DIANA COCORU

COPYCAMP 2017
CONFERENCE REPORT

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The Internet of Copyrighted Things

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CONTEXT AND INTRODUCTION

CopyCamp is an international conference devoted to copyright issues. It is an event that has been organised each year since 2012 by the Modern Poland Foundation in Warsaw, for representatives of culture institutions, the media, creative sectors, and academic, legal, political and non-governmental circles to gather and discuss the influence of copyright on the circulation of cultural goods and social changes taking place all over the world.

From 28 participants primarily from Poland in 2012, CopyCamp has become, between that first edition and the latest one in 2017, a reference event in Europe, attracting more than 300 participants from across the continent and beyond. This year the conference gathered 60 guests from 21 countries, who shared their expertise during presentations and workshops with participants. The teaser video is available here (https://www.youtube.com/watch?v=VI41wVHs4MI and a five-minute summary video (https://www.youtube.com/watch?v=d78EZ2yzFBM) is also already available.

The sixth edition, in 2017, had the aim of broadening the scope of the debate about exclusive rights, hence the title "The Internet of Copyrighted Things" (https://copycamp.pl/en/).

In the view of the author of this report, going back to the origins of copyright, its initial rationale as a legal concept was to encourage creativity and creation by assigning an intellectual-property right which allows exclusivity for publishing or selling the created material. It is a legal protection created hundreds of years ago which initially applied only to copies of books. Its evolution over time saw copyright law granting exceptions and limitations in order to adapt to daily realities. With the transition from the analogue world to the digital one, even more exceptions appeared to be needed, leading to what seems an increasing tension between different categories of stakeholders. This tension reflects the struggle between the tendency to be loyal to traditional business models versus the adoption of new trends of creation where the intermediary layer of distribution and dissemination is progressively eliminated, and where almost everyone seems to become a consumer and a provider at the same time.

This evolution begs *the question of whether current copyright laws are fit for today's society, with its new models of creation, distribution and consumption, or whether copyright in its current form is increasingly becoming a blocker of culture and creativity, and in general an article of law mainly understood only by lawyers and opposed by the average citizen and Internet user*. This divide has led to the review of the Copyright EU Package, which began a few years ago, with the aim of modernising the current laws. Through this process to date, there continue to be a broad range of stakeholders who consider the draft proposals unrepresentative of today's realities.

In this context, the sixth edition of CopyCamp established the goal of talking about culture, science and education, and of going beyond the predictable topics generally addressed in a conference dealing with copyright as an exclusive right. This year, the guests have also looked at themes from daily life, such as agriculture, health, food, heritage digitization, self-driving cars and fashion, music remixes, tractors and software, in an attempt to understand how exclusive rights are used in real-life scenarios and what issues may arise.

The aim of the following sections of this report is to provide brief summaries of some of the most popular presentations in the view of participants, as well as to present an overview of topics not generally considered copyright-related, though in fact they are. Before concluding, the report also dedicates a section to policy and legislative challenges faced in the midst of EU copyright reform currently in the hands of the European Parliament and the EU Council.

THE FASHION INDUSTRY: APPROPRIATION, ILLEGAL COPYING AND CORPORATE SOCIAL RESPONSIBILITY

This section presents dangers posed to cultures from which various designers borrow without due consideration for the actual meaning and importance of the appropriated cultural symbols.

As presented by Ariele Elia from the Fashion Institute of Technology in New York City, appropriation is ”the act of taking or using things from a culture that is not your own, especially without showing that you understand or respect that culture” (*Cambridge Dictionary*'s definition). According to the public's understanding, appropriation occurs when a style leads to racist generalizations or stereotypes regarding its origin, yet is deemed to be high fashion, cool or funny when the privileged utilize it for themselves.

In order to assess whether it is a case of culture appropriation, there are several essential questions. Where does law come in? Why is it important to protect cultures? How to legally protect cultural products? And is there a balance between creative commons and protections?

To answer the first question, the three S's play a key role: *Source* (who is referenced?), *Significance* (does it have special importance?) and *Similarity* (is it a carbon copy?). Applying this analysis developed by practitioners of fashion law, Ms Elia showed various concrete examples of how appropriation is reflected in fashion design and what the consequences are.

