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FREE MOVEMENT OF INFORMATION

For two decades now, we have witnessed a misunderstanding, sometimes carefully maintained by those who have an interest in it. It is a question of maintaining **the amalgam** between the right of the author and the right to information. Most often this amalgam is kept alive by **omission**. Such lawyer or professor of law brandishes in front of non-lawyers **intimidated** the threat of the offense of counterfeiting for any person who would dare to violate the property of the author, without saying that on the other hand, the ideas and the information are in principle free of right.

As already indicated, **the flow of information** can take on multitude forms such as news, films, radio and television programmes, the multitude forms of information associated with the internet, data flow which includes the flow of money, and so forth. However, the increase in information flows has also **stimulated** discourses and theorising on, and research into, the global flow of information. In this paper we focus on a critical overview of some of the discourses and theoretical approaches that have developed to explain and predict the complexity of issues related to the international flow of information, as mentioned by International Telecommunication Union *ITU*.

There are different perceptions of the meaning of the term "*information*". In Medieval Latin the term "*information*" refers to a depiction, instruction or formation. In classical French the singular "*une information*" refers to the gathering and processing of information or evidence in a **judicial inquiry** or court case. Colloquially, information is associated with news, knowledge, facts, figures, data, intelligence and ideas. One also hears about good or useful information; that the more information, the better; that information - or knowledge - is power; that information has been lost; that a book, letter or an internet web page contains information; and that information is provided or exchanged at a conference, it also depends to everyone's IQ (Intelligence Quotient).

The principle of free movement of information

In our understanding, the principle of free movement of information is not an informational right, but a general principle underlying much of the information law legislation. One can have a right to freedom of expression, but not a right to free movement of information. However, this doesn't mean that the principle of free movement of information would be totally unconnected to fundamental informational rights such as the freedom of expression. The principle of free movement of information includes values based on the informational rights and freedoms described above. So that the principle of free movement of information is comparable to the four basic freedoms underlying the European Union law about the free movement of goods, services, capital and persons.

The free movement of information is an important legal norm or principle, which governs the legal interpretation and **argumentation**, which helps solving **normative collisions**. It is therefore not primarily a rule of positive law that is directly applicable but a principle governing the interpretation of norms and weighing of rights applicable in particular situations. To the extent, it can be applied as a principle governing the interpretation in a

particular case it can be said to be a principle for teleological interpretation striving at optimizing free flow of information.

Despite its value basis the principle of free movement of information reveals an instrumentalist view of information; it is the end result that counts. Information is an item that may, but need not necessarily be **a prerequisite** for obtaining knowledge. It may, but need not necessarily have a commercial value or be part of a decision making process. It is thus recognized that information may have different functions in different relationships and processes. Consequently no fundamental distinction is made between different types of content: a copyrighted musical work can be equally important as an object of freedom of expression as a news article.

The principle of free movement of information is also rooted in the drive for efficiency; The rights and their **implementation** should be optimized, with due regard to the costs. Hence in our understanding, the principle of free movement of information is comparable to the optimization standard within **data security legislation**, where the techniques available, the associated costs, the quality, quantity and the data age, as well as the significance of the processing to the protection of privacy shall be taken into account, when carrying out the data security measures. Generally speaking the principle of free movement of information concerns legal institutions and structures safeguarding efficient information flows and the efficient utilization of information resources.

The relationship between the exclusive right to commercially valuable information and the principle of free movement of information needs a few words of explanation. We agree that **patent law** and copyright law are actually based on the principle of free movement of information. In patent law, an exclusive right to exploit a patented invention is given to the patent holder in exchange for access to information explaining the invention. The very idea of patent law is to give inventors **an incentive** to reveal their inventions in exchange for an exclusive right to commercially exploit them. This mechanism is intended to speed up innovation and progress in society and add to the economic growth and wellbeing of society.

In the same way copyright is intended to offer incentives for authors to come forward with and publish their works. In exchange the authors are assured the exclusive rights to commercial exploitation of their works for a certain time and the respect for their moral rights. Copyright offers a private market for cultural expressions, hence, also is an institution designed **to enhance** freedom of expression, as it makes it possible to make and publish works without public funding or private patrons, as a consequence, without **interference** on the content of the work. Both copyright and patent rights can be regarded as prerequisites for a functioning private information market, because it provides a mechanism for trading information and minimizes **the distortion** of competition caused by free riding. Having said this, it's still clear that intellectual property rights imply a certain right to control the use of information and that there is an increasing tension with the free movement of information.

Simon Chalton has found that although intellectual property doesn't create a property right to information per se, it has developed intellectual property in a manner that provides the holder an increasing power to control content. He also notes that the problem in many respects is **the overlapping** opportunities to govern information through various legal instruments such as patents, copyrights, and protection of business secrets. This overlapping and progressively increasing control is further enhanced by private ordering through technical protection measures and contracts. In copyright, the tenses between the exclusive right of the author and the free movement of information have been alleviated. Through doctrines such as **the idea-expression dichotomy**, according to which the exclusive right may pertain to the expression only, not to the ideas contained in an expression. Another similar doctrine is the copyright **exhaustion** or first use doctrine, which makes it lawful to distribute copies of the work once it has lawfully been put on the market.

