

## INCEPTION IMPACT ASSESSMENT

<b>TITLE OF THE INITIATIVE</b>	Modernising the EU copyright framework – 2 <sup>nd</sup> set of measures		
<b>LEAD DG – RESPONSIBLE UNIT – AP NUMBER</b>	CNECT F5	<b>DATE OF ROADMAP</b>	10/2015
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative/non legislative		
<b>INDICATIVE PLANNING</b>	Q2 2016		
<b>ADDITIONAL INFORMATION</b>	<a href="http://ec.europa.eu/dgs/connect/en/content/dg-connect">http://ec.europa.eu/dgs/connect/en/content/dg-connect</a>		
<b>This Inception Impact Assessment is provided for information purposes only and can be 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.</b>			

### A. Context, Subsidiarity Check and Objectives

#### Context

The digital economy has been a major driver of growth in the past two decades, and is expected to grow seven times faster than the overall EU GDP in coming years<sup>1</sup>. The online space enables new ways of creating and distributing copyright protected content (e.g. films, music, books, newspapers, journals, games, art) and new possibilities to generate value. As established in President Juncker's political guidelines and reiterated in Vice President Ansip and Commissioner Oettinger's mission letters, adapting the current EU copyright rules to the realities of the Digital Single Market (DSM) "*in light of the digital revolution, new consumer behaviour and Europe's cultural diversity*" is one of the Commission priority projects for the first part of the mandate<sup>2</sup>. In particular, the DSM Strategy<sup>3</sup> calls for addressing within the EU copyright framework a set of key obstacles to the functioning of the DSM, including specific issues related to (i) the territoriality of copyright, (ii) the definition of rights and exceptions to rights and (iii) the functioning of the copyright marketplace. The adoption of a first set of legislative measures is currently ongoing and foreseen for December 2015/early 2016; the first to enhance cross-border portability of lawfully accessed online content services<sup>4</sup>, and the second to implement in the EU the Marrakesh Treaty for the benefit of print-disabled persons. A Commission Communication setting the scene for the Commission policy action in the area of copyright during the entire mandate is planned for adoption in December 2015<sup>5</sup>.

This roadmap focusses on the second set of measures that the Commission intends to adopt to modernize the existing copyright rules. Subject to further decisions, at the moment the Commission is focussing in particular on the following objectives: (i) allowing for wider online access to works by users across the EU, including via the possible extension of some of the provisions of the Satellite and Cable Directive (93/83/EEC – currently being reviewed<sup>6</sup>), (ii) modernising the EU framework of exceptions and limitations, focussing in particular on those exceptions and limitations which are particularly key for the functioning of the digital single market and the pursuit of public policy objectives (such as those in the area of education, research - including text and data mining - and access to knowledge) and (iii) achieving a well-functioning copyright market place, for example as regards the role of online intermediaries in relation to the distribution of copyright-protected content.

Action in the above mentioned areas does not exclude further action at a later stage on other aspects of the EU copyright framework, including its enforcement.

A wide-ranging public consultation on the review of the EU copyright rules has been carried out in 2013/2014 and received around 10000 replies<sup>7</sup>. A stakeholder dialogue "Licences for Europe"<sup>8</sup>, which followed the adoption in December 2012 of the Commission Communication on content in the Digital Single Market, also took place between February and November 2013. A public consultation as regards the functioning of the existing rules

<sup>1</sup> <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/FI3P%20Fact%20Sheet.pdf>

<sup>2</sup> [http://ec.europa.eu/about/juncker-commission/docs/oettinger\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/oettinger_en.pdf)

<sup>3</sup> Communication from the Commission "A digital single market strategy for Europe", 6 May 2015, [http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication\\_en.pdf](http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)

<sup>4</sup> Initiative subject to a specific Inception Impact assessment on the cross-border portability of online content services in the internal market.

<sup>5</sup> Initiative subject to a specific roadmap on a Communication on the modernisation of the EU copyright rules

<sup>6</sup> Initiative subject to a specific evaluation and fitness check roadmap on the Review of the Satellite and Cable Directive 93/83/ECC.

<sup>7</sup> [http://ec.europa.eu/internal\\_market/copyright/initiatives/index\\_en.htm](http://ec.europa.eu/internal_market/copyright/initiatives/index_en.htm)

<sup>8</sup> <http://ec.europa.eu/licences-for-europe-dialogue/>

applicable to satellite broadcasting and cable retransmission services and their possible extension to certain online transmissions is ongoing until 16 November 2015<sup>9</sup>. In addition, the Commission has launched a public consultation on the social and economic role of platforms, market trends, the dynamics of platform-development and the various business models underpinning platforms, which is open until 30 December 2015 and includes questions on intermediaries distributing copyright protected content<sup>10</sup>.

