



ALAI CONGRESS 2021: Sept. 29th to Oct. 1st 2021, Madrid

COPYRIGHT, COMPETITION, AND INNOVATION

Scientific program

Copyright and Competition laws are inherently related. By protecting authors' interests, copyright laws can play a significant role in fostering competition and the development of efficient markets. Correctly addressing this symbiotic relationship is fundamental to secure innovation, cultural and economic growth, and overall societal development. The ALAI 2021 Congress will be devoted to exploring the inherent connections and tensions between copyright and competition laws, comparing national legal solutions and experiences, and assessing the benefits to enjoy and the hurdles to overcome for the development of markets, culture, and society.

By granting exclusive rights in works to authors, copyright law fosters fair market competition and innovation. Similarly, limitations to these rights as well as restrictions regarding their exercise may exist for the same purpose. This Congress will study whether and if so, to what extent, market competition and innovation concerns are taken into account by legislators and courts when defining and interpreting the scope of protection granted under copyright, when designing specific exempted uses or instances of statutory or compulsory licensing. Efficiency and market competition concerns may also explain specific licensing measures, such as Extended Collective Licensing and mandatory collective management, as well as licensing practices evolving in specific markets, such as software markets and academic publishing markets. The development of new products and services based on the Data Economy, specifically those relying on text and data mining and the reuse of vast public sector information, will offer a good opportunity to revisit the "internal" adjustments in copyright laws and examine their effects in the market.

Competition law may complement copyright policies. Competition (anti-trust) law may challenge specific licensing practices (i.e., refusal to license, abusive pricing, bundling, vertical integration) as well as infringement practices. Further market concerns may also be addressed turning to general legal principles (other than competition law). Market distortions in the exercise of copyright may not only occur in specific instances where the rightsholder has a dominant position in the market but also, regarding the enforcement of copyright, where the dominant position in a specific market is held by the licensee (or "would-be" licensee).

Market competition issues also arise as technological markets evolve. Online multi-sided copyright-related markets (basically, content-sharing platforms and news aggregators) offer an ideal context to assess the interaction of Copyright, Competition and Innovation policies. The last session will provide the opportunity to examine the challenges to enforce copyright in online markets (the so-called "value gaps"). We will examine how these issues are being addressed in different jurisdictions, bringing us back, in a circular manner, to copyright laws' internal adjustments.



Day 1: Wednesday, 29th September 2021

19.45 WELCOME RECEPTION at the MUSEO DEL PRADO

Museo del Prado: Private visit to the Museum, followed by a cocktail reception.

Day 2: Thursday, 30th September 2021

Venue: HOTEL RIU, c/ Gran Via, 84, Madrid

<https://www.riu.com/es/hotel/espana/madrid/hotel-riu-plaza-espana>

8:30 Welcome and registration

9:00 Opening session

*President of ALAI
Spanish Government Representative
WIPO Representative
EU Representative
President of ALADDA*

SESSION 1: COPYRIGHT AND MARKETS

09.30 PANEL 1 – INTRODUCTION: COPYRIGHT LAWS AND GLOBAL MARKETS

This panel will offer a general overview of the inherent relationship between copyright, market competition and innovation, and their global impact, beyond national (or regional) copyright law regimes. Based on national reports, this panel will deal with the several measures already embedded in copyright laws aimed at fostering market competition and innovation. These may include the very definition of the scope of protected subject matter and of exclusive rights, the provision of exceptions and limitations and public domain, as well as specific licensing conditions envisioned for specific markets.

President:

- *Keynote speech on Copyright, Competition and Innovation in Global Markets (20')*
- *General Report: Copyright Adjustments to foster market competition and innovation (40')*

Debate (Q&A)

11:00 Coffee break



11:30 PANEL 2 - LICENSING MARKETS

This panel will examine different licensing practices, in different copyright markets, and their impact on innovation and market development. In specific markets, Extended-Collective Licensing (ECL), as well as compulsory collective management may be required to facilitate access to protected subject-matter and prevent anticompetitive results in downstream markets. Open licensing also has a significant impact in different markets. For instance, the academic publishing sector is being re-shaped as open licensing and open-access repositories develop. And, as far as software, open licensing (FLOSS) or even FRAND conditions and package licenses seek to promote market efficiency and avoid anti-competitive practices. (4 x 20')

President:

- *Extended Collective Licensing*
- *Mandatory collective management*
- *Software Licensing: FRANDs & Open source*
- *Academic Publishing: Open-access and Data Bases*

Debate (Q&A)