> ”Culture ignorance is no longer an excuse”
>
> *Ariele Elia, referring to the quote below from Princess Gabbara in* Ebony *magazine*

Ms Elia used examples involving Gucci and Chanel, the influence of hip-hop music and rapper style, dreadlocks and design inspired by African traditions or American Indian face painting, to reflect on how designers must be aware of sensitivities or they may face the consequences of their negligence. Such consequences can lead to criticism in mass media and the community, for reasons explained in this quote by a fashion commentator: ”That kind of negligence reduces a centuries-old look to just another trend when it's so much deeper than that. And it's downright insulting when far too many Black folks are taunted, labelled as 'ghetto' and discriminated against in the workplace for sporting the same exact hairstyle” (Princess Gabbara in *Ebony*).

"When people perceive us as something you dress up for Halloween, you stop perceiving us as people"

Ariele Elia quoting Dr Jessica Metcalf

In order to 'get it right', Ms Elia's advice is to collaborate with culture institutions and show the process and values behind a certain appearance, with the aim of showing mutual respect. For example, modesty is an important value within Navajo culture (Native American: https://en.oxforddictionaries.com/definition/native_american), and dreadlocks (Rastafarianism) are a symbol of power and pride to stand against those oppressing the black diaspora. Just giving cash or showing some pictures is not enough to honour the cultures and values which stand as inspiration for fashion design.

When it comes to the designer's role in ethical practices in the context of counterfeit, the role of corporate social responsibility (CSR) comes into play. According to Magdalena Płonka and Joanna Porayska (MSKPU in Warsaw), CSR covers the overlap of three operational areas: human rights (people), ecology and other living beings (animals, for example). Among these three areas, it seems that animals are the most sensitive issue for customers. Links with fashion include, for instance, the way in which animals are treated in the process of clothing production (including fur production). The human-rights component of CSR arises in the elements of fair trade and employee rights (such as outsourcing garment production to developing countries). While designers, according to a survey presented during CopyCamp, are considered to contribute to CSR up to 21 per cent, the presenter made the point that nobody speaks about their rights and the importance of securing their intellectual property. A solution in this sense is the certification system as a quality-assurance mechanism.

HOW DOES OPENNESS GET ALONG WITH EXCLUSIVE RIGHTS? THE CASES OF OPEN SOURCE, OPEN AGRICULTURE AND OPEN HARDWARE

According to Mirko Boehm (Open Invention Network, based in the US), there are two extremes in people's relation to content, products and beyond: the liberal-economic stance, which considers everything to be property, versus the opposite extreme, where it is considered that the very concept of property is theft.

CopyCamp participants heard presentations covering the aspect of ownership in Free and Open Source Software (FOSS) Licensing, the patenting of plant seeds, challenges and benefits of Open Agriculture and consequences of Open hardware for projects and society at large.

During the presentation "The concept of property in Open Source in a hybrid open/closed world", Mr Boehm looked at how the notion of Openness fits in the world of software, and more specifically how the notion of ownership fits into a world where code is free to use, study, modify and redistribute (which is the basic definition of Free and Open Source Software).

Two contrasting paradigms are the individualistic one, which says that the author of software gets to decide what can be done with the software, versus the collectivist approach. The FOSS community is averse to authority and delegated decision-making power. What Open Source does is produce common goods in the absence of a central authority, yet it needs authority to manage the use of those goods. To do this, it relies on the rule of law of property, because there is no central authority that can manage access to common goods.

> "If copyright did not exist, we would invent it today to make FOSS viable"
>
> *Mirko Boehm*

Taking the principles of Open Source (collaborative ecosystem, freedom to re-use with very few constraints, and so on) and applying them beyond the software world, participants heard about Open Agriculture, Smart Farming and Open Hardware.

