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**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**

## 1. COPYRIGHT IN THE DIGITAL SINGLE MARKET

Digital technologies, widespread broadband connections and reliance on the internet in daily life have transformed the way creative content is produced, distributed and used.

The internet has become a key distribution channel. In 2014, 49 % of EU internet users accessed music, video and games online.<sup>1</sup> Business models unheard of only 15 years ago and new economic players like online platforms have become well established and today online services are a mainstream channel for consumers to enjoy creative content, alongside physical formats like books and DVDs. Making copies of content digitally is easy and quick. People often expect access to digital content on multiple devices, anytime and anywhere in the single market. When this does not happen, they find it hard to understand why.

EU copyright rules need to be adapted so that all market players and citizens can seize the opportunities of this new environment. A more European framework is needed to overcome fragmentation and frictions within a functioning single market.

The modernisation of EU copyright rules was first announced in President Juncker's Political Guidelines for the incoming Commission and further outlined in the digital single market strategy.<sup>2</sup> It aims to achieve a wide availability of creative content across the EU, to make sure that EU copyright rules continue to provide a high level of protection for right holders, and to maintain a good balance with other public policy goals, like education, research and innovation, or equal access for persons with disabilities,<sup>3</sup> in the digital environment.

These objectives play an important part in Europe's economic and societal progress, international competitiveness and cultural diversity. They all address the needs of right holders and users of copyright-protected content alike.

Copyright rewards creativity and investment in creative content. A copyright framework that offers a high level of protection is the basis of the global competitiveness of Europe's creative industries.<sup>4</sup> Along with the internal market principles of free movement of goods and services, EU competition rules, and our media and cultural policies, copyright is an integral part of the set of rules which govern the circulation of creative content across the EU. The interaction between copyright and these other policy areas determines how value is generated from the production and dissemination of works<sup>5</sup> and how it is shared among market participants.

Developing actions announced in the digital single market strategy, this Communication sets out how the Commission intends to achieve the goal of 'a more modern, more European copyright framework'. It presents a plan that includes targeted actions with proposals for the very short term, including a proposal on the 'portability' of online content services presented

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<sup>1</sup> Eurostat, 'Community survey on ICT usage in households and by individuals', 2014.

<sup>2</sup> COM(2015) 192 final.

<sup>3</sup> In line with the UN Convention on the Rights of Persons with Disabilities to which the EU is a party.

<sup>4</sup> Between 2008 and 2010, industries primarily responsible for creating and producing copyright works accounted for 3.2 % of total employment and for 4.2 % of GDP in the EU (European Patent Office/Office for Harmonization in the Internal Market, 'Intellectual property rights intensive industries: contribution to economic performance and employment in the EU', September 2013).

<sup>5</sup> 'Works' is used in this document to mean both works protected by copyright and other subject matter protected by related rights, as relevant to the context.

together with this Communication, a set of proposals planned for 2016, and a long-term vision. The plan will be brought forward in line with the Better Regulation principles and is based on preparatory work carried out over the past few years on the current framework,<sup>6</sup> which included a comprehensive public consultation in 2013-2014.<sup>7</sup> It takes into account the views of the European Parliament expressed in its recent resolution on the implementation of the Directive on Copyright in the Information Society<sup>8</sup> and the conclusions of the European Council meeting of 25-26 June 2015.<sup>9</sup>

Against this background, the Commission considers it necessary to:

- inject more single market and, where warranted, a higher level of harmonisation into the current EU copyright rules, particularly by addressing aspects related to the territoriality of copyright;
- where required, adapt copyright rules to new technological realities so that the rules continue to meet their objectives.

Copyright and related legislation do not deliver on their objectives in isolation. Films, drama, music, literature, scientific writings, cultural heritage and the rest of Europe's creative output will continue to flourish and play a meaningful role in Europe's growth, identity and social progress only if competitive creative industries and the required market mechanisms are in place. Financial and other support measures from public authorities, as permitted by competition law, also play a role in achieving this. The support provided by the EU includes its 'Creative Europe' programme and research and innovation funding, notably via the 'Horizon 2020' programme. Furthermore, to be effective, EU copyright rules need to be up-to-date, properly transposed, enforced and understood on the ground.

