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NOTE

From: Commission

To: Delegations

Subject: Summary of feedback received on the copyright modernisation package

Delegations will find in the Annex the above mentioned Summary, transmitted by the Commission services.



EUROPEAN COMMISSION
 Directorate-General for Communications Networks, Content and Technology
 Director-General

Brussels,
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 Ambassador and Deputy
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Dear Chair,
 Dear Ambassador,

As part of its Digital Single Market Strategy, the European Commission has set out the objective to make EU copyright rules fit for the digital age. On 14 September 2016, the Commission adopted a set of legislative proposals aiming at the modernisation of the copyright framework (hereafter "the copyright modernisation package"). The package consists of a proposal for a Regulation on the online transmissions and retransmissions of TV and radio programmes¹, a proposal for a Directive on copyright in the Digital Single Market² as well as proposals for a Directive and a Regulation to implement in EU law the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled³.

The legislative package aims at enhancing online availability of content across the EU, adapting exceptions and limitations to the digital environment and achieving a well-functioning copyright marketplace⁴. The objective is to make European works more widely accessible to European citizens while helping European copyright industries to flourish in the Digital Single Market (DSM) and European creators to reach new audiences.

In line with the commitment established in its May 2015 Communication "Better Regulation for Better Results", the Commission makes legislative proposals available for feedback for a period of 8 weeks following adoption. The Commission has made available a website on the

¹ COM/2016/0594 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0594>

² COM/2016/0593 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0593>

³ COM/2016/0596 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0596> and
 COM/2016/0595 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0595>

⁴ <https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules>

Transparency Register of the Commission Documents portal where stakeholders can upload their feedbacks on the legislative proposals and related Impact Assessments (IA). In the case at hand, the feedback period ran from 14 September to 29 November 2016. The Commission received 25 contributions on the copyright modernisation package⁵: 15 on the Directive on copyright in the DSM⁶ and 10 on the Regulation on the online transmissions and retransmissions of TV and radio programmes⁷. These contributions come from representatives of rightholders in the print and audio-visual sectors, cultural heritage institutions, service providers, users and consumers and others⁸.

The attached annex provides a summary of the feedback received.

Yours sincerely,

E-Signed
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ANNEX - Summary of the feedback received on the copyright modernisation package

⁵ Of the 25 contributions registered in the system, 9 were duplicates (3 on the Copyright DSM Directive and 6 on the Regulation); this means that overall the Commission received 16 different post-adoption feedback contributions on the copyright modernisation package via the Transparency website.

⁶ http://ec.europa.eu/transparency/regdoc/7fuseaction=feedbackreport&doc_id=3100990

⁷ http://ec.europa.eu/transparency/regdoc/7fuseaction=feedbackreport&doc_id=3101017

⁸ Publishers (FEP: Federation of European Publishers, EPC: European Publishers Council, STM: Scientific Technical and Medical Publishers), rightholders in audio-visual sector (EUROKINEMA: Association de Producteurs de Cinéma et de Télévision, IVF: International Video Federation, FIAPF: International Federation of Film Producers Associations, SPIO: Association of the German Film Industry, FAMA: Film and Music Austria, VAP: Austrian Anti-Piracy Association, FIAD: International Federation of Film Distributors Associations, ACT: Association of Commercial Television in Europe, IFTA: Independent Film & Television Alliance), culture and heritage institutions (FARO: Flemish Cultural Heritage Association, VVBAD: The Flemish library and archives association, member of SA&S), service providers (ECO: Association of German Internet Industry), representatives of users and consumers (C4C: Copyright for Creativity, SA&S: Partnership for Copyright & Society, member of C4C, IGEL: Initiative Against An Ancillary Copyright, vzbv: Federation of German Consumer Organisations) and others (DAV: German Bar Association).

Annex - Summary of the feedback received on the copyright modernisation package via the Transparency website

The feedback period for the copyright modernisation package adopted by the European Commission on 14 September 2016 ran from 14 September to 29 November 2016. The Commission received 25 contributions on the copyright modernisation package⁹: 15 on the Directive on copyright in the DSM¹⁰ and 10 on the Regulation on the online transmissions and retransmission of TV and radio programmes¹¹.

1. Contributors

- "Copyright DSM Directive": 15 contributions were received overall via this link, of which 3 constitute duplications/replacements in the system. 14 different organisations sent contributions on this legislative instrument.

The contributors are: DAV (German Bar Association), FEP (Federation of European Publishers), FAMA (Film and Music Austria), VAP (Austrian Anti-Piracy Association), IGEL (Initiative Against An Ancillary Copyright), STM (Scientific Technical and Medical Publishers), vzbv (Federation of German Consumer Organisations), C4C (Copyright for Creativity), SA&S (Partnership for Copyright & Society, member of C4C), FARO (Flemish Cultural Heritage Association, member of SA&S), ECO (Association of German Internet Industry), EPC (European Publishers Council), VVBAD (The Flemish library and archives association, member of SA&S). SPIO (Association of the German Film Industry) provided feedback on the Copyright DSM Directive in their contribution submitted via the "Regulation on online transmissions and retransmission of TV and radio programmes" link.

