

## ROADMAP

<b>TITLE OF THE INITIATIVE</b>	Communication on the modernisation of the EU copyright rules		
<b>LEAD DG – RESPONSIBLE UNIT</b>	DG CNECT - F5	<b>DATE OF ROADMAP</b>	10/2015
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

### A. Context and problem definition

Measures to modernise copyright rules in the light of the digital revolution and new consumer behaviour have been announced in the 2014 President Juncker's Political Guidelines and included in the Commission Work Programme 2015, as part of ambitious legislative steps to be taken towards a connected Digital Single Market.

The "Digital Single Market Strategy for Europe", set out in the Commission Communication of 6 May 2015 (the "DSM Strategy"), outlined key areas for legislative action to create a modern, more European copyright framework, and to improve access to digital content, as part of its pillar on "Better online access for consumers and businesses across Europe".

Against this background, and building on the DSM Strategy, the Commission intends to adopt before the end of 2015 a Communication on copyright which will provide a comprehensive overview of the main issues to be tackled in order to ensure the proper functioning of the copyright marketplace, in particular in the online environment and in a cross-border context. The initiative will set out the Commission's plans for the modernisation of the EU copyright framework and will serve as roadmap for future proposals. The Communication will outline, in particular, areas where legislative proposals will be considered, following a **two-stage approach**, including:

- (i) **two legislative proposals in the short term (December 2015/early 2016)**, the first one to enhance cross border portability of content (subject to the opinion of the Regulatory Scrutiny Board) and the second one to implement the WIPO Marrakech Treaty for the benefit of print-disabled persons (NB. the former initiative is described in a separate Inception Impact Assessment<sup>1</sup>, and is not within the scope of this roadmap); and
- (ii) **further measures, including legislative proposals for adoption in spring 2016.**

In addition, the Communication will put forward a long-term vision on certain issues, where EU intervention may be necessary at a future stage. Non legislative intervention on certain areas may also be foreseen and announced in the Communication (more details on the issues that will be touched upon in the Communication are set out in section C of this roadmap).

During its last mandate, the Commission developed policy and legislation on specific aspects of the EU copyright system, including the proposal and adoption of the Directives on Orphan Works and on Collective Management of Rights, a Memorandum of Understanding on Out-of-commerce Works and a stakeholder dialogue to foster licencing solutions (Licences for Europe).

Two international World Intellectual Property Organisation (WIPO) Treaties (the Marrakesh Treaty "to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled" and the Beijing Treaty "on audiovisual performances") were also negotiated and concluded with input from the EU and the Member States. The 2013 Marrakesh Treaty creates a mandatory copyright exception for the benefit of print-disabled persons and allows for the cross-border exchange of special format copies of books and other print material (Braille, large print, etc.). The EU and the Member States signed the Treaty (in April 2014) and, thus, have taken a political commitment to ratify it. In addition the EU is a party to the UN Convention on the Rights of Persons with Disabilities state in Article 30 the obligation for State parties to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials. In the Concluding observations on the initial report of the European Union on the implementation of the Convention the UN Committee on the Rights of Persons with Disabilities has encourage the European Union to take all appropriate measures to ratify and implement the Marrakesh Treaty as soon as possible.

The review of the EU copyright rules was started during the last Commission mandate. Several actions were conducted in order to evaluate the current framework and lay the basis for a legislative reform. An extensive and

<sup>1</sup> Initiative subject to a specific Inception Impact assessment on the cross-border portability of online content services in the internal market.

wide-ranging public consultation on the review of the existing EU copyright rules was carried out between December 2013 and March 2014, covering a large number of issues, including several questions aiming at evaluating the existing framework. More than 9,500 replies were received from a broad range of stakeholders.<sup>2</sup> The stakeholder dialogue "Licences for Europe", which took place in four different working groups between February and November 2013 and led to "Ten pledges to bring more content online" also provided evidence as to the functioning of the market and the position of different stakeholders. In addition, a major evaluation of the functioning of the current framework, the need to adjust certain rules and the impacts of possible changes, was carried out in various legal and economic studies, in particular on issues such as the territoriality of copyright and exceptions. A Eurobarometer survey on cross-border portability and access to online content was also carried out in the 28 Member States in January 2015.

