



ALAI CONGRESS 2021, 29 Sept. – 1st Oct. 2021, Madrid

COPYRIGHT, COMPETITION AND INNOVATION

QUESTIONNAIRE – NATIONAL REPORT OF COUNTRY

Notes: This questionnaire aims at collecting information of law, caselaw and practices available in each country.

Please refer to the ALAI2021 program for further explanation on the Sessions and Panels.

Please, keep your answers short and factual.

Please send national report to rxalabarder@uoc.edu.

Deadline: 15 August 2021.

1. INTERNAL ADJUSTMENTS IN COPYRIGHT LAWS

Identify and explain any specific instances where market competition and innovation concerns haven been specifically addressed by copyright law or caselaw in your country. This may include by means of:

- 1.1.- Defining (or interpreting) the scope of exclusive rights to account for competition and innovation concerns.
- 1.2.- Defining (or interpreting) the scope of exempted uses (E&L) on account of competition and innovation concerns.
- 1.3.- Imposing licensing conditions (statutory licensing, compulsory licensing, compulsory collective management, ECL, etc) or “joint-tariffs”, “one-stop-shops” ... and explain their impact in the market
- 1.4.- Explain any relevant licensing practices existing in your country that favor market competition and innovation. Please refer to any copyright markets (i.e., software, publishing, news, audiovisual. ...)
- 1.5.- By any other means?

2. A STUDY CASE: DATA ECONOMY

Data is called the “new oil” for our economy, as it is being used to develop new products and services. To the extent that this data includes copyrighted works, we want to identify how copyright laws and caselaw are addressing this issue and how different national solutions may have a different impact in the market. In the EU, this activity concerns the exceptions and limitations on Text & Data Mining as well as the regulation on Public Sector Information reuse (PSI)

Notice: we are not only talking about corpuses specifically prepared for TDM purposes (i.e., electronic journals, databases, etc), but also about processing (machine reading) of works, in general, (texts, images, etc) available either online, in digital form or in analogue form.



- 2.1.- Is “machine reading” an act of reproduction? If so, is it being exempted (excluded) under an E&L or as fair use? Is it subject to licensing (if so, what kind of licensing)?
- 2.2.- Please provide any examples (laws, caselaw, licensing) regarding the development of databases, search engines, apps, services, etc based on reusing data produced by the Public sector.
- 2.3.- Is there any evidence of how these measures (law, caselaw, licensing) are fostering or deterring the development of new services and products and of downstream markets?

3. EXTERNAL ADJUSTMENTS: ANTI-TRUST AND BEYOND

Please provide examples (law, caselaw, market practices) of how anti-trust law, unfair competition or any other legal adjustments apply to copyright licensing markets (offline and online). For instance, provide examples regarding the following scenarios:

- 3.1.- “Essential facilities” doctrines to foster the development of downstream markets
- 3.2.- Vertical integration of markets (producers/distributors); tying sales (e. g. exclusive sale of decoders by pay-TV platforms)?
- 3.3.- Bundling of rights/means of exploitation (cable, satellite, internet, cellphones): upstream and downstream competition issues.
- 3.4.- Licensing prices (also under collective licensing) deemed unfair, discriminatory, anti-competitive by courts; arbitration or mediation procedures to set prices; government price-setting ...

4. ONLINE MARKETS: “VALUE GAPS” (ONLINE PLATFORMS)

Notice that complete and valuable information resulting from the stakeholders’ dialogue and written consultations currently launched by the EU Commission will be available at the time of the Congress. https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=68591

<https://ec.europa.eu/digital-single-market/en/news/directive-copyright-digital-single-market-commission-seeks-views-participants-stakeholder>

Please include only information that is specific to your country.

- 4.1.- Is there any norms and/or relevant caselaw addressing the value gap issue, as applied to UGC platforms?

If you are an EU country, have you addressed the transposition of Art. 17 CDSM Directive?

- 4.2.- Is there any norms and/or relevant caselaw or licensing addressing news aggregation?

If you are an EU country, have you addressed the transposition of Art. 15 CDSM Directive?

- 4.3.- Is there any norms and/or relevant caselaw addressing other value gaps?

For instance, regarding cloud storage and compensation for private copying