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**[Are EU policy-makers fighting the right copyright battles?](http://ipkitten.blogspot.it/2015/06/are-eu-policy-makers-fighting-right.html)**

Debate is currently being undertaken at the level of EU institutions as to whether the existing legislative framework in the area of copyright should be updated.

In May 2015 the EU Commission issued its [Digital Single Market (DSM) Strategy](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)**[**[**here**](http://ipkitten.blogspot.co.uk/2015/05/the-digital-single-market-strategy-too.html)**]**. As far as copyright is concerned, despite earlier statements by Commissioners Ansip (from [@Ansip](https://twitter.com/Ansip_EU): “*We are reforming & modernising #copyright rules to get rid of pointless barriers on transfer & access to digital content*” (23 February 2015); *“#copyright rules fit for digital age? I don’t think so*” (19 March 2015)) and Oettinger (from [@GOettingerEU](https://twitter.com/GOettingerEU): “*Modern #copyright rules … are the key goals for 2015*” (6 January 2015)), the DSM Strategy does not contain much.

Policy action is in fact only likely to occur in relation to three issues: (1) (lack of) cross-border access to content and its portability; (2) text and data mining for non-commercial and commercial purposes alike; and (3) discussion around civil enforcement and the role of internet service providers.

In addition to the very narrow focus of proposed interventions, the DSM Strategy does not clarify what legal instruments (if any) would be adopted to undertake reform in the proposed areas.

In parallel to initiatives on the side of the Commission, also the European Parliament has engaged in the copyright reform debate. Pirate Party member and MEP, [Julia Reda](http://juliareda.eu/), was tasked with drafting a Report on the implementation of Directive 2001/29/EC (‘the [InfoSoc Directive](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF)’). The [original version](https://pub.juliareda.eu/copyright_evaluation_report.pdf)**[**[**here**](http://ipkitten.blogspot.co.uk/2015/01/breaking-news-pirate-party-mep-julia.html)**]**contained a number of ambitious proposals to reform EU copyright. Following its publication in early 2015, numerous [amendments](https://pub.juliareda.eu/copyright_evaluation_amendments.pdf) were however presented, so that the [text](http://ifrro.org/content/report-implementation-directive-200129ec-available) approved by the Legal Committee of the European Parliament in mid-2015 represents a significantly watered-down version of the original Report **[a**[**final vote**](https://twitter.com/Senficon/status/593093250359099392)**in the plenary of the Parliament is due to take place in early July]**.

Among the things that have generated a heated debate there is the so called freedom of panorama **[**[**here**](http://ipkitten.blogspot.co.uk/2015/06/freedom-of-panorama-what-is-going-on-at.html)**]**. Article 5(3)(h) of the InfoSoc Directive allows Member States to introduce into their own national copyright laws an exception or limitation to copyright exclusive rights to allow "*use of works, such as works of architecture or sculpture, made to be located permanently in public places*".

Due to the optional (with the sole exclusion of the temporary copies exemption) nature of exceptions and limitations in Article 5 of the Directive, there is a number of Member States, *eg* France and Italy, that have decided not to transpose Article 5(3)(h) into their own copyright laws.

In the Report as originally enacted, among other things Ms Reda recommended that freedom of panorama be made mandatory (rather than merely optional) for Member States to implement into their own legal regimes.

The amended version of the Report (as approved by the Legal Committee) includes a recommendation that "*the commercial use of photographs, video footage or other images of works which are permanently located in physical public places should always be subject to prior authorisation from the authors or any proxy acting for them*".

To translate the latter proposal to reality it would be necessary to amend the InfoSoc Directive. However, at the moment re-opening the InfoSoc Directive does not seem to feature high in the agenda of the Commission (although it is unclear how text and data mining for commercial and non-commercial purposes alike would be achieved).

In any case, besides legal technicalities the current approach to (lack of) freedom of panorama has generated (outraged) headlines. These have ranged from ‘*How the absurd EU copyright law threatens to censor holiday snaps*’ of [*The Times*](http://www.thetimes.co.uk/tto/law/article4478291.ece) (24 June 2015) to ‘*Why the EU wants to stop you posting your vacation photos online*’ of [*Forbes*](http://www.forbes.com/sites/emmawoollacott/2015/06/25/why-the-eu-wants-to-stop-you-posting-your-vacation-photos-online/) (25 June 2015), and ‘*Freedom of panorama: EU proposal could mean holiday snaps breach copyright*’ of [*The Telegraph*](http://www.telegraph.co.uk/travel/travelnews/11695345/Freedom-of-panorama-EU-proposal-could-mean-holiday-snaps-breach-copyright.html) (25 June 2015).

Such reactions suggest a complete lack of support on the side of the public opinion. Thus the question that arises is whether relevant EU policy-makers have chosen the right battle to fight: is it so vital to restrict freedom of panorama at the EU level?

Paucity of case law *even* in those Member States that do not acknowledge freedom of panorama may suggest that this is not really an issue about which relevant rightholders are so passionate that they cannot stand the idea of *not* suing alleged infringers.

All in all, the main message that is being conveyed and perceived by the general public is that copyright imposes unreasonable restrictions and is, ultimately, a ridiculous set of norms.

Is this good for creators, copyright owners, and users of copyright-protected works alike? Not really.