

GREEK REPORT for the ALAI Congress 2012 in KYOTO

(Answers to the Questionnaire)

by Prof. Dionysia Kallinikou / Dr. Pierrina Koriatopoulou

Session 1

— Developments of New Platforms

- 1) How would you define “The Cloud” in your country?

It refers to performing computer tasks using services delivered over the Internet (<http://mobileoffice.aboutcom>). According to the definition by NIST (National Institute for Standards and Technology) cloud computing is a model for enabling ubiquitous, convenient, on demand network access to a shared pool of configurable computing resources (ie. networks, servers, storage, applications and services) that can be provisioned and released with minimal management effort or service provider in interaction.

- 2) Is exploitation of works, performances, sound recordings and so on generally considered to relate to the Cloud?

The exploitation of cultural objects is related to the cloud, If cloud content involves works protected by copyright, such as musical compositions, texts, drawings, films, images, software applications, databases and compilations, or objects protected by related rights, such as performances, sound recordings and broadcasts.

- 3) Are there already commercial platforms established specifically designated for the Cloud or to some extent related to Cloud uses? Can you foresee such new platforms to be established in the near future?

Policy makers have already understood the benefits of cloud computing. The system is very important for public and private sector and the conditions of adoption in Greece are more than encouraging (www.iobe.gr www.iocenter.eu).

- 4) How would you evaluate the Cloud’s importance to copyright for the next few years to come?

There will be new possibilities for dissemination and use of works and other cultural objects.

Sessions 2 and 3

— Can the Internet Treaties of 1996 play an important role in legal issues raised by “Cloud” Business?

- 1) Is there any case law to be found in your country and/or examples of (good) practices concerning:
 - 1.1) the right of making available to the public with reference to “Cloud” storage, retrieval and dissemination?

- 1.2) cloud providers that may be relevant to determine liability for the making available of unauthorized content in the cloud environment?

There is no case law concerning “clouds» and copyright.

- 2) Is there case law on the technological protection measures and Electronic rights management information in the “Cloud” environment?

There is no case law on the technological protection measures and electronic management information in the cloud environment.

- 3) How can we re-examine or re-evaluate the role of the WIPO Treaties with reference to “cloud» developments?

The cloud developments are a real challenge for copyright regulation. However the Internet Treaties are flexible to adapt to new technologies.

Session 4

– New Business Models for effective Protection of Copyright and Related rights in the “Cloud”: Role of electronic rights management in new business models

Note: In general, services offered on the basis of cloud computing technologies are classified as “Software as a Service” (SaaS), “Platform as a Service” (PaaS) and “Infrastructure as a Service” (IaaS). Under the heading of “New Business Models for effective Protection of Copyright and Related rights in the ‘Cloud’”, the main focus is on PaaS, whereas both IaaS and SaaS are of minor importance, since they generally do not involve the use of copyrighted works of literature and the arts (issues of copyright in software are not discussed at this congress).

Note: This subsection focuses on successful business models of authors and rightholders who market their copyrighted subject matter in the cloud either themselves or via a service provider (such as, e.g. Apple’s “iTunes in the Cloud”), presumably by employing digital rights management (DRM) and perhaps also technical protection measures (TPM).

- 1) In your country, what types of cloud services are offered and/or made available by authors and rightholders offering their copyrighted content?
In Greece only I-cloud (i-tunes) services are offered.
- 2) What kinds of works are being offered in this way (e.g., musical works, literary works, photographic works, audiovisual works, performances etc.)?
For the moment only musical works are being offered.
- 3) What rights do rightholders usually transfer to the providers of cloud services?
The right or digital exploitation of works and the right of making them available.
- 4) What uses of copyrighted material are the users of such cloud services permitted?
Only private uses.
- 5) Can you give any figures regarding both royalty rates and total revenue authors and rightholders receive when their works are being offered in the cloud?
Unfortunately not.
- 6) What kind of TPM and DRM is used by these services?

The TPM and DRM used from the big industries as Apple, EMI, etc.

- 7) Under the legislation of your country, to what extent are TPM protected against their unauthorized circumvention?

Technical measures and rights management information are protected against unauthorized circumvention. Article 66A of Greek Copyright Law implements article 6 of the InfoSoc Directive. It provides protection against circumvention of effective technological measures and against provision of devices and products or services to this effect. Circumvention is punished by imprisonment of at least one year and a fine of 2900-15000 Euro and entails the civil sanctions of article 65 of Greek Copyright Law. Injunctions may be ordered in accordance with the Code of civil Procedure, as well as provisional measures *inaudita altera parte*.

