

Opinion

Regarding the dissertation "Balance between copyright and public interest: EU policy consistency" of Ana Lazarova, full-time doctoral student in the "European Studies" department of the Faculty of Philosophy, University of Sofia "St. Kliment Ohridski" for awarding the educational and scientific degree "doctor" in professional direction 3.3. Political Science (European Studies - Media Policy and EU Law)

By

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General data

A dissertation with the following characteristics is presented: a total volume of 333 pages, divided into five chapters with an introduction, conclusion and bibliography. The scholarly apparatus includes 598 footnotes. The bibliography is rich and diverse, it includes numerous international, supranational and national normative acts, relevant judicial practice (European, international and national) and publications by authors from various subject areas - copyright, human rights, competence of the EU in the area under consideration, the secondary European legislation, the national norms transposing it, etc.

The bibliography includes a total of 371 sources, of which 146 are primary and 225 are secondary, the majority being in foreign languages. The richness of the bibliography is evidence of the growing interest in the topic under discussion, as well as its interdisciplinary nature. The scarce number of publications by Bulgarian authors is striking, which is an argument for the topicality of the thesis. Significant parts of the dissertation work have been published - twelve publications are listed, six of which are in English in international journals and anthologies. The publications in Bulgarian are in the journal *Contemporary Law*, and in *Collections of reports* from two doctoral conferences in 2020 and 2021, publications of Law and State Institute Bulgarian Academy of Sciences. I accept that the works presented are related to the topic of the dissertation.

Content of the abstract

The submitted abstract correctly reflects the structure, content and ideas of the dissertation, the methods of scientific research used, the practical significance of the research, including the conclusions and scientific contributions.

Subject, goals, tasks, methods

The object of research are some mechanisms of Directive (EU) 2019/790 on copyright in the digital single market, trends in their national transposition and their relationship with existing legislation and institutes from other legal branches.

The subject of the study is the content and expected results of the copyright reform at the European level, broken through the institute of exceptions and limitations of copyright and related rights.

Its aim is to establish whether there is conceptual and technical, internal and external consistency of the current European copyright reform and in particular

- how the legislative decisions within the reform affect the balance between the rights of authors and publishers, and the communication rights of users. The research objectives are clearly formulated and provide a reliable basis for the analysis. They are mainly two - research and analysis of the existing regulation and the judicial practice of the EU Court regarding the balance of the interests of the rights holders and the public; the way in which the exceptions and limitations regulated in EU law until 2019 have been transposed into national legislations, with an emphasis on the Bulgarian interpretation; the current transposition of Directive (EU) 2019/790; analysis of the instruments that Directive (EU) 2019/790 introduces at the European level; the level of copyright harmonization that the directive achieves compared to the previous directive with horizontal effect in the field from 2001; the conceptual, technical, internal and external consistency of the reform with an emphasis on the question of how far it manages to preserve and improve the balance between intellectual property rights and public interest, above all with regard to the exercise of freedom of information.

The normative, formal-logical, legal-dogmatic, systematic, historical and comparative legal methods are used in the dissertation. They are successfully combined with political analysis. The scientific direction of the dissertation research is distinguished by the interdisciplinary characteristics, which is due to the specificity of the subject.

Evaluation of the dissertation work

The topic turns out to be legally difficult, but it provides an opportunity to prove the author's ability to conduct analysis in several areas of knowledge.

It is related to new normative decisions at the European level, their inclusion in the national legislation and has not been developed in the Bulgarian scientific literature. It is timely first of all due to the need to quickly transpose the Digital Single Market Directive into national legislations. For the transposition to be carried out correctly, the appropriate balancing of copyright and the public interest must be achieved.

