

The Intersection of Competition Law and Intellectual Property in the Markets for Digital Content in Europe

Europe is a very interesting setting where to explore the intersection of competition and intellectual property rules with regard to the commercial exploitation and the licensing of creative works in digital formats. Even though the European Commission is currently seeking to create the conditions for the establishment of a so-called Digital Single Market for creative content like music, movies and books, such markets are unlikely to develop at pan-European level if one considers how different and heterogeneous the various national jurisdictions are, both culturally and technologically (e.g., the quality and diffusion of broadband services is still very different in the various Member States).

From a legal point of view, the national dimension of copyright does not facilitate the licensing of rights on creative works on a multi-territorial basis and is at odds with the intrinsically borderless nature of the Internet. Despite the harmonization of copyright law at a European level in the last two decades, every Member State still has its own body of rules with a territorially limited scope (especially in the field of copyright exceptions and limitations). In addition, institutions like authors' collecting societies in the music sector and content owners like film producers have traditionally licensed their repertoires and titles on a national basis. This situation still occurs since content licensors have found the adaptation of their businesses to new digital settings and their expansion on a multi-territorial basis either too difficult or economically not convenient.

The seminar provides a few examples of how the enforcement of EU competition law has impacted so far on the development of new business and licensing models. In the same way as in other sectors, the EU Commission has enforced competition law to achieve both the objectives of unifying markets for digital content and avoiding the creation of market conditions in which dominant players can abuse of their position to set out unfair conditions of access to digital works by consumers or to hinder the emergence of new products or services.

As far as the unification of markets is concerned, the most relevant example is given by the 2008 *CISAC* decision, in which the EU Commission sanctioned European collecting societies for their reciprocal representation agreements through which they restricted and partitioned the licensing of copyright on musical works on a strictly territorial basis, to the detriment of commercial users and consumers of musical works.

As regards the development of new products and services, the EU Commission is currently examining the scope of very broad licensing agreements that, in certain jurisdictions, end up bundling online and broadcasting rights for audio-visual works and assigning them to TV broadcasters and/or providers of cable TV services on an exclusive basis. These agreements seem to have anti-competitive effects by slowing down the development of web-based offerings of movies and TV series that different undertakings might be willing and able to offer in innovative and convenient ways for consumers.

With regard to the preservation of competition in the markets for digital content, finally, it will be worth paying attention to the conditions under which the EU Commission eventually

approved the mergers between major music publishers (i.e., Sony's acquisition of the publishing branch of EMI) and major record producers (i.e., Universal's acquisition of EMI's recording business) in April and September 2012, respectively.

Biography

Giuseppe Mazziotti is Research Fellow and Manager of the Digital Forum at the Centre for European Policy Studies (CEPS) in Brussels. He is an Italian attorney specializing in intellectual property law, media law, antitrust law and information technology law. He runs his own consulting firm - [Mediartis](#) - and works as 'Of Counsel' with Rome-based law firm Nunziante Magrone. From 2009 to 2011 he was Assistant Professor of intellectual property law at the University of Copenhagen, where he worked also as leader of research projects funded by the EU Commission such as MEDIADEM (media policy-making in EU member states) and LAPSI (legal aspects of public sector information). Giuseppe was Visiting Scholar at the University of California, Berkeley (2004/2005), at Columbia Law School, New York (2010/2011) and Fellow at the Berkman Center for Internet and Society at Harvard University (2011/2012).

In his career, prior to joining CEPS in August 2012, he advised IFPI (Representing the Recording Industry Worldwide), the European Commission (DG INFSO), the European Parliament (DG for Internal Policies) and the Italian Ministry for Cultural Heritage and Activities on various projects concerning intellectual property law and information technology.