

HARMONIZING COPYRIGHT IN THE EU'S DIGITAL SINGLE MARKET: BENEFITS AND BARRIERS

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Abstract

The rapid advancement of digital technology has reshaped global trade and commerce, particularly in the European Union (EU), where the Digital Single Market (DSM) strategy seeks to create an integrated online economy across member states. This research examines the intersection of the DSM and Intellectual Property Rights (IPR), particularly focusing on copyright protection in the digital space. The EU's efforts to eliminate cross-border barriers, enhance e-commerce, and foster innovation have profound implications for copyright law, highlighting both opportunities and challenges for creators and businesses. Through the introduction of the EU Copyright Directive (Directive 2019/790), the EU aims to modernize copyright rules, offering greater legal certainty and protection for digital content creators. However, the digital economy also brings challenges such as geo-blocking, territorial licensing, and issues related to piracy, which hinder seamless access to digital content across borders. This study explores the benefits and obstacles of the DSM strategy in relation to IPR, providing insights into the complexities of balancing copyright protection with the need for an open and integrated digital market.

Keywords: digital single market, European union, intellectual property rights, copyright

A. Background

The rapid advancement of technology has a positive impact on activities in the world of trade, including the ease of transactions, more accessible and widespread marketing, effectiveness and productivity, and greater access to opportunities. By observing the development of digital technology that coexists with daily human activities, digital technology has a significant impact on social, cultural, economic, and other fields. Digitalization can also bring new business opportunities, change the roles of operators in a value chain, and end existing business.¹ The existence of digitization is also the reason for the presence of online commerce that relies on the internet in its processes.

Regarding economic policy, the European Union has a strategy called the single market, which is a policy in the European Union region that deals with import duties, quotas, and trade taxes.² The single market has been established since 1993, and this

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¹ Parviainen et al., 'Tackling the Digitalization Challenge: How to Benefit from Digitalization in Practice'.

² Purnawan, Paraeswari, and Dewi, 'Manfaat Penerapan Strategi Digital Single Market (DSM) Di Kawasan Uni Eropa Tahun 2015-2018'.

policy is specifically for member countries that are part of the European Union. Considering the advancements and developments, especially in the fields of technology and economy, the implementation of the single market that has been previously applied needs to be re-evaluated in order to stimulate competition and trade. With services transitioning from fixed to mobile platforms, this shift necessitates an EU framework for cloud computing, cross-border content access and seamless mobile data, while ensuring privacy and cybersecurity.³ Therefore, a Digital Single Market strategy was formulated as a solution and an outcome of the evaluation of the existing single market.

Digital Single Market (DSM) strategy, in the European Union refers to the initiative aimed at creating a seamless and integrated digital economy across EU member states. It seeks to break down barriers to the online economy and enable individuals and businesses to access and engage in the digital world more easily, securely, and efficiently, regardless of their location within the EU. The DSM has the aim to remove cross-border barriers, boost e-commerce, improve access to digital services, and support innovation and growth in digital economy. The Digital Single Market should deliver trust and security in online transactions, interoperability of different technological solutions and access to digital resources and infrastructure.⁴ Simultaneously, consumers should be given unhindered access to online content and service across Europe without discrimination based on their nationality or their place of residence.⁵

DSM seen as EU's efforts to create a single, integrated digital economy with seamless access to digital goods and services across member states. Doing business across borders has become a daily part of routine operations for many companies⁶, requiring them to navigate varying national regulations, licensing frameworks, and compliance requirements to ensure smooth operations within the EU's digital marketplace. The DSM promotes innovation by fostering a more accessible and competitive digital environment, encouraging investment in creative industries. In the context of the Digital Single Market (DSM), Intellectual Property Rights (IPR) are central to ensuring fair competition, protecting creators, and fostering innovation in the digital economy. However, achieving a fair balance between copyright protection and user access remains a challenge due to the cross-border nature of digital content and services. The IPR-related challenges may include restrictive licensing agreements, enforcement mechanisms, as well as the need for a unified approach to enforcement across the EU.

The digital economy relies heavily on content creation and distribution. Copyrights as one of the right protected by Intellectual Property Rights (IPR) have contribute to a vibrant digital economy. At a firm level, IPR has been positioned to be

³ European Parliament, 'The Ubiquitous Digital Single Market'.

