

Follow-up study on IP perceptions and the reasons behind infringements of IP rights

In 2013, the European Observatory on Infringements of Intellectual Property Rights produced a study on "European citizens and intellectual property: perception, awareness and behaviour". The report states that "9% of the EU citizens surveyed reported they have accessed/downloaded or streamed illegal content from the internet intentionally over the last 12 months". Moreover, the qualitative study shows that citizens are disconnected to IP rights and people underlined the disproportionality of the sanctions and the debate was tainted with "a quite negative and "oppressive" halo". Some persons also agreed that they would download less illegally if there was a reasonable legal offers. And this is just the number of people that admit to knowingly having infringed copyrights. A figure that is most likely to be much higher because of unknowingly or unintentionally infringement and/or unwillingness to admit infringement.

The study gives a few hints on the reason behind the growing gap between citizens and the respect for intellectual property rights. The purpose of a follow-up study would be to find out where this lack of respect for IP rights is coming from, and this from the perspective of citizens.

The real value of a study stands in the reasons behind certain results. It is therefore important to understand the reasons behind the lack of respect for IP rights. Why do citizens feel disconnected to IP rights and have lost faith in the IP rights systems, especially copyright? Which reforms (removal of legal protection for DRM when being used to avail of exceptions/limitations, clearer rules on exceptions/limitations, easier cross-border access to content, more harmonised pricing, cinema release windows, TV release windows, other...) would be most effective in persuading people to use authorised services.

The study should give very clear answers to the question why IP rights are going through a crisis of legitimacy and what reforms could serve to redress this tendencies..

A few reasons that can come to mind are excessive enforcement, lack of legal access to competitive content service, lack of choices, lack of attractive offers from a financial perspective, lack of flexibility (ease of private copying, right to sell legally acquired content..) access that differs from one Member States from another Member States, different implementation of exceptions and limitations to copyright, or just an overly broad scope and duration of copyright, etc...

Study on the benefits of exceptions and limitations

One of the objectives of the European Observatory on Infringements of Intellectual Property Rights is to provide evidence-based contributions and data to enable EU policymakers to shape effective IP policies and to support innovation and creativity.

Facing important digital changes, the copyright system stands at a pivotal moment. At this crucial time, it is necessary to conduct a study that sheds light on the economic, cultural and social benefits of exceptions and limitations to copyright.

The starting point of the study should be the current exceptions and limitations in the 29/2001 Directive, the implementation in the 28 Member States. In particular, the economic cost of the fact that such flexibilities are readily available in the US market and almost impossible to use, let alone predict, in Europe should be analysed

The study should also look at the benefit of harmonisation of exceptions and limitations across the 28 Member States.

The study should also explore the benefits of more flexible exceptions and limitations such as the fair-use principle that applies in the US, and look at other flexible exceptions that may apply in other regions of the world.

The benefits of exceptions and limitations should be assessed with regard to:

1. their economic impact
2. their social impact
3. their cultural impact

Benefits of the Public Domain and Open Licensing

Context

The European Observatory on Infringements of Intellectual Property Rights aims, among other objectives, at providing neutral and fact-based research in the field of intellectual property. The research proposed here aims to complement this by focusing on a fundamental prerequisite for intellectual property - free access to knowledge.

Definitions

The **Public Domain** is the sum of all works whose intellectual property rights have expired, have been forfeited (if legally possible) or are otherwise inapplicable.

Open Licensing is to be understood as the entirety of works, whose intellectual property rights have not expired, but their license permits free use, reuse and redistribution ([Open Definition](#) by the Open Knowledge Foundation).

Scope

Three areas where free and open information plays a pivotal role are to be analysed and where the benefits of PD&OL need to be assessed:

Economic impact: Two aspects are important here. Firstly, the value of all works that make up PD&OL. Secondly, their role as building blocks of innovation and future creative endeavours. Some examples include:

- The Walt Disney Company has a long history of successfully exploiting public domain works (Cinderella, Pinocchio, The Little Mermaid).
- Amazon is providing books in the public domain as a service for its Kindle readers.
- DJs are re-mixing open licence music to create new works.
- Designers are using PD&OL media repositories to create and sell products (websites, calendars, videos, art).

Social impact: The social value generated by the fact that PD&OL works are publicly available and usable (as opposed to secret or monopolised knowledge). The cost of scientific research can be partially included here, as well as the benefits of universally accessible educational materials and culture. PD&OL are also a prerequisite for collaborative projects. Finally, it must be noted that it affects access to information in general and the subsequent impact on citizens' ability to participate in political discourse.

Cultural impact: The benefits that openly available and usable content has on freedom of expression, freedom of creativity, freedom to know and education. The cultural aspect is key to innovation (also in its economic sense) since, without it, creators would have less material to remix and to form into something new. Ultimately, most art is derived from prior art. There is also a great value in allowing cultural heritage institutions (libraries, archives and museums) to give access to public domain works, access to culture is essential in a democratic society.