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Minutes of the fourth meeting of the Copyright review Inter-Service Steering Group Brussels, 28 April 2016

The Chair, (SG.E2), opened the meeting and referred to the document under consideration, which covers part of the future draft impact assessment related to the copyright legislative proposal, scheduled for adoption in September 2016. The ISSG will discuss the draft IA issue by issue, starting in this meeting with the copyright exceptions.

DG CNECT further indicated that the draft IA would be considered by the RSB on 20 July and inter-service consultation would take place in August. As regards the other parts of the draft IA to be covered by the reform, they will be discussed in the context of three additional ISSG meetings to be held in May/June.

DG JUST, DG EAC and LS asked for explanations to be provided in the report as to why certain issues mentioned in the December Communication on copyright are not part of this IA, in particular private copy, remote consultation and user-generated content.

The group reviewed the draft text section by section and made the following principal comments:

4.1 Introduction

DG ECFIN suggested providing additional explanations about the three-step-test.

LS announced they would send textual suggestions on the ECJ's interpretation of the three-step-test.

4.2 Use of protected content in digital and cross-border teaching activities

DG EAC asked for a more balanced assessment of the costs of licences for educational establishments. This exception may require further adaptation in the future to take into account the development of open educational resources. The definition of affiliated students should be clarified.

DG ECFIN suggested that the various national approaches be more comprehensively reflected, including by setting out which systems already allow for digital and cross-border uses and which ones don't. More evidence on the obstacles to cross-border uses should be added, if available.

DG JUST asked for the impacts on fundamental rights to be further developed, possibly also by analysing them separately from cultural diversity in the summary table.

DG EAC enquired if the possibility to clarify other aspects related to the implementation of this exception could be envisaged, for example by way of flanking measures.

DG TRADE asked why the option of excluding textbooks, or even all types of educational material, from the scope of the exception was not discussed and whether a distinction between schools and universities would be relevant in the context of this exception. The existence of problems related to cross-border uses should be further evidenced. DG TRADE also asked for clarification as to the reasons for drawing conclusions about the absence of an international dimension.

LS asked for clarification as to the link between the exception and the availability of licences under option 3. Overall, the cost/benefit analysis should be significantly strengthened. The assessment of the impact on fundamental rights should also cover the impact on freedom of expression.

SG asked whether it would be necessary to harmonise also other parameters of the exception, such as the extent of the concept of illustration (i.e. how much content is covered by the notion of illustration). On textbooks, it is necessary to explain why the flexibility granted by option 3 is considered more appropriate than a general exclusion in EU law. In general, the report should contain a cost/benefit assessment of all options. Statements concerning the magnitude of costs or stakeholders' positions should be systematically and adequately substantiated.

DG ECFIN suggested further economic analysis of the potential impact on the production of content, in particular by analysing the impacts of existing regimes. The impact of option 3 on right holders should be described as being the same as under option 2 in the event that MS do not exercise the possibility to take a different approach or introduce certain carve-outs.

DG CNECT explained that covering also open educational resources would lead to disproportionate negative impacts. On the scale of the cross border problems, additional evidence was not available, notably in view of limited feed-back from stakeholders among educational users and the fact that cross-border uses are often seen as a grey area. The definition of affiliated students will be clarified. More information on the implementation of the teaching exception and on how the various national regimes cover cross-border uses will be added in the Annex. On other aspects related to the implementation of the exception, additional measures have not been considered due to the absence of clear EU added value and in view of the variety of national education systems. The exception as it is proposed is considered compliant with international obligations and will only apply within the Union. As concerns textbooks, option 3 provides enough flexibility as it enables MS to exclude them from the scope of the exception. On the link with licences, option 3 is meant to give MS the flexibility to reach the intended objective, either through an exception or through another system. A distinction between different types of educational establishment is not appropriate here since the exception will not go into very detailed aspects. On the impact on investment in content production, it would be very difficult to verify the existence of a direct link between specific legal regimes and investments, as numerous other factors could be at play.

4.3 Text and data mining

DG JUST stressed the need to develop the fundamental rights assessment further, in particular as regards privacy.

JRC welcomed option 3 and suggested a combination of option 2 (to cater for the needs of citizen scientists) and option 3. More references to SMEs as users of TDM should be added. The impact on society should be better reflected.

