

Resolution
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: Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market

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At its 952nd session, on 16 December 2016, the Bundesrat adopted the following opinion pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

1. The Bundesrat welcomes the efforts of the Commission to adapt EU copyright law to the changed environment of the digital age, as outlined 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 as well as for all other market operators.
2. It stresses the great importance of up-to-date copyright protection for the attractiveness and quality of creative and cultural activities. The protection of authors is the economic basis for all professionals in the cultural and creative sectors.

3. The Bundesrat acknowledges that the Commission wishes to help European copyright industries to flourish in the single market and support European authors and performers to reach new audiences, while also making European works widely accessible to European citizens, including across borders. In this connection, it emphasises that the cultural diversity in the Member States must continue to be protected and an equitable balance must be ensured between the interests of rights holders, distributors, producers, broadcasters and consumers.
4. The Bundesrat welcomes the fact that the Commission recognises digital content as the main driver of growth in the digital economy as well as contributing to the preservation of cultural heritage. It points out that a durable diversity of opinions, culture and commercial supply in the digital sphere can only develop if the economic bases of creators of digital content are protected.
5. The Bundesrat considers it necessary to constantly examine and explain, for individual measures, to what extent the economic bases of professionals in the cultural and creative sectors are being maintained or better protected.
6. It notes with regret, however, that the reform efforts of the Commission, as announced in the Communication, fall far short of expectations for a consistent, consumer-friendly copyright reform. In this regard, the Bundesrat refers to its opinion of 18 March 2016 (BR document 15/16 (resolution)), especially points 4 and 5 which are relevant from a consumer protection perspective, in which it specifically indicated the key aspects of the reform not taken into account by the Commission in the present case.
7. It welcomes in principle the objective pursued by the EU in its second copyright package of ensuring wider online access to content in the EU. In the digital age and a connected Europe, consumers have a basic expectation that they can also use online services across borders. With this in mind, the Bundesrat is in favour of consumers, under certain conditions, also being granted access to such services; it points out that this would also require, in particular, the proposed 'Portability Regulation' (Bundesrat document 612/15) to be drafted in a consumer-friendly manner.

In this context too, it considers that interests need to be balanced.

8. An effective fight especially against copyright infringements on a commercial scale is a particular concern for the Bundesrat. It therefore welcomes the Commission's announcement that, following the completion of the appropriate

evaluation, it will present any proposed amendments to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

9. The Bundesrat welcomes the fact that the Commission will take immediate action to engage, with all parties concerned, in setting up and applying ‘follow-the-money’ mechanisms in a self-regulatory approach. Likewise, it considers initiatives enabling advertisers to collectively renounce the placing of adverts on websites which are structurally designed to make money out of copyright infringement to be generally positive. It is important to ensure that such agreements guarantee transparency and verifiability and that the scope is clearly defined, in order to counteract any negative consequences on freedom of expression and innovative new services. The Bundesrat calls on the Commission to propose accompanying legislative measures, where appropriate, at a later point in the procedure, in order to set these agreements on a legally sound and verifiable basis. Furthermore, it supports the Commission’s approach of also examining, later in the procedure, the increased involvement of intermediary service providers in the protection of intellectual property rights.
10. The Bundesrat refers to its opinions of 10 July 2015 (BR document 212/15 (resolution)), 18 March 2016 (BR document 15/16 (resolution)) and 22 April 2016 (BR document 167/16 (resolution)), which have previously been submitted to the Commission.
11. It welcomes the strong recommendation from the Commission to all the Member States to implement the ‘panorama exception’, which allows people to take pictures of works like buildings or sculptures located in public spaces.
12. The Bundesrat is sending this position directly to the Commission.