

Content – What should the EU do?

An academic view
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... if I were a Commissioner ...

... I'd create a system which would

- ... incite creativity and innovation,
- ... aliment creators and inventors,
- ... enable competition,
- ... benefit consumers,
- ... and secure full employment

But how ...

- ... to make all those conflicting ends meet?
- ... to achieve the right balance
 - between exclusivity and freedom of competition;
 - between exclusivity and free access?
- ... to maintain exclusivity, ensure access and provide for adequate remuneration?

We don't start from scratch ...

True, but

- ... does the current IP-system achieve the results just described?
- ... what should we do in the future to meet the Lisbon goals 2010?

„A city of two tales“:

- **Tale 1:** exclusive rights are necessary to incite creation and innovation:
„the more the better“
versus
- **Tale 2:** exclusive rights stifle creation and innovation:
„the less the better“

Tale 1: „Too much is not enough“

- **Increase** exclusive protection to counter loss of control in digital environment
- **Protect** technical protection measures (TPM)/ digital rights management (DRM) against circumvention
- Higher profits **benefit producers/creators**
- Strong protection **benefits consumers** and increases overall social welfare

Tale 2: „We protect ourselves to death“

- Increase of exclusive protection **reduces** freedom to create and invent
- Protection of TPM/DRM **locks** content away
- Higher profits of producers make consumers **pay more**
- and **decrease** overall social benefits

Which story to believe?

- We **don't know**: There are
 - ... no experiments in real life possible
 - ... no real-time computer simulations (yet?)

However: some credible assumptions

- **Historic evidence** for usefulness of an *appropriate* level of exclusive IP-protection
- **Trend** of ever-increasing protection seems irreversible
- But: only a **balanced approach** provides sufficient protection *and* keeps access open

Hence, academics say ...

- ... **avoid** over-protection
- ... **adjust** rather than merely expand protection
- ... **use** existing, built-in flexibility-jolts, e.g.
 - condition for protection;
 - scope of exclusive rights,
 - and, in particular, limitations (free access, but remuneration)

... if I were a Commissioner ...

... my policy

- ... **aims**,
- ... **strategies**,
- ... and **agenda**

would be ...

Policy aims for the EU

Aim should be to benefit

- **Creators:** e.g. by appropriate framework for teaching and research (open-access policy)
- **Producers:** e.g., by allowing competition with regard to value-added services
- **Users:** by allowing digital private copying
- **General public:** by supporting preservation of digital material (*issue so far overlooked*)

Policy strategies for the EU

- **International level:** negotiate appropriate legal framework
- **Level of Member States:** principle of subsidiarity/competition of national systems
- **Input:** base decisions on serious economic studies (e.g., UK-House Report on Open Access Publishing)
- **Output:** enhance awareness of IP-issues

Policy agenda for the EU

- **Use upcoming „clean-up“-Directive to**
 - **remove** existing overprotection
 - **create** harmonised fair use-exception
 - **create** appropriate room for teaching and research
 - **enable** competition with regard to value-added services
- Create an **EU information network**

Finally, ...

- Let academics help.
- Thank you very much for your attention.

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