



# The EU Approach to Combatting Online Piracy

Conference on Combatting Counterfeiting and Piracy in South-East Asia  
Erling Vestergaard | VICO | 27 May 2021

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## The EU Framework Copyright Piracy



## The EU Framework Copyright Piracy



### EU Intellectual Property System

- Build on top of the international intellectual property system (e.g. Paris and Berne conventions and TRIPS)
- Main aim is creating a fully functioning internal market
- Specific EU-wide rights (e.g. EU trade mark, community design, geographical indication rights for agricultural products, wines and spirits)
- Full (e.g. registered national trade marks and some aspects of copyright and related rights ) and minimum harmonisations (e.g. some aspects of copyright and related rights)



## The EU Framework Copyright Piracy



### EU Copyright System

- Substantive copyright in the EU is partly harmonized in regards to economic rights but not moral rights through more than 10 directives and regulations
- Most notable is the Copyright in the Information Society Directive from 2001 (e.g. harmonizing the right of communication to the public, technical protection measures and exceptions and limitations) and the Copyright in the Digital Single Market Directive from 2019



## The EU Framework Copyright Piracy



### Other Relevant EU Legislation

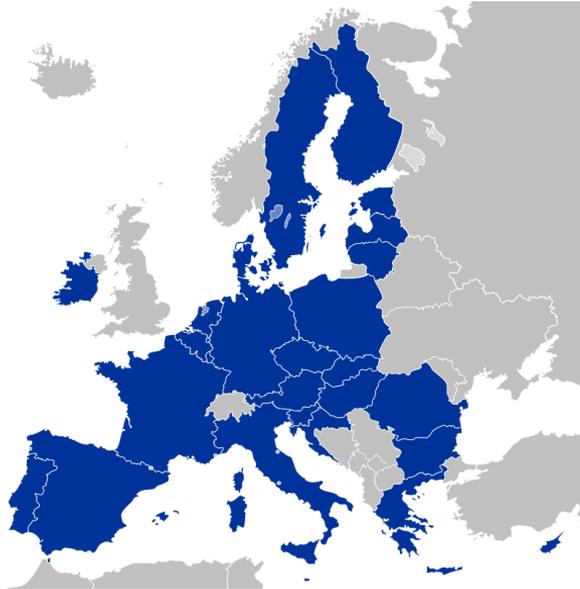
- The Charter of Fundamental Rights from 2000 (e.g. the right to intellectual property (Art. 17(2)), freedom of expression (Art. 11), protection of personal data (Art. 8))
- Enforcement directive from 2004 setting minimum standards for civil enforcement of IP
- The E-commerce directive from 2000 (e.g. rules on liability exemptions for internet intermediaries)

### Other Relevant EUMS Legislation

- The copyright rules are supplemented amongst other by national rules on criminal liability



## The EU Framework Copyright Piracy

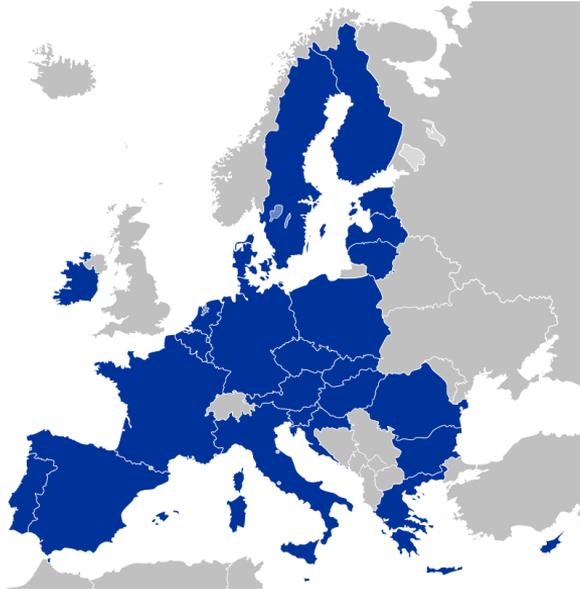


### EU Intellectual Property Court System

- The applicable court system is national courts in accordance with national procedural rules though some harmonization of jurisdictional issues
- No EU-wide court systems exists for copyright cases but some court specialization in EUMS is not uncommon
- The Court of Justice of the European Union (CJEU) issues preliminary rulings on interpretation of EU law
- CJEU has created an extensive jurisprudence in the field of copyright and lately numerous decisions concerning communication to the public and civil enforcement measures



