



*European Economic and Social Committee*

**INT/804**  
**Copyright package**

## **OPINION**

European Economic and Social Committee

**Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market**

[COM(2016) 593 final - 2016/0280 (COD)]

**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**

[COM(2016) 594 final - 2016/0284 (COD)]

and

**Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society**

[COM(2016) 596 final - 2016/0278 (COD)]

Rapporteur: **Juan MENDOZA CASTRO**

Consultation	European Parliament, 06/10/2016 Council, 26/10/2016 and 24/10/2016 (COM(2016) 596 final)
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	13/01/2017
Adopted at plenary	25/01/2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	144/0/2

## 1. **Conclusions and recommendations**

- 1.1 The EESC welcomes the package of measures to adapt copyright to the requirements of the digital economy.
- 1.2 The EU lacks an integrated copyright system. To establish such a system, the main objective is to eliminate fragmentation while, at the same time, enhancing protection for creators who are sometimes pitted against technological giants that dominate the markets.
- 1.3 The area of copyright is a highly complex one, owing to the presence of multiple stakeholders who have different interests but nevertheless need each other. Regulating copyright must serve to strike a balance between the rights of all these parties, avoiding bureaucracy and unnecessary requirements.
- 1.4 In view of the "gradual" approach taken by the Commission, the EESC suggests revising and consolidating existing legislation, making amendments to other directives, considering whether it would be appropriate to propose measures covering internet search engines and the free broadcasting of content over Wi-Fi networks and regulating certain aspects by means of a regulation.
- 1.5 The Committee stresses that swift ratification by the EU of the Marrakesh Treaty on copyright in relation to the blind is important and necessary.
- 1.6 **Online transmissions of broadcasting organisations and digital retransmissions of radio and television programmes:** in the EESC's view, the Commission proposal is appropriate and will promote the distribution of European film productions. The "country of origin" principle is not incompatible with the territoriality of law and freedom of contract.
- 1.7 **Adaptation of exceptions to the digital and cross-border environment:** although the Commission proposals correctly pinpoint the problems, the EESC suggests making a number of amendments to them to adjust copyright more closely to current requirements. They are as follows:
  - include the null and void principle for any agreements that are contrary to exceptions and limitations of copyright<sup>1</sup>;
  - text and data mining:
    - in order to foster innovative enterprises, the scope of application (Article 2 of the proposal) should include researchers and businesses that operate for profit;
    - the principle that mere facts and data should not be subject to copyright (mentioned in recital 8) should be included in the text;

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<sup>1</sup>

As provided for in Article 5 of Directive 2009/24/EC on the legal protection of computer programs and Article 15 of Directive 96/9/EC on the legal protection of databases.

- **copies of works for the preservation of cultural heritage**<sup>2</sup>: clarify and extend the exception so that works that are not available on commercial channels or actively distributed by the rightholders can be made accessible online for non-profit purposes;
  - lift the requirement to use *dedicated terminals on the premises of establishments*<sup>3</sup>, making access to works and other subject-matter technologically neutral;
  - include a new exception for **non-commercial cross-border provision of documents** by European libraries and archives;
  - modify the exception for **scientific research for non-commercial purposes** in the InfoSoc Directive, given that it is deemed extremely difficult to apply in certain cases<sup>4</sup>;
- 1.8 The judgment of the Court of Justice of the EU states that, under certain conditions, the **lending of a digital copy of a book** has similar characteristics to the lending of printed works<sup>5</sup>, satisfying repeated calls by users of libraries and educational institutions.
- 1.9 The proposal concerning the digitisation, distribution and cross-border use of **out-of-commerce works** (Title III, Chapter 1) should be welcomed.
- 1.10 The "**freedom of panorama**" exception should be harmonised by means of European rules.
- 1.11 The Committee supports the exclusive related right of publishers to authorise or prohibit the digital use of their press publications for a period of twenty years.
- 1.12 The Committee agrees with the obligation on information society service providers storing and giving public access to large amounts of copyright-protected works and other subject-matter uploaded by their users to take appropriate and proportionate measures to ensure the functioning of agreements concluded with rightholders or to prevent the availability on their services of such works or subject-matter (*value gap*).
- 1.13 In its view, the Commission proposal represents a step forward in the **protection of authors' rights**, as authors are entitled to fair remuneration for their creative endeavours, to be associated with the commercial success of their works and to benefit from a high level of protection and funding of works.

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<sup>2</sup> Article 5 of Commission proposal COM(2016) 593 final.