In speaking about Open Hardware, Mitch Altman (Cornfield Electronics in San Francisco) emphasized that while everyone generally says that patents encourage innovation, in practice this is actually not the case. Mr Altman owns patents including TV B-Gone (a remote control which can turn off all TVs in public spaces). Starting from a personal story told in a very engaging manner, he shared his direct experience of creating a product which provides the solution to a problem that affects everyone. Aside from how costly it is to go through the process of obtaining a patent, that exclusive protection should presumably offer the inventor the incentive to create more, by giving him or her a monopoly for putting the idea out in the world and making money from it. This was underlined as the old paradigm defined by "Mine! You can't have it!" / "I'll sue you!". This approach leads to much money made by a small number of beneficiaries, and to the situation where the majority of people cannot really use a creative idea until the patent expires.

The new paradigm says ”Yo, check it out!” / ”I'll help you!”. This makes money for some while providing education for all and, in this way, innovation is encouraged. If we start with the idea that a solution was invented to benefit all, permitting it to be copied means more people can benefit from it, which would not happen with a proprietary product. However, if protection is needed, the recommendation was to use trademarks, which require that the name is used only with the permission of the trademark holder.

> ”Share! It's good for you, it's good for everybody else”
>
> *Mitch Altman*

When it comes to Open Agriculture, Krishna Ravi Srinivas (Research Information System for Developing Countries in New Delhi) began the discussion with seeds and plants and bees, passing through different models, for example of governing rights and obligations pertaining to seeds. According to Mr Ravi Srinivas, the reality we witness today is that the seed industry sees a monopoly of a few companies, and an increasing number of seed types are protected under patents and by trade secrets. This had led to a proposal in 1999 for Germplasm to be shared on the basis of GPL licensing terms. This would ensure that plant breeding is not constrained by patents, or by restrictions in Material Transfer Agreements, and thus would be available for further development. Over time, two different models developed. One was based on a pledge to use seeds as one chooses, without restricting others' use of those seeds or their derivatives by patents or other means, and to include this pledge with any transfer of these seeds or their derivatives. The other model was based on German contract law and creates binding obligations and confers rights to the three involved parties (licensor, licensee and beneficiary). While the first model uses the pledge as an acceptance of terms, having enforcement as an issue, the second model contains extensive terms and conditions modeled on contract law and practice and principles from GPL. The latter might be more suited to firms keen to have a binding contract with obligations, and therefore enforcement is not an issue. Both models, however, need more work both in theory and practice.

Along with seeds, Mr Ravi Srinivas explained that another sector which can apply principles of access and benefit-sharing are bees and bee-keeper communities. A group in Italy has proposed that Open Source Licensing be used to safeguard Bee Genetic Resources. It uses the Open Source seed model with fair and equitable benefit-sharing that links access and use with sharing of benefits. The Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture recognize this approach.

Guest speakers highlighted through their presentations various reasons for supporting Openness principles in agriculture. Mr Ravi Srinivas focused on the reason that once seeds are patented they can no longer be widely and easily used for a certain period of time. But another reason given by André Rocha (Farmlabs Initiative, based in Portugal) is that given resource scarcity, we need to be more efficient in the way we produce. Mr Rocha mentioned that research shows that there will be a 69 per cent increase in food calories required to feed our projected population of 9. 6 billion people by 2050 (compared to 2006).

In speaking of Open Agriculture, a definition is needed. First, Mr Rocha explained that Open Source is defined as a "media-specific and contextual phenomenon" (Lanzara 2003), hence it is linked to specific interests and specific communities. He continued by saying that according to MIT, OpenAg is "an open-source community building an ecosystem of food technologies to create healthier, more engaging and more inventive food systems".

"The farms of the future are all about survey drones, fleet of agrobots, farming data, texting cows, tweeting plants and smart tractors"

André Rocha

However, as Mr Rocha explained, what is needed is that all related initiatives have the physical and social communities supporting them. The reality is that farmers are not yet engaged. There are various projects which aim to bring the communities of Open Source, Open Hardware and Agriculture together. For example, Open Source Ecology is a global-village construction where they provide instructions to build anything from tractors to housing to 3D printing and everything else one can imagine in a farm of the future, using Open Source. Another initiative is Farmlabs, which aims to build the physical structures and also to adapt test fields for people to work with these technologies, to create their own results and to gain trust that these new methods are as accurate as needed and that the methods thus receive more frequent use.