13:15 Lunch

15:00 PANEL 3.1 –TDM AND PSI IN THE DATA ECONOMY

The development of new products and services based on the Data Economy, specifically, those relying on text and data mining (TDM) of copyrighted works and the reuse of vast public sector information (PSI), will offer a good opportunity to reflect on the internal adjustments of Copyright laws to foster market competition and further innovation. This panel will examine whether and how the specific measures adopted in copyright laws (scope of rights and protected subject matter, E&L and fair use, licensing mechanisms, etc.) may affect the development of new products and services in these markets, either facilitating it or creating entry barriers. National solutions vary widely. Further assessment of both issues (TDM and PSI) and a general debate with stakeholders will follow after the coffee break.

President:

- *TDM (machine reading) and Copyright: General report (20')*
- *PSI reuse and Copyright: General report (20')*

Debate (Q&A)

16:00 Coffee break

16:30 PANEL 3.2 – STAKEHOLDERS DEBATE ON TDM AND PSI (4x15')

President:



- *PSI: Crown Copyright and PPP: The risk of privatizing PSI?*
- *PSI: How far should the “public task” cover?*
- *TDM: Research centers, Libraries: as E&L beneficiaries*
- *TDM: Academic Publishers*

Debate (Q&A)

18:00 **End of session**

SIDE EVENT

18:30 **ALAI – European Authors’ Right Prize 2020 and 2021 supported by GESAC
Award Ceremony**

It will take place at the HOTEL RIU (to be confirmed).

It is open to ALAI participants as well as to Students and Young professionals.

The ceremony will be followed by a cocktail around 19:30. Ceremony will end around 21:00.

Free evening



Day 3: Friday, 1st October 2021

Venue: HOTEL RIU, c/ Gran Via, 84, Madrid
<https://www.riu.com/es/hotel/espana/madrid/hotel-riu-plaza-espana>

SESSION 2: MARKET ADJUSTMENTS

National courts must ensure that the exercise of copyright does not result in an abuse of a dominant position, either on the original or secondary markets. This applies both to off-line and online markets. Competition authorities, as well as courts and arbitrators, play a decisive role in shaping the relationship between copyright exercise and market competition, when qualifying specific copyright licensing practices as unfair, discriminatory, abusive, or anti-competitive. Refusals to license (a natural part of exclusive rights), vertical integration of markets, tying sales and bundling of rights/means of exploitation... may hinder competition and innovation, reduce consumer choice, and restrict output (when acquired rights are not, or only partially, exploited). Licensing terms (including pricing) may also be challenged in courts as unfair or discriminatory. This panel will examine and compare cases and solutions in different jurisdictions.

09:30 PANEL 4 – COPYRIGHT, ANTI-TRUST AND UNFAIR COMPETITION

President:

- *General report: Essential facilities and Abuse of dominant position (20')*
- *Discriminatory pricing (15')*
- *Further adjustments: Abuse of right, de minimis (“ius usus inocui”) (15')*
- *The “Right to repair” (20')*

Debate (Q&A)

11:00 Coffee break

SESSION 3: ONLINE MARKETS AND “VALUE GAPS”

Copyright and competition concerns seem to reverse in online markets. Online markets are evolving around a few ever-stronger platforms or operators, opening challenges both for market competition (abuse of dominant position) as well as for copyright enforcement. Specific provisions aimed at fostering the development of online markets adopted 20 years ago (i.e., ISP safe-harbors in the 1998 DMCA and 2000 e-commerce Directive) may now need readjustment, as technology and markets evolve, so as to enforce copyright in these markets. This session will examine the specificities of online copyright markets regarding two main topics (content-sharing platforms and news aggregators) and how different jurisdictions are dealing with these so-called “value gap” problems. (3 x 20')

11:30 PANEL 5 – CONTENT-SHARING PLATFORMS

President:



- Overview of the “value gap” problem and available national solutions
- Art. 17 CDSM Directive and its national implementation
- Other “value gaps” (i.e., cloud services - CJEU C-433/20 Austro-Mechana) and how to solve them?

