



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

ALAI
2021
Madrid



ALAI CONGRESS 2021: Sept. 29th to Oct. 1st 2021, Madrid

COPYRIGHT, COMPETITION AND INNOVATION

Scientific program – Draft 19-01-2021

Copyright and Competition laws are inherently related. In addition to protecting authors' interests, copyright laws play a significant role in fostering innovation and the development of efficient markets. However, unbalanced copyright protection might harm market competition and deter technical innovation. Correctly addressing this symbiotic relationship is fundamental in order to secure innovation, cultural and economic growth and overall societal development. The ALAI 2020 Congress will be devoted to exploring the inherent connections and tensions between copyright and competition laws, comparing national legal solutions and experiences, and assessing the benefits to enjoy and the hurdles to overcome for the development of markets, culture and society.

By granting exclusive rights in works to authors, copyright law fosters fair market competition and innovation. Similarly, limitations to these rights as well as restrictions regarding their exercise may be justified for the same purpose: to secure competition in specific contexts and foster further innovation. Market competition and innovation concerns are taken into account by legislators and courts when defining and interpreting the scope of protection granted under copyright, when designing which specific uses should be exempted (by means of statutory Exceptions and Limitations or Fair uses/fair dealing defenses) or when establishing statutory or compulsory licensing, or instances subject to mandatory collective management. Efficiency and market competition concerns may also explain specific licensing measures, such as interoperability requirements, standardization, as well as open licensing and cross-licensing adopted in software markets. The development of new products and services based on the Data Economy, specifically those relying on text and data mining and the reuse of vast public sector information, will offer a good opportunity to revisit the "internal" adjustments in copyright laws and examine their effects in the market.

Additionally, competition law may complement copyright policies. Competition (anti-trust) law may challenge specific licensing practices (i.e., refusal to license, abusive pricing, bundling, vertical integration) as well as, infringement practices. Collective licensing terms and prices may also be challenged in court as unfair or abusive (anti-competitive) and subject to mediation procedures or external price-fixing by government agencies. Further market concerns may also be addressed turning to general legal principles (other than competition law). Market distortions in the exercise of copyright may not only occur in specific instances where the rightholder has a dominant position in the market but also, regarding the enforcement of copyright, when the dominant position in a specific market is held by the licensee.

Market competition issues raise as technological markets evolve. Online multi-sided copyright-related markets (basically, users' platforms) offer an ideal context to assess the interaction of Copyright, Competition and Innovation policies. The last session will provide the opportunity to examine the challenges to enforce copyright in online markets (the so-called "value gap"). We will examine how these issues are being addressed in different jurisdictions (i.e., Art.17 CDSM Directive or Sec.512 USCA), bringing us back, in a circular manner, to copyright laws' internal adjustments. A closing keynote will ponder on the issues ahead for the development of online markets, and the role of ISPs in fostering or hampering competition and innovation, as well as the development of free speech and copyright enforcement in these markets.



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Day 1: Wednesday, 29th September 2021

19.45 WELCOME RECEPTION at the MUSEO DEL PRADO

Museo del Prado: Private visit to the Museum, followed by a cocktail reception.

Day 2: Thursday, 30th September 2021

Venue: CSIC – Consejo Superior de Investigaciones Científicas, C/ SERRANO, 117 - 28006 MADRID

8:30 Welcome and registration

9:00 Opening session

*President of ALAI
Spanish Government Representative
WIPO Representative
President of ALADDA*

SESSION 1: COPYRIGHT AND MARKETS

09.30 PANEL 1 – INTRODUCTION: COPYRIGHT LAWS AND GLOBAL MARKETS

This panel will offer a general overview of the inherent relationships between copyright, market competition and innovation, and how these relationships have a global impact, beyond national (or regional) copyright law regimes. As a comparative law overview, it will also present the several measures adopted in copyright laws aimed at fostering market competition and innovation. These may include the very definition of the scope of protected subject matter and of exclusive rights, the provision of exceptions and limitations and public domain, as well as specific licensing conditions envisioned for specific markets.