<sup>3</sup> Article 5(3)(n) of the InfoSoc Directive, [OJ L 167, 22.6.2001, p. 10](#)

<sup>4</sup> <http://libereurope.eu/blog/2016/10/14/basic-guide-eu-copyright-limitations-exceptions-libraries-educational-research-establishments/>

<sup>5</sup> C-174/15 Vereniging Openbare Bibliotheken v Stichting Leenrecht [OJ C 14 of 16.1.2017, p. 6.](#)

1.14 Attention should be drawn to the need for civil society institutions to help raise users' awareness of the requirement for compliance with copyright laws. The EESC supports the Commission's efforts to combat piracy and any unlawful use of content protected by law.

## 2. Commission proposals

2.1 The evolution of digital technologies has changed the way works and other protected subject-matter are created, produced, distributed and exploited. New uses have emerged as well as new actors and new business models. In the digital environment, cross-border uses have also intensified and new opportunities for consumers to access copyright-protected content have materialised.

2.2 Even though the objectives and principles laid down by EU legislation on copyright remain sound, there is a need to adapt the legislation to these new realities. Intervention at EU level is also needed to avoid fragmentation of the internal market.

2.3 Against this background, the Digital Single Market strategy<sup>6</sup> adopted in May 2015 identified the need "to reduce the differences between national copyright regimes and allow for wider online access to works by users across the EU", highlighting the importance of enhancing cross-border access to copyright-protected content services, and also clarifying the role of online services in the distribution of works and other subject-matter.

2.4 In December 2015, the Commission issued a communication<sup>7</sup> outlining targeted actions and a long-term vision, and reflecting the need to press ahead with the single market in this area, update rules in accordance with digital realities, ensure that Europe's creative industries remain competitive and strike the right balance between copyright and other public policy objectives.

2.5 Further to the recent proposal on cross-border portability<sup>8</sup>, the Commission now proposes a set of legislative measures with three objectives:

- i) ensuring wider online access to content in the EU and reaching new audiences;
- ii) adapting certain exceptions to the digital and cross-border environment; and
- (iii) fostering a well-functioning and fair copyright marketplace.

2.6 First, the proposal for a regulation<sup>9</sup> aims at creating favourable conditions for new online and digital forms of cross-border distribution of television and radio programmes comparable to those applicable to the more traditional transmissions via satellite and retransmissions via cable. The new rules, inspired by those in force under the Satellite and Cable Directive<sup>10</sup>, will make it simpler and faster to clear the rights that are needed for certain online services provided by

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<sup>6</sup> COM(2015) 192 final.

<sup>7</sup> COM(2015) 626 final.

<sup>8</sup> COM(2015) 627 final.

<sup>9</sup> COM(2016) 594 final.

<sup>10</sup> Directive 93/83/EEC ([OJ L 248, 6.10.1993, p. 15](#)).

broadcasters and for certain re-transmission services. These rules aim to facilitate market development and wider dissemination of European radio and TV productions. This will, in turn, generate more consumer choice and cultural diversity.

2.7 In parallel, the proposal for a Directive on Copyright in the Digital Single Market<sup>11</sup> introduces a new negotiation mechanism that will make it easier to conclude licensing agreements to make audiovisual works available on video-on-demand (VoD) platforms. It is part of a broader policy drive to address the multiplicity of factors that lie behind the limited availability of European audiovisual works, notably films, across the EU.

2.7.1 Licensing issues and related legal and contractual difficulties hampering the exploitation of European audiovisual works on VoD services will also be addressed in a structured stakeholder dialogue aimed at streamlining licensing practices and facilitating industry agreements conducive to more sustained exploitation and wider availability of European works. The Commission will report on the results of the dialogue by the end of 2018.

2.7.2 Finally, the proposal for a directive also introduces ways of making it easier for cultural heritage institutions to license rights, as required for the digitisation and dissemination of works that are out-of-commerce but hold great cultural value. Access to works in non-commercial settings, such as educational organisations, public libraries or non-theatrical venues, is also very important for nurturing cultural diversity, for educational purposes and to encourage participation in society. Furthermore, the Commission is, together with European Film Agency Directors (EFADs) and the audio-visual industry, exploring the possibility of creating and funding a catalogue of European films for educational purposes in 2017.

2.8 In parallel, two legislative proposals<sup>12</sup> have been adopted for the implementation in EU law of the Marrakesh Treaty, which requires parties to introduce exceptions supporting people with print disabilities to access books and other print material in formats that are accessible to them. The proposal for a directive will establish a mandatory exception and ensure its functioning for the making and exchange of such accessible format copies within the Single Market. The proposal for a regulation will permit the cross-border exchange of such copies between the EU and third countries that are parties to the Treaty.

### 3. **General comments**

3.1 The EESC welcomes the package of measures to adapt copyright to the requirements of the digital economy.

3.2 European art has a leading position in the world, but film production, publishing and musical and artistic creation have to address market fragmentation, the immense richness of cultural and linguistic diversity, the digital transition and financial difficulties.

