MAGYAR IPARJOGVÉDELMI ÉS SZERZŐI JOGI EGYESÜLET

Hungarian Association for the Protection of Industrial Property and Copyright
Association Honroise pour la Protection de la Propriété industrielle et le Droit d'Auteurs
Ungarische Vereinigung Gewerblichen Rechtsschutz und Urheberrecht

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Public Consultation
on the review of the EU copyright rules

Contents

I. Introduction

A. Context of the consultation

Over the last two decades, digital technology and the Internet have reshaped the ways in which content is created, distributed, and accessed. New opportunities have materialised for those that create and produce content (e.g. a film, a novel, a song), for new and existing distribution platforms, for institutions such as libraries, for activities such as research and for citizens who now expect to be able to access content – for information, education or entertainment purposes – regardless of geographical borders.

This new environment also presents challenges. One of them is for the market to continue to adapt to new forms of distribution and use. Another one is for the legislator to ensure that the system of rights, limitations to rights and enforcement remains appropriate and is adapted to the new environment. This consultation focuses on the second of these challenges: ensuring that the EU copyright regulatory framework stays fit for purpose in the digital environment to support creation and innovation, tap the full potential of the Single Market, foster growth and investment in our economy and promote cultural diversity.

In its "Communication on Content in the Digital Single Market"[1] the Commission set out two parallel tracks of action: on the one hand, to complete its on-going effort to review and to modernise the EU copyright legislative framework[2][3] with a view to a decision in 2014 on whether to table legislative reform proposals, and on the other, to facilitate practical industry-led solutions through the stakeholder dialogue "Licences for Europe" on issues on which rapid progress was deemed necessary and possible.

The "Licences for Europe" process has been finalised now[4]. The Commission welcomes the practical solutions stakeholders have put forward in this context and will monitor their progress. Pledges have been made by stakeholders in all four Working Groups (cross border portability of services, user-generated content, audiovisual and film heritage and text and data mining). Taken together, the Commission expects these pledges to be a further step in making the user environment easier in many different situations. The Commission also takes note of the fact that two groups – user-generated content and text and data mining – did not reach consensus among participating stakeholders on either the problems to be addressed or on the results. The discussions and results of "Licences for Europe" will be also taken into account in the context of the review of the legislative framework.

As part of the review process, the Commission is now launching a public consultation on issues identified in the Communication on Content in the Digital Single Market, i.e.: *"territoriality in the Internal Market, harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform"*. As highlighted in the October 2013 European Council

[1] COM (2012)789 final, 18/12/2012.

[2] As announced in the Intellectual Property Strategy ' A single market for Intellectual Property Rights: COM (2011)287 final, 24/05/2011.

[3] *"Based on market studies and impact assessment and legal drafting work"* as announced in the Communication (2012)789.

[4] See the document "Licences for Europe – tem pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

Conclusions[5] *"Providing digital services and content across the single market requires the establishment of a copyright regime for the digital age. The Commission will therefore complete its on-going review of the EU copyright framework in spring 2014. It is important to modernise Europe's copyright regime and facilitate licensing, while ensuring a high level protection of intellectual property rights and taking into account cultural diversity".*

This consultation builds on previous consultations and public hearings, in particular those on the "Green Paper on copyright in the knowledge economy"[6], the "Green Paper on the online distribution of audiovisual works"[7] and "Content Online"[8]. These consultations provided valuable feedback from stakeholders on a number of questions, on issues as diverse as the territoriality of copyright and possible ways to overcome territoriality, exceptions related to the online dissemination of knowledge, and rightholders' remuneration, particularly in the audiovisual sector. Views were expressed by stakeholders representing all stages in the value chain, including right holders, distributors, consumers, and academics. The questions elicited widely diverging views on the best way to proceed. The "Green Paper on Copyright in the Knowledge Economy" was followed up by a Communication. The replies to the "Green Paper on the online distribution of audiovisual works" have fed into subsequent discussions on the Collective Rights Management Directive and into the current review process.

B. How to submit replies to this questionnaire

You are kindly asked to send your replies **by 5 February 2014** in a MS Word, PDF or OpenDocument format to the following e-mail address of DG Internal Market and Services: **markt-copyright-consultation@ec.europa.eu**. Please note that replies sent after that date will not be taken into account.

This consultation is addressed to different categories of stakeholders. To the extent possible, the questions indicate the category/ies of respondents most likely to be concerned by them (annotation in brackets, before the actual question). Respondents should nevertheless feel free to reply to any/all of the questions. Also, please note that, apart from the question concerning the identification of the respondent, none of the questions is obligatory. Replies containing answers only to part of the questions will be also accepted.

You are requested to provide your answers directly within this consultation document. For the "Yes/No/No opinion" questions please put the selected answer in **bold** and underline it so it is easy for us to see your selection.

In your answers to the questions, you are invited to refer to the situation in EU Member States. ***You are also invited in particular to indicate, where relevant, what would be the impact of options you put forward in terms of costs, opportunities and revenues.***

The public consultation is available in English. Responses may, however, be sent in any of the 24 official languages of the EU.

C. Confidentiality

The contributions received in this round of consultation as well as a summary report presenting the responses in a statistical and aggregated form will be published on the website of DG MARKT.

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[5] EUCO 169/13, 24/25 October 2013.
[6] COM(2008) 466/3, http://ec.europa.eu/internal_market/copyright/copyright-infso/index_en.htm#maincontentSec2.
[7] COM(2011) 427 final, http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm.
[8] http://ec.europa.eu/internal_market/consultations/2009/content_online_en.htm.

Please note that all contributions received will be published together with the identity of the contributor, unless the contributor objects to the publication of their personal data on the grounds that such publication would harm his or her legitimate interests. In this case, the contribution will be published in anonymous form upon the contributor's explicit request. Otherwise the contribution will not be published nor will its content be reflected in the summary report.

Please read our Privacy statement.

PLEASE IDENTIFY YOURSELF:

Name:

Hungarian Association for Industrial Property and Copyright (in Hungarian: Magyar Iparjogvédelmi és Szerzői Jogi Egyesület, as abbreviated: MIE)

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its Code of Conduct.

- If you are a Registered organisation, please indicate your Register ID number below. Your contribution will then be considered as representing the views of your organisation.

……..

……..

- If your organisation is not registered, you have the opportunity to register now. Responses from organisations not registered will be published separately.

If you would like to submit your reply on an anonymous basis please indicate it below by underlining the following answer:

- Yes, I would like to submit my reply on an anonymous basis

TYPE OF RESPONDENT (Please underline the appropriate):

€ **End user/consumer** (e.g. internet user, reader, subscriber to music or audiovisual service, researcher, student**) OR Representative of end users/consumers**

→ for the purposes of this questionnaire normally referred to in questions as **"end users/consumers"**

€ **Institutional user** (e.g. school, university, research centre, library, archive) **OR Representative of institutional users**

→ for the purposes of this questionnaire normally referred to in questions as **"institutional users"**

€ **Author/Performer OR Representative of authors/performers**

€ **Publisher/Producer/Broadcaster OR Representative of publishers/producers/broadcasters**

→ the two above categories are, for the purposes of this questionnaire, normally referred to in questions as **"right holders"**

€ **Intermediary/Distributor/Other service provider** (e.g. online music or audiovisual service, games platform, social media, search engine, ICT industry) **OR Representative of intermediaries/distributors/other service providers**

→ for the purposes of this questionnaire normally referred to in questions as **"service providers"**

€ **Collective Management Organisation**

€ **Public authority**

€ **Member State**

€ **Other** (Please explain):

MIE is an association to promote copyright and industrial property. The members are individuals and legal persons conducting business in the field of industry, academia, public administration, collective management. Our main goal is to promote the matter of the protection of IP and the awareness raising.

II. Rights and the functioning of the Single Market

A. Why is it not possible to access many online content services from anywhere in Europe?

[The territorial scope of the rights involved in digital transmissions and the segmentation of the market through licensing agreements]

Holders of copyright and related rights – e.g. writers, singers, musicians - do not enjoy a single protection in the EU. Instead, they are protected on the basis of a bundle of national rights in each Member State. Those rights have been largely harmonised by the existing EU Directives. However, differences remain and the geographical scope of the rights is limited to the territory of the Member State granting them. Copyright is thus territorial in the sense that rights are acquired and enforced on a country-by-country basis under national law[9].

