



# Copyright and Internet in Europe: Borders in a World Without Borders

*Rome, 29 October 2014*

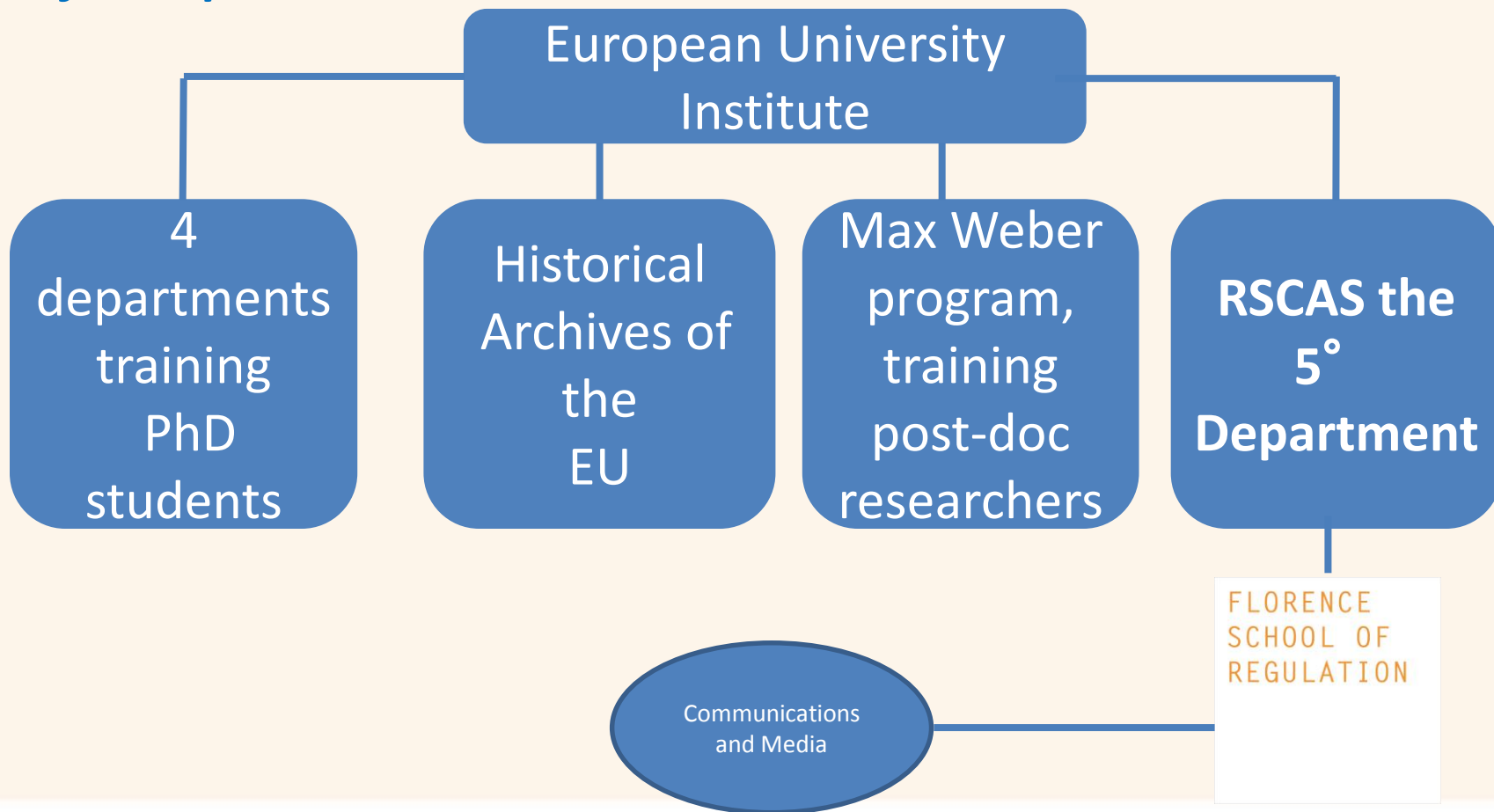
