Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of 13 July 2016, from 10:00 to 12:00

Brussels, room: A1E2

Draft minutes

Mr Svoboda chaired the meeting, replacing Mr Cavada.

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 26 May 2016.

The minutes were approved.

3. Discussion on current issues in the area of IPR

The following spoke: Mr Pavel Svoboda (Chair), Ms Shira Perlmutter (Chief Policy Officer and Director of International Relations, United States Patent and Trademark Office, USPTO), Ms Susan Wilson (United States Intellectual Property Attaché to the European Union, U.S. Department of Commerce); Mr Michael Shapiro (Senior Counsel, Office of Policy and International Affairs, USPTO); Ms Julia Reda.

Mr **Svoboda** introduced the topic and welcomed the guests, recalling the productive JURI delegation to Washington where the guests met and opening the discussion on the new developments on IPR.

Ms **Perlmutter** stated that she was very glad to be able to do a follow-up on the meeting of November in Washington, US. Ms Perlmutter informed of the progress made since then in the field of copyright. She informed of the publication on 28 January of the long-waited **White Paper on Copyright in the digital environment** by the Department of Commerce and Intellectual Property Task Force. In the area of **remixes and mashes-up**, Ms Perlmutter specified that there was no need to change the legislation in force. The combination of the existing application of fair use and licensing was sufficient to deal with these issues, but the USPTO would be looking at whether guidelines could be developed to clarify how this applies to remixes. The second policy issue the USPTO looked at was **exhaustion of rights**, or the first sale doctrine as it is called in the US, in the context of digital transmissions of copyrighted works. Ms Perlmutter concluded that the law did not need to be changed looking at what was happening in the market place. UPSTO did not recommend extending the doctrine to apply to

digital transmissions. However, Ms Perlmutter agreed that there is a need for consumers to be better informed on what they are getting when they pay for works online. In that sense, the USPTO is involved in creating a multi-stakeholder process in order to develop best practices for those consumer communications. In the area of **statutory damages**, Ms Perlmutter emphasized the recommendations of the USPTO, which suggested a number of changes to ensure that courts had adequate flexibility and adequate discretion to assess appropriate amounts of statutory damages in cases involving individuals file shares or mass online services making hundreds of thousands of works available to the public. Ms Perlmutter then informed the audience that in February 2016 the US President sent over to the Senate for advice and consent the **ratification of the two recent WIPO Treaties, the Marrakech Treaty**, to ensure better access to accessible former copies of the works for the blind and visually impaired, and the **Beijing Treaty**, to ensure an up to date framework for legal protection internationally for actors, films and TV shows. Ms Perlmutter is hopeful that the Congress will go forward and have a hearing on the Marrakech Treaty at the least sometime this year. Although this issue has been a priority for the Administration, the ball is now in the Congress's court in order to move forward. The Congress is much occupied with the election year coming up and all of the other priority political items. Finally, she gave a briefing on a **number of studies** that have been launched or in process by the Copyright Office. According to Ms Perlmutter, there have also been discussions in the Congress about the need for **updating the Copyright Act**. It does not seem to be looking at a comprehensive rewrite of the statute, but rather some targeted amendments to update certain provisions and after having very extensive consultations and hearings. Orphan works may also be addressed, since for ten years the US tried to legislate on this issue without success. The Copyright Office recommendations on this are expected by the end of the year. Ms Perlmutter closed by saying that the US is following the discussions in Europe on the digital single market initiative with great interest, not only the copyright parts of the package. There are a constellation of issues that relate to the role and responsibility of intermediaries. All of these issues, including the follow-the-money approach and voluntary initiatives, have been pursued in the US as well. She referred to the package that might emerge on exceptions and limitations and that they are interested in looking at how those are articulated and how they find the right balance. The same issues are dealt with through fair use in the US that depends a lot on the specifics, how much is taken, how commercial the use is. Therefore, they are expecting the proposal to understand how the EU deals with those issues in order to make a comparison with the US approach.