The dissemination of copyright-protected content on the Internet – e.g. by a music streaming service, or by an online e-book seller – therefore requires, in principle, an authorisation for each national territory in which the content is communicated to the public. Rightholders are, of course, in a position to grant a multi-territorial or pan-European licence, such that content services can be provided in several Member States and across borders. A number of steps have been taken at EU level to facilitate multi-territorial licences: the proposal for a Directive on Collective Rights Management[10] should significantly facilitate the delivery of multi-territorial licences in musical works for online services[11]; the structured stakeholder dialogue "Licences for Europe"[12] and market-led developments such as the on-going work in the Linked Content Coalition[13].

"Licences for Europe" addressed in particular the specific issue of cross-border portability, i.e. the ability of consumers having subscribed to online services in their Member State to keep accessing them when travelling temporarily to other Member States. As a result, representatives of the audio-visual sector issued a joint statement affirming their commitment to continue working towards the further development of cross-border portability[14].

Despite progress, there are continued problems with the cross-border provision of, and access to, services. These problems are most obvious to consumers wanting to access services that are made available in Member States other than the one in which they live. Not all online services are available in all Member States and consumers face problems when trying to access such services across borders. In some instances, even if the "same" service is available in all Member States, consumers cannot access the service across borders (they can

[9] This principle has been confirmed by the Court of justice on several occasions.
[10] Proposal for a Directive of the European Parliament and of the Council of 11 July 2012 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, COM(2012) 372 final.
[11] Collective Management Organisations play a significant role in the management of online rights for musical works in contrast to the situation where online rights are licensed directly by right holders such as film or record producers or by newspaper or book publishers.
[12] You can find more information on the following website: http://ec.europa.eu/licences-for-europe-dialogue/.
[13] You can find more information on the following website: http://www.linkedcontentcoalition.org/.
[14] See the document "Licences for Europe – tem pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

only access their “national” service, and if they try to access the "same" service in another Member State they are redirected to the one designated for their country of residence).

This situation may in part stem from the territoriality of rights and difficulties associated with the clearing of rights in different territories. Contractual clauses in licensing agreements between right holders and distributors and/or between distributors and end users may also be at the origin of some of the problems (denial of access, redirection).

The main issue at stake here is, therefore, whether further measures (legislative or non-legislative, including market-led solutions) need to be taken at EU level in the medium term[15] to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders.

1. *[In particular if you are an end user/consumer:]* ***Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?***

□ YES - Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software)

Not relevant.

□ NO

□ NO OPINION

2. *[In particular if you are a service provider:]* ***Have you faced problems when seeking to provide online services across borders in the EU?***

□ YES - Please explain whether such problems, in your experience, are related to copyright or to other issues (e.g. business decisions relating to the cost of providing services across borders, compliance with other laws such as consumer protection)? Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software).

Not relevant.

□ NO

□ NO OPINION

3. *[In particular if you are a right holder or a collective management organisation:]* ***How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.***

[Open question]

[15] For possible long term measures such as the establishment of a European Copyright Code (establishing a single title) see section VII of this consultation document.

4. ***If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?***

[Open question]

5. *[In particular if you are a right holder or a collective management organisation:]* ***Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?***

□ YES – Please explain by giving examples

□ NO

□ NO OPINION

6. *[In particular if you are e.g. a broadcaster or a service provider:]* ***Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipient (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?***

□ YES – Please explain by giving examples

…….

…….

□ NO

□ NO OPINION

7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

□ YES – Please explain

…….

…….

X NO – Please explain

Following the adoption of the directive on collective management, the only rational solution would be to wait for the transposition of the directive, in particular for the expiry of the deadline provided for in Article 30, and the application of Article 33. Before the thorough examination of the effect of the measures provided for in the said rules, it would be premature to introduce further measures in the field of copyright.

□ NO OPINION

B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

[The definition of the rights involved in digital transmissions]

The EU framework for the protection of copyright and related rights in the digital environment is largely established by Directive 2001/29/EC[16] on the harmonisation of certain aspects of copyright and related rights in the information society. Other EU directives in this field that are relevant in the online environment are those relating to the protection of software[17] and databases[18].

Directive 2001/29/EC harmonises the rights of authors and neighbouring rightholders[19] which are essential for the transmission of digital copies of works (e.g. an e-book) and other protected subject matter (e.g. a record in a MP3 format) over the internet or similar digital networks.

The most relevant rights for digital transmissions are the reproduction right, i.e. the right to authorise or prohibit the making of copies[20], (notably relevant at the start of the transmission – e.g. the uploading of a digital copy of a work to a server in view of making it available – and at the users' end – e.g. when a user downloads a digital copy of a work) and the communication to the public/making available right, i.e. the rights to authorise or prohibit the dissemination of the works in digital networks[21]. These rights are intrinsically linked in digital transmissions and both need to be cleared.

1. The act of "making available"

Directive 2001/29/EC specifies neither what is covered by the making available right (e.g. the upload, the accessibility by the public, the actual reception by the public) nor where the act of "making available" takes place. This does not raise questions if the act is limited to a single territory. Questions arise however when the transmission covers several territories and rights need to be cleared (does the act of "making available" happen in the country of the upload only? in each of the countries where the content is potentially accessible? in each of the countries where the content is effectively accessed?). The most recent case law of the Court of Justice of the European Union (CJEU) suggests that a relevant criterion is the "targeting" of a certain Member State's public[22]. According to this approach the copyright-relevant act (which has to be licensed) occurs at least in those countries which are "targeted" by the online

[16] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

[17] Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

[18] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

[19] Film and record producers, performers and broadcasters are holders of so-called "neighbouring rights" in, respectively, their films, records, performances and broadcast. Authors' content protected by copyright is referred to as a "work" or "works", while content protected by neighbouring rights is referred to as "other subject matter".

[20] The right to "authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part" (see Art. 2 of Directive 2001/29/EC) although temporary acts of reproduction of a transient or incidental nature are, under certain conditions, excluded (see art. 5(1) of Directive 2001/29/EC).

[21] The right to authorise or prohibit any communication to the public by wire or wireless means and to authorise or prohibit the making available to the public "on demand" (see Art. 3 of Directive 2001/29/EC).

[22] See in particular Case C-173/11 (Football Dataco vs Sportradar) and Case C-5/11 (Donner) for copyright and related rights, and Case C-324/09 (L'Oréal vs eBay) for trademarks. With regard to jurisdiction see also joined Cases C-585/08 and C-144/09 (Pammer and Hotel Alpenhof) and pending CaseC-441/13 (Pez Hejduk); see however, adopting a different approach, Case C-170/12 (Pinckney vs KDG Mediatech).

service provider. A service provider "targets" a group of customers residing in a specific country when it directs its activity to that group, e.g. via advertisement, promotions, a language or a currency specifically targeted at that group.

8. Is the scope of the "making available" right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

X YES

Substantive law, the conflict of laws and jurisdiction should be kept as different issues - the substantive law is clear. From the aspect of the authors' right, a special type of communication to the public right as well as a right of reproduction (if there is a reproduction element) is needed. As far as the holders of the related rights are concerned, their making available right is required.

As far as the applicable law is concerned, the key issue is where the exploitation (use in terms of copyright) takes place. The answer is again given in the territories of the Member States where either communication to the public and/or reproduction take place. From this starting point, Rome I or Rome II Regulations shall be applied depending on the lawful or unlicensed type of use. The jurisdiction problem is tackled by the EU Court practice. Both the Falco as well as the Pinkney judgements are clear.

The country of origin principle would lead to licensing forum shopping, therefore it may not be applied in relation to the making available right, let alone to the problem of enforcement that is bound to the country where the actual use in terms of copyright takes place. Such a solution would be– with high probability – in conflict with the international commitments and their accepted interpretation of the EU as well.

The target country approach of the CJEU can be used to solve jurisdiction issues of consumer protection where the purpose is to ensure the right of access to remedies of consumers. The application of this approach to copyright issues (scope of license, enforcement of copyright) may lead to uncertainties in cases where the target countries cannot be defined unambiguously. If the use of works /other protected subject-matter may take place in countries other than the targeted ones the target country approach is useless. In some cases, the examination of the intention of the commercial user may help to a certain extent, but the possibility of the actual access to the works/protected subject-matters may not be set aside.

□ NO – Please explain how this could be clarified and what type of clarification would be required (e.g. as in "targeting" approach explained above, as in "country of origin" approach[23])

…….

…….