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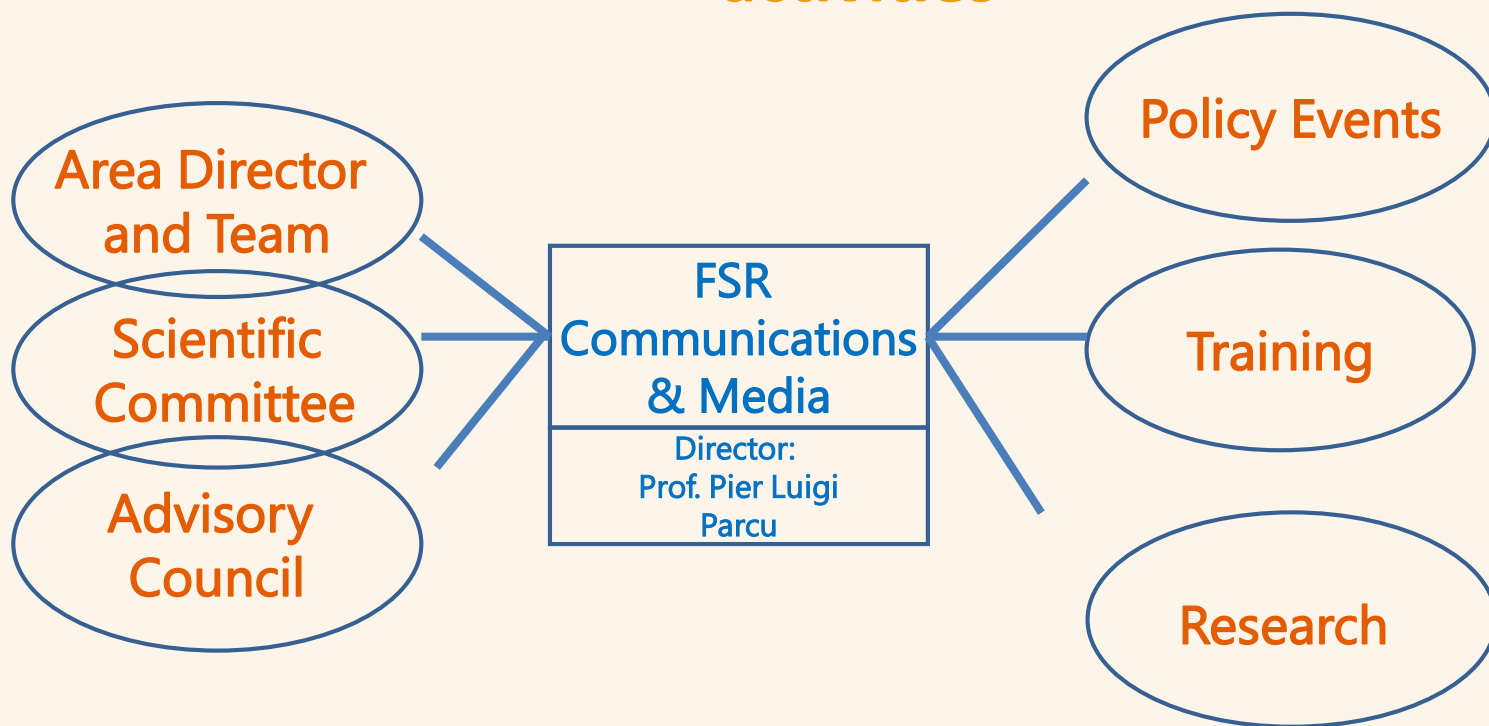
**EUI President:**