Article 66B implements article 7 of the InfoSoc Directive. It provides protection against illegal activities carried out in order to remove or alter the electronic rights-management information and against distribution, Importation for distribution, broadcasting, communication or making available to the public of works or other protected subject matter from which such information has been removed or altered without authority. The violation of these provisions is punished by imprisonment of at least one year and a fine of 2900-15000 Euro and entails the civil sanctions of article 65 of Greek Copyright Law. Injunctions may be ordered in accordance with the Code of Civil Procedure. Provisional measures *inaudita altera parte* can also be ordered.

- 8) Is unauthorized circumvention of TPM a practical problem for those offering their content in the cloud?

Of course it is, but we do not have yet in Greece a case law concerning the circumvention of TPM.

5 Copyright-avoiding business models

Note: *This subsection focuses on business models of persons other than authors and rightholders, who build upon someone else's copyrighted material and who – successfully or not – try not to be subject to copyright liability. Examples are services that make use of the private copying exception (such as, e.g., personalized internet video-recorders) or which strive to benefit from an exception to legal liability as an Internet Service Provider (such as, e.g., under the EU e-Commerce Directive). In addition, strategies of authors who market their copyrighted works outside of copyright (such as, e.g., under an open content or Creative Commons (CC) licence) can also be regarded as “copyright-avoiding” business models (although technically, they are based on copyright).*

5.1 – Private copying in the Cloud

- 1) In your country, are there services – and if so, what kind of services are there - that offer its users to store private copies in the cloud?

Examples are storage services with limited access (such as Google's “Picasa”), platforms with general public access (such as, e.g., FlickrR) and mixed-forms (such as, e.g. Facebook) but also so-called internet-video recorders and possible other forms of private storage services.

In Greece storage services, such as FlickrR or Facebook, are used.

- 2) In legal terms, to what extent do the operators of such services benefit from its user's private copying exception? Are there any other exceptions under copyright law? (Note that general exceptions of legal liability are discussed under 5.2).

Reproduction for private use is permissible under article 18 of Greek Copyright Law without the consent of the author or other right-holders. Importers and producers of specific items have to pay an equitable remuneration to authors and right-holders of related rights. The term "private use" does not include use by an enterprise, a service or an organization. The freedom to make a reproduction for private use shall not apply when the act of reproduction is likely "to conflict with the normal exploitation of the work or to prejudice the author's legitimate interests" (article 18 par. 2 of Greek Copyright Law). The three-step test is considered as a clause of general application concerning the limitations provided by Greek law (article 28C of Greek Copyright Law).

5.2 – Copyright-avoiding models on the basis of – presumed – exceptions to copyright liability or limited interpretations of the "making available" right

- 1) To what extent do the operators of cloud services benefit from a narrow interpretation of the making available (or communication to the public, or public performance) right?

Article 3h of the Greek Law 2121/1993 provides that the author has the right to authorize or prohibit the communication to the public of his works, by wire or wireless means or by any other means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. Under this wording, the Greek "making available" right is granted not only for the stage of making a work passively available to the public, but also the right owner may exert control over an act of transmitting the work to a recipient.

- 2) According to the law in your country, what is the legal status (primary or secondary liability - contributory infringement or vicarious liability; aiding and abetting, other liability such as an inducer, "Störer") of the provider of cloud services with regard to copyright infringing content uploaded by its users?

The provider of cloud services is deemed to be an Internet service provider.

- 3) In your country, do cloud service providers benefit from an exception to liability (such as, e.g., under the EU e-Commerce Directive), and if so, to what extent (e.g., total exemption from liability or exemption only from duty to pay damages)? Please cite to and briefly describe statutory provisions and relevant case law.

Greek legislation has no provisions concerning the cloud service providers. Under articles 12, 13 and 14 of EU e-Commerce Directive, implemented in Greece by articles 11, 12 and 13 of Presidential Decree 131/2003, Internet service providers do not have responsibility for simple transmission of information, caching and hosting if they act in conformity with these provisions concerning the exemptions from liability. Nevertheless, on December 16th, 2009, an ISP responsible for the functioning of a website allowing the users to access to pirated copies of protected works (music files, movies and games) has been arrested. The prosecutor of Rhodes considered the ISP

liable for the copyright infringement, since he knew that through the website exchange of illegal files was taken place and he refrained from taking any measure to prevent this illegal trafficking. Thus, the ISP is accused for perpetrating the illegal acts by profession and at a commercial scale, so in the form of felony. The case is still pending.

- 4) Also according to the law in your country, what duty of care is owed by cloud service providers to monitor and eventually remove copyright infringing content?

Although EU e-Commerce Directive limits the liability of ISP, rightholders have the possibility of applying for an injunction against them when they transmit in the network a third party's infringing protected work. Under articles 11§ 3, 12 § 2 and 13 § 3 of Presidential Decree 131/2003, which implement in Greek law the EU e-Commerce Directive, courts or administrative authorities have the possibility to take action towards intermediaries in order to block access to the sites which facilitate works protected by copyright or related right without the consent of the rightholder.

