Original Scientific Paper
UDC: 347.78:339.137.2:004:658.89(4-67EU)
DOI: https://doi.org/10.22598/iele.2023.10.1.2

# THE DIGITAL CONTENT DIRECTIVE'S IMPLICATIONS ON THE EXERCISE OF COPYRIGHT AND MARKET COMPETITION

**Dino Gliha** *

ABSTRACT

*Directive (EU) 2019/770 aims to strike a balance between achieving a high level of consumer protection and promoting the competitiveness of enterprises, laying down common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or a digital service. Although Directive (EU) 2019/770 should generally be without prejudice to national copyright laws, much of the digital content is covered by copyright protection. Copyright-protected works play a significant role in the digital content markets. With regards to copyright law, of particular interest is Article 10 of the Directive (EU) 2019/770, entitling consumers to remedies from the trader of digital content for lack of conformity, where restrictions resulting from a violation of an intellectual property right prevent or limit the use of the content. Although Article 10 should safeguard copyright-protected works, taking the complete Directive (EU) 2019/770 into consideration, in a certain way, it seems to have a questionable effect on copyright rightsholders and also on competition in relevant markets. Therefore, this research examines the possible implications of Directive (EU) 2019/770 on the exercise of copyright and market competition, with a view to the copyright-competition interaction issue.*

**KEYWORDS:** *digital content and digital services, EU law, obligations law, copyright, competition*

* Dino Gliha, Joint Law Office dr. sc. Sandra Marković, Sidonija Grbavac and dr. sc. Dino Gliha, Zagreb, Croatia; dino.gliha@gmail.com

## 1. INTRODUCTION

Directive (EU) 2019/770 (hereinafter: "Digital Content Directive" or "DCD")[1] sets out to facilitate the cross-border distribution of digital content and ensure a high level of consumer protection. It does so by laying down common rules on certain requirements concerning contracts between traders and consumers for the supply of digital content or a digital service.[2]

The general idea behind the Digital Content Directive is to contribute (provide incentives) for faster growth of the Digital Single Market, to the benefit of consumers and businesses, in particular, small and medium enterprises (hereinafter: "SMEs").[3] It is a sector-specific instrument of consumer contract law with direct implications for the markets concerning digital content. Regardless of its unquestionable impact on digital markets, the Digital Content Directive should be without prejudice to copyright law.[4]

However, besides the bold statement concerning copyright law, it seems that the legislator has not holistically assessed all of the concerned relationships that are in some way affected by the new set of regulations, nor is there much literature discussing the possible effects of the Digital Content Directive on the exercise of copyright and market competition. Hence, this research examines the potential implications of the Digital Content Directive on the exercise of copyright and market competition, with a view to the copyright-competition interaction issue. Namely, the goal of the research is to question if the Digital Content Directive affects copyright rightsholders in exercising their rights and what effect it might have on the digital content and digital service market competition, contributing to a better understanding of the broader implications of the Digital Content Directive beyond the obligations law.

---

1 Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, OJ L 136, 22.5.2019, p. 1–27.

2 Most Member States implemented the DCD through amendments to their existing laws. Croatia, for instance, only partially amended laws (Consumer Protection Act, Official Gazette no. 19/22) to harmonise the DCD. For the rest of the harmonisation, Croatia decided to go with a somewhat specific solution and create an entirely new law - Act on Certain Aspects of Contracts on Supply of Digital Content and Services (Official Gazette no. 10/21)- and separating regulation of contracts between traders and consumers for the supply of digital content or a digital service from the Civil Obligations Act (Official Gazette no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21).

3 See the Digital Content Directive, Recital 1, 2, 3.

4 See the Digital Content Directive, Recital 36.

After this introduction, the second section gives an overview of copyright law and the particularities of copyright in the digital sector. The third section examines the impact of the Digital Content Directive on the exercise of copyright law. The fourth section gives several remarks on competition law and an overview of competition in the digital environment. The fifth section examines the possible effects of the Digital Content Directive on market competition. The sixth section gives a view on the copyright-competition interaction in the context of the Digital Content Directive. The seventh section provides a conclusion and advocates a further discussion on this specific matter.

## 2. DIGITAL CONTENT AND COPYRIGHT

Copyright law is a law of absolute character, acknowledging exclusive private property rights as a reward for the author's labor. It is acknowledged as a fundamental human right, in some legislations considered a constitutional category.[5,6]

[5] See Austin, G. W.: Authors' Human Rights in the Intellectual Property Framework, in: Dreyfuss, R. C.; Siew-Kung NG, E. (eds.): Framing Intellectual Property in the 21st Century: Integrating Incentives, Trade, Development, Culture, and Human Rights, Cambridge University Press, 2018, pp. 210-233.; Coombe, R. J.: Intellectual Property, Human Rights & Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conversation of Biodiversity, Indiana Journal of Global Legal Studies, 6, (1), pp 59-115, 59-61.; Crnić, J.: Ustavne odredbe o autorskom pravu, Zbornik Hrvatskog društva za autorsko pravo, 1, 2000, pp. 15-31, p. 16.; Gliha, D.: Autorsko pravo kao ustavno i međunarodno temeljno ljudsko pravo, in: Josipović, T., Špoljarić, D. (eds.): Život posvećen vladavini prava: Liber Amicorum Mladen Žuvela, Zaklada Zlatko Crnić, Zagreb, 2022, pp. 669-697.; Gliha, I.: Prava na autorskim djelima nastala u radnom ondosu i po narudžbi, Zbornik Pravnog fakulteta u Zagrebu, 56 special issue, 2006, pp. 791-836, pp 801-802.; Grosheide, F. W.: Paradigms in Copyright Law, in: Sherman, B., Strowel, A. (eds.): Of Authors and Origins: Essays on Copyright Law, Claredon Press, Oxford, 1994, pp. 235-253, p. 235.; Strowel, A.: Droit d'auteur and Copyright, in: Sherman, B., Strowel, A. (eds.): Of Authors and Origins: Essays on Copyright Law, Claredon Press, Oxford, 1994, pp 203-234, 207.; Torremans, P. L.: Is copyright human right, Michigan State Law Review, 1, Spring 2007, pp 271-292, pp. 279-281.; Vivant, M.: Authors' Rights, Human Rights?, Revue internationale du droit d'auteur, 174, 10-1997, pp. 60-123, pp. 68-74.

