

**Meeting between the German Minister of Justice, Heiko Maas, and
Commissioner OETTINGER**

on 26/01/2015 at 12:30 in Berlin

OUT OF SCOPE

2) Copyright reform

Their Position:

- "Reform copyright taking into consideration a fair balance between users' interests and an appropriate remuneration for creators; it should be ensured that dominant search engines do not use "unauthorised original content of third parties' websites" (see Letter to the European Commission of 13 November 2014, signed by the Ministries for Justice and Consumer Affairs, Home Affairs, Economy and Transports).
- Heiko Maas argued in a speech in June 2014 that Google took an unfair advantage of its market position to the detriment of German press publishers⁹: *„Es kann nicht sein, dass Internet-Giganten ihre Marktmacht missbrauchen, um sich auf Kosten deutscher Verlage zu bereichern. Das ist nicht gerecht, das ist nicht fair! Wenn man sich die Markteteiligung von 95 Prozent anschaut, dann ist einleuchtend, dass Sigmar Gabriel auch das Kartellrecht bemühen möchte.“*

Our Position:

- A copyright reform is essential for an efficient digital single market. A European digital single market should strengthen the European industry on an international scale.

II. Line to Take

- Obwohl der Europäische Rat gefordert hat, den digitalen Binnenmarkt bis 2015 zu vollenden, ist dies bisher in Europa noch nicht geschehen.
- Infolgedessen gerät Europa beim globalen Wandel in Richtung Internetwirtschaft ins Hintertreffen und büßt so Wettbewerbsfähigkeit, Wachstum und Arbeitsplätze ein. Präsident Juncker hat unmissverständlich zum Ausdruck gebracht, dass dies nicht länger hinnehmbar ist. Folglich müssen wir jetzt handeln, um einen solchen digitalen Binnenmarkt zu schaffen.
- Im digitalen Binnenmarkt
 - können Verbraucher ohne Weiteres und über Grenzen hinweg online einkaufen, haben unabhängig vom Aufenthaltsort in der EU Zugang zu (öffentlichen und privaten) digitalen Diensten, können ihre rechtmäßig erworbenen Inhalte auch in anderen Ländern nutzen und auf andere Endgeräte übertragen, vernetzte Objekte und Apps nutzen und sich darauf verlassen, dass Websites und Online-Dienste in anderen Mitgliedstaaten ebenso zuverlässig

sind wie in ihrem eigenen Land, weil ihre personenbezogenen Daten gut geschützt werden;

- ist es für Unternehmen nicht aufwändiger, ihre Produkte und Dienstleistungen in anderen Mitgliedstaaten anzubieten und bereitzustellen, und sie können online unter gleichen Ausgangsbedingungen auf der Grundlage eines klaren Rechtsrahmens am Wettbewerb teilnehmen.
- Folglich müssen wir die Haupthindernisse angehen, die wir im Zuge unserer gründlichen Vorarbeiten ermittelt haben:
 - regulatorische Fragmentierung in einer Reihe von Bereichen, darunter Urheberrecht, elektronischer Geschäftsverkehr, Datensicherheit, Datenschutz und Steuern;
 - territoriale Beschränkungen auf der Grundlage von Geoblocking.

Speaking points

- Eine der Prioritäten der neuen Kommission wird die Modernisierung des Urheberrechts sein, insbesondere im Hinblick auf die digitale Revolution, das veränderte Verbraucherverhalten sowie die kulturelle Vielfalt Europas.
- Kreative Inhalte sind wesentlich für nachhaltige digitale Ökosysteme. Der Rechtsrahmen muss eine angemessene Vergütung für Autoren und ausübende Künstler gewährleisten.
- Die dieses Jahr verabschiedete Richtlinie zur kollektiven Wahrnehmung ist ein erster Schritt. Sie dient insbesondere dazu, die kollektive Verwertung zugunsten von Urhebern effizienter und transparenter zu gestalten.
- Gleichzeitig sollen die europäischen Verbraucher, digitale Start-up-Unternehmen, Hochschulen und Einrichtungen des kulturellen Erbes in die Lage versetzt werden, die Chancen des digitalen Zeitalters auszuschöpfen.
- Ich bin der Überzeugung, dass die Interessen von Rechteinhabern und von Nutzern miteinander vereinbar sind – die Schaffung eines digitalen Binnenmarktes kann dazu beitragen, sie in Einklang zu bringen.

III. Defensives

End of October, you were quoted in the German newspaper Handelsblatt that you 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.

How will you deliver on Mr Juncker's request that ambitious legislative steps are taken on copyright in the first six months of your mandate?

The reform of copyright rules will not start from scratch.

Some very concrete steps have already been taken during this Commission's mandate, including on multi-territorial licensing with the Collective Rights Management Directive.

Furthermore, already completed economic and legal studies, a stakeholder dialogue on licencing ("Licences for Europe"), and a very broad public consultation .

This will allow us to take informed decisions quickly, so that action can be taken rapidly in keeping with the President's guidelines.

Is copyright reform necessary? Won't it 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.

IV. BACKGROUND

A. EU COPYRIGHT POLICY – STATE OF PLAY

1. 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.

2. 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.

