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Copyright Policy Tendencies in 2015: Further Weakening of Limits and Exceptions and the Ever Reducing Public Domain in Spanish, European Union and International Legislation

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Abstract: In 2015, Spain's new copyright law entered into effect including many new provisions including one that requires Universities to pay Collecting Societies for using manuals and textbooks made available online in virtual campuses. This license cannot be waived and means that Universities have to pay even for works released under free licenses, such as Creative Commons, and for works already in the public domain. This weakens the protection offered by limits such as the one in favor of educational uses (art. 32 of the Spanish copyright act) and also reduces the public domain as it establishes unalienable licenses for content no longer in copyright. This, and other copyright policy tendencies such as various international treaties, at the moment still under discussion, or books rights holders seeking to restrict uses for text and data mining indicate that in 2015 further reducing limits on copyright and the free uses of work in the public domain will continue. We analyze these cases and propose solutions.

Keywords: Copyright, limits on copyright, public domain, users' rights, intellectual property.

Introduction

In Mary Doria Russell's science fiction novel *the Sparrow* there is a passage that describes how the Search for Extraterrestrial Intelligence (SETI) discovers a message coming from another galaxy. Scientists quickly realize that the message is actually a piece of music that must come from a civilization on another planet.

In the story, a media company quickly records the music by an unknown (and unhuman) author and begins to sell it. The United Nations protest arguing that there is an agreement in place providing that any transmission from outer space received by SETI must be considered the possession of all humankind. But, as the book tells us, that did not get in the way of the "vast enrichment" of the media company. Of course, none of the individuals involved in the actual discovery of the music ever saw a dime and nobody ever wondered if the unknown author from beyond the stars agreed to the fixation and publication of their work or if any money should have been sent his or her way.

This little Sci-Fi tale serves to illustrate two well-known problems of current copyright legislation around the world: often, it is big companies, not authors, that actually make most, if not all of the profit and, very often, the companies that make those profits seek ways to appropriate content that should be in the public domain when they determine that such content can be of monetary value to them.

Back in the real world, copyright regulation trends point towards a bigger reduction of what is, and what can and will be available in the public domain. Many of these regulatory decisions also weaken statutory limitations on exclusive rights. If we see copyright limitations as the lines that draw the frontiers between protection and free access and use of content (i.e. the frontier between copyright and public domain) we can see this as part of the same trend that expands protection and harms the present and future of the public domain.

1. The Importance of the Public Domain

When talking about works of authorship, we traditionally look at copyright legislation to be able to define the public domain. We understand that what is in the public domain is either material that is outside of the scope of protection, meaning works, or elements of works, that are not copyrightable¹; or works that can be protected but only for a limited time and when this term of protection expires, they can be freely used as long as certain conditions are met.²

Black's Law Dictionary first defines the public domain as "the universe of inventions and creative works that are not protected by intellectual-property rights and are therefore available for anyone to use without charge." Just like most copyright, and in general,

¹ Both in international treaties and in domestic legislations in general, ideas and information, also called facts, are not copyrightable.

² For example, in most civil law countries even when a work is said to be in the public domain, moral rights of authors must still be respected either for a long time or in perpetuity as some of these moral rights like attribution and respecting the integrity of the work do not expire.

intellectual property legislation around the world, the public domain is just defined in negative terms, as what is not protected or protectable by copyright.³

Based on the dictionary's definition, Ochoa has also proposed a definition using negative terms: "the public domain may be defined as that body of literary and artistic works (or other information) that is not subject to any copyright (or other intellectual property right), and which therefore may be freely used by any member of the general public."⁴

However, copyright's own spatial (scope of protection) and temporal (term of protection) limits can serve to delineate the borders of the public domain in order to arrive to a positive definition of it. It can be said that the public domain is a space where ideas and information circulate freely, either as elements of protected works that cannot be protected; inside of works that are free to use for anyone because they are out of the scope of protection themselves; or because the exclusive rights over them granted to authors and others has lapsed.

Cetina Presuel has offered a positive definition enunciated as follows:

*"Public domain is the public interest space composed of ideas, information, works and materials that circulate freely and that anyone can access or use; without anybody else having the capacity to claim an individual exclusive right over them."*⁵

The importance of the public domain can be stressed from the point of view of the scope of copyright protection: certain elements of works are not protected, such as ideas and information, because "...they are thought to be so important to the public that society demands unrestricted access for them immediately, without waiting for the copyright to expire."⁶ This is also true for works that are excluded from the scope of copyright in some countries, such as legal texts and certain governmental information⁷.

That exclusive rights are subject to a term of protection also serves to underscore the importance of the public domain. Exclusivity to use a work is only temporary because it is desirable for reasons of public policy that eventually all works will be free to use. From a

³ *Black's Law Dictionary* 1349 (9th ed. 2009).

⁴ Tyler T. Ochoa, "Is the Copyright Public Domain Irrevocable? An Introduction to *Golan v. Holder*," *Vanderbilt Law Review* 64 (2011): 123.

⁵ Rodrigo Cetina Presuel, *Límites al derecho de autor y el uso de contenidos protegidos en el ámbito universitario y en la investigación* (Doctoral dissertation) (Madrid: E-Prints Complutense, 2015), <http://eprints.ucm.es/30176/> (accessed June 15, 2015), 710.

⁶ Jessica, Litman, "The Public Domain," *Emory Law Journal* 39 (1990):967. In Civil Law systems, scholars agree that it should not be allowed that the first one that claims to have come up with an idea or gathers certain information has an exclusive right over it, no matter how important or how useful that idea or information might be. See Rodrigo Bercovitz Rodríguez-Cano, ed., *Manual de propiedad intelectual* (Valencia: Tirant lo Blanch, 2012), 52-53.

⁷ See for example art. 13 of the current Spanish Copyright Act: Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia.

right to information⁸ perspective, copyright itself can be said to be an exception to freedom of expression and access to information.⁹ It can also be understood as an exception to the right to communicate.¹⁰ Bel recognizes that the right to information must necessarily have some exceptions, but those exceptions happen in certain situations, are temporary and are only justified by either grave circumstances (social, political, etc.) or in deference to other rights that at any given time must be exercised while at the same time respecting the right to information.¹¹

We can also stress the importance of copyright limitations and the role they play in ensuring a healthy public domain.¹² Since ideas and information are contained in original expression (works, the object of protection), limits ensure that in certain cases, provided certain conditions are met, those elements can still circulate freely in the public domain. The existence of limits is generally justified by public interest and the protection of fundamental rights. One example of this is any statutory limit that allows for quotations, which is justified by the protection of freedom of expression.¹³

⁸ A human right that has its basis in article 19 of the Universal Declaration of Human Rights.

