

THE FUTURE OF IP IN THE EU – IDEAS FROM ACADEMIA
THE EU COPYRIGHT SYSTEM – STATUS QUO AND NEXT STEPS?
A VIEW FROM THE IVORY TOWER

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OUTLINE

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Looking Back (2014-2019)

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CLINT EASTWOOD

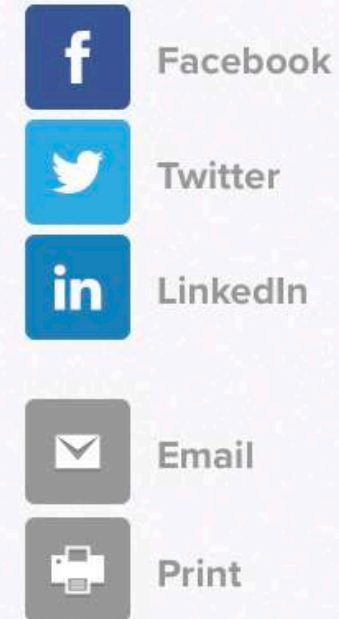
#1 PORTABILITY-REGULATION (2017/1128/EU)

1. Taking normative user expectations and primary law seriously
2. Trilateral approach regarding contracts in the digital age (—> network of contracts!)
3. Paradigm shift: from (copyright) status to contract (law) in the digital age

#2 PRESS PUBLISHER'S RIGHT

1. Improper use of copyright law by overloading it
2. Stiffling competition in the (online) news market and in the search engine market
3. Waste of (litigation) resources





Google will not pay press publishers in France to display their content | Denis Chalet/AFP via Getty Images

Google refuses to pay publishers in France

The announcement pours cold water on publishers' hopes of getting more money from Google after an EU reform of online copyright law.

By **LAURA KAYALI** | 9/25/19, 1:30 PM CET | Updated 9/25/19, 8:16 PM CET

Google will not pay press publishers in France to display their content and will instead change the way articles appear in search results, a senior executive said on Wednesday.

The announcement pours cold water on publishers' hopes of obtaining more money from the tech giant for displaying their content under the European Union's new copyright regime, which France was the first to transpose into national law.

Your Guide to the Changing Media Landscape

World News Publishing

HOME BUSINESS DIGITAL MEDIA EDITORIAL INCUBATOR PRESS FREEDOM M

French press publishers surrender to Google dominance – for now

According to French online publication [Journal du net](#) Google's strategy to circumvent the French law on press publishers' rights was successful: the great majority agreed to let the tech giant use parts of their content for free.



France was the first country to transpose in national legislation the Directive approved by the European Union earlier this year and establishing a publishers' right.

The law will come into force on October 24, 2019, and **Google declared** on September 23rd that the search engine will from that moment on block virtually any results from European newspapers in France.

The search results will return only links, for European news media that indicated their wish to license their content for Google's use. News media that instead granted to Google free use of their content will see thumbnails and snippets show up on search results.

After an initial outrage supported by news media organisations throughout the **world**, including **WAN-IFRA**, the French publishers started adapting their websites to the **instructions** received from Google.

INTERNATIONAL • COPYRIGHT

French Publishers Have Gone to War With Google. They Are Not Likely to Win

By [David Meyer](#) October 25, 2019



Google office building in Detroit, Michigan on September 27, 2019.

RAYMOND BOYD—GETTY IMAGES

EUROPE NEWS

The EU might need to probe Google over new copyright rules, Vestager says

PUBLISHED WED, NOV 20 2019 9:22 AM EST | UPDATED WED, NOV 20 2019 9:58 AM EST



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SHARE

KEY POINTS

- France has been the first EU country to implement an EU copyright law last month that aims to allow publishers to be compensated for their work, when displayed online.
- However, French media firms have complained that Google is refusing to pay for displaying their content.
- Google declined to comment on a potential new probe when contacted by CNBC on Wednesday.

