

# EC copyright directive

## Analysis

ECSCA General Assembly – Autumn Session 2016,  
Ljubljana

# What is proposed?

- 3 new exceptions (teaching, heritage and text & data mining)
- measures to widen access to content (OoC, negotiation Mech. For AV)
- Provisions to reduce the ,value gap' (related rights for press publishers, some clarification on online platforms, fair remuneration in contracts)

## *Exceptions to exclusive rights (title 2)*

- Use of works for digital and **cross-border teaching activities** – non-commercial; 2 conditions:
  - Illustration must take place on premise of education establishment (secure website) accessible only by pupils & staff
  - Indication of the source (authors' name)
  - Fair compensation for right holders for the harm (CMOs?)
- **Text and data mining** (non-commercial) by research org. for scientific research to works to which they have lawful access

- Exception for preservation of **cultural heritage** (article 5)
  - Permission to make copies of a work that is permanently located in the collection of a cultural heritage institution for the sole purpose of preservation (visual arts etc.)
- No UGC, no freedom of panorama, no fair use.....

## *Wider access to content (title 3)*

- **Use of out of commerce (OOC) works by cultural heritage institutions**
  - Mostly for AV works
  - draft defines OoC as *“works which are in all its versions (translations, adoptions etc.) not available to the public through customary channels”*
  - Where CMO has an agreement with an cultural heritage institutions – extended collective licensing shall apply for same categories of rights
- **Access to A-V works on on-demand platforms**
  - Negotiation mechanisms & regulation

# *Well-functioning market for copyright (title 4 – Chapter 1)*

- Press publishers protection (Article 11)
  - New related (neighbouring) right
  - Term: 20y from publication
  - Exclusive rights: Article 2 and 3(2) of Infosoc Directive
- Claims for fair compensation (Article 12)
  - Transfer of rights constitutes sufficient legal basis for publishers to claim a share of compensation for use of works under exceptions (private copying levy)

# *Well-functioning market for copyright (title 4 – Chapter 2)*

## Certain use of protected content by online services

- Article 13 + Recitals 37, **38**, 39
- Recital 38 clarifies that ISPs which provide access to works to the public and going beyond the mere provision of physical facilities are performing an act of communication to the public
  - however only if ISP is not eligible for article 14 ECD

Recital 38 clarifies further:

- When assessing whether article 14 ECD is applicable it is necessary to verify whether the ISP plays an active role including by optimizing the presentation and irrespective of the nature of the means used therefor.
- Thus: if article 14 ECD not applicable, ISPs must have a licensing agreement with right rightholder as the ISP is engaging in an act of communication to the public



- If art. 14 ECD is applicable, **Article 13 imposes a new obligation**, but only to services which provide access to „**large amounts of works**“
- Ensure the functioning of agreements with right holders in order to have ID tools to identify works and other content matters (to facilitate notice and take/(stay?) down)

*Well-functioning market for copyright (title 4 –  
Chapter 3)*

Fair remuneration in contracts of authors and  
performers

- „transparency triangle“ containing 3 articles and 3 accompanying recitals
- Article 14: transparency obligation
- Article 15: contract adjustment mechanism
- Article 16: dispute resolution mechanism

# Transparency obligation (Article 14)

- Authors and performers must receive on a regular basis timely, adequate and sufficient information on the exploitation of their works (...) from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due

# Transparency obligation (Article 14)

- Regular basis timely: at least once a year
- Modes of exploitation & revenues generated
  - broad wording (incl. equity shares, advance payments and any forms of indirect licensing activities)
- Remuneration due
  - In relation to the modes of exploitation & revenues generated
- Reporting obligation also for successors in title

# 2 exceptions added to the original concept:

- Proportionality with regards to the „overall work or performance“
    - Performers displayed a few seconds, musician providing minor contribution
    - News paper edition / published edition?
  - Proportionality with regards to the administrative burden in comparison to the revenues generated
- + Sector specificities must be also taken into account in implementation

# Contract adjustment mechanism (Article 15)

- Authors are entitled to request additional, appropriate remuneration when the originally agreed one is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.

