

Impact case study (REF3)

Institution: University of Glasgow (UofG)		
Unit of Assessment: UoA 18 Law		
Title of case study: Enabling digital innovation: an evidence-led approach to EU copyright law		
Period when the underpinning research was undertaken: 2014–2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): (1) Martin Kretschmer (2) Kris Erickson (3) Bartolomeo Meletti (4) Thomas Margoni	Role(s) (e.g. job title): (1) Professor of Intellectual Property Law and Director of CREATE Centre; (2) Lord Kelvin/Adam Smith Research Fellow; (3) Employed on a consultancy basis to develop Copyrightuser.org, thereafter Copyright Education Creative Director; (4) Senior Lecturer in Intellectual Property and Internet Law	Period(s) employed by submitting HEI: (1) 2012–present (2) 2013–2017 (3) 2014–2017; 2017–present (4) 2016–2020
Period when the claimed impact occurred: 2015–2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact Copyright law governs the use of a wide range of cultural materials. In the digital age, it is increasingly difficult to know whether these materials can be used, and how permissions should be sought. UofG research has: (i) produced evidence to inform the EU copyright debate. From 2015 onwards, Kretschmer coordinated an academic response to proposed EU legislation, which persuaded a majority of MEPs to reject the first negotiation mandate for the Copyright Directive in 2018. The research: (ii) supported amendments to articles 5, 11 & 13, which protect the rights of EU citizens over corporate interests. The same research underpins one of the UK's leading copyright guidance websites, which has: (iii) shaped the creative policy and practice of copyright 'users' within the creative sector via engagement with the British Film Institute.		
2. Underpinning research Almost every activity on a mobile phone, computer or network involves acts of copying. Copyright law has effects that go far beyond its origins of regulating the behaviour of competitors in the same industry sector (e.g. such as protecting a publisher against a re-publisher). It now affects the infrastructure of society, and the role of creators and users as citizens. CREATE, the UK Copyright and Creative Economy Centre (hosted by the UofG School of Law), was established in 2012 to enable a new evidence-led understanding of copyright law.		
2.1. Reconciving the 'users' of copyright CREATE researchers have studied how to enable the creative sector to develop a much wider range of behavioral options relating to copyright. In 2015, an assessment [O1] was undertaken across six artistic mediums: music, film, performance, visual art, writing and interactive development. It sought to understand creators, entrepreneurs, educators and consumers as 'users' of copyright. The research identified and quantified obstacles to creative re-use that arise from misunderstandings of the boundaries of copyright law [O2] and proposed specific interventions to release the value of the creative re-use of material (e.g. increasing the amount of material available in the public domain through legislation; improving knowledge about the boundaries of copyright law among creators; and improving information flow between creative industries and holders of public domain materials). These recommendations were implemented by UofG researchers in the development of the UK online guidance portal CopyrightUser.org (led by CREATE).		
2.2. The EU Copyright Directive When the Copyright in the Digital Single Market Directive was proposed by the European Commission in September 2016, CREATE undertook a series of evidence reviews and empirical studies [O3, O4, O5, O6] relating to the most controversial provisions in the draft legislation. The research found that evidence did not support provisions in Articles 5, 11 and 13, which sought to alter the balance between protecting and rewarding rightholders and facilitating user innovation.		

Article 5 (which later became Articles 3 and 4) proposed a new narrow exception that was designed to enable copying of materials in the process of text-and-data-mining. However, the exception was restricted to purposes of scientific research (thus excluding cultural heritage institutions, journalists and commercial start-ups). Margoni and Kretschmer's research [O4] showed that text-and-data-mining is misconceived as a copyright relevant activity, as the purpose of mining is extracting information from works, not copying the works.

Article 11 (later Article 15), proposed that *anyone* using snippets of journalistic online content must first get a licence from the publisher, potentially affecting everyday activities such as blogging and hyperlinking. Along with Professor Lionel Bently (University of Cambridge) and others, Kretschmer was commissioned by the European Parliament to review the laws of seven Member States to see how far the proposed new articles would 'add value' [O5]. The desk work was executed primarily by the University of Cambridge, with a subcontract given to Prof. Kretschmer, who drew extensively upon the body of empirical evidence from CREATE research. A key finding was that previous interventions to establish press publishers' rights in Germany and Spain did not produce the intended effects (e.g. enforcing the rights of publishers and generating income from US tech companies). It also found that the proposal favoured incumbent publishing interests over innovation (e.g. the interests of quality journalism, small publishers or news-related start-ups).

