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Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of 13 May 2015 from 15:15 - 17:15

in Brussels

Minutes

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 22 April 2015.

The minutes were approved.

3. Brief presentation of the Digital Single Market Strategy

The following spoke: Maria Martin-Prat (Commission), Jean-Marie Cavada, Julia Reda,

Ms Martin Prat touched upon the part related to copyright in the Digital Single Market strategy (adopted on 6 May 2015). She said that the strategy confirms President Juncker's approach to inject internal market in the copyright framework, reaffirms the importance of the creative sector (as regards cultural diversity and the economy) and refers to the issues of territoriality, portability and cross border access to services. She said that one of the strategy's objectives is to increase consumers' access to services across borders. The Commission would also like to assess whether there is a need to review the broadcasters' situation, as it was not part of the 2013 public consultation. The Commission reiterated interest in looking into limitations and exceptions to copyright and try to get to a higher level of harmonisations for key exceptions. A matter relatively new to which the Commission would look into concerns the functioning of the online market place, especially the "value gap". Additionally,

the Commission mentioned the issue of enforcement of rights, as a separated initiative. It intends to table the legislative proposal towards the end of 2015. The questions raised by Members dealt with the delay in the presentation of a legislative proposal, the issue of geo-blocking and anti-competitive practices, the harmonisation of exceptions with cross-border implications. Another question concerned the understanding of "cross-border access". The Commission stated that the Commission would try to strike a balance between copyright and correct functioning of the internal market and that a proportionality assessment and approach to the issue was required. Ms Martin Prat finally pointed out that the passing of legislation would certainly not put an end the ongoing debate on copyright.

4. Publishing: debriefing and synopsis

The following spoke: Pr. Pierre Sirinelli (Paris University (Panthéon Sorbonne), Julia Reda, Catherine Stihler, Emma McClarkin.

Pierre Sirinelli presented some of the important issues raised in the Mission Report on the revision of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (October 2014). He stated that copyright should not be assessed in isolation, but instead be coherent with other corpus of legislation. He considers that the main goal of the reform should be to improve value-sharing. For example, as certain effects of the e-commerce Directive have to do with circulation of IPR works to the detriment of certain right holders, he pointed out that value should be better distributed. Concretely this could be done by revising the e-commerce directive or by introducing some provisions within the copyright directive that would limit the effects of the e-commerce directive when it comes to copyright. He then illustrated the capturing of the value giving the example of the consultation of a web 2.0 site. He pointed out that for the time being copyright can be opposed only to internet users (uploading/posting an item on the web illegally or downloading/having access to that material uploaded illegally) and this was of no relevance in terms of value-sharing. The objective would be to get involved in copyright enforcement the other stakeholders (i.e. centralised servers, proxies, search engines, advertisement companies or agencies, credit cards companies) through softlaw or revising the copyright directive. Pr Sirinelli pointed out the interest of providing intermediaries with a list of sites

uploading material illegally so no investment is made in them, which would be like creating a sort of "secondary-class liability".

During the debate, different issues were raised by Members including the importance of the distribution of value between right-holders and artists; the adverse effects of requiring platforms to monitor the content of materials uploaded by individuals; the risks of reopening the e-commerce directive; the possible actions against operators who infringe copyright and are located outside the EU.

5. Exchange of views with stakeholders on copyright issues in the digital environment - focus on the music sector:

The following spoke: Patrick Ager (Secretary General, European Composer and Songwriter Alliance), Matthieu Philibert (Public Affairs Manager, IMPALA), Andrew Clark (VP Global Digital Business Affairs, Universal Music), Malcolm Huty (Chair of Intermediary liability working group, EuroISPA), Emma McClarkin, Catherine Stihler, Pavel Svoboda, Julia Reda, Pierre Sirinelli, Malcolm Huty, Daniel Friedlaender (Head of EU Communications and Public Affairs, IFPI).

Patrick Ager referred to (i) the role and responsibilities of mediators; (ii) digital music service providers and (iii) creative commons. As regards to (i) mediators should be held more responsible than they are now because they are not just postmen bringing a letter, they open the letter and manipulate it. As regards to (iii) he held that they are not positive for authors.

Matthieu Philibert talked about the value gap and stressed that new exceptions should be avoided while it should be ensured that existing exceptions work well.

Andrew Clark stressed the unceasing decline of the music industry. The figures of turnover for the year 2004 were EUR 16.5 billion and for the year 2014 were EUR 11.2 billion. Malcolm Huty stated that it was not possible to run an internet platform with unlimited responsibility for what is uploaded in it, so this matter should not be reopened. He acknowledged that there was a concern as to how platforms should react to complaints of copyright infringement. Platforms have realised that some complaints and demands to taking down contents come from robots and that sometimes they are used to prevent competition or contain completely unfounded allegations. The answer to a complaint cannot be to take the

contentious content down straightforward and immediately. An assessment as to whether a copyright infringement has taken place should be made and a balance struck, but not by the platforms themselves but by courts of law. Determining a copyright infringement should be the courts' business and not platforms'.

The questions asked by Members to the speakers touched upon the fight against counterfeiting outside the EU territory, consumers' rights and how they could be better protected, the right-holders property interests and harmonisation of exceptions (e.g. parody). Answering the question on whether it would be possible to create an automatic system for the remuneration of authors including a mechanism to solve the value gap, Daniel Friedlaender said that the solution was a licence scheme, such as the one already in place, but indicated that the harbours system was being abused. Malcolm Hutty stated in his turn that there was already such a system and referred to YouTube Revenue Sharing Program according to which a creator could decide either to receive a share of revenues or ask for removal of his or her material. Matthieu Philipert contested this statement saying that this program had been concluded with certain labels only and mentioned distortions in the marketplace because Youtube scheme competed with sites which worked on licence.

6. Next meeting

- 28 May 2015, 9:00-11:00 (Brussels)