



# *Opportunities of EU Level Administration of Private Copying Levies: Exploring an Institutional Approach to Reform*

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# Presentation Agenda

Research Background / PhD Project Background

Goals of the Paper

Paper Structure Part I & II

Main Results / Summary of Recommendations

Questions and Feedback

# The EIPIN Innovation Society Project:

- **15 PhD theses** funded by the EU “Horizon 2020” Project aimed at research in IP and innovation
- Four areas of PhD Research (Workpackages):
  - IP as a Complex Adaptive System
  - Governance of Production and Technologies
  - Adjudication, Justice and Enforcement
  - Allocation of Rights, Actors and Institutions
    - ***Copyright in the Digital Economy***
- Network of five leading European IP institutes, in cooperation since 1999



## Early Career Researchers



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Project: ESR1



Girish Nagraj  
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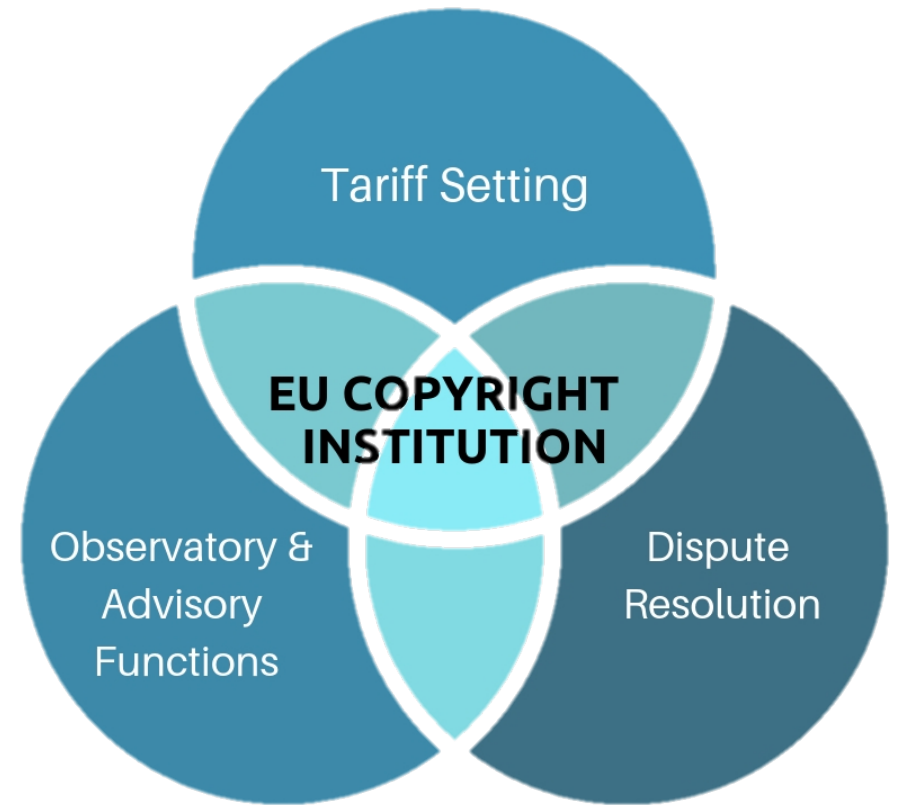
Tamar Khuchua  
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Project: ESR15

# PhD Thesis: Copyright Reform in the EU: An Institutional Approach

***What can be learned from the practices of copyright administrative bodies (boards, tribunals, offices) in EU and non-EU jurisdictions?***



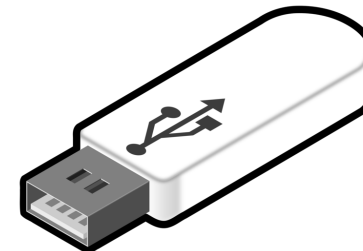
## Goals of the Paper:

1. Use private copying levies issue as a “**test case**” for forwarding the proposal of an EU Institutional approach
  - Relatively **well-defined issue** that has a long history of proposals that haven’t resulted in legislative action
  - Issue is somewhat **unique/important to EU MS** as opposed to other jurisdictions (e.g., cultural function of levy)
2. Comprehensively review the PCL issue for an international audience
3. Provide (early) policy recommendations and conclusions centered on the role and functions of an EU level regulator as it may exist within the current EU legal framework