## **2. ENSURING WIDER ACCESS TO CONTENT ACROSS THE EU**

The EU should strive for a broad availability of online content services 'without frontiers' to deliver more choice and diversity to people. A better functioning digital single market will also provide opportunities for creators and the cultural industries to expand their audiences and business and help them to stand up to international competition.

However, when it comes to copyright-protected content crossing borders, the digital single market is not yet a reality. When people travel to another Member State, they frequently cannot access content they have subscribed to or acquired at home (i.e. the content is not 'portable').<sup>10</sup>

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<sup>6</sup> The framework is a set of 10 directives, including the Directive on Copyright in the Information Society (2001/29/EC, the 'InfoSoc Directive') and the Directive on the Enforcement of Intellectual Property Rights (2004/48/EC, the 'IPRED Directive', relevant for intellectual property in general). The framework also reflects international obligations deriving from international treaties to which the EU and/or its Member States are parties.

<sup>7</sup> Final report available at

[http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/docs/contributions/consultation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf).

<sup>8</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0273&language=EN>.

<sup>9</sup> <http://data.consilium.europa.eu/doc/document/ST-22-2015-INIT/en/pdf>.

<sup>10</sup> In a recent survey, 33 % of respondents (a figure rising to 65 % in the 15-24 age bracket) who do not currently have a paying subscription for accessing content said that if they were to take up such a subscription they would

The range of online content available in one's home country does not reflect the breadth of Europe's cultural production and legal content offers online of European works are still far from realising their full potential. This is particularly the case for European audiovisual works, which in many instances struggle to be distributed, including online, beyond one Member State.<sup>11</sup> Even when available, works are difficult to discover and find. Furthermore, users often cannot access content distribution services available in other Member States.<sup>12</sup>

In an inherently borderless internet, this is not understood by people. This situation may lead to the use of technical 'workarounds', like virtual private networks (VPNs), to get access to content that cannot be found at home, and it can fuel piracy<sup>13</sup>. Another illustration of the current situation is the number of works that would benefit from wider exposure across the EU, but which cannot be found on any commercial distribution channel.

The causes of this situation are multiple. They can partially be traced to copyright and its territorial<sup>14</sup> application. The territoriality of rights does not prevent the granting of multi-territorial licences,<sup>15</sup> but there are instances where these are difficult or impossible to obtain. Right holders may decide to limit the territorial scope of licences granted to service providers and, as a result, services are limited to one or only certain territories. Service providers can also decide to confine a service to a particular territory, even when they have a licence to cover a broader territory, including the whole EU, or such licence is available to them. In addition, acquired licences, in particular for online rights, can remain unexploited.

The financing of new European productions in the audiovisual sector is, to a large extent, based on territorial licensing combined with territorial exclusivity granted to individual distributors or service providers. This is considered necessary by the European audiovisual industry to preserve sustainable financing, but can prevent service providers and distributors from providing cross-border 'portability' of services or from offering their services in other Member States. For out-of-commerce works, legal issues affecting their cross-border accessibility add

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find it important to be able to use it while travelling or staying temporarily in another Member State ('Flash Eurobarometer 411 — Cross-border access to online content', August 2015).

<sup>11</sup> In a study covering a sample of 50 European films across six online providers in seven Member States, average availability reached only 19 % (Commission's calculations based on data in 'Annex — On-demand audiovisual markets in the EU', a report by the European Audiovisual Observatory for DG CONNECT, April 2014).

<sup>12</sup> In a recent survey, more than half (53 %) of those who reported trying to access or download digital content from an online service meant for users in another Member State (up to 30 % of people in one Member State) said that they did so because they were looking for content not available in their own country; approximately the same amount (56 %) said that they experienced problems in trying to do this ('Flash Eurobarometer 411 — Cross-border access to online content', August 2015).

<sup>13</sup> According to a recent survey, 22 % of Europeans consider it is acceptable to download or access copyright-protected content illegally when there is no legal alternative in their country (Office for Harmonization in the Internal Market, 'European citizens and intellectual property: perception, awareness and behaviour', November 2013).

