

REVIEW

From: Prof. Dr. Sc. Jivko Ivanov Draganov, Department of International Law and EU Law,
Law Faculty of the University of National and World Economy

Subject: dissertation work of Ana Lazarova on the topic "Balance between copyright and the public interest: consistency of EU policy", presented for the award of the educational and scientific degree "Doctor" in a professional field 3.3. Political Science, Doctoral Program "European Studies - Media Policy and EU Law"

The reason for presenting the review is my participation in the scientific jury for the defense of the dissertation according to the Order of the Rector of Sofia University "St. Kliment Ohridski ", entered in the Register of Sofia University for members of scientific juries under № 14 / 09.06.2022

1. Information about the candidate

Ana Lazarova graduated in Law from the Faculty of Law at Sofia University "St. Kliment Ohridski " in 1999. She continued her studies at the University of Avignon, where in 2006 she received a master's degree in European law. She has participated in training in the field of copyright at the World Intellectual Property Organization. Since 2020 she has been

enrolled as a doctoral student at the Department of European Studies at the Faculty of Philosophy at Sofia University "St. Kliment Ohridski".

The professional development of the doctoral student reveals a lasting interest in media policy and intellectual property. Ana Lazarova is a lawyer and industrial property representative before the Patent Office of the Republic of Bulgaria and before the EU Intellectual Property Office. She is a co-founder and Chairman of the Digital Republic Association, National Coordinator of Creative Commons for Bulgaria, member of the Public Council for Information Technology and Internet Governance at Ministry of Transport and Communications. She participated in the Working Group at the Ministry of Culture for the transposition of Directive 2019/790. She speaks English, French, Russian and Spanish.

2. General characteristics of the dissertation

The dissertation is a monographic study of a particularly relevant and important for media policy, European studies and theory and practice in the field of intellectual property law topic - the balance between copyright and fundamental rights, in the context of recent achievements in the harmonization of copyright in EU. The work has interdisciplinary character. The dissertation is 333 pages long and consists of an introduction, five chapters, a conclusion and a list of references. There are 598 footnotes. The bibliography includes over two hundred (224) publications in English and Bulgarian, a significant part of which are available online.

The author focuses the research on the copyright reform in the EU, viewed through the prism of the balance between the interests of right holders on the one hand and users on the other. The issues related to the conflict between intellectual property rights and fundamental rights and the constitutionalisation of intellectual property rights in the EU take central place.

In the introductory part the candidate defines the object, subject, goals and tasks of the work. The subject of the study is the reform of copyright in the EU as a tool for balancing conflicting rights and interests. The author aims to establish the consistency of the reform in question, especially in terms of the extent to which legislative decisions contribute to achieving a balance between the rights in question. According to the PhD candidate, the normative regulations reveal major contradictions that predetermine potential collisions at the

EU and national level. The main research thesis is that copyright reform in the EU contains unbalanced solutions in relation to the conflict between copyright and the interests of society and users, and that the new rules contradict the existing regulation of these relations in the EU. The lack of consistency in the new normative solutions is justified.

The first chapter contains an analysis of the general issues of copyright reform in the EU. In it, the author considers the exceptions and limitations of copyright as the main tool for balancing conflicting interests. In particular, the candidate examines the legal nature of exceptions and limitations to copyright and the factors that affect them. The imperfections of the exceptions as a balancing tool are revealed, and the overcoming of these deficiencies, according to the author, can be achieved by considering the exceptions as subjective rights of the users. The classification of exceptions in three main groups has also been made. Attention is paid to the impact of the case law of the CJEU on the balancing of fundamental rights. From the analysis of the reform the author comes to the conclusion of complete failure in terms of its consistency. In the last part of the first chapter the candidate considers the nature of the EU norms through which the copyright reform is carried out. There is a strong critical attitude of the author towards the consequences of copyright reform, which can be attributed to some extent to the disregard for the principle of conferred competence of the EU.

The following chapters of the dissertation discuss the consequences of copyright reform in the field of education, cultural heritage protection, news dissemination and the uploading of copyrighted content by users to online platforms. Each chapter covers a detailed analysis of the new rules and an assessment of the consequences of their implementation. Specific proposals for improving the regulations are formulated. Some of the proposals, for example in relation to defining the criteria for establishing the representativeness of collective management organizations, are well-argued and very well-founded. In general, the author retains the critical approach. In conclusion, the theoretical contributions of the work and the proposals *de lege ferenda* are summarized.

3. Evaluation of the scientific and scientific - applied contributions of the dissertation

The dissertation is distinguished by many merits and has a number of scientific and scientific-applied contributions, which relate to two separate scientific fields - political science and law. The analysis of the phenomena is performed at the level of the European Union and at the national level, which testifies to the in-depth knowledge of the dissertation not only in the field of European studies, but also in legal matters.

The work is a scientific novelty and enriches the existing scientific knowledge in our country in the specific field of media policy of the Union, as well as in terms of harmonization of copyright in the EU and balancing them with fundamental rights, and the consequences and problems arising from this process. This topic is poorly studied in the Bulgarian scientific literature. The scientific novelty is determined also by the fact that the dissertation is based on the analysis of the provisions of Directive 2019/790, which is still being transposed in our country, and the legal framework of these relations has not been the subject of an independent monographic study.

Some of the scientific contributions of work go beyond the boundaries of Bulgarian science. These include identifying the shortcomings of copyright reform in the EU as policies and determining specific problems and contradictions.