A series of legal and economic studies, including a Eurobarometer survey on cross-border access to online content in January 2015<sup>11</sup>, were conducted on various aspects of the existing copyright rules. A data gathering study supporting the evaluation of the Satellite and Cable Directive is presently being launched. These studies, together with the consultations mentioned above, constitute a solid basis for the impact assessment work which will back the measures presented in this roadmap.

## Issue

- (i) There are different issues related to the online **distribution of and availability of content** in the DSM. Besides the issue of cross border portability (which will be addressed by a specific legislative proposal in December 2015<sup>12</sup>), there are also issues as regards both the range of content which is available to consumers at home, as well as the availability of content services across borders. This situation has several causes and the Commission is currently considering a possible range of measures to address it, taking into account both the supply and demand side. The ongoing review of the Satellite and Cable Directive, which lays down rules aimed at facilitating the clearance of rights needed for the provision of satellite broadcasting and cable retransmission services in the EU, will feed in this strand of work<sup>13</sup>.
- (ii) Under the current EU copyright framework **copyright exceptions** are, in most cases, optional for Member States. This is notably the case for the exceptions in the areas of education, research and access to knowledge. The consequent diversity of the implementing conditions foreseen in national legislations, notably as to their application in the digital environment, combined with the lack of cross-border effect of the exceptions, creates legal uncertainty as regards the online use of educational and cultural resources. Moreover, the current EU copyright framework does not always reflect the state of technology. This is the case, in particular, of the current state of legal uncertainty that concerns the use of text and data mining techniques in the context of scientific research.
- (iii) The functioning of the **online market place** is complex. There is a shift from ownership to access-based models. Access to online content by end users increasingly takes place at the end of a process in which several parties may play a role in delivering such content to the public. In this context rightholders are not necessarily always able to enter into licencing agreements and be appropriately remunerated for the online exploitation of their content, in particular by new business models. The Commission is currently looking at possible uncertainties concerning the current legal framework, as well as at the possible need for amending the current rules, to improve the situation described above.

## Subsidiarity check

Legal basis: There is already a substantial body of instruments harmonising the EU copyright rules, which are based on Articles 114 (EU power to adopt measures for the establishment and functioning of the internal market), 53 (freedom of establishment) and 62 (free movement of services) of the Treaty on the Functioning of the European Union (TFEU). The Commission will take these legal bases into account when presenting future proposals in the area of Copyright.

Subsidiarity: Due to the inherent cross-border nature of the issues, intervention by Member States (which, in all likelihood, would be some Member States only) would result in different access and use conditions, uncertainties for consumers (in which countries the service is available/the exception applies? under what conditions?) and for online service providers. In contrast, the EU action would provide legal certainty and harmonised conditions for access to and use of protected content.

Moreover, as copyright and rights related to copyright (including rights of broadcasting organisations) have been

<sup>9</sup> <https://ec.europa.eu/digital-agenda/en/news/consultation-review-eu-satellite-and-cable-directive>

<sup>10</sup> <https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud>

<sup>11</sup> <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2059>

<sup>12</sup> [Initiative subject to a specific Inception Impact assessment on the cross-border portability of online content services in the internal market.](#)

<sup>13</sup> [Initiative subject to a specific evaluation and fitness check roadmap on the Review of the Satellite and Cable Directive 93/83/ECC.](#)