⁴ Bertarini, *European Union Digital Single Market : Legal Framework and Challenges*

⁵ Bertarini. Ibid.

⁶ Cirnu and Barbu, 'Digital Single Market: Cross-Border e-Government Services'.

core to business models in the digital economy.⁷ Copyright protects the intellectual property of creators and businesses in these industries, ensuring that digital goods and services can be traded, distributed and consumed fairly. If the copyright enforcement were weak in the Digital Single Market, there could be an increase number of piracy and unauthorized use which may interrupt the legitimate content creators and distributors.

Additionally, the EU Digital Single Market has previously been discussed by Nyman Metcalf Katrin and Papageorgiou Ioannis F in the article titled "The European Union Digital Single Market: Challenges and Impact for the EU Neighbourhood States" which focuses more on political issues and other aspects of the single market to the EU Neighbourhood States. Meanwhile, this article focuses on Intellectual Property Rights within the European Union. The similar topic was also addressed by Michelle Cini and Patryk Czulno in the article titled "Digital Single Market and the EU Competition Regime: An Explanation of Policy Change" which emphasizes business competition and political impact, whereas this article primarily focuses on Intellectual Property Rights and its positive and negative impacts. While the previous studies have explored various political, economic, and competitive aspects of the EU Digital Single Market, this article contributes a specific focus on Intellectual Property Rights. By examining both the positive and negative impacts of these rights, it offers valuable insights into how Intellectual Property influences the digital economy within the European Union, complementing existing research and broadening the understanding of the market's dynamics.

B. Identified Problems

The purpose of this research focusing on identifying and analysing the impacts of Digital Single Market followed by benefits and challenges of Digital Single Market (DSM) in relation with Intellectual Property Right (IPR) especially in Copyright. This research have the aim to gain a deeper understanding of the obstacles and consequences that arise when intellectual property intersects with the rapid growth and evolution of the digital economy in the European Union.

C. Research Methods

This research uses normative legal research methods to comprehensively and deeply understand social phenomena. Normative legal research is a process to find a legal rules, legal principles, and doctrines of the law to address the legal issues at hand.⁸ This research aims to provide knowledge about the Digital Single Market (DSM) in the European Union region and its impact on Intellectual Property Rights (IPR). By using normative legal research methods, it is expected that this research can explain the

⁷ Foster, 'Intellectual Property Rights and Control in the Digital Economy: Examining the Expansion of M-Pesa'.

⁸ Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object'.

phenomenon in depth. Additionally, the data collection technique required for this research was carried out by gathering literature related to the discussion of this study such as books and journals. Through this research, a clearer picture of the evolving relationship between digital innovation, copyright, and IPR within the EU's digital economy will emerge.

D. Research Findings and Discussions

The EU's Digital Single Market

The Single Market of the European Union (EU) is a globally unique economic area and institutional system, composed of different yet open and tightly integrated regional and national markets; it is in fact a core of the European integration process and an indispensable element of EU.⁹ With the continuous development of digitalization over time, it has become a key factor for the European Union to stimulate the development of digitalization strategies, especially in the economic sector. In the presence of a digital economy, the use of technology not only affects daily human life but also impacts the overall economic activities. This is because with the advent of digitalization, society can conduct buying and selling transactions on a larger scale, even engaging in international transactions.

The growing awareness within the EU of the obstacles for a functioning digital single market at a time when the digital market such only increases in importance has led to multiple EU initiatives to create a strategy for a digital single market.¹⁰ In the Digital Single Market, it is a single market where there is free movement of goods, people, services, and capital, as well as ease for individuals and businesses to access the internet with high data protection, regardless of their nationality or residence. (European Commission, 2015). Through the Digital Single Market strategy, it is hoped that the member countries of the European Union can integrate at the European Union level. On May 6, 2015, the Commission launched the DSM strategy with three pillars: improving access to digital goods and services across the EU; fostering conditions for digital networks and innovative services; and optimizing the potential for digital economic growth.¹¹

More specifically, referencing the first pillar, in order to provide access to goods and digital services across the European Union, the digital single market (DSM) aims to eliminate national barriers to online transactions, building on the common market concept designed to remove trade barriers among the Member States.¹² This aims to expand access for individuals without geographical restrictions (geo-blocking), which often prevent consumers in certain countries from accessing digital services or purchasing products from other countries. This policy is useful for removing

⁹ Rutkowski, 'The Realised and Unrealised Benefits of the EU Single Market : Current Views'.

