

## Meeting between Article 4(1)(b) , Digital Europe, and Commissioner OETTINGER

---

### SCENE SETTER

You will meet Article 4(1)(b) Digital Europe. Digital Europe is the association for the digital technology industry in Europe European organisation representing the digital technology industry.

Digital Europe has been active in promoting the Digital Single Market objectives, including at European Council level. They have participated to the public consultations on AVMSD, geo-blocking, online platforms and the role of publishers in the copyright value chain. They are also supporting digital development through such initiatives as DigitalEurope's Cloud Council and the Alliance for Internet of Things Innovation.

In 2015 you have met twice with Digital Europe representatives. In March the main topics was eSkills. In June the main topic was the implementation of the DSM Strategy and its international impact.

VP Ansip has also met with Digital Europe repeatedly. In October 2015 the topics of discussion were the AVMSD review, Free Flow of Data and DSM European Cloud Initiative and in February 2016 the discussion centred on geo-blocking, copyright including text and data mining and platforms.

The topic for today's meeting will be copyright. It is anticipated that Digital Europe will use this meeting to discuss with you the details of the upcoming copyright reform, in particular private copying levies, text and data mining and a neighbouring right for newspaper publishers.

### Digital Europe's position on the copyright reform

- **Text and data mining ("TDM"):** Digital Europe is not really "demandeur" of a legislative intervention on TDM but wants to make sure that our legislative intervention which will focus on TDM carried out for the purposes of research has no "unintended spillover" on other forms of data analytics carried out by other players and technology companies for other reasons than research.
- **Neighbouring right for press publishers:** In its submission to the public consultation on the role of publishers in the copyright value chain, Digital Europe has taken the position that no ancillary rights should be granted either to newspapers, magazines, scientific journals or books or publishers at EU or national level.
- Another topic of interest for Digital Europe are what they call "outdated and inefficient" **private copying levies:** for them, there is a low level of transparency leading to grossly inflated levy tariffs, big differences in tariffs across Member States + double payments and overcompensation. They want the EU to harmonise principles and methodology used in assessing harm and setting tariffs + provide guidance to avoid double payments and/or overcompensation

### Our objectives:

- Explain the step-by-step approach to the copyright reform and the next step foreseen for September, which would focus on exceptions and limitations, achieving a well-functioning copyright market place, and the revision of the Satellite and Cable directive.
- Confirm that other issues mentioned in the Communication and left out of the 2016 summer package, including private copying levies, remain important for the Commission but have a different timing and require further assessment before decisions on actions are taken.

### LINE TO TAKE

#### **I. On copyright reform**

- the **Communication** on a "modern and more European" copyright framework adopted on 9 December sets out the main political objectives and areas of action as well as the timeline, based on a step-by-step approach;
- **the first step** has been the adoption in December 2015 of a **legislative proposal on cross border portability** which aims at ensuring that subscribers to online content services can continue using them while temporarily present in another Member State.
- **A second set of legislative proposals will follow in September 2016** which will focus in particular on the following objectives:
  - allowing for **wider online availability of content 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);
  - **modernising the EU framework of exceptions and limitations**, focussing in particular on those exceptions and limitations which are key for the functioning of the digital single market and the pursuit of public policy objectives (e.g. those in the area of education, research - including text and data mining - and access to knowledge); and
  - achieving a well-functioning copyright market place, for example as regards the **role of online intermediaries when they distribute copyright-protected content**, but also **regarding news publishers and creators**.
- Action in these areas does not exclude further action at a later stage on other aspects of the EU copyright framework.

## **II. Specific issue: Text and data mining**

- Text and data mining is a promising set of technologies which we want to encourage in order to fostering research and innovation in Europe.
- The Commission is looking at TDM in the context of the copyright modernisation expected for September 2016, as indicated in the December Copyright Communication. The objective is to make sure that public interest research organisations enjoy full legal certainty to carry out TDM while taking into account the role of the publishing industry and the need to let the commercial market for TDM develop.
- Currently, the legal framework applicable to TDM in the EU is fragmented and there is legal uncertainty. The role of right holders and those who invest in the publication of copyright protected content will be duly considered, including the necessary safeguards to maintain the integrity and security of publishers' databases.
- We are aware of Digital Europe concerns as regards possible unintended effect of an exception covering specifically scientific research on text and data mining and other data analysis techniques carried out for other purposes (e.g. market analysis) and we are considering the best way to avoid them.

