Copyright: the hard road to harmonization

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Since the mid-nineties, national and international regulators have been adopting legislative reforms intended to curtail the problem of piracy within the digital environment. Such reforms include adapting technical provisions in the relevant acts, making sanctions stricter, introducing specific felonies in criminal law, and creating new legal actions and police divisions specialized in fighting against the illegal copying of protected works.

The new EU Directive proposal in this matter attempts to harmonize the legal actions in place for punishing those who violate copyrights in the EU. Thus far, there is nothing that deserves much notice. What is truly outstanding is that the proposal has a limited range, affecting only those infringements with commercial purposes or when they cause substantial prejudice to the rights holder. This limitation has given rise to criticism among industry associations that would have liked to see an express reference to those circumstances where legal action could be brought against private citizens that infringe reproduction and distributions rights attached to protected works.

Such criticism seems reasonable, especially if one bears in mind that the Directive proposal is conceived as a “minimum standard” rule, compatible with other community or state regulations that supposedly could better serve the objective of protecting the rights of authors. Indeed, the resulting dispersion of norms could thus nullify the efforts of precision made during the drafting of the terms of the referential Directive in this field, the Copyright in the Information Society Directive.

It is precisely these kinds of loopholes and ambiguous terms and conditions that have made life easier for copyright infringers in recent times. The most obvious example is peer-to-peer online networks. This activity is perfectly legal in principle, but it becomes contrary to the law once it involves swapping protected works, something particularly difficult to crack down on due to a deficient legal framework. We’ll see whether the final draft of the Directive can help redress this situation.