

COPYRIGHT REFORM IN THE EU : THE CHALLENGES OF THE DIGITAL SINGLE MARKET

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The better question. The better answer.
The better the world works.



Preliminary comments



Preliminary comments



Internet of things Robotics

- ▶ Data privacy compliance
- ▶ Machine liability
 - ▶ Automotive
 - ▶ Health care



Social Media

- ▶ Use of Social as marketing and communication tool
 - ▶ Data protection
 - ▶ Advertising laws



Cloud Computing & Cybersecurity

- ▶ Regulations on data localization (privacy etc.)
- ▶ Software License management
- ▶ Cloud contract drafting



e-Commerce

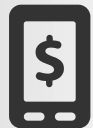
- ▶ Online order process under e-Commerce law
- ▶ Digital signature
- ▶ Sales restrictions and competition law



(Big) Data Analytics

- ▶ Align data privacy laws and analytics goals
- ▶ Ownership and sharing of data under competition law

Digital Transformation



e-payment

- ▶ Design payment process in order to
 - ▶ comply with financial regulation
 - ▶ avoid license duty



Sharing Economy

- ▶ Liability shift by platform operators
- ▶ Comply with sector regulations (e. g. Uber)



Mobile

- ▶ Telco regulatory law
- ▶ Mobile specifics in privacy, e-commerce
- ▶ Employment law (home office)

