Copyright in the digital single market

2016/0280(COD) - 14/09/2016 - Legislative proposal

PURPOSE: to modernise certain aspects of the Union copyright framework to take account of technological developments and new channels of distribution of protected content in the internal market

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with Council.

BACKGROUND: rapid technological developments continue to transform the way works and other subject-matter are created, produced, distributed and exploited. New business models and new actors continue to emerge. The objectives and the principles laid down by the Union copyright framework remain sound. However, **legal uncertainty remains, for both rightholders and users,** as regards certain uses, including cross-border uses, of works and other subject matter in the digital environment. As set out in the Commission communication entitled 'Towards a modern, more European copyright framework', in some areas it is necessary to **adapt and supplement the current Union copyright framework** to ensure that the internal market does not fragment.

In this context, the Commission has identified **three areas of intervention with the aim of modernising the exceptions and limitations on copyright**: (i) digital and cross-border uses in the field of education, (ii) text and data mining in the field of scientific research, and (iii) preservation of cultural heritage. The objective is to guarantee the legality of certain types of uses in these fields, including across borders.

Evolution of digital technologies has reinforced the **role of the Internet** as the main marketplace for the distribution and access to copyright-protected content. In this new framework, rightholders face difficulties when seeking to license their rights and be remunerated for the online distribution of their works.

Accordingly, it is necessary to provide for **measures aiming at improving the position of rightholders** to negotiate and be remunerated for the exploitation of their content by online services giving access to user-uploaded content. A fair sharing of value is also necessary to ensure the sustainability of the **press publications sector.**

This proposal is presented in parallel with :

- a proposal for a regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes;
- a proposal for a regulation and a directive to implement the Marrakech treaty in order to improve access to format copies of certain works for the benefit of persons who are blind, visually impaired or otherwise print disabled.

IMPACT ASSESSMENT: the impact assessment examines the baseline scenarios, policy options and their impacts for eight topics regrouped under three chapters, namely (i) ensuring wider access to content, (ii) adapting exceptions to digital and cross-border environment and (iii) achieving a well-functioning marketplace for copyright.

The assessment concluded that, bearing in mind the predominance of SMEs in the creative sectors, the introduction of a special regime would not be appropriate, as it would defeat the purpose of the intervention.

CONTENT: complementing Directive 2010/13/EU and the proposal amending it, this draft directive lays down rules which aim at **further harmonising the Union law applicable to copyright and related rights** in the framework of the internal market, taking into account in particular digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations, on the facilitation of licences as well as rules aiming at ensuring a well-functioning marketplace for the exploitation of works and other subject matter.

Measures to adapt exceptions and limitations to the digital and cross-border environment: Member States are obliged to provide for mandatory exceptions or a limitation allowing:

- text and data mining carried out by **research organisations** for the purposes of scientific research;
- digital uses of works and other subject-matter for the sole purpose of **illustration for teaching,** enabling teachers and students will be able to take full advantage of digital technologies; and
- **cultural heritage institutions** ((i.e. publicly accessible libraries or museums, archives or film or audio heritage institutions) to make copies of works and other subject-matter that are permanently in their collections to the extent necessary for their preservation.

Measures to improve licensing practices and ensure wider access to content: the proposal requires Member States to:

- put in place a legal mechanism to **facilitate licensing agreements** of out-of-commerce works and other subject-matter; the **cross-border** effects will be ensured;
- put in place a stakeholder **dialogue** on issues relating to foster the relevance and usability of the licensing mechanisms and ensure the effectiveness of the safeguards for rightholders;
- put in place a **negotiation mechanism** to facilitate negotiations on the online exploitation of audiovisual works.

Measures to achieve a well-functioning marketplace for copyright: the proposal provides for:

- a **new right for press publishers** aiming at facilitating online licensing of their publications, the recoupment of their investment and the enforcement of their rights; the rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned;
- the possibility for all publishers to receive a **share in the compensation** for uses of works under an exception;
- measures to improve **transparency and better balanced contractual relationships** between authors and performers and those to whom they assign their rights;
- the obligation for Member States to implement negotiation and **dispute resolution** mechanisms.