<sup>14</sup> The rights of authors and other right holders (performers, producers and broadcasters) are largely harmonised at EU level. However copyright remains territorial. This means that instead of there being a single copyright title valid simultaneously across the whole of the EU, there are 28 separate national ones. The use of a work in all Member States requires the conclusion of a licence, or several licences, covering each of the national territories.

<sup>15</sup> Efforts to make multi-territorial licensing easier have been made through the Directive on Collective Rights Management (2014/26/EU).

to more general difficulties in having them licensed for digitisation and for making them available domestically in the first place. This limits the availability of heritage online.

For television and radio broadcasting services, the Satellite and Cable Directive<sup>16</sup> already includes rules that aim to facilitate the rights clearance required for certain cross-border activities. These rules were devised well before the advent of the internet as a distribution channel for broadcasters and only apply to satellite broadcasting and to cable re-transmissions. The Commission is currently carrying out a review of this directive for its potential application in the online environment.

Other factors are also at play. For example in the audiovisual sector, a key role is played by the ‘market-readiness’ of works, i.e. how visible they are for potential licensees, and how easy it is to license them, as well as their availability in formats and in catalogues that are ready for use. Another issue is the gap between content offers and their actual uptake by potential audiences. Works need to be easily discovered and found by people in the first place,<sup>17</sup> even if they are already distributed online, and they must be understood in a known language. In general, there is a disconnect between the resources supporting culturally diverse *production* and the efforts put into its *circulation* and *access*.<sup>18</sup>

Ensuring wider access to creative content online and stimulating its circulation across Europe therefore involves combining a wide array of policy instruments. Along with a review of the current copyright legislation, the support the EU provides through its ‘Creative Europe’ programme and research and innovation programmes can also play a part. Having the creative and distribution industries and the Member States on board will also play a vital role in making content more widely available across the EU. The creative and distribution industries have the keys to evolving business models, while the Member States are primarily responsible for cultural policies in the EU. Member States also provide and manage most of the public funds directly supporting the European audiovisual industry, amounting to EUR 2.1 billion a year.<sup>19</sup>

The ultimate objective of full cross-border access for all types of content across Europe needs to be balanced with the readiness of markets to respond rapidly to legal and policy changes and the need to ensure viable financing models for those who are primarily responsible for content creation. The Commission is therefore proposing a gradual approach to removing obstacles to cross-border access to content and to the circulation of works.

As a first step, the Commission is presenting together with this Communication a proposal for a regulation on the ‘**portability**’ of online content services, to ensure that users who have subscribed to or acquired content in their home country can access it when they are temporarily in another Member State.

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<sup>16</sup> Directive on Satellite Broadcasting and Cable Retransmission (93/83/EEC).

<sup>17</sup> The Commission is also looking at how European audiovisual content, including non-national content, can be promoted as part of its assessment of the Directive on Audiovisual Media Services (2010/13/EU).

<sup>18</sup> This is addressed by the EU’s ‘Creative Europe’ programme (its MEDIA sub-programme in particular), which focuses strongly on promotion and distribution.

<sup>19</sup> European Audiovisual Observatory, ‘Public Funding for Film and Audiovisual Works in Europe’, October 2011. This figure refers to 2009 and only includes direct support (including EU-level support, which was however a small fraction of the total).

Furthermore, in order to allow for wider online access to works by users across the EU, the Commission is assessing options and will consider legislative proposals for adoption in spring 2016 including:

- Enhancing **cross-border distribution of television and radio programmes** online in the light of the results of the review of the Satellite and Cable Directive;
- Supporting right holders and distributors to reach agreement on **licences that allow for cross-border access to content, including catering for cross-border requests from other Member States**, for the benefit of both European citizens and stakeholders in the audiovisual chain. In this context, the role of mediation, or similar alternative dispute resolution mechanisms, to help the granting of such licences, will be considered;
- Making it easier to digitise **out-of-commerce works** and make them available, including across the EU.

