

João Pedro Quintais

# On Peers and Copyright: Why the EU Should Consider Collective Management of P2P



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**Volume 14**



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## Preface

*“On Peers and Copyright: Why the E.U. should consider collective management of P2P”* corresponds to the dissertation submitted to the Munich Intellectual Property Center in satisfaction of the requirements for the degree of Master of laws in Intellectual Property (LL.M. IP) in September 2011. This dissertation is now published, as updated until January 2012, mostly in light of relevant legislation, case law and some bibliography coming out in the intervening period. As constantly happens in literature regarding copyright and technology, this writing will have likely become outdated before its publication. Nonetheless, given the nature of the text and this publication, we’ve decided to limit any amendments to a minimum, maintaining the original structure, contents and overall direction of the research.

This book analyzes the E.U.’s approach to P2P, a disruptive and economically significant digital age technology that highlights the tensions between the Internet and a territorial and fragmented copyright law. It aims at providing the necessary legal qualification and context to understand why the E.U. has thus far failed to achieve its deterrence goals and followed a path that represents a financial burden for both Member States and rights holders, while not being able to monetize a vast market, inadequately tapping the innovation and cultural development potential of this technology, damaging the reputation of the content industry and “criminalizing” users.

It is argued that a solution to this conundrum must be based on the use of copyright law and policy as tools for market organization and innovation growth, with respect for rights holders and users (sometimes) opposing interests and the existing legal framework. The best answer to mass online P2P uses seems to be that of collective rights management, as it offers an organized licensing and remuneration system compatible with the interests of stakeholders. This is especially true in the E.U., home to a developed and sophisticated market of CMOs, subject to numerous ECJ and Commission decisions, as well as varying E.U. institutional approaches, all pointing towards a preference for multi-territorial and pan-European licensing models covering mass online uses of copyright content. In this context, this book tests the compatibility of several non-voluntary and voluntary approaches to P2P with international treaties, the *acquis* or simply strategic policy considerations.

The concept of this book is to offer a modest contribution to the discussion of alternative and workable models, within the framework of copyright law, to address P2P uses in the E.U.

The author would like to thank Professor P. Bernt Hugenholtz for his supervision, comments and suggestions.

*Amsterdam, April 2012*

*João Pedro Quintais*

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## Acronyms and Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
ADAMI	Administration des Droits des Artistes et Musiciens Interprètes
ASCAP	American Society of Composers, Authors and Publishers
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works of Sep. 9, 1886, completed at Paris on May 4, 1896, as revised at Paris on Jul. 24, 1971 and amended on Sep. 28, 1979
BMI	Broadcast Media Incorporated
CISAC	International Confederation of Societies of Authors and Composers
CMO(s)	Collective Management Organization(s)
Database Directive	Directive 96/9/EC, of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, 1996 O.J. (L 77/20)
DRM	Digital Rights Management (including TPMs and electronic rights management)
ECJ	European Court of Justice or Court of Justice of the European Union
EFF	Electronic Frontier Foundation
Enforcement Directive	Directive 2004/48/EC, of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, 2004 O.J. (L 195/16)
GEMA	Gesellschaft für musikalische Aufführungs-und mechanische Vervielfältigungsrechte
IFRRO	International Federation of Reproduction Rights Organizations
InfoSoc Directive	Directive 2001/29/EC, of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, 2001 O.J. (L 167/10)
IFPI	International Federation of the Phonographic Industry
ISP(s)	Internet Service Provider(s)

P2P	Peer-to-Peer file-sharing
Rome Convention	International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of October 26, 1961
Rental Right Directive	Council Directive 92/100/EEC, of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, 1992 O.J. (L 346/61) as republished and amended by Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 (codified version), 2006 O.J. (L 376/28)
Resale Right Directive	Directive 2001/84/EC, of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, 2001 O.J. (L 272/32)
RIAA	Record Industry Association of America
Satellite and Cable Directive	Council Directive 93/83/EEC, of 27 September 1993 on the coordination of certain rules concerning copyrights and rights related to copyright applicable to satellite broadcasting and cable retransmission, 1993 O.J. (L 248/16)
SESAC	Society of European State Authors and Composers
Software Directive	Council Directive 91/250/EEC, of 14 May 1991 on the legal protection of computer programs, 1991 O.J. (L 122/42), as republished and amended by Directive 2009/24/EC, of the European Parliament and of the Council of 23 April 2009 (codified version), 2009 O.J. (L 111/16)
Term Directive	Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, 2006 O.J. (L 372/12), as amended by Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011, 2011 O.J. (L 265/1)
TFEU	Consolidated Version of the Treaty on the Functioning of the European Union, Sep. 5, 2008, 2008 O.J. (C 115) 47

TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, THE LEGAL TEXTS: THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS 320 (1999), 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)
TPM(s)	Technical Protection Measure(s)
U.S.C.	United States Code
VCL	Voluntary Collective Licensing
WCT	WIPO Copyright Treaty, opened for signature 20 December 1996, 2186 U.N.T.S. 121 (entered into force 6 March 2002)
WPPT	WIPO Performances and Phonograms Treaty, opened for signature 20 December 1996, 2186 U.N.T.S. 203 (entered into force 20 May 2002)
WIPO	World Intellectual Property Organization
WIPO Internet Treaties	the WCT and WPPT
WTO	World Trade Organization