Ms **Reda** stated that she found very important to have a regular dialogue with the US and she considered the visit to the US by the JURI Committee very instructive, where a lot of alignment was found. Then, Ms Reda referred to a case relating to the exhaustion of e-books, in which Advocate General Szpunar's Opinion in C-174/15, *Vereniging Openbare Bibliotheken*, on that matter was delivered on 16 June 2016, and a decision from the CJEU is expected. Regarding remixes, Ms Reda then referred to developments in Germany, where a High Court ruled in a case about sampling, where the dispute involved the interpretation of an open norm. Ms Reda informed that the German Constitutional Court found that, in general, taking smaller parts from an existing work in order to create a new work could be allowed. She also mentioned the discussion about the need for a remix exception.

Ms Reda asked Ms Perlmutter on her perspective about the need to align the exclusive rights in copyright. She questioned the implications for the international scene of the possible introduction of neighbouring rights for publishers. Ms Reda detailed that neighbouring rights for publishers are quite uncommon in other countries, and given the nature of the internet and the exchange of works, she expressed her concern about the effects that may occur. She believes it very encouraging to see that there is movement regarding the Marrakesh Treaty on the American side, and she inquired Ms Perlmutter on whether she expects that the US will be a part of the Treaty when it becomes active. Finally, Ms Reda questioned Ms Perlmutter about the approval of the Librarian of Congress, stating that in her opinion President Obama has found an excellent candidate.

Ms **Perlmutter** answered Ms Reda, informing that regarding the Librarian of Congress, there has been some delay on the confirmation process for reasons that have nothing to do with IP. This was not confirmed by the White House. Hopefully it would be a minor temporary stand-by. With regard to the Marrakesh Treaty, Ms Perlmutter informed that the US would join but the question is when. She declared it still might be possible by the end of this Administration. Ms Perlmutter said that the accession to the Treaty has been regarded as one of the Administration's top priorities and the Treaty has been generally well accepted. She guaranteed that there are no opposition to the Treaty and that the delay is due to the Congressional schedule. She added that there are still some concerns about the implementing legislation. Responding to the question on neighbouring rights for publishers, Ms Perlmutter pointed out that the US does not have the concept of neighbouring rights. All rights are dealt with under the Copyright System. Publishers do have rights of their own, not just delivered from authors, in some circumstances. In particular, if something qualifies as work made for higher, the publisher has the rights *ab initio*. In some ways, this system would not be foreign to the US legal order, but it depends on what it means and how it is drafted. Otherwise, in the US, if it is not a work for higher, the publisher gets rights through contract by the author, similarly to most European countries. Regarding the question about whether public domain works in a new edition and would have rights for the first time, Ms Perlmutter had some doubts on what would work from an American perspective. The issue would be whether there was sufficient original authorship that had been added to make it a new legal copyrightable work as a whole, and then the protection would not extent to the underlined public domain work. She assumed that would be the case here as well. E-books and library lending in the US are generally dealt with through contracts with publishers. One of the things the USPTO has explored in the White Paper was that the terms of those licenses are evolving, so initial licenses were no longer fair and acceptable. Ms Perlmutter thinks it is premature to legislate in this area, but is going to keep a close eye on it to see if they continue to evolve in acceptable ways or whether in future there might be some a need to reassess the legislation. Regarding remixes, Ms Perlmutter stated that, on the one hand, they have the fair use approach that applies, and, on the other hand, there is some licensing that is available as well, including through intermediaries like Youtube. She then added that they were told that a number of copyright industries were also looking at ways to make micro licensing available directly to consumers that could be used for remixes for those who did not want to take the risk of relying on fair use or who thought that what they were doing would go beyond what fair use would permit. Ms Perlmutter encouraged the development

of more licensing options for those who wish to license instead of using fair use. In addition, in order to achieve greater clarity, the USPTO is also preparing workshops that will go into more depth on exactly how the fair use doctrine applies to remixes. She hoped that it would be announcing publicly in the upcoming weeks.