[6] On the international level see The Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407, Art. 17(2); The Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, retrieved from: https://www.echr.coe.int/documents/convention_eng.pdf (last accessed: 23.11.2022.), Protocol 1, Art 1; The Universal Declaration of Human Rights, adopted by the United Nations General Assembly of its 183rd meeting, held in Paris on 10 December 1948, retrieved from: https://www.un.org/en/universal-declaration-human-rights/ (last accessed: 23.11.2022.), Art. 27(2).; .; International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession

In the center of the copyright is an author. Copyright works represent the reflection of the author's personality as such. Copyright originates *ex persona*, resulting from the author's creativity, and, naturally, belongs to the author.[7] As Le Chapelier said:

> "the most sacred, the most legitimate, the most unassailable, and as it were, the most personal of all property, is the work which is the fruit of a writer's thoughts."[8]

Such interpretation of copyright as a natural right is integrated into individual legislations following civil-law tradition and has foundations in the theory of natural law and personal theory.[9]

---

by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with Article 27, [https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf], Art. 15.

On the national level see The Constitution of the Republic of Croatia (Official Gazette no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14), Art. 69(4); The Constitution of France, [https://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october 1958.25742.html], Art. 34.; The Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 28 March 2019 (Federal Law Gazette I p. 404), [https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0019], Art. 1(1), 14, 5; The Constitution of the Portuguese Republic, [https://dre.pt/constitution-of-the-portuguese-republic], Art. 42; The Spanish Constitution, [https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf], Art. 20(1), 149(1, pt. 9); The Constitution of Sweden, [https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf], Art. 16. (commonly copyright is implicitly protected within the national constitutions, while Sweden is a unique example where copyright is explicitly protected).

[7] Goldstein, P.; Hugenholtz, P. B.: International Copyright: Principles, Law and Practice, Second Edition, Oxford University Press, Oxford, 2010, pp. 6, 20.

[8] See Report of Le Chapelier on Dramatic Author's property (with the Decree adopted by the National Assembly), Paris (1791), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, [www.copyrighthistory.org]
Although that famous declaration is often quoted in supporting the author-oriented rationales for copyright, almost invariably is taken out of context and not used in accordance with its original meaning. Still, regardless of its exact meaning and origin, Le Chapelier's declaration has found its place among copyright proponents and is also welcome to be used in future endeavours to protect copyright.; See Ginsburg, J. C.: A Tale of Two Copyrights: Literary Property in Revolutionary France and America, Tulane Law Review, 64(5), May 1990, pp. 991-1031, pp. 1006-1007.

[9] Roots of such concept of copyright can be found in works of eighteenth and nineteenth century philosophers such as Locke, Rousseau; Kant, Hegel, Kohler, Young, Diderot, Lessing, Fichte, von Gierke.; Atkinson, B.; Fitzgerald, B.: A Short History of Copyright: The Genie of Information, Springer, Cham, 2014, p. 28.; Dock, M.-V.: The origin and development of the literary property concept (orig. Genèse et évolution de la notion de propriété´ littéraire), Revue

In the countries of civil-law tradition, there is no exhaustive list of copyright works - any creation of the mind can attract copyright protection as long as it meets the requirements of the Berne Convention[10] and the relevant national law. Thus, an original intellectual creation from a literal, scientific, or artistic field that has individual character, regardless of its expression type, value, or purpose, would generally be acknowledged as a copyright-protected work. The threshold for creativity is low. In the EU, it is generally sufficient that the work is the "author's intellectual creation" [11].[12] Novelty is not a requirement. The protection begins immediately by the act of creation, without any formalities.[13] In civil law legislation, even the fixation of the work is not required, which aligns with the personality concept that copyright originates *ex persona*.[14]

internationale du droit d'auteur, LXXIX, January 1974, pp 126-204, pp 186-188.; Hesse, C.: Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777-1793, Representations, Special Issue: Law and the Order of Culture, University of California Press, Spring 1990, pp. 109-137, p. 112.; Hesse, C.: Intellectual Property, 700 B.C., - A.D. 2000, Daedalus - Journal of the American Academy of Arts and Science, Spring 2002, pp. 26-45, pp. 33-35.

[10] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971 and amended in 1979, S. Treaty Doc. No. 99-27 (1986) (hereinafter: „the Berne Convention").

[11] Judgment of the Court (Fourth Chamber) of 16 July 2009, *Infopaq International A/S v Danske Dagblades Forening*, C-5/08, EU:C:2009:465, para. 3.

[12] Under the common-law approach, the requirement is "at least some minimal degree of creativity».; See US *Feist Publications, Inc. v. Rural Telephone Service Company, Inc.*, 499 U. S. 340, 345 (1991).

[13] The Berne Convention, Article 5, Paragraph 2.; WIPO, Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), WIPO Publication, No. 615(E), Geneva, 1978, pp. 33-34.

[14] In the common-law regimes, for evidentiary purposes, it is usually required that the work be fixed in a tangible medium to enjoy copyright protection. However, laws are generally open-minded as to the medium of fixation, and, of course, regardless of that requirement, work still exists independently of any particular material object in which it may be concretised. Also, although by the beginning of the twentieth century most of the countries have abandoned other formal prerequisites (e.g. obligation to deposit copies of the work), in some countries, such as the US, registration of works with the Copyright Office is required for judicial enforcement of copyright (for works of U.S. origins) and to award of statutory damages or attorney's fees (for works regardless of country of origin).; See Ginsburg, J.: Copyright, in: Dreyfuss, R., C.; Pilla, J.: (eds.), The Oxford Handbook of Intellectual Property Law, Oxford University Press, 2018, pp. 487-516, p. 491; Ginsburg, J.: The US Experience with Copyright Formalities: A Love/Hate Relationship, Columbia Journal of Law & the Arts, Vol. 33, No. 4, 2010, pp. 311-348.
In common-law legislation there is also a *de minimis* requirement for copyright works. The civil-law tradition does not apply quantitative restrictions on copyright.

Thus, much of the digital content is covered by copyright law. On the front, copyright-protected works are photographs, music, videos, pictures, and others. In the back, the source code that lies beneath the software is also considered a literal work protected by copyright.[15]

During the last two decades, digital evolution has changed the ways works and other protected subject matters are created, produced, distributed, and exploited. New uses, actors and business models emerged; cross-border uses intensified; new opportunities for consumers to access copyright-protected content have materialized. In such a (digital) world, a general sense of the presence of copyright seems to be diminished. Many users do not understand (or do not want to understand) that behind the content they consume lays efforts, creativity, and resources invested by someone to create that content.

Regardless of such lack of copyright awareness, under the natural right concept of copyright, the author enjoys the right to control the exploitation of the work entirely. Thus, the existing copyright protection automatically covers new ways of use. That also includes digital content. A somewhat different situation is in the systems following the common-law tradition of copyright. Having the main idea that the state grants copyright rather than being a natural consequence of creation, those systems require legislative interventions to adapt to newly-emerged ways of exploiting copyright and list and define exclusive rights that copyright grants. For that reason, systems of civil law tradition adapt more easily to new developments than the systems of common-law tradition.[16]

Hence, in discussions concerning EU law, where most Member States follow the civil-law tradition of copyright, recognition of digital copyright-protected-content covered by the Digital Content Directive generally does not represent an extension of copyright but simply corresponds to the principle that authors enjoy an exclusive right in the material and non-material exploitation of their work.

