



## EUROPEAN COMMISSION

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*Mr Claude BARTOLONE  
President of the Assemblée nationale  
Palais Bourbon  
126, rue de l'Université  
F – 75007 PARIS*

*Dear President,*

*The Commission would like to thank the Assemblée nationale 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 making good on the Digital Single Market Strategy<sup>1</sup> 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 European Union copyright rules outlined in the Communication 'Towards a modern, more European copyright framework'<sup>2</sup> 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.*

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<sup>1</sup> COM(2015) 192 final.

<sup>2</sup> 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, therefore fostering 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 may apply the provisions of the Marrakesh Treaty with third countries.*

*The Commission welcomes the Assemblée nationale's support, notably for the further harmonisation of certain copyright exceptions and the introduction of a new right for press publishers. The Commission shares the views of the Assemblée nationale on the importance of strengthening the position of creators and ensuring an effective fight against piracy. In response to the specific comments presented in the Opinion, the Commission would like to refer the Assemblée nationale to the attached annex.*

*The proposals presented by the Commission are currently in the legislative process involving both the European Parliament and the Council in which your government is represented.*

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

- *On exceptions to copyright (Articles 3 to 6 of the proposal for a Directive on copyright in the Digital Single Market and proposals to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled) – paragraphs 1 and 7 of the Opinion*

*Concerning the mandatory exceptions introduced by the proposed legislation, the Commission has duly taken into account the issue of compensation for right holders. It concluded that, given their nature and scope, the possibility to provide for such compensation was not required for the proposed exceptions for text and data mining, preservation of cultural heritage and for the benefit of people with print disabilities. The Commission considered, on the other hand, that Member States should be allowed the option to provide for fair compensation for the uses under the mandatory exception for illustration in digital teaching activities.*

*The exception authorising libraries and other institutions to allow on-screen consultation of works for research and private study on their premises is provided for in Article 5(3)(n) of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society<sup>3</sup>. Remote consultation, in closed electronic networks, of works held in libraries and other relevant institutions is today done on the basis of licences. In view of this, and taking account of the recent judgment of the Court of Justice of the European Union on the scope of the lending right<sup>4</sup>, provided for in Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property<sup>5</sup>, the Commission has decided not to propose new rules in this respect.*

- *On the measures to achieve a well-functioning marketplace for copyright (Title IV of the proposal for a Directive on copyright in the Digital Single Market) – paragraphs 6,9 and 10 of the Opinion*

*The Commission's proposal for a Directive on copyright in the Digital Single Market provides for measures that aim at improving the transparency, the negotiation position and ultimately the remuneration of right holders, authors and performers across the value chain. More specifically, the measures targeting user upload content services (content sharing platforms) under Article 13 of the proposal will allow right holders to better decide on the use of their content by such services and to be remunerated for the uses of their content.*

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<sup>3</sup> OJ L 167, 22.6.2001, p. 10-19.

<sup>4</sup> Case C-174/15, *Vereniging Openbare Bibliotheken v Stichting Leenrecht*.

<sup>5</sup> OJ L 376, 27.12.2006, p. 28-35.

Concerning the obligation contained in Article 13 of the proposal, 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 cannot be overly burdensome or costly for the service provider who can choose to put in place measures which are best adapted to its specific situation (taking into account its resources, the type of content made available, etc.). These elements should 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 and does not change Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market<sup>6</sup>. The Commission's plans with regard to online platforms were outlined in the Digital Single Market Strategy of May 2015 and in the subsequent Communication on Online Platforms and the Digital Single Market Opportunities and Challenges for Europe of May 2016<sup>7</sup>.

– On measures to fight against piracy and counterfeiting – paragraph 9 of the Opinion

Strengthening the fight against piracy and massive copyright infringements remains a priority for the Commission. Actions related to the enforcement of intellectual property rights form a complementary workflow to copyright proposals and include among other things a ‘follow-the-money’ approach to deprive those engaging in commercial infringements of the revenue streams. An **assessment** of the need to amend the current legal framework, in particular Directive 2004/48/EC on the enforcement of intellectual property rights<sup>8</sup>, is still underway.

– 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 5 of the Opinion

The measures provided in the proposal for a Regulation aim at facilitating the clearance of rights for online transmissions and retransmissions of television and radio programmes, without disrupting the existing licensing and distribution models. They are based on mechanisms used in the Satellite and Cable Directive (Council Directive 93/83/EEC<sup>9</sup>) for satellite broadcasting (country of origin) and cable retransmissions (mandatory collective management of rights).

In the proposed Regulation, the country of origin principle would only apply to the licensing of rights for broadcasters' online services consisting in the provision of radio or television programmes simultaneously with or for a defined period of time after their broadcast (online

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<sup>6</sup> OJ L 178, 17.7.2000, p. 1-16.

<sup>7</sup> COM(2016) 288 final.

<sup>8</sup> OJ L 157, 30.4.2004, p. 45-86.

<sup>9</sup> OJ L 248, 6.10.1993, p. 15-21.

*live television, catch-up services along with ancillary materials). Considering its narrow scope of application and the fact that it does not restrict the contractual freedom of the parties, the Commission considers that the application of a country of origin approach does not jeopardise the territoriality of copyright. The proposal does not oblige broadcasters to provide their services across borders or right holders to grant pan-European licences (see Recital 11 of the proposal for a Regulation). This means that, despite the application of the country of origin to the licensing of rights, broadcasters and right holders would remain free to contractually limit the distribution of content to certain territories, provided that applicable European Union and national rules are respected.*

*For retransmissions of television and radio programmes, the proposed Regulation extends the mandatory collective management of rights to retransmission services operating by means other than cable, but on equivalent closed networks such as Internet Protocol Television networks. This measure, in the same way as equivalent rules applying to cable retransmissions, would not affect the territorial licensing of rights, only the manner in which these rights are exercised, i.e. via collective management organisations or broadcasters.*