



Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of Thursday 2 July 2015 from 09:00 - 11:00

in Brussels

Draft Minutes

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 23 June 2015.

The minutes were approved.

3. Roundtable discussion on "freedom of panorama"

Mr Jean-Marie Cavada opened the meeting by introducing the issue of the freedom of panorama, explaining what it is and reminding the adoption in JURI Committee of an amendment on freedom of panorama to the draft report on the implementation of the InfoSoc Directive.

- **Setting the debate**

The following spoke: Mr Dimitar Dimitrov (Wikimedia), Ms Marie-Anne Ferry-Fall (President of European Visual Artists).

In his presentation, Mr Dimitrov explained the purpose and current state of play of Wikimedia. He clarified that what was luxury for those benefiting from encyclopaedias at home is nowadays online and freely accessible. Wikimedia is aiming at free online accessibility/usability of Wikipedia to anyone and anywhere in the world. Focusing on the issue of the freedom of panorama's exception, Mr Dimitrov focused his argumentation explaining that restricting the commercial usage is problematic as the term "commercial" doesn't always mean "profitable" (non-profit organizations can provide commercial services). He said that there is uncertainty about what exactly commercial usage is and what falls into the non-commercial category and concluded by saying that the restricting commercial usage

does not work. He specifically mentioned the amendment adopted in JURI on freedom of panorama and called for a compromise that would not restrict freedom in MS where the exception exists.

Mrs Ferry-Fall focused on the freedom of panorama exception relating to the visual arts. As she stated, the panorama exception is one of 20 optional exceptions in the InfoSoc Directive but twelve of them do already touch the visual arts (architecture, street art, etc.) which make visual art's authors more impacted and in a weaker position than others artists. Exception of panorama is differently applied in Member States but in MS where the exception exist (e.g. Spain, Portugal) there is still perception of fees. She explained that there is no crossborder effect and very little disputes and concluded that there is no need to harmonise the exception. She stressed that platforms' (such as Facebook or Instagram) terms and conditions ask for commercial transfer of rights and according to her, a mandatory exception - requested by the platforms - would deprive authors from receiving fees when they will have to pay for these remunerations. Even if the restriction for commercial purposes is established the internet users will still be freely enjoying their possibility to upload pictures on the social media websites.

- **Artists' viewpoints**

The following spoke: Ms Brigitta Bartsch (EU-Liaison Office of the Federal Chamber of German Architects), Mr Aymeric Zublena (architect), Mr Bent Nygaard Larsen (Federation of European Professional Photographers).

Mrs Bartsch informed that architects have not set a position yet on the current issue relating to copyright but will take the opportunity to get information from the discussion. She mentioned that BAK accepts free use of images but this needs to be limited: in commercial use of images (e.g. advertisement for a car) architects are to be named as a source and the work of art should be always taken into account.

On the offset, Mr Zublena said that he has great respect towards encyclopaedias and has no problem to see Wikipedia displaying his works for cultural and educational purpose. Nevertheless, he is concerned regarding the possibility for other entities to use pictures of his works from Wikipedia for commercial purposes. The reason would be financial but also the risk for his works to be used for illustrating ideas that he does not share. He then explained

that the legislation is perfectly fine in France when it comes to images used in television: when buildings are used incidentally as backdrop he has no objection but if the building is central to the scene, producers usually ask for authorisation to the artist who is potentially entitled to some payment. He explained that he agrees to free usage for encyclopaedias, culture, educating children, i.e. when there is a public interest, but as soon as there is a different use (e.g. images used to sell a product) he does not see anymore where the public interest is.

Before dwelling into the subject, Mr Larsen introduced the Federation of European Professional Photographers. He warned that he was not defending the FEP's view on freedom of panorama considering the limited time to collect information on this from 29 countries. However he said that FEP is in principle in favour of freedom of panorama because would lead to a larger market and preserve cultural heritage. Nevertheless, it is a complicated issue. There is a quite difference between taking selfies and work of educated photographers (e.g. in Denmark the education lasts for even 7 years). suggestions: clear definition between commercial and not commercial use. profe photographers respect the law but individuals: do they know the law? The problem with the usage for either commercial or non-commercial purposes is that individuals often do not know the law.

- **An academics' perspective**

The following spoke: Dr. Eleonora Rosati (University of Southampton), Pr. Alexandra Bensamoun (Université Paris-Sud, co-director of Centre d'Études et de Recherche en Droit de l'Immatériel).

Dr. Rosati referred to two approaches respecting to freedom of panorama: one making the exception of article 5 of the InfoSoc Directive mandatory (cf. Julia Reda's draft report); the other one restricting freedom of panorama to non-commercial uses (cf. report adopted by the Legal Affairs Committee). As regards the practical implications, she mentioned that freedom of panorama was not a sensitive issue as not much litigation had arisen so far from freedom of panorama and therefore this was not among the top IP issues. She said that it was difficult to make a distinction between commercial and non-commercial uses of a work (the so-called grey area), giving the example of the potential commercial use by Facebook of pictures

uploaded by individuals agreeing to grant worldwide licences to Facebook to use the pictures. She explained however that the general impact of an exception on the public might be significant when it comes to the perception of copyright and therefore restricting freedom of panorama might have significant influence.

Pr. Bensamoun referred to the principle of subsidiarity meaning that any change has to be necessary. In the case of the exceptions in the infosoc directive, justification (e.g. socioeconomic needs, crossborder problems) should be given before action is taken. She said that if the aim of making exceptions mandatory is to harmonise rules, the sole copyright would not be enough, as e.g. administrative law would be impacted when it comes to the definition of public and private places. She explained that the existence of exceptions should not be put into question but on the other hand cannot lead to total expropriation, especially when it is for private purposes, which would end up in excluding categories of artists from copyright (discrimination). She also said that copyright, as property right, is a fundamental right and raised the question of the three step test as well as the definition of commercial use.

General Q&A session:

The following spoke: Julia Reda, Pavel Svoboda, Jean-Marie Cavada, Dimitar Dimitrov, Alexandra Bensamoun, Brigitta Bartsch, Aymeric Zublena, Brigitta Bartsch, Eleonora Rosati. The first issue being discussed was related to drawing line between the commercial and non-commercial usage. The debate then dwelled into the problematic interpretation of public interest and the definition of public space. Further, the right of author to object usage of his work was discussed. The difference between moral rights and economic rights and the question of harmonisation of moral rights was mentioned. Finally, the practical implications of the creation of a one-stop-shop per country (for authorization) were examined.