[15] See Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance), OJ L 111, 5.5.2009, p. 16–22. (before: Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.5.1991, p. 42–46).; The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1 January 1995, [ https://www.wto.org/english/docs_e/legal_e/27-trips.pdf], Article 10.; The WIPO Copyright Treaty (WCT), 20 December 1996, [https://wipolex.wipo.int/en/treaties/textdetails/12740], Article 4.

[16] See von Lewinski S.: International Copyright Law and Policy, Oxford University Press, Oxford 2008, pp. 54.-55.

## 3. COPYRIGHT WITHIN DIGITAL CONTENT DIRECTIVE

The Digital Content Directive defines 'digital content' as data that are produced and supplied in digital form and 'digital service' as a) a service that allows the consumer to create, process, store, or access data in digital form; or b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service.[17] Although the definitions are broader than all that is covered by intellectual property rights in the digital realm, intellectual property rights, in particular copyright, undoubtedly play a significant role in digital content markets, which are the focus of the Digital Content Directive. Much of the digital content is, in essence, copyright-protected works (see *supra 2*), while digital services inevitably include computer programs that are their integral part. Some categories of copyright-protected work the Digital Content Directive explicitly acknowledges within its recitals – computer programs, tailor-made software[18], applications, video files, audio files, music files, digital games, e-books, software-as-a-service, word processing, and games offered in the cloud computing environment, social media.[19]

Thus, exclusive copyright rights are undoubtedly vested in digital content and digital services offered in digital markets. However, one of the particularities of such markets is that the ones offering digital content and services are commonly not the creators of such content and services. Hence, to start distributing copyright-protected content and offer services based on copyright-protected works, traders must first obtain appropriate rights from copyright rightsholders. In the context of the Digital Content Directive, a "'trader' means any natural or legal person, irrespective of whether privately or publicly owned, that is acting, including through any other person acting in that natural or legal person's name or on that person's behalf, for purposes relating to that person's trade, business, craft, or profession, concerning contracts covered by this Directive." Such arrangements between copyright rightsholders and traders define conditions for using copyright-protected works. They commonly also formulate end-user license agreements, defining the parameters of use by the individual end-users.[20]

However, the focus of the Digital Content Directive is the relationship between traders and consumers concerning the supply of digital content or a digital

[17] The Digital Content Directive, Article 2, Paragraph 1, Point 1 and 2.

[18] The Digital Content Directive, Recital 26.

[19] The Digital Content Directive, Recital 19.

[20] See the Digital Content Directive, Recital 53.

service.[21] In the context of the Digital Content Directive, a "'consumer' means any natural person who, concerning contracts covered by this Directive, is acting for purposes which are outside that person's trade, business, craft, or profession". Considering that the Digital Content Directive harmonizes rules on the conformity of digital content or service, the issue with copyright arises when the lack of such conformity results from copyright law. In other words, the problem occurs when a trader does not have the appropriate rights to supply a copyright-protected work to consumers legally.

The Digital Content Directive generally should not deal with copyright law and other intellectual property laws.[22] However, in dealing with third-party rights, the Proposal of the DCD provided a solution that, at the time the digital content is supplied to the consumer, the digital content shall be free of any right of a third party, including based on intellectual property, so that the digital content can be used in accordance with the contract.[23] The intent was to oblige the supplier to ensure that the content is free from copyright restrictions so users can freely consume the content.[24] Such a solution did not seem appropriate and was rightly criticized by the expert audience. It implied that even in the case of a breach of copyright, a consumer could still continue to use copyright-protected work for which the appropriate rights were not acquired. Regardless of the consumer's expectations, consumer protection rights should not boldly overcome the rights of authors and other legitimate rightsholders. If the solution ended in the application, it would likely cause confusion and possibly interfere with copyright law.

Hence, in the adopted final text of the DCD, the general idea remained that the Directive should be without prejudice to copyright and related rights, including the portability of online content service.[25] Considering that the DCD should have avoided interference between consumer protection and copyright and other intellectual property rights, the European legislator boldly decided to refrain from any overlap with intellectual property rights.[26] Thus, regarding the third-party rights, the DCD provided a somewhat different solution instead of the potentially misleading solution from the Proposal. The DCD adopted

[21] The Digital Content Directive, Recital 11.

[22] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD) (hereinafter: „the DCD Proposal"), p. 4, Recital 21.

[23] The DCD Proposal, Article 8

[24] See the DCD Proposal, Recital 31.

[25] The Digital Content Directive, Recital 36.

[26] See the Digital Content Directive, Recital 9, 12, 20, 36

Article 10, which deals with the potential conflict between consumer protection and intellectual property rights, respectively, with the situation when it is not possible to allow the use of digital content due to a breach of intellectual property rights. According to Article 10:

> "Where a restriction resulting from a violation of any right of a third party, in particular intellectual property rights, prevents or limits the use of the digital content or digital service under Articles 7 and 8, Member States shall ensure that the consumer is entitled to the remedies for lack of conformity provided for in Article 14 unless national law provides for the nullity or rescission of the contract for the supply of the digital content or digital service in such cases."[27]

In such a way, the Digital Content Directive aims to strengthen consumer protection by providing remedies for the lack of conformity without thereat getting into the issue of a trader's relationship with a copyright rightsholder. If a copyright-protected work vested in digital content was used without the appropriate permission from the copyright rightsholder, the consumer cannot continue using such content but has remedies for lack of conformity towards the trader.

Aside from the obvious illegal uses of copyright-protected works by the trader, such a situation activating Article 10 might occur due to an end-user licensing agreement imposed by the copyright rightsholder under which the digital content or service is supplied to the consumer. The DCD provides an example of an end-user license agreement prohibiting the consumer from making use of certain features related to the functionality of the digital content or digital service. If a restriction concern features that are usually found in digital content or digital services of the same type and that the consumer can reasonably expect, such a situation could constitute a breach of the objective requirements for conformity, entitling the consumer to claim the remedies for lack of conformity[28].[29,30] Besides, the issue of restriction of consumer's use due to intellectual property rights can also occur when a rightsholder as a third party rightfully compels the trader to stop infringing those rights and to discontinue offering the digital content or digital service in question or when the consumer cannot use the digital content or digital service without infringing the law. In such situations, the consumer cannot continue using digital content or service and

[27] The Digital Content Directive, Article 10.

[28] The Digital Content Directive, Article 14.

[29] The trader can avoid liability by fulfilling the conditions for derogating from the objective requirements for conformity.; See the Digital Content Directive, Article 8 Paragraph 5.