According to Mr Ravi Srinivas, precision agriculture and big data in agriculture can transform the industry through the Internet of Things into an operation that is data--centric, with farmers making decision based on real-time data backed by analysis and support. For Open Data in Agriculture there can be two extreme situations: (1) a closed proprietary system, in which the farmer is part of the integrated food-supply chain, and (2) Open and Collaborative Systems, in which farmers and others have options to

choose and collaborate on. According to him, we can build an open, collaborative system that enables data-sharing through creative commons, with or without infrastructure for collecting and analyzing real-time data. However, what is needed is to assess whether farmers really need all this and will benefit from it, or whether this will become yet another technology reducing their control in food production.
Some of the *key questions* that Mr Ravi Srinivas raised were:
— How adequate are creative-commons licenses for the challenges presented above?
— Can we develop models based on Open Source and Open Data for use in agriculture and which would become guiding principles?
— Farmers are also generators of data and users as well, so what licensing model can help the most?
— Who owns the collected and aggregated data, and should farmers be considered mere users who contributed data for free?

A final thought was raised by Mr Ravi Srinivas, underlining that IoT in agriculture may be trickier from an Open Source perspective, as issues including privacy, users' rights over data contributed and governance of data raise many new questions.

ROBOTS, AI AND COMPUTER-GENERATED INTELLECTUAL PROPERTY

There is great interest in robots and artificial intelligence (AI). But what does AI actually mean? This was a question raised by Marek Porzeżyński (Future Institute in Poland). Mr Porzeżyński continued by explaining that this is an area of computer science that emphasizes the creation of intelligent machines that work and react like humans. Some AI activities include speech recognition, learning, problem solving and planning. An example of weak AI is the personal assistant, while AI equipped with cognitive abilities is considered strong AI.

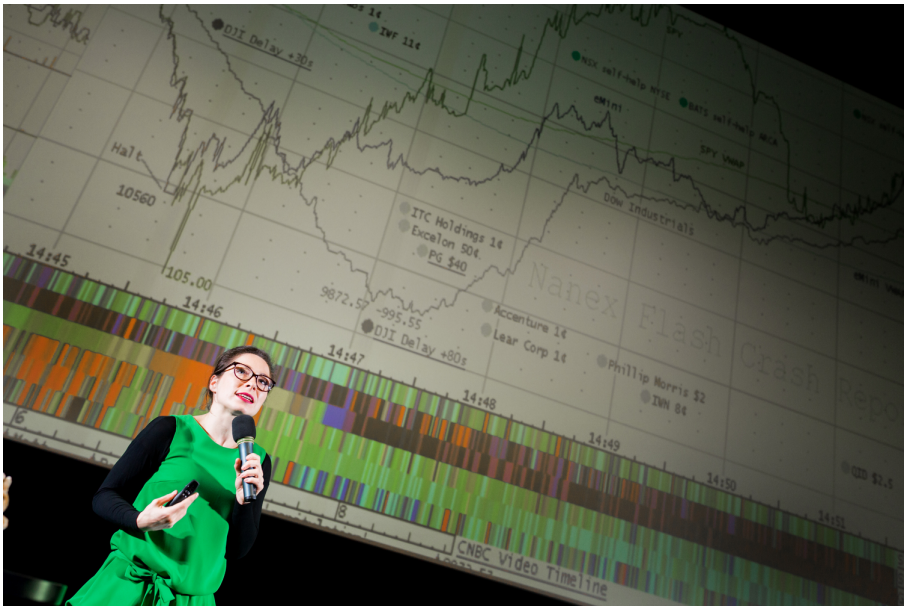
Presentations relevant for this topic underlined that in sum there is no need for a lex robotica, that we speak about artificial intelligence yet "real AI" does not actually exist (yet), and that we expect a lot from AI but in fact it does not provide what we expect.

