

## **Participation to CCIA and EDiMA's event "The Internet opportunity"**

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The discussion will focus on:

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- Copyright reform (in particular as regards "Ancillary Copyright")

**CCIA Position on Copyright**

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General position: CCIA supports robust and balanced copyright protection but they consider that "over-protection" can discourage innovation and threaten competition. In their view, protecting copyright does not mean protecting business models, nor should it threaten computer security, obstruct interoperability or undermine competition – particularly in industries entirely unrelated to piracy.

With regard to copyright and DSM: Interested in the exceptions and notably text and data mining. They advocate for US style fair use, although they realize that this is probably not realistic in the EU; Have concerns regarding the possible duty of care for internet intermediaries and regulation on platforms, which according to them may limit the internet potential.

CCIA Europe Vice President James Waterworth is quoted on CCIA website saying: "Platform regulation would hit European platform companies hardest given they grow here [...] A new 'duty of care' requiring Internet companies and telecoms firms to proactively monitor, judge and remove user or third party content on networks and hosting platforms could destabilise the delicate balance between freedom of speech, an open economy and security concerns."

### **EDiMA position on Copyright reform (November 2014)**

Main points include: Prioritise enforcement of Digital Single Market rules in relation to copyright; Balanced and modernised exceptions and limitations, with flexibility for Member States to take into account innovation; If harmonisation is chosen, it should be case by case where needed for the Single Market purposes; There should be no copyright on linking and browsing; Text and data mining should not be under copyright protection; Levies should be phased out across Europe and a concerted effort should be made to eliminate double payments resulting from the broken levies system.

### **Objective**

- Present the Commission's plans to complete the Digital Single Market, specifically as regards the future of the Audiovisual Media Services Directive and the Copyright reform.
- Get CCIA's and EDiMA's views on the process and substance of the upcoming initiatives above.

### **Line to take**

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### **Copyright reform**

- The Copyright modernisation is a clear priority for this Commission.
- The copyright reform will deal with targeted issues to ensure Single Market for copyright area. The Digital Single Market Strategy sets out our objectives for copyright reform.
- Portability of and cross-border access to online content will be an important element of the reform. An intervention in this area is needed because consumers are increasingly accessing content online, but still face problems when trying to access online content services across borders.
- We will also aim at improving legal certainty for certain types of use of content, for example for education and research, in particular text and data mining. We have to take into account the EU legal system and the legal traditions of Member States and focus on exceptions and limitations where most urgently needed for the Digital Single Market. Also, it is important to take into account existing market mechanisms to avoid upsetting market offers in cases where they can deliver better and faster than legislation. Generally, the ambition is to achieve a higher level of harmonisation in the area of exceptions, to improve the functioning of the DSM.
- We have to ensure a functioning online content market place, where the applicable rules are clear for different parties, and where right holders can exercise their rights under fair conditions. We need to clarify the rules applicable to online intermediaries with regard to the use of protected content.

- Finally, we intend to tackle commercial-scale copyright infringements and modernise the cross-border enforcement of copyright.

**Ancillary rights (if raised by your interlocutors)**

- We are aware of the requests coming from some publishers to legislate at EU level to introduce additional ("ancillary") rights covering the exploitation of publishers content online.
- We are observing the practical implementation of such systems which have recently been adopted in particular in Germany and in Spain. [REDACTED]  
[REDACTED]
- In particular, one has to take into account that all publishers, including press publishers, already enjoy the right to authorise the use of their publications.

- [REDACTED]  
[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

**Defensive points**

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***Will the Commission take action for copyright protection of newspaper publishers?***

- We are closely observing the discussions and legislative initiatives on ancillary rights in the Member States, notably in Germany and Spain. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

**Background notes**

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## Copyright reform

### Ancillary rights

Germany introduced a neighbouring right for press publishers in August 2013. The law grants newspaper publishers an exclusive right to authorise or prohibit the making available of press products or parts of press products online if done by commercial search engine operators or commercial news aggregation providers. Authors and journalists have a right to participate in a possible remuneration. So far, the new right has not resulted in any payments as publishers have granted a "free" licence to Google. Yahoo has challenged the constitutionality of the law. Publishers have started an arbitration proceeding to have a "tariff rate" approved.

Under Spanish law (adopted in November 2014), news aggregators do not need an authorisation from the relevant right holders to make news snippets available to the public. However, the use is subject to the payment by news aggregators of compensation to the publishers and authors of the original press articles. This compensation cannot be waived and is subject to mandatory collective management. In reaction to the law, Google has stopped Google News in Spain. The extent to which other (smaller) news aggregators are going to pay the compensation is not clear yet.

[REDACTED]

All publishers, including press publishers, already enjoy the right to authorise the use of their publications, either as authors (authors of "collective works", a legal fiction in place in some Member States), as holders of the rights (e.g. when the journalist are employees) or as licensees of the works created by journalists, photographers and other authors.

[REDACTED]

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