In addition according article 64A of the Greek Law 2121/1993, which implements the InfoSoc Directive, the judicial authorities may issue an injunction against an intermediary whose services are used by a third party to infringe an IP right.

Upon the Athens' s Court decision no 4658/2012 of the 16th of May, 2012, ISPs are for the first time obliged to implement copyright filtering technology in order to block access to the sites which facilitate works protected by copyright or related right without the consent of the rightholders. This injunction is not intended as a penalty against ISPs, but is based on the fact that in those cases such intermediaries are in the best position to stop or to prevent a IP infringement.

2.5.2. Permanent injunctions (Article 11)

- 5) What evidence must a rightholder present in order to have infringing content removed?

According article 63A of the Greek Law 2121/1993, which implements the InfoSoc Directive, the rightholder in order to preserve his rights has to present before the court reasonably accessible evidence sufficient to support his claims and has, in substantiating those claims, specified evidence that lies in the control of the opposing party.

- 6) In your country, are there any contracts that have been concluded between cloud service providers and rightholders concerning the use of copyrighted material by the users of the cloud services?

No yet.

- 7) In your country, what copyright-avoiding cloud services are operating successfully, and what services that sought to be avoiding copyright have been banned and eventually shut down?

Only the model via Creative Commons licences.

- 8) In your country, are there any legislative changes under discussion as regards the liability of service providers who provide for cloud services? In particular, do you think that liability of service providers will be reduced or, rather, increased?

There is no such a discussion in Greece. Furthermore for the status of liability of service providers Greece applies the *acquis communautaire*.

- 9) Do you see any progress regarding filtering technology?

5.3 – “Copyright-avoiding” business models operated by authors for the “Cloud”

- 1) In your country, is there a noticeable use of “copyright-avoiding” business models, such as Creative Commons (CC) or comparable open content licenses by rightholders with respect to cloud-based exploitations of works?

The CC licence is available in Greece but there is no case study concerning the “cloud”.

- 2) If so, in what areas (music, literature, audiovisual works, scientific works etc.) are such licenses most often used?

In Greece the CC licences are most often used for scientific and literature works.

- 3) Are there any figures available as to how the authors of such works generate income from such cloud-based exploitations, and how much?

Unfortunately not.

- 4) Also in your country, what legal obstacles are authors faced with when making use of open content and CC-licenses?

Examples might be the unenforceability of such licences; the refusal to award damages for unauthorized commercial use of works that have been made available only for non-commercial use; collecting societies refusing to represent authors who want to market some of their works under a CC-licence; the exclusion of CC-authors from receiving remuneration under a private copying regime etc.

Collecting societies refuse to represent authors who want to market some of their works under a CC-licence.

Session 6

—Future Model of One-Stop-On-Line Licensing in the Cloud Environment

- 1) Does your country have specific private international law rules for copyright in particular and for intellectual property in general or are there general rules of private international law that apply in these circumstances? In particular do your country's rules of judicial competence (personal jurisdiction) make it possible to sue a foreign intermediary who makes it possible for infringements to occur or to impact in the forum? Which law applies in such instances? Would the law applicable to the primary infringement apply? Would the law of the intermediary's residence or place of business apply?

Article 67 of Greek Copyright Law contains provisions concerning applicable law provided international conventions that have been ratified by Greece do not provide otherwise.

Especially art. 67 provides as follows

Applicable Legislation

(1) Copyright in a published work shall be governed by the legislation of the State in which the work is first made lawfully accessible to the public. Copyright in an unpublished work shall be governed by the legislation of the State in which the author is a national.

(2) Related rights shall be governed by the legislation of the State in which the performance is realized, or in which the sound or visual or sound and visual recording is produced, or in which the radio or television broadcast is transmitted or in which the printed publication is effected.

(3) In all cases, the determination of the subject, object, content, duration and limitations of the right shall be governed by the legislation applicable pursuant to paragraphs (1) and (2), above, with the exception of any exploitation license arrangement. The protection of a right shall be subject to the legislation of the State in which the protection is sought.

(4) Paragraphs (1), (2) and (3), above, shall apply except where they run contrary to any international convention ratified by Greece. In the case of States not conjoint with Greece through the ratification of an international convention, paragraphs (1), (2) and (3), above, shall be applicable as regards the protection of copyright or of any particular object of copyright or of any particular related right, provided that the legislation of the relevant state offers adequate copyright protection to works first made accessible to the public in Greece and to related rights stemming from acts effected in Greece.

- 2) Does your national collective rights management organisation grant multi-territorial licences and are there cloud-specific licence models when it comes to collective licensing? If so, does this include rules on cross-border contracts (including jurisdiction and choice of law aspects)?

The collective management organizations in Greece grant territorial licenses. In the new contracts they

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