□ NO OPINION

[23] The objective of implementing a "country of origin" approach is to localise the copyright relevant act that must be licenced in a single Member State (the "country of origin", which could be for example the Member State in which the content is uploaded or where the service provider is established), regardless of in how many Member States the work can be accessed or received. Such an approach has already been introduced at EU level with regard to broadcasting by satellite (see Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission).

9. *[In particular if you are a right holder:]* ***Could a clarification of the territorial scope of the "making available" right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief[24])?***

See the answer to the previous question.

□ YES – Please explain how such potential effects could be addressed

…….

…….

□ NO

□ NO OPINION

2. Two rights involved in a single act of exploitation

Each act of transmission in digital networks entails (in the current state of technology and law) several reproductions. This means that there are two rights that apply to digital transmissions: the reproduction right and the making available right. This may complicate the licensing of works for online use notably when the two rights are held by different persons/entities.

10. *[In particular if you a service provider or a right holder:]* ***Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?***

□ YES – Please explain what type of measures would be needed in order to address such problems (e.g. facilitation of joint licences when the rights are in different hands, legislation to achieve the "bundling of rights")

…….

…….

X NO

The existence of the reproduction right and that of the making available (a special subtype of communication to the public) is not a novelty. Commercial users are used to obtaining more licenses. All broadcasting licenses include the two licenses granted with regards to the two modes of use. The same applies to online uses. Since Hungary follows the continental traditions, the two rights are exercised by the same CMO in the field of authors' musical rights. There is however a consequence of the Commission's soft law legislation (the Online Recommendation), namely that the major publishers withdrew the representation of the mechanical reproduction rights from the musical CMO-s. Here the fulfilment of the objective of the re-aggregation of the repertoires of the collective management directive has to be observed and evaluated before jumping to unfounded conclusions. It is moreover to be noted that the fact that more rightholders are involved in the musical online licensing (authors and music publishers – the re-aggregation is to be evaluated + performing artists + sound recording producers – here the assignment of performing artists' making available right is the issue) is a hard fact that cannot be

[24] Injunctive relief is a temporary or permanent remedy allowing the right holder to stop or prevent an infringement of his/her right.

changed or touched upon by legislation. Economic rights cannot be "taken away" or regrouped. A possible legislation on statutory one stop shops in the online field may violate the international commitments. However, the voluntary one stop shops might mitigate the eventual problem of obtaining more licenses. Anyway, audiovisual and fine arts' rights are in one hand.

In addition, the type of the online service is also an important fact. It can be disputed and depends on the technology used whether the provider of a pure streaming service needs a mechanical reproduction license or not. A differentiated approach is therefore needed.

☐ NO OPINION

3. Linking and browsing

Hyperlinks are references to data that lead a user from one location in the Internet to another. They are indispensable for the functioning of the Internet as a network. Several cases are pending before the CJEU[25] in which the question has been raised whether the provision of a clickable link constitutes an act of communication to the public/making available to the public subject to the authorisation of the rightholder.

A user browsing the internet (e.g. viewing a web-page) regularly creates temporary copies of works and other subject-matter protected under copyright on the screen and in the 'cache' memory of his computer. A question has been referred to the CJEU[26] as to whether such copies are always covered by the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

11. Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

X YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

The pending decisions of the ECJ should be waited on before jumping to any legislation. There are controversial scholarly opinions on the legal nature of linking. It may not be defined that per definitionem all types of linking to foreign content (deep, surface, embedded, framing, indexing) constitute communication to the public, no matter whether the link leads to a content that is made lawfully or unlawfully available. At the same time, the type of linking may play a role in the evaluation of the behaviour. A thorough analysis of the hyperlink as a technological notion is necessary. Depending on the result of the analysis, the introduction of a possible well defined free use of the traditional forms of links to a protected content may be considered.

☐ NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it does not amount to an act of communication to the public – or to a new public, or because it should be covered by a copyright exception)

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…….

[25] Cases C-466/12 (Svensson), C-348/13 (Bestwater International) and C-279/13 (C More entertainment).

[26] Case C-360/13 (Public Relations Consultants Association Ltd). See also http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0202_PressSummary.pdf.

□ NO OPINION

12. Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

X YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

The problem is solved by Art. 5 (1) a) of the Infosoc Directive and the Infopaq I and Infopaq II judgements.

□ NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it is or should be covered by a copyright exception)

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…….

□ NO OPINION

4. Download to own digital content

Digital content is increasingly being bought via digital transmission (e.g. download to own). Questions arise as to the possibility for users to dispose of the files they buy in this manner (e.g. by selling them or by giving them as a gift). The principle of EU exhaustion of the distribution right applies in the case of the distribution of physical copies (e.g. when a tangible article such as a CD or a book, etc. is sold, the right holder cannot prevent the further distribution of that tangible article)[27]. The issue that arises here is whether this principle can also be applied in the case of an act of transmission equivalent in its effect to distribution (i.e. where the buyer acquires the property of the copy)[28]. This raises difficult questions, notably relating to the practical application of such an approach (how to avoid re-sellers keeping and using a copy of a work after they have "re-sold" it – this is often referred to as the "forward and delete" question) as well as to the economic implications of the creation of a second-hand market of copies of perfect quality that never deteriorate (in contrast to the second-hand market for physical goods).

13. [In particular if you are an end user/consumer:] Have you faced restrictions when trying to resell digital files that you have purchased (e.g. mp3 file, e-book)?

□ YES – Please explain by giving examples

…….

…….

□ NO

[27] See also recital 28 of Directive 2001/29/EC.

[28] In Case C-128/11 (Oracle vs. UsedSoft) the CJEU ruled that an author cannot oppose the resale of a second-hand licence that allows downloading his computer program from his website and using it for an unlimited period of time. The exclusive right of distribution of a copy of a computer program covered by such a licence is exhausted on its first sale. While it is thus admitted that the distribution right may be subject to exhaustion in case of computer programs offered for download with the right holder's consent, the Court was careful to emphasise that it reached this decision based on the Computer Programs Directive. It was stressed that this exhaustion rule constituted a *lex specialis* in relation to the Information Society Directive (UsedSoft, par. 51, 56).

□ NO OPINION

14. *[In particular if you are a right holder or a service provider:]* ***What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.***

[Open question]

The introduction of the exhaustion of online rights would lead to the collapse of the existing lawful services. In addition, it would go against the rules and preambles laid down in the Infosoc Directive as well as the practice of the ECJ (Laserdisken) on the limitation of the exhaustion to tangible property. The "resale" always constitutes a new copy, a new reproduction, even if the deletion of the first "sold" copy can be monitored, which is very doubtful.

The UsedSoft judgement is not a way to follow. It is based on the lex specialis of the Software Directive.

In addition it includes

- a serious gapon the possibility to track the deletion of the first copy,

- a serious legal dogmatic mistake of mixing up licensing with sale, and thereby urging the software producers not to grant licenses in the future for the entire term of protection and to choose other (cloud based) business models.

The rightholders would not have a fair share from the incomes generated by the new market to be opened by the possible introduction of a digital exhaustion and this model would undermine the paradigm of copyright, meaning the incentive function. If the price of the "first sale" should be based on the calculation of all further possible online uses, it would lead to a radical increase of prices.

The introduction of the digital exhaustion would corrupt the enforcement. It would be impossible to track whether the source of the "resold" copy was a lawful one or not.

C. Registration of works and other subject matter – is it a good idea?

Registration is not often discussed in copyright in the EU as the existing international treaties in the area prohibit formalities as a condition for the protection and exercise of rights. However, this prohibition is not absolute[29]. Moreover a system of registration does not need to be made compulsory or constitute a precondition for the protection and exercise of rights. With a longer term of protection and with the increased opportunities that digital technology provides for the use of content (including older works and works that otherwise would not have been disseminated), the advantages and disadvantages of a system of registration are increasingly being considered[30].

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

□ YES

□ NO

[29] For example, it does not affect "domestic" works – i.e. works originating in the country imposing the formalities as opposed to works originating in another country.

[30] On the basis of Article 3.6 of the Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, a publicly accessible online database is currently being set up by the Office for Harmonisation of the Internal Market (OHIM) for the registration of orphan works.

□ NO OPINION

16. What would be the possible advantages of such a system?

[Open question]

-

17. What would be the possible disadvantages of such a system?

[Open question]

-

18. What incentives for registration by rightholders could be envisaged?

[Open question]

Voluntary registration systems exist in various Member States, also in Hungary. The only function of such systems -due to the prohibition of formalities under the Berne Convention - is that the substantiation of an infringement claim may be corroborated by the registration that may not constitute either protection nor authorship, let alone the certification of title chain.

