INTERMEDIARIES IN THE EYE OF THE COPYRIGHT STORM:
A COMPARATIVE ANALYSIS OF THE THREE STRIKE APPROACH WITHIN
THE EUROPEAN UNION

Evi Werkers

Abstract

The rapid development of the digital information society has shaken the creative content sector to its very foundations and has upset the balance between right holders, intermediaries and users. On the one hand, there is more creative content available, creators can produce and distribute their works to a wider public at a low cost, independently of physical constraints and across borders. On the other hand, right holders have lost the power to control the (re)distribution of their creations and, despite the stimulation of technological protection measures, continue to face a swelling problem of digital counterfeiting, piracy and dropping sale numbers. To resolve the issue of illegal sharing of copyright protected content certain Member States increasingly seek refuge to collaboration with internet service providers, sometimes resulting in close surveillance of users’ digital sharing behaviour and limitations on access to the internet. Due to these developments the once established “neutral” role of internet service providers and the e-commerce regime exempting them of liability is put under considerable pressure. Furthermore, the regulatory instruments for the protection of copyright and creativity no longer seem capable of guaranteeing rightholders a fair return on their creative investments while ensuring the public’s access to information and respect for privacy. In this paper an interdisciplinary comparative analysis will be made a closer look will be taken into the recent debates that took place in Belgium and the United Kingdom since the adoption of the (French) three strikes approach. The different speed by which these countries seek solutions to restore the balance and the eagerly awaited interpretations by the European Court of Justice in the SABAM/Scarlet case and the High Court’s judicial review will be critically analysed to shed a light on the future of the three strikes approach.

Author’s bio

Evi Werkers obtained her Law degree at the University of Antwerp in 2004 (cum laude). In 2005 she obtained her degree as Master in Cultural Management at the University of Antwerp Management School (cum laude). Evi joined the ICRI team in November 2005. She cooperated in multiple research projects regarding eCulture, convergence, liability of ISPs, digital preservation of heritage, user-generated content, animation movies etc. In the course of 2009 she was in charge of the study "Copyright in the information society" which was commissioned by the Flemish government (Department Culture, Youth, Sports and Media). In 2010 she was appointed as member of the reserve pool for the Council Arts and Heritage. She specializes in copyright with special focus on eCulture and is currently writing a Doctoral Thesis in this field. She speaks Dutch, English and French fluently and has passive knowledge of German. For more information please visit this website: http://www.law.kuleuven.be/icri/people.