⁹ Bercovitz Rodríguez-Cano, *Manual de propiedad intelectual*, 97.

¹⁰This right is understood as a human right that includes a number of “specific communication rights within a multi-layer framework.” L.S. Harms, “Some Essentials of the Right to Communicate” in www.righttocommunicate.org, 2002, <http://righttocommunicate.com/?q=node/15> (Accessed on September 2nd, 2015). It is also understood as a right that means more than just speaking or freedom of expression. For us, the right to communicate acknowledges the ability to share, receive, impart and (re)use information. It must be noted that the definition of this right is still a matter of controversy, as it is the right itself. The right was first mentioned by Jean D’Arcy and explored for the first time in his work “Direct Broadcast Satellites and the Right of Man to Communicate” in *EBU Review 118: 1969*. The right was the subject of intense political controversy and initiatives to formally recognize it at an international level eventually died down. In more recent times a reconsideration of its value and status as a human right has emerged once again as it seems to fit quite well into our contemporary idea of communication allowed by the Internet, mobile and digital technologies. “The movement to establish a right to communicate is largely based on the premise that freedom of expression does not comprehensively address the social cycle of communication in modern, technologically mediated societies. Proponents of the right to communicate posit that, while many communication rights do exist through secondary implications and liberal interpretations of existing human rights provisions, communication processes are so central to contemporary society that a comprehensive communication rights framework is required.” Marc Raboy and Jeremy Shtern, “Histories, Contexts and Controversies,” in *Media Divides: Communication Rights and the Right to Communicate in Canada*, eds. Marc Raboy and Jeremy Shtern Vancouver: UBC Press (2010), 31. If we at least accept that the right to communicate is a right to share, receive, impart and (re)use information that can be contained in copyrighted works, it can be seen how copyright can be understood as an exception to the right. Also, if copyright law grants rightsholders control over works that is too strong and restrictive, it could be argued that such a law would obstruct the human right to communicate.

¹¹ Ignacio Bel, “El ejercicio del derecho a la información y sus excepciones,” in *Derecho de la información. El ejercicio del derecho a la información y su jurisprudencia*, eds. Ignacio Bel and Loreto Corredoira (Madrid: Centro de Estudios Políticos y Constitucionales, 2015), 225.

¹² Notice that we call them copyright *limitations* and avoid using the term *exceptions*. Even though many authors use both terms interchangeably (we have done so in the past) we consider it more appropriate to refer to them as limitations on copyright as they define where copyright ends and gives way to rights that can be enjoyed by users and are justified by protection of fundamental rights such as freedom of expression, access to information and the mentioned right to communicate. It can also be justified by other public policy goals such as a right to education or a guarantee of access to culture. For more on this please see Op. cit. Rodrigo Cetina Presuel *Limites al derecho de autor y contenidos protegidos...*

¹³ Although many authors consider the *fair use* doctrine of American copyright as an open-ended type of limit, not everyone agrees: in Rodrigo Cetina Presuel, “¿De la sartén al fuego? La cuestión de la adopción del *fair use*

The relations between copyright protection, limits on copyright and public domain can be better expressed by the following illustration:

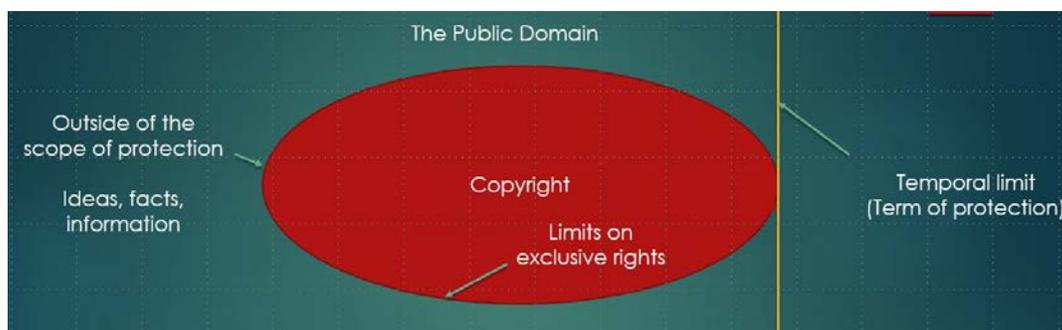


Illustration 1: Frontiers of public domain

Since limits are very important for ensuring free access, any attempt to nullify or weaken them should also be seen as an attack on the public domain. Indeed, both limits and the public domain can serve to protect free access and fundamental freedoms such as freedom of expression, or the right to communicate we just mentioned.

But even if it's clear that copyright legislation itself can be important to determine what is in the public domain, policy makers and rightsholders tend to undervalue it, perceiving it as a space where only the most insignificant of works can be found. These types of works either don't deserve protection because they are so old that no one can make money out of them anymore (so why bother protecting them) or they don't deserve any protection as they don't meet the necessary requirements to be considered original works of authorship (and thus are perceived as not being valuable either). Public Domain is seen as a sort of junkyard full of works that nobody wants or cares about, a residual space conceived as the negative side of individual copyrights that are worth protecting.¹⁴

The perception above described comes from understanding copyright as a mere set of economic rights, or as many in Civil Law see it, a unidimensional property right where the most stringent protection is necessary to make the most money possible. If certain exceptions¹⁵ exist, is because it is understood that property does have a social function. However, when something falls into the public domain and is free to use, it must be because it is a work that no longer has value. If it was already in the public domain, it is because it was an element that didn't really needed any protection.

como una solución al sistema de límites al derecho de autor en México," *VIRTUalis* 5, no. 10 (2014), <http://aplicaciones.ccm.itesm.mx/virtualis/index.php/virtualis/article/view/104/91>, taking into account the difference we just established between limit and exception, the author considers that fair use is configured more like an exception than a limit on copyright.

¹⁴Christina Schmitz Vacarro, "Propiedad intelectual, dominio público y equilibrio de intereses," *Revista Chilena de Derecho*, 36, no. 2 (2009), 347.

¹⁵ Again, please note that we use the term *exception* as it fits with the point of view being described.