4. Presentation by the Commission on the regulatory environment for platforms and online intermediaries.

The following spoke: Mr Pavel Svoboda; Mr Gerard De Graaf (Director for Digital Economy and Coordination, DG CNECT, European Commission); Ms Shira Perlmutter (Chief Policy Officer and Director of International Affairs, United States Patent and Trademark Office, USPTO); Ms Susan Wilson (United States Intellectual Property Attaché to the European Union, U.S. Department of Commerce); Mr Dietmar Köster; Ms Julia Reda; Ms Catherine Stihler.

Mr **Svoboda** introduced the topic and welcomed Mr Gerard De Graaf who for the first time was invited to speak at the Working Group meeting. He recalled that Mr Eric Peters and Ms Maria Martin-Prat from DG CNECT presented the first results of the consultation and held an exchange with Members at the WG meeting in March.

Mr **De Graaf** started by pointing out the general approach of the communication "Online platforms and the Digital Single Market – Opportunities and Challenges for Europe". The first point is related to the **concept of platforms**. He said that when talking about platforms, there is a tendency to lump together a great variety of different situations in business models. He stressed that the concept of platforms encompasses market places, app-stores, social media, content distributed, collaborative economy, payment systems, in other terms a great variety of different situations, which will require different policies to respond it. According to him, a one-size-fits-all policy is not the right answer. The second point is the very **positive role that platforms play in economies and societies**. Platforms have given more choice, new services and innovation, and they have been a major enhancement of efficiency in our economy. In Mr De Graaf's perspective, also for democracy, the role that platforms play in terms of allowing public debate and exchanges should not be underestimated. The Commission believes that the EU should be committed to take a positive welcoming attitude towards the platform economy. Whilst the platforms are very diverse, they also have some elements in common. The first informal state tend to be ICT-based, they are disruptive, they work on the basis of data, and they benefit from network effects. Platforms develop quickly, they rescale very quickly, and so speed and scale up are really the main issues of the game in the platform economy. The EU share of the platform economy, in terms of market capitalisation is, according to Mr De Graaf figures, rarely 4%. Most of the platforms originate in other part of the world, in the US primarily, but also increasingly in China. Mr De Graaf **blamed the fragmentation of the single market** as one of the reasons that the platforms' development in Europe has not been a successful as far as we would have wished. For a platform, which is successful in one Member State, and wants to scale up in Europe, it is like starting up all over again. In the last IMCO Committee meeting, the example of Spotify was mentioned: it is a very successful European platform, but it took about 5 years before Spotify was available in all EU Member States. In the meantime, it went to the US and it was available there before it was accessible in the majority

of EU Member States. Mr De Graaf stated that this has to do with fragmentation, that it takes time, efforts and money in order to scale up in Europe. Platforms have to adjust to very different conditions and regulations that still apply. Therefore, the lesson to be drawn for Europe, in Mr De Graaf words is to make sure that the single market works, if EU wants to be more successful in the platform economy. Mr De Graaf stressed that the Commission wants to make sure that we have the right framework, which means "**one rule for one market**", not 28 different rules. Member States, in particular, need to exercise self-restraint. If there is a need for action, or regulatory action, it should be adopted at EU level in the form of a high level of harmonisation that Member States should implement according to their own needs and political requirements. The second message is that platforms are a very rapidly developing market. Mr De Graaf advocated that when finding policy solutions, the EU has to be absolutely sure that it is a solution that would resist and stand the test of time. This means that, in many situations, acting with more **flexible principle-based interventions**, as self-regulation or co-regulation, might be a more appropriate than using divisive legislative interventions. That is something that the Commission tries to apply in the different measures that it is putting forward. The third key message Mr De Graaf addressed was the perception that platforms operate in legal vacuums, given that there are the economy and a parallel economy, which is called platform economy. Mr De Graaf refused those concepts. Platforms are subject to regulation in the EU where there is competition law, consumer law, taxation, value added taxation, and a wide range of data protection rules, a wide range of laws. All these regulations apply to platforms. Mr De Graaf believed it is imperative that these **rules are effectively enforced**. Providing framework conditions start with effective enforcement of existing rules, before creating new measures. The last message Mr De Graaf mentioned concerned the fact that there is a great variety or diversity of business models, that requires the adoption of a problem-different approach. If a one-size-fits-all horizontal platform regulation is used, it will take nowhere. Mr De Graaf considered that when facing a particular problem, the question is not what kind of problem can be resolved by the market itself, but rather if the problem can be resolved at EU level or is better resolved by national level. If the answer is at EU level, then it has to be designed in a way that guarantees access to the single market. It is not because it is possible to define platforms that is a good enough reason to regulate them. There is a need for good evidence that there is a problem and that problem is best resolved at EU level through legislation.

