



ASSEMBLY OF THE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

Written Opinion

COM(2016) 593

COM(2016) 594

COM(2016) 596



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PART I – INTRODUCTION

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 on monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012 and in accordance with the Guidelines for the scrutiny of EU initiatives approved on 1 March 2016, the European Affairs Committee received the following:

- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market **COM(2016) 593**.
- 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**
- 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 benefit 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**

Given their subject matter, these proposals were forwarded to the Committee on Culture, Communication, Youth and Sport, which approved the report annexed to and forming an integral part of this Opinion.

Under the new guidelines for the scrutiny of European initiatives, approved by the European Affairs Committee, this Committee has drafted a technical note on the initiative under examination, which will also be attached to this Opinion.



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PART II – RECITALS

1. Context of the Proposals

These three proposals were identified by the European Affairs Committee as an integral part of a 'joint package', dealing with copyright and related rights, comprising a Proposal for a Regulation and two Proposals for a Directive.

The European Union has approved a variety of Directives in the area of copyright and related rights in order to ensure 'legal certainty and a high level of protection for rightholders'.

As regards the coverage of these proposals in European Union policy, reference is made to both Article 167 of the Treaty on the Functioning of the European Union (TFEU), which states that 'The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore' and Article 169 of the TFEU which makes reference to consumer protection.

As regards proposal COM(2016) 593 on copyright in the Digital Single Market, reference is also made to Articles 165 (which concerns teaching and the organisation of education systems and their cultural and linguistic diversity) and Article 179 which addresses the Union's objective of strengthening its scientific and technological bases.

As regards COM(2016) 596, on exceptions and the use of subject-matter protected by copyright and related rights, for persons who are blind, visually impaired or otherwise print disabled, this forms parts of the Union's programme aiming 'to ensure that all beneficiary persons have access to books, journals, newspapers, magazines and other writings, sheet music and other print material to substantially the same degree as persons without an impairment or disability, and that the full potential of the internal market can be exploited to achieve this'.



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2. Analysis of the Initiatives

COM(2016) 593

- This initiative is a Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market.
- The purpose behind COM(2016) 593 is to provide for and harmonise ‘the Union law applicable to copyright and related rights in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content’.
- This Proposal for a Directive takes into account the Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union, opinions issued by national parliaments, the European Economic and Social Committee and the Committee of the Regions, in accordance with the ordinary legislative procedure, and states as its objective the ‘harmonisation of the laws of the Member States on copyright and related rights’; it also considers that ‘the protection provided by this legal framework also contributes to the Union's objective of respecting and promoting cultural diversity while at the same time bringing the European common cultural heritage to the fore’. It takes account of the fact that ‘legal uncertainty remains, for both rightholders and users, as regards certain uses, including cross-border uses, of works and other subject-matter in the digital environment’ and the intention of addressing this problem; it also provides for the possibility of permitting ‘new types of uses that are not clearly covered by the current Union rules on exceptions and limitations’, specifically in the fields of research, education and preservation of cultural heritage; it aims to establish ‘a fair balance between the rights and interests of authors and other rightholders on the one hand, and of users on the other’; it takes account of the wishes of rightholders, the intention being to preserve the possibility of choosing ‘the format and the modalities to provide the beneficiaries of the exceptions and the limitation established in this Directive with the means to benefit from them provided that such means are appropriate’, and where there is no exception or limitation, ‘an authorisation to undertake such acts would be required from rightholders’, taking into account ‘the objective of ensuring the security and integrity of the system and [which]



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should not undermine the effective application of the exception'; it also considers the exceptions and limits on the use of technology adapted for use in the area of scientific research; during the process of facilitating rights relating to press publication materials, it is 'necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses'; it attempts to take account of technological developments and new channels of communication and respecting private and family life.

- The three areas of action identified by the European Commission as regards copyright are as follows:
 - **digital and cross-border uses in the field of education;**
 - **text and data mining in the field of scientific research;**
 - **preservation of cultural heritage.**
- We would also mention that amendments to EU legislation on copyright in the digital single market were the subject of three public consultations from 2014 to 2016.