If one subscribes to this point of view as a rights holder, it is only natural that if a work, or a number of them, are perceived as still valuable (meaning, they can still be exploited) one will fight for those works not to enter the public domain, or to only do so after the longest period of time possible. The same happens when something that is outside of the scope of protection is perceived as exploitable. That is why, historically, most rightsholders, as described in section 2 below, have always pushed for an expansion of the scope and term of copyright protection.¹⁶ Authors like Igor Sádaba point out that copyright legislative actions are destroying the public domain and this is leading to a “commodification of knowledge.”¹⁷

We must not forget that the creation of new works of authorship depends on common elements accessible to all. Copyright law is meant to incentivize creation and distribution of works because out of those common elements (ideas, information and facts) new works can be created. Public domain should be seen as an essential part of the system to make creation of works possible¹⁸ or as James Boyle puts it, as the basis of all art and science: market, democracy, science, freedom of speech and art depend more on the public domain than on protected content.¹⁹

2. Public Domain under constant threat

The idea that what is in the public domain is reducing constantly and what is protected by copyright is always expanding is not new at all. There is a consistent historical trend that points to an ever expanding, constantly broadening protection.

The Internet and digital technologies have given way to copyright law that seeks to regulate activities that used to be considered private activities, regardless of any commercial purpose. Technology allows for greater ways to communicate works but has also given way to a broad protection that includes broadcasts or online distribution of works. Current technology (such as technical protection methods) also allows rights holders to control even private uses of works.

One would think that a natural consequence of the development of technology that allows new and different ways to exploit works is for legislation to concern itself with new categories of works that warrant protection, and to adopt new rights to protect all those involved with such exploitation. This is only partially true. Copyright protection growth is not always related to technological advancement. For example, US copyright only protected certain kinds of written works: books, maps and charts but today, “... the scope or definition of writing has evolved such that it incorporates a large category of subject matter that is not

¹⁶ See Neil W. Netanel, “Why has Copyright expanded? Analysis and critique, in Vol. 6 of *New Directions in Copyright Law*, ed. Fiona Macmillan (United States: Edward Elgar Publishing, 2007). For a study on how lobbying done on behalf of entertainment industries influences copyright legislation around the world, endangering fundamental freedoms, see Monica Horten, *A Copyright masquerade: How corporate lobbying threatens online freedoms*, (New York: Zed Books, 2013).

¹⁷ Igor Sádaba, *Propiedad intelectual ¿Bienes públicos o mercancías privadas?*, Madrid: Catarata, 2008).

¹⁸ Litman, “the Public Domain,” 1990, 976.

¹⁹ James Boyle, *the Public Domain: Enclosing the Commons of the Mind* (New Haven: Yale University Press, 2008), 40-41.

limited primarily to aesthetic works. The result is that today computer software, building designs, three dimensional commercial products such as jewelry, directories, compilations of facts, financial reports, photographs, sound recordings, and the bar examination, among other things, are subject matter within the domain of copyright law.”²⁰ Many of these works can be reproduced using technology that is just a little more advanced than a printing press of old. That they are protected today is not the result of technological progress, it is just a matter of policy.

Contemporary copyright laws around the world are usually not specific and allow for open categories of works that can be protected. Types of works listed in statutes are just meant to serve as examples as to what can be protected. This is also true for international treaties. For example, article 2.1 of the Berne Convention grants protection to “... every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression...” and then includes a broad list of examples like books or other writings, lectures, sermons, dramatic, musical, choreographic and cinematographic works, illustrations, maps, plans, sketches and three-dimensional works relative to science and other disciplines.

Both in international and domestic legislation pressure on the public domain has been growing. This is not only due to policy, as also courts have a part to play. There have been numerous attempts to claim or expand exclusive rights through legal disputes. Among many other examples, Litman²¹ mentions that statutory protection of television broadcasts “has led to litigation over how much of what we see on television can be claimed as property”²² or that copyrights over computer software has “generated lawsuits claiming that copyright provides exclusive rights to the ‘look and feel’ of programs...”²³ In European Union law, the Court of Justice of the European Union (CJEU) has substantially lowered the minimum criteria for determining what constitutes an original work²⁴, even considering very short phrases as copyrightable.²⁵

Contemporary legislation includes many beneficiaries. Originally, only creators of works and editors were granted protection. At some point, artists and interpreters were also granted rights. Eventually, so did producers and others that have little to do with creation, such as broadcasting entities. Most of the rights protect strictly economic interests and in many occasions, revenue doesn't even reach the authors, the ones that legislation is supposed to incentivize to create.

²⁰Andrew Beckerman-Rodau, “The Problem with Intellectual Property Rights: Subject Matter Expansion,” *Yale Journal of Law & Technology*, 13, no. 35 (2010), 64.

²¹Litman, “the Public Domain,” 988.

²² *National Assoc. of Broadcasters v. Copyright Royalty Tribunal*, 675 F. 2d 367 (D.C.Cir. 1982).

²³ *Apple Computer, Inc. v. Microsoft Corp.*, 717 F. Supp. 1428 (N.D. Cal. 1989).

²⁴ *Sentence of the CJEU in Infopaq International A/S v. Danske Dabladeforening*, C-5/08, July 16th, 2009.

²⁵ In regards to the exclusive rights of reproduction and communication to the public, it is easy to see how this can be a problem for search engines or for social networks such as Twitter where small parts of works are constantly being used.

The term of protection has also expanded by leaps and bounds. Today the minimum general term, mandated by international law (art. 7 of the Berne Convention) is the life of the author plus fifty years. Since members of the treaty had to adjust their domestic laws, the 20th century saw the term of protection expand everywhere around the world.

In the US, copyright protected works for up to twenty eight years, with the possibility to renew protection for another twenty eight. Today, works created after January 1st, 1978²⁶ are now protected the life of the author plus seventy years.²⁷ Even some works created before that date, and that should be in the public domain by now, have been granted an additional extension on their term of protection. It is well known that *Steamboat Willie*, where Mickey Mouse and other Walt Disney Co. owned characters first appeared, should have been free to use starting in 1984. However, §304 of the Copyright Act now provides that the work will not enter the public domain until at least 2023, that is if the term is not again extended somehow in future reforms.²⁸

Even though the United States took a long time to amend legislation to comply with the Berne Convention, according to Greenberg²⁹, in general, in two hundred years of American copyright history, for most works, the term of protection has quadruplicated.³⁰

Most countries protect works for the life of the author and around seventy years, that is the case of Spain³¹ and it is similar in most countries around the world such as Italy, the United Kingdom, the Netherlands, Belgium, France, Portugal, Sweden or Brazil. Some countries like Chile or Argentina have dramatically expanded the term of protection as a result of Berne. Before the Berne Convention, the former protected authors' rights for only five years after the death of the author and the latter for only the life of the author plus ten years. Countries like Mexico³² grant a hundred years of protection after the death of the author (all protection in Mexico used to be perpetual making this country a rare exception that actually reduced its copyright term, even if it still is one of the longest).

