

Meeting between Mogens Blicher Bjerregård (European Federation of Journalists) and Commissioner Oettinger

on 30.4.2015, 14h on copyright

I. Scene setter

For European Federation of Journalists – Mogens Blicher Bjerregård - President

OUT OF SCOPE

For DG CNECT:[tbd]

For the Cabinet: GHO

Estimated duration of meeting: 30 minutes.

Agenda: Copyright.

Their Position

The European Federation of Journalists (EFJ) contributed to the public consultation on the review of the EU copyright legal framework, launched by the Commission from December 2013 to March 2014.

EFJ supports adequate measures to ensure that journalists are equitably remunerated for the use of their works. With regard to copyright, EFJ's main concern is the fair contractual arrangements between journalists and other players in the market (e.g. press publishers, broadcasters). EFJ considers that fair contractual conditions include the capacity of journalists, as authors, to exercise their rights in the digital environment as in the analogue world (e.g. fair remuneration, moral rights).

EFJ denounces what they see as unfair clauses in their contracts with newspapers (e.g. global transfer of rights, including digital rights, transfer for future uses, unknown forms of exploitation, no time-limit in contracts, etc.). Buy-out contracts (one-off payment in exchange of the transfer of all exclusive rights) seem to constitute general practice in this sector. Consequently, EFJ claims that journalists lose control over the use of their works and do not receive remuneration when they are reused on different formats, platforms or media.

According to them, the contractual position of authors should be improved by copyright law (e.g. to adopt certain protection measures for authors that cannot be waived by contract). EFJ has referred to the German Copyright Act as a good basis, since it lays down mechanisms to review the employment contract when the remuneration received by the author is unequitable.

Mogens Blicher Bjerregård recently stated that "copyright regulations are designed to promote creators' ability to protect their creative freedom, the integrity of their work, earn a living and the right to attribution".

Finally, EFJ has also shown its concerns regarding the current transfer of value taking place on the Internet, to the benefit of online intermediaries and to the detriment of the cultural and creative sector. Even though press publishers have been more vocal on the discussions around Member States' legislative initiatives on online news aggregators, journalists may also play an important role. However, EFJ's position on this is unclear. More revenues for press publishers for the exploitation of their publications by news aggregators would not necessarily entail an increase on the remuneration obtained by journalists.

Our Position

A copyright reform is essential for an efficient digital single market (DSM). The Commission understands the role of copyright in the cultural sector and believes that the DSM will bring benefits to all stakeholders.

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On a neighbouring right for press publishers:



Line to Take

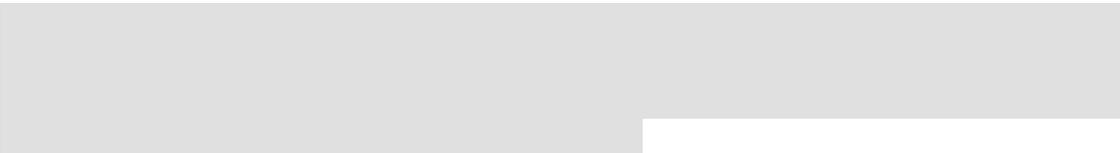
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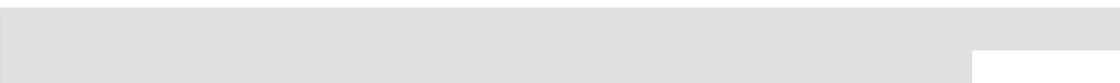
- One of the immediate priorities of the new Commission is to modernise copyright rules in the light of the digital revolution, new consumer behaviour and Europe's cultural diversity. This has been confirmed in the 2015 Commission work programme.
- If we want to create a true digital single market in Europe, modernising copyright is a prerequisite. At the same time we want to make sure that copyright remains a driver for creativity and investment.

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(Neighbouring right for press publishers – if raised by EFJ)

- It is important to create a regulatory framework which gives incentives to press publishers for investing into new products and content.
- We are closely observing the discussions and legislative interventions in the Member States, notably in Germany and Spain.

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Defensives

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Qu: What do you think about the laws in Germany and Spain on press publishers?

- The Commission is aware of the laws adopted by Germany and Spain.
- It will monitor the effects of such legislation in practice as well as its impact on the functioning of the digital single market.

- [Redacted]

Qu: Will the Commission include new provisions regarding press publishers and online news aggregators in its copyright reform?

- [Redacted]
- [Redacted]
- [Redacted]

Contact: [Redacted], Unit F5, [Redacted]

Background

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 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.

