

## **ACADEMIC OPINION**

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regarding the dissertation thesis of Ana Borisova Lazarova

on the topic: "**The Balance between Copyright and Public Interest: Consistency of the EU Policy** "

submitted for the acquisition of the educational and scientific degree "Doctor" in the professional field 3.3. "Political Sciences"; Doctoral program "European Studies - Media Policy and EU Law"

The following academic opinion is submitted on the basis of Order No. 14/09.06.2022 of the Rector of Sofia University "St. Kliment Ohridski".

In accordance with the requirements of the Act on the Development of the Academic Staff in the Republic of Bulgaria (ZRASRB) and the national Regulation for its implementation (PPZRASRB) for the acquisition of a scientific degree "doctor" before the scientific jury, the candidate presented a dissertation thesis and 12 scientific publications in Bulgarian and in English. The dissertation thesis corresponds to the formal requirements provided in art. 27, para. 2 of PPZRASRB.

### **1. Relevance and significance of the researched scientific problem**

The dissertation aims to analyse the development of the European reform in the field of copyright through the prism of some key instruments provided in the new Directive (EU) 2019/790 on copyright in the digital single market, aimed at achieving a balance between competing rights of authors and publishers, on the one hand, and the communication rights of users and consumers, on the other. The importance and urgency of the problem are related to both the dynamically changing legal framework in the context of the digital environment and the criticisms of the specific directive that the legislative decisions provided for in it are not well-grounded and formulated and will have a negative impact on the exercise of freedom of information by the Internet users and on the mechanisms for balancing the interests of the

right holders with the public interest. The author starts with a research thesis suggesting the imbalance of the new legislative decisions provided for in Directive (EU) 2019/790, as well as the inconsistency with respect to the previous legal framework.

The dissertation work is extremely relevant in view of the current process of transposition of Directive (EU) 2019/790 in Bulgaria and the need to define a set of legal provisions to ensure the effectiveness of the European legal framework at the national level.

## **2. Evaluation of the scientific results and contributions of the dissertation work**

The presented dissertation in a volume of 333 pages (including a bibliography) examines the researched problem in five main chapters. In the first chapter, the author analyzes the development of the legal doctrine on establishing a fair balance between copyright and the public interest and places the regulatory changes introduced by Directive (EU) 2019/790 in the context of the legal framework applicable up to now in Europe. As a merit of the study, the detailed clarification of the terminology related to the researched problem should be noted, both from the point of view of legislative decisions, and in view of the theory and judicial practice, as well as the attempt to propose a systematization of the concepts used. The author clarifies the conceptual differences between the concepts of "limitations" and "exceptions" in copyright law, as a basic tool for balancing interests. The content of the concept of "free use" in the sense of the Bulgarian Copyright and Related Rights Act (ZAPSP) has been analysed. In the context of the analysis of the concept of "user rights", the author distinguishes between the concepts of "consumer" and "user" of copyright and proposes legislative changes in the ZAPSP with a view to achieving consistency and clarity in the use of terminology (p. 30).

In the first chapter, the author pays special attention to the so-called process of "constitutionalization" of intellectual property law and examines the balance of rights in copyright through the prism of the catalogue of fundamental human rights recognized in Europe. Attention is drawn to cases where the interests justifying copyright exceptions and/or limitations do not derive from fundamental human rights, and how these should be balanced.

The dissertation analyses the nature of the exceptions from several perspectives. Primarily, exceptions are examined as a balancing tool to define the balance between copyright and a certain countervailing interest, so as to limit the rightholder's monopoly over his work. The author concludes that exceptions can hardly be established as a neutral and

flexible mechanism in Europe, due to their instability and fragmentation. Second, exceptions are considered as user privileges or protection against copyright infringement. According to the third perspective presented, exceptions can be considered as subjective rights. In conclusion, the author supports the thesis that exceptions should be considered as consumer/user rights of the same rank/order as copyright and related rights regulated in secondary legislation, with a view to the possibility of establishing a fair balance between them (p. 41). The author points out that such an approach is also adopted by the European institutions regarding the interpretation of Article 17, paragraph 7 of Directive 2019/790 (p. 47).