²⁶According to the Copyright Term Extension Act (Sony Bono Act) of 1998. Previously, copyright terms had been extended in 1831, 1909 and 1976.

²⁷ §302 of US Copyright Law (Copyright Act of 1976, US Code Title 17) states that "(a) In General – Copyright in a work created on or after January 1, 1978, subsists from its creation and... endures for a term consisting of the life of the author and 70 years after the author's death."

²⁸ A lot has been written about this case. A detailed description of it can be found in, among others, Arlen W. Langvardt, "The beat should not go on: Resisting early calls for further extensions of Copyright duration," *Penn Sate Law Review* 112 (2008). Already, as 2023 fast approaches, the debate of wether or not extend the term once again is surfacing. See for example: Steve Schlackman, "How Mickey Mouse keeps changing Copyright Law," *Art Law Journal*, February 15, 2014, <http://artlawjournal.com/mickey-mouse-keeps-changing-copyright-law> (accessed May, 12, 2015).

²⁹Brad, Greenberg, "More than just a formality: Instant authorship and Copyright's opt-out future in the digital age," *UCLA Law Review* 59 (2012), 1028.

³⁰ And in *Golan v. Holder* 565 U.S. ____ (2012) the U.S. Supreme Court established that the U.S. Congress has the authority to grant new protection to works that have already passed into the public domain.

³¹ According to art. 26 of the Spanish Copyright Act (Ley de Propiedad Intelectual) a work is protected, in general, for the life of the author plus seventy years.

³² According to art. 29 (I) of Mexico's Federal Copyright Statute (Ley Federal de Derecho de autor).

So, even if there may be some exceptions to the rule, copyright's scope and term of protection have been consistently expanding. The trend does not seem to be reverting as what we have seen so far in 2015 and shall see in the near future show. We analyze some of those trends that appear in both international legislation and domestic law below.

3. The 2015 Spanish Copyright Act: a terrible attempt at a temporary solution.

On January 1st, 2015 a new amendment of the Spanish Copyright Act entered into force.³³ The new law has been met with general discontent. Nobody seems to be happy with it. It has been called a missed opportunity and rejected by most of the interested parties,³⁴ and even those that in recent years have been pushing for a harder legislative stance on digital piracy think the law “was born dead.”³⁵

The Spanish government itself admits that the new law is just a temporary measure as it acknowledges that local law will have to be amended again when the new European Copyright Directive is eventually approved. So far, the European Union has announced that they expect a new draft to be proposed around September of 2015.³⁶

Many of the recent reforms fall upon limits on copyright.³⁷ Even before the law actually began its effects, Google decided to shut down its Google News service in Spain as a result of the imposition of a fee on news aggregators that post snippets of stories as provided by the new art. 32.2 of the legislation.³⁸ According to the law, the fee cannot be waived and its administration is left to collective management organizations (CMOs).³⁹ These organizations, at least in Spain, are highly controversial and their reputation has been tarnished even more in recent years due to corruption scandals.⁴⁰ Some have called Spanish

³³ Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.

³⁴ Tommaso, Koch, “La Ley de Propiedad Intelectual, aprobada solo con los votos del PP,” *El Pais*, October, 30, 2014, http://cultura.elpais.com/cultura/2014/10/30/actualidad/1414657007_768641.html (accessed November 4, 2014).

³⁵ Arancha Moreno, “Los tentáculos de la Ley de Propiedad Intelectual,” *La Gaceta*, October 30, 2014, <http://www.gaceta.es/noticias/los-tentaculos-ley-propiedad-intelectual-30102014-1930> (accessed November 4, 2014).

³⁶ Jennifer Baker, “EU MEPs accept lonely Pirate’s copyright report – and water it down,” *the Register*, June 16, 2015, http://www.theregister.co.uk/2015/06/16/euoparl_committee_votes_for_copyright_reform_but_pirate_mep_s_till_sees_room_for_improvement/ (accessed June 16, 2015).

³⁷ For a first analysis see Loreto Corredoira, “El derecho de autor en la información: obras protegidas y contenido de los derechos de propiedad intelectual,” in *Derecho de la información. El ejercicio del derecho a la información y su jurisprudencia*, eds. Ignacio Bel and Loreto Corredoira (Madrid: Centro de Estudios Políticos y Constitucionales, 2015), 661-671 and for an analysis of all of the reforms refer to Rodrigo Bercovitz Rodríguez-Cano (ed.), *La reforma de la Ley de Propiedad Intelectual* (Valencia: Tirant lo Blanch, 2015).

³⁸ Ashifa Kasam, “Google News says ‘adiós’ to Spain in row over publishing fees,” *the Guardian*, December 16, 2014, <http://www.theguardian.com/world/2014/dec/16/google-news-spain-publishing-fees-internet> (accessed May 12, 2015).

³⁹ See article 32.2 of the 2015 Spanish Copyright Act.

⁴⁰ Pedro Letai, “SGAE-gate. Spanish Collecting Society Facing Corruption,” *Kluwer Copyright blog*, July 15, 2011, <http://kluwercopyrightblog.com/2011/07/15/sgae-gate-spanish-collecting-society-facing-corruption/> (accessed May 18, 2015).

CMOs a total fraud on both taxpayers and authors, trusted by none and a system in dire need of reform.⁴¹

The 2015 Spanish norm has many controversial parts but a very serious threat on both the public domain and limits to copyright come from modifications on another part of article 32 (the newly added part 4) that regulates the limit that allows for unauthorized uses of works for educational purposes. This may be the law's biggest mistake.

The provision allows for universities and public research institutes to partially reproduce, distribute and communicate to the public works or publications without consent from the author or rights holder when this is done for educational or scientific research purposes. This would allow for personnel of these institutions to distribute parts of works in virtual campuses, including book chapters, journal articles or up to ten percent of a complete work according to the article's text. This may sound like a welcome addition but, the same article also provides that authors and publishers of the used works are entitled to a non-waivable equitable compensation that is to be managed by a Collective Management Organization, in this case the one known as CEDRO, that in Spain represents publishers and authors.

The fact that compensation cannot be renounced implies that universities and public research centers must pay even when they use fragments of works that are distributed under open access models such as Creative Commons⁴² and that CMOs may collect compensation for works that may even be in the public domain.