As a result there are no reasonable incentive to set up a European registration system.

D. How to improve the use and interoperability of identifiers

There are many private databases of works and other subject matter held by producers, collective management organisations, and institutions such as libraries, which are based to a greater or lesser extent on the use of (more or less) interoperable, internationally agreed 'identifiers'. Identifiers can be compared to a reference number embedded in a work, are specific to the sector in which they have been developed[31], and identify, variously, the work itself, the owner or the contributor to a work or other subject matter. There are notable examples of where industry is undertaking actions to improve the interoperability of such identifiers and databases. The Global Repertoire Database[32] should, once operational, provide a single source of information on the ownership and control of musical works worldwide. The Linked Content Coalition[33] was established to develop building blocks for the expression and management of rights and licensing across all content and media types. It includes the development of a Rights Reference Model (RRM) – a comprehensive data model for all types of rights in all types of content. The UK Copyright Hub[34] is seeking to take such identification systems a step further, and to create a linked platform, enabling automated licensing across different sectors.

[31] E.g. the International Standard Recording Code (ISRC) is used to identify recordings, the International Standard Book Number (ISBN) is used to identify books.

[32] You will find more information about this initiative on the following website: http://www.globalrepertoiredatabase.com/.

[33] You will find more information about this initiative (funded in part by the European Commission) on the following website: www.linkedcontentcoalition.org.

[34] You will find more information about this initiative on the following website: http://www.copyrighthub.co.uk/.

19. What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

[Open question]

The role of the EU in this field may not exceed the support of the private initiatives by soft law. The objectives to be supported are the elaboration and distribution of industry standards. Grants may also contribute to the adoption of identifiers.

E. Term of protection – is it appropriate?

Works and other subject matter are protected under copyright for a limited period of time. After the term of protection has expired, a work falls into the public domain and can be freely used by anyone (in accordance with the applicable national rules on moral rights). The Berne Convention[35] requires a minimum term of protection of 50 years after the death of the author. The EU rules extend this term of protection to 70 years after the death of the author (as do many other countries, e.g. the US).

With regard to performers in the music sector and phonogram producers, the term provided for in the EU rules also extend 20 years beyond what is mandated in international agreements, providing for a term of protection of 70 years after the first publication. Performers and producers in the audio-visual sector, however, do not benefit from such an extended term of protection.

20. Are the current terms of copyright protection still appropriate in the digital environment?

X YES – Please explain

The term of protection is part of the copyright paradigm (the incentive to create). This incentive may not be understood as an individual incentive for the creator only but rather as a general incentive for the community of creators. Therefore, the term of protection, as it has been increased lately by the amendment of the term of the protection directive, expresses that the creators of widely and long used works will receive their reward. If a work does not "live" as long as the term of protection, the term of protection does not play any role. In cases where works are so highly appreciated that they are used even decades after the death of the original author, the protection is well justified.

The economic weight of the copyright based industries also support the keeping of the term of protection as it is.

What would happen to the value of "immaterial assets" protected by copyright as registered in the books of the relevant economic players, if all of a sudden the term of protection were shortened? It would decrease the values of such players, and therefore would have a negative impact on the economic data.

□ NO – Please explain if they should be longer or shorter

……

……

[35] Berne Convention for the Protection of Literary and Artistic Works, http://www.wipo.int/treaties/en/ip/berne/.

□ NO OPINION

III. Limitations and exceptions in the Single Market

Limitations and exceptions to copyright and related rights enable the use of works and other protected subject-matter, without obtaining authorisation from the rightholders, for certain purposes and to a certain extent (for instance the use for illustration purposes of an extract from a novel by a teacher in a literature class). At EU level they are established in a number of copyright directives, most notably Directive 2001/29/EC[36].

Exceptions and limitations in the national and EU copyright laws have to respect international law[37]. In accordance with international obligations, the EU acquis requires that limitations and exceptions can only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interest of the rightholders.

Whereas the catalogue of limitations and exceptions included in EU law is exhaustive (no other exceptions can be applied to the rights harmonised at EU level)[38], these limitations and exceptions are often optional[39], in the sense that Member States are free to reflect in national legislation as many or as few of them as they wish. Moreover, the formulation of certain of the limitations and exceptions is general enough to give significant flexibility to the Member States as to how, and to what extent, to implement them (if they decide to do so). Finally, it is worth noting that not all of the limitations and exceptions included in the EU legal framework for copyright are of equivalent significance in policy terms and in terms of their potential effect on the functioning of the Single Market.

In addition, in the same manner that the definition of the rights is territorial (i.e. has an effect only within the territory of the Member State), the definition of the limitations and exceptions to the rights is territorial too (so an act that is covered by an exception in a Member State "A" may still require the authorisation of the rightholder once we move to the Member State "B")[40].

The cross-border effect of limitations and exceptions also raises the question of fair compensation of rightholders. In some instances, Member States are obliged to compensate rightholders for the harm inflicted on them by a limitation or exception to their rights. In other instances Member States are not obliged, but may decide, to provide for such compensation. If a limitation or exception triggering a mechanism of fair compensation were to be given cross-border effect (e.g. the books are used for illustration in an online course given by an university in a Member State "A" and the students are in a Member State "B") then there

[36] Plus Directive 96/9/EC on the legal protection of databases; Directive 2009/24/EC on the legal protection of computer programs, and Directive 92/100/EC on rental right and lending right.

[37] Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (1971); Article 13 of the TRIPS Agreement (Trade Related Intellectual Property Rights) 1994; Article 16(2) of the WIPO Performers and Phonograms Treaty (1996); Article 9(2) of the WIPO Copyright Treaty (1996).

[38] Other than the grandfathering of the exceptions of minor importance for analogue uses existing in Member States at the time of adoption of Directive 2001/29/EC (see, Art. 5(3)(o)).

[39] With the exception of certain limitations: (i) in the Computer Programs Directive, (ii) in the Database Directive, (iii) Article 5(1) in the Directive 2001/29/EC and (iv) the Orphan Works Directive.

[40] Only the exception established in the recent Orphan Works Directive (a mandatory exception to copyright and related rights in the case where the rightholders are not known or cannot be located) has been given a cross-border effect, which means that, for instance, once a literary work – for instance a novel – is considered an orphan work in a Member State, that same novel shall be considered an orphan work in all Member States and can be used and accessed in all Member States.

would also be a need to clarify which national law should determine the level of that compensation and who should pay it.

Finally, the question of flexibility and adaptability is being raised: what is the best mechanism to ensure that the EU and Member States' regulatory frameworks adapt when necessary (either to clarify that certain uses are covered by an exception or to confirm that for certain uses the authorisation of rightholders is required)? The main question here is whether a greater degree of flexibility can be introduced in the EU and Member States regulatory framework while ensuring the required legal certainty, including for the functioning of the Single Market, and respecting the EU's international obligations.

21. Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

X YES – Please explain by referring to specific cases

There is still a considerable difference among the Member States due to the optional free use cases and the open end list. This is detrimental to legal safety. However, a number of the cases of free use as introduced in the Member States have no impact on the internal market. It is important to note the most significant exceptions that are transposed in the various legal systems.

□ NO – Please explain

□ NO OPINION

22. Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?

X YES – Please explain by referring to specific cases

In general we are not in favour of the further harmonization. However, it is worth considering to make mandatory or to provide for more details of those exceptions and limitations that have been introduced in the overwhelming majority of the Member States (e.g. free private reproduction + mandatory compensation).

□ NO – Please explain

…….

…….

□ NO OPINION

23. Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.

[Open question]

No.

24. Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

□ YES – Please explain why

…….

…….

X NO – Please explain why

The EU regulatory framework is sufficiently flexible. The Member States may choose from a rich menu that includes all the limitations and exceptions that existed in the Member States' copyright law at the time of the adoption of the Infosoc Directive and the three step test also serves the sophisticated evaluation of the free use cases well. The jurisprudence of the Member States can rely on this solution without any difficulty. A greater flexibility would result in a decrease in the level of protection, which should be high as it is reflected in the Infosoc Directive.

□ NO OPINION

25. If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

[Open question]

-

26. Does the territoriality of limitations and exceptions, in your experience, constitute a problem?

See our answer to the question 23.