President: **TBA**

- *Keynote speech on Copyright, Competition and Innovation: the EU Market and beyond (20').*
TBA
- *Keynote speech on Copyright Adjustments to foster market competition and innovation (40') –*
TBA

Discussion (Q&A)

11:00 Coffee break



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11:30 PANEL 2 - LICENSING MARKETS

This panel will examine different licensing practices, in different copyright markets, and their impact on innovation and market development. In specific markets, statutory licensing mechanisms, compulsory collective management or even FRAND conditions may be required to facilitate access to protected subject-matter and prevent anticompetitive results in downstream markets. “One-stop-shops” and “Joint tariffs” (Art.47 Swiss Law) may also respond to similar concerns. Open licensing also has a significant impact in different markets. For instance, the publishing sector is being re-shaped as open licensing and open-access repositories develop. As far as software, open licensing (FLOSS) as well as the adoption of consortia and standards commonly applied in patents, and package licenses seek to promote market efficiency and avoid anti-competitive practices. (4 x 15’)

President: *TBA*

- *Collective licensing models conducive to market competition - TBA*
- *Software Licensing: FRANDs & Open source*
- *Academic Publishing: open-access and Data Bases – TBA*
- *And a “Right to repair”? – TBA*

Discussion (Q&A)

13:15 **Lunch** (*in the garden of the Residencia de Estudiantes, nearby Congress venue*)

15:00 PANEL 3.1 –TDM AND PSI IN THE DATA ECONOMY

The development of new products and services based on the Data Economy, specifically, those relying on text and data mining (TDM) of copyrighted works and the reuse of vast public sector information (PSI), will offer a good opportunity to reflect on the internal adjustments of Copyright laws to foster market competition and further innovation. This panel will examine how the specific measures adopted in copyright laws (scope of rights and protected subject matter, E&L and fair use, licensing mechanisms, etc.) may affect the development of new products and services in these markets, either facilitating it or creating entry barriers. National solutions vary widely; for instance, the ecosystem for the growth of start-ups and the development of projects based on data and AI technologies in the EU *acquis* (Databases, PSI reuse, CDSM Directives) differs from the one in the USA (Fair use and Freedom of Information Act), for instance. In between, a variety of national laws and policies offering different outcomes for the development of new products, services and markets as well as technological innovation based on data. National solutions and effects (as gathered in national reports) will be examined in the first part of this panel, before opening a general debate, also with stakeholders, after coffee break.



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President: **TBA**

- *TDM (machine reading) and Copyright: General report (30') – TBA*
- *PSI reuse and Copyright: General report (30') – TBA*

16:00 **Coffee break**

16:30 **PANEL 3.2 – STAKEHOLDERS DEBATE ON TDM AND PSI (4x15')**

- *Copyright Owners: to license TDM or not to license TDM? – TBA*
- *Publishers: how far should the “public task” cover? – TBA*
- *Research centers, Libraries: as E&L beneficiaries - TBA*
- *Start-ups: between legal uncertainty and market entry barriers - TBA*

Discussion (Q&A)

18:00 **End of session**

SIDE EVENT

18:30 **ALAI – European Authors’ Right Prize supported by GESAC**

Award Ceremony

It will take place at Residencia de Estudiantes (nearby Congress venue). It is open to ALAI participants as well as to Students and Young professionals. The ceremony will be followed by a cocktail around 19:30. Ceremony will end around 21:00.