Moreover, as announced in the DSM Strategy, the Commission has launched a review of the Satellite and Cable Directive (Directive 93/83/EEC) to assess whether it has met its original objective and whether the extension of all or some of its provisions to online transmissions could bring about solutions to ensure cross-border access for consumers (this review is subject to a specific evaluation roadmap<sup>3</sup>). A public consultation was opened on 24 August and will close on 16 November 2015.

The evidence gathered during the review of the EU copyright rules and, more recently in the review of the Satellite and Cable directive will be used to inform the required evaluation and impact assessment in view of the legislative proposals to be tabled in spring 2016.

The Communication will outline actions in the area of copyright, legislative and non-legislative, that are being considered to address in particular:

- Issues related to the territoriality of copyright in the digital single market, including obstacles to the cross-border portability of legally acquired content (this aspect will be subject to a specific legislative proposal on the portability of online content, to be adopted at the same time as the Communication: see above) and to the cross-border access to and availability of on-line services; the Communication will also present measures to improve the current situation where European works, notably films face difficulties in being distributed on an European scale).
- Issues related to the definition of rights and exceptions to rights which are relevant for the distribution and access to copyright protected works in the digital single market;
- Issues related to the functioning of the copyright marketplace, including the challenges posed by the growing involvement of online intermediaries in content distribution and the related impact on the remuneration of right holders. The Communication will also highlight the importance of an effective enforcement of IPR in the face of illegal activities online that more and more take place on a commercial scale in particular by making reference to the ongoing evaluation and review of the IPR Enforcement Directive (2004/48/EC)<sup>4</sup>.

Each action will be taken forward in line with the Commission Better Regulation principles.

The Communication is a soft law instrument, which by itself will not produce any effect on stakeholders. Follow-up actions, including possible legislative actions, will affect citizens and end-users of copyright protected content; institutional users which preserve and provide access to protected works as part of their public interest mission (e.g. educational establishments, cultural heritage institutions, research institutions); authors/creators and other right holders; distributors of content protected by copyright (commercial users of protected content).

Over the last three decades, the EU copyright acquis has largely harmonised the protection of copyright and related rights (including a closed list as to the permitted exceptions to rights). As a result, Member States' scope to act outside of this framework is limited (for instance, Member States may not adopt further exceptions beyond this list or enlarge the scope of the existing ones as defined in EU law). This would also be the case for the implementation of the Marrakesh Treaty which requires the introduction of a mandatory exception in Union law. The announced objective of modernising the EU copyright framework thus requires coordinated EU-level action. EU-wide measures are also the only way to establish across Europe common requirements necessary for the

<sup>2</sup> Consultation Report: [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/docs/contributions/consultation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf)

<sup>3</sup> Initiative subject to a specific evaluation and fitness check roadmap on the Review of the Satellite and Cable Directive 93/83/ECC.

<sup>4</sup> Initiatives subject to a specific evaluation and fitness check roadmap on the IPR Enforcement Directive, and of an Inception Impact Assessment on Modernising the enforcement of intellectual property rights.

smooth functioning of the Digital Single Market.

As regards other specific issues that will be covered in the Communication, their cross-border nature implies that results can only be achieved if action is taken at EU level. In particular, obstacles related to the territoriality of copyright in the Digital Single Market cannot be addressed by Member States acting individually (this applies to action in the area of cross-border portability and cross-border access). The same consideration applies as regards the application of the exceptions to rights, notably in the case of cross-border uses (for example, those exceptions relevant for access to knowledge, education and research, as these are activities increasingly take place across borders). The need for a clarification of the role of online platforms when they distribute copyright protected content also requires examination at EU level in view of the fact that the services of such online platforms have - almost by definition - a cross-border reach.

