

## President Juncker - Lunch with the European Publishers' Council

### Scene setter

The European Publishers Council (EPC) is a high level group of Chairmen and CEOs of leading European media corporations. The members are the most senior representatives of European newspaper and magazine publishers (e.g. Axel Springer AG, Burda Media, Elsevier, Financial Times Group, Thomson Reuter etc.). These publishers are active on multimedia markets covering newspaper, magazine, book, journal, internet, online database publishers, radio and TV broadcasting. Christian Van Thillo, Chief Executive Officer of De Persgroep, is the Chair of EPC since 21 November 2014.

### Copyright

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In its Vision Paper on Copyright (June 2014), EPC emphasized the importance of a true partnership between technology and copyright in order to facilitate market developments and meet consumer demands. The Linked Content Coalition (LCC) is an EPC initiative. LCC's goal is to enable the widest possible access to content based on clear rights information.

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## **Objectives**

### **Copyright**

#### **Commission objectives:**

- Confirm that one of the immediate priorities of the Commission will be to modernise copyright rules within a short time-frame, as indicated in the 2015 Commission work programme.
- [REDACTED]

#### **EPC objectives:**

- [REDACTED]

## **Line to take**

### **Copyright**

- Copyright will be at the centre of the action of the new Commission in the context of the digital single market policy.
- One of the immediate priorities of the new Commission will be to modernise copyright rules in the light of the digital revolution, new consumer behaviour and Europe's cultural diversity. This has now been confirmed in the 2015 Commission work programme.
- We need to modernise copyright to make it fit for the Digital Single Market. We want citizens and businesses to access and exercise online activities. At the same time we want to make sure that copyright remains a driver for creativity and investment. Improving enforcement of copyright and the position of creators in the Internet value chain will be part of the wider debate.
- We believe that more opportunities for the users of content are compatible with the protection of the rights of rightholders.
- The ultimate objective is to release the full potential of the European Digital Single Market.
- In order to achieve our goal, we pay careful attention to the proposals from all stakeholders, including not only right holders and businesses, but also institutional users and citizens.
- We acknowledge EPC as an important actor on a wide range of multi-media markets (newspapers, magazines, books, internet, online database publishers, radio and TV) and as a provider of access to multimedia content and knowledge in general. We thank you for your proposals in this regard.
- The outgoing Commission carried out important work for the review of copyright: a broad public consultation closed in March 2014 and a number of legal and economic studies were undertaken.
- We have a good basis for the reform. Now, we are looking forward to working, in partnership with Member States and the Parliament, on a balanced copyright modernisation initiative.

### Defensive points

#### Copyright

***Is copyright reform necessary? Will it not favour big internet companies at the expense of European creators?***

There is nothing unusual in saying that EU copyright rules need updating. The main relevant piece of legislation is the Directive on Copyright in the Information Society ('InfoSoc Directive'), dating back to 2001.

In the digital environment, copyright rules should continue to reward and provide incentives for creation while allowing access to a wider variety of works, including across borders. The EU copyright framework needs to take into account new technologies, new uses and new market conditions.

This does not mean favouring big players or damaging creators. It simply means that – as with other areas of law – copyright rules need to be reviewed in light of the realities of a market that is increasingly digital and fundamentally cross-border in nature.

We need more clarity in our rules, we need to act when we have the required evidence and we need to inject the dynamics of the single market into our copyright framework.

This will be a win-win result for all players involved: creators and creative industries, digital companies, consumers, libraries and heritage institutions, researchers and libraries etc.

***End of October, Commissioner Oettinger was quoted in the German newspaper Handelsblatt that he wanted to reform copyright in order to make it possible to collect a levy on Google and other commercial users of copyright protected works.***

The new Commission is planning a copyright reform. Our goal is to modernise copyright rules in the light of the digital revolution and changed consumer behaviour. For the moment, we are examining possible options. In any event, we want to make sure that creators receive a fair remuneration from the online use of their works.

***What is the opinion of the Commission with regard to the press publishers' ancillary right in Germany?***

European copyright rules have achieved a high degree of harmonisation. However, Member States also keep a certain margin of discretion to lay down rules in their national legislation, so long as they are in compliance with the EU acquis and do not hamper the development of the digital single market.

The Commission will monitor the practical implementation of this provision, particularly after Google's agreements with some press publishers to keep on aggregating their content in Google News.

**Contact(s):**

Copyright: [REDACTED] (DG CNECT, F5), tel.: [REDACTED]

Title of the briefing contribution

## **BACKGROUND**

### **Copyright**

#### **1. ON 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 Programme 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, ES and SK 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 (chaired by MEP Cavada, ALDE, FR), 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 held a series of hearings on the matter. Her draft report was published on 19 January 2015.

##### **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 much 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](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf).

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#### **D. Possible ways ahead and possible timelines**

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## **2. EPC VISION PAPER ON COPYRIGHT - SUMMARY**



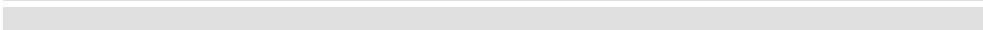
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(<http://epceurope.eu/issues/our-copyright-vision/>)

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<sup>1</sup> 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).

EPC argues that developing a technical infrastructure using metadata and registries would create a more transparent market place for copyright based services. In this context, EPC favours the development of a "partnership between copyright and technology", in which licensing would be an essential element:

- Recommendation 2 ("Legal clarification between hyperlinks and licensing terms"): Based on the CJ judgement in the *Svensson* case<sup>2</sup>, EPC holds that hyperlinks should be subject to the communication to the public right. Right owners should be able to restrict access to websites based on licence terms to a specific public, whether or not accompanied by technical measures.   
  

- Recommendation 4 ("Fair framework for unlicensed use of snippets"): EPC is concerned about the unlicensed use of 'snippets' from content on media and publishers' websites by search engines and news aggregators (as they might substitute for the articles and negatively affect the publishers' business). EPC advocates for a new exclusive right for press publishers based on the German "Leistungsschutzrecht" (an exclusive right for press publishers to make published press material in the form of 'snippets' publicly available on the internet through search engines and aggregators for commercial purposes).
- Recommendation 7 ("Monitoring deep framing practices"): EPC considers that deep framing should not be treated as hyperlinking<sup>3</sup> and argues that an authorisation for deep framing should be necessary.
- Recommendation 8 ("Fair browsing"): EPC acknowledges that internet browsing should not be considered as an infringement of copyright. However, it makes the reservation that an "overbroad interpretation could mean that activities which ought properly to be licensable (e.g. the consumption of press cuttings) might cease to be so."
- Recommendation 13 ("Toolbox of solutions for Text and Data Mining"): EPC opposes the introduction of an exception for text and data mining (TDM). It favours the development of technical infrastructure and standard licence terms in this area, and welcomes the CrossRef TDM services, which enables researchers to mine the content of several publishers via a unique platform, and publishers to know who is mining their content and for what purposes. Even if an exception would be limited to non-commercial research, EPC considers it impossible to delineate the boundaries between commercial and non-commercial research and between research for scientific or other purposes etc. It also sees difficulties in terms of the interplay between an exception and available commercial licences.

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<sup>2</sup> Case C-466/12, in which the CJ held that hyperlinking to copyright protected content that has been made freely available on the internet with the consent of the right holder, does not constitute an act of communication to the public under Directive 2001/29/EC that requires the right holders authorisation.

<sup>3</sup> In the *Svensson* case, the Court hinted that deep framing should be treated in the same way as deep linking.