



European Economic and Social Committee

Modernisation of copyright rules

Brussels, 27 April 2016

OPINION

of the European Economic and Social Committee
on the

**Communication from the Commission to the European Parliament, the Council, the European
Economic and Social Committee and the Committee of the Regions – Towards a modern, more
European copyright framework**

COM(2015) 626 final

Rapporteur: **Denis Meynent**

On 22 December 2015, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards a modern, more European copyright framework
COM(2015) 626 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 216 votes to 3, with 10 abstentions.

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1. Conclusions and recommendations

- 1.1 The EESC regrets that the Commission does not make more specific proposals in this communication and simply lists various angles without taking a position on them, which makes it harder to have a well-structured debate.
- 1.2 Copyright remains a fundamentally important way to protect and fairly pay authors and those involved in disseminating works and performances via interconnected digital networks.
- 1.3 The Committee calls for the Marrakesh Treaty to be swiftly ratified. Exceptions for teaching, scientific research and the exchange of knowledge should also be a priority, and it is also in favour of digitising orphan works.
- 1.4 The EESC is of the view that a united European position on private copying is possible and desirable. A large proportion of the revenue from private copying levies should logically be directed towards funding literary and artistic works and promoting cultural diversity, as well as towards public goods such as education and research, for example.
- 1.5 The EESC calls for a new legal context to promote the creation of copyright-protected work and, simultaneously, to enhance the contribution of new types of licence and new business models to building the European single market, while preserving freedom of contract and the right of authors and creators to reap the full benefit of their works.

- 1.6 The EESC considers a regulation to be the best instrument for establishing the digital single market. Existing legislation should also be consolidated.
- 1.7 The EESC encourages the Commission to conduct studies and in-depth research on business models linked to free licences, on their current and potential economic importance, on the revenue and jobs they could create in various fields, and on any legal proposals that would enhance their profile and use.
- 1.8 The EESC believes that Europe's cultural diversity is at the heart of European identity and that this diversity should be fostered and promoted among the Member States.
- 1.9 The fight against copyright violations should prioritise putting a stop to and penalising infringements on a commercial scale. To this end, it is vital that Member States' law enforcement bodies and judicial authorities work together and exchange information.
- 1.10 The transfer of value in the online environment that currently benefits self-proclaimed intermediaries who avoid creators' consent and remuneration should be addressed.

2. **Commission proposals**

- 2.1 The action plan examined here aims to modernise European copyright rules. The Commission's communication lays out the plan's key elements, aimed at delivering its digital single market strategy: broadening access to content across the entire EU, stipulating copyright exceptions, creating a fairer market, and combating commercial piracy, while also encouraging the long-term unification of copyright.
- 2.2 In particular, the communication includes a proposal for a regulation on cross-border portability of online content services¹, which would constitute a new right for European consumers and should come into effect in 2017, the year when roaming charges will also be abolished in the EU.

3. **Introduction**

- 3.1 Movement of digital content between European countries accounts for a very small proportion of the total (4%); most digital services are located in the USA, and the remaining movement takes place within national borders. The European digital single market is currently very undeveloped. Barriers still exist, and they represent a particular hindrance to cultural exchanges among many European linguistic minorities that are located on opposite sides of several national borders.

¹ COM(2015) 627 final; see p. XX of this OJ.