[30] The Digital Content Directive, Recital 53.

continue infringing the third party's intellectual property rights but activate Article 10 towards the trader.[31]

Therefore, while the relationship between the trader and the customer is dealt with within the scope of the DCD, the relationship between a trader and a copyright rightsholder stays outside and is dealt with within the appropriate copyright framework. Otherwise, if the solution that was initially proposed remained, potential conflicts between consumer protection and copyright law would be inevitable.

## 4. COMPETITION IN THE DIGITAL ENVIRONMENT

Competition law prevents and sanctions anti-competitive behavior and promotes free undistorted competition, which is one of the cornerstones of the EU internal market.[32,33] It is focused on the market and consumers in a broader sense caught by the activities of undertakings. Also, within the EU, competition laws have the function of building and strengthening the internal market by enhancing market integration between the Member States.[34] Without healthy and fair competition, there is no development of the digital content market.

In the rapidly evolving digital landscape, market conditions for competition have undergone significant changes. The digital economy is marked by swift technological advancements and low barriers to entry for creators, resulting in a more dynamic and unpredictable environment than the traditional economy. The internet allows practically anyone to create and distribute content with minimal investment or technical skills. With creativity and innovation driving the digital industry, there is a greater level of technological complexity and interdependence among various market players. Such occurrences have created

[31] The Digital Content Directive, Recital 54.

[32] See Opinion of Advocate General Cosmas of 16 May 2000, *Masterfoods and HV, Case C-344/98*, EU:C:2000:249., para. 105.; Judgment of 8 October 2008, *Schunk GmbH and Schunk Kohlenstoff-Technik GmbH v Commission of the European Communities*, T-69-04, EU:T:2008:415, para. 39.; Judgment of 17 February 2011, *Konkurrensverket v TeliaSonera Sverige AB*, C-52-09, EU:C:2011:83, para. 20.

[33] See VerLoren van Themaat; W., Reuder, B. (eds.): European Competition Law: A Case Commentary, Edward Elgar, Cheltenham, Northampton MA, 2014, p. 6.

[34] See Judgment of 1 June 1999., *Eco Swiss China Time Ltd v Benetton International NV*, C-126/87, EU:C:1999:269, para. 36.; See also Colino, S. M., Competition Law of the EU and UK, Eighth Edition, Oxford University Press, Oxford, 2019., p. 7.
See Gerber, D., J.: The Transformation of European Community Competition Law, Harvard International Law Journal, 35(1), Winter 1994, pp. 97-147, pp. 98, 101-103.

new opportunities for competitors and have spurred the development of innovative business models and emerging markets. Overall, dynamic competition has surpassed the static competition in the digital economy.[35]

Consequently, on the one hand, happenings in the digital sector have undoubtedly increased the number of offerings on markets and the number of competitors offering their content and services. Although an increase in the offer is generally considered good for consumers, the inflation of works and dynamics of new markets may also cause a decrease in quality and disruption of many traditional markets. Having low barriers to entering the digital market, a large number of creators inevitably leads to more content of varying quality. With information bombing, users tend to have a growing demand for easily digestible content, and often, more emphasis is on producing a large volume of content to stay relevant and visible, leaving creators less time or resources to invest in creating high-quality content. Unfortunately, this is often a reality in the digital era. For that reason, it is necessary to carefully balance all of the involved rights and interests, especially when in any way intervening in the digital sector.

On the other hand, the development of digital technologies provided powerful incentives to businesses to exploit economies of scale and economies of scope, forming large global markets in all kinds of industries. Competition severely increased in the form of start-ups. However, due to low and unstable prices and the instability of many digital sectors, among other things, most businesses are not able to grow and survive on their own. Hence, the competition is ultimately concentrated among the Big Tech companies (Google, Apple, Facebook, Amazon, and Microsoft) that often hold a dominant position in their relevant markets.

In the constantly evolving digital landscape, the fundamental principles and framework of competition law remain sound. However, legislators and competition law enforcers must carefully consider new factors to adapt and refine established concepts, doctrines, and methodologies to enforce competition law effectively.[36]

---

[35] See Choi, Y., S.; Heinemann, A.: Restrictions of Competition Law in Licensing Agreements: The Worldwide Convergence of Competition Laws and Policies in the Field of Intellectual Property, European Business Organization Law Review, 17(3) September 2016, pp. 405-422, p. 418.

[36] On competition law in the digital environment, see Crémer, J., de Montjoye; Y-.A.; Schweitzer, H.: Competition Policy for the Digital Era, European Commission Special Advisers' Report, Shaping competition policy in the era of digitisation, [http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf]; Zekos, G.: Economics and Law on Competition in 21st Century Globalization, Nova Publishers, New York, 2014, pp. 1-47.

Furthermore, beyond the competition law framework that directly deals with competition on the market, legislators and enforcers in other fields of law, such as civil obligations law, regulating the supply of digital content and services should also be cautious not to impose unnecessary restrictions on competition in digital markets. To achieve this, they must take a more nuanced approach, targeting specific areas of concern while ensuring that innovation and competition continue to thrive. Otherwise, even well-intentioned regulations may unintentionally limit competition and innovation, hindering the overall progress of the digital economy.

## 5. DIGITAL CONTENT DIRECTIVE'S EFFECT ON MARKET COMPETITION

The Digital Content Directive generally does not enter into the field of competition law. Still, that does not necessarily mean that it does not produce a certain (intentional or unintentional) effect on market competition, which may trigger competition law concerns later.

The DCD states in Recital 2 that it promotes the competitiveness of enterprises. In the Explanatory memorandum, the European Commission considered that the existing and upcoming fragmentation in the supply of digital content creates obstacles for businesses to sell cross-border because they have to incur contract law-related costs and are also uncertain about their rights and obligations. Per the European Commission, that directly affects the establishment and functioning of the internal market and negatively affects competition in general.[37] Hence, harmonizing rules on contracts for the supply of digital content and digital services should help overcome this issue and promote competition. According to the Impact Assessment Report, targeted, fully harmonized rules for digital content and goods seems to be the best solution to meet the policy objectives.[38] It should increase competition, „leading to an overall increase of trade and consequently an increased and better choice at more competitive prices for consumers, with significant macroeconomic gains for the EU."[39]

[37] Explanatory memorandum, in: Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD) (hereinafter: „the Explanatory Memorandum"), p. 5.

[38] See Commission Staff Working Document Impact Assessment Accompanying the document Proposals for Directives of the European Parliament and of the Council (1) on certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods, SWD/2015/0274 final/2 - 2015/0287 (COD) (hereinafter: „the Impact Assessment"), pp. 45-54.

[39] The Explanatory memorandum, p. 9.