Finally, the persisting difficulties of cross-border enforcement of copyright (and other intellectual property rights), often linked to the borderless nature of the internet, require a common EU approach. Indeed, commercial scale IP-infringement schemes operate cross-border, not only within the EU but globally. In addition not only the rights and exceptions but also the area of enforcement is already largely harmonised by Directive 2004/48/EC.

## B. Objectives of the initiative

The main objective of the Communication will be to set the scene for the Commission policy action in the area of copyright during the entire mandate. The Communications will chart a clear and comprehensive course towards the achievement of targeted objectives in the short and medium term, which would represent important steps towards a more long-term vision. Building on the orientations of the Digital Single Market Strategy, it will also set out in more detail the key principles guiding the EU action in this area, i.e. to promote clear and balanced copyright rules that take into account new technologies, new uses and new market conditions, facilitate access to content for users across the EU, enhance the competitiveness of the EU creative industries by opening new market opportunities and reward the creativity and work of authors and other right holders.

As regards the short and medium term horizon, the Communication will map the various relevant areas and identify the concrete actions through which the Commission intends to modernise the EU copyright framework. The proposed actions will respond to the following challenges:

- Fostering a wide availability of creative content across the EU, taking into account both supply and demand driven interventions. This area includes intervention aiming to ensure cross-border portability of digital content (see separate inception impact assessment) and action aiming to gradually remove obstacles to cross-border access to content and to the circulation of works within the digital single market;
- Increasing legal certainty in the definition of rights and exceptions, and making sure that EU rules can work practically on the ground and keep pace with technology and market changes over time;
- Through the implementation of the Marrakesh Treaty, ensuring compliance with the EU's international obligations, creating a legally certain situation for the beneficiary persons and for their organisations in the EU and ensuring the broadest possible availability of accessible formats.
- Clarifying the rules on the activity of online intermediaries in relation to copyright-protected content and ensuring greater transparency and balance in the system.
- Achieving a more modern and European framework for the enforcement of IPR in the digital single market.

Copyright and related rights have already been largely harmonised in the EU through a set of ten Directives. The actions suggested in the Communication will bring about changes needed to adapt this framework to technological developments within the boundaries of the existing policy area (copyright and related rights).

## C. Options

As indicated in section A, the Communication to be adopted in December 2015 will announce how the Commission intends to articulate the copyright modernisation process, i.e. following a two-step approach, comprising of:

- a first set of legislative measures to be adopted in the short term (December 2015/early 2016): a proposal for a Regulation on cross border portability (see separate inception impact assessment) and a proposal for a legislative instrument on the implementation of the Marrakesh Treaty;
- a second set of measures in spring 2016. It could include, subject to further deliberation and impact assessment work:
  - o Aspects of cross-border access to copyright protected services, including those which may

follow from the review of the Cable and Satellite Directive (a public consultation and studies are ongoing: see separate evaluation roadmap);

- Further harmonisation of exceptions to copyright which are key for the functioning of the digital single market;
- Clarification on the role of internet intermediaries when they distribute copyright protected content; and
- The enforcement of intellectual property rights.

In addition to identifying possible legislative proposals, the Communication which will be adopted in December 2015 will also consider non-legislative action such as support at EU level for business driven measures and industry dialogues where required to address specific issues.

The details, including the analysis of the specific policy options and the respect of the proportionality principle, are described separately, in the context of the Inception IA related to the proposals to be tabled in spring 2016<sup>5</sup>.

#### D. Initial assessment of impacts

As explained above, no direct impact is expected from the Communication.

Indeed, the Communication is only intended to provide a cross-cutting analysis of existing challenges and to suggest possible way forwards for modernising the current copyright legal framework, as well as other supporting actions to improve its functioning.

Impact assessments will be carried out for each individual follow-up initiative likely to have significant impacts, in line with the Commission Better Regulation standards.

No direct impact is expected as a result of the action presented in the **Communication**. Its main objective is to announce possible measures to adapt EU copyright for a better functioning of the (domestic) digital single market. Certain trading partners of the EU will be following the process closely and particular care will be required to ensure that follow-up legislative intervention remains compatible with both our multilateral and bilateral obligations in the area.