Mr De Graaf then indicated that the Commission is founding its policymaking on the following important principles. The first principle is the **level playing field**. The economy has changed fundamentally and in an increasing way in many sectors. The traditional operator is facing the incumbency of the competitors in the new e-commerce and platforms economy. This is for example the case of electronic communications, telecoms, where the so called 'over the top' are competing on some services with the telecom providers. Mr De Graaf considered that the question is whether it is also true for the collaborative economy in general, where new services, like Uber, are moving into traditional areas, which have been regulated for a very long time. The question to be asked is if the regulation is still fit for the purpose. Thus, if there can be scope for bi-regulation. In the area of telecoms the EU regulates on an *ex ante* basis because there is market failure. If the market works well and there is effective competition, the reasons for intervention might no longer be present or at least the intervention cannot be at the same

extent. He also believed that possible ways to de-regulate should be assessed. Regulating platforms might be necessary, particularly when you have a type of services in competition, but maybe not necessarily in the exactly same way the traditional providers are regulated. For Mr De Graaf this is certainly the case when platforms are not providing exactly the same service or similar services. In the last IMCO Committee Skype and WhatsApp were given as examples of platforms that do not provide the same services as telecoms services have been providing for a long time. In those cases, you cannot apply the same rules to these services. This reflects the assessment that the Commission is currently making. The second principle pointed out by Mr De Graaf concerned **responsibility of platforms**. Platforms have become very important in our economies and society. A lot of the information we get comes from platforms and according to Mr De Graaf this brings with it a great responsibility: platforms have to have responsibility in relation to hate speech or protection of minors. Following this approach, the Commission proposed at the end of May a review of the Audio-visual Media Services Directive. Mr De Graaf recommended the promotion of a more proactive role of platforms, while ensuring effective regulation, when that regulation is necessary. The Commission has also taken the view that it would not be appropriate to modify the e-Commerce Directive, which is relevant in the context of the copyright debate. In the perspective of the Commission, the e-Commerce Directive has been an important cornerstone of the growth of the digital economy in Europe, since it has provided predictability and it has enabled information services providers to make investments on the basis of legal certainty. In his opinion, if the e-Commerce Directive would be modified, it would create unwanted legal uncertainty. The background to the debate, also on copyright, is that important principles of the e-Commerce Directive, particularly the safe harbour provisions of Arts. 14 and 15, would continue to apply. The Commission has referred as third **principle transparency and fairness**, which has two dimensions. It has a consumer dimension, in the sense that consumers need to be sure that when they get information in order to answer uncertainty problems presented by platforms, they are well protected. It has also a businesses' dimension, since a lot of businesses, particularly small ones, rely on platforms to reach their customers. This has been very positive, given that many SMEs now have much wider reached consumers in other Member States thanks to these platforms, having the possibility to sell their products and services to a much wider market. However, the comprehensive assessment has showed some evidences that there might be situations where this relation between platforms and companies, which are hosted on the platforms, might be typified by some unfair commercial practices. The Commission believes that this may be linked with terms and conditions, situations where platforms compete directly with those they host products and services provided by companies. It may also have to do with the use of data by the platforms, with changes that platforms may make in their operations which might have an immediate effect on the visibility of the SMEs or the companies that rely on platforms for market access. In this particular case, the Commission has announced it will undertake further investigations for six months to look for further evidence, studies, surveys and workshops, aimed at establishing whether indeed these problems are over nature and over extent that they merit intervention and that they cause harm to companies. By the spring of next year, the Commission will present its findings and recommendations about future actions, which can range between legislative intervention to self-regulation or potentially alternative dispute resolution settlements. The last principle enunciated is the **open market**. This is related to data,

the way data is used and the way data can flow. Both stay within Member States competences. The Commission is preparing a legislative initiative proposal for legal instrument by the end of November on the free flow of data, particularly focused on avoiding unjustified geo-localisation restrictions that Member States impose. The Commission is also looking at the free flow of data between platforms, for example in clouds. A lot of SMEs and companies are concerned about blocking, mainly that when going into a particular platform or cloud, they will not have the possibility to move their data out of a cloud to a competing one. It raises issues of interoperability, portability of data and standards.