<p>harmonised at EU level, national legislation would not be sufficient in order to ensure cross-border distribution of and availability of copyright protected content. Therefore, legislative measures in these areas can only be taken at EU level, as only the EU is entitled to act to adapt the existing EU legal framework.</p>
<p><b>Main policy objectives</b></p>
<p>In today's digital world, copyright rules should continue to reward and provide incentives for creation while increasing availability of a wider variety of works, including across borders, building on the EU's rich cultural diversity.</p> <p>The main objective of this initiative is to modernise the EU copyright framework so that clear and balanced rules take into account new technologies, new uses and new market conditions, facilitate availability of content for users across the EU, enhance the competitiveness of the EU creative industries by opening new market opportunities and reward the creativity and works of authors and other rightholders.</p> <p>The initiative will notably address the following specific objectives: (i) enhance cross border access to and distribution of online content across the EU, (ii) modernise the framework of copyright exceptions and limitations, particularly in the areas of education, research and access to knowledge, in particular to ensure that exceptions function better across borders in the digital single market and (iii) provide a clarification of the rules concerning the activities of online intermediaries in relation to the distribution of copyright protected content.</p>
<p style="text-align: center;"><b>B. Option Mapping</b></p>
<p><b>Baseline scenario – no EU policy change</b></p>
<p>No policy intervention. In case of no EU action, the achievement of the above mentioned objectives would rely on market players to progressively offer access to content online. It will also rely on Member States, to take full advantage of the policy space available under the current EU copyright framework, and on the courts, and notably the CJEU, to clarify the application of provisions of EU secondary law and of the Treaty relevant to the free movement of services. Finally, it would mean continuing to rely on the application of competition law to address certain issues of territorial restrictions.</p>
<p><b>Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation</b></p>
<p>This option would involve Commission's action without legislative changes. Such action could take the form of guidance to Member States aiming, in particular, at exploiting to its maximum - through a "soft law" approach - the current margin of manoeuvre left to Member States by the current level of harmonisation of the EU copyright rules (notably in the area of exceptions and limitations). In addition/alternative, recommendations could be considered in some areas to support market developments and deliver convergence between national rules (see below).</p>
<p><b>Alternative policy approaches</b></p>
<p>This option would entail EU legislative intervention to achieve a deeper level of harmonisation of the current EU copyright rules, clarify the framework for some new uses and services, and achieve a more systematic cross-border effect, notably in the area of exceptions and limitations. The changes envisaged under this option could be achieved mainly through the available legal instruments (most likely Directives).</p>
<p><b>Alternative policy instruments</b></p>
<p>Non-binding instruments such as guidance or recommendations could be considered in some areas (see above).</p>
<p><b>Alternative/differentiated scope</b></p>
<p>The above mentioned approach relies on an incremental harmonisation of the EU copyright rules, notably</p>

<p>through the possible adoption of legislative proposals amending and complementing the existing EU framework. An alternative approach would consist in proposing a full harmonisation of copyright in the EU, in the form of a unitary copyright title and European copyright code. This would require substantial changes on many relevant aspects of copyright law and practice and would deliver results only over a very long term (due to the difficulty of such a full harmonisation process).</p>
<p><b>Options that take account of new technological developments</b></p>
<p>All options aim at taking into account technological developments (in itself one of the main objective of modernising existing copyright rules).</p>
<p><b>Preliminary proportionality check</b></p>
<p>The range of possible intervention which is currently being considered is proportionate in the sense that it does not go beyond what is necessary to solve problems that have a cross-border nature (access to and distribution of copyright protected content in the DSM), which cannot be achieved by the Member States alone.</p>
<p style="text-align: center;"><b>C. Data Collection and Better Regulation Instruments</b></p>
<p><b>Data collection</b></p>
<p>Information and data needs mainly concern the situation in the different sectors of the market, the views of stakeholders and the possible technical costs.</p> <p>Stakeholder views have been gathered via a series of consultations (see below). A series of legal and economic studies were conducted on various aspects of the existing copyright rules. One of these studies assesses, as regards rights and limitations to rights, the extent to which the implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society is appropriate for the economic and technological realities of digital markets<sup>14</sup>. A study on the legal framework of text and data-mining<sup>15</sup> and economic studies on the territoriality of the making available right<sup>16</sup> and on economic impacts of adapting certain limitations and exceptions<sup>17</sup> were also conducted. A study on the level of remuneration paid to authors and performers in the music and audio-visual sectors in certain EU countries has recently been published<sup>18</sup>, and a follow up study on the remuneration of authors in the print sector is currently ongoing. A study on data gathering as regards the review of the Satellite and Cable Directive is currently being launched<sup>19</sup>.</p>
<p><b>Consultation approach</b></p>
<p>Stakeholder views have been gathered via a series of consultations as mentioned above: e.g. from 5/12/2013 to 5/03/2014, the Commission held a wide-ranging public consultation<sup>20</sup>. Around 10000 replies were received from a broad range of stakeholders. A public consultation as regards the functioning of the existing rules applicable to satellite broadcasting and cable retransmission services and their possible extension to certain online transmissions is ongoing until 16 November 2015<sup>21</sup>. In addition, the Commission has launched a public consultation on the social and economic role of platforms, market trends, the dynamics of platform-development and the various business models underpinning platforms, which is open until 30 December 2015 and includes questions on intermediaries distributing copyright protected content<sup>22</sup>. A Eurobarometer survey on cross-border</p>