Balance is at the heart of copyright in general. On the one hand, it must guarantee the author a certain level of exclusivity over his/her creation. On the other hand, it must not prevent the legitimate interests of other subjects to access and use protected works, as well as the general interest in participation in education, access to creative content and the free dissemination of information. This basic function is generally recognized in copyright theory. In practice, copyright regulation around the world includes multiple mechanisms aimed at achieving balance. Basic principles of copyright, such as the idea/expression dichotomy, ensure that the monopoly of rights holders does not impede the free circulation of ideas.

A number of rules regarding the subject matter of protection, the requirement of originality, the exhaustive enumeration of exclusive economic and moral rights, the terms of protection and above all the limitations and exceptions to copyright form additional obstacles to the over-expansion of intellectual property law at the expense of society as a whole. The dissertation examines in detail the theoretical foundations of the institute of exceptions and limitations in copyright law and through their analysis, as well as of the jurisprudence related to their use, the doctoral student reaches conclusions about the consistency of the EU policy. The detailed analysis in the first chapter of the legal nature and the

factors that determine the strength and stability of exceptions at the European and national level presents the doctoral student's ability to connect law with political analysis. Exceptions are considered not only as a balancing tool, but also as a privilege and subjective rights - "user rights of the same rank/order as copyright and related rights regulated in secondary legislation" (p.283)

The most important conclusion is that the only possibility to comply with the condition for equal treatment of counter-rights of a constitutional order in the context of copyright is to perceive the exceptions as subjective user rights.

The principle of territoriality is characteristic of copyright. As the protection and use of intellectual property rights increases across national borders, infringements do not remain confined to national territories. As an example of this growing trend, the author on pages 140 and 145 points out that the educational exemption regulated by the 2001 and 2019 directives can also have a cross-border use. Recital 31 of directive 2001/29/EC expressly states that the facilitation of cross-border use is one of the main objectives of the directive, sought in particular by the means of (partial) harmonization of copyright exceptions and limitations. The so-called fictitious localization contained in Article 5, par. 3 of Directive 2019/790, constitutes an irrebuttable presumption that certain cases occur in the jurisdiction in which the educational establishment is established. For its part, the 2001 exception, like the majority of private law institutes in principle, provides that the general rules of private international law apply to cases involving more than one jurisdiction.' As a recommendation for further work on the subject, some clarification on cross-border use would be appropriate. It is undisputed that the 2019 Directive does

not regulate matters of private international law, which leaves some room for maneuver to Member States. It would be good to briefly consider the effect of Art. 8 of the Rome II Regulation on the law applicable to non-contractual obligations. At least for the procedural mechanisms of Article 17, paragraph 9, the possibility of the Member States applying only one national law should be preserved.

The doctoral student shows a critical attitude towards the current legal framework in the researched area. He discovers in it imperfections, incompleteness, as well as incorrect normative decisions and makes proposals *de lege ferenda* based on them. I believe that all are justified by legal arguments and deserve careful consideration in view of the upcoming transposition of the directive.

Through the analysis carried out in the dissertation, the research thesis has been convincingly proven: The new legislative decisions within the framework of the copyright reform are unbalanced in terms of the clash between the interests of the rights holders, and in particular - the publishers, on the one hand, and the public interest, on the other.

Obviously, after accumulating some practice in the implementation of the directive, work on its improvement will be necessary. In such a case, the dissertation will have serious practical significance.

After the analysis of the dissertation submitted for opinion and in view of the persuasiveness of the conclusions and contributions, I declare in my capacity as a member of the scientific jury that Anna Lazarova's dissertation meets the requirements of Art. 6, para. 3 of La on the Development of the Academic Staff

in the Republic of Bulgaria and has all the necessary qualities to be successfully defended for the acquisition of the educational and scientific degree "doctor".

I give a positive assessment of the dissertation and propose to award the scientific and educational degree "doctor" in professional direction 3.3. Political Sciences (European Studies - Media Policy and EU Law) of Anna Lazarova, a full-time doctoral student in the "European Studies" Department of the Faculty of Philosophy of the University of St. Kliment Ohridski.

June 28, 2022

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