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On content in the Digital Single Market

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1. Introduction

The digital economy has been a major driver of growth in the past two decades, and is expected to grow seven times faster than overall EU GDP in coming years. Online there are new ways of providing, creating and distributing content, and new ways to generate value. The emergence of new business models capitalising on the potential of the internet to deliver content represents a challenge and an opportunity for the creative industries, authors and artists as well as for the other actors in the digital economy. Against this backdrop, one of the Commission's objectives is to ensure that copyright and copyright-related practices, such as licensing, stay fit for purpose in this new digital context.

In 2010, in its Digital Agenda for Europe,¹ the Commission endeavoured to open up access to content as part of its strategy to achieve a vibrant Digital Single Market and identified a number of actions in the field of copyright. In 2011, in its Intellectual Property Strategy "A Single Market for Intellectual Property Rights"², the Commission recognised the strategic importance of copyright for the development of the Digital Single Market. The Strategy sought to develop solutions targeted and designed to address specific obstacles with the most appropriate tools available, be they commercial or contractual solutions, technology-based solutions, or legislative intervention.

Against this background, the Commission has already taken a number of actions, including new legislation on orphan works and a pending legislative proposal on collective management; a contractually-based solution in the form of the Memoranda of Understanding on out of print books, and access to works by the Visually Impaired; and support for the development of technological solutions. The Commission has also published a call under the CIP-ICT Policy Support Programme 2012, on 'European Rights Information Management'.

In the Compact for Growth and Jobs in June 2012 the Heads of State or Government underlined, among other measures needed to achieve a well-functioning Digital Single Market by 2015, the importance of modernising Europe's copyright regime and facilitating licensing, while ensuring a high level of protection of intellectual property rights and taking into account cultural diversity.

Whilst good progress has been made in delivering the copyright-related actions identified in the Digital Agenda and the Intellectual Property Strategy, there remains work to be done to ensure an effective single market in the area of copyright.

The Commission will therefore work on two parallel tracks of action. On the one hand, it will complete its on-going effort to review and to modernise the EU copyright legislative framework.

¹ COM (2010) 245 final/2

² COM(2011) 287 final

In parallel, the Commission will set out to address a number of issues on which rapid progress is necessary and possible. Thus, a structured stakeholder dialogue will be launched by the Commission, with the assigned objective of delivering by the end of 2013 practical industry-led solutions to these issues, without prejudice to further public policy action, including legislative reform, as appropriate. Under the name of "Licensing Europe", this process will seek to tap the potential and explore the possible limits of innovative licensing and technological solutions in making EU copyright law and practice fit for the digital age.

2. Structured stakeholder dialogue

"Licensing Europe" will comprise four parallel work strands, tasked with delivering effective market-led solutions, without prejudging the possible need for public policy action. For this reason, the participants will be hands-on representatives of rights holders, licensing bodies, commercial and non-commercial users of protected content, as well as internet end-users. The process will be launched at an initial plenary meeting beginning 2013, and working groups will be established to take forward work and report back to the plenary at mid-term (June) and finally in the fourth quarter of 2013. The process will cover the issues as set out below. The specific detail for the work on each them should be considered indicative.

(i) Cross-border access and the portability of services

The Commission's objective is to foster cross-border on-line access and "portability" across borders of content. To benefit from new developments, like cloud-computing, cross-border legal access to cloud-stored content and services should also be facilitated. Service providers interested in providing their services to consumers across the EU need to ensure that they have secured all the necessary rights in the Member State in which they wish to provide services. Both multi-territory and single territory licensing is possible, depending on the sector, the service provider and the rights holder. However, distribution of content is often limited to one or a few Member States (e.g. using geo-blocking), with service providers (online platforms) or rights holders electing to impose cross-border sales restrictions.

- This work strand should identify the main categories of restrictions on cross-border access and portability by sector (taking into account some aspects of the consultation responses to the 2011 Green Paper on the online distribution of audiovisual works in the EU) and the main reasons behind these restrictions. On this basis it should take stock of current industry initiatives and deliver practical solutions to promote multi-territory access.