Article 13 (later Article 17) proposed to change the liability regime so that platforms that host user-generated content (e.g. YouTube) would become responsible for unlawful content found on their sites. A likely consequence of such proposals would be the introduction of large-scale upload filtering software—a burden that would likely discourage start-ups and effectively lock-in YouTube's dominance. Automated takedown would struggle to tell copyright infringement apart from legal uses such as parody; as a result, legitimate content would be removed, thus affecting creative freedoms. Kretschmer and Erickson's research [O6] investigated the factors that motivate takedown requests of user-generated content by copyright owners using an original dataset of 1,839 music video parodies. The research found that takedown requests by copyright holders already results in the removal of lawful content, and that policy concerns frequently raised by rightholders are not associated with statistically significant patterns of action.

3. References to the research

[O1] K Erickson, P Heald, F Homberg, M Kretschmer and D Mendis, [Copyright and the Value of the Public Domain: An Empirical Assessment](#) (2015), Project Report, UK Intellectual Property Office, Newport.

[O2] P Heald, K Erickson and M Kretschmer, "[The valuation of unprotected works: a case study of public domain photographs on Wikipedia](#)" (2015) 29(1) *Harvard Journal of Law and Technology* 1-32.

[O3] M Kretschmer, S Dusollier, C Geiger and PB Hugenholtz, "[The European Commission's public consultation on the role of publishers in the copyright value chain: a response by the European Copyright Society](#)" (2016) 38(10) *European Intellectual Property Review* 591-595.

[O4] T Margoni and M Kretschmer, "The text and data mining exception in the proposal for a directive on copyright in the digital single market: Why it is not what EU copyright law needs", paper presented at European Policy for IP, Berlin (07/09/2018), and Global Congress on IP & Public Interest, Washington (27/09/2018). Available as [a CREATE blog](#) (25/04/18).

[O5] L Bently, M Kretschmer, T Dudenbostel, M Calatrava Moreno, and A Radauer, [Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive](#) (2017), Project Report, European Parliament, Brussels. [\[PDF available\]](#)

[O6] K Erickson, and M Kretschmer, "[This video is unavailable](#)": [analyzing copyright takedown of user-generated content on YouTube](#) (2018) 9(1) *Journal of Intellectual Property, Information Technology and E-Commerce Law* 75-89.

Evidence of the quality of the research: Output [O1] is an 81-page research report that was peer reviewed by the UK Intellectual Property Office prior to publication. Outputs [O2] and [O6] are published in international double-blind peer reviewed law journals.

4. Details of the impact

4.1. Context

Copyright policy has suffered from the lack of an accepted evidence base. It is a highly technical field of law that, through digitization, is suddenly implicated in everyday life. The debate around the EU Commission's proposals for copyright reform (2015–2019) was played out amid intense corporate lobbying aimed at MEPs, governments and the general public. The face-off between US tech companies (e.g. Google) versus European collecting societies, record companies and press publishers, led to widespread accusations of deception and unfair lobbying. Amid this confusion, there was a real danger that the interests of EU citizens would be drowned out.

4.2. Informing the EU copyright debate

CREATE's interdisciplinary research has provided EU citizens and policymakers with a trusted source of information during the course of this complex debate (as demonstrated by the report on corporate lobbying [E1]). Kretschmer also disseminated research findings and advocated CREATE's evidence-led approach through invited presentations at hearings in the European Parliament and at high-level roundtables for the European Commission (confirmed by collated evidence [E2]). A key recommendation of the research [O1] was to support innovation by increasing the amount of material available for re-use without seeking permission. When the final study [O1] was published in 2015, it fed into a European Parliament review of the 2001 Copyright Directive. The then Rapporteur cited the research in Parliament and endorsed its role in safeguarding public domain works for the benefit of EU society: *'the empirical results generated by the CREATE study helped my colleagues and I advocate for change to European copyright that will improve the regulatory landscape for creators and users.'* (confirmed by letter [E3]).

