RECREATING EUROPE What's to come in EU copyright content moderation?

Measuring impact on access to culture and the future of regulation



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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

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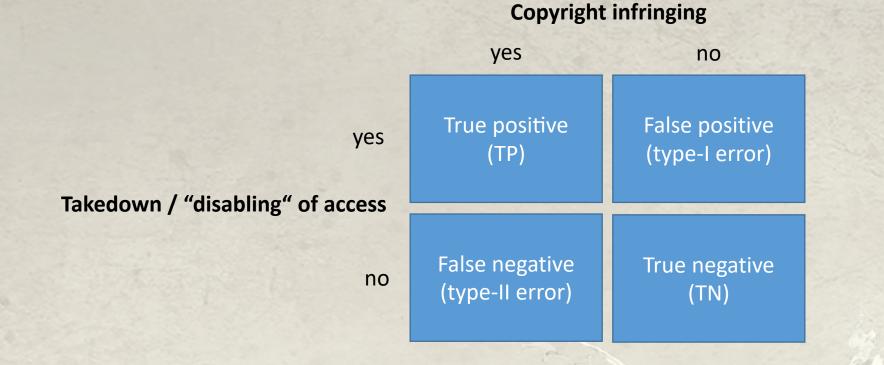
Access to culture is tricky

- 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?]

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

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- 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 ¹/₄ (*culturally diverse, accessible & creative Europe* true positives/negatives)?