



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

The Director-General

Brussels
CNECT.R.4

Steliyana Doseva
4 Gabelsbergerstr.
80333 Munich
Germany

Via email:

[ask+request-11433-
05c25c5a@asktheeu.org](mailto:ask+request-11433-05c25c5a@asktheeu.org)

Subject: Your application for access to documents - GestDem 2022/3423

Dear Ms Doseva,

We refer to your email of 14 June 2022 wherein you make a request for access to documents pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter ‘Regulation 1049/2001’), which was registered on the same day under the abovementioned reference number. We also refer to our email, dated 5 July 2022 (our reference Ares(2022)4906814) whereby we informed you that the time limit for handling your applications was extended by 15 working days pursuant to Article 7(3) of Regulation 1049/2001.

1. SCOPE OF YOUR APPLICATION

You requested the following documents:

“... All written documents in relation to the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016) 593 final 2016/0280 (COD) submitted to the Directorate General for Communications Networks, Content and Technology between 14th of September 2016 and 26th of March 2019 by the following actors:

- Companies/firms (e.g., Meta (Facebook), Google, Microsoft, Twitter, Apple, Amazon, Universal Music Group)
- Interest organizations (e.g., NGOs, business associations, unions, umbrella organizations)
- Think tanks (e.g., research groups, expert groups, law firms, consultancies)
- Institutions (e.g., universities, media authorities in all EU countries) ...”

Given the wide-scope of your request, we contacted you on 22 June 2022 with a view to agree on a fair solution based on Article 6(3) of Regulation 1049/2001, our reference, Ares(2022)4585878. In order to help you narrow down the scope of the request, we provided you with the categories of documents and the number of documents per category that had been identified at that stage. We indicated the steps that the handling of your application would entail, and we concluded that according to our estimate a maximum of 15 documents could possibly be dealt with within the remaining timeframe.

By your email dated 28 June 2022, you replied:

“... I can narrow down the scope of my request, asking you for all written documents in relation to recitals 2, 3, 5, 6, 12, 23, 24, 25, 29, 30, 37, 39, 42 and Articles 2 and 13 of the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016) 593 final 2016/0280 (COD) submitted to the Directorate- General for Communications Networks, Content and Technology between 14th of September 2016 and 26th of March 2019 by the following actors:

- Companies/firms (e.g., Meta (Facebook), Google, Microsoft, Twitter, Apple, Amazon, Universal Music Group)
- Interest organizations (e.g., NGOs, business associations, unions, umbrella organizations)
- Think tanks (e.g., research groups, expert groups, law firms, consultancies)
- Institutions (e.g., universities, media authorities in all EU countries)

This contextual addition is one way to narrow down the scope of my request. I can also understand the reasons for the extended deadline (15+15 working days) here.

Since I cannot narrow the scope by excluding actors/ groups of actors from my request, I would suggest you, as an alternative, to extend the deadline and provide all written documents related to the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016) 593 final 2016/0280 (COD)) within 60 working days.”

Taking into account the time limits of Article 7(3) and (4) of Regulation (EC) 1049/2001 and the need to balance the interest in access against the workload resulting from the processing of your application in line with the case law of the EU Courts¹, we have, as announced in our fair solution proposal of 22 June 2022 and taking into account the

¹Judgment of the Court of Justice of 2 October 2014 in case C-127/13, Strack v Commission, paragraphs 27-28.

documents that you specified in your reply, restricted the scope of your application to 15 documents. This is what we could achieve, taking into account DG CONNECT's resources and the global workload of the concerned staff during the same period, within the given timeframe.

2. DOCUMENTS FALLING WITHIN THE SCOPE OF THE REQUEST

The following documents have been identified as falling within the scope of your request:

- Letter, 17.01.2019, co- signed by 12 digital rights organizations, ARES(2022)5385882 (**Document 1**)
- Presentation, A Community of European Entrepreneurs, Google, ARES(2018)1381336 (**Document 2**)
- Proposal for a Directive on Copyright in the Digital Single Market, Foundation Conference of European National Librarians, ARES(2022)5381779 (**Document 3**)
- CISAC Position Paper on the EU “Copyright Package”, 28-02-2017, ARES(2022)5381350 (**Document 4**)
- Communication from Special procedures, United Nations Human Rights, Office of the High Commissioner, OL OTH 41/2018, 13.06.2018, ARES(2022)5386062 (**Document 5**)
- Open letter, 30.11.2017, co-signed by over 80 human and digital rights organizations, ARES(2017)5887331 (**Document 6**)
- Opinion on the EU Copyright Reform Package, European Copyright Society, 24-01-2017, ARES(2017)454150 (**Document 7**)
- Position of the German Authors' Rights Initiative, 25 September 2018, Initiative Urheberrecht (authors' rights initiative), ARES(2022)5381576 (**Document 8**)
- Position on the Commission's proposal for a Directive on copyright in the Digital Single Market COM(2016) 593, 7-12-2016, Europeana, ARES(2022)5385314 (**Document 9**)
- Commission Proposal on Copyright in the Digital Single Market, Library and Cultural Heritage Institution Responses, Liber Europe, ARES(2022)5385518 (**Document 10**)
- Letter, 16.11.2016, ARES(2016)6521184 (**Document 11**)
- Email, Cost of Filtering – copyright, 27 June 2017, ARES(2017)3217298 (**Document 12**)
- Letter, 21 November 2018, Ref. No. GR/380/2018, ARES(2018)5960884 (**Document 13**)
- Extended Comments to the EU Commission proposal for a revision of the European Copyright Directive, ARES(2022)5385169 (**Document 14**)
- Comments on the Digital Single Market Copyright Proposals, 6.12.2016, ARES(2022)5385419 (**Document 15**)

3. ASSESSMENT UNDER REGULATION 1049/2001

Following an examination of the identified documents under the provisions of Regulation 1049/2001 and taking into account the opinion of the third parties concerned, we have arrived at the conclusion that full access can be granted to Documents 1, 2, 3 and 4. Partial access can be granted to Documents 5, 6, 7, 8, 9 and 10. Access cannot be granted to Documents 11, 12, 13, 14 and 15. Full disclosure of the documents is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

A. Full access

Full access is granted to Documents 1, 2, 3 and 4. Please find them enclosed to this letter.

B. Partial access

Full disclosure of Documents 5, 6, 7, 8, 9, and 10 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- the names and contact information of Commission staff members not pertaining to the senior management;
- the names and functions of other natural persons.

Article 9(1)(b) of the Data Protection Regulation² does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. In your request, you do not express any particular interest to have access to these personal data nor do you put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Consequently, we conclude that, pursuant to Article 4(1)(b) of the Regulation 1049/2001, access cannot be granted to the personal data contained in the identified documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

Consequently, the above-mentioned parts of Documents 5, 6, 7, 8, 9 and 10 have been blanked out.

C. Access Refusal

(i) Protection of commercial interests

Full and partial disclosure of the Documents 11, 12, 13, 14 and 15 is prevented by the exception concerning the protection of commercial interests laid down in Article 4(2) Regulation 1049/2001.

The first indent of Article 4(2) of the Regulation 1049/2001 provides that “*the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure*”.

This provision must be interpreted in light of Article 339 of the Treaty of the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional

² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

secrecy, in particular information about undertakings, their business relations or their cost components.

Documents 11, 12, 13, 14 and 15 are documents of third parties. The documents contain views and positions of the organizations concerned, which relate to business strategies and other commercial interests of companies, including intellectual property. There is a real and non-hypothetical risk that disclosure of these documents could undermine and seriously affect the commercial interests of the companies at question. Therefore, access to Documents 11, 12, 13, 14 and 15 cannot be granted as the disclosure is prevented by the exception to the right of access referred to above.

(ii) Protection of privacy and integrity of individuals

Full and partial disclosure of the Documents 11, 12, 13, 14 and 15 is prevented by the exception concerning the protection of privacy and integrity of the individual outlined in Article 4(1)(b) Regulation 1049/2001, since they contain the following personal data:

- the names and contact information of Commission staff members not pertaining to the senior management;
- the names and functions of other natural persons.

As pre-cited above, please see to this effect considerations under 3.B.(i), we concluded that in accordance to Article 4(1)(b) of the Regulation 1049/2001, access cannot be granted to the personal data contained in the identified documents, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

4. OVERRIDING INTEREST IN DISCLOSURE

The exceptions laid down in Article 4(2) and Article 4(3) of Regulation 1049/2001 apply, unless there is an overriding public interest in the disclosure of documents. Such an interest must, firstly, be a public interest and, secondly, outweigh the harm caused by disclosure. We have examined whether there could be an overriding public interest in the disclosure of the aforementioned parts of the documents which are being withheld but we have not been able to identify such an interest.

5. REUSE OF DOCUMENTS

Please note that the abovementioned identified Documents originating from third parties are disclosed to you based on Regulation 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released document without the agreement of the originator, who may hold an intellectual property right on it. The European Commission does not assume any responsibility from their reuse.

6. CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position. Such

a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

Roberto Viola

Enclosures: (10)