



EUROPEAN COMMISSION

*Brussels, 10.7.2017
C(2017) 4631 final*

*Mr Liviu DRAGNEA
President of the
Camera Deputaților
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – 050563 BUCHAREST*

Dear President,

The Commission would like to thank the Camera Deputaților 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}.

Through this proposal, the Commission is delivering on the Digital Single Market Strategy¹ 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'² 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.

The proposal presented by the Commission is currently in the legislative process involving the European Parliament and the Council. The Camera Deputaților's Opinion has been made available to the Commission's representatives in the ongoing negotiations with the co-legislators and will inform these discussions.

The Commission would like to refer the Camera Deputaților to the attached annex for a detailed response to the points made in its Opinion.

¹ COM(2015) 192 final

² COM(2015) 626 final

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

- On the use of protected content by information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users (Article 13 of the proposal for a Directive on copyright in the Digital Single Market) – paragraphs 1, 2 and 7 of the Opinion

The obligations set out in Article 13 of the proposal are related to the objective of ensuring a well-functioning marketplace for the distribution of copyright-protected content online. As explained in the Impact Assessment accompanying the proposal³, given the cross-border nature of online content services, intervention at national level would not be sufficiently efficient to achieve this objective and could result in fragmentation. European Union level action is therefore in order to ensure a level playing field for the services involved in online content distribution.

The measures proposed in Article 13 are proportionate to the nature of the services covered, which are online services that have large amounts of protected content uploaded by their users. Due to their nature and role, these services can be expected to have certain responsibilities and cooperate with right holders whose content is uploaded without their involvement. The proposal therefore sets an obligation for these services to take measures, in cooperation with right holders, to either ensure the functioning of agreements concluded with right holders for the use of their works, or to prevent the availability of such works. These measures should be appropriate and proportionate to the nature and size of the services.

As outlined in the Impact Assessment, the proposal strikes a balance between different fundamental rights. The proposal does not affect the possibilities for users to upload and share their content with other users. Moreover, the service providers would need to apply the above-mentioned measures to content that right holders have identified and provided to the services. If following the application of the measures some content cannot be uploaded by users of the services, users will be able to challenge these removals through the complaints and redress mechanisms provided for in Article 13(2) of the proposal.

- On the exceptions for text and data mining and for use of works and other subject-matter in digital and cross-border teaching activities (Articles 3 and 4 of the proposal) – paragraphs 3 and 4 of the Opinion

The proposal for a Directive introduces new mandatory exceptions for text and data mining carried out by research organisations for the purpose of scientific research (Article 3) and for the use of works and other subject matter in digital and cross-border teaching activities (Article 4).

³ Impact Assessment on the modernisation of EU copyright rules:
<https://ec.europa.eu/digital-single-market/en/news/impact-assessment-modernisation-eu-copyright-rules>

The text and data mining exception is targeted and aims specifically at supporting European Union research policy and researchers in research organisations, including universities and other organisations whose primary goal is to conduct scientific research and provide educational services. This is the area where, according to the Commission's assessment, legal intervention at European Union level is needed. As indicated in the Impact Assessment accompanying this legislative proposal, the Commission considers that a text and data mining exception that would also cover commercial companies is not sufficiently supported by available evidence and could negatively impact the existing well-functioning licensing market. At the same time, in order to take into account the realities of the current research environment, recital 10 of the proposal explicitly specifies that "research organisations should also benefit from the exception when they engage into public-private partnerships".

The new teaching exception applies to the digital use of protected content for the sole purpose of illustration for teaching. As explained in recital 15, it should benefit all educational establishments in primary, secondary, vocational and higher education. The uses allowed under the exception should be in the context of teaching and learning activities undertaken under the responsibility of educational establishments, in their premises or through secure electronic networks.

- On the use of out-of-commerce works by cultural heritage institutions (Article 7 of the proposal) – paragraph 5 of the Opinion*

Article 7 of the proposed Directive provides for a legal mechanism supporting easier collective licensing for the dissemination of out-of-commerce works and other subject-matter in the collections of cultural heritage institutions.

In order to ensure the effectiveness and legal certainty concerning the use of out-of-commerce works by cultural heritage institutions, Article 7(2) sets out the conditions for a work or other subject-matter to be deemed as out of commerce and requires Member States to consult right holders, collective management organisations and cultural heritage institutions for the purposes of establishing the requirements to determine whether such works or other subject-matter can be licensed pursuant to Article 7(1). It should be noted that the proposed mechanism would apply to all kinds of works. Recital 25 of the proposed Directive acknowledges that the specificities of different types of works or other subject-matter may require sector-specific requirements and procedures for the practical implementation of the licensing mechanisms provided for in Article 7. In some cases, a work or other subject-matter may not be immediately available even though it is still in-commerce (e.g. audiovisual works in broadcasting). Therefore, Article 7(2) provides that account should be taken not only of the immediate availability in the customary channels of commerce, but also of whether the work or other subject-matter can be reasonably expected to become available in the near future.

- On the contract adjustment mechanism (Article 15 of the proposal) – paragraph 6 of the Opinion

This mechanism preserves the contractual freedom of the parties as they would remain free to agree on any kind of remuneration arrangement. However, when this arrangement becomes disproportionately unfair in view of the subsequent revenues, the contract adjustment mechanism would provide a tool to share the success with the author or performer in the spirit of the original contract. This measure is meant to remedy exceptional situations and is needed by individual creators who face a lack of transparency and bargaining power vis-à-vis their contractual partners, as demonstrated in the Impact Assessment accompanying the proposal.