

DIRITTO E POLICY DEI NUOVI MEDIA

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DIRITTO E POLICY DEI NUOVI MEDIA

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The Digital Single Market Copyright

Internet and Copyright Law in the European Perspective

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We live in an analogue world

MARIO FRANZOSI*

Abstract: digitization decomposes our speeches in bits or digits. In the digital world the speech is received instantly by all those who have access to Internet, namely two or three billions people. It travels digitally and is received analogously. The human mind is scarcely prepared for this new world. The legislators, even less. How can the law regulate the new phenomenon created by digitization? Either the copyright system adapts to the technological advantage that has evolved or it will perish. There is still hope, if we act promptly.

We live in an analogue world. The world presents nuances: there are infinite amounts of colors in our vision, infinite numbers of tones we can hear, infinite numbers of smells. There are no sharp passages in things; smooth passages instead.

This expression is natural, but can only be transmitted at a short distance. My voice can be heard here, but not there. With an amplifier, it goes a few meters from here.

Digitization decomposes our speeches in small atoms, in bits or digits. When it so decomposed, our speech can travel with the speed of light, and it is then received by a distant hearer, where it is re-assembled in analogue format. The speech is received instantly by all those who have access to Internet, namely two or three billions people. It travels digitally and is received analogously. The world is full of rumor, with 3 billion people speaking at the same time.

The human mind is scarcely prepared for this new world. The legislators, even less. Take for instance copyright laws. Italian copyright law is (better, was in 1941) a beautiful piece of law; I dare to say, a legal masterpiece. But it shows, as a human being, the problems of age. It received oft and on modifications, insertions, additions to comply with new necessities. The result is a patchwork of rules, not always

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manageable. But the challenge represented by digitization is enormous, and requires a profound reflection. How can the law regulate the new phenomenon created by digitization?

Medvedev, then President of the Russian Federation, said few years ago that Internet will cause the collapse of the entire system of intellectual property, and particularly copyright. A little more optimistic is Francis Gurry, general Director of WIPO. He notices that it is impossible to reverse technological advantages, and the changes that they produce. Resistance is vain, and the inevitability of technological change has to be accepted. This is especially true for the copyright system: so either the copyright system adapts to the technological advantage that has evolved or it will perish.

There is still hope, if we act promptly.

The law must change. The interpretation given by judges of the law must change. Look at the principle of territoriality. Copyright laws are territorial: they only consider behaviors that occur in the State. What the legislator says is valid in San Remo, but not in Menton; in Gorizia but not in Nova Gorica. The institutions are trapped in a territorial cage. And how about the operators? They are also trapped. Some believe they have an advantage in the present status of affairs, some do not. But the trap is not that of bad faith: is the trap of prejudice, of old thinking. I cannot accuse anybody of defending in bad faith wrong positions. The point is that we do not know what the new positions should be.

The law must be neutral to technology. It cannot fight against technology, but also does not need to foster it (and this also because there are some technologies that look good today but wrong tomorrow). The gist of the law is not to influence technological possibility, nor to maintain artificially moribund technology. The purpose of the law is to facilitate cultural exchanges, foster cultural dynamism. The law should be neutral. If it preserves moribund business interest, it becomes itself moribund and dies.

I am not that optimistic on the attitude of the European legislator (not to talk of the Italian). Take for instance Directive 29 of 2001 of the European Parliament. It says that several things have to be made urgently for copyright. What European legislators have done? Nothing. It is only in June 2015 that the European Parliament is advancing some proposals (A8-0000/2015; Motion for a European Parliament