<sup>14</sup> "Study on the application of Directive 2001/29/EC on copyright and related rights in the information society", De Wolf and partners, December 2013, [http://ec.europa.eu/internal\\_market/copyright/docs/studies/131216\\_study\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf)

<sup>15</sup> "Study on the legal framework of text and data mining", De Wolf & partners, March 2014, [http://ec.europa.eu/internal\\_market/copyright/docs/studies/1403\\_study2\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study2_en.pdf)

<sup>16</sup> Study on the "Economic analysis of the territoriality of the making available right", CRA, March 2014, [http://ec.europa.eu/internal\\_market/copyright/docs/studies/1403\\_study1\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study1_en.pdf)

<sup>17</sup> Study "Assessing the economic impacts of adapting certain limitations and exceptions to copyright and related rights in the EU – Analysis of specific policy options", CRA, May 2014, [http://ec.europa.eu/internal\\_market/copyright/docs/studies/140623-limitations-economic-impacts-study\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/140623-limitations-economic-impacts-study_en.pdf)

<sup>18</sup> <https://ec.europa.eu/digital-agenda/en/news/commission-gathers-evidence-remuneration-authors-and-performers-use-their-works-and-fixations>

<sup>19</sup> <https://ec.europa.eu/digital-agenda/en/news/eu-seeks-views-satellite-and-cable-directive>

<sup>20</sup> The consultation document is available at [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/index\\_en.htm](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm)

<sup>21</sup> <https://ec.europa.eu/digital-agenda/en/news/consultation-review-eu-satellite-and-cable-directive>

<sup>22</sup> <https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud>

<p>access to online content was carried out in the 28 Member States. The results of this survey were published in August 2015<sup>23</sup>.</p> <p>The public consultations were complemented by the stakeholder dialogue "Licences for Europe"<sup>24</sup>.</p> <p>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.</p>
<p><b>Will an Implementation plan be established?</b></p> <p>x Yes   <input type="checkbox"/> No</p>
<p style="text-align: center;"><b>D. Information on the Impact Assessment Process</b></p>
<p>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 GROW, COMP, JUST, EMPL, ECFIN, ENV, ESTAT, RTD, EAC, TRADE, JRC, SANTE, the EPSC and the LS take part in it. The steering group has already been working on the IA for the proposal for a Regulation on portability, and will be further involved in the preparation of this second set of legislative measures.</p>
<p style="text-align: center;"><b>E. Preliminary Assessment of Expected Impacts</b></p>
<p><b>Likely economic impacts</b></p> <p>In economic terms, the proposed initiative will entail benefits and costs for the different market players, depending on the options which will eventually be retained. The economic impact will be carefully assessed in the Impact Assessment in full compliance with the better regulation principles and taking in to account in particular the need to make sure that the EU copyright framework continues to ensure a high level of protection for rightholders and those who invest in the creation of content and maintain a good balance with other policy goals in the digital economy.</p>
<p><b>Likely social impacts</b></p> <p>The initiative would not have significant social impacts. Impact on fundamental rights will be assessed according to better regulation rules.</p>
<p><b>Likely environmental impacts</b></p> <p>The initiative would not have environmental impacts.</p>
<p><b>Likely impacts on simplification and/or administrative burden</b></p> <p>The initiative would not directly put burden on businesses. Depending on the type and content of EU intervention, businesses may have to incur compliance costs to adapt to a modified legal framework and possibly to renegotiate contracts. These aspects will be taken into account in the IA work.</p>
<p><b>Likely impacts on SMEs</b></p> <p>SMEs are largely present both from in the creative industry (publishers, record companies, AV producers, etc.) and among providers of services distributing copyrighted content. The Commission is carefully assessing the impact of any possible measure on SMEs.</p>
<p><b>Likely impacts on competitiveness and innovation</b></p> <p>The initiative could help innovation in the creation of content and as regards online content services and attract more consumers to online content services.</p>
<p><b>Likely impacts on public administrations</b></p> <p>The impacts would depend on the chosen instrument. In the case of a directive, Member States would have to prepare the implementing legislation within the set transposition deadline.</p>

<sup>23</sup> <http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2059> Some 26,586 respondents from different social and demographic groups were interviewed via telephone.

<sup>24</sup> For details, see the document "Licences for Europe – ten pledges to bring more content online": [http://ec.europa.eu/internal\\_market/copyright/docs/licences-for-europe/131113\\_ten-pledges\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf)

<b>Likely impacts on third countries, international trade or investment</b>
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The initiative would not have direct impacts on third countries, international trade or investment.
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