- "Regulation on online transmissions and retransmissions of TV and radio programmes": 10 contributions were registered in the system, of which 6 are duplications. 9 different organisations contributed on this instrument.

The contributors are: EURO CINEMA (Association de Producteurs de Cinéma et de Télévision), IVF (International Video Federation), FIAPF (International Federation of Film Producers Associations), SPIO (Association of the German Film Industry), vzbv (Federation of German Consumer Organisations), FIAD (International Federation of Film Distributors Associations), ACT (Association of Commercial Television in Europe), IFTA (Independent Film & Television Alliance). FAMA (Film and Music Austria) provided feedback on the topic through its contribution via the Copyright DSM Directive link.

- Marrakesh Directive and Marrakesh Regulation: no contributions were received via the two links. To note, FAMA and DAV contributions submitted under "Copyright DSM Directive" include their feedback on the Marrakesh proposals.

2. Feedback on the procedural aspects

The "C4C" coalition shared some procedural comments on the consultation process that took place before the adoption of the package, namely regarding the consultation on the role of publishers in the copyright value chain and on the 'panorama exception'¹².

⁹ Of the 25 contributions registered in the system, 9 were duplicates (3 on the Copyright DSM Directive and 6 on the Regulation); thus overall the Commission received 16 different post-adoption feedback contributions on the second copyright package via the Transparency website.

¹⁰ http://ec.europa.eu/transparency/regdoc/?fuseaction=feedbackreport&doc_id=3100990

¹¹ http://ec.europa.eu/transparency/regdoc/?fuseaction=feedbackreport&doc_id=3101017

¹² Public consultation held from 23/03/2016 to 15/06/2016, see [Synopsis reports and contributions to the public consultation on the role of publishers in the copyright value chain and on the 'panorama exception'](#)

3. Feedback on the content of the legislative proposals (and Impact Assessment)

3.1. Copyright DSM Directive

3.1.1. Measures to adapt exceptions and limitations to the digital and cross-border environment

The Commission's proposal establishes new mandatory exceptions and limitations regarding: (i) text and data mining (TDM), (ii) illustration for teaching and (iii) the preservation of cultural heritage.

On text and data mining (TDM), representatives of publishers (EPC, STM, FEP) as well as of the audiovisual industry (SPIO) considered that the new exception should be limited to non-commercial purposes and advocated for a narrow scope. FAMA supported the proposal but called for a mandatory compensation for rightholders. C4C and SA&S welcomed the proposal but considered that the exception was too narrow and raised concerns as regards the application of technical measures.

Regarding the proposed exception for illustration for teaching, FEP considered that the exception should be narrow and welcomed the recognition of the role of licences in this area. FAMA suggested excluding audio visual content while C4C and SA&S advocated for a wider scope of the proposed exception.

As regards preservation of cultural heritage, some respondents (FEP, EPC DAV and FAMA) emphasised the need for a clearer and narrower definition of the beneficiaries and/or for a narrow scope of the exception. SA&S on the other hand considered that the exception should be broader and go beyond preservation to also allow the dissemination of cultural heritage.

3.1.2 Measures to improve licensing practices and ensure wider access to content

Out-of-commerce works

The proposal sets out a legal framework to help cultural heritage institutions to digitise and make available out-of-commerce works, notably across borders, by facilitating the conclusion of collective licences on the basis of mechanisms such as extended collective licences or presumptions of representation.

FEP welcomed the fact that the Commission recognised the role of stakeholder cooperation in the digitisation and making available of cultural heritage, called for a clear definition of "out-of-commerce" works and suggested that commercial players should also benefit from the new provisions. FAMA raised some questions on the legal drafting and on the impact of the proposed mechanism on national systems. SPIO welcomed the proposal.

SA&S referred to potential implementation difficulties related to the determination of the collective management organisation from which the concerned licences are to be sought and the requirements to be complied with before works can be disseminated across borders.

Access to and availability of audiovisual works on video-on-demand platforms

The proposal requires Member States to set up a negotiation mechanism to facilitate the licensing of audiovisual works on video-on-demand (VoD) platforms with the aim of improving the availability of European audiovisual works on such platforms.

Some national representatives of the film industry (SPIO, FAMA, VAP) raised questions about the practical application of the mechanism.

3.1.3. Measures to achieve a well-functioning marketplace for copyright

Rights in Publications

The proposed Directive introduces a neighbouring right covering digital uses of press publications with the objective to address difficulties faced by publishers of these publications in the digital environment.

