



EUROPEAN COMMISSION

*Brussels, 30.5.2017  
C(2017) 3546 final*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market" {COM(2016) 592 final}.*

*The Communication is part of the second copyright modernisation package presented by the Commission on 14 September 2016. It sets out the legislative and non-legislative measures proposed to support the competitiveness of European cultural and creative industries and to make European works widely accessible to citizens, including across borders. It covers measures aimed at ensuring wider access to content across the EU, adapting exceptions to digital and cross-border environments, achieving a well-functioning marketplace for copyright and providing an effective and balanced enforcement system.*

*The Commission welcomes the Bundesrat's support for the objective of adapting EU copyright rules to the digital environment. The Commission shares the views of the Bundesrat on the importance of protecting cultural diversity, reinforcing the position of creators and ensuring an effective fight against copyright infringements.*

*In response to the more specific comments in the Opinion, the Commission would like to refer the Bundesrat to the attached annex.*

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

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Andrus Ansip  
Vice-President*

*Ms Malu DREYER  
President of the Bundesrat  
Leipziger Straße 3 - 4  
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## ANNEX

*The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and would like to offer the following observations:*

*On the protection of creators (paragraphs 2, 4, 5): Several measures of the proposed Directive on copyright in the Digital Single Market, described in Section 4 of the Communication "Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market", are aimed at maintaining a copyright environment in Europe that provides the incentives to create and invest in creative content. For example, the measure requiring online services storing and giving access to large amounts of user-uploaded content to put in place appropriate measures, such as content recognition technologies, would make sure that right holders can determine the use of their content and be remunerated for it. The proposed Directive also sets out new rules that would ensure increased transparency for authors and performers on the exploitation of their works and will help them to obtain appropriate remuneration.*

*On the consumer dimension of the copyright reform (paragraph 6): The Commission would like to highlight some elements of the second copyright modernisation package which would bring concrete benefits to consumers. For example, the measures set out in the proposal for a Regulation on online transmissions and retransmissions of TV and radio programmes is expected to result in citizens having access to a wider variety of TV and radio programmes online. The provisions of the proposal for a Directive on copyright in the Digital Single Market would notably contribute to ensure a greater availability of EU audiovisual works on Video on Demand (VoD) platforms across Member States and to facilitate access to out-of-commerce works in the collections of cultural heritage institutions. The introduction of new copyright exceptions would also be beneficial to researchers, teachers and students. Through the implementation of the Marrakesh Treaty into EU law, blind and other visually impaired persons would have better access to special format copies of books across the EU and from other parts of the world.*

*As mentioned in the Communication accompanying the second copyright modernisation package, the Commission will continue to assess other issues related to exceptions identified in the Communication "Towards a modern, more European copyright framework" of 9 December 2015. This includes questions related to private copying. Concerning the application of the principle of exhaustion in the digital world, the Commission consulted on this issue as part of the 2013/2014 public consultation on the review of the EU copyright rules. The conclusion reached after the end of the consultation was that action in this regard at EU level would be premature due, notably, to the difficulties in assessing the concrete impact on the market.*

*On enforcement (paragraphs 8 and 9): The Commission is currently finalising the evaluation of the overall functioning of the current legal framework for the enforcement of all intellectual property rights, including copyright. This evaluation appears to indicate that, while the existing rules have helped effectively in protecting intellectual property and preventing intellectual property infringements, the Directive is not applied in a homogeneous*

*manner across the Member States and that an adjustment of the existing rules could be necessary, in order to ensure legal certainty and enhance their effectiveness. The Commission will make such legislative proposals in 2017.*

*However, in the digital environment, the effective enforcement of intellectual property rights can only be achieved if legislative initiatives are complemented with voluntary good practices. In EU-level dialogues between right holders, intermediaries, brands, civil society, consumer groups and other interested parties the Commission engages in setting up and applying voluntary cooperation agreements to reduce the level of commercial scale infringements of intellectual property rights. The first Memorandum of Understanding (MoU) brokered by the Commission in 2011 on the sale of counterfeit goods via the Internet was reviewed in June 2016 to include Key Performance Indicators that will allow for the impact of the MoU to be objectively quantified. A new agreement between the advertising industry, right holders and advertisers will be signed before the summer. On 21 October 2016, under the auspices of the Commission, representatives of the advertising industry, right holders and advertisers, as well as intermediaries and technology providers, reached an agreement on a set of guiding principles. The Commission agrees that it is important to ensure that such agreements guarantee transparency and verifiability and that their scope is clearly defined, in order to counteract any negative consequences on freedom of expression and innovative new services. To this end, civil society and consumer organisations are involved in the process. The Commission will also consider proposing accompanying legislative measures, where appropriate, and examining the increased involvement of intermediary service providers in the protection of intellectual property rights.*