

18 March 2016

**Decision**  
of the Bundesrat**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a modern, more European copyright framework****COM(2015) 626 final; Council Doc. 15264/15**

At its 943rd session on 18 March 2016, the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG:

1. The Bundesrat welcomes the Commission's intention to further harmonise current EU copyright law and to adapt it as far as possible to the new technological reality of the digital environment, so that it continues to meet its objectives. We regard the Commission's efforts to adapt EU copyright law to the changed environment of the digital age, as set out in the Communication, as an important and overdue advance towards a digital single market, with new opportunities for the European economy and European consumers.
2. However, the Bundesrat regrets that the Commission's reform plans as set out in the Communication fall far short of its expectations for a consistent reform of copyright law that strikes an appropriate balance between the interests of rights holders, distributors, consumers and cultural institutions.
3. Initiatives such as considering regulation of cross-border distribution of television and radio programmes and cross-border licensing, or facilitating the discovery of available legal content, are for the most part only roughly outlined. The Bundesrat calls on the Commission, in its future work on the copyright reform, to clarify how it intends to strike the necessary balance between the interests of the different stakeholders.
4. Thus far, the plans to harmonise the limitations on copyright are also restricted to certain areas, while other practical and contentious issues, such as the exception for private copies and other forms of reasonable non-commercial use, are ignored.
5. In the Communication, the limitation on rights of communication to the public and of making available is only examined in the context of considering a need for

action. There is no mention of additional aspects that require regulation, such as the legality of reselling legally acquired digital content.

6. In the light of this, the Bundesrat calls on the German Government to urge the Commission to carry out a more extensive examination and revision of existing European copyright law, especially Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society, taking due account of consumers' needs.
7. In its resolution of 9 July 2015 on the implementation of Directive 2001/29/EC, the European Parliament calls on the Commission to assess the effectiveness of current copyright law from a consumer perspective and to develop a set of clear and comprehensive consumer rights. The Bundesrat supports this request and asks the German Government to work towards its prompt implementation by the Commission.
8. The Bundesrat is of the view that, in modernising and harmonising European copyright law, an appropriate balance must be struck between the interests of rights holders, distributors, consumers and cultural institutions.
9. The Bundesrat refers to its position of 10 July 2015 (BR document No 212/15 (decision)) on the Communication on a digital single market strategy for Europe (COM(2015) 192 final), especially points 14 and 15, and reaffirms its willingness to support the Commission in its efforts to reduce avoidable restrictions on use and exploitation rights resulting from the fragmentation of the different legal systems in the Member States, in which, as stated above, an equitable balance must be ensured between the interests of rights holders, distributors and consumers.
10. It is the expectation of the Bundesrat that European copyright law will not limit cultural diversity in the Member States and will ensure fair compensation for creators in the digital age. For this, it is necessary that a broad range of established and innovative business models can exist alongside each other. Copyright law should not accelerate a concentration of market power.
11. With regard to the proposals announced for spring 2016 to improve Europe-wide online access to works, the Bundesrat reaffirms its opinion that geoblocking can be justified to enforce copyright in specific circumstances.
12. The Bundesrat expects that, within the necessary modernisation of copyright law, the impact on the existing funding models for European audiovisual works will be borne in mind. This applies in particular to small and medium-sized enterprises and independent creators. The particular importance of media and cultural goods is to be taken into account through special arrangements. The same applies to particularities of national copyright laws to protect the pluralism of the media and culture, such as collective royalties that are distributed among rights holders or

restrictions on widespread access to content. The particular role of the European collecting societies and European aid for film and media is to be taken into account.

13. The Bundesrat expects the Commission to establish the conditions still required for a general exception for education and science in conjunction with the Europe-wide harmonisation of the legal framework for the use of copyrighted works in teaching and research at public higher education and research institutions. We refer in this matter to our decision of 20 September 2013 (BR document No 643/13 (decision)). It would therefore be appropriate to adapt the limits of Article 5(2) and (3) of Directive 2001/29/EC to that effect, in order to guarantee, in particular, remote access to libraries and online access to archives. It is also important to strike an acceptable balance between the interests of rights holders and of the public, and in particular to guard against the risk of abuse to the detriment of the rights holder.
14. The Bundesrat welcomes the Commission's proposal for a Regulation of the European Parliament and the Council on ensuring the cross-border portability of online content services in the internal market, presented alongside the Communication. In this respect, it also recalls that the interests of producers, distributors and rights holders of digital content are to be taken into account. In particular, a clear time limit on portability is required in the Regulation, in order to ensure legal and investment certainty.
15. The Bundesrat is of the opinion that enabling cross-border access must take into consideration the particular situation of free services and public service broadcasting.  
  
It points out that the establishment of cross-border portability must not lead to providers of free services and public service broadcasters being obliged to provide portability.
16. However, the Bundesrat does not share the Commission's view that a single copyright jurisdiction with its own tribunal should be a long-term goal for the further harmonisation of EU copyright law. There is no discernible justification for this type of limitation on the competence of national courts, the more so since copyright law reflects the cultural diversity of Europe. Since copyright law does not concern only industry, copyright disputes often also involve individual citizens, who have a strong interest in the matter being dealt with locally and under a familiar legal system. The overall uniform application of EU law will be assured through the Court of Justice of the EU. It is not apparent why the Court's activities in the area of future EU copyright law would not be sufficient to harmonise the rules.
17. The Bundesrat reserves the right to take a separate position on the individual legislative acts announced in the Commission Communication.

18. The Bundesrat is submitting this opinion directly to the Commission.