

Meeting between Michael Hager and Parliamentary State Secretary Kelber and State Secretary Billen (German Ministry of Justice and Consumer Affairs)

20 January 2015 at 10:45, CAB room

I. Scene setter

For the German Ministry of Justice and Consumer Affairs (Bundesministerium der Justiz und für Verbraucherschutz – BMJV):

Ulrich Kelber, Parlamentarischer Staatssekretär BMJV, CV siehe Background



Gerd Billen, Staatssekretär BMJV, CV siehe Background



For DG CONNECT: n.a.

For the Cabinet: Michael Hager

Estimated duration: 45 minutes

Agenda: Copyright

Objective: Engaging with the German Ministry of Justice and Consumer Affairs about the copyright reform

Their Position:

- Reform des Urheberrechts unter Berücksichtigung eines fairen Gleichgewichts zwischen den Interessen der Nutzer und einer angemessenen Vergütung für Urheber; es sollte sichergestellt werden, dass ein marktbeherrschender Suchmaschinenanbieter nicht „unautorisiert Originalinhalte von Webseiten Dritter zu verwenden“ (siehe Schreiben der Bundesminister der Justiz und für Verbraucherschutz, des Innern, für Wirtschaft und Energie und für Verkehr und digitale Infrastruktur vom 13. November 2014 an Vizepräsident Ansip, Kommissar Oettinger, Kommissarin Jourová und Kommissarin Vestager).

Our Position:

- Eine Reform des Urheberrechts ist von grundlegender Bedeutung für einen funktionierenden digitalen Binnenmarkt. Ein europäischer digitaler Binnenmarkt sollte die europäische Industrie auf der internationalen Bühne stärken.

Line to Take:

OUT OF SCOPE

II. Speaking points

Urheberrecht

- 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-ups, Hochschulen und Einrichtungen im Bereich des kulturellen Erbes in die Lage versetzt werden, die Chancen des digitalen Zeitalters voll 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.

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.

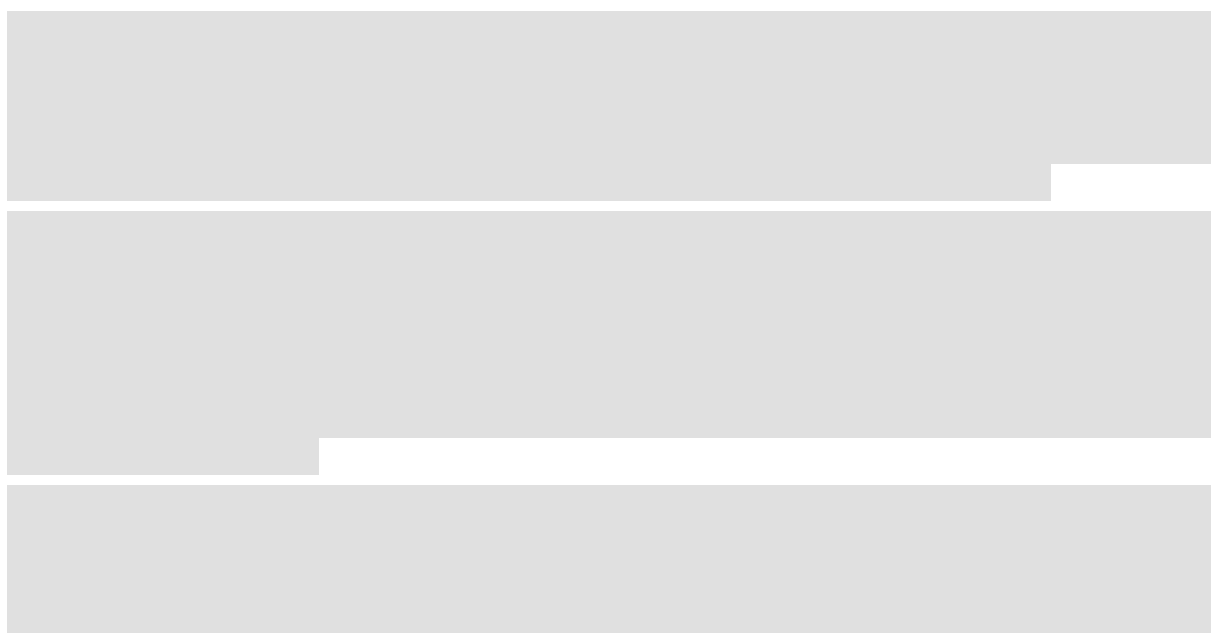
In the European Parliament, MEP Pavel Svoboda (EPP, CZ), the new chair of the JURI Committee (which traditionally has copyright in its competences) has set up an inter-group on copyright, while the only Pirate Party MEP, Julia Reda (Greens/EFA, DE) was appointed rapporteur on an own-initiative report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

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).

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 (German)

Ulrich Kelber, Parlamentarischer Staatssekretär, BMJV



ZUR PERSON

Ulrich Kelber ist seit 2000 Bundestagsabgeordneter und vertritt als direkt gewählter Abgeordneter seine Heimatstadt Bonn im Deutschen Bundestag. Er ist verheiratet und hat fünf Kinder. Der Dipl.-Informatiker arbeitete nach seinem Studium zunächst am Forschungszentrum Informationstechnik im GMD (heute Teil des Fraunhofer-Instituts), danach als Wissensmanagement-Berater bei einem mittelständischen Software-Haus.

Er war von 2005 bis 2013 stellvertretender Vorsitzender der SPD-Bundestagsfraktion und koordinierte die Politikbereiche Verbraucherschutz, Ernährung und Landwirtschaft, Umwelt, Naturschutz und Reaktorsicherheit sowie Nachhaltigkeit.

Seit Mitte Dezember 2013 ist er Parlamentarischer Staatssekretär beim Bundesminister der Justiz und für Verbraucherschutz mit dem Arbeitsschwerpunkt Verbraucherschutz.

Gerd Billen, Staatssekretär, BMJV

Zur Person	
Geboren am 13. März 1955 in Speicher in der Eifel. Verheiratet, drei Töchter	
Ausbildung und beruflicher Werdegang	
seit 2013	Staatssekretär im Bundesministerium der Justiz und für Verbraucherschutz
2007 - 2013	Vorstand des Verbraucherzentrale Bundesverbands
2005 - 2007	Leiter des Bereichs Umwelt- und Gesellschaftspolitik der Otto Group
1993 - 2005	Bundesgeschäftsführer des Naturschutzbunds Deutschland NABU
1989 - 1991	Bundvorsitzender und Mitbegründer von Neuland-Fleisch
1985 - 1992	Bundvorsitzender und Mitbegründer der Verbraucher Initiative e.V.
1983 - 1985	Pressesprecher des Bundesverbands Bürgerinitiativen Umweltschutz
1981 - 1983	Freier Journalist
1973 - 1979	Studium der Sozial-, Ernährungs- und Haushaltswissenschaften an der Rheinischen Friedrich-Wilhelms-Universität Bonn