## The EU Framework Copyright Piracy



- Voluntary enforcement measures through
- The Memorandum of Understanding (MOU) on Online Advertising from 2018 is a voluntary agreement facilitated by the EC to limit advertising on websites and mobile applications that infringe copyright or disseminate counterfeit goods
  - Numerous EUMS national initiatives



## Liability and Safe Harbour for Intermediaries



## Liability and Safe Harbour for Intermediaries

### Safe Harbour (E-commerce Directive, 2000/31/EC)

- Internet Access Provider: Almost complete safe harbour, Article 12
- Caching Provider: Extensive safe harbour (but irrelevant today), Article 13
- Hosting Provider: Safe harbour unless bad faith (and the basis for Notice-and-Takedown regimes), Article 14
- Prohibition of general monitoring obligations (whether legislative or case law based), Article 15



## Enforcement Measures Online



## Enforcement Measures Online

### Civil measures

- EU minimum harmonisation based on TRIPS
- In a growing number of EUMS jurisprudence have developed in regards to amongst other internet access blocking orders (incl. dynamic and live blocking orders)

### Administrative enforcement

- National systems

### Criminal enforcement

- High diversity between EUMS (e.g. sanctions, investigative tools available, money laundering)
- A growing number of successful criminal cases are being investigated (often with support from EUROPOL and EUROJUST) and later heard by the courts

### *Civil measures, e.g.*

- Disclosure of customer information
- Asset seizure (including domain name transfer) and asset freezing
- Blocking of customers access to specific Internet services
- De-indexing (and de-prioritization) of search results
- Removal of infringing content and marketing

## Copyright in the Digital Single Market Directive Article 17



## Online Content-Sharing Service Provider (OCSSP)

- Store and give access to large amounts of User Uploaded Content (UUC), which is organized and promoted for profit-making purposes
- Not e.g. non-profit encyclopedias, scientific repositories or open source developers, online marketplaces or cloud storage

## Digital Single Market Directive Article 17

(1) Direct responsibility for communication to the public of the UUC, InfoSoc Dir

(2) Have secured license for OCSSP and users activities?

(3) Ineligible for 'Safe-harbour', E-commerce Dir Article 14(1)

(4) Obligated to

YES

NO

**NOT  
LIABILITY**

(2a) Best effort to secure license

+

(2b) Best effort to ensure unavailability

+

(2c) Acts expeditiously on notice to remove

+

(2d) Best effort to prevent future uploads

YES

NO

**LIABILITY**

(4a) Effective complaint and redress

+

(4b) Inform users about allowed use

+

(4c) After request provide right holders adequate information on functioning of agreed practices

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## Future Perspectives



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### Fighting Copyright Piracy in the Future

- A new proposal on a Digital Services Act from EC has introduced a more comprehensive framework but proposal does not fundamentally change the existing liability exemption regime
- Securing balancing copyright protection and enforcement with fundamental rights to data protection and privacy; freedom of expression and access to information; right to conduct a business; due process of law
- Continued development of civil enforcement jurisprudence on amongst other dynamic and live blocking orders and initiation of more criminal investigations and prosecutions incl utilising international judicial cooperation within the EU and beyond
- Emerging technologies will impact and challenge copyright protection but also give new tools to fight copyright piracy: Rise of virtual, augmented and mixed reality, blockchain, artificial intelligence, quantum computing





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