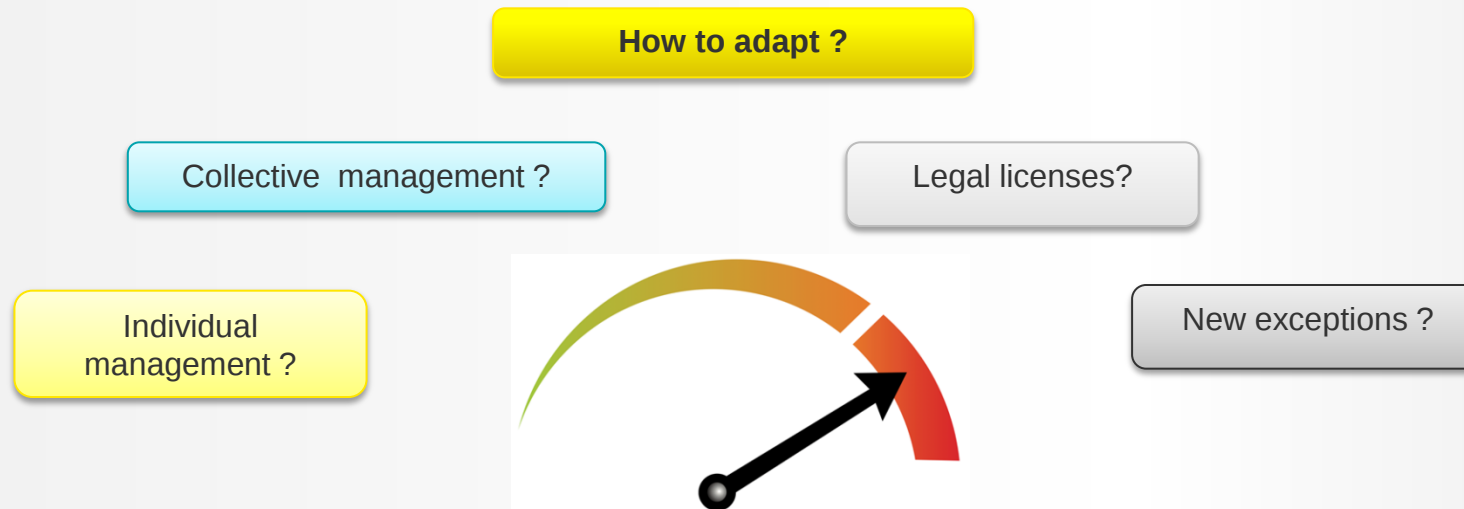


3D Printing

- ▶ Intellectual property protection
- ▶ Designs
- ▶ Patents
- ▶ Copyright

Digital transformation

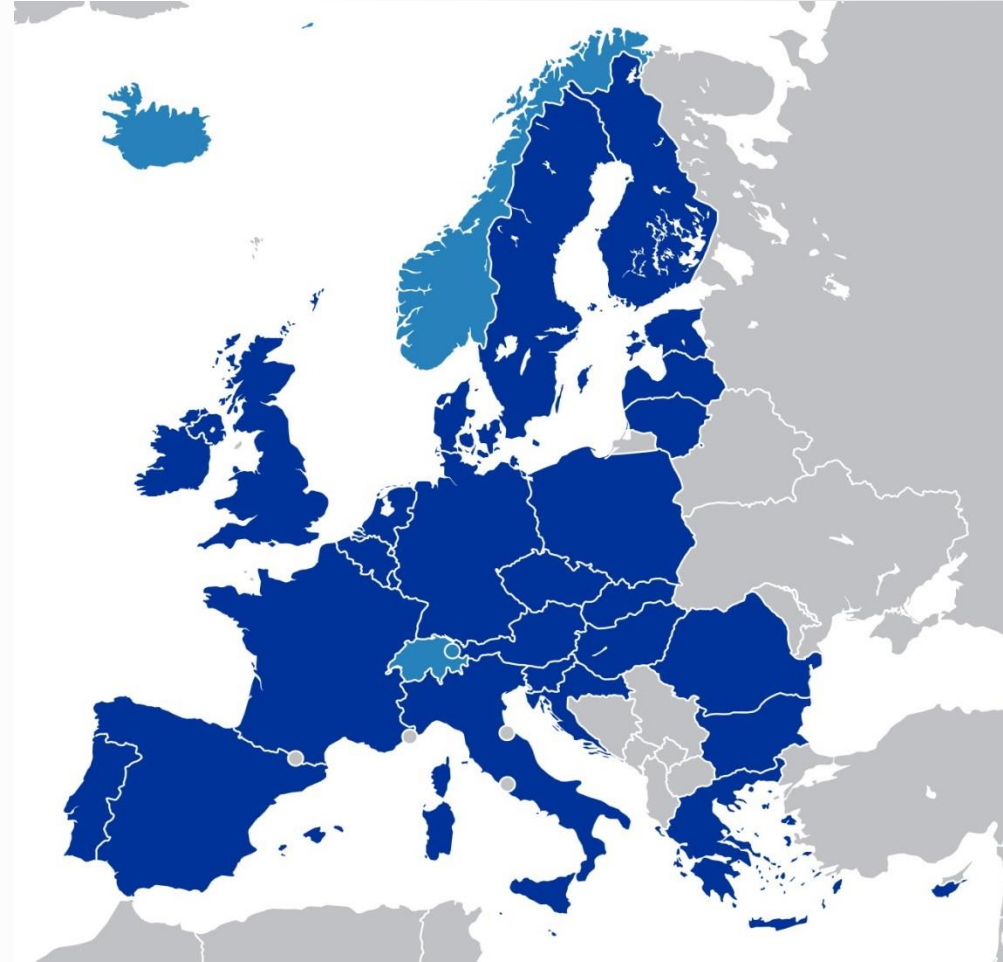
- ▶ Internet has no borders (unlike the Laws) ;
- ▶ Individual devices are replaced by cloud technologies (and subscriptions);
- ▶ The appetite of users has grown ;
- ▶ New “creative uses” emerged (mashups, remixes, supercuts memes etc) ;
- ▶ Intellectual property law is very criticized (and subject to received ideas).



Single Market



- ▶ 28 national legislations and case law
- ▶ EU Directives
- ▶ EU Regulations
- ▶ ECJ Case Law



Single Market

The « Four Freedoms » guaranteed by EU law:

- ▶ Free movement of goods;
- ▶ Freedom of movement for workers;
- ▶ Right of establishment and freedom to provide services;
- ▶ Free movement of capital.