Particular benefiters of the increase of legal certainty and reduction of transaction costs should be small and medium-sized enterprises (SMEs) that were more affected by the contract-law-related barriers to cross-border online trade.[40] The DCD emphasizes that on numerous occasions.[41] Still, SMEs should not be exempted in any way from the new legislation. From the consumers' perspective, whether they buy from SMEs or giant suppliers should be no different.[42]

Although the potential benefits to the SMEs were indeed considered in the impact assessment and noted in the explanatory memorandum[43], the Proposal of the Directive itself did not emphasize the benefits for SMEs. However, regarding considerations of competition, the Proposal took a somewhat different approach. Instead of just noting the promotion of competition like in the final text of the DCD, the Proposal contained a recital (46) on the importance of competition for a well-functioning Digital Single Market. According to Recital 46, to stimulate competition, consumers should be enabled to respond to competitive offers and switch between suppliers. The recital further argues that obstacles to doing so are of legal, technical, or practical nature, thereat, particularly emphasizing contractual conditions or lack of means for retrieving all data uploaded by the consumer, produced by the consumer with the use of the digital content or generated through the consumer's use of the digital content. Further on, the recital notes the issue of long-term contract arrangements and provides a solution to overcome those obstacles and issues by allowing consumers to terminate any contractual relationship that lasts longer than 12 months. Such a solution was formulated in Article 16 of the Proposal. Although such a solution has some rationale, it seems that it provides a rather narrow understanding of competition in the context of switching between suppliers. Namely, from the wording of the recital, it seems that the focus was on the providers of services that enable the creation of their digital content rather than on suppliers offering digital content.[44] Thus, it is not surprising that Recital 46 of the Proposal was omitted from the final text.

Still, it seems that the DCD does not provide appropriate attention to the potential effects it may cause on market competition. It certainly seems reasonable that both competitors and consumers should benefit from the harmonized legislation in the field of supply of digital content and services and that changes

[40] See the Impact Assessment, p. 28.

[41] The Digital Content Directive, Recitals 3, 4, 7, 11.

[42] The Explanatory memorandum, p. 10.

[43] The Explanatory memorandum, p. 2, 10.

[44] See Oprysk, L.: Digital Consumer Contract Law without Prejudice to Copyright: EU Digital Content Directive, Reaosnable Expectation and Competition, GRUR International, 70(20), 2021, pp. 943-956, p. 949.

in legislation should promote competition. However, the Proposal, including the impact assessment and explanatory memorandum, and the final text of the DCD, leave an impression that effects on competition were not considered holistically.

In the digital realm, traders in the sense of the DCD are commonly online platforms as intermediaries between creators (copyright rightsholders) and consumers as end-users.[45] Platform providers have been explicitly acknowledged as possible traders within Recital 18 of the DCD - "if they act for purposes relating to their own business and as the direct contractual partner of the consumer for the supply of digital content or a digital service."[46] The position of online platforms is specific *per se* due to their particular nature and the characteristics of the digital markets they operate. Although the impact of a particular online platform depends on several factors, some of their common features are that they are digital service that facilitates interactions between two or more distinct but interdependent sets of users (whether businesses or individuals) who interact through the service via the internet.[47] In understanding the concept of online platforms and their effects on the market, of particular interest are the positive, indirect network effects of online platforms - a group of users (for instance, third-party sellers on Amazon) benefits more as the number of people in another group of users (buyers using the same platform) increase, and possibly *vice versa*.[48] Thus, if a platform provides a better service

[45] See Oprysk, L.: op. cit., p. 943, 953.

[46] Member State are free to extend the application of the Directive to platform providers that do not fulfil the prescribed requirements.

[47] See European Commission, Online Platforms: Contrasting perceptions of European stakeholders - A qualitative analysis of the European Commission's Public Consultation on the Regulatory Environment for Platforms, final report, A study prepared for the European Commission DG Communications Networks, Content & Technology by: Prof. Annabelle Gawer, 2016, [https://www.surrey.ac.uk/sites/default/files/2018-11/online-platforms-contrasting-perceptions-european-stakeholders-report.pdf]; OECD, (online platforms): op. cit., p. 21.; Rochet, J.-C., Tirole, J.: Two-Sided Markets: A Progress Report, The RAND Journal of Economics, 35(3), 2006, pp. 645–667, pp. 645-646.; Shelanski, H.; Knox, S.; Dhilla, A.: Network effects and efficiencies in multi-sided markets, in: OECD, Rethinking Antitrust Tools for Multi-Sided Platforms, 2018, [https://www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm], pp. 189-198, p. 190.;

[48] The basic idea behind network effects, that has started developing since 1907s, is that in some cases a service is more valuable if more customers are using it because customers want to interact with each other. Some customers attract more customers - more customers make the network more attractive. Finally, explosive growth results in a single undertaking firmly holding the market - the winner takes all. In comparison to indirect network efftects (between different kind of users), which is characteristic for multi-sided markets, direct network effects are between the same kind of users (for instance characteristic for the concept of the landline

to one side of the market, it increases the demand for its service on the other side(s). In other words, if there are more providers on the one side, the platforms become more attractive to users on the other side(s); if there are more users on that other side(s), the attractiveness of the platform will further grow on the providers' side.[49]

Due to the phenomenon of network effects and specific characteristics of digital markets, online platforms tend to concentrate on markets and lock in consumers.[50] Such platformisation is typical for digital markets in all kinds of industries, and only a few competitors manage to operate such markets successfully. There is little room for many successful players in such an environment, and indeed winners take much.[51,52] Consequently, barriers to accessing such markets are high and dominant undertakings have the power to control access to digital markets and can influence how various market players are remunerated.[53]

Although one of the ideas behind the Digital Content Directive is to promote competitiveness, it seems that with regards to the competition on the market, DCD indeed imposes additional barriers that will more likely harm SMEs instead of removing them and, consequently, possibly reduce the diversity of offerings on the market for consumers. The significant issue with the Directive is the lack of clarity on what the legitimate expectations of consumer traders

telephone service, fax machines, the standard for videocassette recorders (VCRs)).; See Evans, D. S.; Schmalensee, S.: Debunking the 'Network Effects' Boogeyman: Policymakers need to march to the evidence, not to slogans, Regulation - The Cato Review of Business and Government, 40(4), Winter 2017-2018, pp. 36-39, pp. 36-38.

[49] See OECD, (online platforms): op. cit., pp. 22, 23.; OECD: The Evolving Concept of Market Power in the Digital Economy, OECD Competition Policy Roundtable Background Note, 2022, [www.oecd.org/daf/competition/the-evolving-concept-ofmarket-power-in-the-digital-economy-2022.pdf], p. 10.

[50] See European Commission, (Online Platforms): op. cit., p. 19.

[51] See Frank, R. H.; Cook, P. J.: The Winner-Take-All Society, Penguin Books, New York, 1996.; Iansiti, M.; Lakhani, K. R.: Managing Our Hub Economy, Harvard Business Review, September-October issue, pp. 84-92.