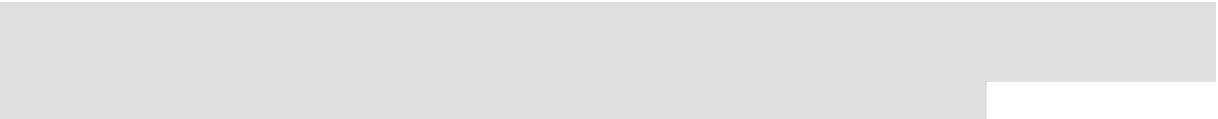
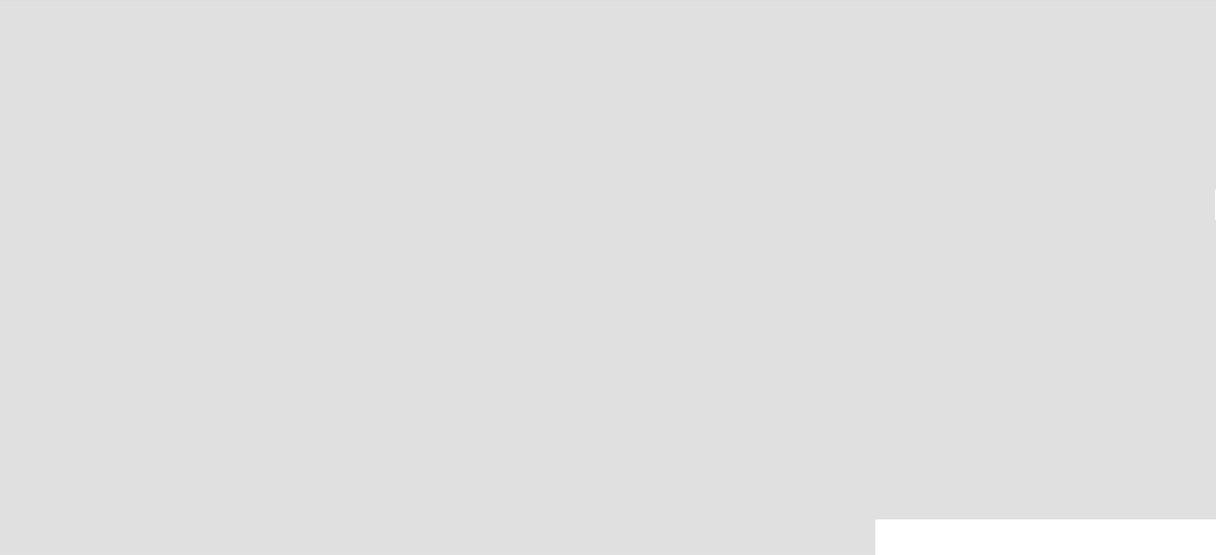
Furthermore, the Council Working Party had some exchanges of views during the Greek Presidency of the EU (first half of 2014). Discussions are also taking place in some Member States (e.g. DE, UK, ES, IE, AT, FI, SK, HR), either around national legislation reforms or the role of copyright and copyright 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.

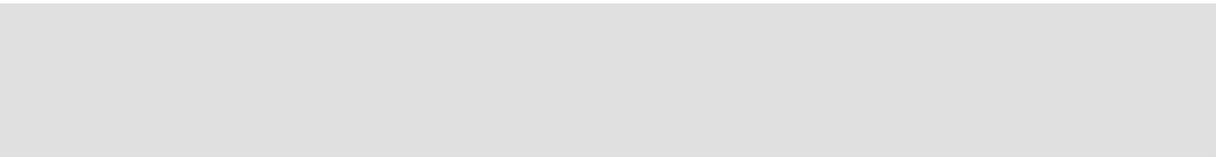
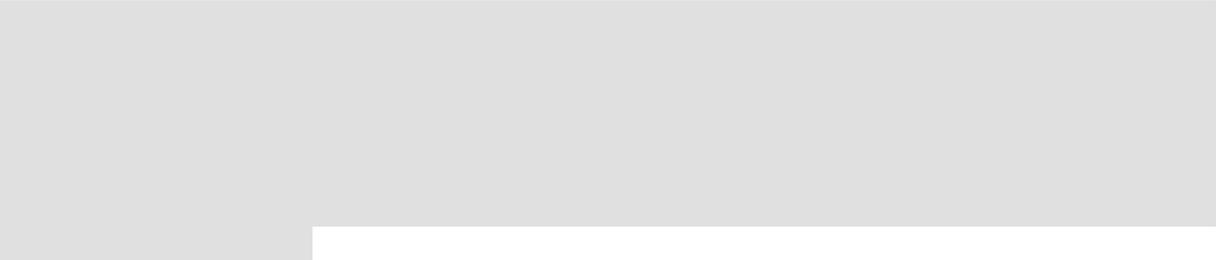
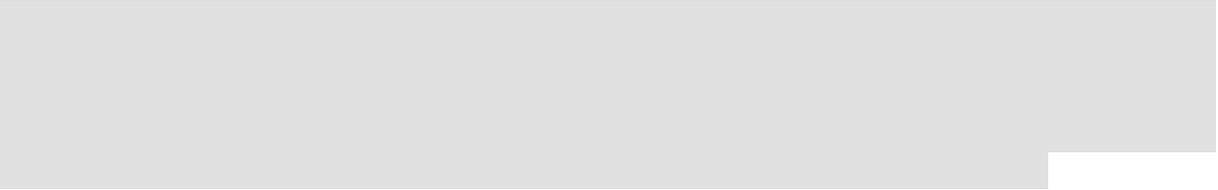
C. *Main positions of stakeholders, MEPs and Member States*

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. Member States' legislative initiatives related to news aggregators and Google:

As an online news aggregator, Google News offers internet users access to news published in the press, by providing, together with hyperlinks to pages or articles in different newspapers' websites, the headlines and the first lines of press articles. This has led to litigation in a number of Member States (notably in Belgium and France). In France Google reached an agreement with press publishers in 2013 (by establishing a 60 million-euro fund to support French press publishers). In reaction to this type of situation, two EU Member States (Germany and Spain) have put forward legislative initiatives to address press publishers' concerns on this issue.

Google has been critical to these legislative initiatives and claimed that his activity benefits press publishers by increasing the traffic in their websites.

The effectiveness of the German law (in force since August 2013) is still to be confirmed, since 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.

The new law in Spain 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.

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).