ReCreating Europe

Rethinking digital copyright law for a culturally diverse, accessible, creative Europe

Grant Agreement No. 870626

Milestone title	MS1 Workshop 1 - Mapping Legal Framework - Methodology and Design
Milestone Lead:	UvA
Partner(s) involved:	USZ, UvA, HIIG, CPG
Related Work Package:	WP6 Intermediaries (Copyright Content Moderation and Removal at Scale in the Digital Single Market: What Impact on Access to Culture?)
Related Task/Subtask:	T6.1 Mapping the regulatory framework public/private
Main Author(s):	Péter Mezei (USZ)
Other Author(s):	João Pedro Quintais (UvA)
Dissemination Level:	Public
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Version history table			
Version	**Date**	**Modification reason**	**Modifier(s)**
v.01	27 May 2020	Original version	Péter Mezei (USZ), João Pedro Quintais (UvA)

1. Role and description of the Milestone

The original aim of the Milestone was to provide for a mapping of the relevant legal framework of intermediaries on a public, private, EU and national level, to address the challenges of methodology and to design the work of WP6. The event was planned to be a small legal expert workshop,

however, due to the COVID-19 pandemic, we had to organize the event as an online workshop, and hence it involved over 60 participants from all across (and beyond) Europe.

1.1 Deviations to Annex 1

☒ No changes needed project is on track
☐ Reorganisation of the project
  Changes:

2. Means of verification

- Webinar report (ReCreate Website): https://www.recreating.eu/public-and-regulatory-framework-of-online-intermediaries-workshop/
- Additional Report (Copy21 website): http://copy21.com/2020/05/public-and-regulatory-framework-of-online-intermediaries-conference-report/
- Online recording (YouTube): https://www.youtube.com/watch?v=n9RccSMBSjE&t=5s
- Presentation Slides (Zenodo): https://zenodo.org/record/3833714#.Xs4188ZS9QK
- Twitter: see @reCreatingEU (5.05.2020)

3. Highlights and conclusions

Following what can only be described as a long and tortuous process, the EU legislative bodies adopted the Copyright in the Digital Single Market (CDSM) Directive in June 2019. Article 17 (former Article 13) on the new liability regime of online content sharing service providers (OCSSPs) occupies the center stage of the discourse on CDSM.

In the context of the Horizon 2020 funded "reCreating Europe" project, a group of scholars is carrying interdisciplinary research to examine the public and private regulatory consequences of Article 17 and its regulation of content moderation activities, in particular its impact on access to culture in the Digital Single Market. The research is carried out in Work Package (WP) 6. The design and preliminary results of this research were recently presented in a online webinar, which took place on May 5, 2020. Presented included members of the research team: Péter Mezei and István Harkai (University of Szeged) and João Pedro Quintais (University of Amsterdam, IVIR). The other partners of WP6 were represented Christian Katzenbach and João Carlos Magalhaes (Alexander von Humboldt University, HIIG) and Sebastian Felix Schwemer (University of Copenhagen, CIIR).

João Pedro Quintais introduced the main tasks of WP6. The project aims to explain, critically examine and evaluate the existing legal frameworks (public/private, existing/proposed) that shape the role of intermediaries in organising the circulation of culture and creative works in Europe, including content moderation. The researchers also intend to measure the impact of legal frameworks, business practices and technologies on access and diversity, the creation of culture value, and on creators' creative practices and users' consumption patterns. In his presentation, João further introduced the background and the mechanics of Article 17, the challenges of the value gap for the European copyright industry, the pre-CDSM norms and case law of the EU law. João also highlighted the key issues that participants plan to address in the 33 months long project.

Péter Mezei and *István Harkai* focused on the methodological challenges and research questions related to their comparative research in WP6. They intend to focus on the national implementation of Article 17 in selected Member States of the EU in two phases. First, before the deadline of the national implementation is due; and, second, following the deadline of the implementation. Hence the first phase research aims to focus mainly on the policy considerations and the draft proposals of the selected Member States, and the second phase will address the accepted norms and – if possible – the emerging case law related to OCSSPs. The research will put a great emphasis on the terminological, structural and policy challenges of Article 17. It will also critically evaluate whether the original policy purposes of the EU (e.g. filling in the value gap and facilitating access to culture via the internet) can be reached.

The research project of *Christian Katzenbach* and *João Carlos Magalhaes* addresses the development of private ordering mechanisms and platform governance (both governance of and governance by platforms). Christian and João will collect and analyse data related to the organisational practices (including terms of service, privacy agreements, privacy policies, community guidelines), public discourse, technologies and content policies of platforms of. With the help of WayBack Machine, the research will introduce the evolution of the relevant documents/policies of platforms. Christian and João provided an example for the constant changes to platform regulations. The case study of Twitter evidences that the platform's internal rules have substantially changed almost 300 times in the period (2009-2020) analysed by Christian and João. By looking at mainstream (e.g. YouTube), alternative (e.g. Mastodon), niche (e.g. Vimeo) and industry-centred (e.g. Spotify) services, the research will finally allow to understand the internal evolution and functioning of private ordering of a great number of platforms.

Sebastian Felix Schwemer, together with *Thomas Riis*, joined WP6 to assess normatively "how legal rules and contractual terms on the moderation and removal of copyright content on large-scale UGC platforms affect digital access to culture and the creation of cultural value." As such, Thomas and Sebastian intend to focus on how Article 17 of the CDSM Directive will affect the business practices of OCSSPs. They will also pay close attention to issues beyond Article 17, e.g. European norms related to terrorist contents or the upcoming Digital Services Act, as well as to trusted notifiers or flaggers. In sum, Thomas and Sebastian plan to deliver reasoned opinions on how to improve copyright content moderation and removal practices toward better and more diverse access to culture.

- All participating universities presented their ongoing research on the event. In sum, the workshop allowed for the general introduction of the legal challenges of Article 17 on intermediaries of the Copyright in the Digital Single Market Directive, highlighted the coming comparative and multidisciplinary research on the public and private rules and practices/mechanisms of enforcing copyrights in the digital domain. The event also sparked considerable debate, useful questions and notes supported the researchers to add further perspectives to their research, and, at the same time, the event allowed external participants to become aware of the planned outcomes of WP6.

4. Annexes

See at *2. Means of Verification*.