COM(2016) 594

- This initiative is a 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.
- The objective of the proposal is to 'enhance wider online access to TV and radio programmes by users across the EU'.
- It is a response to the need identified by the European Parliament and the Council to 'provide for wider dissemination of television and radio programmes originating in other Member States for the benefit of users across the Union, by facilitating licensing of copyright and related rights in works and other protected subject-matter contained in broadcasts of such programmes'. In order to achieve this, it takes into account changes in the forms of broadcasting and access to radio and television programmes,



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in particular by promoting the facilitation of online ancillary services, as is the case with cross-border satellite broadcasting and retransmission by cable of radio and television programmes from other EU Member States. Retransmission of services offered on the open internet should be excluded from the scope of this Regulation as those services have different characteristics. It also raises a series of questions prompted by the fact that news programmes on both radio or television have a very short time-frame for obtaining the necessary licences, which compromises right holders and makes it possible that their works and other protected subject matter will be exploited without authorisation or payment of remuneration, since 'In order to make their online services available across borders, broadcasting organisations need to have the required rights to works and other protected subject matter for all the relevant territories which further increases the complexity of the rights' clearance'.

- It should also be noted that the Proposal safeguards the fact that 'through the principle of contractual freedom it will be possible to continue limiting the exploitation of the rights affected by the principle of country of origin laid down in this Regulation, especially as far as certain technical means of transmission or certain language versions are concerned, provided that any such limitations of the exploitation of those rights are in compliance with Union law'. In response and 'in order to provide legal certainty to operators of retransmission services offered on satellite, digital terrestrial, closed circuit IP-based, mobile or similar networks, and to overcome disparities in national law regarding such retransmission services, rules similar to those that apply to cable retransmission as defined in Directive 93/83/EEC should apply'. Furthermore, 'in order to prevent circumvention of the application of the country of origin principle through the extension of the duration of existing agreements concerning the exercise of copyright and related rights relevant for the provision of an ancillary online service as well as the access to or the use of an ancillary online service, it is necessary to apply the principle of country of origin also to existing agreements but with a transitional period'.
- It should be noted that a public consultation on Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright



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applicable to satellite broadcasting and cable retransmission took place from 24 August to 16 November 2015. In 2015-2016, the Commission conducted a variety of discussions with public and commercial broadcasters, telecommunications operators, right holders and collective management organisations (CMOs) to discuss issues related to transmissions and retransmissions of TV and radio programmes.

- This Regulation provides for a period of assessment, 'in order to assess, among other things, to what extent the cross-border provision of ancillary online services has increased to the benefit of European consumers and hence also to the benefit of improved cultural diversity in the Union'.

COM(2016) 596

- This initiative is a 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 benefit 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.
- The objective behind the Proposal is to 'ensure that all beneficiary persons have access to books, journals, newspapers, magazines and other writings, sheet music and other print material to substantially the same degree as persons without an impairment or disability, and that the full potential of the internal market can be exploited to achieve this'.
- It is based on Article 26 of the Charter of Fundamental Rights of the European Union ('the Charter') which states the objective of supporting 'the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community'. The Directive also reflects the Union's commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), given that the UNCRPD 'guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others'.
- The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled, was signed on behalf of the Union



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on 30 April 2014. This Directive 'implements the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner, with a view to ensuring that those measures are applied consistently throughout the internal market'.