Some of the proposals *de lege ferenda* in connection with the transposition of Directive 2019/790 in our country are also contributing, including the proposal to replace the term "care of a diligent merchant" with the EU term "best efforts"; to provide for a special procedure in the Law on Copyright and Neighbouring Rights for the exercise of the subjective right of users, provided for in Directive 2019/790; for the inclusion of the exception for parody as a general exception in the Law on Copyright and Neighbouring Rights, etc. The author has rightly pointed out that the replacement of the term "care of a diligent merchant" will prevent confusion between two different concepts in the application of the relevant provisions.

The proposals made by the PhD candidate for the improvement of the legal framework regarding the legal criteria for establishing the representativeness of the organizations for collective management of rights should be indicated as an independent contribution. The criticism of the current legislation is well-founded.

The in-depth study of the copyright reform carried out by Directive 2019/790 is of a contributing nature. It covers all elements of this reform and has both theoretical and

important practical and applied significance. The analysis can be useful to the national legislator and to practitioners working in the field of copyright.

A contribution to the field of political science and European studies is the systematization of copyright exceptions in Union law in view of their ideological and political justification. A detailed and in-depth study of the case law of the Court of Justice of the EU will support future research in the field of copyright reform and at the same time will serve as a particularly useful and valuable tool in the hands of practitioners.

It should be emphasized that the contributions of the dissertation relate not only to the field of political science and European studies, but also to various areas of legal science, including EU law, intellectual property law and the protection of fundamental rights.

4. Evaluation of the publications

The candidate's research activity is impressive. For the period from her enrollment until now, Ana Lazarova has published a total of twelve articles, reports and other materials on the topic or related to the topic of the dissertation. Six of them are in Bulgarian and six in English. The articles have been published in authoritative national and international periodicals in the field of law and in the field of intellectual property law, such as the magazine "Contemporary Law", the Journal of Intellectual Property Law and Practice and others as well as in online platforms.

The reports are presented at doctoral conferences in the country. The main part of the publications deals with various aspects of copyright reform in the European Union, while others are devoted to various issues of copyright, including e-books, the free use of protected works and others.

5. Evaluation of the abstract

The abstract consists of a presentation of the structure, general characteristics and a brief presentation of the content of the dissertation by chapters. In a separate paragraph of the abstract there are presentations of the proof of the research theses and of the conclusions. The scientific contributions of the work are indicated. A list of publications used by the author is included.

The abstract meets the requirements regarding its form and content and correctly

reflects the scientific and scientific-applied contributions of the dissertation.

6. Remarks and recommendations

Some remarks and recommendations, which I have formulated below, can be addressed to the PhD candidate.

The strong critical approach to the EU's copyright harmonization policy and to many of the new legislative solutions makes an impression. The author has supported the formulated theses with serious arguments, but some of them can be subjected to additional analysis, which may lead to different conclusions.

Although the candidate has discussed the questions about the EU's competence to legislate in the field of intellectual property and in particular to harmonize copyright, she has failed to analyze the importance of the principle of conferred competence. Indeed, EU policy and harmonization of copyright can be described as insufficiently effective, inconsistent and fragmentary. It can also be agreed that this has negative consequences for national protection. However, this situation is objectively determined by the principle of conferred competence, according to which the limits and scope of EU competence are drawn by the Treaties. No matter how important it is to carry out a complete and coherent reform, the EU is limited to the adoption of those legal norms that are related to the functioning and development of the internal market. Additional restrictions on the Union legislature also stem from the fact that, within the shared competence to which the internal market falls, the institutions should ensure compliance with the principle of subsidiarity. At this stage in the development of the EU, full harmonization of copyright is beyond the competence of the Union, and possible development is limited to what is necessary to ensure the functioning of the internal market. Moreover, copyright includes a number of moral rights that remain outside the competence of the EU. For these reasons, the critique of copyright reform should outline the limits of possible Union intervention and, on this basis, draw the appropriate conclusions and recommendations.

The exceptions that allow free use of protected works are considered by the candidate mainly as a balancing tool in the conflict between copyright and fundamental rights. There are different interpretations regarding the limitations on copyright, so that on the one hand they do not affect the interests of the author, and on the other hand copyrights do not deprive

the general public of free access to protected works. Some of the hypotheses of free use of the works are not directly related to the possible conflict between copyright and fundamental rights and, accordingly, to the need to ensure a fair balance between them. The processes of constitutionalization of copyright are debatable in the legal doctrine as they set precedents that may further fragment the current legislation and result to enforcement problems. All this can be the subject of further analysis by the author in her future research.

The conclusions about the new system for monitoring content uploaded by users on large platforms cannot be fully shared. The new rule introduced by Directive 2019/790 should be seen rather as an exception from the general principle of limitation of liability, which remains in force. This exception does not apply to all online service providers, but only to a limited number of parties, which comes down to the large online platforms, and the introduction of the new regime is in connection with the economic benefit that can be generated by users from uploading protected content.

The critical remarks made do not change my entirely positive impression of the presented dissertation.

7. Conclusion

The dissertation work on the topic "Balance between copyright and public interest: consistency of EU policy" is an original scientific study, which has many merits and is a valuable contribution to the development of science and practice in the field of copyright policy and protection in the European Union and in our country. The work meets the national minimum requirements established in the ZRASRB and in the Regulations for its implementation and should receive a positive assessment.

Based on my overall impression of the qualities and merits of the work, I strongly suggest that the scientific jury decide to award Ana Borisova Lazarova the educational and scientific degree "Doctor" in the professional field 3.3. Political science, scientific specialty "European Studies - Media Policy and EU Law".

27.06.2022

Sofia

.....
Prof. Jivko Draganov