□ YES – Please explain why and specify which exceptions you are referring to

□ NO – Please explain why and specify which exceptions you are referring to

…….

…….

□ NO OPINION

27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of "fair compensation" be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?)

[Open question]

This problem is solved by the judgement of the ECJ C-462/09 (Stichting de Thuiskopie v Opus Supplies Deutschland GmbH) stating that (…) "the provisions of the Directive on copyright impose on a Member State which has introduced the private copying exception into its national law an obligation to achieve a certain result, meaning that it must guarantee, within the framework of its competences, the effective recovery of the fair compensation intended to compensate the authors harmed by the prejudice sustained, in particular if that harm arose on the territory of that Member State". In plain words even if the sale of media that is subject to private copy remuneration is sold in the territory of another Member State, the fair compensations shall be collected in the

Member State, where the media is sold. The enforcement of the right to the fair compensation is subject to jurisdiction and court enforcement rules. The problem of applicable law has been excellently solved by the Opus decision.

Access to content in libraries and archives

Directive 2001/29/EC enables Member States to reflect in their national law a range of limitations and exceptions for the benefit of publicly accessible libraries, educational establishments and museums, as well as archives. If implemented, these exceptions allow acts of preservation and archiving[41] and enable on-site consultation of the works and other subject matter in the collections of such institutions[42]. The public lending (under an exception or limitation) by these establishments of physical copies of works and other subject matter is governed by the Rental and Lending Directive[43].

Questions arise as to whether the current framework continues to achieve the objectives envisaged or whether it needs to be clarified or updated to cover use in digital networks. At the same time, questions arise as to the effect of such a possible expansion on the normal exploitation of works and other subject matter and as to the prejudice this may cause to rightholders. The role of licensing and possible framework agreements between different stakeholders also needs to be considered here.

1. Preservation and archiving

The preservation of the copies of works or other subject-matter held in the collections of cultural establishments (e.g. books, records, or films) – the restoration or replacement of works, the copying of fragile works - may involve the creation of another copy/ies of these works or other subject matter. Most Member States provide for an exception in their national laws allowing for the making of such preservation copies. The scope of the exception differs from Member State to Member State (as regards the type of beneficiary establishments, the types of works/subject-matter covered by the exception, the mode of copying and the number of reproductions that a beneficiary establishment may make). Also, the current legal status of new types of preservation activities (e.g. harvesting and archiving publicly available web content) is often uncertain.

28. (a) *[In particular if you are an institutional user:]* ***Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?***

(b) *[In particular if you are a right holder:]* ***Have you experienced problems with the use by libraries, educational establishments, museum or archives of the preservation exception?***

Not relevant.

□ YES – Please explain, by Member State, sector, and the type of use in question.

…….

…….

□ NO

[41] Article 5(2)c of Directive 2001/29.
[42] Article 5(3)n of Directive 2001/29.
[43] Article 5 of Directive 2006/115/EC.

□ NO OPINION

29. If there are problems, how would they best be solved?
[Open question]

-

30. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]
-

31. If your view is that a different solution is needed, what would it be?

[Open question]

-

2. Off-premises access to library collections

Directive 2001/29/EC provides an exception for the consultation of works and other subject-matter (consulting an e-book, watching a documentary) via dedicated terminals on the premises of such establishments for the purpose of research and private study. The online consultation of works and other subject-matter remotely (i.e. when the library user is not on the premises of the library) requires authorisation and is generally addressed in agreements between universities/libraries and publishers. Some argue that the law rather than agreements should provide for the possibility to, and the conditions for, granting online access to collections.

32. (a) *[In particular if you are an institutional user:]* ***Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?***

(b) *[In particular if you are an end user/consumer:]* ***Have you experienced specific problems when trying to consult, including across borders, works and other subject-matter held in the collections of institutions such as universities and national libraries when you are not on the premises of the institutions in question?***

(c) *[In particular if you are a right holder:]* ***Have you negotiated agreements with institutional users that enable those institutions to provide remote access, including across borders, to the works or other subject-matter in their collections, for purposes of research and private study?***

[Open question]

-

33. If there are problems, how would they best be solved?

[Open question]

In the event of the introduction of off-premises access, serious technical difficulties arise. The identification of the user, as well as the monitoring of the observing of the scope of the licensed use, will constitute serious obstacles. Safe technical solutions would need vast investments to be made by budget institutions. The technical difficulties go hand in hand with the legal aspects of the same problems. The transposition of the orphan works directive may offer a solution with regards to the orphan works. This however brings the orphan works and the off-premises making available of orphan works in to a more advantageous situation than that of the "ordinary" works. The cross-border off-premises access to orphan works will be easier than the access to other works.

34. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]

-

35. If your view is that a different solution is needed, what would it be?

[Open question]

It would be worth considering the introduction of the extended collective licensing of the off-premises access to library collections. This solution would make the licensing simple and would eliminate the problem of the unidentified right holders.

3. E – lending

Traditionally, public libraries have loaned physical copies of works (i.e. books, sometimes also CDs and DVDs) to their users. Recent technological developments have made it technically possible for libraries to provide users with temporary access to digital content, such as e-books, music or films via networks. Under the current legal framework, libraries need to obtain the authorisation of the rights holders to organise such e-lending activities. In various Member States, publishers and libraries are currently experimenting with different business models for the making available of works online, including direct supply of e-books to libraries by publishers or bundling by aggregators.

36. (a)** [In particular if you are a library:] **Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?

(b)** [In particular if you are an end user/consumer:] **Have you experienced specific problems when trying to borrow books or other materials electronically (e-lending), including across borders, from institutions such as public libraries?

(c)** [In particular if you are a right holder:] **Have you negotiated agreements with libraries to enable them to lend books or other materials electronically, including across borders?

Not relevant.

□ YES – Please explain with specific examples

…….

…….

□ NO

□ NO OPINION

37. If there are problems, how would they best be solved?
[Open question]

-

The following two questions are relevant both to this point (n° 3) and the previous one (n° 2).

38. *[In particular if you are an institutional user:]* ***What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?***

[Open question]

Distribution of physical copies via libraries does not jeopardize the traditional publishers' business models, because they do not compete with each other, the library services cannot be conducted commercially per definitionem and the public lending remuneration exists to provide compensation for eventual losses. In the electronic area a market player can let access to the material in the same way (on similar platforms) as the libraries, so they compete with each other. Basically, there is not any relevant difference between them which could support a decision for making the electronic lending free.
See further the comment to the resale questions.

39. *[In particular if you are a right holder:]* ***What difference do you see between libraries' traditional activities such as on-premises consultation or public lending and activities such as off-premises (online, at a distance) consultation and e-lending? What problems have you encountered?***

[Open question]

-

4. Mass digitisation

The term "mass digitisation" is normally used to refer to efforts by institutions such as libraries and archives to digitise (e.g. scan) the entire content or part of their collections with an objective to preserve these collections and, normally, to make them available to the public. Examples are efforts by libraries to digitise novels form the early part of the 20th century or whole collections of pictures of historical value. This matter has been partly addressed at the EU level by the 2011 Memorandum of Understanding (MoU) on key principles on the digitisation and making available of out of commerce works (i.e. works which are no longer found in the normal channels of commerce), which is aiming to facilitate mass digitisation efforts (for books and learned journals) on the basis of licence agreements between libraries and similar cultural institutions on the one hand and the collecting societies representing authors and publishers on the other[44]. Provided the required funding is ensured (digitisation projects are extremely expensive), the result of this MoU should be that books that are currently to be found only in the archives of, for instance, libraries will be digitised and made

[44] You will find more information about his MoU on the following website: http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm .

available online to everyone. The MoU is based on voluntary licences (granted by Collective Management Organisations on the basis of the mandates they receive from authors and publishers). Some Member States may need to enact legislation to ensure the largest possible effect of such licences (e.g. by establishing in legislation a presumption of representation of a collecting society or the recognition of an "extended effect" to the licences granted)[45].

40. *[In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:]* ***Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?***

X YES – Please explain why and how it could best be achieved

The element of the MOU that makes possible the cross border access needs a EU level regulatory solution.

□ NO – Please explain

…….

…….

□ NO OPINION

41. Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?

X YES – Please explain

After testing the model in practice it would be reasonable to summarise the experiences and to implement the (modified) model in other areas.

□ NO – Please explain

…….

…….