[52] Although indeed only a few online platforms manage to enjoy benefits on network effects, their success is often short due to changes of environment and struggles with monetisation.; See Evans, D. S.; Schmalensee, S.: op. cit., pp. 38-39.

[53] See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Digital Single Market Strategy", COM(2015) 192 final, p. 11.; Reyna, A., Evidence to the UK House of Lords, Inquiry into Online Platforms and the EU Digital Single Market, 12 October 2015, [http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocume nt/eu-internal-market-subcommittee/online-platforms-and-the-eu-digital-single- market/oral/23234.pdf], p. 13

must satisfy to avoid liability. In practice, big players form the picture of what is customary; hence, it is more difficult for small and new players to enter the market and comply with the necessary behavior. Besides, the existing traders already have large user bases and information on what is indeed a legitimate (or realistic) expectation of consumers and the market.[54]

Also, in practically any comprehensive digital market analysis, intellectual property rights should be considered. Keeping in mind that intellectual property rights, particularly copyright, are vested in much of the digital content and digital services, the supply of such content and services inevitably depends on the rights of the rightsholders. Thus, the change of the regulation concerning the supply of digital content concerns not only consumers and traders but also intellectual property rightsholders creating the content and services being supplied. Besides having an effect on the competition among traders, new regulations can also have an effect on competition among intellectual property rightsholders. All of that should have been considered in the process of bringing the DCD.

## 6. THE DIGITAL CONTENT DIRECTIVE'S POSSIBLE IMPLICATIONS ON THE COPYRIGHT-COMPETITION INTERACTION

The copyright-competition interaction is a specific interdisciplinary issue that occurs under specific economic and social circumstances. It refers to a situation when an exercise of copyright falls under the scrutiny of competition law. Thus, it necessarily concerns both copyright law and competition law and must be carefully approached not to disturb those laws that otherwise peacefully coexist.[55]

From the perspective of copyright law, it represents a *de facto* limitation of the exercise of copyright in a broader sense, originating outside the copyright.[56]

---

[54] See Oprysk, L.: op. cit., p. 954.-956.

[55] See Gliha, D.: The Copyright-Competition Interaction within the EU, doctoral dissertation, University of Zagreb, Faculty of Law, 2022.

[56] See Anderman, S.; Schmidt, H.: EU Competition Law and Intellectual Property Rights: The Regulation of Innovation, Second Edition, Oxford University Press, Oxford, 2011, p. 319.; Benabou, V.-L.: Neutral or harmful effects of competition law on copyright or Liaisons Dangereuses (Dangerous Love Affairs) on the Carte du Tendre, Exploring the Sources of Copyright, ALAI Congress, Paris, September 18-21, 2005, pp. 648-663, pp. 649-650.; Goldstein, P.; Hugenholtz, P. B.: op. cit., pp. 390-392.; Rahnasto, I.: Intellectual Property Rights, External Effects and Antitrust Law, Oxford University Press, Oxford, 2003, pp. 42-49.; von Lewinski, S.: op. cit., p. 153.

From the perspective of competition law, it represents a specific situation in which the focus should mainly be on the effects of copyright instead of allocation and productiveness; at the same time, consumer welfare *per se*, as one of the main objectives of competition law, cannot be used as a justification for limiting the exercise of copyright.[57]

The Digital Content Directive does not deal with the matter of copyright law or competition law. Therefore, has no direct implications for the copyright-competition interaction issue. Still, it might provide certain effects that concern copyright rightsholders and competition in relevant markets. Also, in the case of possible copyright-competition interaction issues in digital content or service markets, the regulation and implications of the DCD should be considered in the assessment.

The connection between copyright and market competition issues within the Digital Content Directive primarily exists through Article 10, regulating third-party rights. Namely, the addition of conformity obligations imposed on traders indeed puts an additional burden and barrier to entry on certain players in the market and potentially disturbs competition. Having appropriate copyright rights certainly is a legitimate expectation of a consumer, and the supply of digital content largely depends on the licensing with the copyright rightsholders. Although harmonization of rules, in general, might be beneficial to traders offering digital content and services cross-border, traders can only be competitive if having the ability to secure necessary licenses. Without the appropriate license, using of such copyright-protected work is illegal, except if the use falls under some copyright exceptions or limitations. However, this issue is a copyright law matter, out of the scope of the DCD. Considering that traders are often not the creators of the content, their offer depends on the licensing arrangements with the holders of intellectual property rights. Therefore, the competitiveness of the traders largely depends on their ability to offer content and service legally.[58] Given the position of the already established traders and the particularities of digital markets where often only a few traders control the market (see *supra* 5), it is reasonably possible that new provisions, which were supposed to balance the digital content and digital service market, might actually increase the bargaining power of big players over the content creators (authors) and foreclose competition instead of enhancing it.

[57] See Benabou, V.-L.: op. cit., p. 650-654.; Ginsburg, D. H.; Geradin, D.; Klovers, K.: Antitrust and Intellectual Property in the United States and the European Union, in: Muscolo, G.; Tavassi, M. (eds.): The Interplay Between Competition Law and Intellectual Property, Wolters Kluwer, Alphen aan den Rijn, 2019, pp. 99-119, p. 110.

[58] See Oprysk, L.: op. cit., p. 949-950.

Thus, on the one side, regardless of the opening of the internal market for B2C relations in the supply of digital content, big players commonly shape such markets and lure (or force) creators as suppliers to provide them with content. On a bigger scale, regardless of the reduction of costs and other legal barriers, smaller traders would still hardly compete with big suppliers and attract creators to obtain content to offer, considering that the same conformity rules still catch them.

On the other side, with the concentration of the traders' market, as intermediaries, holders of intellectual property rights are deprived of the choice of intermediaries to which they could license their intellectual property rights, allowing the established intermediaries to dictate the rules of licenses. Although Article 10 of the DCD rightly did not allow interference of consumer rights and expectations with intellectual property rights, as was the possible case with the Proposal, still, when considering the Directive holistically, the rightsholders' position in the exercise of their copyright rights indeed seem to be affected by the Directive negatively.

Hence, if already going into such a legislative intervention, it seems reasonable if the legislator also considered the digital content's supply side and balanced all the relationships on the market. The legislator should have more comprehensively considered the nature of digital content and digital service markets, network effects, the concentration of such markets, and the effect of those occurrences on rightsholders providing digital content and digital services. Considering that it seems that such factors were not adequately considered, that might ultimately produce adverse effects on creators as suppliers, SME traders, and, ultimately, consumers. In other words, there is a danger that the DCD might have some unintended consequences for competition, ultimately negatively impacting consumer welfare and disrupting efforts to promote the Digital Single Market and the competitiveness of the SMEs but instead enhancing market domination of few players, opening them to possible scrutiny of competition authorities.

