



## EUROPEAN COMMISSION

Secretariat-General

Directorate E - Policy Co-ordination II  
**SG.E.2-Knowledge and Infrastructure**

Brussels, 27 October 2015

### **Subject: Inter-Service Meeting on the draft Copyright Communication - 26 October 2015**

*This meeting was convened to discuss the draft Communication on copyright, on which Inter-Service Consultation was launched on 22 October, with a deadline for responses of 5 November. It provided services with an opportunity to ask questions and request clarification of certain aspects, as well as to make preliminary comments on key issues.*

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In introduction, SG referred to the ongoing ISC process, stressing that this meeting was meant to provide explanations about the content of the Communication and, to the extent possible at this early stage, to enable DG CNECT to start reflecting on possible adjustments.

DG CNECT gave a general overview of the document, stressing the choice of a three-step approach (immediate measures, further measures for 2016 and long-term perspective) and detailing its main components, section by section. As far as the section on enforcement is concerned (section 5), DG GROW is in the lead and will provide answers to any questions raised in relation to its content. In particular, DG GROW pointed to the challenging timing announced in the Communication with respect to a Memorandum of Understanding on 'follow the money' and the need to ensure consistency between such self-regulatory action and the ongoing review of the legislative framework.

### **Discussion**

#### *Sections 1 and 2*

DG JUST noted the difference in scope and in level of ambition as regards territoriality between the content of this draft Communication and the actions previously considered in the context of the draft IA. It was suggested to keep options more open at this stage.

DG COMP echoed DG JUST's comment on the scope of actions related to territoriality. Clarifications were sought with respect to the idea and purpose of a mediation system to facilitate licensing and it was suggested to re-draft this action to clarify what role the Commission intends to play in this system, if any. The reference to an extension of the Satellite and Cable Directive to online broadcasting transmission is a welcome first step.

JRC questioned the possibility of defining the concept of 'broadcasting' in a fast-changing environment, where drawing stable lines between technologies and business models is increasingly difficult.

DG EAC welcomed the draft Communication and its clear structure and articulation of actions in several stages. The introductory and concluding sections could focus in a more distinct manner respectively on short-term targeted proposals and long-term objectives.

Drafting suggestions will be provided to further nuance the text with regard to the balance between the DSM priorities of, on the one hand, promoting user access, and on the other hand, encouraging creativity and cultural diversity. Sectors other than audiovisual should also be adequately covered.

DG RTD welcomed the balance achieved in the text and suggested strengthening slightly the research and innovation dimension.

LS informed that drafting suggestions would be provided to clarify certain interpretations of existing law, as well as to nuance the current presentation of copyright law as a major driver for change in relation to territoriality in audiovisual. In addition, the scope of the paragraph on public funding should be clarified, and concepts such as 'market-readiness' and 'last mile' should be re-formulated in clearer terms. The section should also provide more detailed information about the nature of the legislative measures envisaged for 2016.

DG CNECT recalled the delicate balance to be struck in a Communication between providing clear political orientations and respecting Better Regulation and impact assessment requirements. The Communication clearly states the ultimate objective of full cross-border access while taking into account the complexities of this debate. It therefore broadens the scope of possible actions and measures and addresses the obstacles to cross-border access and to cross-border circulation of content. On the Satellite and Cable Directive, a public consultation is ongoing and a study has been launched. This should allow shedding further light on the point raised by JRC. On licenses, the intention is to look into ways to facilitate multi-territorial licensing for audiovisual content and to consider how licenses could be more systematically granted outside of the home territory, in particular by using mediation processes (inspired by the existing Satellite and Cable mechanism).

### *Section 3*

DG JUST asked for explanations about the rationale for covering the 'panorama exception'. User-generated content should also be addressed in the Communication or at least explicitly flagged as an area for future reflection. DG JUST welcomed the inclusion of private copy and enquired about intentions with respect to the exception itself and the divergent implementations by MS.

LS pointed out that there were currently two mandatory exceptions in EU law. The language on the Marrakesh Treaty should be brought in line with the Roadmap and reflect the latest exchanges between DG CNECT and LS.

DG RTD welcomed the action announced in relation to text and data mining (TDM). However, the limitation to 'public interest research organisations' would exclude certain categories of users, which might also carry out research with a public interest objective, such as independent researchers or innovative SMEs.

DG GROW supported RTD as regards extending the scope of the TDM exception beyond public interest research organisation (i.e. to cover also businesses).

JRC supported the comment by DG RTD on the scope of the TDM exception. JRC also suggested including a reference to relevant JRC studies and to Commissioner Moedas' Open Science policy.

LS supported a more neutral reference to future beneficiaries of a TDM exception. The justification for including 'panorama' in the Communication is unclear as is the proportionality of EU intervention in this area.

DG CNECT explained that the issue of 'panorama' had been added following public debates triggered by the discussion on the European Parliament report. For various reasons, user-generated content is not considered mature enough at this stage but may be flagged as part of the long term process. On private copy, the draft Communication does not commit to any specific type of action or timing, in order to allow for a full assessment of needs and feasibility. The reference to the Marrakesh treaty will be updated as appropriate. On the scope of the TDM exception, the current wording reflects a political choice in terms of approach; amending this sentence would require reconsidering its other elements, notably the definition of allowed purposes (non-commercial vs commercial purposes).

#### *Section 4*

DG COMP welcomed the reference to problems faced by news aggregators and to the current risk of diverging national interventions.

LS inquired about intended measures concerning news aggregators and more generally stressed the need to clarify the structure of this section, to better identify its various components and the corresponding actions that are envisaged.

DG CNECT explained that this section reflected the present political debate about the roles of the various players in the online environment and the applicable rules. This debate is ongoing and various assessments are currently taking place, in particular in the form of public consultations. There is therefore at this stage no position about future measures. As regards news aggregators, competition enforcement is very relevant as the problem faced by these actors is one of unbalanced bargaining positions.

#### *Section 5*

DG JUST welcomed the focus on the follow-the-money approach and asked for clarification about the concrete objectives of the review in relation to the identification of infringers. As regards the cross-border effect of injunctions, it should now be covered by the Brussels I Regulation.

DG GROW clarified that the review would examine ways to improve identification and access to information about commercial-scale infringers, which is currently more effective in certain MS than in others. As regards injunctions, Brussels I may facilitate the process but is not solving the practical problems.

DG CNECT also pointed out that one of the main issues regarding cross-border enforcement of injunctive reliefs was that of the lack of possibility of enforcing injunctions on ISPs outside of the national jurisdiction, which is also linked to the lack of single copyright title.

#### *Section 6*

RTD will suggest some drafting changes to avoid giving the impression that all the emerging issues would be tackled at a later stage, which might be interpreted as applying also to the TDM issue.

**Next steps**

All DGs are invited to provide their formal responses to the Inter-Service Consultation as soon as possible and no later than by the set deadline of 5 November.

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**List of participants**

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