The fundamental principles of EU law:

- ▶ Property and Intellectual property
- ▶ Freedom of expression
- ▶ Public interest etc.



Digital Single Market

“Making the single market fit for the digital age” (J.C. Juncker, president of the EU Commission)

The « Three pillars » of the digital single market :

- ▶ better access to online products and services
- ▶ better conditions for digital networks and services to grow and thrive
- ▶ boosting the growth of the European digital economy

The challenge of the digital single market for right owners:

- ▶ DSM is focused on users' access to works.
- ▶ How can we ensure better protection for authors ?

Digital Single Market

Consumer law

E-Commerce

Intellectual
Property



Public law
(infrastructures)

Contract law

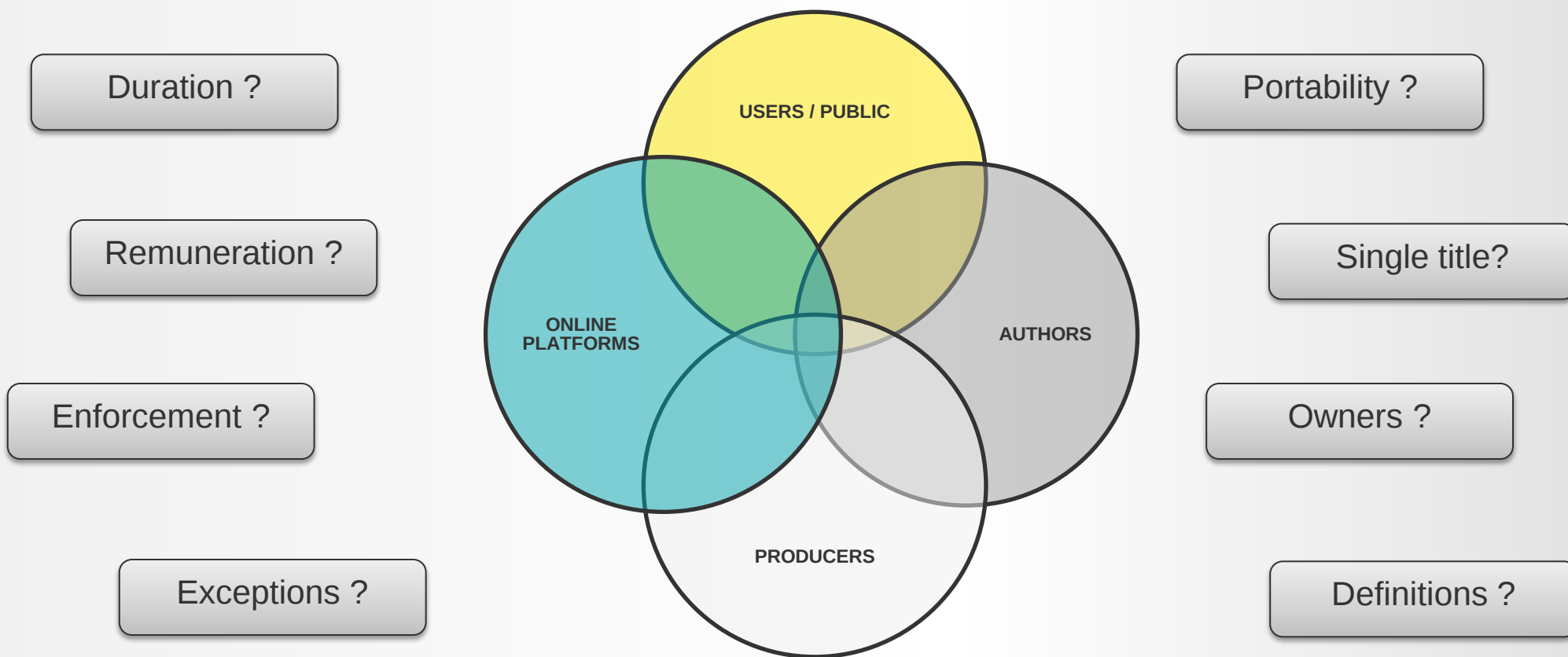
Torts

Tax law

A man in a dark suit stands with his back to the camera, looking at a large, glowing digital chart that stretches across the horizon. The chart features a series of vertical bars and a line graph, all rendered in a bright, ethereal light. The setting is a futuristic, curved space with a high, arched ceiling and a reflective floor. The overall atmosphere is one of innovation and digital transformation.