## 7. CONCLUSION

Consumer protection is undeniably crucial and requires thorough regulation. However, a new set of rules may not always achieve the desired outcomes if all relevant factors are not considered beforehand. Regarding copyright and market competition, it appears that the European legislator may not have thoroughly analyzed the complex relationships within the markets impacted by the DCD.

The focus of the DCD is undoubtedly on the relationship between consumers and traders. However, the new legislative intervention also produces certain effects on the creators and providers of digital content and digital services.

Although the DCD does not directly address copyright law, its impact on the position of copyright rightsholders inadvertently intersects with this area.

Interfering with the position of copyright holders is not inherently harmful; it could potentially improve the position of creators on the market. However, by considering the possible distortions on the traders' market, who are paying fees to the copyright rightsholders, the enactment of the DCD may actually weaken copyright holders' positions.

Namely, compliance with the obligations arising from the DCD, instead of helping them, will likely negatively affect SME traders and possibly create additional barriers for them to enter or stay on markets and compete with the big, well-established players dominating such markets.

Consequently, lessening competition among traders weakens the copyright rightsholders' position as digital content and digital service creators in negotiating terms of use of the works they provide, leaving them with lesser options and lower earnings. Ultimately, instead of providing consumers with a better life, this could lead to consumers facing fewer choices and lower quality digital content and digital services they consume.

Traders, particularly SMEs, must understand their expectations in the dynamic and unpredictable digital landscape where a few big players typically dominate, and copyright holders should receive adequate compensation for their creations.

To avoid such an unfavorable scenario, in years to come, the Commission or the CJEU should promptly fill in the gaps of the DCD and provide an interpretation of all of the unclear standards stemming from the DCD, particularly the legitimate expectation of the consumers. However, any such intervention is a lengthy process, whether legislative or court decision. At this point, the DCD, with its current content, certainly remains. Keeping that in mind, to avoid the potential adverse effects of the DCD on SME traders and copyright rightsholders, it is vital to carefully and regularly monitor the impact of the DCD holistically. Therefore, further empirical research on this matter is needed.

## LITERATURE

1. Anderman, S.; Schmidt, H.: EU Competition Law and Intellectual Property Rights: The Regulation of Innovation, Second Edition, Oxford University Press, Oxford, 2011.
2. Atkinson, B.;Fitzgerald, B.: A Short History of Copyright: The Genie of Information, Springer, Cham, 2014.
   – DOI: https://doi.org/10.1007/978-3-319-02075-4

3. Austin, G. W.: Authors' Human Rights in the Intellectual Property Framework, in: Dreyfuss, R. C.; Siew-Kung NG, E. (eds.): Framing Intellectual Property in the 21st Century: Integrating Incentives, Trade, Development, Culture, and Human Rights, Cambridge University Press, 2018, pp 210-233.
   – DOI: https://doi.org/10.1017/9781316471647.009
4. Benabou, V.-L.: Neutral or harmful effects of competition law on copyright or Liaisons Dangereuses (Dangerous Love Affairs) on the Carte du Tendre, Exploring the Sources of Copyright, ALAI Congress, Paris, September 18-21, 2005, pp. 648-663.
5. Choi, Y., S.: Heinemann, Restrictions of Competition Law in Licensing Agreements: The Worldwide Convergence of Competition Laws and Policies in the Field of Intellectual Property, European Business Organization Law Review, 17(3), September 2016, pp. 405-422.
   – DOI: https://doi.org/10.1007/s40804-016-0046-y
6. Colino, S. M.: Competition Law of the EU and UK, Eighth Edition, Oxford University Press, Oxford, 2019.
7. Coombe, R. J.; Intellectual Property, Human Rights & Sovereignty: New Dilemmas in International Law Posed by the Recognition of Indigenous Knowledge and the Conversation of Biodiversity, Indiana Journal of Global Legal Studies, 6(1), pp 59-115.
8. Crémer, J., de Montjoye; Y-.A., Schweitzer, H.: Competition Policy for the Digital Era, European Commission Special Advisers' Report, Shaping competition policy in the era of digitisation, [http://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf]
9. Crnić, J.; Ustavne odredbe o autorskom pravu, Zbornik Hrvatskog društva za autorsko pravo, Vol. 1., 2000., pp. 15-31.
10. Dock, M.-V.; The origin and development of the literary property concept (orig. Genèse et évolution de la notion de propriété littéraire), Revue internationale du droit d'auteur, LXXIX, January 1974, pp 126-204.
11. Evans, D. S.; Schmalensee, S.: Debunking the 'Network Effects' Boogeyman: Policymakers need to march to the evidence, not to slogans, Regulation - The Cato Review of Business and Government, Vol. 40, No. 4, Winter 2017-2018, pp. 36-39.
12. Frank, R. H.; Cook, P. J.: The Winner-Take-All Society, Penguin Books, New York, 1996.
13. Gerber, D., J.: The Transformation of European Community Competition Law, Harvard International Law Journal, Vol. 35, No. 1, Winter 1994, pp. 97-147.
14. Ginsburg, J. C.: A Tale of Two Copyrights: Literary Property in Revolutionary France and America, Tulane Law Review, Vol. 64, No. 5, May 1990, pp. 991-1031

15. Ginsburg, J.: Copyright, in: Dreyfuss, R., C.; Pilla, J. (eds.): The Oxford Handbook of Intellectual Property Law, Oxford University Press, 2018, pp. 487-516.

16. Ginsburg, J.: The US Experience with Copyright Formalities: A Love/Hate Relationship, Columbia Journal of Law & the Arts, Vol. 33, No. 4, 2010, pp. 311-348.
    – DOI: https://doi.org/10.2139/ssrn.1537247

17. Ginsburg, D. H.; Geradin, D.; Klovers, K.: Antitrust and Intellectual Property in the United States and the European Union, in: Muscolo, G.; Tavassi, M. (eds.): The Interplay Between Competition Law and Intellectual Property, Wolters Kluwer, Alphen aan den Rijn, 2019, pp. 99-119
    – DOI: https://doi.org/10.2139/ssrn.3237788

18. Gliha, D.: Autorsko pravo kao ustavno i međunarodno temeljno ljudsko pravo, in: Josipović, T., Špoljarić, D., (eds.), Život posvećen vladavini prava: Liber Amicorum Mladen Žuvela, Zaklada Zlatko Crnić, Zagreb, 2022, pp. 669-697.

19. Gliha, D.: The Copyright-Competition Interaction within the EU, doctoral dissertation, University of Zagreb, Faculty of Law, 2022.

20. Gliha, I.: Prava na autorskim djelima nastala u radnom ondosu i po narudžbi, Zbornik Pravnog fakulteta u Zagrebu, Vol.56, special issue, 2006, pp 791-836.

21. Goldstein, P.; Hugenholtz, P. B.: International Copyright: Principles, Law and Practice, Second Edition, Oxford University Press, Oxford, 2010.