## **III. Specific issue: Neighbouring right for press publishers**

- In its December Communication the Commission announced its intention to analyse the situation as regards publishers and news aggregators.
- The Commission has carried out a public consultation on the role of publishers in the copyright value chain that was open from 23 March until 15 June 2016. Views expressed and information gathered have helped us to understand whether there are problems in the exploitation and enforcement of rights on publications and will assist the Commission' assessment of the need for initiatives, as part of its efforts to modernise EU copyright rules under the Commission's Digital Single Market Strategy.
- We are currently considering introducing a neighbouring right for press publishers at EU level in order to recognise the important role of press publications for a pluralistic society and democratic debate and in order to address their problems to reach agreements and monetise use of their content by online service providers. This new neighbouring right is not about hyperlinking and it is not an ancillary right like in ES or DE.

## **IV. Specific issue: private copying levies**

- It is an important issue for the functioning of the internal market but also one where views are very different across the stakeholders. It will not be part of the September legislative proposals.
- As indicated in the December Communication the Commission is committed to assess the current situation taking into account the development of new technologies, reforms

at national level and a number of clarifications put forward by the case-law of the EU Court of Justice over the last few years.

## **DEFENSIVES**

### **Second copyright package**

*What are the Commission's plans with regard to intermediaries?*

- The Commission is looking into the activities of different types of intermediaries in relation to copyright-protected content. It is our objective to clarify the rules applicable to the intermediaries which distribute content ("value gap").
- No final decision has been taken yet.

*Will the Commission tax hyperlinks?*

- The Commission has no plan to tax hyperlinks. In other words, we have no intention to ask people to pay for copyright when they simply share a hyperlink to content protected by copyright.
- Europeans are sharing and posting hyperlinks every day and they should remain free to do so. We want to reassure them and make this point very clear.
- In our action plan to modernise EU copyright rules, we explained that we would look at the activities of different types of intermediaries in relation to copyright-protected content. This is a different issue. News aggregators, for example, are not only using hyperlinks but extracts of articles and make business out of this activity.

*What are the Commission's plans regarding the so-called panorama exception?*

- The Commission has launched a public consultation on this matter. The results of the consultation will feed in our decision as to whether further action is needed in this area.
- No decision has been made yet.

**What is text and data mining (TDM)? What is the problem? What will the Commission do?**

- Text and data mining (TDM) refers to technologies through which vast amounts of digital content are read and analysed by machines. TDM is used in science and research, notably to discover correlations between materials produced in different scientific fields and generate new knowledge.
- Today, the implementation of the exception on scientific research (Article 5(3)(a) of Directive 2001/29/EC) differs across the EU, and the lack of a clear EU provision on TDM for scientific research purposes creates uncertainties in the research community. Moreover, the current situation harms the EU's competitiveness and scientific leadership at a time when research and innovation activities increasingly take place through cross-border and cross-discipline collaboration and on a large scale.
- Text and data mining is a promising set of technologies which we want to encourage in order to foster research and innovation in Europe.

- The Commission is considering the possibility to propose a targeted exception allowing public interest research organisations to carry out text and data mining of content they have lawful access to, with full legal certainty, for scientific research.

### **Press publishers right**

#### **Why is the Commission looking into neighbouring rights when it was a failure in Germany and Spain?**

- The news publishing industry (publishers of newspapers and magazines) has been affected in a very specific way by the transition from print to digital. News content is increasingly read online and it is redistributed by new internet players such as social media and news aggregators. However, only a very small part, if at all, of the revenues generated through news content online eventually trickle down to the publishers of this content.
- This is a sector which is key for the democratic value of the European society and media pluralism. This situation is not acceptable and should be tackled at EU level through the introduction of a new related right for news publishers.
- Germany and Spain tried to address the problems of news publishers in the recent past through national legislation which has not always given the desired results. However, I believe that intervention at EU level will have the necessary scale to provide a much needed added value to the news publishing industry.

