

RECREATING EUROPE

What's to come in EU copyright content moderation?

Measuring impact on access to culture and the future of regulation



16 November 2021, 10:00-11:30 CET
Sebastian Felix Schwemer @schwemer

Normative assessment of the impact on creation and access to culture

- Value-based norms (fundamental copyright balance: creation vs. access; fundamental rights (e.g. expression, information, arts, conduct a business); cultural rights (e.g. UDHR Art. 27); privacy/data protection
- Modalities of law and interactions (state-enacted vs. “private”; platforms as important gateway for accessing protected content)
- Elements in qualitative assessment: rules (predictability) vs. standards (flexibility: fair results in specific cases); effectiveness; geographical scope; technology neutrality



- **Access to culture is tricky**
 - Is "access to culture" quantitative? Is it qualitative? How does cultural diversity (Treaty & all fun recitals) play into this? What's the relation to the digital single market?
 - Inherit conflict with copyright? What's the role of copyright's limitations&exceptions? "Cultural bias" in automated content moderation?
- **(1)** Assumption: Existing copyright framework is „optimal“
 - [NB: implication that moderation of copyright infringing material is *not* detrimental to access to culture (true positive)]
- Thus **(2)** *detrimental* to access to culture/cultural diversity is:
 - (2.1) any moderation that comes with **type-I errors** (false positive)
 - (2.2) any moderation that comes with **type-II errors** (false negative)
 - [(2.3.) but what **really** about TPs and TNs?]

Copyright infringing

yes

no

yes

True positive
(TP)False positive
(type-I error)**Takedown / "disabling" of access**

no

False negative
(type-II error)True negative
(TN)

SF Schwemer (2021), *Regulatory strategies for mitigating errors in automated content moderation* (in preparation)

- Both *excessive* and *insufficient* content moderation will have a negative impact on access to culture.
 - Error analysis (and normative considerations within copyright framework) as a framework for future regulation: What ways to minimise false positives/negatives (ex ante/ex post)?
- Oversimplification: Correct enforcement is „optimal“ for cultural diversity, but is it 🙌 (*culturally diverse, accessible & creative Europe – true positives/negatives*)?