When controversial new legislation was introduced by the European Commission in September 2016, Kretschmer drew upon the underpinning research to coordinate an academic response to the Copyright in the Digital Single Market Directive. CREATE's [digital portal](#) [E4] became a focal point for this activity, providing a hub for the dissemination of academic statements and the findings of CREATE's most relevant research [O2, O3, O4]. As a result of the initiative of Kretschmer (and others), over 200 academics signed open letters opposing Articles 11 and 13. These interventions also advocated opening Article 5 (which became Articles 3 and 4: exceptions for text-and-data-mining) to all users, including for commercial purposes (confirmed by open letters [E5]).

Kretschmer then co-authored an academic statement entitled 'Misinformation and Independent Enquiry' (known as the CREATE Statement [E6]), which received over 40,000 impressions on Twitter. This was a key piece of evidence that persuaded a majority of MEPs to reject the first negotiation mandate for the Directive in the [vote on 5 July 2018](#). This rejection was highly significant, as it represented a surprise result in the face of extensive corporate lobbying (e.g. Google alone held 22 meetings with high-level European Commission staff specifically on copyright). With the Commission's proposals sent back to the drawing board by Parliament, the then Shadow Copyright Rapporteur wrote: *'I cannot stress enough that I think the active academic intervention in this vote has been absolutely decisive for this first success'* [E7].

4.3. Supporting amendments to the EU Copyright Directive

As the result of the research and interventions of CREATE (and others), specific changes were made to the Copyright Directive prior to the vote in respect of Article 11, and subsequent to the vote in respect of Articles 5 and 13. For example, the European Parliament commissioned study [O5] was presented to the Committee on Legal Affairs (JURI) on 7 December 2017 [E2]. Its concerns that the reform would give big media players the power to monetize their content online (at a cost to the circulation of news) were reflected in an explicit exemption for 'hyperlinking' introduced by Parliament to the Commission draft (and further amendments that remove 'individual words or short extracts' and 'private or non-commercial uses' from the scope of the new right).

For Articles 5 and 13, the European Parliament introduced later amendments that enabled the rejected draft to pass plenary votes (on 11 September 2018 and 26 March 2019 respectively). For Article 5, the scope of the text-and-data-mining exception was extended to embrace cultural

heritage institutions (in line with the findings of [O4]). For Article 13, obligations were re-focused on major platforms (e.g. YouTube). In line with the findings of the underpinning research [O6], exemptions were provided for ‘microenterprises and small-sized enterprises, educational or scientific repositories’ under a new definition of an ‘online content-sharing service provider’ introduced as Article 2(6).

The amended Copyright Directive was approved by the European Parliament on 26 March 2019 and the European Council on 15 April 2019. While the revised provisions remain problematic, a former MEP and Copyright Rapporteur of the Internal Market Committee confirms that, ‘*Prof. Kretschmer’s research underpinned the case for innovation-enabling improvements*’ (statement [E8]). She (and other MEPs) relied upon academic evidence throughout the highly-complex debate (as confirmed by transcript [E9]). Statement [E8] specifically confirms the role of the empirical evidence provided by the underpinning UofG research [O4, O5, O6] within that process: ‘*The importance of academic input into the copyright debate was essential due to the polarised nature of the debate and the power of those right holders’ lobbies who were not supporting creators but profit. Without academic input, there would have been little counter argument particularly as the subject is complex and legalistic.*’

4.4. Shaping the creative policy and practice of copyright users

Based upon the underpinning research [O1, O2], CREATE’s CopyrightUser.org web portal has become one of the UK’s most authoritative copyright guidance sites, attracting more than 1,661,003 unique visitors since 2017 [E10]. This resource enables educators and cultural heritage practitioners to access independent copyright guidance based upon up-to-date empirical evidence. Its success has been widely recognized. For example, the European Commission commissioned the Council of Europe’s European Audiovisual Observatory to carry out an independent study to identify the most significant media literacy projects carried out since 2010—CopyrightUser.org was in the top 5 for the UK in 2016 [E11].

