



EUROPEAN COMMISSION

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*Mr Erik Christensen
Chair of the European Affairs
Committee of the Folketing
Christiansborg
DK – 1240 COPENHAGEN*

*cc. Ms Pia KJÆRSGAARD
Speaker of the Folketing
Christiansborg
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Dear Chair,

The Commission would like to thank the Folketing 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} and 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}.

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 European Union" and on the action plan for the modernisation of European Union 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.

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.

¹ COM(2015) 192 final.

² COM(2015) 626 final.

The Commission welcomes the Folketing's support for the Commission's proposal concerning online services storing and providing access to copyright-protected content uploaded by their users. In response to the comments and questions put forward by the Folketing the Commission would like to refer to the attached annex.

The proposal presented by the Commission is currently in the legislative process involving the European Parliament and the Council. The Folketing's Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Folketing 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 Folketing in its Opinion and is pleased to provide the following clarifications.

- On the protection of press publications concerning digital uses (Article 11 of the proposal for a Directive on copyright in the Digital Single Market)***

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.

As to the impacts on the freedom of expression and the free flow of information on the Internet, the introduction of a new related right for press publishers would create a new category of right holder but would not change the scope of what is protected by copyright. This is clarified in particular in recital 34 of the Commission's proposal.

- 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***

In the proposed Regulation, the country of origin principle would only apply to the licensing of rights for certain, narrowly-defined, transmissions by broadcasters, that is to say online transmissions 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). The principle would therefore not apply to the entirety of the broadcasters' operations. Moreover, the effect of the proposed mechanism is limited to facilitating the clearance of rights for online transmissions and does not concern any regulatory matters. Broadcasters would need to obtain the rights for the country in which they are established from the relevant right holders (which, for a broadcaster based in the United Kingdom, may be Danish right holders if they have the rights for the territory of the United Kingdom). It is, in the Commission's view, very unlikely that broadcasters would relocate their place of establishment due to reasons linked to the licensing of copyright and related rights.

In addition, clearing the rights in one Member State does not take away the possibility for right holders to obtain appropriate remuneration. 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 right holders shall take account of all aspects of the ancillary online service, including the features of the service, the audience and the language version. This provision is essential to ensure that right holders 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.