(ii) User-generated content and licensing for small-scale users of protected material

The Commission's objective is to foster transparency and ensure that end-users have greater clarity on legitimate and non-legitimate uses of protected material, and easier access to legitimate solutions. Content generated by users themselves is often covered by some form of licensing by rights holders, in partnership with certain platforms. However the scale and coverage of such licences is not transparent to the end user. Furthermore, such arrangements create rights and obligations for the contractual partners, but do not necessarily provide legal certainty to the end-users. In parallel, small-scale users of content, such as small companies who wish to use some images or music in their websites, struggle to identify how to acquire licences for low value uses of protected content.

- This work strand should identify the extent to which user-generated content is licensed to relevant platforms, and identify how to ensure that end-users are informed about what is legal and illicit use on the internet.
- It should seek to ensure that end users benefit from easier access to, and greater clarity on what are the legitimate and non legitimate uses of protected material. To that effect, it should identify the range and extent of "one-click" licensing initiatives in the EU, deliver solutions to extend the development and interconnection of such initiatives and explore the appropriateness of licensing or appropriate terms – e.g. the possibility of free licenses.

(iii) Audiovisual sector and cultural heritage institutions

The Commission's objective is to facilitate the deposit and online accessibility of films in the EU both for commercial purposes and non-commercial cultural and educational uses. It remains difficult for online service providers to develop catalogues of European films for online availability, particularly those which are "out-of-distribution" i.e. works whose rights holders are unwilling or unable to exploit on an individual basis: it may be difficult to identify the existence of films, or the rights may be complex and time-consuming to clear. Film Heritage Institutions also consider that the current situation in some Member States does not allow them to fulfil their public interest mission.

- This work strand should identify successful collaborative solutions to improve the discoverability and the making available online of audiovisual works, particularly those which are out of distribution on a voluntary basis. It should deliver concrete solutions to spread best practice approaches throughout the EU both for commercial and non-commercial uses.
- Recommendations should be made on how to ensure that Member States provide adequate scope in a practical manner for cultural heritage institutions to 'reproduce' or 'format shift' archived material in order to digitise for preservation purposes.

(iv) Text and data mining

The Commission's objective is to promote the efficient use of text and data mining (TDM) for scientific research purposes. TDM currently requires contractual agreements between users (e.g. typically research institutions) and rights holders (e.g. publishers of scientific journals) to establish the modalities for technical access to the relevant data sets.

- This work strand should identify the scale of demand for TDM access at EU level for text mining of scientific publications and underlying data for research purposes, and appropriate means of meeting this demand. It should explore the potential and possible limits of standard licensing models, as well as assess the appropriateness and feasibility of technology platforms to facilitate TDM access.

In addition to these areas, during 2012 the issue of **private copying levies** has been the subject of an industry mediation process, fostered by the Commission and led by former Commissioner António Vitorino. Mr. Vitorino is expected to deliver a report on this issue at the beginning of next year, including a number of recommendations. On this basis the Commission will draw conclusions as to appropriate follow-up actions for the specific recommendations, including the further involvement of stakeholders to contribute to the finding of future-proof and internal market friendly solutions.

3. Review of the copyright framework

In parallel the Commission will complete its on-going review of the EU copyright framework, based on market studies and impact assessment and legal drafting work, with a view to a decision in 2014 whether to table the resulting legislative reform proposals. The following elements will be addressed: territoriality in the Internal Market; harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform.

4. Conclusion

Over the next two years the Commission will continue to work for a modern copyright framework that remains fit for purpose and seeks to foster innovative market practices in order to guarantee effective recognition and remuneration of rights holders; to provide sustainable incentives for creativity, cultural diversity and innovation; to increase the choice of and open up access to legal offers by end users; to allow new business models to emerge; and to more effectively contribute to combating illegal offers and piracy.

The Commission is confident that the stakeholder dialogue can work as an incubator for innovative win-win solutions for all stakeholders. Such solutions are vital for driving forward the Digital Single Market and EU cultural policy and complement work on-going in the implementation of the Digital Agenda, the modernisation of copyright in the single market, or the successful implementation of the MEDIA and Culture programmes.