Setting aside the concerns about CMOs having an even more prominent role in the Spanish copyright system, this could be a terrible blow to the public domain as universities and research centers may have to pay for using material that should be completely free to use in the first place. Xalabarder points out, referring to art. 32.2, that non-waivable compensation is difficult to justify since it is granted to "*publishers or, as applicable, other rights owners*"; that is, it will most likely benefit businesses and companies, rather than the *authors* (natural persons) who have created the contents."⁴³ The same result can be expected of an unwaivable compensation for using parts of works by personnel in universities and research centers.

⁴¹ Jesús López González, *¿Consumes cultura? La propiedad intelectual en la era digital* (Doctoral dissertation), (Barcelona: Universidad Autónoma de Barcelona, 2015) http://ddd.uab.cat/pub/tesis/2015/hdl_10803_288226/jlg1de1.pdf (accessed on June 8, 2015), 158.

⁴² Current terms for the most open of Creative Commons Licenses, Attribution 4.0 International (CC BY 4.0) state in Section 2(b)(3) that: "to the extent possible, the Licensor waives any right to collect royalties from You for the exercise of the Licensed Rights, whether directly or through a collecting society under any voluntary or waivable statutory or compulsory licensing scheme. **In all other cases the Licensor expressly reserves any right to collect such royalties.**" Full text of the License can be read at <https://creativecommons.org/licenses/by/4.0/legalcode> (accessed on June 1st, 2015) (Text highlighted by the authors). This means that when non-waivable licenses are established by law, CC licenses expressly refrain from interfering with them. For more, see Raquel Xalabarder, "The Remunerated Statutory Limitation for News Aggregation and Search Engines proposed by the Spanish Government – its Compliance with International and EU Law," *IN3 Working Paper Series*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2504596, 17-18.

⁴³ Xalabarder, "The Remunerated Statutory Limitation," p. 12.

With policy like this, Spanish legislators enable situations that lead to an undue appropriation of otherwise freely accessible material: control over knowledge that should be common to all passes to private hands that could not claim it under previous legislation. Once again, we can see an expansion of the scope of protection of exclusive economic rights (that may not even benefit creators) and a reduction of what is part of the public domain.

With respect to CMOs, particularly CEDRO, if the opinion of their legal representatives is any indication, appropriating content that is in the public domain is not only possible but also desirable.⁴⁴ We will have to wait and see if the Spanish dispositions survive local legislation adaptation to the coming European Directive and if this dangerous trend continues.

4. Newer technology: regulatory trends on text and data mining in the European Union

As mentioned, a trend in copyright law is the continuous expansion of its scope. Before, copyright legislation concerned itself mainly with creative works, but slowly it has begun to also regulate what has been described as “quasi-technological products”⁴⁵ like computer software or industrial design, or even granting copyright protection over databases, including the so-called *sui generis* right that, rather than protecting the database, protects the substantial investment “in either the obtaining, verification or presentation of the contents.”⁴⁶ All of this raises concerns about information itself being appropriated by rights holders.

There is a steady growth of digitized content available online. More and more works, including scientific publications and scientific data are available on the Internet. Through the use of software, called text and data mining software (TDM) it is possible to search and analyze great amounts of information contained in said digital content. The public at large uses TDM every day, when they use online search engines to find all sorts of content and TDM techniques make it possible to sort effortlessly through very, very large amounts of material. Often, people are not even aware that they are using TDM in their online searches.

But TDM can do much more than just make it easier for people to find content online. TDM can be defined as follows: “Text-mining, data mining or media mining is the extracting of ‘chunks’ of data using computer programmes to discover hidden facts contained in databases. Using a combination of machine learning, statistical analysis, modelling techniques and

⁴⁴Mercedes Morán, “Apuntes sobre el dominio público en España,” *El blog de CEDRO*, March 18, 2015, <http://www.cedro.org/blog/blog.cedro.org/2015/03/17/dominiopublico> (accessed on March 24, 2015). For a comment on the CMOs views see Rodrigo Cetina Presuel, “Apuntes sobre ‘Apuntes sobre el dominio público en España’ (el Blog de CEDRO),” *Latin Cyberlaw Clinic*, March 24, 2015, <http://cyberlaw.ucm.es/expertos/rodrigo-cetina/278-apuntes-sobre-los-%E2%80%9Capuntes-sobre-el-dominio-p%C3%BAblico-en-espa%C3%B1a%E2%80%9D-de-mercedes-mor%C3%A1n-el-blog-de-cedro.html> (accessed May 11, 2015).

⁴⁵P. Bernt Hugenholtz and Lucie Guibault, “The Future of the Public Domain: An Introduction,” in *the Future of the Public Domain: Identifying the Commons in Information Law*, eds. Lucie Guibault and P. Bernt Hugenholtz (The Netherlands: Kluwer Law International, 2006), p. 3.

⁴⁶ See Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, also known as the Database Directive.

database technology, data mining finds patterns and subtle relationships in data and infers rules that allow facts or hypotheses to be discovered or analyzed”⁴⁷ This definition makes clear that TDM has enormous research potential but at the same time, it is a complex process involving various different techniques other than just simply sorting through content.

Indeed, TDM is often used for academic research purposes other than just searching through bibliographic databases owned by scientific publishers. The technology can “speed up processes that were previously done manually, (it can also) enable new methods, which are often referred to as ‘data-driven science’... TDM is regarded as a driver for improving the performance of all sciences, including social sciences, arts and humanities. This applies both to attaining insight that cannot be gained without the use of TDM techniques, and to the acceleration of research processes by building on previous work.”⁴⁸

With such prospects for the use of this technology it is only natural that rights holders – including the publishing industry and particularly academic publishers – see a great opportunity in providing TDM services themselves. They usually provide for a way to search through the content they offer in their own websites but if they want to provide more useful, and probably more lucrative services, in doing so they might “(hinder) the ability of third parties... to mine their content.”⁴⁹

The problem is that very often, researchers will use the techniques that best let them achieve their goals and will “autonomously operate TDM techniques and therefore need extensive access to research data and publications”⁵⁰ that are in the possession of the rights holders we just described. If rights holders want to provide their own version of these services they will have to limit access to content and legislation currently allows them to do just that, enabling “the publishing industry to block these newcomers to the market, impede innovation and increase prices.”⁵¹

Purely economic concerns aside, the question is if the free flow of information can and should be controlled in such a way. TDM techniques can *read* content that is partially or completely available online, and extract *facts* and *figures* from it that the software can process and present to the researcher. The act of reading itself and facts and figures collected through this act fall out of the scope of copyright, meaning they are in the public domain and thus, should be free to use. Text and data mining is not an exclusive right granted to authors or publishers in any legislation whether local, European or international and should be open to anyone. A European Union report recognizes the challenge of “...avoiding a regulatory overspill of

⁴⁷ Response from the British Library to the independent Review of Intellectual Property and Growth, 2011, <http://infojustice.org/download/gcongress/limitationsandexceptionsforculturalinstitutions/British%20library.pdf> (accessed June 1, 2015). 12.