As a direct result of engagement with CopyrightUser.org, there is evidence of changes to policy and practice within the cultural heritage sector. For instance, based upon the underpinning research [O1], Meletti was seconded to the British Film Institute (BFI) from 2017–2018. The BFI hosts the largest public searchable database dedicated to British films released in the UK. This flagship platform for the BFI’s mass digitization project has received over 74 million views to date. As a result of Meletti’s secondment, the BFI reappraised its copyright policy, guidance and staff training (as confirmed by statement [E12]). The BFI’s Rights Database Manager testifies that, ‘*links to pages on Copyrightuser.org have been embedded in our internal policy and guidance documents to help provide more information and context on copyright research [...] Approximately 35 members of BFI staff have used guidance [...] Using Copyrightuser.org in this way helps us particularly where we are unable to give legal advice but can direct people to the resources on the website so they can gather more information about the issues.*’ [E12]

The secondary beneficiaries of the BFI’s revised copyright guidance are its members and partner organisations. These changes enable creators (e.g. filmmakers and educators) to use archive material more readily in their creative projects. For instance, in 2017 the BFI supported a pilot project to supply films to students for creative reuse. The project has since grown across the UK and Ireland and now provides 60 Higher Education Institutions with access to 39 titles for creative projects. The BFI’s Rights Database Manager confirms that, ‘*The ongoing impact of [Meletti’s] secondment and continued use of Copyrightuser.org [...] has brought positive changes to the BFI for both our internal development of clearer and evidence-based copyright policies and how we communicate with partners and the public to deliver our public mission.*’ [E12]

5. Sources to corroborate the impact

[E1] Corporate Europe Observatory Report on Copyright Directive lobbying (Opinions attributed to ‘academics’ (e.g. on p.11) hyperlink to the Academic Statement [E5], hosted on the CREATE website, which cites the underpinning research [O5] among the key academic contributions on p.5) [PDF available].

[E2] Collated evidence: invited presentations at hearings in the European Parliament and at high-level roundtables for the European Commission (2014-2017) including confirmation of

Bently and Kretschmer's presentation of the proposed press publishers' right (7 Dec 2017) **[PDF available]**.

[E3] Letter from MEP/Rapporteur (29 January 2016) (acknowledges the influence of Erickson/Kretschmer report **[O1]** on the review) **[PDF available]**.

[E4] CREATE EU Copyright Reform digital resource: <https://www.create.ac.uk/policy-responses/eu-copyright-reform/> **[PDF available]**.

[E5] Academics against Press Publishers' Right Statement (10 September 2018) (voting recommendations based upon two open letters) **[PDF available]**.

[E6] (i) Academic statement entitled 'Misinformation and Independent Enquiry' (29 June 2018) known as the 'CREATE Statement', co-authored by Kretschmer; (ii) CREATE Statement Twitter Analytics (confirms over 40,000 impressions) **[PDFs available]**.

[E7] Email from MEP (10 July 2018) (confirms the decisive role of the academic intervention) **[PDF available]**.

[E8] Statement from former MEP and Copyright Rapporteur of the Internal Market Committee, now CEO of the Open Knowledge Foundation (June 2020) (confirms the importance of the academic intervention and the use by policymakers of the underpinning research) **[O4, O5, O6]** **[PDF available]**.

[E9] Transcript of former MEP and Copyright Rapporteur's contribution to the Committee on the Internal Market and Consumer Protection Extraordinary meeting (13 March 2017) [IMCO (2017)0313_1, 13/3/2017] (in which the Rapporteur relies on evidence presented in the open academic letter of 24 February 2017) **[PDF available]**.

[E10] CopyrightUser.org has attracted 1,661,003 unique visitors since 2017 (figures confirmed by a GoAccess report on 28 August 2020) **[PDF available]**.

[E11] Mapping of media literacy practices and actions in EU-28. European Audiovisual Observatory, Strasbourg 2016 (confirms CopyrightUser.org was in the top 5 media literacy projects in the UK in 2016 on p.379) **[PDF available]**.

[E12] Statement from the Rights Database Manager, British Film Institute (June 2020) **[PDF available]**.