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João Pedro Quintais

On Peers and Copyright: Why the EU Should Consider Collective Management of P2P



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Preface

“On Peers and Copyright: Why the E.U. should consider collective management of P2P” corresponds to the dissertation submitted to the Munich Intellectual Property Center in satisfaction of the requirements for the degree of Master of laws in Intellectual Property (LL.M. IP) in September 2011. This dissertation is now published, as updated until January 2012, mostly in light of relevant legislation, case law and some bibliography coming out in the intervening period. As constantly happens in literature regarding copyright and technology, this writing will have likely become outdated before its publication. Nonetheless, given the nature of the text and this publication, we’ve decided to limit any amendments to a minimum, maintaining the original structure, contents and overall direction of the research.

This book analyzes the E.U.’s approach to P2P, a disruptive and economically significant digital age technology that highlights the tensions between the Internet and a territorial and fragmented copyright law. It aims at providing the necessary legal qualification and context to understand why the E.U. has thus far failed to achieve its deterrence goals and followed a path that represents a financial burden for both Member States and rights holders, while not being able to monetize a vast market, inadequately tapping the innovation and cultural development potential of this technology, damaging the reputation of the content industry and “criminalizing” users.

It is argued that a solution to this conundrum must be based on the use of copyright law and policy as tools for market organization and innovation growth, with respect for rights holders and users (sometimes) opposing interests and the existing legal framework. The best answer to mass online P2P uses seems to be that of collective rights management, as it offers an organized licensing and remuneration system compatible with the interests of stakeholders. This is especially true in the E.U., home to a developed and sophisticated market of CMOs, subject to numerous ECJ and Commission decisions, as well as varying E.U. institutional approaches, all pointing towards a preference for multi-territorial and pan-European licensing models covering mass online uses of copyright content. In this context, this book tests the compatibility of several non-voluntary and voluntary approaches to P2P with international treaties, the *acquis* or simply strategic policy considerations.

The concept of this book is to offer a modest contribution to the discussion of alternative and workable models, within the framework of copyright law, to address P2P uses in the E.U.

The author would like to thank Professor P. Bernt Hugenholtz for his supervision, comments and suggestions.

Amsterdam, April 2012

João Pedro Quintais

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