# Where do I store my music?

In 2009, the PCL on the Apple iPod Touch (64GB) ranged between €1.42 and €19.40<sup>1</sup>



1. Kretschmer, M. (2011). 'Private Copying and Fair Compensation: Report.'

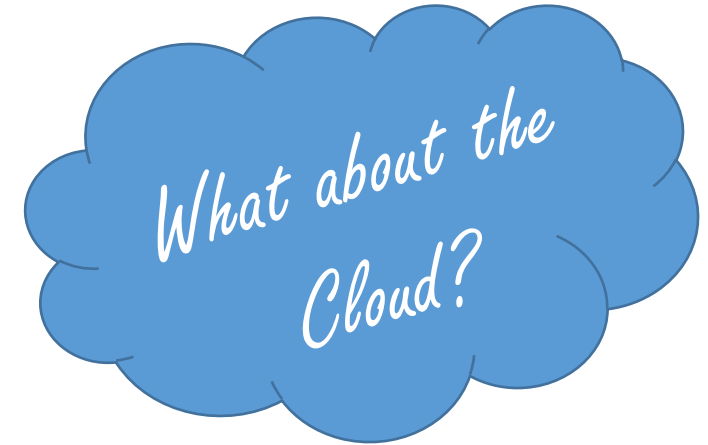
The joint doctoral programme EIPIN Innovation Society and its results received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 721733.



# Why are PCLs problematic in the EU?

## Out of the 22 Member States that implement a levy system in the EU:

- Different media and equipment subject to the levy
- Levies differ for the same media and equipment
- Levies differ in whether they are imposed on:
  - manufacturers, importers, distributors, or consumers
- Cross-border transactions lead to double-payment scenarios for EU manufacturers/users



# Paper Structure -- Part I

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# Main Results:

## Q: Opportunity for harmonizing tariff-setting practices?

A: Each national system uses widely differing factors for calculating harm

*C: **Upper and lower thresholds** can reduce volatility of rates among MS; **applicable technology** determined centrally*

## Q: Can collections and distributions improve to eliminate/reduce double-payment?

A: MS monitor the sufficiency of C/D schemes within its jurisdiction

*C: **Centralized EU point of declaration** for cross-border M&I; unified exemption/reimbursement criteria can be set at EU level*

## Q: Future of DRM and levy phase-out?

A: DRM implementation has fallen short of expectations; licensing practices increasing without adequate oversight (unbalanced copyright outcomes)

*C: **DRM standard-setting and tech. assessment** by neutral EU regulator*

# Summary of Recommendations:

## Tariff-Setting

- Upper and lower thresholds of tariff amounts;
- Basic procedural requirements for rate-setting which encourage equal stakeholder participation;
- Unified “baseline” criteria of harm + national regulatory bodies simplify factors contributing to harm;
- Leviable devices/media determined at EU level.

## Collection/Distribution

- Refunds/Exemptions for cross-border M&I at centralized point;
- Unified criteria of exemptions (application of levy in “country of destination”) + Ex-ante exemptions managed at the EU level;
- Ex-post reimbursements handled in limited cases by national governments;
- Cultural function of levy to incentivize “EU culture” and rebalance “harm” broadly.

## Observatory/Advisory

- Technological assessment of availability of DRM made at the EU level to anticipate levy phase-out;
- Supervision of DRM standardization measures that are properly balanced with copyright objectives;
- Advisory function to aid Member States’ domestic legislative efforts.

## Questions for Audience and Feedback:

- Amount of background sufficient for understanding the issues? Too much context in Part I?
- Logical progression of argument/proposal for reform?
  - Part I: Theoretical/Technical issues (present looking, assessment-oriented);  
Part II: Institutional Approach to Reform (future looking, proposal-oriented)
- Sections that need to be reworked? Confusing/problematic sections?
- Lack of evidence to support conclusions (and suggestions how to remedy this)?

# Thank You!

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For more on the ESR 12 Project, visit:

<https://www.eipin-innovationsociety.org/research/allocation-of-rights-actors-and-institutions/esr-12/>