***Prof. Joseph H.H. Weiler***





## FSR Communications and Media structure and activities





## Next Events

- **The Place of the National Judiciary in the Single Market for Telecoms, 20 November 2014**
- **Block 2 of the Annual Training: Networks Regulation, 4-6 December 2014**
- **Internet and Content: an Option for the Future, 9 December 2014**
- **FSR Conference on Smart Cities, 5-6 February 2015**
- **Block 3 of the Annual Training: Internet Economy and Audiovisual Content Delivery, 12-14 February 2015**
- **FSR C&M 2015 Scientific Seminar, 29-30 March 2015 (the call for papers will be opened soon)**
- **Block 4 of the Annual Training: Competition Policy in Electronic Communications and Media Markets, 16-18 April 2015**
- **FSR C&M Annual Conference, 29 May 2015**
- **4th Conference on the Regulation of Infrastructures, June 2015**



## Economic Rationale for Copyright

➔ In extreme synthesis knowledge/creative goods are essentially “public goods”.

➔ Copyright responds to a joint market failure: knowledge/creative goods suffer from (relative) non excludability and non-rivalry in consumption.

➔ If a producer cannot exclude and goods are non rivalry in consumption, incentives for production are almost inexistent.



## Economic Rationale for Copyright

➔ Obviously the market failure is amplified when the cost of creation is higher and the cost of copying is lower, but anyway is pervasive.

➔ Is copyright the only solution and/or does it create other important market failures?

➔ I will deal with these complex issues only under a specific angle: is copyright under renewed pressure because of technological innovation? Why? And what are the consequences?



## Economic Rationale for Copyright

➔ Normally 3 potential market failures “derived” from copyright are charged: transaction costs (difficulties in selling the right), market power (abuse of the right) and externalities (difficult in coordination of acquisition of connected but different rights).

➔ Technology has ambiguous effects on these 3 problems: from one side it provides powerful instruments to reduce transaction costs and market power and certainly to overcome externalities. On the other side it weakens copyright altogether radically further lowering the cost of duplication and its control.



## Some pros of the impact of the Internet on creativity and innovation

- ➔ The cost for producing and distributing works is reduced.
- ➔ Content is spread and accessed easily and instantly.
- ➔ The easier circulation of works and access to them is has important consequences on stimulating further creativity and innovation.
- ➔ Renders easy the creation and spread of User Generated Content.
- ➔ Possibility of offering products tailored on consumers requests, such as bundled (e.g. possibility of accessing a large content offer at a minimum subscription fee) and unbundled (e.g. possibility of buying single songs, articles...) offers.





## Some cons of the impact of the Internet on creativity and innovation

- ➔ Increase of piracy and plagiarism.
- ➔ Uncertainty on what is possible (legal) or not. Some examples recent Court decisions on issues like clickable links or browsing and caching.
- ➔ Specific uncertainty related to UGC where the content includes copyrighted material that is integrated in new creations (think about amateur videos for non commercial use where copyrighted songs are used as background music).
- ➔ The Internet is, by definition, global and in the copyright world this clashes with something that is still strictly related to territorial enforcement.



## Access to content seen from the users side

➔ Users are getting used to access more and more content online.

➔ At this regard, there are “fair” and “unfair” users, meaning those that do and do not respect copyrights.

➔ That said, even “fair” users face difficulties in accessing content in different cases, such as:

- Content that is accessible only in some EU MSs (blocked in other);
- Content from home country not accessible when in other EU MSs;
- Content from home country for which a subscription has been paid not accessible when in other EU MSs.
- Content is offered at different prices and conditions in the different EU MSs.



## The issue of territoriality and harmonisation

→ Copyright is historically bound to the principle of territoriality and thus it is regulated nationally (higher transaction costs and externality).

→ As at today the main relevant European instrument addressing online copyright is Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

→ Nonetheless, the EU is currently facing a lack of harmonisation which, consequently, means uncertainty and different treatments among EU citizens (different national implementations means also different enforcement standards adopted by the national courts).

→ This “country by country approach” entails high economic and administrative costs (transaction costs and again externalities).



## The Internet is borderless, but...

2011 Communication from the Commission on "*A Single Market for Intellectual Property Rights*"

**"The internet is borderless but online markets in the EU are still fragmented by multiple barriers. Europe remains a patchwork of national online markets and there are cases when Europeans are unable to buy copyright protected works or services electronically across a digital single market. Technology, the fast evolving nature of digital business models and the growing autonomy of online consumers, all call for a constant assessment as to whether current copyright rules set the right incentives and enable right holders, users of rights and consumers to take advantage of the opportunities that modern technologies provide."**



## Copyright... a matter of balance

- ➔ Between fostering innovation and creativity, protecting the authors, creating markets and favoring consumption.
- ➔ Between harmonising legislations in Europe respecting different cultures and traditions.
- ➔ Between the interests of users and those of authors, collective management organisations and producers
- ➔ Between copyright and fundamental rights (e.g. freedom of expression).
- ➔ Between copyright and competition.



## To conclude

➡ The initiative of the EC to modernize EU copyright rules is appreciable, however time is running and a common efficient approach is urgently needed.

➡ From the recent public consultation on the review of the EU copyright rules it clearly emerges that there are many different actors with very different interests involved : a balanced solution is needed in order to avoid the risk of braking creativity and innovation.

➡ Moreover, while it is fundamental to strengthen coordination at an international level, it is clear that inventing borders in a world without borders can only destroy social welfare.

➡ In the end technology allows and calls for inventing markets and limiting obsolete regulation, resisting change is more than a crime is a mistake...



**Many thanks for your  
attention!**

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