

Automated Anti-Piracy Systems as Copyright Enforcement Mechanisms: A need to consider cultural diversity

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BACKGROUND

- Over the last two years, the European Commission (EC) has made several proposals, under the auspices of the Digital Single Market Strategy, to combat piracy in order to promote cultural diversity.
- The EC has suggested measures to foster 'better choice and access to content online and across borders' and 'a fairer sustainable marketplace for creators, the creative industries and the press'.
- Based on these considerations, article 13 of the proposed copyright directive requires online-sharing platforms to introduce automated anti-piracy systems (AAPSs) to detect and deal with copyright infringements without human oversight. These approaches have been rejected by the Court of Justice of the European Union in previous cases.
- Beyond jeopardising the careful balance struck by current legislation on copyright and impacting on enforcement, the current proposals could have a serious impact on the intermediaries regime and distort competition.
- For their services to be efficient there is a commercial incentive for undertakings (right-holders and intermediaries) to collaborate. It is reasonable to ask whether such collaboration endangers cultural diversity in an environment generally conducive to the connection of cultures.

METHODOLOGY

- The paper focuses on the legal framework for copyright as well as the safe harbour provisions located in the E-Commerce Directive to determine whether there are links between the rules applicable to online sharing platforms and the promotion of cultural diversity.
- The authors undertook doctrinal research into the applicable legal instruments and the judicial interpretation of these instruments. In addition, the authors draw on recent developments to analyse the evolution of policy and its impact on cultural diversity in the EU.

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KEY FINDINGS

- There seems to be a negative correlation between the use of AAPSs as copyright enforcement mechanisms and fostering cultural diversity in society.
- The current legal framework gives strong incentives to platforms to block content which may infringe copyright. As a result, the design of algorithms is likely to focus on avoiding the display of allegedly infringing content and will be over-inclusive.
- Focusing on the effects of AAPSs as copyright enforcement mechanisms, this paper demonstrates cultural expressions do not flow freely in a borderless environment. Adopting strong anti-piracy algorithms can harm the promotion of diversity in a society.

POLICY ISSUES

- Promoting increased choice and access to cultural works online and across borders while establishing a fairer and sustainable environment for creators and creative industries requires evaluation of the interplay between copyright, freedom of expression and diversity.

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ABOUT THE AUTHOR(s)

Sabine Jacques: Lecturer, School of Law and Centre for Competition Policy, University of East Anglia, Norwich NR4 7TJ, sabine.jacques@uea.ac.uk

Krzysztof Garstka: Research Associate, School of Law and CIPIL, University of Cambridge, Cambridge, kkg22@cam.ac.uk

Morten Hviid: Director, Centre for Competition Policy and Professor, School of Law, University of East Anglia, Norwich NR4 7TJ, m.hviid@uea.ac.uk

John Street: Professor, School of Politics, Philosophy, Language and Communication Studies and Centre for Competition Policy, University of East Anglia, Norwich, j.street@uea.ac.uk