(1 and 2) The Communication will outline the Commission's vision and thrust in the area of copyright. Impact Assessments will be prepared for the legislative initiatives to be adopted in spring 2016 covering the areas announced in the Communication. The impact assessment work is already ongoing.

The envisaged proposal for a legislative instrument to implement the Marrakesh Treaty will be prepared in line with the principles of Better Regulation.

(3 and 4) The different work strands related to the copyright modernisation are being discussed in the context of an Inter-service Steering group chaired by the SG, with the participation of several DGs, notably DG COMP, EAC, ECFIN, EMPL, ENV, ESTAT, GROW, JRC, JUST, RTD, SANTE, TRADE, the EPSC and the SJ take part in it. The steering group has already been working on the impact assessment for the adoption of the Regulation on portability and will be further involved in the preparation of this Communication.

#### E. Evidence base, planning of further work and consultation

The Communication and the policy action developed on its basis will build on the preparatory work carried out by the Commission over the last few years in the area of copyright, in particular:

- Responses to the public consultation on the review of EU copyright rules carried out in 2013/2014. A summary report has been published<sup>6</sup>.
- Legal and economic studies on various aspects of copyright rules, in particular:
  - A "Study on the application of Directive 2001/29/EC on copyright and related rights in the information society" (December 2013), which comprises an assessment of the extent to which the implementation of Directive 2001/29/EC is appropriate to the economic and technological realities of digital markets as well as the assessment of the "disabilities" exception;
  - A study on the legal framework of text and data mining (March 2014);

<sup>5</sup> Initiatives subject to a specific Inception Impact Assessment on Modernising the EU Copyright Framework (Second set of measures).

<sup>6</sup> [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/docs/contributions/consultation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf)

- Economic studies on the territoriality of the making available right (March 2014) and on economic impacts of adapting certain limitations and exceptions (June 2014);
- A study on the making available right and its relationship with the reproduction right in cross-border digital transmissions (December 2014);
- A study on the level of remuneration paid to authors and performers in the music and audio-visual sectors in certain EU countries (July 2015);
- A follow up study on the remuneration of authors in the print sector (ongoing); and
- A data gathering study supporting the evaluation of the Satellite and Cable Directive (ongoing).

The 2013/ 2014 studies are available under: [http://ec.europa.eu/internal\\_market/copyright/studies/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/studies/index_en.htm). The 2015 remuneration study is available under <https://ec.europa.eu/digital-agenda/en/news/commission-gathers-evidence-remuneration-authors-and-performers-use-their-works-and-fixations>.

Additional studies may be launched in future on specific aspects of the copyright modernisation as the need arises

No further information or studies are planned for the purposes of the Communication as such.

Communication and information activities around the initiative will take place according to current Commission practices.

Stakeholders have been consulted on a large number of issues relating to the review of copyright rules, as outlined above (public consultation between December 2013 and March 2014 with more than 9500 replies). As part of the review of the Satellite and Cable Directive, the Commission also launched a Public Consultation on 24 August 2015, which will be open until 16th November 2015 (see the dedicated evaluation roadmap on the Cable and Satellite Directive).

In addition, on 24 September 2015 the Commission launched a public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. This public consultation includes copyright related questions (relations between right holders and online content aggregators).

The results of the 2013/2014 public consultation on copyright, as well as the review of the Satellite and Cable Directive and the results of public consultation on platforms will inform the Commission's decisions as regards possible legislative proposals that will be identified in the Communication.

The consultation strategy also included the organisation of roundtable discussions between Commissioner Oettinger and stakeholders to exchange on territoriality, text and data mining and access to knowledge and culture. These roundtable discussions were organised in January/February 2015 with representatives from creative industries, service providers, institutional users and consumers.

In addition, a Eurobarometer survey on cross-border access to online content was carried out in the 28 Member States in January 2015 and regular contacts are ongoing with all types of stakeholders to gather further information and data and to discuss specific issues.