

Meeting between Bundestag Committee for Legal Affairs and Consumer Protection (Ausschuss für Recht und Verbraucherschutz des Deutschen Bundestages) and Commissioner OETTINGER

At Deutscher Bundestag on 14th of January 2015

at 14:45

OUT OF SCOPE

I. Scene setter

For [organisation/interlocutor etc.]: Ausschuss für Recht und Verbraucherschutz des Deutschen Bundestages

For DG CONNECT: [redacted] tel. [redacted], [redacted] tel. [redacted] (F1),

For the Cabinet: Bodo Lehmann

Agenda: Reform of the copyright rules, on-going negotiations on data protection, consumer protection & the internet

Objective(s): engaging with the German Bundestag about the importance of the DSM

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Copyright/ Urheberrecht (input Liane Wildpanner, Tel 72057, F5)

- Urheberrecht ist im Zentrum der politischen Prioritäten der neuen Kommission. Präsident Juncker hat dies in seinen politischen Leitlinien vom Juli 2014 sowie in seinen „mission letters“ an Vizepräsident Ansip und mich betont.
- Eine der Prioritäten der neuen Kommission wird die Modernisierung des Urheberrechts sein, insbesondere im Hinblick auf die digitale Revolution, dem veränderten Verbraucherverhalten sowie der kulturellen Vielfalt Europas. Das Endziel ist es, das volle Potenzial eines europäischen digitalen Binnenmarktes freizusetzen.
- Kreative Inhalte sind wesentlich für nachhaltige digitale Ökosysteme. Unser Rechtsrahmen muss eine angemessene Vergütung für Autoren und ausübende Künstler gewährleisten.
- Die dieses Jahr verabschiedete Richtlinie zur kollektiven Rechtewahrnehmung ist ein wichtiger Schritt in diese Richtung.
- Andere wichtige Erfolge der letzten Kommission waren etwa die Richtlinie über verwaiste Werke, die Absichtserklärung über vergriffene Werke, die Erklärungen der Interessensvertreter die im Rahmen von „Licences for Europe“ präsentiert wurden, der Vertrag von Marrakesch für Blinde etc.
- Die letzte Kommission hat bereits wichtige Arbeit für die Reform des Urheberrechts geleistet: eine breite öffentliche Konsultation, die im März 2014 geschlossen wurde und juristische und ökonomische Studien, von denen einige noch andauern.
- Urheberrecht soll weiterhin Investitionen in die Schaffung von vielfältigen kreativen Inhalten in Europa ermöglichen. Gleichzeitig sollen die europäischen Verbraucher, die digitalen Start-ups, Universitäten sowie die Institutionen des kulturellen Erbes in die Lage versetzt werden, die Chancen des digitalen Zeitalters vollumfänglich zu nutzen.
- Nutzern mehr Möglichkeiten einzuräumen kann Hand in Hand damit gehen, Rechteinhabern mehr Chancen zu geben.
- Wir freuen uns darauf, gemeinsam mit den Mitgliedstaaten und dem Parlament an einer ausgewogenen Urheberrechtsreform zu arbeiten.

BACKGROUND

1. EU COPYRIGHT POLICY – STATE OF PLAY

A. *Current situation*

The EU copyright acquis is a set of ten directives, the main of which is the Directive on Copyright in the Information Society ('InfoSoc Directive'). In addition, the Directive on the Enforcement of Intellectual Property Rights ('IPRED') covers horizontal civil enforcement aspects valid for all forms of intellectual property, including copyright. This acquis provides for a high level of copyright protection and has harmonised the key author and neighbouring rights and, to a lesser degree, exceptions and limitations to copyright. These are listed in EU directives but most of them remain optional for Member States to implement.

The Barroso II Commission developed policy and legislation on a number of specific copyright aspects, including the proposal and adoption of the directives on Orphan Works and on Collective Management of Rights, a Memorandum of Understanding on Out-of-commerce Works and a stakeholder dialogue to foster licencing solutions (Licences for Europe). The often heard argument that the Commission "has not done anything on copyright recently" should therefore be rejected.

There is however a wide expectation, buttressed by the announcements and political guidelines of President Juncker, that the new Commission will introduce further reform proposals covering certain 'core' aspects that have not been revisited since the adoption of the InfoSoc Directive in 2001. The modernisation of copyright has been formally included in the Commission work plan for 2015. Such modernisation can be delivered based on a review carried out recently by ex-DG MARKT, including a number of legal and economic studies. This has assessed the functioning of the current framework, the need to adjust certain rules and the impacts of possible changes, in particular on issues such as territoriality of copyright and exceptions. The new Commission will need to decide how to proceed with such reform prospects.

B. *State of play of consultation*

The Commission carried out a public consultation on the review of the EU copyright rules between December 2013 and March 2014, covering a large number of issues. Almost 10,000 replies were received, including from 11 Member States.

Furthermore, the Council Working Party had some exchanges of views during the Greek Presidency of the EU (first half of 2014). Discussions are also taking place in some Member States (e.g. DE, UK, ES, IE, AT, FI, SK, HR), either around national legislation reforms or the role of copyright and copyright enforcement in the digital economy more generally. The UK and ES have recently introduced changes to their national laws.

In the European Parliament, MEP Pavel Svoboda (EPP, CZ), the new chair of the JURI Committee (which traditionally has copyright in its competences) has set up an inter-group on copyright, while the only Pirate Party MEP, Julia Reda (Greens/EFA, DE) was appointed rapporteur on an own-initiative report on the implementation of the InfoSoc Directive and has started holding a series of hearings on the matter.

C. *Main positions of stakeholders, MEPs and Member States*

Very different views were expressed during the public consultation by stakeholders, with users and institutional users (consumer organisations, libraries, cultural heritage institutions,

etc.) calling for a review of EU copyright rules to facilitate access to content and right holders (authors, publishers, producers, etc.) largely considering that the current rules remain appropriate in the digital environment. Generally speaking, the stakeholder environment is very divided, although positions vary in tone and content depending on the issue at hand. A detailed overview is available in the report of the consultation mentioned above, available here: http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf.

D. Possible ways ahead and possible timelines



2. German press publisher's law:

Germany has introduced a neighbouring right for press publishers, in force since August 2013. The effectiveness of this law is still to be confirmed, since powerful Google News announced last year that it would not aggregate news snippets from those press publishers who want to exercise (be remunerated for) the new neighbouring right. As a result, most publishers have preferred to be aggregated by Google News against no remuneration.

There is a similar new law in Spain, which came into force on 1 January 2015. Google reacted to the adoption of the law in a similar way as in Germany. However, the compensation due to press publishers cannot be waived in Spain and is subject to compulsory collective management, so Google decided to stop the provision of the Google News services in Spain, as from 16 December 2014. This has given rise to a controversy amongst press publishers, who claim Google has refused to negotiate any compensation and has reacted based on its dominant position.

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¹ On average in 2008-2010 (source: European Patent Office - Office for Harmonization in the Internal Market, *Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union*, September 2013).