⁴⁸ Christoph Bruch, ed., *Text and Data Mining and the Need for Science-friendly EU Copyright Reform: D/2015/13.324/1*. (Brussels: Science Europe, 2015) http://www.scienceurope.org/uploads/PublicDocumentsAndSpeeches/WGs_docs/SE_Briefing_Paper_textandData_web.pdf, 2.

⁴⁹ Bruch, *Text and Data Mining*, 1.

⁵⁰ Bruch, *Text and Data Mining*, 3.

⁵¹ Bruch, *Text and Data Mining*, 2.

copyright and database law into zones never intended by those who drafted the first copyright law.”⁵²

Of course, right holders think otherwise and base their claims to control who can mine their content in both the aforementioned Database Directive and the so-called Infosoc Directive,⁵³ particularly on the reproduction right contained in art. 2. Based on this “researchers intending to mine works protected by copyright would need either a corresponding license from the right holders of the works or an appropriate copyright exception.”⁵⁴

Such a limit exists in European copyright (art. 5.1 of the Infosoc Directive) and its adoption is mandatory, meaning that all member states must include the limit in their local legislation. However, a researcher looking to mine content on their own would only be able to benefit from the limit if the content has been legally accessed, there is no need to make permanent copies of it in order to mine it and the use has no independent economic significance.⁵⁵ Besides, as the Infosoc Directive itself provides, for the limit to be applicable, the license that establishes the terms for using the content must not itself rule out copying the content (permanently and/or temporarily) or prohibit data mining.⁵⁶ These conditions make it very difficult for text and data mining activities to be allowed in any way by this limit.⁵⁷

Current limits on copyright may not be sufficient but we have stressed their role in protecting the public domain and thus, we must search for proposals that seek to either broaden current ones or to adopt others that specifically allow for the text and data mining of content.

One interesting proposal suggests a limit that has similar characteristics that other scientific research limits but it is a separate one, co-existing in parallel to the rest.⁵⁸ This limit would apply to the reproduction and adaptation rights contained in both the Infosoc and the Database Directives and the extraction right also covered in the Database Directive. It would only apply when the purpose is mainly, but not solely, scientific research (and not only illustration activities like other limits) as long as it is justified by non-commercial purposes. Only users that have lawfully accessed the data could benefit.

The limit would not cover tools designed for data analysis and uses of data that can substitute the pre-existing works or databases. Finally, the limit will not be able to be overridden by

⁵²Ian Hargreaves, ed., *Standardisation in the area of innovation and technological development, notably in the field of Text and Data Mining* (Luxembourg: Publications Office for the European Union), <https://www.iprhelppdesk.eu/node/2459> 67.

⁵³ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

⁵⁴ Bruch, *Text and Data Mining*, 5.

⁵⁵ Mining software can often require that content is stored in a local hard drive to be analyzed.

⁵⁶ Article 6.4 of the Directive establishes that contracts that establish the terms for accessing works made available to the public online under licensing terms.

⁵⁷ Bruch, *Text and Data Mining*, 5.

⁵⁸ Jean-Paul Trialle, *Study on the legal framework of text and data mining (TDM)* (Brussels: European Union, 2014) http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study2_en.pdf This report also examines in depth TDMs and all its policy implications at the European level, even proposing a definition for the activity, which it prefers to call *data analysis*.

contractual terms and it would be mandatory to ensure harmonization between the Member States.⁵⁹ This limit has very similar terms as the one adopted by UK copyright in 2014.⁶⁰ The direction taken by UK law offers hope that the EU legislators will follow a similar path.

If the limit seems somewhat narrow in its scope it is because it concerns itself with complying with the Three-Step test as it is currently interpreted under international law (Berne Convention and WIPO Copyright treaties) because otherwise the limit would be deemed invalid and individual states would not be able to adopt it.⁶¹

Another proposal calls for a TDM limit “applying to *all* scientific researchers, commercial and non-commercial”⁶² in order to avoid problems related to defining what actually constitutes ‘scientific’ research and what can and cannot be considered as ‘commercial research’⁶³ However, the Hargreaves Report recognizes that it would be better to focus efforts into “...a reform with broader effect than an exception covering only text and data mining” and that establishes “a durable distinction in European law between copyright’s long standing and legitimate role in protecting the rights of authors of ‘expressive’ works and copyright’s questionable role in the digital age of presenting a barrier to modern research techniques and to the pursue of knowledge.”⁶⁴

This goes in the same line as our argument that data mining is not an exclusive right (nor it infringes on any exclusive right)⁶⁵ as what is being mined is information that falls out of the scope of copyright protection and thus is in the public domain. We can only hope, as the Hargreaves report does, that the upcoming European Copyright Directive makes that very necessary distinction.

5. The coming European Union Copyright Directive: will users and public domain win?

⁵⁹ In Trialle, *Study on the legal framework*, 97-113 each element is described in detail.

⁶⁰ The new UK limit lets copyright holders require researcher to pay to access their content but cannot restrict text or data mining done for non-commercial purposes. The sale of the text or data extracted by researchers is prohibited under UK law. The limit is contained in the new Section 29A of the Copyright, Designs and Patents Act of 1988, amended in accordance with the Copyright and Rights in Performances (Research, Education and Archives) Regulations 2014 that entered into force on June 1st, 2014.

⁶¹ How the limit would comply with the Three-step test is examined in Trialle, *Study on the legal framework*, 101-104.

⁶²Hargreaves, *Standardisation in the area of innovation and technological development*, 67.

⁶³ As the report argues, making this distinction can be difficult “in an environment where academics frequently work in partnership (or ‘co-creation’) with private sector businesses and where today’s publicly funded post-graduate Research programme is tomorrow’s spin-out Company...” Hargreaves, *Standardisation in the area of innovation and technological development*, 67.

⁶⁴ Hargreaves, *Standardisation in the area of innovation and technological development*, 67-68.