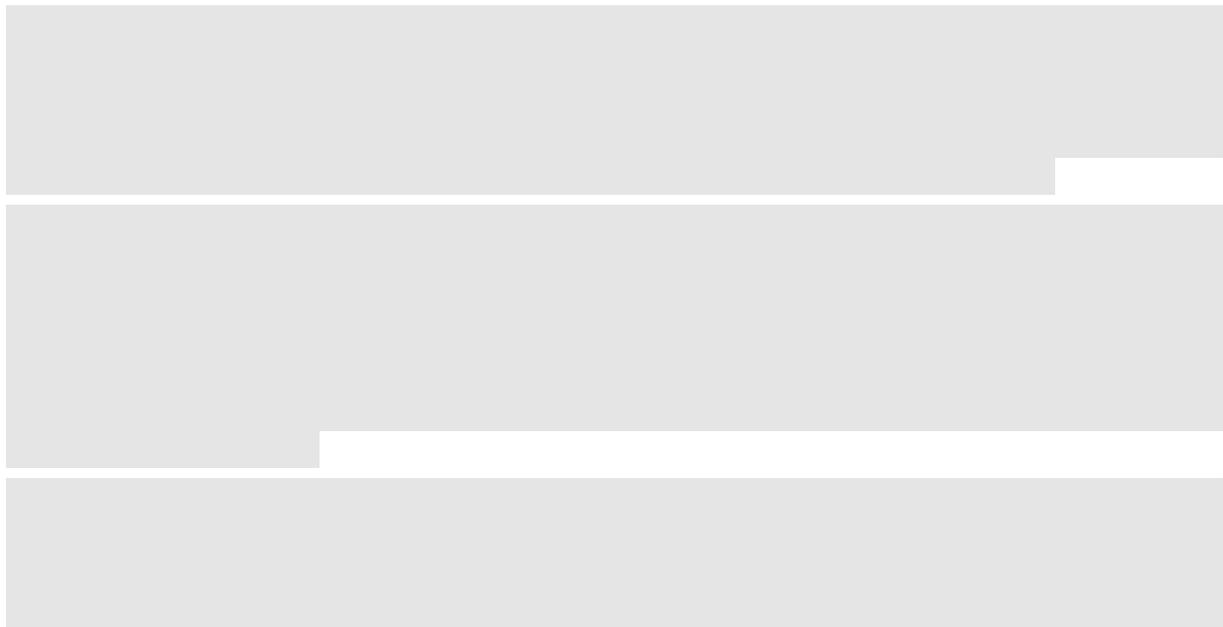
In the European Parliament, MEP Pavel Svoboda (EPP, CZ), the new chair of the JURI Committee (which traditionally has copyright in its competences) has set up an inter-group on copyright, while the only Pirate Party MEP, Julia Reda (Greens/EFA, DE) was appointed rapporteur on an own-initiative report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

3. 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.



4. Possible ways ahead and possible timelines





B. GERMAN NEIGHBOURING RIGHT FOR PRESS PUBLISHERS:

Germany has introduced a neighbouring right for press publishers, in force since August 2013. Its effectiveness remains unclear. Only certain publishers have chosen to claim their exclusive right against news aggregators. VG Media, the collecting society tasked with collecting the remuneration on the basis of the ancillary right, filed a complaint against Google with the Federal Competition Authority. In August 2014, the complaint was dismissed on grounds of inadmissibility. Also in August 2014, Yahoo News filed a constitutional complaint against the law with the Federal Constitutional Court. Meanwhile, Google News has recently announced that it will not aggregate news snippets from those press publishers who want to exercise the new neighbouring right.

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.

C. SUMMARY: LETTER OF THE GERMAN MINISTRY OF JUSTICE AND CONSUMER AFFAIRS TO THE EUROPEAN COMMISSION, 13 NOVEMBER 2014

Copyright

Copyright should strike a fair balance between the interests of users and right owners, creators. We should examine the need to reform Directive 2001/29/EC. Contractual solutions remain important but will not solve all problems.

Market regulation

Competition law: it should be ensured that dominant search engines do not favour own services, do not use "unauthorised original content of third parties' websites", do not force websites to acquire advertising to a large extent, do not limit the transferability of content on competing platforms.

It should be examined whether there is the need for a self-standing regulation on internet platforms to prevent abuses of dominant positions.

¹⁰ 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).

We should try agreeing on common principles regarding net neutrality. The Commission could for example start working on a Green Paper.

It should be examined whether the merger regulation should be reformed in order to address cases such as the acquisition of WhatsApp by Facebook (19 bn USD acquisition, but turn over below the regulation's threshold).

We support a strict application of state aid rules and a minimum harmonisation of corporate tax rates.

Trust and security/consumer protection

The negotiations on the proposed data protection regulation should continue. We should however make sure that it better addresses the challenges of Big data services.

In principle, we support the "right to be forgotten" and the "right of data portability" included in the proposal.

Infrastructure and funding

Infrastructure: we support the 300 bn EUR programme of the Juncker Commission. An important part should be spent on digital infrastructure.

We should do more for risk financing (500 m facility to be created at the EIB); promote "Industry 4.0" (= linking of manufacturing and IT); promote funding for cloud computing, smart home, smart services, IT and data security, big data.

We call on the Commission to take measures promoting good working conditions in the digital age.

Contact: [REDACTED], [REDACTED] (F.5)

Attachment:

Letter of German Ministries to the European Commission, 13 November 2013 (in German, see Background document in BASIS 4402)