#3 ART. 17 DSM-DIRECTIVE

1. Complicated regulation for a - admittedly – complex problem
2. EU Copyright Law's Frankenstein
3. One size (property right) doesn't fit all industry sectors





What Should be Done? (2019-2024)

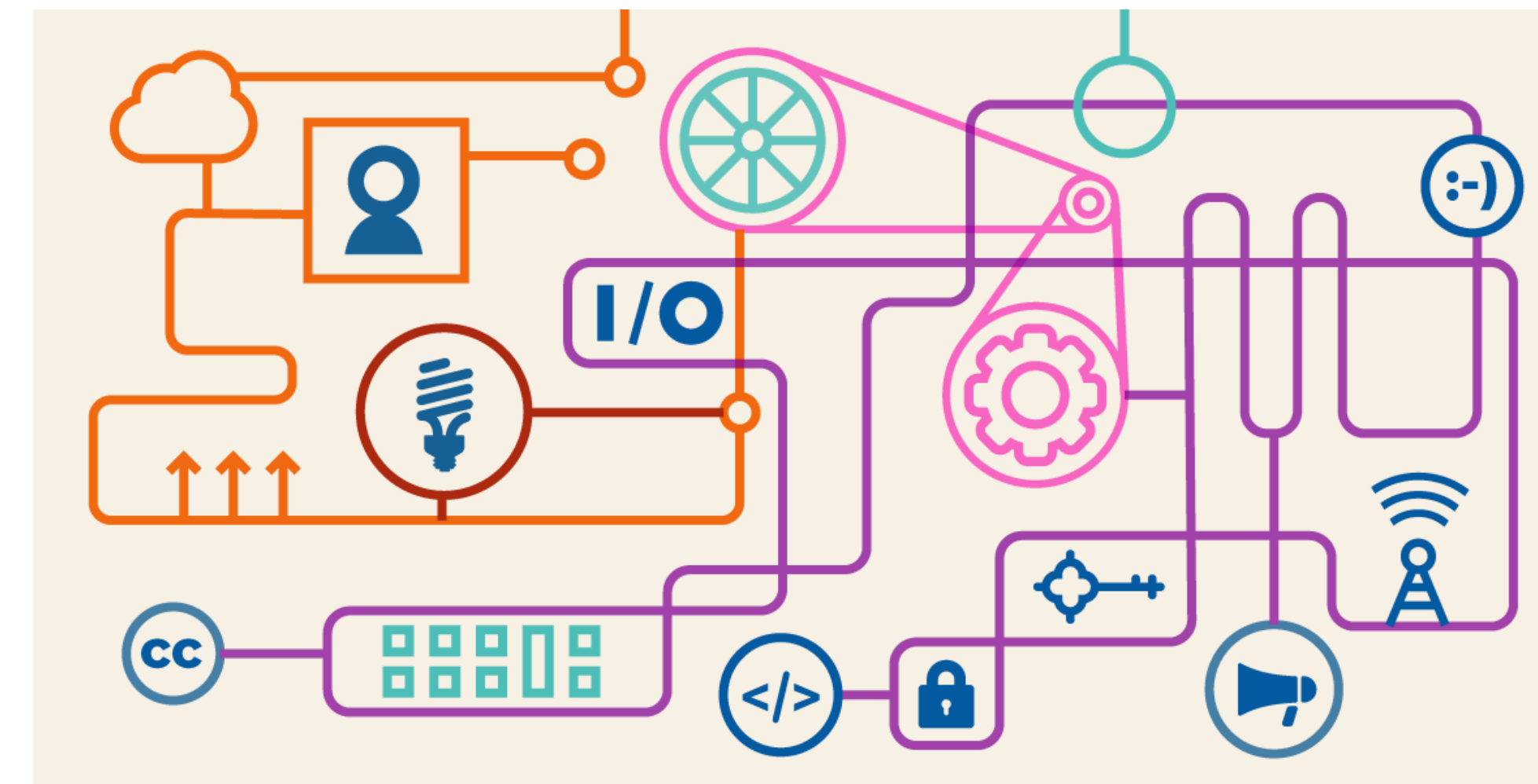
#1 ALIGNING COPYRIGHT LAW WITH CONTRACT LAW