⁶⁵ Which also follows the spirit of the American *Authors Guild Inc. v. Google, Inc.* (SDNY, 2d Cir. 2013) sentence that dismissed the case. Judge Chin, that decided the case found Google’s use of books owned by third parties as “highly transformative” and deemed as fair use the act of turning “book text into data for purposes of substantive research, including data mining and text mining (p. 20).

In May 6, 2015, the European Union adopted its Digital Single Market (DSM) Strategy,⁶⁶ a series of new initiatives to be delivered by the end of 2016 that, among other things, aims to modify copyright legislation to make it simpler and clearer, adapt it to reflect new technologies and to grant better access to digital content.

The Strategy recognizes the need for innovation in research for both non-commercial and commercial purposes. For this to happen, the Commission has pledged to make legislative proposals before the end of 2015, including harmonized limits (they still call them exceptions) to copyright that provide “greater legal certainty for the cross-border use of content for specific purposes (e.g. research, education, text and data mining, etc.).”⁶⁷

That the EU includes copyright reform in its trade and market goals (as per usual) speaks volumes of the focus of the reform, as always centered mostly on commercial exploitation of works and the profits of rightsholders. It seems that the rights of users is a secondary concern. The strategy to protect the rights of the public is based solely on the reform of statutory limitations to exclusive rights, although the Directive finally recognizes that not having mandatory exceptions (as they call them) is a problem, not only for achieving that Digital Single Market, but also to ensure equal rights protection across multiple European states. However, the DSM only calls for “adequate and well-balanced changes to certain of the existing exceptions⁶⁸” so the upcoming Directive certainly doesn’t look like a game changer. One very small glimmer of hope appeared on June 16th, 2015 as the Legal Affairs Committee of the European Parliament adopted an amended version of an EU copyright report by European Parliament Member for the Pirate Party Germany, Julia Reda (better known as the Reda Report)⁶⁹.

Among the amendments that were defeated were various ones that proposed to delete a part of the report that “calls on the Commission to safeguard public domain works, which are by definition not subject to copyright protection and should therefore be able to be used and re-used without technical or contractual barriers, also calls on the Commission to recognize the freedom of rightholders to voluntarily relinquish their rights and dedicate their works to the public domain.”⁷⁰ The fact that some legislators would not agree to allow a definition of the public domain in a report is troubling and exemplifies how little will there is for ensuring access to works that are available for everyone.

⁶⁶ European Commission. "Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe," *ec.europa.eu*. May 6, 2015, http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf (accessed May 31, 2015).

⁶⁷ European Commission, *Digital Single Market Strategy*, 7.

⁶⁸ European Commission, *Digital Single Market Strategy*, 30.

⁶⁹ At the moment of writing this work a full text version of the amended report was not yet available. A previous version can be read in Julia Reda, *Draft Report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society* (Brussels: European Parliament, 2015), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-546.580+02+DOC+PDF+V0//EN> (Accessed May 31, 2015).

⁷⁰ Like we saw in the case of Spain, where a new amendment of copyright law grants collecting societies the right to obtain compensation for the use of fragments of works online even if these are in the public domain.

The Reda report also recommended the EU to clarify in future legislation that digitization of content “does not grant new copyright protection to works that were previously commonly owned” and to ensure that “works created by employees of the government, public administration and the courts as part of their official duty should be in the public domain.” Reda claims that the final report “maintains a strong call for safeguarding the public domain and ensuring that works that belong to us all stay in the public domain when they are digitized.”⁷¹ The recommendation for government created works to be in the public domain was scraped from the report along with a call to reduce copyright terms in future EU legislation. Regarding TDM, the report calls for the adoption of limits to allow its use for research but only indirectly acknowledges that information contained in digitized content must remain in the public domain.

We called the Reda report as very small glimmer of hope because these types of documents are not binding in nature and yet, the fact that a document that openly calls for stronger protection of the rights of the users in Europe and contains positive definitions of the public domain was supported by all political groups may indicate the possibility that legislators are more sensitive to these subjects that they were before and that they are no longer solely focused on securing profits for rightholders.

Only time will tell what will happen. A specific legislative copyright reform proposal is expected before the end of 2015 but like we said, we really don’t expect a new Directive that will deviate greatly from current conceptions of copyright and the public domain.

6. International Treaties currently under negotiation.

In recent years, international treaties like ACTA⁷², seen as dangerous for both user freedom and constitutional rights, were met with substantial public protest. Public outcry led to its rejection, among others, by the European Parliament. This and other incidents (like the rejection of SOPA or PIPA in the US) make it clear that “as academics, professionals and policy makers continue to work on IP reform, it should be recognized that any legitimate enforcement of the IP rights of content authors will need to account for a people-centered law that respects such individual freedoms and liberties.”⁷³ This is also encouraging news for the public domain.

⁷¹ Julia Reda, "Reda report adopted: A turning point in the copyright debate," *juliareda.eu*. June 16, 2015, <https://juliareda.eu/2015/06/reda-report-adopted-a-turning-point-in-the-copyright-debate/> (Accessed June 18, 2015).

⁷²The so-called Anti-Counterfeiting Trade Agreement. The last known draft can be accessed at http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf (Accessed June 16, 2015).

⁷³Loreto Corredoira, “A Wave of Fresh Air in Copyright regulation?” *Media Policy Blog of the London School of Economics and Political Science*, July 29, 2013 <http://blogs.lse.ac.uk/mediapolicyproject/2013/07/29/a-wave-of-fresh-air-in-copyright-regulation/> (Accessed June 11, 2015).

However, other treaties that could put it in serious danger are still being negotiated. One of those is the WIPO Treaty on the Protection of Broadcasting Organizations⁷⁴ that has been in development since 1998 and surprisingly is still alive. If adopted, the treaty would grant TV broadcasters a fifty year right to control content broadcasted over their networks and over any fixation of it once it has been received by the end user. This would apply even to works for which the broadcaster has no copyright over and would also restrict the use of content that is in the public domain. Some have even called for the treaty to be applied over the Internet. As the Electronic Frontier Foundation correctly argues such a treaty would negatively “impact the work of journalists, archivists, and creators who could otherwise legally gain access to source content through broadcasts” with the terrible consequences for access to information that this would mean.⁷⁵

Other treaties to watch include the Trans-Pacific Partnership Agreement (TPP)⁷⁶ which contain copyright related provisions that seek, among other things, to lengthen minimum copyright terms mandated by international treaties and strengthen protection for technical protection measures with the known consequences on limits on copyright; the Transatlantic Trade and Investment Partnership (TTIP),⁷⁷ and the Trade In Services Agreement (TiSA).⁷⁸ In recent years there has been much outcry over treaties that are negotiated in secret and this has, on a positive note, led the European Union to undertake transparency efforts and make their proposals related to TTIP public.⁷⁹

There is no doubt that the European transparency effort is welcome news and in 2015 there is much more public oversight over trade treaty negotiations that are usually conducted in secret. Leaks by news organizations, the EFF, WikiLeaks and similar sites contribute greatly to this oversight and their efforts should be recognized. Let’s hope that greater transparency and public scrutiny yield their fruits and pressure leads countries to steer away from agreements that imperil constitutional rights and the public domain just like it happened with ACTA, SOPA or PIPA a couple of years ago.