# Dispute resolution mechanism (Article 16)

- Disputes concerning articles 14 and 15 may be submitted to a voluntary resolution procedure
  - Collective representation / action?
  - Unions / associations on behalf of individual members?

# Transparency triangle – elements to improve:

- Reporting obligation must include „subsequent transferees“ in Article 14
- „relevant“ before renues must be deleted in Article 15
- Article 15 must work retro-actively from transposition of directive
- Recitals must be strengthened, including collective bargaining



# Next steps:

- Proposals discussed in the Parliament and Council
- Aim of final agreement among the co-legislators first half of 2018
- Stakeholder reactions?

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## **European Commission copyright proposal is a good first step**

14th September 2016



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## Draft Directive on Copyright in the Digital Single Market: a lost opportunity

Published on [September 14, 2016](#)

**Press Release | Brussels, 14 September 2016**

**Draft Directive on Copyright in the Digital Single Market is a lost opportunity to make a real difference for Europe's performers**

Performers (actors, dancers, musicians...) in Europe stand united to express their disappointment today with respect to the very limited ambitions of the [European Commission's proposal for a Directive](#) on "Copyright in the Digital Single Market".[...] [Read more](#)





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## Copyright package: Progress undermined by failure to strengthen rights of authors

**The wide-reaching copyright package presented today by the European Commission is met with a mixed reaction by SAA. Beyond these first steps to support authors, SAA calls for greater ambition at EU level for screenwriters and directors.**



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14 Sep 2016

## Press Release: New copyright directive fails at every level

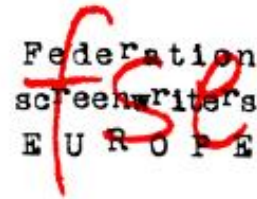
By Guillermo Peris

The European Commission has proposed a Copyright Directive that could not conceivably

The retrograde [copyright reform plans](#) Commissioner Oettinger presented today spell disaster for the internet. Oettinger has let copyright reform be [hijacked by corporate interests](#) and turned a blind eye to the needs of artists and users. This attempt to remake

- **Wikimedia** – In an attempt to modernize copyright laws, the European Commission forgets about users
- **Openforum Europe** – New EU copyright does not support an open Internet
- **EDiMA** – European Commission copyright proposals not fit for the digital age [PDF]
- **CCIA** – European Commission releases Copyright and Telecom rules: end of Europe's digital single market ambitions?
- **IFLA** – European Copyright Proposals: Libraries and Cultural Heritage Institutions Respond
- **VZBV** – Große Enttäuschung über die Vorschläge zum europäischen Urheberrecht
- **BEUC** – EU modest in opening up online content market to consumers
- **LIBER** – A Strong Rationale Needs Strong Resolve – LIBER Responds to the Commission Copyright Proposal
- **COMMUNIA** – Europeans deserve a better copyright reform
- **DIGITALEUROPE** – Copyright reform misses an opportunity to adapt European rules to the digital age [PDF]
- **EuroISPA** – European Commission copyright proposal risks turning back the clock on Digital Single Market





## ***The Authors' Group welcomes the directive....***

However, authors need further mechanisms against unfair [copyright] contracts and the undersigning organizations are looking forward to working with the European Parliament and Council in this respect.

The Authors' Group also welcomes the provisions of the directive clarifying the liability of online platforms but considers that substantial work remains to be done with regards to proportionate remuneration of authors, particularly for the online exploitation of their works.

# Commission sides with artists over tech giants in radical reforms

Juncker 'is completely out of touch with how the internet works,' said MEP Julia Reda.

## Reform des EU-Urheberrechts: „Völlig jenseits von Gut und Böse“

SPIEGEL ONLINE - 01.09.2016

Die EU bekommt ein neues Urheberrecht. Was langweilig klingt, könnte das Internet stark verändern. Die Piratin Julia Reda erklärt, welche Einschränkungen normalen Nutzern drohen könnten. mehr...



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By Chris Johnston  
Business reporter

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