Copyright in the digital single market

Squaring the circle



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1. The Copyright reform in the European Union

2. The impact of European Court of Justice's case law on the future of Copyright: the hyperlinks example

1. The Copyright reform in the European Union

A. The shape of the European Reform

- ▶ From the 2001/29 EC directive to the draft directive on Copyright in the digital single market
- ▶ Overview of the EU Commission's proposals

B. The challenges of the European Reform for authors and rights owners

- ▶ Risks and opportunities for authors and rights owners
- ▶ The gaps of the reform for authors and rights owners

1. The Copyright reform in the European Union



2005



2004



2010



2004

COPYRIGHT
DIRECTIVE: 2001



2006



2010

A. The Shape of the European Reform

1. From the 2001/29 EC directive to the draft directive on Copyright in the digital single market

- ▶ Brief history of the copyright reform project since the 2001/29 EC directive
- ▶ EU Commission's roadmap

- 6 May 2015 : The European Commission announced its comprehensive strategy for a digital single market;
- 2015/2016 : public consultations;
- 9 December 2015 : Draft regulation on portability of audiovisual content within the EU;
- 3 May 2016 : Draft directive and draft regulation on access to the visually impaired (Marrakech Treaty);
- 14 September 2016 : Communication "*Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market*";
- 14 September 2016 : Draft regulation on online transmission of broadcasts organizations and retransmissions ("country of origin principle");
- **14 September 2016 : Draft Copyright directive : upgrade of the Copyright Directive 2001.**

A. The Shape of the European Reform

1. From the 2001/29 EC directive to the draft directive on Copyright in the digital single market

- ▶ EU Commission's roadmap - next steps (source: EU Commission) :

DATA ECONOMY	VAT	E-PRIVACY
		
Explore all issues raised by the data economy, e.g. localisation of data, liability, standardisation, to identify where regulatory action is needed • Data precious for research, innovation and new business opportunities • Support promising technologies, such as cloud computing and the Internet of Things	Reduce the administrative burden on businesses arising from different VAT regimes • Single electronic registration and payment • Common VAT threshold	Adapt our existing rules on electronic communications services (e-Privacy Directive) to the new EU framework on the protection of personal data

A. The Shape of the European Reform

2. Overview of the directive on Copyright in the digital single market

- ▶ New sui-generis right for publishers of news publications
- ▶ Mandatory exceptions : TDM, digital-teaching, preservation of cultural heritage
- ▶ “Value gap” : roles and responsibility of online platforms
- ▶ Fair remuneration to authors and performers : entitled to have their contract adjusted if the remuneration is not adapted to the revenues
- ▶ Creation of bodies to help in contractual negotiations

B. The challenges of the European reform for authors and rights owners

1. Risk and opportunities of the reform for authors and rights owners

- ▶ Will the extension of mandatory exceptions save copyright?
- ▶ Is the multiplication of sui-generis rights a solution?
- ▶ What should be the place of online platforms and marketplaces in the digital single market?
- ▶ *“Authors’ rights vs. Copyright”* : Commission’s proposals are mainly focused on the rights to the users, whereas some legal systems (incl. France) have traditionally provided authors with a central role
- ▶ Some economic sectors are based on a national approach of copyright. Before breaking down national copyright borders, we need to agree on a common European cultural policy and on appropriate economic models

B. The challenges of the European reform for authors and rights owners

2. The gaps of the reform for authors and rights owners

- ▶ IPR enforcement in the digital single market
- ▶ The questions raised by a “single European copyright title” project
- ▶ The need for clarification of other reform projects (harmonization of private copy, panorama exception...)

