



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

The Director General

Brussels,
CONNECT/I2/VD/ml (2016)6389052

*By registered letter with
acknowledgment of receipt:*

Brussels,

Mr Andreas PAVLOU
ALTER-EU, Mundo B
Rue d'Edimbourg 26
1050 Brussels
BELGIUM

Advance copy by email:

[ask+request-3249-
xxxxxxx@xxxxxxx.xxx](mailto:ask+request-3249-xxxxxxx@xxxxxxx.xxx)

Subject: Your application for access to documents – Ref GestDem No 2016/4774

Dear Mr Pavlou,

I refer to your e-mail dated 30/08/2016 wherein you make a request for access to documents, registered on the same day under the above mentioned reference number. I also refer to my holding reply of 05/09/2016 concerning the extension of the deadline.

Your application concerns: *"documents which contain the following information*

- any record/minutes of meetings between DG Connect officials/representatives [1] and any interest representatives [2] on the topic of the EU Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (the 'CRM Directive').

- any emails or other correspondence between DG Connect officials/representatives and all interest representatives [2] on the topic of the EU Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (the 'CRM Directive'),

[1] excluding the European Commissioner, his Cabinet and the Director-General

[2] including companies, consultancies and law firms, trade/business/professional associations, think tanks and NGOs. "

I consider your request to cover documents held by the Commission up to the date of your initial application, i.e. 30/08/2016.

Documents contained in Annex I

Annex I contains a series of documents and extracts which fall under the scope of your request. After examining them under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents I have come to the conclusion that they may be partially disclosed.

Certain parts of the documents have been blanked out as I believe their disclosure is prevented by the exception to the right of access laid down in Article 4 of the above Regulation:

1) With the exception of document 13 (see below (2)) all expunged parts of the documents contain **personal data** the disclosure of which would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable². According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

2) The expunged parts in document 13 contain, in addition to personal data (see above (1)), **commercially sensitive business information** of the company that submitted it. Disclosure of these parts would undermine the protection of their commercial interests (first indent of Article 4(2) of Regulation 1049/2001).

¹ Official Journal L 8, 12.1.2001, p. 1.

² Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

Documents contained in Annex II

Annex II contains documents and letters that originate from third parties. In accordance with Article 4(4) of Regulation 1049/2001, we are still in the process of consulting the senders of these documents. Based on their answer and after assessing whether an exception is applicable, we may be able to grant you access to them. You will receive a reply to this part of your request as soon as possible.

Documents contained in Annex III

Annex III includes documents, the disclosure of which cannot be granted as exceptions to the right of access laid down in Article 4 of Regulation 1049/2001 apply.

Some of the documents (5-6) are correspondence exchanged between the Commission and third parties regarding ongoing complaints officially registered by the Commission ("CHAP"). These are covered by the exception relating to the protection of the purpose of investigations provided for in Article 4(2) of Regulation 1049/2001 and access is therefore refused on that basis. I consider that the disclosure of these documents would jeopardize the objectives of the investigation.

Other documents (1-4) constitute letter of complaints which, after a case by case analysis, I consider cannot be disclosed at this stage since they refer to information which might lead to infringement procedures in the future. In this sense, we believe that their disclosure would risk jeopardizing a new investigation under way.

I have examined the possibility of granting partial access to these documents in accordance with Article 4(6) of Regulation (EC) No 1049/2001. However, partial access is not possible considering that the documents concerned are covered in their entirety by the exceptions under first and third indent respectively of Article 4(2) of Regulation (EC) No 1049/2001.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

Having considered this, I have concluded that the public interest in making the entirety of the content of the documents public does not outweigh the harm that their disclosure would cause to the interests protected by the invoked exceptions.

The larger debate regarding the copyright framework, including the matters related to the collective management of rights, is public. The European Commission participates on a regular basis in public debates, conferences, discussions with the Members of the European Parliament and replies to citizens' questions as well as to oral and written questions from the European Parliament. I therefore take the view that there is the required transparency at this stage to meet the public interest in this debate.

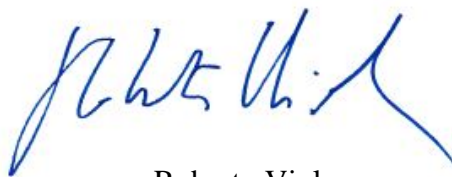
Moreover, I consider that in this case the public interest is better served by protecting the purpose of the on-going investigations or further potential ones. In particular, the public interest to reach conformity by the Member States concerned with EU law requires maintaining an atmosphere of mutual trust between the Commission and the Member States.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Roberto Viola', is positioned above the printed name and title.

Roberto Viola
Director-General

Contact: CNECT-I2@ec.europa.eu

Enclosures (3) :

Annex I
Annex II
Annex III