The Commission will also, by leveraging its 'Creative Europe' programme and other policy instruments:

- Further promote tools to bring more European works into the single market, including the creation of **ready-to-offer catalogues** of European films, the development of **licensing hubs** (to help the licensing of works that are not yet available in a given Member State), and a larger use of **standard identifiers of works** (including by exploring links with the MEDIA sub-programme);
- Support the development of a European **aggregator of online search tools**<sup>20</sup> destined to end users (online indexation of available legal offers) and of national search tools, as well as promote **more efficient funding for, and use of, subtitling and dubbing** supported by public funds;
- Intensify its **dialogue with the audiovisual industry** to promote legal offers and the discoverability and findability of films (in its new partnership with national film funds), to find ways for a **more sustained exploitation of existing European films** (with the European Film Forum), and to explore alternative models of financing, production and distribution in the **animation sector that are scalable at European level (in a structured industry cooperation forum)**.

### 3. ADAPTING EXCEPTIONS TO DIGITAL AND CROSS-BORDER ENVIRONMENTS

The fragmentation of copyright rules in the EU is particularly visible in the area of exceptions. The exceptions set out in EU law are, in most cases, optional for Member States to implement.<sup>21</sup> Often exceptions are not defined in detail. As a consequence, an exception in the law of one Member State may not exist in a neighbouring one, or be subject to different conditions or vary in scope. In some cases the implementation of a given exception in Member States' law is narrower than what EU law permits.<sup>22</sup> Most exceptions do not have effect beyond a given

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<sup>20</sup> In cooperation with the European Observatory on Infringements of Intellectual Property Rights.

<sup>21</sup> EU law only provides for two mandatory exceptions: in article 5(1) of the InfoSoc Directive, which covers certain temporary acts of reproduction, and in article 6 of the Directive on Certain Permitted Uses of Orphan Works (2012/28/EU).

<sup>22</sup> The case law of the Court of Justice of the EU (CJEU) has repeatedly acknowledged that Member States must exercise the discretion they enjoy when implementing exceptions in their national law within the limits imposed by EU law. In particular, Member States are not free to determine the limits of a given exception in an inconsistent and non-harmonised manner, varying from one Member State to another (Case C-467/08 Padawan). The CJEU

Member State. Some of them may also need to be reassessed in the light of today's technological realities.

This situation seems to be posing problems in particular for those exceptions that are closely related to education, research and access to knowledge. The EU exception on illustration in teaching is a good example of how Member States implement exceptions in different ways, particularly when we look at Member States' understanding of how the exception should apply in digital environments. These differences could act as a brake on education trends like online courses, in-classroom use of technologies and digital materials and cross-border learning which have gained considerable ground in recent years.<sup>23</sup> In addition, the heterogeneous national implementation of the exception commonly referred to as 'panorama exception', which lets people take and upload pictures of works such as buildings or sculptures permanently located in public spaces, may give rise to uncertainties.

Similarly, the optional nature and the lack of cross-border effect for the disability exception raise problems. For instance, they make it difficult for people with print disabilities to access special formats made under the copyright exception of another Member State. The EU has given an international commitment to address this issue by signing up to the Marrakesh Treaty,<sup>24</sup> which now needs to be ratified and implemented.

The need to better reflect technological advances and avoid uneven situations in the single market is also clear with text-and-data mining (TDM), through which vast amounts of digital content are read and analysed by machines in the context of science and research. The lack of a clear EU provision on TDM for scientific research purposes creates uncertainties in the research community. This harms the EU's competitiveness and scientific leadership at a time when research and innovation (R&I) activities within the EU must increasingly take place through cross-border and cross-discipline collaboration and on a larger scale, in response to the major societal challenges that R&I addresses. Similarly, the EU exception authorising libraries and other institutions to allow on-screen consultation of works for research and private study only applies to terminals on the libraries' physical premises, which does not take into account today's technological possibilities for remote consultation. Lastly, the EU exception on preservation activities by cultural heritage institutions also needs attention, notably because Member States often do not take digital formats into account when implementing the exception at national level.<sup>25</sup>

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also said that, whilst exceptions must be interpreted strictly, Member States have to safeguard their effectiveness to permit observance of the exception's purpose (Case C-145/10 Painer).

<sup>23</sup> In a 2013 survey of higher education, 82 % of institutions indicated that they offer online courses, and 40 % estimated that at least half of their students were engaged in e-learning (European Universities Association, 'E-learning in European Higher Education Institutions', November 2014).

<sup>24</sup> The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or otherwise Print Disabled, signed on behalf of the EU on 30 April 2014.