□ NO OPINION

F. Teaching

Directive 2001/29/EC[46] enables Member States to implement in their national legislation limitations and exceptions for the purpose of illustration for non-commercial teaching. Such exceptions would typically allow a teacher to use parts of or full works to illustrate his course, e.g. by distributing copies of fragments of a book or of newspaper articles in the classroom or by showing protected content on a smart board without having to obtain authorisation from the right holders. The open formulation of this (optional) provision allows for rather different implementation at Member States level. The implementation of the exception differs from

[45] France and Germany have already adopted legislation to back the effects of the MoU. The French act (LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du xxe siècle) foresees collective management, unless the author or publisher in question opposes such management. The German act (Gesetz zur Nutzung verwaister und vergriffener Werke und einer weiteren Änderung des Urheberrechtsgesetzes vom 1. Oktober 2013) contains a legal presumption of representation by a collecting society in relation to works whose rightholders are not members of the collecting society.

[46] Article 5(3)a of Directive 2001/29.

Member State to Member State, with several Member States providing instead a framework for the licensing of content for certain educational uses. Some argue that the law should provide for better possibilities for distance learning and study at home.

42. ***(a)*** *[In particular if you are an end user/consumer or an institutional user:]* ***Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?***

(b) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the way in which works or other subject-matter are used for illustration for teaching, including across borders?***

Not relevant.

□ YES – Please explain

…….

…….

□ NO

□ NO OPINION

43. If there are problems, how would they best be solved?

[Open question]

-

44. What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?

[Open question]

-

45. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

[Open question]

-

46. If your view is that a different solution is needed, what would it be?

[Open question]

-

G. Research

Directive 2001/29/EC[47] enables Member States to choose whether to implement in their national laws a limitation for the purpose of non-commercial scientific research. The open formulation of this (optional) provision allows for rather different implementations at Member States level.

[47] Article 5(3)a of Directive 2001/29.

47. ***(a)*** *[In particular if you are an end user/consumer or an institutional user:]* ***Have you experienced specific problems when trying to use works or other subject matter in the context of research projects/activities, including across borders?***

(b) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the way in which works or other subject-matter are used in the context of research projects/activities, including across borders?***

Not relevant.

□ YES – Please explain

…….

…….

□ NO

□ NO OPINION

48. If there are problems, how would they best be solved?

[Open question]

-

49. What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?

[Open question]

-

H. Disabilities

Directive 2001/29/EC[48] provides for an exception/limitation for the benefit of people with a disability. The open formulation of this (optional) provision allows for rather different implementations at Member States level. At EU and international level projects have been launched to increase the accessibility of works and other subject-matter for persons with disabilities (notably by increasing the number of works published in special formats and facilitating their distribution across the European Union) [49].

The Marrakesh Treaty[50] has been adopted to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. The Treaty creates a mandatory exception to copyright that allows organisations for the blind to produce, distribute and make available accessible format copies to visually impaired persons without the authorisation of the rightholders. The EU and its Member States have started work to sign and ratify the

[48] Article 5 (3)b of Directive 2001/29.

[49] The European Trusted Intermediaries Network (ETIN) resulting from a Memorandum of Understanding between representatives of the right-holder community (publishers, authors, collecting societies) and interested parties such as associations for blind and dyslexic persons (http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm) and the Trusted Intermediary Global Accessible Resources (TIGAR) project in WIPO (http://www.visionip.org/portal/en/).

[50] Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, Marrakesh, June 17 to 28 2013.

Treaty. This may require the adoption of certain provisions at EU level (e.g. to ensure the possibility to exchange accessible format copies across borders).

50. ***(a)*** *[In particular if you are a person with a disability or an organisation representing persons with disabilities:]* ***Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?***

(b) *[In particular if you are an organisation providing services for persons with disabilities:]* ***Have you experienced problems when distributing/communicating works published in special formats across the EU?***

(c) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?***

X YES – Please explain by giving examples

Access is not hindered by the copyright rules - there is a free use (exception) with a sufficiently broad scope covering all modes of exploitation. The lack of an actual availability of works and other protected subject matter is the reason for the problem.

□ NO

□ NO OPINION

51. If there are problems, what could be done to improve accessibility?

[Open question]

See the answer to the previous question.

52. What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

[Open question]

-

I. Text and data mining

Text and data mining/content mining/data analytics[51] are different terms used to describe increasingly important techniques used in particular by researchers for the exploration of vast amounts of existing texts and data (e.g., journals, web sites, databases etc.). Through the use of software or other automated processes, an analysis is made of relevant texts and data in order to obtain new insights, patterns and trends.

The texts and data used for mining are either freely accessible on the internet or accessible through subscriptions to e.g. journals and periodicals that give access to the databases of publishers. A copy is made of the relevant texts and data (e.g. on browser cache memories or in computers RAM memories or onto the hard disk of a computer), prior to the actual analysis. Normally, it is considered that to mine protected works or other subject matter, it is

[51] For the purpose of the present document, the term "text and data mining" will be used.

necessary to obtain authorisation from the right holders for the making of such copies unless such authorisation can be implied (e.g. content accessible to general public without restrictions on the internet, open access).

Some argue that the copies required for text and data mining are covered by the exception for temporary copies in Article 5.1 of Directive 2001/29/EC. Others consider that text and data mining activities should not even be seen as covered by copyright. None of this is clear, in particular since text and data mining does not consist only of a single method, but can be undertaken in several different ways. Important questions also remain as to whether the main problems arising in relation to this issue go beyond copyright (i.e. beyond the necessity or not to obtain the authorisation to use content) and relate rather to the need to obtain "access" to content (i.e. being able to use e.g. commercial databases).

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results. At the same time, practical solutions to facilitate text and data mining of subscription-based scientific content were presented by publishers as an outcome of "Licences for Europe"[52]. In the context of these discussions, other stakeholders argued that no additional licences should be required to mine material to which access has been provided through a subscription agreement and considered that a specific exception for text and data mining should be introduced, possibly on the basis of a distinction between commercial and non-commercial.

53. ***(a)*** *[In particular if you are an end user/consumer or an institutional user:]* ***Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?***

(b) *[In particular if you are a service provider:]* ***Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?***

(c) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?***

X YES – Please explain

In our view, text and data mining constitutes use in copyright terms. Depending on the technology chosen by the miner or his/her technical contributor, the behaviour is either reproduction or falls within the scope of the general rule on the exploitation of works that is subject to the authorization of the right holder. In the case of databases, Article 7 (5) of the Database Directive is extremely relevant in this respect. (The repeated and systematic extraction and/or re-utilization <u>of insubstantial parts</u> of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.)

There is not any exception (free use) in this regard. Presumably, such a broad exception that would permit data and text mining in general would conflict with the Member States' international obligations.

[52] See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

□ NO – Please explain

…….

…….

□ NO OPINION

54. If there are problems, how would they best be solved?

[Open question]

It would be conceivable to introduce the rule of a properly defined free text/data mining for educational or scientific purposes without permitting the making of a permanent copy. It should be clear that privileged data (personal data, trade secrets etc.) shall not be subject to the exception, and the exclusive database right with regards to the insubstantial parts of databases should not be eroded by the exception. In addition - with due regard to the sensitive, privileged data - TPM should be privileged in relation to a possible new exception. Commercial uses should not fall within the scope of the text/data mining. It is worth considering also applying the exception of the citation to the data mining. It would mean that the indication of the source (respect of moral rights) as well as the proportionality of the citation could also be applied to the new eventual exception of data mining.

55. If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

[Open question]

-

56. If your view is that a different solution is needed, what would it be?

[Open question]

In case of the massive use of specific content that would exceed the scope of the exception (the justified and proportional use of text and data), the licensing could happen through a collecting society for a remuneration.

57. Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?

[Open question]

We do not have any knowledge about other barriers.

J. User-generated content

Technological and service developments mean that citizens can copy, use and distribute content at little to no financial cost. As a consequence, new types of online activities are developing rapidly, including the making of so-called "user-generated content". While users can create totally original content, they can also take one or several pre-existing works, change something in the work(s), and upload the result on the Internet e.g. to platforms and

blogs[53]. User-generated content (UGC) can thus cover the modification of pre-existing works even if the newly-generated/"uploaded" work does not necessarily require a creative effort and results from merely adding, subtracting or associating some pre-existing content with other pre-existing content. This kind of activity is not "new" as such. However, the development of social networking and social media sites that enable users to share content widely has vastly changed the scale of such activities and increased the potential economic impact for those holding rights in the pre-existing works. Re-use is no longer the preserve of a technically and artistically adept elite. With the possibilities offered by the new technologies, re-use is open to all, at no cost. This in turn raises questions with regard to fundamental rights such the freedom of expression and the right to property.