¹⁰ Nyman-Metcalf and Papageorgiou, 'The European Union Digital Single Market - Challenges and Impact for the EU Neighbourhood States'.

¹¹ Martinello, 'The Ubiquitous Digital Single Market'.

¹² European Parliament, 'The Ubiquitous Digital Single Market'.

geographical barriers within the European Union to facilitate online transactions for the public without geographical restrictions.¹³ This proves that the Digital Single Market (DSM) is one form of economic integration.

A major problem identified by the Commission in its impact assessment is the difficulties faced by some stakeholders such as broadcasters, service-providers and cultural institutions for clearing rights and making their content available online in a cross-border context.¹⁴ In its impact assessment, the Commission stressed that rights-holders face difficulties when seeking to monetise and control the distribution of their content online, and that there is growing concern about the sharing of the value generated by online content distribution.¹⁵

By eliminating these barriers, it is expected that a more open, efficient, and competitive market can be created throughout the European Union. This is directly impacts the Intellectual Property Rights (IPR) as it creates both opportunities and challenges for right holders. On one hand, broader access to digital content or services can be beneficial for the creators or businesses in terms of expanding their intellectual property. But on the other hand, it comes to a challenge if there is unauthorized distribution or piracy of the digital goods across borders. Furthermore, ensuring a balanced approach to copyright enforcement is essential to fostering innovation while protecting the rights of creators. Strengthening cross-border licensing mechanisms and simplifying copyright clearance procedures can enhance accessibility without undermining the economic incentives for content creation.

The second pillar, “fostering conditions for digital networks and innovative services,” the European Union strives to create an environment where digital networks and innovative services can thrive. The EU recently launched essential integration initiatives to take steps towards the DSM in some specific areas of the single market. One of these areas is the field of services, on a national and especially on a supranational level.¹⁶ This is done by providing digital services with reliable infrastructure, including support for appropriate regulations. Intellectual Property Rights (IPR) play a major role for this pillar, particularly as new technology continue to evolve. As digitalization grows, business or innovators rely heavily on IPR in terms of protecting their goods and services. Well-functioning IPR framework is crucial for incentivizing research and development, ensuring that creators and businesses can benefit from their innovations. The protection of copyrights, patents, and trademarks not only safeguards investments but also encourages further technological advancements, fostering a competitive digital economy within the European Union.

¹³ Purnawan, Paraeswari, and Dewi, ‘Manfaat Penerapan Strategi Digital Single Market (DSM) Di Kawasan Uni Eropa Tahun 2015-2018’.

¹⁴ European Parliament, ‘Copyright in the Digital Single Market’.

¹⁵ (European Parliament, n.d.) This issue serves as a condition that needed to be addressed before the Digital Single Market (DSM) could be fully realized.

¹⁶ Schmidt and Krimmer, ‘How to Implement the European Digital Single Market: Identifying the Catalyst for Digital Transformation’.

The third pillar, "optimizing the digital economy's growth potential," sees the European Union striving to focus on maximizing the digital economy by facilitating businesses in terms of expanding their business activity. E-commerce growth offers tangible benefits for consumers, such as new products, lower prices, more choice and higher-quality goods, while boosting cross-border trade and offering easy price comparison.¹⁷ Although full harmonisation by way of the forthcoming General Data Protection Regulation may be an important step, without increasing user confidence in data protection and security, an unrestricted cross-border flow of data is unlikely to be achieved.¹⁸

As businesses expanding their business across the EU, Intellectual Property Rights (IPR) play a vital role where IPR enable businesses to safeguard their innovations, brand identity, and digital assets in the digital marketplace. Several IPR objects require enhanced protection in the third pillar of the Digital Single Market (DSM), including copyright for digital content, trademarks and industrial designs for brand identity, and patents and trade secrets for technological innovation. Additionally, database rights safeguard data investments, while domain names and geographical indications (GI) help maintain authenticity in digital trade. Strengthening these protections fosters business confidence, encourages innovation, and supports seamless cross-border e-commerce. Moreover, IPR enhances a company's ability to attract investment by offering investor confidence that the business's assets are legally protected, fostering an environment conducive to growth.