<sup>25</sup> 90 % of institutional respondents to a 2015 survey declared that they have collections that need to be preserved for future generations, and an average of 60 % said that they collect 'born-digital' material (ENUMERATE, 'Survey Report on Digitisation in European Cultural Heritage Institutions 2015', June 2015).

The Commission will take action to ensure that the EU framework on exceptions that is relevant for access to knowledge, education and research is effective in the digital age and across borders.

As a first step, the Commission will propose the legislation required to implement the **Marrakesh Treaty**.

The Commission is assessing options and will consider legislative proposals on other EU exceptions by spring 2016, in order to:

- allow public interest research organisations to carry out **text and data mining** of content they have lawful access to, with full legal certainty, for scientific research purposes;
- provide clarity on the scope of the EU exception for ‘**illustration for teaching**’, and its application to digital uses and to online learning;
- provide a clear space for **preservation** by cultural heritage institutions, reflecting the use of digital technologies for preservation and the needs of born-digital and digitised works;
- support **remote consultation**, in closed electronic networks, of works held in research and academic libraries and other relevant institutions, for research and private study;
- clarify the current EU exception permitting the use of works that were made to be permanently located in the public space (the ‘**panorama** exception’), to take into account new dissemination channels.

The general objective is to increase the level of harmonisation, make relevant exceptions mandatory for Member States to implement and ensure that they function across borders within the EU.

In preparing the proposals, the Commission will take into account the relevant market situation and licensing practices for the uses concerned, and care will be taken to comply with international obligations, including the ‘three-step’ test.<sup>26</sup> The aim is to give users and right holders a legally certain and predictable system.

Levies that compensate right holders for the reprography and private copying exceptions can be a significant source of revenue but also raise single market issues. Many Member States impose these levies on a wide range of media and devices, and they are set, applied and administered in a variety of different ways.

This has caused considerable legal uncertainty. The substantial case law of the Court of Justice of the EU (CJEU) has clarified some of the issues signalled by the 2013 Vitorino Report<sup>27</sup> as detrimental to the free movement of goods and services. However, persisting national disparities can be problematic, especially when products subject to levies are traded across the EU. Levies are sometimes imposed by Member States irrespective of payments already made in other Member States, or without proper exemption or refund schemes. Undue payments may also occur when products for professional use are levied. Consumers are confronted with lack of clarity and transparency. There can also be discriminatory practices in the distribution of

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<sup>26</sup> The ‘three-step’ test, enshrined in the main international treaties on copyright, provides that exceptions shall only be applied in certain special cases which do not conflict with a normal exploitation of a work or other subject matter and do not unreasonably prejudice the legitimate interests of the right holder.

<sup>27</sup> This was the outcome of a mediation process led by Mr António Vitorino.



collected levies favouring national right holders. This situation may warrant intervention at EU level to provide greater clarity and put an end to major distortions.

The Commission will assess the need for action to ensure that, when Member States impose levies for private copying and reprography to compensate right holders, their different systems work well in the **single market** and do not raise barriers to the **free movement of goods and services**. Issues that may need to be addressed include the link between compensation and harm to right holders, the relation between contractual agreements and the sharing of levies, double payments, transparency towards consumers, exemptions and the principles governing refund schemes, and non-discrimination between nationals and non-nationals in the distribution of any levies collected. The Commission will also promote a reflection on how levies can be more **efficiently distributed to right holders**.

#### 4. ACHIEVING A WELL-FUNCTIONING MARKETPLACE FOR COPYRIGHT

A precondition for a well-functioning market place for copyright is the possibility for right holders to license and be paid for the use of their content, including content distributed online. The production of rich and diverse creative content and innovative online services are part of the same equation. Both — creative content and online services — are important for growth and jobs and the success of the internet economy.

There is, however, growing concern about whether the current EU copyright rules make sure that the value generated by some of the new forms of online content distribution is fairly shared, especially where right holders cannot set licensing terms and negotiate on a fair basis with potential users. This state of affairs is not compatible with the digital single market's ambition to deliver opportunities for all and to recognise the value of content and of the investment that goes into it. It also means the playing field is not level for different market players engaging in equivalent forms of distribution.