2. The impact of the ECJ case law

The hyperlinks example

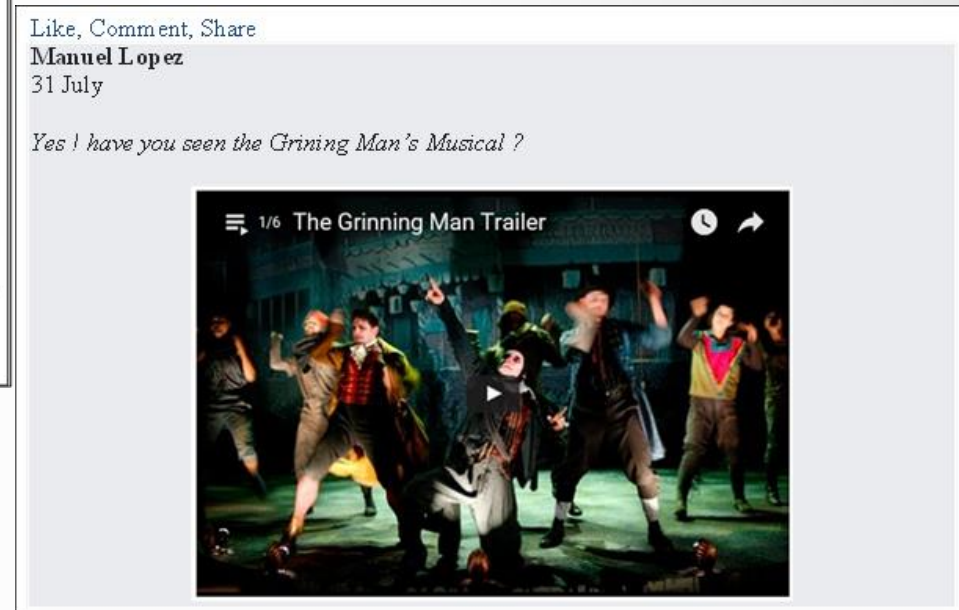
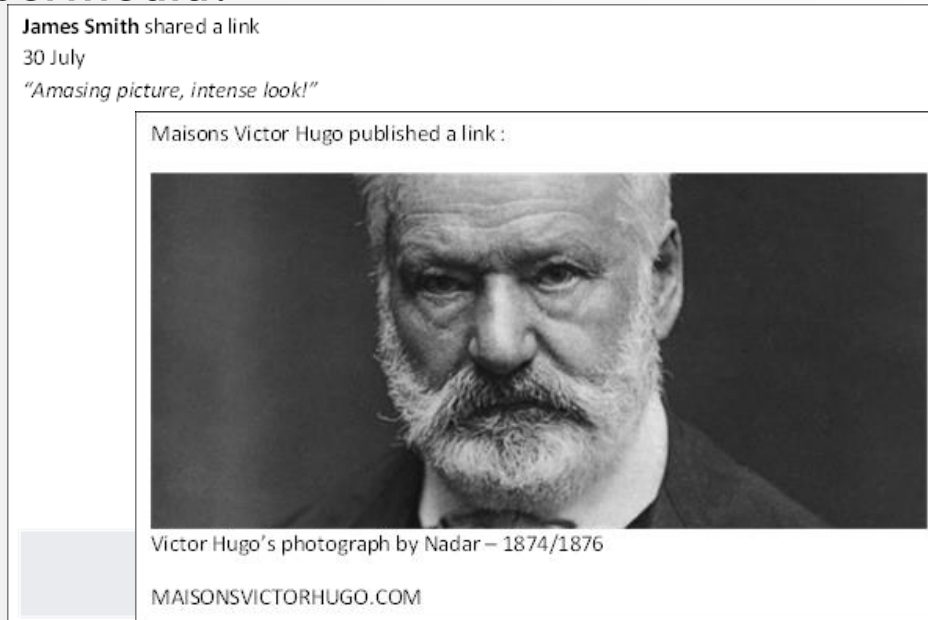


