



Lisbon Council: Flexible copyright is good for economic growth

Opinion by Paul Keller, managing director, Kennisland

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Last week the [Lisbon Council](#) published the [2015 Intellectual Property and Economic Growth Index](#) authored by Benjamin Gibert. This report attempts to address one of the most prominent shortcomings of the debate on the modernisation of copyright: the almost complete lack of evidence on the relationship between copyright and the economy.

While there is consensus in the discussion about copyright policy that it should be based on (economic) evidence, such evidence is extremely hard to come by. The most quoted study in this field, the 2014 joint OHIM and EPO study '[IPR-intensive industries: contribution to economic performance and employment in the European Union](#)' is [deeply flawed](#) and does not really say anything about how copyright rules influence economic performance. It simply proceeds, based on the assumption that copyright intensive industries must benefit from copyright. This is rather unfortunate since the question at hand is not whether copyright is a good or a bad thing, but rather how to ensure that copyright provides maximum benefit to society. [The question at hand is not whether copyright is a good or a bad thing, but rather how to ensure that copyright provides maximum benefit to society.](#) Maximising Economic growth is generally assumed to be a good (and measurable) proxy for this, although it is of course highly questionable if economic growth is indeed the most important indicator of social welfare..

In the context of the ongoing European review on the copyright framework, **the 2015 Intellectual Property and Economic Growth Index is a welcome and very timely attempt to provide more evidence.** The report attempts to show the relationship between

the amount of flexibility of national copyright systems and economic growth in key economic sectors in those countries:

Obviously, intellectual property is an important pillar of the modern economy, incentivising creators, inventors and distributors in important ways. But many countries and economic areas have found different ways of interpreting and enforcing those rights – including the pivotal area of exceptions. Which country has the most advantageous balance? What are the implications for future prosperity? And, most importantly, what does the evidence tell us about the best way to structure the intellectual property regime to ensure the most innovation, economic growth, job creation and social well being?

To be able to do so Gilbert has constructed an index that measures the scope and flexibility of exceptions to copyright. This SFEER index ranks eight countries with regards to how broad and how flexible the exceptions and limitations to copyright are in their respective copyright legislation. A country with broad and flexible exceptions and limitations scores high on the index. The reason why the US scores highest on this index lies in the [fair use doctrine](#) that provides a much more flexible (and often broader) space of exceptions than the European approach., while countries with few and narrowly defined exceptions scores low on the index. It is somewhat unexpected to see the Netherlands score so low on this index as the Netherlands has implemented the most exceptions and limitations of any European country. The low score on the index reflects the fact that many of the exceptions contained in Dutch copyright law are narrowly defined and fails to take into account some of the less prominent exceptions. For a full discussion of the methodology of the SFEER index please refer to the annex of Gilbert’s report.

Rank	Country	SFEER SCORE
1	US	8.13
2	UK	7.81
3	Germany	7.50
4	Sweden	7.19
5	Spain	6.88
6	Japan	6.25
7	France	6.25
8	Netherlands	5.94

Gilbert then compares the index scores for each country and economic growth in key economic areas of the selected countries. While conventional wisdom would hold it that more flexible copyright systems would be bad for economic sectors that rely on the creation and licensing of copyrights (such as publishing) but good for intermediaries and

ICT service providers, Gilbert shows that there is a positive correlation between more flexibility and positive economic developments in both sectors. For more information see Gilbert's paper, particularly the section on Econometric Analysis on page 23ff in the Annex. (and for the economy as a whole):

The finding that the growth rate of value-added output of the publishing, audiovisual and broadcasting industries is positively correlated with a copyright regime that has greater scope and flexibility of exceptions to exclusive rights is a particularly interesting one that goes against stated conventional wisdom within those business sectors. Actors in this industry group have consistently pushed for stronger copyright law on the basis that this enables them to extract maximum value from their investments in audiovisual content.

He goes on to explain this observation by pointing to the societal changes that have been brought by digitisation:

This may have been the case 20 years ago. However, the proliferation of digital technologies and social networks has dramatically changed the way people engage with content online. Strong copyright law with few exceptions may have helped promote the growth of these industries in an industrial era where most people were never more than passive consumers of content on analogue devices. In a digital era, access to content and the ability to hyperlink, mix, remix, copy – and particularly to share – is fundamental to the ways in which we interact with content.

In this digital environment, a copyright system with limited exceptions may actually diminish the value of audiovisual content to consumers and simultaneously inhibit their ability to promote it within their social networks. The very notion of passive consumers of content is being displaced by notions of co-creation, remix culture and user-generated content in an attention economy where awareness of the product is an increasingly important source of value.

In the light of the ongoing discussions about a review of the EU copyright rules these are important observations. While Gilbert's methodology can be questioned on a number of aspects: Primarily the small size of his sample and his concept of 'significant borderline correlation'. it does make one thing very clear: at least in aggregate, broader and more flexible exceptions and limitations to copyright do *not* undermine the ability of rights holders to generate income from their rights. In addition, countries with more flexible systems fare much better where it comes to growth of their ICT sectors. This purely economic analysis does not take into account non economic positive externalities such as increased access to culture and knowledge or more freedom for expression. As justifications for reforming copyright these effects are probably even more important than increased economic growth.. In other words, adapting the EU copyright rules by making them less restrictive and more flexible will in all likelihood not result in the collapse of

the creative industries in the EU. [Adapting the EU copyright rules by making them less restrictive and more flexible will in all likelihood not result in the collapse of the creative industries in the EU.](#) Instead, such a move can be expected to have a positive impact on the economy of the EU:

The EU is poised to benefit enormously from the digital revolution. However, it can only do so if it is supported by a copyright policy that appreciates the new dynamics of innovation and the complex ecosystem in which economic value is embedded online. Copyright law, more than ever before, is integral to the creation, dissemination and exchange of information goods and cultural works. The question is not whether copyright remains relevant today but instead what form the copyright regime should take in order to best promote innovation and growth?

By suggesting a methodology for measuring the relationship between the flexibility allowed by copyright and economic development, Gilbert has made an important contribution to the discussion about copyright policy that should be welcomed by all stakeholders that have been calling for more economic evidence. While the conclusions reached by Gilbert may defy long held beliefs from many stakeholders, they support us in [our conviction that Europe needs more flexible copyright rules that re-balance the interests of rights holders and society at large.](#)