- The Proposal is based on the fact that 'persons who are blind, visually impaired or otherwise print disabled continue to face many barriers in accessing books and other print material which are protected by copyright and related rights'. It was therefore necessary to propose measures to increase the availability of those works in accessible formats and to improve their circulation in the internal market as regards these particular cases. The objective of the measures introduced by the Proposal 'is to improve the availability of books, journals, newspapers, magazines and other writings, sheet music and other print material, including in audio form, whether digital or analogue, in formats that make those works and other subject-matter accessible to those persons to substantially the same degree as to persons without an impairment or disability', specifically by making these materials available in alternative formats, including Braille, large print, adapted e-books, audio books and radio broadcasts.
- The uses laid down in this Directive 'include the making of accessible format copies by either the beneficiary persons or authorised entities serving their needs — whether public or private organisations, in particular libraries, educational establishments and other non-profit organisations that serve persons with a print disability as their main or one of their main activities or public interest mission'; authorised entities are also permitted to make and disseminate online and offline within the Union, accessible format copies of works or other subject-matter covered by the Directive. It should be possible for accessible format copies made in one Member State to be available in all Member States, in order to ensure their greater availability across the internal market.
- No public consultation of stakeholders has taken place in the context of this subject. The public consultation conducted by the Commission in 2013 and 2014 on the review of the EU copyright rules 'also included a section on limitations and exceptions for the benefit of persons with disabilities and on the access to and circulation of works in accessible formats, which also referred to the Marrakesh Treaty'.
- The Commission has undertaken to closely monitor the impact of this Directive and to examine, 'changes to the scope of this Directive [...] if necessary'.

In the light of the provisions contained in the Proposal, the following must be considered:



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a) Legal basis

The legal basis of these three proposals is Article 114 of the Treaty on the Functioning of the European Union as regards the Digital Single Market, of which the copyright legislative package forms part.

b) Principle of subsidiarity

Bearing in mind that this 'joint package' of initiatives relates to a strategy approved by the European Commission ('A Digital Single Market Strategy for Europe'), we consider that the objectives of these proposals and communication cannot be sufficiently achieved by the Member States individually and can be best achieved at the level of the European Union. The EU may therefore take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the TFEU.

As a result, this package of initiatives complies with the principle of subsidiarity.

PART III - OPINION OF THE RAPPORTEUR

This 'joint package' deals with the issues of copyright and related rights and, in general, the digital market. Given the relevance of this issue, there is still need for in-depth discussion in order to improve citizens' access to cultural content, but also to ensure the rights of authors and creators of literary, scientific and artistic works.

At national level, the 'Left Block' (*Bloco de Esquerda* or BE) party considers that there is still a lot of work to be done. Given that access to and sharing of information are an essential part of modern society, the instruments of public and private regulation of these processes have been unclear, conflicting and, in some cases, contradictory.

However, having examined the mechanisms for monitoring and restricting the use of DRM (Digital Rights Management) technologies by users, we believe that these do not only not help contribute to a healthier industry, but they have also demonstrably compromised the rights of users. This is clearly to the benefit of publishers and in such cases, the rights of users and authors are ultimately compromised.

Whilst the digital market is an urgent issue and requires regulation in many areas, there are a number of important reservations to be made: Firstly, Portuguese legislation still falls far short of technological developments and is not currently capable of effectively addressing users or to authors and creators. Secondly, although it is important to examine these legislative proposals



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(and others which have been submitted), the BE considers that this sufficient analysis has not yet taken place, nor have sufficiently detailed solutions been found.

We therefore take the view that the proposals should continue to be monitored, in conjunction with the relevant Committee, both due to the vastness of the issues which fall under the 'Digital Single Market' and also the need to ensure a healthy balance between creators/authors and users, in order to bring an end to the prevalence of publishers and/or intermediaries.

PART IV - OPINION

In the light of the information set out above, the European Affairs Committee is of the opinion that:

- 1 – These initiatives do not violate the principle of subsidiarity and proportionality, insofar as they relate to an issue that is international in nature, involving the principle of regulation of access of EU citizens to European cultural content and their cross-border usage;
- 2 - The issues of distribution and regulation of access to work and other protected material, within the context of copyright and related rights, are issue worthy of the attention of the Commission and should therefore be appropriately monitored;
- 3 - This concludes the scrutiny of this initiative.

Palácio de São Bento, 30 November 2016

Rapporteur

(Isabel Pires)

Chair of the Committee

(Regina Bastos)

PART V – ANNEX

- Report from the Committee on Culture, Communication, Youth and Sport



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- Technical note from the European Affairs Committee.