22. Grosheide, F. W.: Paradigms in Copyright Law, in: Sherman, B.; Strowel, A. (eds.): Of Authors and Origins: Essays on Copyright Law, Claredon Press, Oxford, 1994, pp 235-253.

23. Hesse, C.: Enlightenment Epistemology and the Laws of Authorship in Revolutionary France, 1777-1793, Representations, Special Issue: Law and the Order of Culture, University of California Press, Spring 1990, pp. 109-137.
    – DOI: https://doi.org/10.1525/9780520314542-006

24. Hesse, C.: Intellectual Property, 700 B.C., - A.D. 2000, Daedalus - Journal of the American Academy of Arts and Science, Spring 2002, pp. 26-45

25. Iansiti, M.; Lakhani, K. R.: Managing Our Hub Economy, Harvard Business Review, September-October issue, pp. 84-92.

26. Oprysk, L.: Digital Consumer Contract Law without Prejudice to Copyright: EU Digital Content Directive, Reaosnable Expectation and Competition, GRUR International, Vol 70, Iss. 20, 2021, pp. 943-956.
    – DOI: https://doi.org/10.1093/grurint/ikab058

27. Rahnasto, I.: Intellectual Property Rights, External Effects and Antitrust Law, Oxford University Press, Oxford, 2003.

28. Reyna, A.: Evidence to the UK House of Lords, Inquiry into Online Platforms and the EU Digital Single Market, 12 October 2015, [http://data.parliament.uk/writ-

tenevidence/committeeevidence.svc/evidencedocume nt/eu-internal-market-sub-committee/online-platforms-and-the-eu-digital-single- market/oral/23234.pdf]

29. Rochet, J.-C.; Tirole, J.: Two-Sided Markets: A Progress Report, The RAND Journal of Economics, 35(3), 2006, pp. 645–667.
    – DOI: https://doi.org/10.1111/j.1756-2171.2006.tb00036.x
30. Shelanski, H.; Knox, S.; Dhilla, A.: Network effects and efficiencies in multi-sided markets, in: OECD, Rethinking Antitrust Tools for Multi-Sided Platforms, 2018, [https://www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm], pp. 189-198.
31. Strowel, A.: Droit d'auteur and Copyright, in: Sherman, B.; Strowel, A. (eds.): Of Authors and Origins: Essays on Copyright Law, Claredon Press, Oxford, 1994, pp 203-234.
32. Torremans, P. L.: Is copyright human right, Michigan State Law Review, No 1, Spring 2007, pp 271-292.
33. Vivant, M.: Authors' Rights, Human Rights?, Revue internationale du droit d'auteur, 174, 10-1997, pp 60-123.
34. von Lewinski S.: International Copyright Law and Policy, Oxford University Press, Oxford 2008.
35. Zekos, G.: Economics and Law on Competition in 21st Century Globalization, Nova Publishers, New York, 2014.

*INTERNET SOURCES*

1. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1 January 1995, [https://www.wto.org/english/docs_e/legal_e/27-trips.pdf]
2. The Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 28 March 2019 (Federal Law Gazette I p. 404), [https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0019]
3. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971 and amended in 1979, S. Treaty Doc. No. 99-27 (1986).
4. The Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407.
5. Commission Staff Working Document Impact Assessment Accompanying the document Proposals for Directives of the European Parliament and of the Council (1) on certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods, SWD/2015/0274 final/2 - 2015/0287 (COD).

6. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A Digital Single Market Strategy", COM(2015) 192 final.
7. The Constitution of France, [https://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october 1958.25742.html]
8. The Constitution of the Portuguese Republic, [https://dre.pt/constitution-of-the-portuguese-republic].
9. The Constitution of the Republic of Croatia (Official Gazette no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14).
10. The Constitution of Sweden, [https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf].
11. The Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, [https://www.echr.coe.int/documents/convention_eng.pdf].
12. Croatian Act on Certain Aspects of Contracts on Supply of Digital Content and Services (Official Gazette no. 10/21).
13. Croatian Civil Obligations Act (Official Gazette no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21).
14. Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, OJ L 136, 22.5.2019, p. 1–27.
15. Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version) (Text with EEA relevance), OJ L 111, 5.5.2009, p. 16–22. (before: Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs, OJ L 122, 17.5.1991, p. 42–46).
16. European Commission, Online Platforms: Contrasting perceptions of European stakeholders - A qualitative analysis of the European Commission's Public Consultation on the Regulatory Environment for Platforms, final report, A study prepared for the European Commission DG Communications Networks, Content & Technology by: Prof. Annabelle Gawer, 2016, [https://www.surrey.ac.uk/sites/default/files/2018-11/online-platforms-contrasting-perceptions-european-stakeholders-report.pdf].
17. Explanatory memorandum, in: Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD).
18. International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accor-

dance with Article 27, [https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf].

19. OECD, An Introduction to Online Platforms and Their Role in the Digital Transformation, OECD Publishing, Paris, 2019.
20. OECD: The Evolving Concept of Market Power in the Digital Economy, OECD Competition Policy Roundtable Background Note, 2022, [www.oecd.org/daf/competition/the-evolving-concept-ofmarket-power-in-the-digital-economy-2022.pdf].
21. Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD).
22. Report of Le Chapelier on Dramatic Author's property (with the Decree adopted by the National Assembly), Paris (1791), Primary Sources on Copyright (1450-1900), eds L. Bently & M. Kretschmer, [www.copyrighthistory.org].
23. The Spanish Constitution, [https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf]
24. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly of its 183rd meeting, held in Paris on 10 December 1948, [https://www.un.org/en/universal-declaration-human-rights/].
25. The WIPO Copyright Treaty (WCT), 20 December 1996, [https://wipolex.wipo.int/en/treaties/textdetails/12740].
26. WIPO, Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), WIPO Publication, No. 615(E), Geneva, 1978.

*CASE LAW*

1. Judgment of 1 June 1999., *Eco Swiss China Time Ltd v Benetton International NV*, C-126/87, EU:C:1999:269.
2. Judgment of the Court (Fourth Chamber) of 16 July 2009, *Infopaq International A/S v Danske Dagblades Forening*, C-5/08, EU:C:2009:465.
3. Judgment of 17 February 2011, *Konkurrensverket v TeliaSonera Sverige AB*, C-52-09, EU:C:2011:83.
4. Opinion of Advocate General Cosmas of 16 May 2000, *Masterfoods and HV, Case C-344/98*, EU:C:2000:249.
5. Judgment of 8 October 2008, *Schunk GmbH and Schunk Kohlenstoff-Technik GmbH v Commission of the European Communities*, T-69-04, EU:T:2008:415.
6. US *Feist Publications, Inc. v. Rural Telephone Service Company, Inc.*, 499 U. S. 340, 345 (1991).