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results or even the definition of UGC. Nevertheless, a wide range of views were presented as to the best way to respond to this phenomenon. One view was to say that a new exception is needed to cover UGC, in particular non-commercial activities by individuals such as combining existing musical works with videos, sequences of photos, etc. Another view was that no legislative change is needed: UGC is flourishing, and licensing schemes are increasingly available (licence schemes concluded between rightholders and platforms as well as micro-licences concluded between rightholders and the users generating the content. In any event, practical solutions to ease user-generated content and facilitate micro-licensing for small users were pledged by rightholders across different sectors as a result of the "Licences for Europe" discussions[54].

58. ***(a)*** *[In particular if you are an end user/consumer:]* ***Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?***

(b) *[In particular if you are a service provider:]* ***Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?***

(c) *[In particular if you are a right holder:]* ***Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?***

X YES – Please explain by giving examples

UGC is anonymous. The enforcement of copyright against consumers that infringe copyright is either not possible or is viable only through a NTD procedure. It is still unclear after the Promusicae, LSG and Bonnier decisions, in which cases and to what extent the data of infringing private persons can be claimed in civil proceedings. Rightholders are not remunerated at all or rarely, even though the intermediary platforms generate usually serious receipts by operating UGC platforms.

□ NO

□ NO OPINION

[53] A typical example could be the "kitchen" or "wedding" video (adding one's own video to a pre-existing sound recording), or adding one's own text to a pre-existing photograph. Other examples are "mash-ups" (blending two sound recordings), and reproducing parts of journalistic work (report, review etc.) in a blog.

[54] See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

59. ***(a)*** *[In particular if you are an end user/consumer or a right holder:]* ***Have you experienced problems when trying to ensure that the work you have created (on the basis of pre-existing works) is properly identified for online use? Are proprietary systems sufficient in this context?***

(b) *[In particular if you are a service provider:]* ***Do you provide possibilities for users that are publishing/disseminating the works they have created (on the basis of pre-existing works) through your service to properly identify these works for online use?***

□ YES – Please explain

…….

…….

□ NO – Please explain

…….

…….

□ NO OPINION

60. ***(a)*** *[In particular if you are an end user/consumer or a right holder):]* ***Have you experienced problems when trying to be remunerated for the use of the work you have created (on the basis of pre-existing works)?***

(b) *[In particular if you are a service provider:]* ***Do you provide remuneration schemes for users publishing/disseminating the works they have created (on the basis of pre-existing works) through your service?***

X YES – Please explain

With regards to these uses, the lack of authorization/payment is not the only problem, but the infringement of moral rights is too (especially integrity protection and the right of name may be damaged).

□ NO – Please explain

…….

…….

□ NO OPINION

61. ***If there are problems, how would they best be solved?***

[Open question]

The Hungarian Council of Copyright Experts examined the issue and sees the solution in voluntary framework agreements between right holders and users. Due to the immaturity of the topic, self-regulation seems a particularly appropriate instrument.

62. ***If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?***

[Open question]

The non commercial purpose of consumers is not relevant. The use of works and other protected subject matter requires authorisation anyway. In addition, the mass non-commercial uses do have a seriously negative impact on the licensed lawful services.
The authorization of the acts of every single consumer is impossible. Therefore, it can be considered whether a compensated narrow exception regarding reproduction, communication and eventual adaptation could be introduced in conjunction with the exclusive licensing right or the remuneration right to be introduced towards the operators of the UGC platforms (please see below).
Such an exception should not and may not cover moral rights (in particular the right of integrity). Moral rights can be enforced via the existing NTD procedures if such procedures can be broadened by a stay down obligation.
A possible solution may be if the exception does not cover the adaptation right and, in this case, both the assertion of the adaptation right and the moral rights can happen via the NTD procedures if such procedures can be broadened by a stay down obligation.
The platforms offering UGC services are commercial and also include usages (reproduction and/or communication to the public) that could in no way be considered as UGC.
The platforms offering UGC services should either obtain the necessary licences with regards to their communication to the public and/or the reproduction that occurs via these platforms or these usages should be made subject to a remuneration right to be exercised via mandatory collective management (this limitation of the exclusive right would compensate the possible exception to be introduced for the benefit of the consumers generating the UGC).

63. If your view is that a different solution is needed, what would it be?
[Open question]
…….
…….

IV. Private copying and reprography

Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use and photocopying[55]. Levies are charges imposed at national level on goods typically used for such purposes (blank media, recording equipment, photocopying machines, mobile listening devices such as mp3/mp4 players, computers, etc.) with a view to compensating rightholders for the harm they suffer when copies are made without their authorisation by certain categories of persons (i.e. natural persons making copies for their private use) or through use of certain technique (i.e. reprography). In that context, levies are important for rightholders.

With the constant developments in digital technology, the question arises as to whether the copying of files by consumers/end-users who have purchased content online - e.g. when a person has bought an MP3 file and goes on to store multiple copies of that file (in her computer, her tablet and her mobile phone) - also triggers, or should trigger, the application of private copying levies. It is argued that, in some cases, these levies may indeed be claimed by rightholders whether or not the licence fee paid by the service provider already covers copies

[55] Article 5. 2)(a) and (b) of Directive 2001/29.

made by the end user. This approach could potentially lead to instances of double payments whereby levies could be claimed on top of service providers' licence fees[5657].

There is also an on-going discussion as to the application or not of levies to certain types of cloud-based services such as personal lockers or personal video recorders.

64. In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions[58] in the digital environment?

☐ YES – Please explain

…….

…….

X NO – Please explain

The case law of the European Court of Justice (Padawan-, Opus-, Amazon-, Kyocera cases, and the future decisions in ACI Adam and CopyDan cases) can in principle be codified. However, the practice clearly reflects occasional problems that cannot comprehensively be regulated. All in all, the codification is not necessary due to the practice of the CJEU.

If the harmonization and further legislation would be put on the agenda, the first step in any further harmonization should be that all Member States introduce these private copy remunerations.

☐ NO OPINION

65. Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies?[59]

X YES – Please explain

The licensing of the making of digital copies in systems that include the private copy remuneration and make private digital copying free is legally impossible. If there is an exception, the scope of the license may not cover the usage that is the subject-matter of the exception. In other words, if there is no restricted act, there is no room for licensing. Please also see VG Wort v. Kyocera that clarified the relationship between licensed uses and the remuneration right. As a consequence, the licensing and the private copy remuneration go hand in hand. The border of the scope of the license is that the licensee may make possible the download of the work or other subject-matter. The copying of the downloaded content is subject to the remuneration.

☐ NO – Please explain

…….

[56] Communication "Unleashing the Potential of Cloud Computing in Europe", COM(2012) 529 final.

[57] These issues were addressed in the recommendations of Mr António Vitorino resulting from the mediation on private copying and reprography levies. You can consult these recommendations on the following website: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf.

[58] Art. 5.2(a) and 5.2(b) of Directive 2001/29/EC.

[59] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies

…….

□ NO OPINION

66. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?

[Open question]

Diversity of online services does not allow for fully integrated solutions. The reproductions which are subject to the remuneration and which must be licensed by the right holder will depend on the business model. However, it should be clarified that, in the case that the private copying is included (offered) in the cloud services, it should be remunerated. What is decisive is the Padawan ruling stating that: private copying could be made not only by digital reproduction equipment, devices and media but also by copying services.

67. Would you see an added value in making levies visible on the invoices for products subject to levies?[60]

□ YES – Please explain

X NO – Please explain

In Member States where the tariffs are publicly available, it would mean an unnecessary extra burden and additional administrative cost. The regulation of the question does not need an EU level action.

□ NO OPINION

Diverging national systems levy different products and apply different tariffs. This results in obstacles to the free circulation of goods and services in the Single Market. At the same time, many Member States continue to allow the indiscriminate application of private copying levies to all transactions irrespective of the person to whom the product subject to a levy is sold (e.g. private person or business). In that context, not all Member States have ex ante exemption and/or ex post reimbursement schemes which could remedy these situations and reduce the number of undue payments[61].

68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?

□ YES – Please specify the type of transaction and indicate the percentage of the undue payments. Please also indicate how a priori exemption and/or ex post reimbursement schemes could help to remedy the situation.

