

Copyright Law 2030
– A memorandum on the future of the creative ecosystem in Europe –
[Courtesy translation of the original German text]*

I. Where do we stand?

(1) *Fundamental changes.* The regulatory approaches and instruments of copyright law are often still based on analogue thinking. For the past 30 years, digitalisation and connectivity have been putting the regulatory framework to the test. With the (European) legislator reacting only on a piecemeal basis, courts are increasingly taking on regulatory tasks.

(2) *Copyright law as a regulatory framework for communication.* Copyright law does not only provide the commercial infrastructure for creatives, the media and intermediaries. In fact, all types of content – text, images, audio-visual material – are subject to protection. As a result, copyright also determines how society communicates. Therefore, it plays a key role in a pluralistic democracy.

(3) *Mismatch between theory and practice.* While the law focuses on the sole author, the creative process is, in reality, dominated by collaboration. Often, it is not the creative people who hold the rights but corporations in the creative industries. Despite the ban on formalities, content in digital ecosystems may often only be exploited once it has been entered into private registers of collecting societies or platforms. A rigid term of protection allows successful items to enjoy monetization over a very long period of time, but it creates barriers to access for all protected subject matter, thereby making socially desired (e.g. creative) uses more difficult.

II. What do we need?

(4) *Reduction of complexity through differentiation.* The supposedly simple system of uniform, far-reaching exclusive rights for all types of protected content, coupled with narrowly drawn legislative limitations and exceptions, leads, in practice, to over-complex solutions. One size doesn't fit all: We need sector-specific approaches in order to avoid dysfunctional effects and provide adequate regulation for the different challenges of the individual sub-systems affected by copyright law.

(5) *Relief from false expectations.* As a society, we need to develop an understanding of copyright's core tasks: Copyright law must create the proper incentives and provide access rules that, jointly, promote creativity and protect authenticity and that are sensitive to social communication practices. It is not the purpose of copyright law to protect business models.

(6) *Plurality of governance instruments.* Large parts of copyright law's current regulatory content could be left to the market and to technology (governance by technology). However, this would require

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an appropriate legal framework (governance of technology). Copyright law is an integral part of this framework. Thus, regulators should always inquire whether copyright law is the right means to achieve their desired objective; copyright law's regulatory deficits shall not be tolerated with reference to other regulatory instruments.

III. What do we have to do?

(7) *Visionary thinking.* Any modern copyright law must take into account trends and scenarios of the near future. To this end, the European academic community should work together and submit joint proposals – proposals which may put the existing European or international legal framework up for discussion. The institutions of the European Union and its Member States should promote this research programme and pay attention to its results.

(8) *Inter- and intradisciplinary research.* In order to better understand the specific rationalities of the sub-systems affected by copyright law, we need knowledge from the technical and social sciences. We must draw on this knowledge to regulate the creative ecosystem appropriately. In addition, we need to break down the silo thinking within the legal community. For example, we should be sensitive for the implications for labour law, data protection and contract law. Finally, we should take into account the difficulties of law enforcement in an international context.

(9) *Sector-specific regulation.* We need careful empirical and normative analyses of the various sectors within the creative industries and their interaction – both with one another and with their neighbouring systems. On this basis, we will be able to develop tailor-made regulation for the individual sub-systems that allow us to better address the many different environments of copyright law.

(10) *Develop a new architecture.* The copyright law of the 21st century must learn from past experience but should not stick to the instruments and solutions applied in the analogue age. Digital, internet-based uses require modified (sector-specific) regulation. One possible solution is a shortened term of protection; any renewal could be subject to fees and registration. This would incentivise right holders to evaluate the subject-matter's economic potential and would strengthen the public domain. Publicly controlled registers could relieve the system and foster exploitation and accessibility in the interest of both stakeholders and the general public. At the same time, authors' moral rights should be strengthened in the digital context.