2. The impact of European Court of Justice's Case law on the future of copyright: the hyperlinks example

- A. Brief summary of the recent EU Case law on hyperlinks: from the Svensson case to the GS-Media case
- B. The impact of ECJ's case law for authors and rights owners

2. The impact of European Court of Justice's Case law on the future of copyright: the hyperlinks example

- *From hyperlink:* <http://www.maisonsvictorhugo.com>
- *... to hypermedia:*

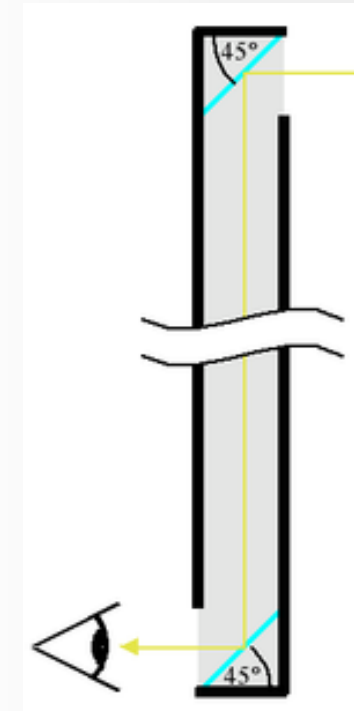


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► *Hyperlink: a road sign*



Hypermedia: a periscope



A. Brief summary of the recent EU Case law on hyperlinks: from the Svensson case to the GS-Media case

Svensson and Bestwater cases - 2014

The consequences of the “the new audience” criteria

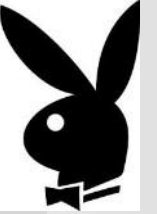
- ECJ Svensson : the insertion of an hyperlink that directs to a work freely accessible to the public cannot be sanctioned : it does not target a “new audience”
- ECJ BestWater : the “new audience” criteria is applied to “*framing links*” (embed content)



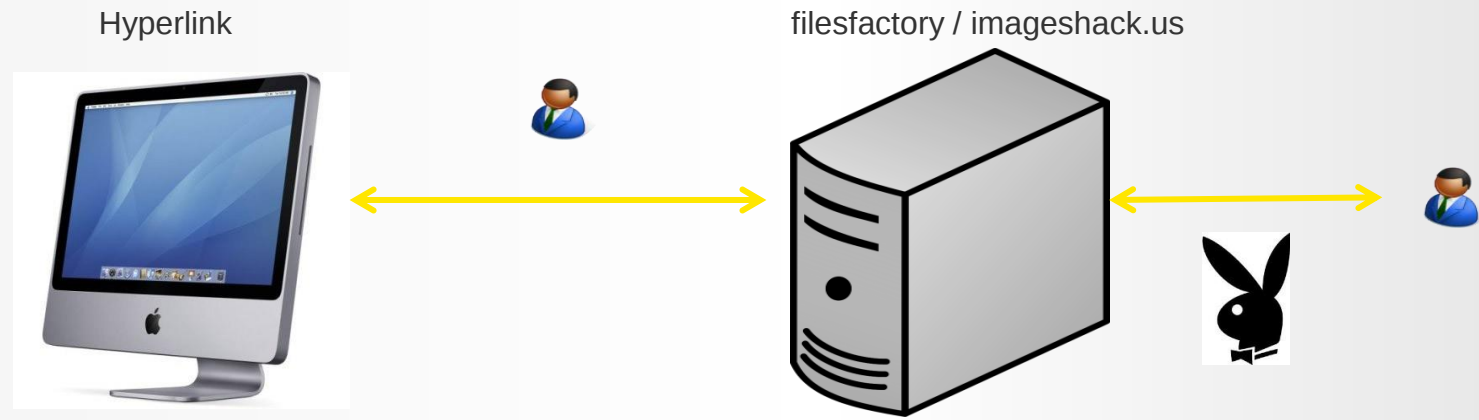
A. Brief summary of the recent EU Case law on hyperlinks: from the Svensson case to the GS-Media case