7. Conclusions

If at least part of what the Reda report proposes is taken into account we may see a positive definition of the public domain in European legislation but there is a very real possibility that this definition is not accompanied by real measures that clarify when and what works and elements are in the public domain. This means that most of the problems we have described will still be there by the end of this year and the years to come.

⁷⁴ The latest draft can be read at http://www.wipo.int/edocs/mdocs/copyright/en/sccr_27/sccr_27_2_rev.pdf (Accessed June 16, 2015).

⁷⁵ Jeremy Malcolm, “The Danger of New Post-Fixation Rights in the WIPO Broadcasting Treaty, www.eff.org, December 9, 2014, <https://www.eff.org/deeplinks/2014/12/danger-post-fixation-rights-wipo-broadcasting-treaty> (Accessed June 11, 2015).

⁷⁶ A leaked draft from 2014 can be accessed at <https://wikileaks.org/tpp-ip2/> (Accessed June 16, 2015).

⁷⁷ In February of 2015 a draft was published by the BBC and can be accessed at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/26_02_2015_ttipp.pdf (Accessed June 16, 2015).

⁷⁸ Leaked documents can be read at <http://www.sepla21.org/comunicado-da-sepla-quanto-ao-tisa/> (Accessed June 16, 2015).

⁷⁹ Accessible at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230> (Accessed June 16, 2015).

We would rule out the possibility of a reduction in the term of protection anywhere in the world as current international treaties do not make this possible and there is very little political will to change that. Inside the European Union, it would be beneficial to have at least one harmonized general term of protection that makes it easier to determine exactly when a work will pass into the public domain. Having different protection terms grants rights (both exclusive rights and rights to freely access content) to some EU citizens while it deprives others. The upcoming EU reform does offer hope of harmonizing the term, at least inside the European Union but this will be more of a problem than a solution if copyright terms are once again extended as a result.

It is likely that some new limits on exclusive rights will be introduced in the upcoming European Directive but it is not clear that all of them will be mandatory and there are no guarantees as to how broad they will be construed and then interpreted. There is no clear indication that European policy makers plan to make members adopt statutory limitations that contain certain specific language. It is also not clear that a new EU Copyright Directive would invalidate dispositions such as article 32.4 of the 2015 Spanish Copyright Act. So, terms that allow for CMOs to collect compensation for uses of works that should be freely accessible will still be possible and authors will continue to be denied the right to freely decide if they want to release their works to the public domain.

In regards to text and data mining, even if a limit is introduced, no matter if its terms are broad, its sole existence will serve to remind us that copyright policy still tends to expand the scope of protection in favor of rights holders and it no longer concerns itself only with protection of creative or expressive works. Legislators still have a narrow view and only see copyright as a means to protect markets and maximize profits, even if that means granting control over information that should be publicly available.

Currently there are various international treaties that pose a threat to public domain but increased transparency efforts, particularly by the European Union, and constant leaks and activism by various organizations and news outlets allow for greater oversight and public scrutiny. At least that is a good thing.

But despite some positive news, it looks that in 2015 and beyond, legislators and rights holders will still see the public domain as a mere repository of what is not valuable and will still try to perpetuate legislation that allows for appropriation of any type of content, expressive or not, the minute is deemed as commercially valuable.

A change of paradigm is necessary. Legislators must understand the importance of protecting the public domain and the need to separate what should be protectable according to the spirit and goals of copyright legislation, and what should be part of those common elements accessible to all that make possible for new works to be created.

The public domain should be understood as essential to the system that makes the creation of works possible for the benefit of society in general and should be seen as a space where works, and ideas can freely circulate for the benefit of fundamental rights like freedom of expression and access to information and/or the human right to communicate.

In 2015 and the following years, efforts to strengthen and protect the public domain such as calling for a positive definition of it in legislation should continue. Also, the possibility of adopting legislation that protects the public domain itself against further expansion of copyright and undue appropriation of content that is already publicly accessible, or that will be so in the near future, should be considered.

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Legislation:

International Treaties:

- Universal Declaration of Human Rights.
- Berne Convention for the Protection of Literary and Artistic Works.
-

European Directives:

- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, also known as the Database Directive.
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society.

Mexico:

- Ley Federal del Derecho de Autor

Spain:

- Real Decreto Legislativo 1/1996, de 12 de abril, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la material.
- Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil.

United States:

- Copyright Act of 1976 (US Code, Title 17)
- Copyright Term Extension Act of 1998 (Sony Bono Act)

United Kingdom:

- Copyright, Designs and Patents Act of 1988
- Copyright and Rights in Performances (Research, Education and Archives) Regulations 2014

Judicial decisions:

European Union:

- Infopaq International A/S v. Danske Dabladeforening, C-5/08, July 16th, 2009.

United States:

- National Assoc. of Broadcasters v. Copyright Royalty Tribunal, 675 F. 2d 367 (D.C.Cir. 1982).
- Apple Computer, Inc. v. Microsoft Corp, 717 F. Supp. 1428 (N.D. Cal. 1989).
- *Golan v. Holder* 565 U.S. ____ (2012)
- *Authors Guild Inc. v. Google, Inc.* (SDNY, 2d Cir. 2013)

International Treaties that have not yet entered into force or have been rejected:

- Anti-Counterfeiting Trade Agreement.
http://www.mofa.go.jp/policy/economy/i_property/pdfs/acta1105_en.pdf
- Transatlantic Trade and Investment Partnership <https://wikileaks.org/tpp-ip2/>
- Trans-Pacific Partnership Agreement
http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/26_02_2015_ttip.pdf
- Trade in Services Agreement <http://www.sepla21.org/comunicado-da-sepla-quanto-ao-tisa/>
- WIPO Treaty on the Protection of Broadcasting Organizations
http://www.wipo.int/edocs/mdocs/copyright/en/sccr_27/sccr_27_2_rev.pdf