

Why We Founded the European Copyright Society. A Reminder

Opening speech at the [ECS 10th Annual Conference](#),

May 29, 2026, Château de Versailles

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The European Copyright Society [was officially launched – very appropriately - in the European Parliament building in Brussels on January 13, 2012](#). This happened at a side event to the [academic conference celebrating the tenth anniversary of the EU InfoSoc Directive](#), which was jointly organized by [CRIDs](#) and [IViR](#). Founding members of the Society were Lionel Bently, Séverine Dusollier, Reto M. Hilty, Christophe Geiger, and me.

But the ECS was actually conceived a year earlier, in January 2011, in conversations between Christophe Geiger and me, at restaurant [Au Crocodile](#) in Strasbourg. Yet another suitable location. Au Crocodile is famous not only for its fine dining, but also for the [Crocodile Club](#), an informal group of MEPs that met here at the initiative of Altiero Spinelli in the 1980's. The Crocodile Club was important because it pushed for deeper European political integration, which eventually led to the Maastricht Treaty that established the European Union.

So why did we found the ECS? Unfortunately, my speech at the European Parliament is lost in time. According to an email sent out on behalf of the five founders, the Society was founded “with the aim of creating a platform for critical and independent scholarly thinking on European Copyright Law. To this end the Society envisages organizing workshops and symposia on distinct issues, and occasionally drafting statements or resolutions addressed to the EU legislature or other law making institutions, to serve as counterweight to vested interests that are usually better than academics in catching the attention of the law makers.”

Indeed, the main impetus for establishing the ECS was a growing concern among copyright scholars that lawmaking at the EU level was becoming the product of lobbying by ‘stakeholders’, and that the general public interest was thereby overlooked.

Until the end of the 1990's the European Commission ran several committees allowing for academic input into the legislative process. From 1987 [the Legal Advisory Board \('LAB'\), connected to DG XIII](#) (now CONNECT), regularly advised the Commission on various issues of copyright and information law. In roughly the same period, DG III (Internal Market) operated its own expert committee on copyright law.

Both advisory boards were terminated by the European Commission by the end of the last century. In contrast to lawmaking procedures at the national level, where academic input is

often ensured through a variety of committees and advisory boards, copyright scholars currently have no institutionalized expert role in the EU legislative process.

Another important reason for founding the ECS was the growing importance of the EU Court of Justice in copyright law matters. Unlike the European Court of Human Rights and the U.S. Supreme Court, the CJEU does not allow concerned academics to be heard in landmark CJEU by way of third-party interventions or *amicus curiae* briefs.

The ECS was established to make up for these lacunae in the legislative and judicial process by regularly producing statements and opinions to the attention of the EU legislative and the CJEU.

Membership to the ECS (upon invitation) is open to [“academics with a proven record of critical scholarship in the field of European copyright law. Members are expected to abide by the Society’s core principle of complete academic independence.”](#) The words ‘critical’ and ‘independence’ are crucial here. The ECS is not a platform for copyright traditionalism or dogmatism, or a lobby aimed at protecting vested interests. The Society can only act as a credible counterweight to stakeholder lobbying if its members are fiercely independent critical academics.

At the same time, the Society’s aims and means are not theoretical, but pragmatic. We want a better world – or perhaps, just a better Europe – by improving its copyright laws in ways that reflect copyright’s underlying purposes. Not “if copyright is good, more copyright is better” – but a balanced framework that best serves the interests of authors, the creative industries, intermediaries, the users and society at large. Here, the fundamental rights and freedoms enshrined inter alia in the EU Charter guide us.

An important factor that directly inspired the founding of the ECS was [the academic Wittem project that operated since 2002](#) and eventually produced the European Copyright Code in 2010. Several founding members of the ECS were directly involved in the Wittem project. As the Code demonstrated, copyright law in Europe was rapidly solidifying into a unified body of law, so the need to study EU copyright law as a coherent system became self-evident. Indeed, one of the first published opinions of the ECS was [a letter in 2014 to commissioner Oettinger](#) urging the Commission to start working on the true unification of copyright by way of a European Copyright Law (Regulation) that would replace national legal titles. The [Commission’s 2015 communication “towards a modern, more European copyright framework”](#) mirrors the ECS’s letter.

These are the kind of interventions we had in mind when founding the Society: concise and expedient statements reflecting big picture-concerns, not stakeholder interests or doctrinal quibbles.

As others in this conference will explain, the Society's many opinions in cases pending before the CJEU have similarly found their way in the jurisprudence of the Court. I was particularly pleased to see that our Society was quoted by AG Emiliou [in his opinion in Pelham 2 \(Case C-590/23\)](#). And what makes me even happier are the frequent references in recent CJEU decisions to fundamental rights and freedoms, to "fair balance" and to the diverse societal interests that copyright law seeks to achieve in the EU.

One thing that does worry me is that the Opinions of the ECS seem to be becoming longer and denser as the Society grows older. Surely, AG's (or their clerks) won't mind reading lengthy, subtly formulated opinions. But for impact at the legislative (that is, political) level, conciseness and clarity remain the name of the game.

So has the European Copyright Society been successful? As a founder that is not for me to say. Not yet knowing the outcome of today's deliberations, I asked the one person (besides Christophe and me) that knows everything about the ECS: ChatGPT.

Here's what it has to say:

Overall assessment

The ECS has probably been:

- the most influential transnational academic copyright network in Europe,
- particularly in shaping the language of:
 - proportionality,
 - user rights,
 - fundamental-rights balancing,
 - and flexible interpretation of limitations.

Its influence resembles that of a "soft doctrinal institution":

not authoritative in a formal sense, but increasingly difficult for European copyright courts and policymakers to ignore.

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+ Ask anything

Instant ▾



ChatGPT can make mistakes. Check important info.