According to Tomasz Zalewski (LegalTech Polska), "real AI" is a machine as skillful as humans. We have witnessed brilliant AI achievements: examples include autonomous cars, software defeating the best human player at Go 20 years ago, and another recent case of software defeating the chess champion. However, there are severe limitations. AI is focused on narrow tasks, but it has no genuine intelligence and no self-awareness. As explained by Martyna Czapska (prawnointelektualny.pl), there is neither the possibility nor a need to mimic human consciousness. And there is no threat either, as underlined by Mr Zalewski, of legal robots replacing lawyers, because such robots cannot put arguments in context, they cannot even formulate arguments and they are mere chatbot algorithms which in some cases even breach user privacy (for example, Chatbot Lawyer Do Not Pay).

According to the famous life cycle of emerging technologies developed by Gartner, one can see that AI is in the phase of "peak of inflated expectations". In Mr Zalewski's translation, this means that we expect a great deal from AI but in fact it does not provide what we expect. At least not yet. The stage that follows is disappointment. Disappointment at not getting what we expected to receive from AI.

In various sectors, despite the Gartner cycle mentioned above and those inflated expectations, there seem to be a high degree of enthusiasm for what AI can do. For example, in the music sector, as explained by the artist Nick Briz, machine-learning can be used for music sampling and music creation. Algorithms can reap the metadata of any selected beat, extracting the pattern of the beat and then reproducing the same beats with different sounds. Another case scenario, presented by the lawyer Radosław Radwan, is Vaporwave, which is a micro-genre of electronic music and an Internet meme that emerged in the early 2010s.

In the marketing and social-media sector, targeting and product placement are increasingly being generated by algorithms. According to Katarzyna Szymielewicz (Panoptykon Foundation in Warsaw), the down side is that under the present circumstances algorithms shape what one think about politics, health and everything. For this reason, Ms Szymielewicz calls strongly for algorithmic transparency. The General Data Protection Regulation, which will enter into force in May 2018, contains some solutions for this. Moreover, the GDPR's Article 20 can help, in that it regulates who owns data. However, if the data is generated by algorithms, it is no longer the user's, and there is no right to port it. While transparency and the portability right can be part of the solution for challenges mentioned above, the key question raised by Ms Szymielewicz remains whether we can make algorithms really accountable.



In her presentation "Do androids dream of copyright?", Ms Czapska made the distinction between the two types of computer-involved works (computer-assisted works and computer-generated works), explaining that the latter draws the attention in the realm of intellectual property. However, there is no law to generate copyright to a computer program itself. She presented three main potential approaches: to grant copyright for the programmer (the company), for the user (considering that s/he initiates the process which leads the computer to create work) or for the programmer and the user together (considering that the user feeds the data which makes the program create).

Ms Czapska raised the question of whether we really need copyright for AI. She went on by explaining that the purpose of copyright is to encourage acts of creation (the economic aspect of it) while the second element is the emotional bond between an author and his or her work. That bond does not exist for AI, and as far as the economic part is concerned, robots do not need that either. As recognized by the legal counsel

Damian Flisak, there are indeed complex issues such as civil aspects of robot activities and consciousness, as well as the reality that AI is changing society's business models, as well as our mobility patterns (autonomous cars, for example), as emphasized by Iga Bałos (sprawnaedukacja.pl). However, according to Mr Flisak, intellectual property is not the most crucial point and we actually have effective mechanisms in place which enable protection: technical measures, trade secrets, content protection. Moreover, according to him, machine-generated works do not belong to the copyright area at all, because only human beings can be authors of copyrighted works. Ms Czapska, on the other hand, underlined that it becomes harder and harder to draw the line between what was created by a human and what was created by a machine (see the case of the Monkey Selfie, which became so popular, while it seems pretty obvious to conclude that the monkey could not be the beneficiary of the exclusive right).

TOWARDS A REDEFINITION OF OWNERSHIP?

Policy-making takes a current legal framework and adapts it to new realities. The copyright environment is rapidly changing in the digital world, and many of its concepts are no longer adjusted to society's way of consumption and/or dissemination. According to Aaron Perzanowski (Case Western Reserve University School of Law in Ohio), in our day the relation with the copy has changed. Previously, the copy was the source of consumer ownership and behaviour (with video cassettes, DVDs, CDs, we all had physical copies around, which is how we interacted with copyrighted works). Today, distribution looks different: Kindle, video streaming such as Youtube and Netflix, music streaming accessed through cloud or streaming. According to Mr Perzanowski, consumer-ownership interest as we knew it has disappeared from the market in many respects. As this has happened, we have seen the legal system struggle with how to deal with the new ways of consumption of copyrighted works, when goods are disembodied from any physical instantiation.

