



EUROPEAN COMMISSION

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Mr Milan ŠTĚCH
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1

Dear President,

The Commission would like to thank the Senát for its Opinion on the proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market {COM(2016) 593 final}, the proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes {COM(2016) 594 final}, the proposal for a Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled {COM(2016) 595 final} and the proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefits of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society {COM(2016) 596 final}.

Through these proposals, the Commission is delivering on the Digital Single Market Strategy¹ objective "to reduce differences between national copyright regimes and allow for wider online access to works by users across the EU" and on the action plan for the modernisation of EU copyright rules outlined in the Communication 'Towards a modern, more European copyright framework'² of December 2015.

The proposal for a Directive on copyright in the Digital Single Market aims at adapting certain key exceptions to copyright to the digital and cross-border environment; improving licensing practices and ensuring wider access to content; and achieving a well-functioning marketplace for copyright.

¹ COM(2015) 192 final.

² COM(2015) 626 final.

The objective of the proposed Regulation on online transmissions of broadcasting organisations and retransmissions of television and radio programmes is to facilitate the clearance of rights for cross-border online transmissions of television and radio programmes and retransmissions over closed networks, and as a result to foster the cross-border distribution of television and radio programmes.

With the proposal for a Directive on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled, the Commission is implementing the Marrakesh Treaty into European Union law through a new exception. The proposal for a Regulation in the same area will make sure that the Member States apply the provisions of the Marrakesh Treaty in their relationships with third countries.

The Commission welcomes the Sénat's support on the harmonisation of certain mandatory exceptions to copyright and the Commission's proposals to implement the Marrakesh Treaty. In response to the comments and questions put forward by the Sénat the Commission would like to refer to the attached annex.

The proposal presented by the Commission is currently with the co-legislators i.e the European Parliament and the Council.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Sénat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

ANNEX

The Commission has carefully considered the questions raised by the Sénat in its Opinion and is pleased to provide the following clarifications.

- On the exception for text and data mining (Article 3 of the proposal for a Directive on copyright in the Digital Single Market) – paragraph 2 of the Opinion

Article 3 of the proposal for a Directive on copyright in the Digital Single Market introduces a new mandatory exception for text and data mining (TDM) carried out by research organisations for the purpose of scientific research. In order to take into account the realities of the current research environment and support innovation, recital 10 of the proposal explicitly specifies that "research organisations should also benefit from the exception when they engage into public-private partnerships".

- On the protection of press publications concerning digital uses (Article 11 of the proposal for a Directive on copyright in the Digital Single Market) – paragraphs 3 to 6 of the Opinion

Article 11 of the proposal for a Directive on copyright in the Digital Single Market provides for a new related right for publishers of press publications. This new right aims at ensuring that the organisational and economic contribution of press publishers (such as newspaper and magazine publishers) is recognised in European Union law.

The Commission's proposal is different from other legislative measures adopted in certain Member States to grant protection to press publishers. In the Commission's proposal, the rights granted to the publishers of press publications are the exclusive rights of reproduction and making available to the public, concerning digital uses. As the proposed rights are exclusive in their nature, they provide publishers with the right to authorise or prohibit the reproduction and making available to the public of their press publications and to set the conditions to do so, including for free or against the payment of licence fees.

The introduction of a new related right for press publishers would create a new category of rightholders but will not change the scope of what is protected by copyright. This is clarified in particular in recital 34 of the Commission's proposal. Therefore, the jurisprudence of the Court of Justice of the European Union on the scope of the rights of reproduction, including with regard to the use of snippets³, and making available to the public, including as regards whether or not a given act of hyperlinking constitutes an act of communication to the public⁴, should also apply to the rights granted to press publishers.

The protection granted under Article 11 is independent from and should in no way affect any rights provided for in Union law to the authors of the works incorporated in a press publication, as laid down in Article 11(2).

³ Judgment of 16 July 2009, *Infopaq International* (C-5/08) or Order of the Court of 17 January 2012, *Infopaq International* (C-302/10).

⁴ Judgment of 13 February 2014, *Svensson and Others* (C-466/12), Order of 21 October 2014, *BestWater*, (C-348/13) or Judgment of 8 September 2016, *GS Media BV v Sanoma Media Netherlands BV and Others* (C-160/15).

A 20-year term of protection is considered appropriate, as it would place press publishers in a situation comparable to other related rightholders without causing a significant impact on other stakeholders, including authors, consumers and online service providers.

- *On the use of protected content by information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users (Article 13 of the proposal for a Directive on copyright in the Digital Single Market) – paragraphs 7 and 8 of the Opinion*

The measures targeting user upload content services (content sharing platforms) under Article 13 of the proposal for a Directive on copyright in the Digital Single Market would allow rightholders to better decide on the use of their content by such services and to be remunerated for the uses of their content.

The measures that need to be taken by user upload content services should be ‘appropriate and proportionate’. As the measures need to be proportionate, they should not be overly burdensome or costly for the service provider, which may choose to put in place measures which are best adapted to its specific situation (e.g. by taking into account its resources, the type of content made available, etc.). These elements aim to ensure that no barriers are created for innovation and European platforms, while at the same time creating a more balanced content market.

The Commission's proposal is copyright-specific. The wider context for the measures imposed on the above-mentioned services has been set out in the relevant recitals in the Commission's proposal which, among others, recall the application of the existing copyright and e-commerce rules to these market players, without changing the underlying directives, i.e. Directives 2000/31/EC⁵ and 2001/29/EC⁶.

- *On the measures provided in the proposal for a Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes – paragraph 9 of the Opinion*

The country of origin principle introduced in the proposal for a Regulation would apply to the licensing of rights for broadcasters' ancillary online services, i.e. services consisting in the provision of radio or television programmes simultaneously with or for a defined period of time after their broadcast (online live television, catch-up services along with ancillary materials such as previews). This mechanism would facilitate the clearance of rights and open new opportunities for broadcasters to make their programmes available online across the European Union, but it would not oblige them to do so. It is expected to benefit consumers through a wider choice of television programmes, in particular news, current events, political debates, cultural and entertainment programmes.

⁵ OJ L 178, 17.7.2000, p. 1–16

⁶ OJ L 167, 22.6.2001, p. 10–19

As explained in recital 11, the proposal does not affect the contractual freedom of broadcasters or rightholders, which would remain free to contractually limit the distribution of content to certain territories, provided that applicable European Union and national rules are respected.

Article 2(2) of the proposed Regulation provides that, under the application of the country of origin principle, the licence fees paid by broadcasters to rightholders take account of all aspects of the ancillary online service, considering notably the features of the service, the audience and the language version. This provision is essential to ensure that rightholders are remunerated for the access to and the use of ancillary online services taking place in Member States other than the Member State where the broadcaster has its principal establishment. It should also help small broadcasters to make their ancillary online services available across borders without excessive licence fees, notably to serve their nationals living in other Member States and who are interested in keeping up with developments in their home country.