Representatives of rightholders (EPC, STM, FAMA) considered the proposal favourably and some of them called for a broader scope of the new publishers right. FEP and STM also welcomed the provision in the proposed directive which allows Member States to introduce measures to authorise publishers to claim fair compensation for uses under exceptions.

Representatives of consumers and users (Vzbv, C4C, IGEL, ECO) took the view that the proposal would not be an effective tool to solve the problems faced by publishers in the digital environment and pointed to possible solutions in the area of copyright enforcement as an alternative to the introduction of a new right.

Certain uses of protected content by online services

Representatives of rightholders (SPIO, FAMA, EPC, VAP) welcomed the Commission's proposal but considered that it should have clarified that the services targeted by the new measures do not benefit from the liability exemption under the e-commerce Directive. Some rightholders also called for a clarification of the scope of the "communication to the public" right.

C4C, ECO and Vzbv questioned the need for legislative action and raised questions as to the interplay with the e-commerce Directive and on freedom of expression, as well as on the impact on small players.

Fair remuneration in contracts of authors and performers

The proposed Directive introduces transparency obligations in contractual relationships between authors and performers. This measure is supported by mechanisms of contract adjustment and dispute resolution.

FEP considered that the intervention was not justified for the book sector. FAMA supported the transparency obligations but stressed the need for taking into consideration the specificities of each sector. SPIO suggested that these measures should not interfere with collective labour agreements.

C4C welcomed the proposal but considered that it should also include measures in the areas of contract law to strengthen the protection of creators.

3.2. Regulation on online transmissions and retransmissions of TV and radio programmes

The objective of the Regulation is to facilitate rights clearance for certain online transmissions of TV and radio programmes and for retransmissions by means equivalent to cable. The proposal introduces the country of origin principle for the licensing of broadcasters' ancillary online services (simulcasting, catch-up services). Mandatory collective management is proposed for retransmissions by means other than cable, but on equivalent closed networks (e.g. IPTV, satellite, digital terrestrial, mobile).

The joint contribution by a number of representatives of the audiovisual sector¹³ (including distributors, producers, commercial broadcasters, film directors, actors, sport organisations, trade associations) criticised the analysis carried out in the Commission's Impact Assessment on the transaction costs for clearing the rights for cross-border exploitation of TV programmes and on the consumer demand for accessing non-domestic content online. They also expressed concerns on the impacts of the proposed country of origin principle on the territorial licensing of rights, notably when considered in combination with the application of the EU competition rules. Separate additional contributions from FAMA, ACT and IFTA contained similar comments.

Vzbv welcomed the intervention in this area and believed the Regulation's scope should not be limited to broadcasters' ancillary online services but should be extended to VoD services. They also argued that online piracy is best countered by increasing legal and affordable access to digital content.

3.3. Marrakesh proposals

The Commission proposals aim at implementing the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled by introducing in EU law a new mandatory exception with a cross-border effect. This will allow beneficiary persons and organisations serving their needs to make copies of works in formats that are accessible to them, and to disseminate such copies across borders within the EU and with third countries parties to the Treaty.

DAV generally welcomed the Commission's proposals but deemed it appropriate to give Member States the possibility to provide for compensation. FAMA questioned the choice of a Regulation as a legal instrument.

4. Feedback on the scope of intervention

Some stakeholders had comments on the issues which have not been included in the Commission's legislative proposals¹⁴.

SPIO believed that the proposals did not address the question of cumulative application of exceptions. C4C pointed to the lack of solutions regarding freedom of panorama, consultation exception and e-lending, and more generally to the lack of harmonisation of the full list of exceptions and to the fact that the proposals introduced only a few new mandatory exceptions, creating uncertainty on how new and old exceptions interact. C4C also proposed to introduce a flexible norm based on the three-step test in the Berne Convention as a way to future-proof exceptions. SA&S advocated for an "open access" provision which would stipulate that publicly funded research be made available for free after a reasonable period after first publication. Vzbv was of the view that the Commission proposals were not sufficiently clear to ensure legal certainty for consumers.

¹³ (ACT: Association of Commercial Televisions in Europe, Bundesliga, CEPI: European Coordination of Independent Producers, EURO CINEMA: Association de Producteurs de Cinéma et de Télévision, EUROPA DISTRIBUTION: European Network of Independent Film Distributors, EUROPA INTERNATIONAL, FERA: Federation of European Film Directors, FIA: International Federation of Actors, FIAD: International Federation of Film Distributors Associations, FIAPF: International Federation of Film Producers Associations, IVF: International Video Federation, LaLiga: The Spanish Football League, MEDIAPRO, MPA: Motion Picture Association, Premier League, SPIO: Association of the German Film industry, UNIMEI: Uni Global Union Media Entertainment and Arts, UNIC: International Federation of Cinemas).

¹⁴ The Commission has explained in the relevant sections of the Impact Assessment the specific reasons for not including certain topics in the proposals.