Free evening



Day 3: Friday, 1st October 2021

Venue: CSIC – Consejo Superior de Investigaciones Científicas, C/SERRANO, 117 - 28006 MADRID

SESSION 2: MARKET ADJUSTMENTS

09:30 PANEL 4 – COPYRIGHT LICENSING AND ANTI-TRUST

As recently reminded by the CJEU's Advocate General Szpunar (*C-762/19, CV-Online Latvia*), national courts must ensure that the exercise of copyright does not result in an abuse of a dominant position, within the meaning of Article 102 TFEU or of national competition law, either on the original or secondary markets. Competition authorities, as well as courts and arbitrators, play a decisive role in shaping the relationship between copyright exercise and market competition, when qualifying specific copyright licensing practices as unfair, abusive or anti-competitive. Refusals to license (a natural part of exclusive rights), vertical integration of markets, tying sales and bundling of rights/means of exploitation... may hinder competition and innovation, reduce consumer choice and restrict output (when acquired rights are not, or only partially, exploited). This may apply both to off-line and online markets; see EU Commission *Final report on the E-commerce Sector Inquiry* COM(2017)229final(10.5.2017). Additionally, general legal adjustments (other than competition law) may also apply to secure competition and innovation in the market. This panel will examine and compare cases and solutions in different jurisdictions. (3 x 20')

President: **TBA**

- *General report: Overview of anticompetitive practices (national reports ...)* - **TBA**
- *Essential facilities and Abuse of dominant position (102 TFEU)* **TBA**
- *Additional adjustments: Abuse of right, de minimis ("ius usus inocui")* – **TBA**

Discussion (Q&A)

11:00 Coffee break

11:30 Panel 5 – COPYRIGHT PRICING

Copyright prices are often scrutinized from a competition law perspective. Licensing terms and pricing, mainly under collective licensing, may be challenged in courts as unfair or abusive (anti-competitive). Alternatively, in order to avoid unfair or anticompetitive outcomes, licensing terms and pricing may be subject to mediation and arbitration procedures or even set by independent government authorities. This panel will examine some of these cases and solutions (3 x 20')

President: **TBA**



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- *General report: Tariffs challenged in court as unfair or abusive, discriminatory pricing (i.e., CJEU: C-525/16, MEO v. GDA) – TBA*
 - *Arbitration and Mediation mechanisms (Germany? Canada?) - TBA*
 - *Price set by government authorities (Spain) - TBA*
- Discussion (Q&A)*

13:15 **Lunch** (*in the garden of the Residencia de Estudiantes, nearby Congress venue*)

SESSION 3: ONLINE MARKETS

15:00 **PANEL 6.1 – THE “VALUE GAP” AND BEYOND**

This panel will examine the specificities of online copyright markets and how different jurisdictions are dealing with the so-called “value gap” problem. Online markets are evolving around a few ever-stronger platforms or operators, opening challenges both for market competition (abuse of dominant position) and for copyright enforcement. Specific provisions aimed at fostering the development of online markets adopted 20 years ago (i.e., ISP safe-harbors in the 1998 DMCA and 2000 e-commerce Directive) may now need readjustment, as technology and markets evolve, so as to enforce copyright in these markets. Current national solutions range from strict liability exemption regimes (i.e., sec.512 DMCA) to the special copyright rule in Art.17 CSDM Directive and its national implementations. Yet a new liability regime set for online platforms is proposed in the upcoming EU Digital Service Act. (3 x 20’)

President: **TBA**

- *General Report: Overview of the “value gap” problem and available national solutions (from sec.512 DMCA to Art.17 CDSM Directive and its national implementation) – TBA*
- *ISP Liability beyond Copyright: Cloud services, Free speech, Privacy and Data protection, etc. – TBA*
- *The upcoming EU Digital Services Act (a general liability Safe Harbour) – TBA*

Discussion (Q&A)

16:30 **Coffee Break**

17:00 **PANEL 6.2 - CLOSING KEYNOTE**

President: **TBA**

- *Market competition and ISPs ... What is next? – TBA*



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18:00 **End of Congress**

18:15 **ALAI Assembly**

18:30 **End of ALAI Assembly**

21:00 **GALA DINNER** - *At the Casino de Madrid, with musical entertainment.*
<https://www.casinodemadrid.es/casinoa/index.html>

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