Informational rights at constitutional level

A natural starting point for any endeavour **to grasp** the set of rules related to information law would therefore be to start in the fundamental rights recognized in the

national constitutions, European Union law and international conventions. The most important fundamental informational rights are the freedom of expression and freedom to form an opinion, freedom of thought and belief, right to informational **self-determination** and respect for correspondence and the right to own intellectual property. Freedom of expression and freedom to form an opinion has been expressed in Article 19 in the Universal Declaration on Human Rights (UDHR) which states that " *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*."

Article 10 of the European Charter on Human Rights (ECHR) includes similar language but continues with a limitation of this freedom: "This article shall not prevent States from requiring **the licensing** of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in **the interests** of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing **the disclosure** of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

Freedom of opinion and expression is in fact supplemented by the right to participate in society, especially the right to vote and the freedom of assembly and association. In the EU Charter, the right to education (article 14) and the freedom of art and sciences (article 13) may be seen as complementary to the freedom of expression.

Copyright protects a formatting

In truth, what belongs to the author is the creation of form that he has **achieved**. Copyright protects any formatting. It is the choice or arrangement of materials that is the object of his property. It is thus the choice of the words, their arrangements in sentences, in paragraphs, according to a given plane (the plan is a formatting protected independently of the text, as well as a scenario independently of the play). It is also the choice of colours and forms for a pictorial work … etc. the protection is all about PCW (*proprietor of the composite work*).

On the other hand, the ideas which presided over the creation, they are not protected. It is a constant in most legal systems in the world to recognize the freedom of ideas, a principle whose corollary is access to knowledge for all, recognized as we know by various declarations of human rights.

Legally, it is therefore not possible to directly protect an idea, but this is another subject. The idea of drawing a depiction is not protected. The fact of drawing one doesn't prevent other authors from drawing their own depiction. The idea that the weather is nice in Paris today is an idea that it is open to everyone to have. But if I form the expression "*My God, what a beautiful weather in Paris today*! This sentence belongs to me; I choose the words and punctuation: I am the author, the protection is known as UTAD (*Under Trust Agreement Dated*).

From freedom of ideas to freedom of information

With the example of good weather, we will have seen that the information is most often of the order of unprotected idea. But what are the *Professions of I-D*, if not interested in information, it's their daily raw material; their raison to be is even to process information, to circulate it in order to enrich the users' performances while seeking knowledge.

It is also related to Deliberative Process Privilege *DPP*, which means that privilege protecting the policymaking process in order to encourage open discussion among government decision makers, such as advice, recommendations, and opinions that are part of an agency decision-making process.

The foundations of handicraft hindered

Why, then, would authors - and especially their publishers - want to prevent us from circulating information on the pretext that they have **enshrined** it in their own words? We will be told that the solution is simple; it's enough to locate the ideas - free of a text - and to reformulate them with other words. This is exactly what I-D professionals have been doing for years with abstracts and summaries. And yet, here the press publishers would like **to ban**

abstracts. There may be something else to do more urgent. Still, the useful work of information professionals is simply **hampered** by the omnipresence of sacrosanct copyright.

Theory of expropriation

Could we not envisage, in order letting all the economic activities take place, a kind of information priority in certain cases and a priority for the author in other cases? In the case of works of professional information, could we not consider that information takes precedence over the property of the author? Is not this the deep feeling of many scientific writers or professional information? Some are required to publish in the exercise of their mission. This is the case for teachers and researchers, who sometimes have to pay to be published in prestigious journals to ensure career advancement. In certain cases, therefore, **an expropriation** of the author's private rights - temporary or permanent - could be envisaged with regard to a collective right to the flow of information.

This theory is not only an idea of a jurist, but it is a principle already partially recognized, particularly in French copyright.

Open access

The most recent offensive is without doubt that of **open access**. The concept of open access means essentially: *findable, accessible, interoperable and reusable* (FAIR). Tired of systematic tariff policies and the systematic transfer of all rights of researchers by scientific journals, universities have begun to take back the rights of their researchers and decide to publish them themselves. Many universities have done the same is before a pooling of free access to all scientific knowledge, to the great disappointment of private publishers who are gradually reviewing their business model. So it seems that the evil spirits who predicted us a totally commercial Internet **supplanting** the libertarian Internet of the first researchers were misled. Once again, the Internet is not what some inspired thinkers decree, but what its actors do.

Conclusion

Analysing the current policy questions within different fields of information law, one can see certain common issues **arising** within the different frameworks. At the deep level, establishing trust is a prerequisite for a functioning information market or Single European Information Space. However, there is no single means for establishing trust. When it comes to commercial markets, it is much a question of providing a sufficient architecture for electronic commerce, including proper consumer protection and enforcement of consumer protection. The universal service provisions in the telecommunications regulation provides consumers with affordable access to the information networks.

Without the infrastructure, there is no access to content either. At the content level, provisions on access to government information and transparency are important. From a commercial perspective, the *Paul Scherrer Institute* (PSI) regulation is intended to provide a usable framework encouraging re-use of government information resources for value added services. This is typically a framework designed to prevent underutilization of information resources. Within the copyright framework copyright exceptions may of course be seen as providing **remedies** for underutilization of information sources. However, within copyright doctrine this concept is unfamiliar, and is more often seen as protecting the interests of the public or providing for copyright balance.

Questions:

- Translate the underlined terms into Arabic.
- Give an abstract (in Arabic) to the topic.

Important notes

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The professionals of I-D: is a type of social identification and is the sense of oneness individuals have with a

profession. Professional identity consists of the individual's alignment of roles, responsibilities, values, and ethical standards to be consistent with practices accepted by their specific profession