## **BACKGROUND**

### **Press release by Digital Europe following the adoption of the Communication on the modern and more European copyright framework of 9 December 2015**

DIGITALEUROPE supports European Commission efforts to reform copyright levies

BRUSSELS (December 9th 2015) – The European Commission has, after over a decade of hesitation, today made a political commitment to reform the outdated and inefficient mechanism that is copyright levies.

The decision to tackle this thorny issue comes as part of a Communication on how the Commission intends to reform copyright more widely next year. In addition to addressing old problems like the inefficient way levies are collected to compensate rights holders, the Communication also addresses more recent issues such as how to deal with ancillary copyright and data mining.

In its Communication the Commission identifies a need for action to ensure that the levies imposed by some countries don't distort the single market. It also asks whether any economic harm is incurred by artists when their works are copied by private individuals. Levies are seen as a way to compensate artists for private copying of content such as music or movies from one digital device to another.

The Communication also promises to address the issue of double payments. You often pay twice or more times for the same copyright: first when you buy a CD or a download, and then every time you buy a new storage or copying device, such as a smart phone, laptop, tablet, external hard drive, USB stick or printer, even if you don't use that device to store or copy the copyright protected material.

“We are delighted that the Commission has finally acknowledged what a mess the levies system is. We have been raising these issues with lawmakers for over ten years by now and urging them to reform the system in light of the digital technologies most of us now use every day of our lives,” said Article 4(1)(b) DIGITALEUROPE.

Levies are a lucrative source of revenues for the organisations that collect the levies. The Commission is sure to come under pressure from them to maintain the status quo. “We urge the Commission to stick to its guns and not be swayed from this important reform,”

Article 4(1)(b) said.

In addition to levies, the Commission's Communication addresses the issue of ancillary copyright, where an Internet portal carries snippets of news articles from newspaper websites. There are calls for some form of compensation to the newspapers for the snippets. However, news publishers themselves are divided about whether such compensation is necessary, with many in France, Spain and Germany now arguing that the traffic to their websites that these snippets generate is worth more to them than any compensation.

When Spain introduced ancillary copyright last year, causing a leading Internet news aggregator to close its service, newspapers suffered. The same will happen across Europe if ancillary copyright is introduced across the EU.

Similarly, the Communication looks into data mining, asking whether the owners of the data should receive compensation for its re-use.

“It’s important for research purposes and for the broad benefit of society that data isn’t overly restricted,” said [Article 4\(1\)\(b\)](#), adding: “The Commission must find a way to balance the interests of rights holders, while also allowing society to take the maximum advantage of the free circulation of knowledge and creative works.”



## **V. Attachments**

### **1. CV** Article 4(1)(b)

Article 4(1)(b)

Article 4(1)(b)

## **2. Company Profile Digital European Commission**

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

### **DIGITALEUROPE MEMBERSHIP**

#### **Corporate Members**

AMD, Airbus, Apple, BlackBerry, Bose, Brother, CA Technologies, Canon, Cassidian, Cisco, Dell, Epson, Ericsson, Fujitsu, Google, Hitachi, Hewlett Packard Enterprise, HP Inc., Huawei, IBM, Ingram Micro, Intel, iQor, JVC Kenwood Group, Konica Minolta, Kyocera, Lenovo, Lexmark, LG Electronics, Loewe, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, NEC, Nokia, Nvidia Ltd., Océ, Oki, Oracle, Panasonic Europe, Philips, Pioneer, Qualcomm, Ricoh Europe PLC, Samsung, SAP, SAS, Schneider Electric IT Corporation, Sharp Electronics, Siemens, Sony, Swatch Group, Technicolor, Texas Instruments, Toshiba, TP Vision, VMware, Western Digital, Xerox, Zebra Technologies, ZTE Corporation.

National Trade Associations

Austria: IOÖ Belarus: INFOPARK

Belgium: AGORIA

Bulgaria: BAIT

Cyprus: CITEA

Denmark: DI Digital, IT-BRANCHEN

Estonia: ITL

Finland: FFTI

France: AFDEL, AFNUM, Force Numérique

Germany: BITKOM, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: ICT IRELAND

Italy: ANITEC

Lithuania: INFOBALT

Netherlands: Nederland ICT, FIAR

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS, APDETIC

Slovakia: ITAS

Slovenia: GZS

Spain: AMETIC

Sweden: Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT UKRAINE

United Kingdom: techUK