Of high academic value is the presented analysis of the political and ideological rationale for the existence of the institution of copyright exceptions and limitations. In the process of the research, the author defines three types of exceptions with a view to their justification: 1/ related to fundamental rights; 2/ related to social, political and cultural goals; and 3/ de minimis use. The dissertation also distinguishes the exceptions provided for in EU law with a view of whether it is mandatory to be implemented in the national legal systems of the member states, concluding that there is a lack of consistency and a deepening of fragmentation (p. 67). The dissertation analyses the methods of regulating the exceptions in Directive 96/9/EC on the legal protection of databases, Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society, Directive 2006/115/EC on the right to rent and lend, etc. The author is extremely critical of the way in which the exceptions in Directive (EU) 2019/790 are regulated, because although they are mandatory for transposition by the member states, the complex and unclear way in which the provisions are formulated does not allow for their practical harmonization at EU level (p. 77). The author also discusses the implications of the transposition of exceptions in the national legal systems with imperative or dispositive legal norms and focuses on the mechanisms to overcome the effect of exceptions by contractual means, as they are strongly advocated in the 2019 reform.

In the following four chapters, the author successively examines the instruments newly introduced by Directive (EU) 2019/790, their history, dynamics with the existing regulation and practical application, in the context of: 1/ policies to promote access to education; 2/ policies to promote access to culture; 3/ distribution and access to news; and 4/ freedom of information in relation to the activity of user content platforms. The purpose of

the analysis is to make recommendations for improving the effectiveness of the relevant instruments in the process of national transposition.

The author emphasizes the relevance of the topic of exceptions for the exercise of consumer rights in the field of education in the context of the mass use of digital technologies for educational purposes during the COVID-19 crisis. It is stated that Directive (EU) 2019/790 aims, *inter alia*, to introduce a harmonized regime for the use of copyright-protected works for educational purposes in the form of formulating a mandatory exception or limitation from copyright that allows digital use, without the permission of the author or the relevant right holder, by educational institutions or under their control and responsibility, of protected works for the purposes of illustration in teaching. The new provision is analysed in the context of the current legislation in the Bulgarian Copyright and Related Rights Act (ZAPSP), as a result of the transposition of the exceptions provided for in Directive 2001/29/EC and Directive 96/9/EC on the legal protection of databases. According to the author's interpretation, the new exception is limited in terms of its beneficiaries and types of use compared to the previous regulation. Only formal education structures can benefit from it, with permitted use only affecting digital use. Moreover, according to the author, the balance of rights is detrimental to the public interest, as Directive (EU) 2019/790 provides for possibilities to deviate from the mandatory nature of the exception, such as in cases where appropriate licenses exist on the market.

In the next three chapters, the author consistently presents arguments and justifies her conclusions about the lack of vision and strategy in the EU to achieve the goals set for copyright reform, as well as about the inconsistent use of legal instruments and the inconsistencies with the established legal framework. The exceptional attention to detail with which the author works must be emphasized, as well as the big volume of academic literature, regulations and case law that has been processed to elaborate the dissertation work. The comparative legal material is presented correctly and accurately. The analyses made and the conclusions reached based on them in the dissertation make it possible to conclude that the candidate has achieved the set goals of the research. The analysis of the dissertation work contains some scientific contributions that are original to science and show the in-depth theoretical and practical knowledge of the candidate in the researched field.

### **3. Recommendations**

The present dissertation work could become a basis for continuing comparative legal research in the field of copyright, both in terms of the transposition of Directive (EU) 2019/790 and in terms of the analyses of the legal framework in other legal systems outside the EU.

#### **4. Conclusion**

In view of the fulfilment of all legally established requirements for the elaboration and defense of a dissertation thesis for the award of a doctorate degree, in accordance with the requirements of the Act on the Development of the Academic Staff in the Republic of Bulgaria (ZRASRB) and the national Regulation for its implementation (PPZRASRB), as well as in view of the qualities of the presented scientific research, I give my positive assessment and propose to the scientific jury to award Ana Borisova Lazarova the scientific and educational degree "doctor" in the professional field of higher education: 3.6. "Political Sciences".

July 29, 2022

Sofia

Assoc. Prof. Dr. Denitza Toptchiyska