1. Copyright law should accommodate contract law and the normative expectations of consumers protected by the latter's objective conformity requirements
2. Adopting a modern conception of the principle of exhaustion („first sale doctrine for the 21st century“)
3. Adapting copyright for the challenges of the ongoing hybridisation of material and immaterial goods (IoT)

#2 FOSTERING INNOVATION IN UNCHARTERED TERRITORY

1. Free commercial text and data mining from the licensing clause!
2. Does fostering AI in Europe require a narrowly tailored right to ensure the commercialisation of the (immaterial) results?
3. Limit the scope of the exclusive reproduction right and introduce a well balanced derivative right (applying a more sociological approach)!



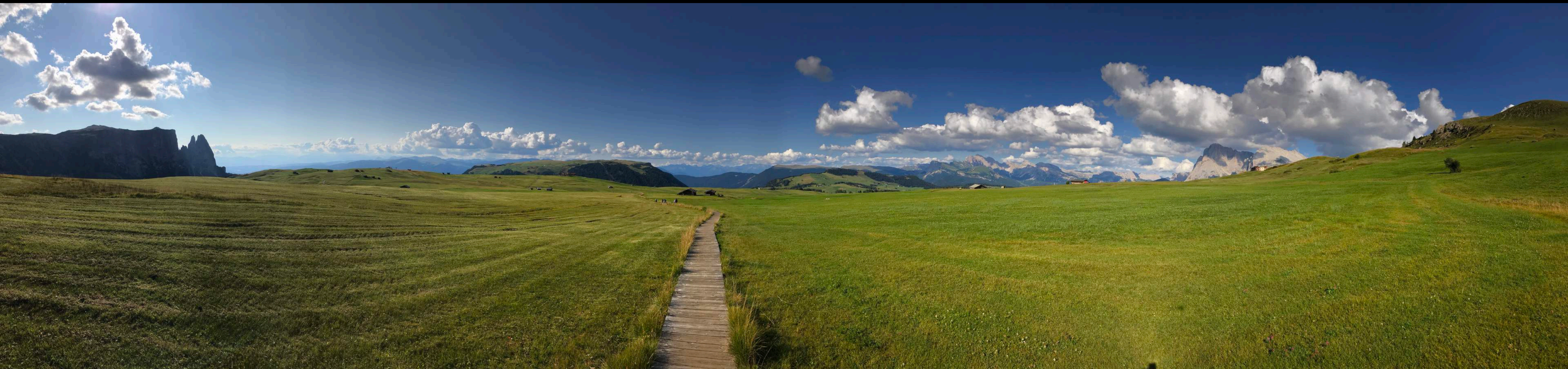
<https://www.eff.org/de/deeplinks/2019/08/interoperability-and-privacy-squaring-circle>

#3 RESTRUCTURING & PROCEDURALIZATION



1. Design copyright institutions with a reasonable distribution of transaction costs built in!
2. Expand the tools of re-structuring the exercise of exclusive rights by implementing more opt-out-requirements for right holders!
3. Introduce a strong limitation in favor of UGC, remunerable by platform providers!

Visions: Looking Beyond 2025



#1: DIFFERENTIATION

Limitation of copyright
protected subject matter in
favour of sector specific
(ancillary) rights regimes



NEW NARRATIVE FOR © EUROPE



#2: NEW COPYRIGHT STORY

De-fetishizing the exclusive right and focusing on innovation, access, reasonable remuneration and personality rights

#3: BACK TO THE DRAWING BOARD

Re-activating formalities (registration), combined with much shorter, but renewable terms of protection (subject to renewal fees) and gradually decreasing scope of protection





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