Currently, these discussions centre on certain online platforms and aggregation services. They are, however, likely to continue to arise for all online activities involving the commercial reuse or retransmission of copyright-protected content.

There are various reasons for this situation, both legal and market-related (including the relative market power of the parties involved). From a copyright perspective, an important aspect is the definition of the rights of communication to the public and of making available. These rights govern the use of copyright-protected content in digital transmissions. Their definition therefore determines what constitutes an act on the internet over which creators and the creative industries can claim rights and can negotiate licences and remuneration. There are contentious grey areas and uncertainty about the way these concepts are defined in EU law, in particular about which online acts are considered 'communication to the public' (and therefore require authorisation by right holders), and under what conditions.<sup>28</sup> These questions create on the one hand uncertainty in the market and, on the other, put into question the ability of these rights to transpose into the online world the basic principle of copyright that acts of exploitation need to

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<sup>28</sup> This uncertainty has resulted in a number of questions being referred to the CJEU for preliminary rulings.

be authorised and remunerated. Apart from its significance for the fair distribution of value in the online market place, lack of clarity on the definition of these rights can also generate uncertainty for ordinary internet users.

More broadly, the situation raises questions about whether the current set of rights recognised in EU law is sufficient and well-designed. For news aggregators, in particular, solutions have been attempted in certain Member States, but they carry the risk of more fragmentation in the digital single market.

In addition, platforms can also consider that they are not engaging in copyright-relevant acts at all, or that their activities are of a merely technical, automatic and passive nature, allowing them to benefit from the liability exemption of the e-Commerce Directive.<sup>29</sup> This has prompted a growing debate on the scope of this exemption and its application to the fast-evolving roles and activities of new players, and on whether these go beyond simple hosting or mere conduit of content.

Another relevant issue is fair remuneration of authors and performers, who can be particularly affected by differences in bargaining power when licensing or transferring their rights. Mechanisms which stakeholders raise in this context include the regulation of certain contractual practices, unwaivable remuneration rights, collective bargaining and collective management of rights.

The Commission is reflecting and consulting<sup>30</sup> on the different factors around the sharing of the value created by new forms of online distribution of copyright-protected works among the various market players. The Commission will consider measures in this area by spring 2016. The objective will be to ensure that the players that contribute to generating such value have the ability to fully ascertain their rights, thus contributing to a fair allocation of this value and to the adequate remuneration of copyright-protected content for online uses.

In this context, the Commission will examine whether action is needed on the **definition of the rights** of ‘communication to the public’ and of ‘making available’. It will also consider whether any action specific to news aggregators is needed, including intervening on **rights**. The role of alternative dispute resolution mechanisms will also be assessed. The Commission will take into account the different factors that influence this situation beyond copyright law, to ensure consistent and effective policy responses. Initiatives in this area will be consistent with the Commission's work on online platforms as part of the digital single market strategy.

The Commission will also consider whether solutions at EU level are required to increase legal certainty, transparency and balance in the system that governs the **remuneration of authors and performers** in the EU, taking national competences into account.

## 5. PROVIDING AN EFFECTIVE AND BALANCED ENFORCEMENT SYSTEM

Respect for copyright, as for any other intellectual property right, is essential to promote creativity and innovation and create trust in the market place. Rights that cannot be effectively

<sup>29</sup> Directive 2000/31/EC.

<sup>30</sup> The Commission is consulting on these and other issues related to online platforms: <https://ec.europa.eu/eusurvey/runner/Platforms>.

enforced have little economic value, particularly when infringements occur on a commercial scale that free-rides on the work and investment of creators, the creative industries and legal distribution services. Such commercial-scale infringements are currently very frequent and harmful, not only to right holders but also to the EU economy as a whole. An effective and balanced civil enforcement<sup>31</sup> system, which takes full account of fundamental rights, is required to reduce the costs of fighting infringements, particularly for small businesses, and keep up with their increasing cross-border nature.