- 3.2 In his programme "A New Start for Europe"², the president of the Commission made it a priority to establish a large-scale, connected digital market for all EU countries without national discrimination.
- 3.3 Copyright is the legal mainstay of creation and is the basis for the remuneration of authors, creators, performers and other right holders and, more globally, for the ecosystem of cultural and creative activities and industries. Copyright is a territorial law and differs between Member States. It confers exclusive and extensive rights everywhere for right holders, who receive revenue not just from licences, but also simply because a work could be copied onto other media or given to a third party by the purchaser of a licence, with no requirement to prove that a copy has actually been made (levies for private copying and taxation of blank media that could be used for making illegal copies). Some honest user activities, done in good faith, are even classed as criminal offences in some Member States, while being permitted in others.
- 3.4 There are minimal exceptions and limitations to copyright in any country. Copyright was invented in an era of printing on paper and was designed for the technology of that time – primarily book publication, but also newspapers, periodicals and sheet music – and is no longer entirely in step with a digital world of constantly evolving high-speed interconnected networks. It must be refined. In other areas, such as new ways of accessing music and audio-visual works, managing rights has become more complicated due to the fragmentation of repertoires, which should be resolved by the new Directive on collective management of copyright³. Little had changed between the time of wax discs and DVDs, particularly in terms of distributing or lending works. New technologies have ushered in a comprehensive paradigm shift, and almost all record and DVD shops have vanished, giving way to new forms of online distribution and lending. The same is true for cinema, television, and all art forms that can be put on the internet.
- 3.5 The fact that the relevant law has failed to meaningfully evolve prevents us from fully harnessing all of the possibilities opened up by the digitisation of works and intangible productions, and their subsequent circulation through an internet that is rapidly developing and becoming ubiquitous.

4. **General comments**

- 4.1 The EESC regrets that the Commission does not make more specific proposals in this communication and simply lists various angles without taking a position on them, which makes it harder to have a well-structured debate.

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http://ec.europa.eu/priorities/publications/president-junckers-political-guidelines_en.

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[OJ L 84, 20.3.2014, p. 72; OJ C 44, 15.2.2013, p. 104.](#)

- 4.2 In its opinion of 26 October 2006⁴, the EESC called on the Commission to put forward proposals to promote and protect free licences such as the LGPL for technical documentation and the Creative Commons licence for literary and artistic works. But despite the importance of this issue – the vast majority of servers and server farms in the world operate under free licences such as Debian, or GPL in the case of GNU/Linux – it must be noted that the Commission has as yet made no proposals of this kind.
- 4.3 This is detrimental to the development of cross-border movements of data and services within the European single market. Indeed, the Creative Commons licence and the public domain constitute new universal spaces brought about by digitalisation and the interconnected network, while the fragmented state of the law throws up just as many other obstacles as border barriers to cross-border interaction.
- 4.4 Rather than constraining and stifling authors and creators, as well as users, the law should unlock the incredible potential of the internet for them. European legislation should enable the elimination of as many obstacles as possible that hinder cross-border interaction among linguistic minorities within the EU and provide easier access to services and works.
- 4.5 Rather than fearing such developments, right holders should make the most of the opportunities they offer. "Free" does not automatically mean "free of charge": open-source software, for example, allows for a different business model, revolving around the service and creating jobs, unlike some current practices that favour the owner's profits and legal protection.
- 4.6 The EESC once again encourages the Commission to conduct studies and in-depth research on business models linked to free licences, on their current and potential economic importance, on the revenue and jobs they could create in various fields, and on any legal proposals that would enhance their profile and use.
- 4.7 A great deal of consideration should be given to experiments such as making the following available on the internet under free licences: scientific publications; reports of research funded by public money; and university courses – such as all courses offered by MIT – so as to compensate for the disproportionate cost of higher education in some countries. These should be studied to gauge to what extent they might be implemented in the EU (MOOCs). In this way, higher education and culture become public goods helping to bring about a knowledge society, which we wish to develop in the EU.
- 4.8 Modes of production are changing, and intangible goods and services distributed by interconnected networks represent new directions for economic development and the creation of jobs and innovative businesses. Modes of consumption have started to change, and these new forms are rapidly gaining ground. However, we must be clear: in spite of this fact, the

4 [OJ C 324, 30.12.2006, p. 8.](#)

European single market does not yet exist in relation to the current providers of intangible services. This is mainly due to different preferences and cultural practices in different Member States, the language spoken by consumers, and also the fragmentation of copyright which does not make it any easier to develop the European market or to create multi-territorial, even European, licences.

