

My name is Glyn Moody; I am a journalist, author and consultant who has been writing about technology and its impact on society for nearly 30 years. I am the author of the 2001 book "Rebel Code: Linux and the Open Source Revolution", the first - and so far only - detailed history of the free software and open source movements. More recently, I have been focussing on digital rights, particularly in the field of copyright.

I find it interesting and indicative that the reflection paper begins with the statement "Copyright is the basis for creativity." When we think of European creativity, we might think of Shakespeare, or Goethe or Racine; or perhaps Michelangelo, da Vinci or Rembrandt; in the field of music names such as Bach, Mozart and Beethoven would be obvious ones. And yet these examples of creativity – supreme creativity, indeed – were all produced at a time when there was no copyright. So, manifestly, copyright is **not** the basis for creativity: it is something that has been added afterwards, largely because certain players wanted to turn creativity into commerce.

Against that background, I think it is vital for the European Commission to keep in mind the fact that simply making copyright "stronger" will not automatically make Europe's creativity greater. I would also urge the European Commission to remember that copyright is a time-limited, state-granted **monopoly**: like all monopolies, it is about reducing people's freedom. It is therefore generally – and rightly – recognised that monopolies are not desirable things, and should be avoided where possible. So the general tenor of any revision of European copyright should be to **reduce** it, not extend its monopolistic reach.

An alternative way of putting this is that users' rights need to be increased, and the reflection paper addresses this point in considering a Community Copyright law:

"Unification of EU copyright by regulation could also restore the balance between rights and exceptions – a balance that is currently skewed by the fact that the harmonisation directives mandate basic economic rights, but merely permit certain exceptions and limitations. A regulation could provide that rights and exceptions are afforded the same degree of harmonisation."

This is crucially important, since previous copyright changes have always tended to diminish the rights of users in favour of rights holders (typically large media companies, and often foreign-owned to boot). It is worth reflecting on the fact that when the term of copyright has been altered, it has only ever been changed in one direction: upward. This constant ratchet means that the compact between the public and copyright holder – that the latter will place copyrighted material in the public domain after a limited period of monopolistic protection – has been broken repeatedly.

Over the last few decades, works that should have been placed in the public domain are constantly swept up by extended copyright terms, which means that the rights holders are being given extended monopolies but the public receives nothing in return (there is no evidence whatsoever that extended terms have any effect on creativity: nobody decides to write something simply because their heirs will receive an extra decade or two of an intellectual monopoly).

Again, this means that copyright needs to be recalibrated in favour of the end-user, not the rights holders. This is not just some abstract legal point - there is a very real need for this, as the reflection document points out: “the growing importance of the Internet and of digitisation technologies is opening up new possibilities for distributing creative content online.” But this is not only about *distribution*: perhaps the most important change wrought by the arrival of the Internet in the area of content is that millions – soon billions – of ordinary people have themselves become creators, albeit of a new kind. For society – and the economy – to derive the full benefit of this new creativity, copyright laws fully suited to this new situation are required.

In particular, this means that citizens need more rights to take and use online materials for follow-on creation, which can then be taken and used in its turn by others for the same purpose. If the laws are not adapted, one of two things will happen. People will do it anyway – just as they are sharing files online despite increasingly Draconian legislation – which simply weakens the rule of law in Europe; or else Europe will fall behind other, more forward-looking economies that are able to tap into this huge welling-up of user-generated digital content.

For all these reasons, I urge the European Commission to seize the present opportunity to remake copyright laws for the digital age, rebalancing them by granting far greater rights to users, and allowing a new period of European creativity to flourish as a result.

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Best wishes

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