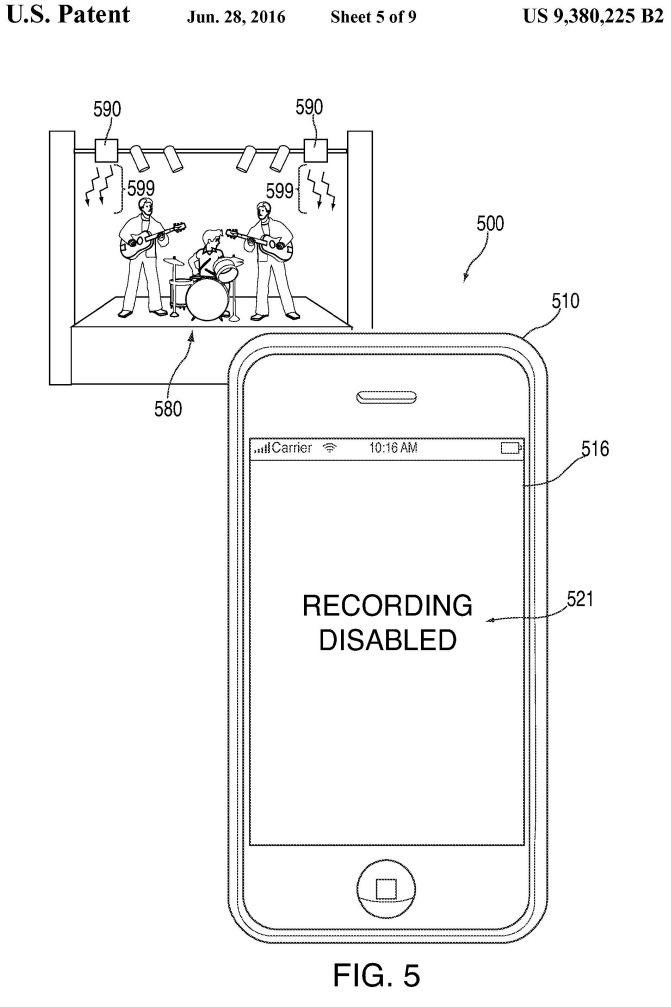


FIG. 5

U.S. Patent 9,380,335 (from the presentation of Aaron Perzanowski)

Mr Perzanowski continued his presentation by speaking about the increasing tension between the reality of the market and the legal system. There are exceptions which no longer take into account all case scenarios, or collective-management systems which are no longer adapted to how creative content is distributed. He emphasized that we need a redefinition of sales and of ownership itself. Embedded software and network capability has undermined user control over devices you buy (from a simple coffee machine to a tractor). The legal system needs to develop a new framework and new vocabulary to respond to new problems which are appearing in practice.

According to Julia Reda (a member of the European Parliament), the current EU legislative review tries to respond to some of these new challenges. In the proposal for a Copyright Directive which is now under negotiation, there are some good elements, but also bad parts. The showdown comes at the end of this year, only several months away, when the European Parliament and the EU Council will presumably have adopted their respective first reading positions. Ms Reda encouraged stakeholders to tell a clear story about what is at risk and which problems need to be avoided. As she explained, two elements of this proposal generated the highest controversies: (1) free uploading and hosting of files on the Internet, and (2) the technique of hyperlinking, which is basic in how we communicate and participate on the Internet. The first is dealt with in Article 11, which obliges the payment of a license fee for linking to newspaper articles on the Internet. The second is dealt with in Article 13, putting an obligation on platforms to install filters to automatically identify copyrighted content or face liability if they fail to do so. Upload filters and the laws for sharing links to news content have chilling effects on online participants, and undermine what makes Internet so unique.

