have survived: the system would have collapsed. Authors' rights are all modern: they do adapt while retaining the same philosophy and the same goals.
Europe has already "legislated" in the field of authors' rights and within sectors formed by the cultural industries. Some directives are too recent for their impact to be known at this stage. It would be counterproductive to add further legal texts without making a precise assessment of them.
Authors' rights do not impede the new behaviour of Internet users: in the digital economy, everyone is already enjoying more freedom, larger variety and better access to knowledge and to protected content.
For authors and the creative world, the question is why and how to modernise the rules pertaining to authors' rights.

## For a coherent development of authors' rights

To reform does not mean to abolish ; it involves building without starting by destroying. The need for reforms should be evaluated, together with their objective justifications for them and effective benefits.
As a prerequisite to any change, legal and economic studies should assess the situation in each of the Member States and the impact that any modification of the legal rules would have on European creators in particular, and their ability to carry out their creative activities.
Yet no such prior assessment was suggested in the report recently submitted by MEP Julia Reda (who, moreover, represents the Pirate Party) evaluating Directive 2001/29 May 22th 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

## Harmonising a legal framework: the stakes

*Droit d'auteur* and other authors' rights systems, on the one hand, and the copyright system, on the other hand, are based on different legal rules which are primarily designed to establish a balance between the protection of authors and the protection of holders of the exploitation rights in a work. These two systems currently co-exist peacefully and efficiently in Europe.

However, as each of these legal philosophies has its own logic, they are not "soluble" in a single European directive. Undermining certain foundations of authors' rights or copyright could destroy a legal framework that proved to be source of wealth.
If there is to be a proposal aimed at harmonising the legal framework applicable to authors' rights and the protection of the property right in creative works, it is essential the author be the focus of the discussion, strengthening of the authors protection be guaranteed, and the future of the creative professions preserved.
Some "European sub-legislation", in relation to national laws, could only weaken the protection of authors and the creative professions, including in countries outside the European Union.
There is no real benefit The European Union could ever expect to gain from levelling down in its legislation on intellectual property.

**Authorship is a profession**

Authors are intellectual workers.
An original work is the signature and the prolonging of the author's personality; the work that the author created is the expression of his or her thought and his or her art.
Acknowledging that works are the property of their creators does imply legitimate remuneration in return for their assignment of the rights to use or exploit their works. That very recognition – together with the legal ability to transfer rights over the author's property – that enables a business to invest in the publishing or the production of works.
No business would invest in the development of a creation (and hence in remunerating its author) if it is not legally expect a "return" on its investment. Without the due income from the exploitation or distribution of a work, an author cannot expect to receive remuneration, proportional to the success of such exploitation or distribution. No European citizen can be deprived of fair payment for his or her work by an exceptional law, nor by law made up of exceptions.

**Authors' rights are fundamental rights**

Authors' rights are fundamental rights, as confirmed by the judgment of the European Court of Human Rights (ECHR, January 29th 2008).
Article 27 of the Universal Declaration of Human Rights of December 10th 1948 provides that : "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author."
An essential component of authors' rights, the moral right, reflecting the deep bond between the creative work and its creator, enables authors to retain their connection with their works, giving them the ability, if they wish, to object to any public distortion of their creative endeavour and thinking.
The moral right cannot and must not be diverted or made subject to conditions; it must remain one of the basic principles of authors' rights.

**Exceptions to authors' rights**

An exception to or limitation on authors' rights is a partial expropriation of the author's exclusive property. It is justified only if reasons of superior general interest do exist, outweighing a legitimate individual interest. Accordingly, European legislation on authors' cannot be built purely on exceptions to the rights.
In accordance with the Berne Convention, an exception to the author's monopoly must narrowly define the special case or cases involved, must not conflict with a normal exploitation of the work and must not unreasonably prejudice the author's legitimate interests.
Where there are legitimate reasons for an exception, ways of compensating for it, i.e. remunerating the dispossessed owner, among other conditions, should be considered in order to mitigate the effects of that expropriation.

If Europe is willing to make its creativity and cultural heritage keep on thriving, it would not be wise, as a cultural policy, to force authors and other rightholders into be cultural philanthropists ; creating works of authorship is not a public service.
As a matter of fact, exceptions are not to be deemed "entitlements" even for undertakings with a public service mission, whose role should rather be to foster access to culture and its renewal, i.e. finance creators.
The European Union must reaffirm, and show to the world, that Europe will thrive with creators, not against their rights.

**And what if the real issues lay elsewhere…**

Whether the existing European or national solutions appear not to be (or no longer to be) sufficient remains to be proven. Therefore, targeted legal and economic impact studies in the individual EU Member States must be conducted first.
No new exception or extension of an existing exception can be justified without being precisely defined using clear legal concepts. In addition, the publicly funded institutions responsible for protecting the heritage and for teaching and education cannot regard protected content as "their due" and, in order to strengthen their position, promote the introduction of exceptions to authors' legitimate property rights in their favour.
Digital economy cannot be addressed only in relation to authors' rights solely. The creation, development and optimisation of such economy depend on value transfers and mass effects.
More broadly, the question of the digital economy requires consideration of:
- value sharing between authors and distributors of their works,
- ways of tackling infringement and piracy of creative works,
- the legal liability of Internet players (review of Directive 2000/31 on electronic commerce),
- the transparency of economic flows, and
- the rules on the treatment of the profits generated by the major players in the digital economy.

Authors and assignees of authors' rights are sources of economic and cultural wealth. Authors have a legitimate right to enjoy the revenue from their work and their profession.
Everyone should be knowledgeable not only about one's rights but also about one's duties when one lawfully accesses works, with regard to one's use and dissemination. It is legitimate to improve the portability of rights and the interoperability of equipment, without calling into question the economy of certain cultural products at the same time.
Authors' rights are not at issue in these matters, which require above all reviewing of the rules on electronic commerce and on the organisation of the various markets' distribution channels in the EU Member States.
Indeed, one of the fundamental issues is that of the financing of cultural content by the major Internet players (i.e. the ultra-powerful lobbies in Brussels – Google, Amazon, Facebook and Apple), because it is protected content that has enhanced and continues to enhance the value of their assets.

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