X NO – Please explain

[60] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

[61] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

Our Copyright Act includes an export exception. If the media subject to the private copy remuneration is exported, the party obliged to pay the remuneration may claim a refund if the export is certified with appropriate documents. If a party seated abroad sells media subject to the private copy remuneration for buyers resident in Hungary, the OPUS decision applies, and such a party is liable to provide data and pay the remuneration pursuant to the Copyright Act.

□ NO OPINION

69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).

[Open question]

In Hungary the private copy remuneration and the reprography levy do not cover private reproduction only, but extend to some institutional copying acts, so the question should be evaluated in this context. A certain percentage of the remuneration is paid with regards to free reproductions other than private copying but subject to the remuneration. Nonetheless, the applicable Tariff Chart includes a professional a priori exemption covering non re-writable media if the party obliged to pay the remuneration can certify with appropriate documents that the media will and may not be used for private copying. In cases of re-writable media, the use of the media for private copying can never be excluded.

70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?

[Open question]

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71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?

[Open question]

See the answer to the previous question.

V. Fair remuneration of authors and performers

The EU copyright acquis recognises for authors and performers a number of exclusive rights and, in the case of performers whose performances are fixed in phonograms, remuneration rights. There are few provisions in the EU copyright law governing the *transfer* of rights from authors or performers to producers[62] or determining who the owner of the rights is when the work or other subject matter is created in the context of an employment contract[63]. This is an area that has been traditionally left for Member States to regulate and there are significant

[62] See e.g. Directive 92/100/EEC, Art.2(4)-(7).
[63] See e.g. Art. 2.3. of Directive 2009/24/EC, Art. 4 of Directive 96/9/EC.

differences in regulatory approaches. Substantial differences also exist between different sectors of the creative industries.

Concerns continue to be raised that authors and performers are not adequately remunerated, in particular but not solely, as regards online exploitation. Many consider that the economic benefit of new forms of exploitation is not being fairly shared along the whole value chain. Another commonly raised issue concerns contractual practices, negotiation mechanisms, presumptions of transfer of rights, buy-out clauses and the lack of possibility to terminate contracts. Some stakeholders are of the opinion that rules at national level do not suffice to improve their situation and that action at EU level is necessary.

72. *[In particular if you are an author/performer:]* ***What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?***

[Open question]

The introductory text of this question covers a very broad spectrum of problems, but an acute problem can be detected mainly in respect of the right of making available of performing artists. In this regard, there are significant differences between Member States, particularly with regard to transferability. In Hungary, it is an exclusive and transferable right, managed collectively, so the transfer may only be exercised in cases where the right holder withdraws his/her making available right from collective management. In other cases, the collecting society may claim remuneration for the use. However, there are several problems in practice with regards to the exercise of this making available right.

It would be worthwhile considering the introduction of a remuneration of which the performing artist cannot waive and which is not subject to transfer, so the performing artist could get a share from the revenue of any use. In the case of such an EU-wide solution, it should be left to the Member States to decide about the transferability of the exclusive right that would leave intact the remuneration right of the performing artist. All performing artists (audiovisual and musical performing artists) fight with this problem, which needs a general solution.

73. Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?

X YES – Please explain

Contract law is fundamentally different in the Member States, since the vast majority of these provisions are not harmonized. Because the possible introduction of a standstill clause would not necessarily apply in the same way in all Member States, while selecting one of these solutions it should be treated with special care. Also, the statutory and case law background of the licensing agreements deserve special attention.

□ NO – Please explain why

…….

…….

□ NO OPINION

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

[Open question]

VI. Respect for rights

Directive 2004/48/EE[64] provides for a harmonised framework for the civil enforcement of intellectual property rights, including copyright and related rights. The Commission has consulted broadly on this text[65]. Concerns have been raised as to whether some of its provisions are still fit to ensure a proper respect for copyright in the digital age. On the one hand, the current measures seem to be insufficient to deal with the new challenges brought by the dissemination of digital content on the internet; on the other hand, there are concerns about the current balance between enforcement of copyright and the protection of fundamental rights, in particular the right for a private life and data protection. While it cannot be contested that enforcement measures should always be available in case of infringement of copyright, measures could be proposed to strengthen respect for copyright when the infringed content is used for a commercial purpose[66]. One means to do this could be to clarify the role of intermediaries in the IP infrastructure[67]. At the same time, there could be clarification of the safeguards for respect of private life and data protection for private users.

75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

X YES – Please explain

The new enforcement system has not yet been fully tested since the transposition of Directive 2004/48/EC, which is due to the slow movement of the legal system. There has not been much case law since the 2006 implementation. Therefore, not all tools could have been fully tested so far. Thus, it cannot be said with absolute certainty whether the system is effective or not with regards to commercial scale infringements.

However, it can be said that the current toolbar is not suitable for the online infringements.

□ NO – Please explain

…….

…….

□ NO OPINION

76. In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers,

[64] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[65] You will find more information on the following website: http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm

[66] For example when the infringing content is offered on a website which gets advertising revenues that depend on the volume of traffic.

[67] This clarification should not affect the liability regime of intermediary service providers established by Directive 2000/31/EC on electronic commerce, which will remain unchanged.

payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

[Open question]

The role of intermediaries in the current system is essentially limited to the notice and take down proceedings since, because the provision of information (data of infringers) may not be ensured in civil enforcement, the filtering is outside of the possible sanctions and the NTD may pre-empt the injunction. It requires a fast reaction, but it is not effective enough to prevent further infringements. Therefore, the introduction of other devices should be necessary, in particular by strengthening the role of intermediaries. In most cases they have technical / IT tools, which would suppress the infringements effectively.

Thus, it is particularly important to strengthen the commitment of the entire chain of intermediaries. It would be useful to make clear the liability rules (i.e. the hosting provider does not carry out editing activities).

77. Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?

□ YES – Please explain

X NO – Please explain

According to the case law of the European Court of Justice, the legislative solution for finding the right balance is not uniform in the Member States' law. In many Member States, the courts cannot require the intermediaries to share personal data on the basis of the request for information, which ultimately means that copyright law absolutely cannot prevail over the protection of personal data. Therefore, it would be appropriate to harmonize at EU level the criteria for the disclosure of personal data. The LSG and Bonnier decision provide a good basis for that.

□ NO OPINION

VII. A single EU Copyright Title

The idea of establishing a unified EU Copyright Title has been present in the copyright debate for quite some time now, although views as to the merits and the feasibility of such an objective are divided. A unified EU Copyright Title would totally harmonise the area of copyright law in the EU and replace national laws. There would then be a single EU title instead of a bundle of national rights. Some see this as the only manner in which a truly Single Market for content protected by copyright can be ensured, while others believe that the same objective can better be achieved by establishing a higher level of harmonisation while allowing for a certain degree of flexibility and specificity in Member States' legal systems.

78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

□ YES

X NO

□ NO OPINION

79. Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that this is a longer term project?

[Open question]

The idea of a European copyright title reflects the idea of the single market. However, on the copyright markets we cannot speak about a single internal market in general. In some areas (especially for transborder online uses) it is an attainable goal, but in other areas it is not the ambition of the market players, either. Even in relation to the online area, it should also be stated that most services are not aimed at the whole territory of the EU, but several Member States.

Because of this situation, the single European copyright title cannot replace the national protection that is anyway part of the property system of the Member States.

The parallel existence of the EU level and national level protection - similar to some fields of industrial property law – would be significantly impeded, as the EU and its Member States are contracting parties of international agreements that exclude the formality conditions of protection attached to the protection of the contracting countries. The national and EU protection could not be separated from each other without a registration similar to the registration of the industrial property rights.

Moreover, Art 118 of the TFEU does not constitute a proper legal ground to introduce a single Copyright Title. paragraph (2) clearly refers to language regimes and the relevant decision making. From this reference, it is clear that the entire provision may only apply to industrial property rights.

The content and the regulatory approach and method of the national copyright laws are determined by the cultural, social and economic characteristics of the Member States, that do not seem to converge. It is to be feared that a unified European copyright title would abolish these national characteristics / values.

Therefore, the establishment of European copyright title is premature and unnecessary at the moment.

VIII. Other issues

The above questionnaire aims to provide a comprehensive consultation on the most important matters relating to the current EU legal framework for copyright. Should any important matters have been omitted, we would appreciate if you could bring them to our attention, so they can be properly addressed in the future.

80. Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.

[Open question]

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