

*Vilnius,
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INFORMAL DISCUSSION SESSION: CHALLENGES OF THE COPYRIGHT MODERNIZATION PROCESS

Vilnius, 7–8 October 2013

The European Commission in its Communication on content in the Digital Single Market stressed the immense and strategic importance of the copyright for the development of the Digital Single Market. It also pointed out the importance of modernising Europe's copyright regime and facilitating licensing, while ensuring a high level of protection of intellectual property rights and taking into account cultural diversity.

The Minister of Culture of the Republic of Lithuania during his presentations in the Lisbon Council and in the European Parliament Legal Affairs committee pointed out that Lithuania welcomes the Commission's objectives and initiatives to create a well-balanced legal framework for the use of creative activities. Furthermore, the Presidency believes that in order to meet the challenges of the digital age it is essential to harmonize the interests of copyright holders and copyright users. The rights of authors, performers, producers of phonograms or audiovisual works are more exposed in the digital environment. On the other hand, new business models based on the on-line distribution of content create new opportunities to generate incomes. We have seen a huge increase in the consumption of these services over the last several years. Accordingly, the copyright modernization process should ensure the right balance between new online businesses and an effective copyright protection regime. This should encourage the growth of the cultural and creative industries, as well as the European economy.

Against this background, the Lithuanian EU presidency would like to encourage further discussions and consultations between the member states regarding the promotion of creative content in the Digital Single Market. Therefore the Presidency would like to open the informal discussion amongst the experts of the Member States in the Copyright Working Party and the Commission, as well as the experts from the relevant authorities in Lithuania on 7-8 October 2013.

The Presidency suggests the following titles for the discussion:



I. Territoriality for digital transmission

1) Territoriality of copyright and the Internal Market

Questions for discussion:

Is the territoriality of copyright a reason why access to online services in the EU Member States remains uneven in some sectors/Member States and why cross border access in a number of cases is not possible?

Is there something that needs to be done beyond the facilitation of multi-territorial licensing?

2) The definition of rights relevant in the context of digital transmission

Questions for discussion:

Do all digital transmissions (downloads, streams and so on) require the licensing of the communication to the public, as well as making the rights themselves and the rights to reproduction available? If so, is the fact that the rights may be in different hands the cause of problems and are there measures that should be taken to bundle such rights?

Is there a new approach to clarifying where the act of 'making rights available' takes place? If so, in which sense?

With interactivity as the delimitation between the making the rights available and the general communication to the public, is there a need to clarify where activities such as webcasting fall?

Digital transmissions and private copying: what is the scope and the logic of a private copying exception in the context of digital transmissions? Is there a need to clarify the scope of the private copying exception in this context, including the concept of minimum harm?

II. Limitations and exceptions to copyright and related rights

3) The level of harmonization of limitations and exceptions

Questions for discussion:

Are there problems arising from the fact that all limitations and exceptions in the acquis (other than temporary acts of reproduction) are optional? Should some of them be made 'compulsory'?

Is there a problem arising from the fact that some exceptions in the acquis are worded in a general way (e.g. those for the benefit of archives or those for teaching and education)? Should their scope be more precisely defined?



Is there a need for new limitations and exceptions? If so, which ones or for which reasons?

Is there a need for more flexibility for Member States? How to square flexibility with the need to have adequate harmonisation?

4) Cross border limitations and exceptions

Questions for discussion:

Other than in the Orphan Works Directive limitations and exceptions in the EU the acquis does not affect cross border issues. Is this a problem, if so for which ones?

In the event of the cross border effect on limitations (e.g. online consultation of a book in a library across borders) how would one address the payment of 'fair compensation' when such fair compensation exist? (Who pays, where?)

Is there a need, following the jurisprudence of the CJEU, to harmonise to some extent the functioning of the levy system (when it exists) to ensure the functioning of the Internal Market? Should alternatives to the levy system be considered?