The Digital Single Market (DSM) in the European Union has significant implications for Intellectual Property Rights (IPR), particularly in the realm of copyright. As the DSM aims to create a seamless online marketplace where goods, services, and digital content can move freely across borders, it raises both opportunities and challenges for the protection of copyrighted works. The growth of digital platforms and online services requires robust copyright frameworks to ensure that creator's rights are respected and that they are fairly compensated for the use of their works in the digital space. The DSM promotes innovation by fostering a more accessible and competitive digital environment, encouraging investment in creative industries. However, achieving a fair balance between copyright protection and user access remains a challenge, as restrictive licensing agreements and enforcement mechanisms can sometimes hinder the availability of digital content across borders.

Ensuring access to – and the provision of – copyright-protected content across borders, in particular via the Internet, has emerged as one of the key areas of action in the context of Digital Single Market strategy.¹⁹ Right holders strategies contribute to the fragmentation of markets along national borders. Because licenses normally have a limited geographic scope, distributors are contractually obliged to block consumer

¹⁷ Martinello, 'THE UBIQUITOUS DIGITAL SINGLE MARKET'.

¹⁸ Baran and Eckhardt, 'Digital Single Market Strategy-Pillar 3'.

¹⁹ Ibáñez et al., 'Copyright Licensing and the EU Digital Single Market Strategy'.

from other countries to access it.²⁰ Geo-blocking poses significant challenges for copyright especially in European Union, where Digital Single Market has been a key objective for several years. DSM seeks to address issues such as geo-blocking and territorial licensing, which have traditionally restricted access to digital content across borders. By promoting more flexible cross-border licensing arrangements, the EU aims to increase the availability of digital works throughout the region while ensuring that right holders receive appropriate compensation. Copyright has traditionally been a national matter, with member states implementing their own regulation. This has led to a fragmentation in access to content across EU.

EU Copyright Directive (Directive 2019/790) in the Digital Single Market

Within the framework of the knowledge economy in which the world functions, intellectual property is an important factor as it is also the foundation for shaping this knowledge economy.²¹ The digital revolution has exasperated challenges within the copyright, linked, amongst others, to new uses of protected material (such as streaming and sharing content), liability of online service provider, and rights management.²² On 14 September 2016, in line with the digital single market strategy, the European Commission presented a legislative package for the modernisation of the EU copyright rules, including a new directive on copyright in the digital single market.²³

As a response to the digital revolution and to harmonized copyright law across the EU, there is an existence of the Directive on Copyright in the Digital Single Market (Directive 2019/790). This is an European Union directive which has been adopted and come into force on 7 June 2019. The emergence of new business models and consumption patterns increasingly characterised by the use of the internet to deliver content cross -border has significant impact on users and the creative industries, and represents a challenge to copyright protection within the internal market.

As stated in the Comission Communication of 9 December 2015 entitled 'Towards a modern, more European Copyright framework', in some areas it is necessary to adapt and supplement the existing Union copyright framework, while keeping a high level of protection of copyright and related rights to digital and cross-border environments, as well as for measures to facilitate certain licensing practices, in particular, but not only, as regards the dissemination of out-of-commerce works and other subject matter and the online availability of audiovisual works on video-on-demand platforms, with a view to ensuring wider access to content.²⁴ The Directive 2019/790 is created and adopted to solve some copyrights needs and problem. The general objective of the EU initiative is to adapt the EU copyright rules to the digital

²⁰ Langenegger, *From 28 to 1; Addressing the Barriers to the Digital Single Market*.

²¹ Kyazim, 'Directive (EU) 2019/790 on Copyright and Related Rights in the Digital Single Market at a Glance'.

²² Vetulani-Cęgiel and Meyer, 'Power to the People? Evaluating the European Commission's Engagement Efforts in EU Copyright Policy'.

²³ Madiega, 'Copyright in the Digital Single Market'.