GS Media / Sanoma
case - 2016

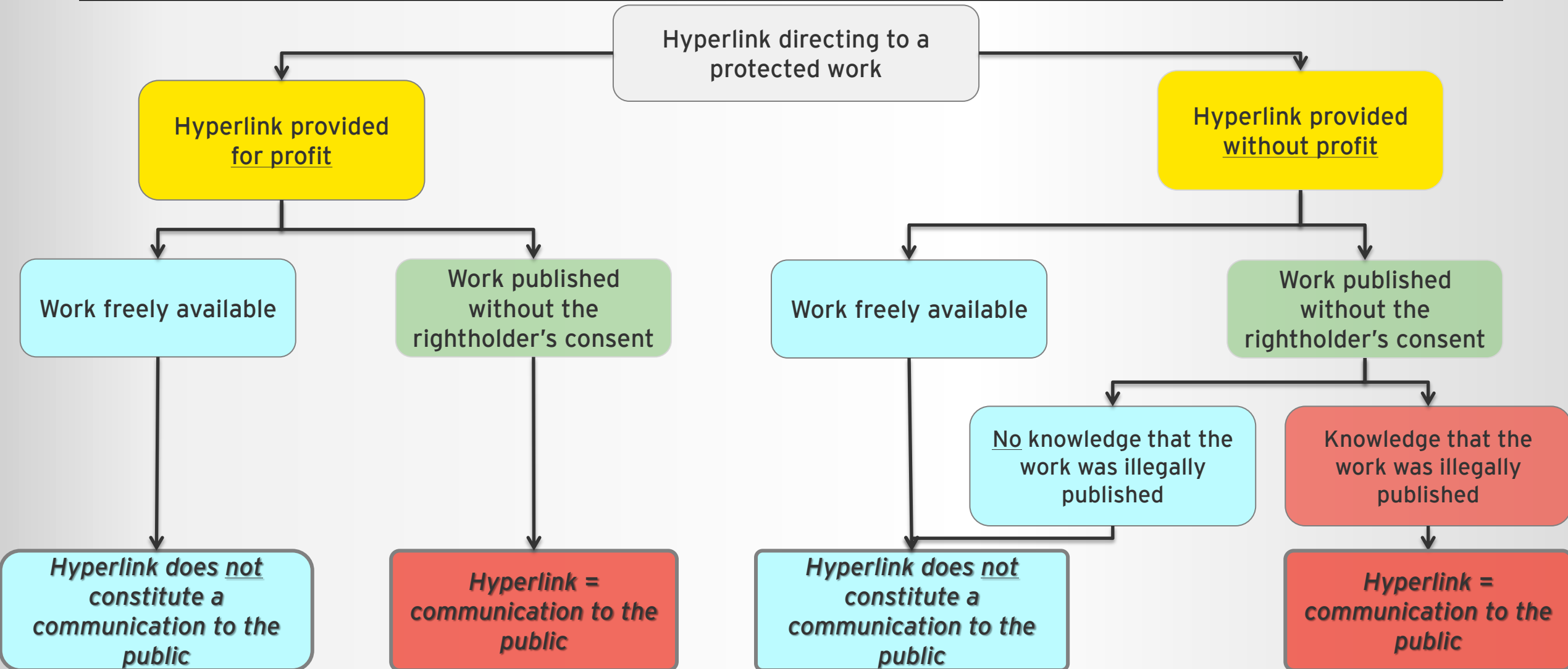
Hyperlink to unauthorized works : the publishers' responsibility



- In that case, the hyperlink pointed to a photograph that had been made accessible without the authorization of the rights owner (Playboy)



A. Brief summary of the recent EU Case law on hyperlinks: from the Svensson case to the GS-Media case



B. The impact of ECJ's case law for authors and rights owners

Balance between the adaptation of copyright to the digital single market and the protection of authors and right owners ?

Greater responsibility of publishers/"linkers" within the digital single market ?

Thank you!



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