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<sup>11</sup> COM(2016) 593 final.

<sup>12</sup> COM(2016) 596 final, COM(2016) 595 final.

- 3.3 Simplifying the authorisation system should help to reduce fragmentation, facilitate cross-border access to online content and create more balanced protection of authors, particularly vis-à-vis the business giants controlling digital markets.
- 3.4 The area of copyright is a highly complex one, owing to the presence of multiple stakeholders who have different interests but nevertheless need each other. Regulating copyright must serve to strike a balance between the rights of all these parties.
- 3.5 The Commission is adopting a "gradual" approach<sup>13</sup>, proposing supplements to the existing rules rather than a comprehensive review. The EESC suggests considering:
- the revision and consolidation of existing law, including amendments to other directives, such as those on the terms of protection of copyright<sup>14</sup> and the authorised use of orphan works<sup>15</sup>;
  - use of a regulation as the appropriate instrument for establishing the digital single market<sup>16</sup>;
  - whether it is necessary or appropriate to take account of the issues of internet search engines and free broadcasting of content over Wi-Fi networks<sup>17</sup>.

#### 4. Measures to guarantee wider access to content across the EU

##### 4.1 Online transmissions of broadcasting organisations and retransmissions of radio and television programmes<sup>18</sup>

4.1.1 In the EU, the radio and television programming and broadcasting sector comprises almost 12 000 companies and employs 255 000 people, with a turnover of EUR 66 500 million<sup>19</sup>. Reform is needed because existing mechanisms to facilitate the authorisation of copyright and related rights do not cover on-line transmission or certain digital retransmissions.

4.1.2 The EESC agrees that the "country of origin" principle should be included, as this is already the case with transmission by satellite<sup>20</sup> and as it is not incompatible with the territoriality of law and freedom of contract.

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13 Communication COM(2016) 592 final.

14 Directive 2006/116/EC (consolidated version).

15 Directive 2012/28/EU.

16 Opinion [OJ C 264, 20.7.2016, p. 51](#).

17 See CJEU Judgment in Case C-484/14, Tobias Mc Fadden v Sony Music Entertainment Germany GmbH.

18 COM(2016) 594 final.

19 Eurostat: Programming and broadcasting statistics (2015).

20 Directive 93/83/EEC.

4.1.3 The EESC thinks that technologically neutral amendment of digital retransmission legislation should simplify the process of clearance of rights for new providers and hence improve access to key content for consumers.

4.1.4 Fittingly, the reform establishes that when difficulties arise in granting licenses, Member States are to ensure that an "impartial body" facilitates agreements on access to and availability of audiovisual works on **VOD platforms**.

## 5. **Adaptation of exceptions to digital and cross-border environments**<sup>21</sup>

5.1 Europe's libraries, museums and archives offer a cultural space for people and are fundamental for transmitting knowledge and for learning and research. They also make a major financial contribution in terms of copyright<sup>22</sup>.

5.2 Due to the lack of harmonisation, complex laws, geographical barriers and language differences, European researchers are at a disadvantage compared to their counterparts in leading countries such as the US. The reform must therefore achieve three goals: broadening the scope and adapting it to new technological realities, establishing a uniform and mandatory approach and ensuring legal security by regulating exceptions and limitations<sup>23</sup>.

5.3 The Hague Declaration (2014) highlights the enormous potential of text and data mining (TDM) for innovation and research. For researchers, SMEs and large technological companies, TDM is a key instrument, one that is underutilised in the EU owing to legal, technological and contractual constraints.

5.4 The Commission is proposing to introduce mandatory exceptions in various areas:

- **TDM for the purposes of scientific research** in the case of reproductions and extractions made by not-for-profit research organisations;
- digital uses of works and other subject-matter for the sole purpose of illustration for **teaching**, to the extent justified by the non-commercial purpose to be achieved; and
- **copies of works for the preservation of cultural heritage**.

5.5 Although in its view the Commission proposals correctly pinpoint the problems, the EESC is proposing amendments to adjust the rules more closely to current requirements (see the conclusions). Amongst other things, it is important that the established exceptions to copyright are not rendered void by contractual agreements or technological tools. On the other hand, the

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<sup>21</sup> COM(2016) 593 final.

<sup>22</sup> They make purchases worth EUR 4 800 million annually: Outsell report, *Library Market Size, Share, Performance, and Trends*.

<sup>23</sup> See *Towards a modern, more European Copyright Framework*. EBLIDA (European Bureau of Library, Information and Documentation Associations); Europeana; Association of European Research Libraries (LIBER); Public Libraries 2020; International Federation of Library Associations and Institutions (IFLA).

copyright exception for **scientific research for non-commercial purposes** (Article 5(3)(a)) should be revised as it is deemed extremely difficult to apply<sup>24</sup>.