DG GROW expressed support for the initiative and for the effort to harmonise exceptions and allow for cross-border uses. Internal consultations are still ongoing, so further comments, if any, will be provided in writing.

LS asked for the sentence referring to the UK law on page 23 to be reformulated and raised concerns about giving the impression that the Commission is considering the UK law to be compatible with EU law. The scope of public interest research organisations needs to be defined and clarification should be provided as to the scope of 'scientific research', which should cover both humanities and life-science.

DG TRADE asked for clarification on the distinction between commercial and non-commercial and enquired about the definition of citizen scientists and the nature of their activities.

DG EAC asked for clarity on the exact definition of beneficiaries and on the distinction between commercial and non-commercial purposes. The formulation of these two definitions will have a direct influence on the impacts of the measure on right holders. The IA should more clearly establish that the chosen approach is the one achieving the best balance between the interests of researchers and the need to preserve investment in content. DG EAC also recalled the position on the three-step test taken by the College in the December Communication.

DG RTD stressed the good collaboration with DG CNECT on this topic. Option 3 is the appropriate approach to cater for the needs of public research organisations. However, the proposal by JRC of combining option 2 and 3 in order to enable TDM by citizen scientists is also worth considering. The exact definition of public organisation beneficiaries will require careful reflection.

DG ECFIN asked for additional clarification about the baseline scenario (uses currently permitted). Conclusions on economic impacts, in particular regarding the impact on subscription fees, should be consistent with the data presented.

SG asked for a more detailed analysis under option 2 concerning the shortcomings of industry-led solutions perceived by researchers and the reasons for stating that their resistance to these solutions would persist in the future. Impacts of option 3 on corporate users should also be analysed.

DG CNECT pointed out that there was no clear evidence at this stage of the need to address the situation of citizen scientists and that it would be advisable not to add another layer of complexity in this exception. Furthermore, it is difficult to establish a clear distinction between commercial and non-commercial purposes, which is why it is proposed to define the scope of the exception by reference to the type of beneficiaries. The definitions will be drafted more precisely in the legal text but will need to capture the various national situations. In terms of potential negative impact on right holders, the condition of lawful

access will be an important mitigating factor. The wording on the UK law referred to by LS will be revised. CNECT considered that the UK law was not incompatible with EU law but explained that there was no intention to specifically endorse it in the IA and agreed to adjust the wording to avoid giving the impression that the Commission is taking a formal position on its compatibility with EU law.

4.4 Preservation of cultural heritage

DG EAC expressed general support for the initiative. Beneficiaries should be identified in relation to the objective of long-term preservation, in order to avoid the misuse of the exception in the context of other types of activities, such as the provision of access to works.

LS enquired about the possible link between the proposed mandatory exception and the new Public Sector Information Directive and suggested that that link be examined.

SG asked for clarification about the scope of the exception in terms of activities, in particular whether it could allow the dissemination of snippets. The EU dimension of the problem should be presented in more detail.

DG CNECT indicated that the exception as such would not allow any type of distribution of the preserved material, which is the angle from which 'misuse' concerns should be looked at, as opposed to a too restrictive definition of beneficiaries. This aspect will be the subject of another area of the impact assessment, covering the digitisation of out-of commerce works, to be discussed at the next meeting. The PSI Directive is more relevant in that context. Additional information will be provided on the cross-border dimension but cooperation between MS in this area is still at an early stage.

Next steps

DGs are invited to send their comments or contributions to DG CNECT ([REDACTED]), with copy to the SG ([REDACTED]), by **04 May**. The next meetings of the ISSG are tentatively scheduled for 19 May, 6 June and 24 June.

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[REDACTED]

Contact: [REDACTED]

Cc.: Paraskevi MICHOU, Jean-Eric PAQUET, James MORRISON,
Elizabeth GOLBERG, [REDACTED]

Pauline ROUCH (Cab Juncker)
Ben SMULDERS, Liene BALTA (Cab Timermanns)
Juhan LEPASSAAR; Laure CHAPUIS (Cab Ansip)
Michael HAGER; Bodo LEHMANN (Cab Oettinger)

List of participants

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%