- 4.9 The EESC calls for a new legal context to promote the creation of copyright-protected work and, simultaneously, to enhance the contribution of new types of licence and new business models to building the European single market, while preserving freedom of contract and the right of authors and creators to reap the full benefit of their works. These new models can be developed alongside the models set out in the WIPO treaties. This issue should be an integral part of the digital strategy announced by the Commission in May 2015 and of the plan to modernise copyright examined here.
- 4.10 Exceptions represent another barrier. The EESC urges Member States to ratify the Marrakesh Treaty, which stipulates an exception for blind or visually impaired people, as soon as possible. The EU has signed this treaty, but only the individual Member States can ratify it so that it can enter into force. The EESC recommends that the Commission follow the opinion of the European Parliament of 9 July 2015 and urge the Member States to promptly ratify this important treaty, which was very difficult to negotiate due to the conservative viewpoints of certain stakeholders. The Committee also urges the European Council to make every effort to speed up the ratification process.
- 4.11 Additionally, more works that are accessible to blind or visually impaired people should be produced: over 95% of books are not currently accessible to them.
- 4.12 Other exceptions connected to the digital age and networks should be taken into consideration, especially in relation to public research; the digitisation by university and public libraries of literary works that are in the public domain or are orphan works; and the lending of e-books and audio and visual resources, given the rapid spread of e-readers and a wide variety of new media. At the same time, it is important to note that some tech industries try to recapture protection for what is already in the public domain, restricting access for commercial strategies.
- 4.13 Geographical zoning is another obstacle to disseminating works. While affecting all potential users, it has a particular impact on the very many linguistic minorities in the EU, due to the differences between the political map and linguistic map of Europe, a historical legacy of the wars of the nineteenth and twentieth centuries. The rise of populist and nationalist voices has lent an urgent political dimension to solving this problem. The European Charter for Regional Languages has been widely ratified but, to take one example, the current barriers significantly reduce the cultural impact of television broadcasts in regional languages.

4.14 The EESC believes that Europe's cultural diversity is at the heart of European identity and that this diversity should be fostered and promoted among the Member States.

4.15 These issues are key for the EESC and the Committee encourages the Commission to consider its proposals, which are in compliance with international copyright treaties and might open new prospects for completing the EU digital single market.

5. **Specific comments**

5.1 Substantial changes will be needed in the very near future, along the lines of the 16-initiative strategy published in May 2015 and of the preceding general comments that propose a major new initiative to promote public goods, interoperability and cross-border relations and free licences. In its opinions on digital contract rights (INT/775) and on the sharing economy and self-regulation (INT/779), the EESC recognises the importance of copyright for correctly determining the rights of stakeholders in terms of digital contracts and the sharing economy.

5.2 The EESC notes with interest that the Commission clearly states that EU copyright rules need to be adapted, so that all market players and citizens can seize the opportunities of this new environment, and that a more European legal framework is needed to overcome fragmentation and frictions within a functioning single market. The Committee endorses this aim, but notes that governments are defending the territoriality of copyright by saying that it is the only way to ensure that creative ventures are funded. Other ways exist and should be explored; the door should not be shut before the alternatives have at least been objectively assessed.

5.3 The Committee does not believe that inaction and rejection of change on copyright represent an adequate response to rapid technological change and innovations in services and distribution which are inevitably emerging and developing as the internet, networks and broadband develop. It shares the Commission's view that it will be necessary to, "where required, adapt copyright rules to new technological realities so that the rules continue to meet their objectives".

5.4 A large degree of variation is evident, and might become even more evident in future, with regard to exceptions that are closely related to education, research and access to knowledge. This can range from simple use as an example or illustration up to – in practice, if not in law – the unlimited provision of works, books or courses for educational purposes.

5.5 Directive 2001/29/EC on copyright sets out a list of exceptions. Putting the items on this list into practice, and modifying them, should be discussed using the procedures of participatory democracy so as to make individual and collective opinion more receptive and to reach a consistent and unified European law relating to exceptions. The exceptions must be properly specified and defined so that they can be applied more easily. The EESC shares the Commission's view that exceptions for teaching, scientific research and the exchange of

knowledge should be the priority; at the same time, looking ahead, other public goods should be studied.