Debate (Q&A)

13:15 **Lunch**

15:00 **PANEL 6 – NEWS AGGREGATORS ... AND MORE**

President:

- Art. 15 CDSM Directive and its national implementation
- The Australian way
- What is next? The EU Digital Services / Markets Acts

Debate (Q&A)

16:30 **Coffee Break**

17:00 **CLOSING SPEECH**

President:

- *Copyright, Competition and Innovation: Closing summary*

17:30 **End of Congress**

18:00 **ALAI Assembly**

18:30 **End of ALAI Assembly**

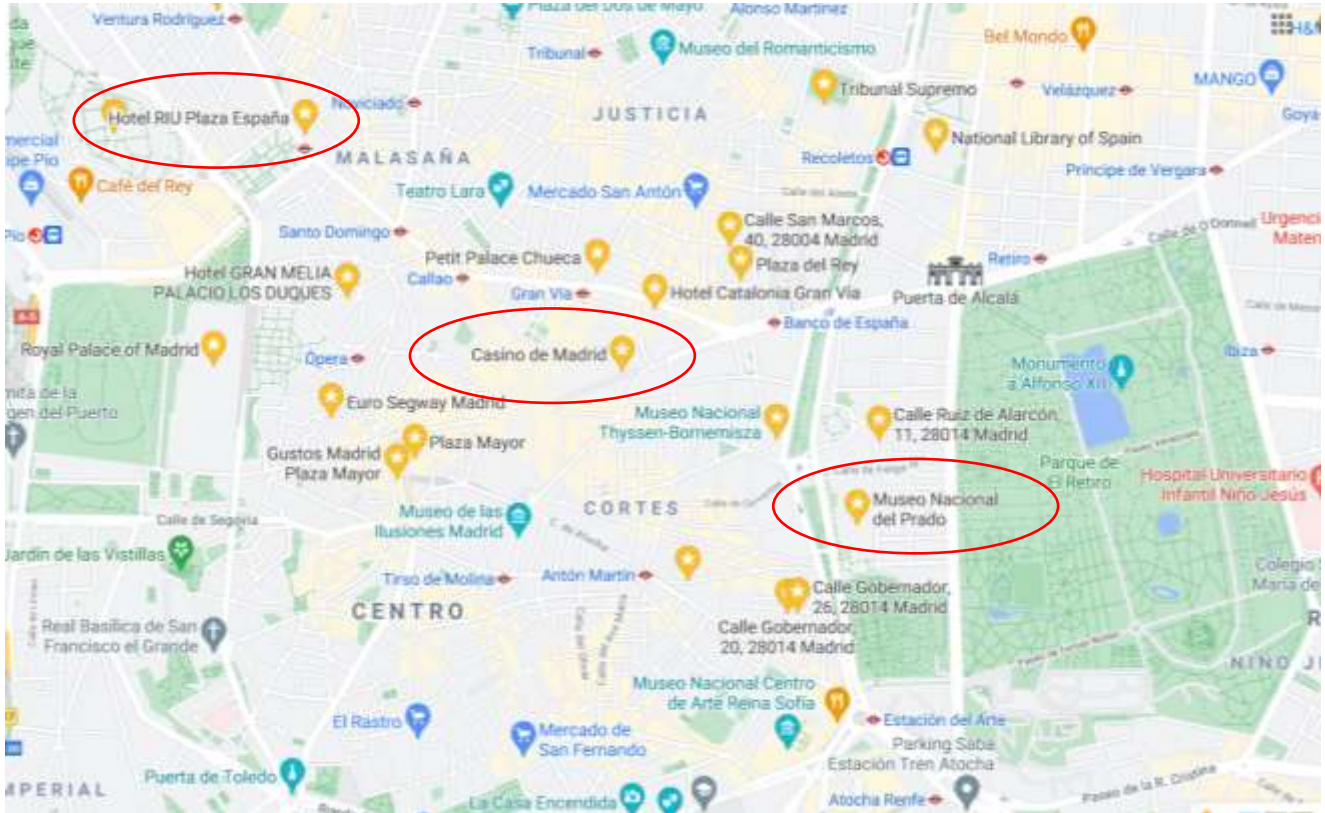
21:00 **GALA DINNER - At the Casino de Madrid, with musical entertainment.**

<https://www.casinodemadrid.es/casinoa/index.html>



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

ALAI
2021
Madrid



Thursday 30 Sept. - Friday 1 Oct. - Conference venue

HOTEL RIU, c/ Gran Via, 84 – Madrid 28013

<https://www.riu.com/es/hotel/espana/madrid/hotel-riu-plaza-espana>

Wednesday 29 Sept. – Welcome reception

Museo del Prado, c/ Ruiz de Alarcón, 23 – Madrid 28014

<https://www.casinodemadrid.es/casinoa/index.html>

Friday 1 Oct. – Gala Dinner

Casino de Madrid, c/ Alcalá, 15 – Madrid 28014

<https://www.casinodemadrid.es/casinoa/index.html>