

Avenues to restructure the copyright regime

Dr Sabine Jacques

CREATe

Centre for Competition Policy, UEA

Background

- ❖ Normative gap in copyright law: the current bundle of economic rights is not aligned with today's creative process and exploitation of the resulting work.
- ❖ Poort's argument: 'reasonable exploitation' + *guiding principles & catalogue regulation*.
- ❖ Rognstad's previous article: catalogue could include specific legitimate purposes as falling outside the right to reasonable exploitation (e.g. parody).
- ❖ Suggestion: *using cultural diversity as an overarching goal could provide opportunities to resolve conflicts between freedom of expression and proprietary rights (i.e. copyright).*

Comments on Poort's paper (another lawyer's perspective)

- ❖ Nice reminder that the economic rationale for copyright \neq maximum breadth of protection or maximisation of creative outputs;
- ❖ Role of courts? Legal certainty increased or decreased?
- ❖ ISPs: costs of false positives, but what about the cost related to ignoring false negatives?
- ❖ What's next?

Restructuring copyright through cultural diversity

- ❖ **Art. 2.1 UNESCO Convention on the protection and promotion of cultural diversity:** ‘Cultural diversity can be protected and promoted only if human rights and fundamental freedoms, such as freedom of expression, information and communication, as well as the ability of individuals to choose cultural expressions, are guaranteed.’



“Diversity is something Europe has in abundance, across the cultural spectrum.

We are home to an amazing amount of ideas, talent and creativity. World-class artists, creators, and the industry that supports them in their work.

At the same time, there is a dark cloud lurking. Piracy.”

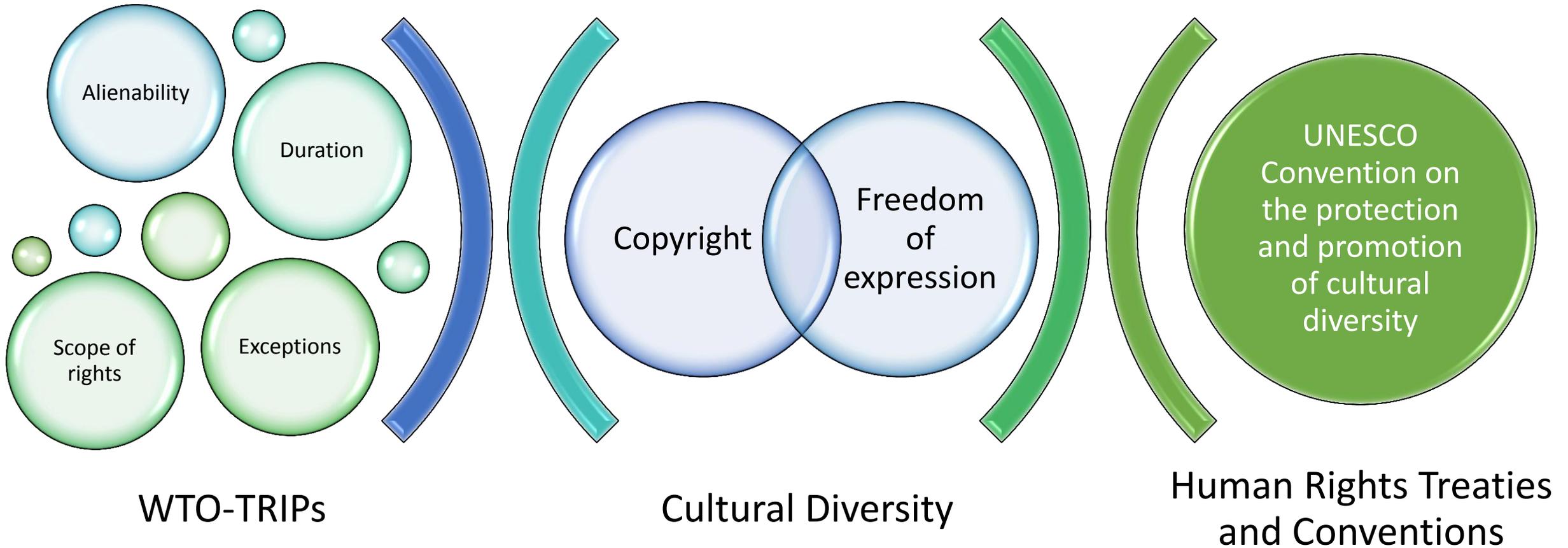
- Andrus Ansip at CEIPI/European Audiovisual Observatory event “Copyright Enforcement in the Online World”, 22/11/2016

The current reforms...

- ❖ Concerned about the 'Value gap'
- ❖ Wish to 'regulate ad-funded platforms'
- ❖ Increase reliance on AAPS
- ❖ Promote partnerships between platforms and RHs
- ❖ Require 'complaints and redress mechanisms'



Clash between copyright and cultural diversity?



Do platforms currently promote diversity in cultural works?

Remarks:

- Based on Kris Erickson and al.'s dataset
- December 2016, 38.5% of content previously uploaded in 2011 is not viewable to the public on YouTube due to copyright concerns (**32.1% blocked via Content ID**)
- Only a few videos attract most of the views – the **top-5** most watched videos, account for slightly over a half (**55.5%**) of all views while the top-10 account for almost a quarter (72.2%)
- Out of our cohort of 1839 videos, **only 27 videos** were effectively viewed in 2013 and only 20 remained in 2016
- As opposed to the absolute number of YouTubers sharing content, there is as little as **13 effective YouTubers** in 2016
- Algorithmic blocking mostly efficient **with sound recording and videos**

Table 1: General descriptive statistics

Descriptive statistics	2013		2016	
	N	Percent	N	Percent
Live	1471	80.0%	1088	59.2%
Manual copyright take down			118	6.4%
Algorithm copyright take down	265	14.4%	591	32.1%
Not available for other reason**	103	5.6%	42	2.3%
Total N	1839	100	1839	100

	2013	2016
Effective number of tubes viewed	27.2	20.2
Effective number of <u>youtubers</u>	-	13.6
Top 5 <u>youtubers</u> ' share of total views	-	55.5%
Top 10 <u>youtubers</u> ' share of total views	-	72.2%

*Algorithm take down

**This includes take down for other reasons than a copyright claim.

Conclusion

❖ What we have learned:

1. The current legal framework provides a conducive environment for 'cultural black hole'
2. Copyright presumption reversed in the online environment
3. Algorithmic decision-making plays a substantial part in the works shared on platforms
4. Digital fingerprinting technology suitable for some works but not others
5. Algorithms can have a positive effect on diversity if targeting the most popular varieties

❖ Cultural diversity should not be seen as undermining the economic rationale for copyright but restructuring copyright should take **both** into consideration

❖ This would reinsert balance ensuring better access and choices in the enjoyment of cultural expressions but also, contribute to promoting competition within the copyright system.

To be continued...