According to other CopyCamp guest speakers, further aspects requiring the attention of policymakers are the digitization of heritage, as presented by Maksym Naumko (Creative Commons Ukraine), collective-management organizations and transparency of contracts, as presented by Natalia Mileszyk (Centrum Cyfrowe in Warsaw), the adaptability or lack thereof of copyright to the education sector, as described by Delia Browne (National Copyright Unit in Australia), text and data mining, as presented by Peter Murray-Rust (University of Cambridge), and the legalization of non-commercial sharing as explained by Krzysztof Siewicz (Modern Poland Foundation).

Ms Reda drew attention to the fact that the situation in the European Parliament during the last year developed in a bad direction, with several committees voting on opinions which have not been helpful. She explained that the new lead rapporteur, who is German (MEP Axel Voss), seems to be waiting until the new German government has formed (which will not happen before December) before he forms his opinion. Regarding the other arm of the co-decision, the EU Council, it seems that various member states are strong supporters of current copyright paradigms. However, according to Ms Reda, the Council's working style makes it more obscure, and she encouraged stakeholders to contact their respective governments and express their concerns, and to increase their use of local communication channels (social media, blogs, etc.).

As she summarized, there are several initiatives which address different pieces of the legislative proposal: ”Save the link”, ”Save the meme”, Copyfighters, ”Save Code Share” and ”Let's make copyright RIGHT RIGHT now for education”. Then there are some which provide needed tools to make voices heard, such as ”Call your MEP”. There are also quite a number of open letters which have been sent to policymakers. Although these initiatives are highly appreciated and welcomed, Ms Reda made the point that they seem fragmented and this fact should be addressed for greater success.

The copyright legislative review has generated great appeal among old and young. As presented by Bernhard Hayden (Young Pirates of Europe), 20 young people gathered and figured out what youth wants and laid it down in a position paper available on #copyfighters.eu.

Attracting new talent to copyright movements cannot be achieved if we all end up being sad and depressed with so much pressure on our shoulders, as pinpointed by Jérémie Zimmermann (an initiator of Hacking with Care). Mr Zimmerman explained that while passion is our fuel and it is powerful, it burns at the same time and can burn us, therefore we have to collectively cater to this passion so we will not be the ones burned. Care is a primary strategic objective because of the timeline we are working on — these issues

will not be resolved in a few years, thus we need to be resilient over time. And hence the importance of ”hacking with care”.

CONCLUSIONS

For CopyCamp's 2017 edition, guests examined daily-life themes such as agriculture, health, food, heritage digitization, self-driving cars and fashion, music remixes and tractors and software, in an attempt to understand how exclusive rights are used in real-life scenarios and what issues may arise. Guests have offered impulse statements and the general conference set-up enabled the exchange of views, learning from each other's experiences and a friendly environment to connect, to explain our respective concerns and to discuss ways of enabling a copyright framework which reflects our everyday realities.

ABOUT THE AUTHOR

Diana Cocoru is currently Director for Policy and Research at OpenForum Europe. She holds a degree in Law, one in International Economic Relations and a Masters in European Business Law. She has closely followed the EU copyright review from the very beginning of the process, in 2013. She has authored a research paper (http://www.openforumeurope.org/library/high-level-policy-paper-text-data-mining/) with policy recommendations for the text and data-mining exception, has coordinated the drafting and publication of an academic paper (http://www.openforumeurope.org/library/ofe-academic-paper-publishers-intellectual-property-right-implications-freedom-expression-authors-open-content-policies-2/) on the new press publishers' right, and is currently leading the online initiative Save Code Share (http://www.savecodeshare.eu/), aiming to preserve the ability to collaboratively build software online by broadly raising awareness about the unintended impact of the proposed Directive on code sharing platforms.

DISCLAIMER

The summaries of the speakers' presentations presented in this report are based on the author's notes. Although every effort has been made in good faith to reflect and to convey objectively the essence of the speakers' individual presentations, this report is not in any way binding or necessarily complete. Moreover, the views expressed in this report do not necessarily reflect those of the author or of the organizers of CopyCamp. Neither the author nor the organizers of CopyCamp should be held accountable for any claimed deviation from the original speeches.

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