Mr De Graaf then addressed the **value gap issue**. He referred that the Commission is still in the process of reflection. He then gave some indications about the issues that the Commission is currently considering. Firstly, the Commission agrees that there is a value gap and recognizes that there is a problem. It has already committed itself regarding the matter in the package adopted last December with the portability proposal, which is making its way now through the Council and the Parliament. There was also a Communication where the Commission said that in the package, which is on the agenda of the Commission for the 21 September, it would look into finding ways to address the problem of the value gap. The Commission is looking to the creative content sector as an ecosystem. What they would like to see is an ecosystem that is healthy and sustainable. He specified that in this regard one should look at not just what is going on at the top of the value chain between platforms and producers, but also at what happens in lower down of the value chain between authors, performers, producers and higher up.

Moreover, in relation to the value gap, he underlined that an important point is to realise that copyright is an important element but it is not able to provide all the answers. This issue is also to be looked at from the perspective of the bargaining position. He emphasized the role of small players in the market. In his view, copyright can be a solution to some of the problems; it cannot be a solution to all the problems. There are other issues around bargaining that need particular attention. In terms of the solutions, the Commission is still reflecting on a number of options. This is not straightforward. In the context of the e-Commerce Directive, where the Commission has taken the view that the e-Commerce Directive safe harbour should remain as it is. The intention is to clarify, to put in place provisions that would facilitate the interaction between platforms and right holders. It would provide the conditions for these two parties to engage in negotiations that would lead to outcomes, which would be beneficial for both sides. The Commission is also discovering how technological solutions might help. In particular, they might help in avoiding material that is put on or uploaded into platforms to be available if the rights have not been clear, because there are already solutions out there in the market, some of the platforms are investing a lot in technological solutions. The Commission advocates that cooperation between platforms and right holders could be helpful in making such technological solutions more effective.

Mr De Graaf then focused on the fact that the Commission has also organised a public consultation on what is generally known as neighbouring rights for publishers. This consultation concluded about a month ago. Here the background is related to the possibility for publishers to have productive negotiations with those who make use of the content that they produce. Publishers generally do not have their own rights, their rights have been conferred to

them. Therefore, the question that was put in the public consultation was if it was appropriate, justified and necessary for publishers to be given or to be accorded those rights and in case of an affirmative answer, if all or only a part should be entitled to them. Mr De Graaf stated that press publishers have an important role-play in our society; they are under tremendous pressure because of the changing of these models of the digital distribution of their news. The Commission believes that press publishers have a very important role to play in a democratic society and that we should enable them to continue to play that role. There is a political consideration behind the question whether or not conferring neighbouring rights to publishers or press publishers would be the right way forward. The Commission is still reflecting on it and it is something that in the impact assessment will be carefully considered.

In conclusion, Mr De Graaf anticipated that the copyright package would come out on 21 September 2016. There will be a number of legislative instruments in that package, including two instruments implementing the Marrakesh Treaty into the EU legal order, a regulation on access to content, in particular for broadcasters and certain ancillary services, the modification and modernization of the 2001 InfoSoc Directive which will deal with exceptions, particularly in the area of education, research and preservation. The reform will deal with issues relating with the functioning of the market around on copyright, and the value gap in particular.

There are some company measures as well to promote high quality content and access to it across the EU, which would not be part of the package, but the Commission may adopt a communication setting out these measures. Last but not least, COM is working very closely with platforms and certain operators in the market to achieve a memorandum of understanding to cut off the flow of money to websites that on a very large scale make money out of illegal content.