5.6 The EESC also calls for harmonisation of the exception of "**freedom of panorama**", allowing private individuals to take and share online pictures of works such as buildings or sculptures located in public areas. Even though it confirms the need for the exception, the Commission has decided to leave the possibility of implementation, on an optional basis, to the Member States.

#### 5.7 **Copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise disabled**

5.7.1 The Committee stresses that swift ratification by the EU of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which entered into force on 30 September 2016, is important and necessary. The Treaty will enable many European citizens who are blind or visually impaired to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.

5.7.2 The proposals for a regulation<sup>25</sup> and directive<sup>26</sup> will allow the EU to fulfil an international obligation incumbent upon it under the Marrakesh Treaty. This is also consistent with the EU's obligations under the UN Convention of the rights of persons with disabilities.

5.8 **Licensing and wider access to content.** As is appropriate, it will be possible to digitise and distribute **out-of-commerce works** first published in the EU (Article 7) and a licence granted in one Member State will be applicable throughout the EU (Article 8).

#### 5.9 **New related right for press publishers**

5.9.1 According to Article 11(1) and Article 11(4) of the proposed directive<sup>27</sup>, Member States must provide press publishers – for twenty years – with the exclusive right to authorise or prohibit the digital use of their press publications.

5.9.2 The EESC supports this measure as a way of ensuring fair and equitable distribution of value between press publishers producing such information and the online platforms using it.

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24 <http://libereurope.eu/blog/2016/10/14/basic-guide-eu-copyright-limitations-exceptions-libraries-educational-research-establishments/>

25 COM(2016) 595 final.

26 COM(2016) 596 final.

27 COM(2016) 593 final.

5.9.3 The EESC points out that while many press publishers – essential for democracy – are experiencing a financial crisis resulting in the closure of publications and huge job losses, the revenue of those who use their information is increasing<sup>28</sup>.

## 5.10 Use of protected content on line

5.10.1 Information society service providers that store and provide public access to large amounts of copyright-protected works or other subject-matter uploaded by their users will, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter identified by rightholders in cooperation with the service providers. On the one hand, there will be measures such as "effective content recognition technologies"; on the other, these providers will provide rightholders with "adequate information" and put in place complaints and redress mechanisms. Member States will facilitate cooperation between the parties<sup>29</sup>.

5.10.2 The measure – one that the EESC considers adequate – aims to close the *value gap* which currently exists between rightholders and information society service providers, enabling such rightholders to take better decisions on the use of their products. There are examples of advertising-based services which do not provide sufficient reward for the use of copyright-protected material, while subscription-based online services do<sup>30</sup>.

## 6. Better functioning of the copyright market

6.1 The EESC agrees with the Commission's assertion that copyright infringements on a commercial scale, with infringers free-riding on the work and investment of others, are today a serious threat for European creators. Without an effective and balanced enforcement system, copyright and other intellectual property rights (IPR) are ill-protected and investment in creativity and innovation is throttled<sup>31</sup>.

6.2 Authors are entitled to fair remuneration for their creative endeavours, to be associated with the commercial success of their works, and to benefit from a high level of protection and funding of works<sup>32</sup>.

6.3 The proposal – which the EESC deems adequate – establishes measures designed to strengthen authors' contractual powers. While Member States will have to guarantee the obligation of

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28 In 2015 internet platforms' revenue amounted to USD 153 650 million, and is expected to reach USD 260 360 million in 2020. See <https://www.statista.com/statistics/237800/global-internet-advertising-revenue/>

29 See Article 13.

30 According to Jan Hückmann & Dora Grunwald, YouTube has nearly 1 billion users and paid USD 630 million to rightholders in 2015; Spotify has over 10 million users and paid rightholders USD 2 billion. See Google's arguments against this measure at: <https://europe.googleblog.com/2016/09/european-copyright-theres-better-way.html>

31 Communication COM(2016) 592 final.

32 Opinion [OJ C 264, 20.7.2016, p. 51](#).

transparency, alongside contract adjustment and alternative dispute resolution mechanisms, the reform strengthens the negotiating capacity of authors and artists<sup>33</sup>.

- 6.4 It is worth pointing out the need for public and private civil society organisations to contribute in the relevant areas to raising users' awareness of the fact that authors must be remunerated for their work under the framework established by law.

Brussels, 25 January 2017

Georges DASSIS  
President of the European Economic and Social Committee

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<sup>33</sup> Currently covered by Directive 2014/26/EU ([OJ L 84, 20.3.2014, p.72](#)).