²⁴ 'Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC'.

environment that is rapidly changing the way works and other protected subject matter are created, produced, distributed, and exploited.²⁵

According to Dr Panar Kyazim, The Directive 2019/720 goals is achieved through the implementation of several main task. The first task is legally allowing certain types of use of copyright objects. The second task is regulating some new methods for admissible free use within the framework of educational activities, the work of organizations for the protection of cultural heritage and scientific research activities. The third task is reducing the obstacles to the use of works for the needs of the above-mentioned activities. The fourth task is to stimulating the development of creative content. The need task is strengthening the contractual position of the rights holder and adapting the exceptions to the digital cross-border environment.²⁶

The directives that have been adopted in the area of copyright and related rights contribute to the functioning of the internal market, provide for a high level of protection for right holders, facilitate the clearance of rights, and create a framework in which the exploitation of works and other protected subject matter can take place. That harmonised legal framework contributes to the proper functioning of the internal market, and stimulates innovation, creativity, investment and production of new content, also in the digital environment, in order to avoid the fragmentation of the internal market. The protection provided by that legal framework also contributes to the Union's objective of respecting and promoting cultural diversity, while at the same time bringing European common cultural heritage to the fore. Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action.²⁷

Copyright Benefits and Barriers in the Digital Single Market

The Digital Single Market (DSM) in the European Union aims to create a seamless and integrated online space where digital goods and services can be accessed freely across borders. Legal certainty as to the functioning of the online content market has been one of the main aims of the complex Directive 2019/790 on copyright and related rights in the Digital Single Market.²⁸ However, copyright laws in the digital environment present both significant benefits and barriers in achieving this goal.

Copyrights is the legal concept that grants the creator of an original work exclusive rights to their creation in terms of the usage and distribution that is usually have a limited period. The rights are designed to protect the creator works and to get financial benefit. In such scenario, granting monopoly rights can be an elegant solution because it allows easy control over the distribution of works.²⁹ Therefore, copyright

²⁵ Madiaga, 'Copyright in the Digital Single Market'.

²⁶ Kyazim, 'Directive (EU) 2019/790 on Copyright and Related Rights in the Digital Single Market at a Glance'.

²⁷ 'Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC'.

²⁸ Stavridou, 'Copyright in the Digital Single Market in Europe: The Quest for Legal Certainty Still Remains'. Langenegger, *From 28 to 1; Addressing the Barriers to the Digital Single Market*.²⁹

regulation need to be harmonized and reformed because of the necessity of the digital age.

On the one hand, copyright protection helps ensure that creators' works are safeguarded against unauthorized use, fostering innovation and encouraging investment in digital content creation. The EU Copyright Directive (Directive 2019/790) strengthens these protections, offering digital creators across the EU to have a better control over their works in terms of digital or online environment. The harmonized copyright laws under the Digital Single Market create a consistent legal framework across the EU which provide legal certainty for the creators. The directive places greater responsibilities on online platforms to ensure compliance, which can be particularly burdensome for smaller content-sharing services that may lack the resources to implement robust copyright enforcement mechanisms.

As creative works traverse national borders, disparate legal frameworks often hinder effective protection and enforcement of copyright rights.³⁰ Issues such as geo-blocking, territorial licensing, and the need for cross-border enforcement complicate access to digital content across the EU. There is still a complexity of copyright licensing, in terms of digital space, content is often licensed on territorial basis. This means that the licensing agreement are only specific on one country. This condition creates geo-blocking and accessible issues to the same content as those in other regions. Furthermore, illegal streaming, unauthorized file-sharing, and piracy remain significant issues for the right holders.

Moreover, the increased reliance on automated enforcement mechanisms, such as content recognition technologies, can lead to unintended consequences, including the removal of lawful content due to misidentification or over-enforcement. This raises concerns about the balance between protecting copyright and preserving users' rights to access and share information. The financial burden of implementing these technologies disproportionately affects smaller digital platforms and independent creators, potentially limiting competition and innovation in the digital market.

E. Conclusions

In conclusion, the Digital Single Market (DSM) represents a major step toward a more integrated online marketplace in the European Union, with significant implications for copyright and intellectual property rights. The EU Copyright Directive (2019/790) provides a much-needed framework for protecting digital content, offering creators better control and fair compensation while promoting innovation. The harmonization of copyright laws across the EU creates legal certainty, making digital transactions more predictable and efficient.

However, challenges remain in fully realizing a borderless digital market. Issues such as geo-blocking, territorial licensing, and cross-border enforcement continue to hinder the free movement of digital content. While the EU's efforts to address these barriers through copyright reform are important, piracy and complex licensing

³⁰ IP Law Mastery, 'Addressing the Challenges of Copyright in the Global Market'.



structures still pose significant challenges. Achieving a balance between creator protection and open access to digital goods is key to the future success of the DSM.

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