Mr **Köster** referred to the problem of the value gap and the value chain. One of these problems states that the platforms generated a lot of work and a lot of money for themselves. Indeed, he stressed that the source of the creative culture in Europe are the creators. In his opinion, the question is if there is not a responsibility for the platforms to redistribute all the money they generated in favour of the creators. He acknowledged that they already have a small part of responsibility, but he thought that it is not enough and he wondered if it was possible to take another step forward. Mr Köster advocated that pure market government approach is not efficient for fair remuneration. He then addressed the issue of fragmentation of the single market in Europe. He stated that the Commission is right on this, but we have also to keep in mind that it is very important to combine the single market with social regulation and the value gap is a very important point as well. He asked Mr De Graaf whether there could be other instruments with which you could realise, or carry out, a better remuneration for the creators; for example, which role the collecting societies can play. He stated that there are big problems between Youtube and collecting societies in Germany. Another problem is that often the artistic creators in the negotiations are not in the same level. In Germany they talked about the right to sue of the organisation of the artists, realising that it should not belong only to one artist, it should be the task of a collecting society or trade unions.

Ms **Reda** shared the concern of the coherence of the different measures that the Commission proposes and the level playing field in that regard. She also addressed the problem of the authors' remuneration and the publishers's call for neighbouring rights and how this would fit with what the Commission is considering regarding the value gap. Finally, Ms Reda inquired about better regulation and the numerous consultations launched by the Commission. She questioned how the Commission intends to make sure that many people especially from civil society who are responding to the public consultations in their free time continue to participate in all these consultations and their voice is actually being heard.

Ms **Stihler** stated that the Marrakesh Treaty is interesting from both the America and European side. She believes that the EU has to have to progress on that to reassure that Europe is very serious and committed relatively to accessibility and equal rights for people with disabilities.

Mr **De Graaf** confirmed that platforms have responsibility towards authors and performers. If the ecosystem is sustainable, everybody in the ecosystem needs to ensure that everybody else in the ecosystem can thrive, because if you get to a situation where authors and performers are no longer fairly remunerated, we will see a starvation of quality content, that can down our societies and that is in nobody's interest. Platforms are successful because of the content that they can share. The offer to those visiting that platform is of quality content that a lot of authors and performers have produced. In theory, platforms have interest in making sure that the rest of the ecosystem is healthy. The Commission does believe that some intervention is necessary in order for the value to be descaptured from the platforms, to be more fairly distributed throughout the system so that money follows down to the authors and the performers. The Commission is also looking at other provisions of transparency and information to authors and performers about how their work have been used and exploited. The Commission is studying the possibility of renegotiating contracts where manifestly after time the content is having more revenue than initially thought, the so called 'best-seller clause'. The market itself is unlikely to lead the results that we believe are necessary for the ecosystem to be sustainable. Therefore, a certain number of obligations need to be imposed. The Commission will put some provisions into the legal instruments in order for the market to work better. He then affirmed that harmonisation and non-fragmentation do not mean no rules. The point that the Commission is trying to make is that if we decide that a rule is needed, it is better to have a harmonised one. The single market cannot work based on 28 different rules. The Commission is arguing for a smart regulation agenda. He also underlined the importance of bargaining power relating to the value gap. He pointed out that there are two sides of this issue: on the one hand, the copyright part and, on the other hand, the symmetry of big parties that have a lot of market power often negotiating with those who have a very little market power. Here the negotiations can be taken under unfair terms, maybe with arbitration or independent support. With regard to the coherence, different measures and levelling the playing field, Mr De Graaf warned that if we regulate mainly or only for broadcasters and ancillary services, and we leave aside the VOD, we are not unlevelling the playing field. The copyright reform has to be inevitably step-by-step. The Commission is taking an important step forward. The market is moving very fast and this is a very complicated area. The Commission is taking a step-by-step approach in this copyright reform. This is not the final piece in the copyright field. As to broadcasters and ancillary