- 5.6 The EESC is of the view that a united European position on private copying is possible and desirable. It will support action by the Commission in this regard, which should be taken as quickly as possible because national differences are a significant obstacle to the single market of electronic goods, while new media continue to emerge. Consistency is crucial for the free movement of goods incorporating such media. The distribution of revenue from levies on media should take into account that most of these media are not intended for copying copyright-protected works. Logically, therefore, a large proportion of this revenue should be directed towards funding artistic creation and the promotion of cultural diversity – as is already the case in some countries – and towards public goods such as education and research.
- 5.7 The Committee is convinced that the internet must retain its inherent principle of neutrality, in order to ensure that consumers remain totally equal, regardless of their economic power. Net neutrality is a founding principle of the internet. It ensures that telecoms operators do not treat their users' communications differently but remain simply conduits for information. This principle allows all users, regardless of their financial resources, to have access to the same network in its entirety. This definition, and a statement underlining the protection of this neutrality, should be clearly expressed in the EU legislation.
- 5.8 When fighting against copyright violations, infringements on a commercial scale, depriving creators of a large proportion of their revenue, should be stopped and penalised. The Committee has already issued several opinions on the problems in the fight against counterfeit goods and all forms of violation of copyright and related rights, and thus refers to these opinions, which it still considers to be wholly valid⁵.
- 5.9 Copyright remains a fundamentally important way to protect authors and those involved in disseminating works and performances via interconnected digital networks. Copyright must evolve to adapt to very rapid technological changes and innovations in distribution and services. This modernisation should happen in such a way as to safeguard the rights of creators and performers, to ensure they are fairly remunerated for their creative endeavours, to guarantee that they can reap the benefit of the commercial success of their works, and to keep protection and funding of works robust. In particular, the legal status of online platform services in terms of copyright must be reviewed. Although they are today the primary portal through which users access online content, platform services claim to be mere technical intermediaries and thus refuse to remunerate content creators. This undermines the efficiency

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[OJ C 230, 14.7.2015, p. 72](#); [OJ C 44, 15.2.2013, p. 104](#); [OJ C 68, 6.3.2012, p. 28](#); [OJ C 376, 22.12.2011, p. 66](#); [OJ C 376, 22.12.2011, p. 62](#); [OJ C 18, 19.1.2011, p. 105](#); [OJ C 228, 22.9.2009, p. 52](#); [OJ C 306, 16.12.2009, p. 7](#); [OJ C 182, 4.8.2009, p. 36](#); [OJ C 318, 29.10.2011, p. 32](#); [OJ C 324, 30.12.2006, p. 8](#); [OJ C 324, 30.12.2006, p. 7](#); [OJ C 256, 27.10.2007, p. 3](#); [OJ C 32, 5.2.2004, p. 15](#).

of the market, distorts competition and drives down the overall value of online cultural content.

- 5.10 Refusing to adapt to the global nature of the internet, broadband and new consumer expectations runs the risk of devaluing a right that is beneficial to the progress of intellectual works and their dissemination. However, exceptions justified by other interested parties' rights whose social needs are changing – such as disabled persons, students and public libraries – will have to be accepted. The Member States, which have the largest degree of legal influence on the changes to come, will have to implement other developments to continuously "Europeanise" copyright and related rights.
- 5.11 The EESC considers a regulation to be the best instrument for establishing the digital single market, as the variety of national laws clearly leads to an almost complete stalemate which must be overcome by means of an inclusive dialogue between all stakeholders, including representatives of licences for free software and content and the new services and business models that they engender. Obstacles to multi-territorial licences must also be better analysed, and ways to overcome them improved.
- 5.12 Various interests and preconceived notions on the subject of copyright are so strong that only gradual progress, based on a rigorous assessment and proportional responses, may be possible. However, everything must be done to fully bring about the knowledge and information society which is the only way to extricate Europe from a crisis that is shaking the European ideal to its very foundations. In a dynamic social market economy, the general interest should prevail over a few special interests.

Brussels, 27 April 2016

The President
of the
European Economic and Social Committee

Georges Dassis