An effective response to these challenges calls for a renewed effort and for a possible review of certain aspects of the existing legal framework. A ‘follow-the-money’ approach, which sees the involvement of different types of intermediary service providers, seems to be a particularly promising method that the Commission<sup>32</sup> and Member States have started to apply in certain areas. It can deprive those engaging in commercial infringements of the revenue streams (for example from consumer payments and advertising) emanating from their illegal activities, and therefore act as a deterrent. Furthermore, the current legal framework seems not to be fully fit for the challenges of the digital single market, particularly with regard to applying the right of information, injunctions and their cross-border effect, calculating damages and reimbursing legal costs. The Commission is currently evaluating the functioning of the broader intellectual property rights framework and is consulting the public<sup>33</sup> on these matters, in line with the digital single market strategy and the internal market strategy<sup>34</sup> objectives. It is also important that systems that allow illegal content to be removed by hosting services, once identified, are effective and transparent and prevent legal content from being taken down erroneously. These systems, which apply horizontally to all types of illegal content, are very relevant for the enforcement of copyright, as copyrighted material accounts for a large portion of the content subject to notices.

The Commission will take immediate action to engage, with all parties concerned, in setting up and applying ‘**follow-the-money**’ mechanisms, based on a self-regulatory approach, with the objective of reaching agreements by spring 2016. Codes of conduct at EU level could be backed by legislation, if required to ensure their full effectiveness.

As regards the **legal framework for the enforcement of intellectual property rights**, including copyright, the Commission will assess options and consider by autumn 2016 the need to amend the legal framework focussing on commercial-scale infringements, inter alia to clarify, as appropriate, the rules for identifying infringers, the application of provisional and precautionary measures and injunctions and their cross-border effect, the calculation and allocation of damages and legal costs.

The Commission is also carrying out a comprehensive assessment and a public consultation on online platforms,<sup>35</sup> which also covers ‘**notice and action**’ mechanisms and the issue of action remaining effective over time (the ‘take down and stay down’ principle).

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<sup>31</sup> The EU legal framework for the enforcement of copyright is set out in the IPRED Directive, and in some provisions of the InfoSoc Directive.

<sup>32</sup> COM(2013) 209 final.

<sup>33</sup> [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8580](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8580).

<sup>34</sup> COM(2015) 550 final.

<sup>35</sup> <https://ec.europa.eu/eusurvey/runner/Platforms>.

## **6. FOSTERING A LONG-TERM VISION**

Copyright will continue to matter to the economy, society and culture in the long term. In some areas, the promise of market-led solutions in response to emerging uses, particularly as regards the cross-border dimension, will need to be monitored. More generally, the EU should stand ready to respond to the need for its national copyright systems to further converge as content markets become closer and user behaviour further evolves, underpinned by rapid technological developments.

The effective and uniform application of copyright legislation across the EU, both by national legislators and the courts, will continue to be as important as the rules themselves. Potential difficulties and barriers to the single market should be identified as early as possible and addressed through proper mechanisms. The Commission will facilitate a structured dialogue between Member States to ensure a shared understanding of EU copyright law and foster convergence of national laws, including as regards enforcement.

The Commission will also continue to be vigilant about aligning the legal framework, including exceptions and licensing mechanisms, with market developments and consumer behaviour. It will do so with particular regard to emerging issues that require further analysis and monitoring. It will undertake stakeholder dialogues and further consultation where appropriate.

This approach is incremental, moving towards the realisation of a long-term vision for copyright in the EU: one where authors and performers, the creative industries, users and all those concerned by copyright are subject to the very same rules, irrespective of where they are in the EU. In this context, the Commission may call upon experts to assist it with defining further need for reform of EU copyright rules.

The full harmonisation of copyright in the EU, in the form of a single copyright code and a single copyright title, would require substantial changes in the way our rules work today. Areas that have so far been left to the discretion of national legislators would have to be harmonised. Uniform application of the rules would call for a single copyright jurisdiction with its own tribunal, so that inconsistent case law does not lead to more fragmentation.

These complexities cannot be a reason to relinquish this vision as a long-term target. Notwithstanding the particularities of copyright and its link with national cultures, difficulties and long lead-times have also accompanied the creation of single titles and single rulebooks in other areas of intellectual property, notably trademarks and patents, where they are now a reality.

The EU should pursue this vision for the very same reason it has given itself common copyright legislation: to build the EU's single market, a thriving European economy and a space where the diverse cultural, intellectual and scientific production of Europe travel across the EU as freely as possible.