



## Committee on Legal Affairs

# Working Group on Intellectual Property Rights and Copyright Reform

Meeting of 21 January 2015 from 9:00 to 11:00

## Minutes

### **1. The agenda was adopted.**

### **2. Introduction and preliminary remarks by Mr Cavada.**

The issue of confidentiality of the debates enabling frank and sincere discussions was raised as well as the necessity of transparency of the Working Group's work which is ensured by the information given through the webpage.

It was decided that the EP Committee on International Trade will be invited to the Working Group meetings when the subject discussed falls under its competence.

### **3. The minutes of the meeting of 17 December 2014 were approved.**

### **4. Adoption of the Working Group mission statement.**

A new draft taking into account the participation of the Committee on International Trade was adopted.

### **5. Adoption of the working programme for the January - July 2015 period.**

The timeframe for meetings cannot be confirmed on bloc yet and the dates mentioned in the calendar will be confirmed progressively.

Regarding the content of the first two meetings on publishing, it was proposed to distinguish between commercial activities on one hand and educational issues on the other (including academic/scientific libraries). It was also proposed to deal with the issue of online intermediaries during the meetings on music and the audiovisual sector, focusing on territoriality and portability of works in online market. It was mentioned that only EU

intermediaries would be invited. Photography was also considered important and two Members requested to discuss the issue of "freedom of panorama". Members agreed on discussing the role of science and the availability of scientific research and academic work (it was also proposed to include "official" works) on the internet. The question of exceptions to copyright - for public, educational and scientific purposes - was also highlighted as an important subject for discussion. Members furthermore agreed on inviting academics specialising in copyright to each meeting. Representative of the civil society, in particular users, would also be included in the programme.

#### **6. Exchange of views with the Commission on its general approach to copyright and its activities in view of the upcoming proposal on copyright.**

The Commission presented the state of play and the starting point of the reflexion, with a focus on the scope of rights rather than limitations. The EU has a body of legislation which has come with important jurisprudence, the latter being sometimes considered as a problem. According to the Commission, jurisprudence is necessary when it is not possible to legislate or when the level of harmonisation is not sufficient. The interpretation and extent of the notions of "harm" and "communication to the public" were highlighted as examples where the legislator is unable to intervene and where court rulings are needed. Regarding the review of the legislation on copyright, the Commission said that the challenge is relating to internal market and recalled one of President Juncker's objectives: to inject internal market element in the copyright rules. One of the questions raised is whether we have a sufficient harmonisation when it comes to exceptions and limitation. The Commission said that there is a need for appropriate protection for copyright, as the system rewards those who create and invest in creativity and on the long term is an incentive to creation. Finding the right balance between general interest (education, knowledge) and the freedom to provide services and free movement of goods will be difficult. The main question would however remain how to create incentives and protection for investors while at the same time ensuring adequate access for consumers.

The issues discussed touched upon territoriality, cross-border access, portability, geoblocking, business models, implications in growth and employment, European code and pan European licence.

Following questions from Members concerning the balance to be struck between a possible single European title under directly applicable EU law and national copyright systems under harmonised national legislation, and to which extent the copyright package envisioned by Commissioner Oettinger therefore would take the form of regulations or directives, the Commission stressed the concepts of territoriality and cultural diversity, and claimed that in order to create a single title it would be necessary to replace national titles by an EU title which would harmonise everything. The possibility of introducing a single EU title has not been discussed in the Commission, and it would in any event not be possible to achieve during this term. A single title would best be described as a dream for legislators and academics, also when one considers proportionality and subsidiarity aspects, and this could only possibly be achieved following further harmonisation of national legislation during the next 20 years.

**7. Exchange of views with the European Parliament's Legal Service on Article 118 TFEU and Article 17(2) of the Charter of Fundamental Rights of the European Union: legal basis and possible developments.**

The Legal Service gave a presentation of the legal opinion originally presented by the EP legal service in 2010 on Article 118 TFEU and the creation of European intellectual property rights. The question refers to the scope of Article 118 TFEU and to whether this Article can be used as a legal basis for harmonising certain aspects of European copyright law. The Legal Service gave historical elements for the interpretation of Article 118 TFEU and put forward its view on the legal application, especially the difference between industrial property and copyright (the former needing a title to implement the right) and the linguistic issue of Article 118 TFEU (the difference between the French and English versions speaking about "titres" and "rights" respectively). It would be difficult to imagine a "title" for copyright, not least since copyright includes both economic and moral rights. In addition, the Legal Service explained the cultural implications of copyright and the supplementary EU competence in the area of culture. The new text replaces the old Article 118 of the Treaty, which required unanimity in the Council, and which was used for industrial property together with the flexibility clause in old Article 308 in the Treaty. The new text of Article 118 TFEU was primarily aimed at deblocking such problems in the Council when it comes to the patent

dossier, which is clear not least from the second paragraph on linguistic arrangements. The principle of subsidiarity was reminded as well as the context of the establishment of the internal market would make a regulation, rather than a directive, possible when it comes to copyright, but in the view of the Legal Service it would be difficult to use Article 118 TFEU for that purpose. According to the Legal Service, one should take into consideration all these elements in order to assess whether the application of Article 118 TFEU for copyright is truly relevant or not.

Following questions from Members concerning a "European copyright code" and whether the flexibility clause in Article 352 TFEU, together with Article 118 TFEU, could be used for copyright legislation, the Legal Service underlined that such a code would constitute an academic exercise with very little practical value, and that such a code could very well be based on Article 114 TFEU. The update of old Article 308 of the Treaty to Article 352 TFEU constitutes merely historical changes.

#### **8. Presentation by the European Parliament Research Service of the background to and progress of the ex-post impact assessment on the InfoSoc Directive, and other better regulation tools available to the Working Group.**

EPRS recalled the policy cycle approach of the EPRS (ex-ante and ex-post impact assessments, analysis of the Commission's impact assessments and cost of non-EU studies as well as prospective works) and the support services it offers. A lot of its work is based on review clauses in EU legislative acts. There should for instance have been four reports presented by the Commission under Article 12 of the InfoSoc Directive, but only one report was presented in 2007 if one does not count the stakeholder consultation in recent years. EPRS mentioned that it is currently working on four pieces of research on copyright in the context of the ex-post impact assessment of the InfoSoc Directive, which would take into account the calendar of the upcoming review of legislation. The largest part of the study would deal with harmonisation, and the three shorter studies would concern legislative, internal and industry aspects, respectively. The preliminary version is expected in May 2015 and the final version in July at the earliest. This could however possibly be shortened and simplified if the Commission would present a preliminary version of their upcoming proposal in the meantime.

**9. Presentation by the Policy Department of the services available to the Working Group.**

The Policy Department presented the services which it usually provides to parliamentary committees and explained that the same independent expertise can also be provided to the Working Group. For example, it can deliver in a very short period of time briefings and notes on specific issues, but it works exclusively on request of parliamentary bodies. The Policy Department stressed that it continually keeps track of new academic work and research and the work of think-tanks.

**10. Presentation of the study "*Creating growth - Measuring cultural and creative markets in the EU*" of December 2014 by GESAC.**

GESAC presented the study made by EY, giving facts and figures on creative and cultural industries. The main idea was to show the significant contribution to jobs and growth of the cultural and creative industries and to underline that only adequate copyright protection can ensure sustainability of the sector.