services, the Commission is trying to look at close system, with the aim of making easier to have the rights cleared. He stressed that it is not an obligation upon broadcasters, but it constitutes a facilitation measure, and it is a controvergent measure that we know from the Cable and Satellite Directive. From that perspective, the Commission is levelling the playing field, or maybe unlevelling it for the advantage of the broadcasters, rather than of the VOD platforms, which is much more complicated. On the Reprobel case, Mr De Graaf stated that very recently publishers were benefitting from private copying levies, but then the decision came and they lost their benefits. He said that it is not correct to say that authors are losing money. He suggested that the solution could be to go back to the situation before the Reprobel ruling, but at the same time he recognised it is not possible anymore. As to the simplification or harmonisation, particularly on exceptions, the Commission is not only researching but also focusing on education, preservation of all range of exceptions according to disabilities exception set forth in the Marrakesh Treaty. It is looking at all the exceptions where we need a single market harmonisation, as a measure of simplification. With regard to consultation and better regulation, he said that in this area they have consulted people in deep. This is the most widely consulting area since 2012-2013. The Commission has 12 or 13 consultations on-going, and this is beyond their capacity. He underlined that there is no obligation to use this tool. If people want to participate in law making and in the legislative process, they have to make an effort to give the Commission their views.

Lastly, on the Marrakesh Treaty, the Commission agrees on its importance. They regret the delays that have occurred; it is also due to the competence issue with the Council, which they hope will be solved very quickly. The Commission hopes to get clarity from the CJEU on the legal competence question. On the Commission's opinion, these are not complicated instruments and it implements international commitment.

Ms **Perlmutter** recalled the public and stakeholders consultations on what role the government can usefully play in facilitating the further development of the online market place. They have been focusing on the responses and comments they received on issue of standard identifiers, on the possibility of doing something along the lines that UK has been experimenting on copyright hub, to bring people together to have some sort of licensing platforms in different sectors. She then asked how to make identifying content easier.

Ms **Wilson** pointed out the area of enforcement of intellectual property rights is included both in the review of the IPR Enforcement Directive as well as in the mandate to develop further voluntary stakeholders' initiatives. She referred to the violation of intellectual property rights in the form of counterfeiting and piracy as a tremendous challenges. She stated that the problem has doubled in the past ten years and the dangers to consumers is increasing given that many categories of products have been counterfeited. The US identified over 600 categories of goods counterfeited. Problems are everywhere in the supply chain. According to her, we need to look at how standards make the market safer, what can be done in that space, covering market surveillance and third parties testing, how dangers to consumers can be dealt with, what else can we do in the transatlantic cooperation to treat this problem of counterfeiting.

Mr **De Graaf** underlined the very important non-legislative actions, aimed at ensuring that the content created by authors and performers can be enjoyed as widely as possible and legally by any consumer. In his opinion, we are not enjoying as much culture diversity and richness as Europe has to offer, and part of it should also be blamed on territoriality. A lot of the content is locked up, a lot of the production that is supported financially by the europrogrammes and it never reached the audience that it could have reached. He assumed that if consumer is offered a good legal offer there would be less incentive to enjoy piracy, as shown by the case of Spotify. The important task here is to facilitate. Member States have many good practices in this regard. We need to scale up this at EU level, in order to make the content available to all EU citizens in a safe way. Using technology creates all these problems, but is also often a solution for challenges. The Commission is then actively supporting and promoting standardisation in this regard.

As to the piracy, he referred to the revision of the IPR Enforcement Directive that would come before the end of the year. There is the need to protect consumers but also industries. He stressed that they adopted the follow the money approach and also that co-regulatory initiative is a good solution. Mr De Graaf stated that the Commission is focusing its attention on websites that infringe copyright materials and it is working with advertising companies and with payment companies. They are expecting to get very important results in order to make sure that there is an attractive legal offer.

5. Consideration of the draft working programme and calendar for 2016.

The following spoke: Mr Pavel Svoboda (Chair); Mr Dietmar Köster; Ms Julia Reda;

The issues of the relationship between creative common licensers and right holder compensation schemes and of social and cultural rights and remuneration of creators were mentioned as subjects of interest by Mr Köster. Ms Reda wanted to ensure that a session on the questions around licensing and creative commons would be organized in line with the conclusions of the Working Group.