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Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of Thursday 15 October 2015 from 09:00 - 10:45

in Brussels

Minutes

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 17 September 2015.

The minutes were approved.

3. Presentation of the final results of the InfoSoc Directive ex-post impact assessment and of the policy briefings

Mr Jean-Marie Cavada opened the roundtable discussion by recalling that most of the authors of the study already presented the first results of the above-mentioned study in May (to the Working Group) and in June (to the JURI Committee). The study was published on 14 October 2015 and the Committee invited the authors to present their final results and conclusions.

- **Introduction by EPRS**

The following spoke: Mr Stéphane Reynolds (administrator in charge of the study and author of the introductory part).

Mr Reynolds recalled that the study had brought together 15 independent experts as well as an important team from the European Parliament. Mr Reynolds explained that his introduction was analytic and emphasised that it contained conclusions raised by CEPS, followed by his own personal findings. Moreover, Mr Reynolds made clear that the study was not intended to provide for a legislative proposal but to offer an analytical framework for the current reform.

- **Experts' key findings**

- Felice Simonelli (CEPS), Giuseppe Mazziotti (CEPS) and Giacomo Luchetta (Economisti Associati) - authors of the ex-post impact analysis of the InfoSoc Directive as well as of the section on intellectual property aspects of the Internal Market

Mr Mazziotti presented the structure of the study and passed the floor to Mr Luchetta who explained that the enforcement of copyright in the on-line environment does not work very well for rights holders. This can be explained by the fact that mechanisms endorsed by the Directive (TPM) did not consider the explosion of the Internet and of the digital diffusion of copyright content and has been overcome by high-speed technological development. Concerning remuneration and compensation of authors and performers, the InfoSoc Directive did not ensure an adequate level of remuneration. Moreover, he explained that the remuneration depends on their own and their counterparts' market power. Consequently, remuneration is satisfactory for a limited number of creators which are generally the biggest actors in the market. Furthermore, Mr Luchetta emphasised that the market structure of digital content economy is radically new. Finally, Mr Mazziotti explained that they were asked to assess whether the Directive achieves its objectives through different criteria.

Concerning the Internal Market aspects of EU copyright, CEPS was asked to assess the added value of and options for improving the functioning and efficiency of the Single Market with respect to copyright. Mr Mazziotti explained that they were able to identify two major policy problems: (1) the 'non-functioning' of the Internal Market for online copyright-protected content and (2) the tension between the system of copyright exceptions and limitations and emerging usage of information in the online environment. Consequently, the major policy objectives that should be achieved are to prevent the partition of the Internal Market and to remove the tension between copyright exceptions and limitations and new market needs. Those objectives can be divided into more specific sub-objectives. This led CEPS to draft five possible policy options depending on the level of interventions planned/considered, dealing with either soft law or hard law. In addition, CEPS provided an impact matrix of those different policy options. As a conclusion, Mr Mazziotti underlined that 'no action' is not a viable option and that 'more Europe' is needed in the field of copyright.

- Agnieszka Markowska (Milieu), prepared the part on legal aspects of copyright

First, Ms Markowska recalled the EU copyright framework and presented an overview of harmonisation gaps. Then she explained the criteria for assessing the impact of addressing the existing gaps. Overall she argued that stakeholders would be affected in different ways by any improvement of the EU legislation on copyright and emphasised that all stakeholders will benefit from such an improvement. Indeed, a better EU harmonization will lead to a better collective management of copyrights. Finally, she focused on the possible legal solutions and presented different possible harmonisation levels, concluding that an EU copyright title is the most comprehensive solution. This solution can be divided into two sub-options, meaning either replacing national legislation or creating a parallel EU system that would coexist with the national legislations.

- Viviana Spaghetti and Marc Jensen (VVA), authors of the part relating to the remuneration and aspects related to the implementation of copyright rules

First, Ms Spaghetti recalled that copyright infringements represent a disincentive to content creation as online piracy causes shortfalls in expected revenues from digital content. An effective and balanced civil enforcement system and a fairer system for the remuneration for authors and performers could contribute to the completion of the EU Digital Single Market. She explained that the overall objective of the InfoSoc Directive to strengthen copyright protection in the EU was not achieved and EU provisions have not been implemented in a uniform manner throughout the EU.

Secondly, she claimed that there is a lack of data on the diffusion of legally consumed versus infringing content and on the allocation of revenues along the value chain in different sectors. Moreover, there is also a lack of data to quantify the industry's revenue losses and a lack of transparency in contractual arrangements along the value chain.

Concerning the industry aspects of copyright enforcement, she explained that there is a need to improve interpretation and implementation of the existing framework, to ensure the future compatibility of the InfoSoc and IPR Enforcement directives with other EU legislation, also to limit legal uncertainty in the EU copyright framework regarding the responsibility of

online intermediaries as well. She presented possible legislative and non-legislative policy options to improve copyright enforcement.

As regards remuneration/compensation for authors and performers, she explained that there is a need to increase authors and performers bargaining power vis-à-vis producers, publishers, and online intermediaries. It is also necessary to improve transparency in revenue allocation and to take into account the emergence of new forms of digital content distribution. Finally, the scope of transfer and the remuneration to be paid to authors and performers in copyright contracts should be clearer. She presented possible legislative and non-legislative policy options for remuneration and compensation. Finally, she concluded that 'no new policy action' is not an option and that 'soft law' measures seem to be the most relevant option. Overall, an EU legislative action is needed.

- **Q&A**

The following spoke: Jean-Marie Cavada, Felice Simonelli, Giuseppe Mazziotti, Giacomo Luchetta, Viviana Spaghetti, Marc Jensen, Catherine Stihler, Dietmar Köster, Therese Comodini Cachia

In the subsequent Q&A session, three main issues were mainly discussed: (1) portability, (2) enforcement and (3) fair remuneration for authors and performers.

As regards portability, a Member asked how to define this concept in a legal sense. It was said that portability concerns services and deals with licensing issues. However, it still remains a national matter as it entails rights holders to request a number of permissions from each Member State. Moreover, portability is an outcome of the licensing scheme so there is no need to emphasise the legal aspects.

Concerning enforcement, a Member asked which Member State can be seen as a best-practice model for enforcement. Some national models such as France, Italy or Spain are not considered as efficient whereas in the UK or Ireland, the model of enforcement works considerably well from a civil proceeding prospective. Overall, there is no clarity about the model it should opt for and no improvement in the copyright contract law should be expected as it remains national legislation.

Concerning fair remuneration of authors and performers, a Member asked how the problem linked to the fact that the market alone cannot guarantee a fair remuneration could be solved.

Is an EU action needed or can it be solved through collective agreements? It was said that the German legislation contains interesting provisions aiming to ensure a fair remuneration if this is not stipulated in the contract. The obligation to introduce a minimum wage can be very difficult to implement due to the differences in legislation between the Member States. At the same time, 'soft law' could be a better solution as the 'digital' environment is changing very quickly. Moreover, in the case of collective bargaining, this issue is more linked to labour law than to copyright law.

Finally, a Member asked about the level of awareness by users with regard to copyright law. It was replied that some studies have shown that users are not aware of infringement of copyright law. This issue can be addressed by means of soft law.

4. Debriefing on the meetings with Silicon Valley companies during the IMCO visit of July 2015

The following spoke: Catherine Stihler

Mrs Stihler explained that the delegation visited twenty organisations in three days and that the issue of Digital Single Market was the purpose of the visit. Members of the delegation wanted to learn about the challenges to face and the possible remedies and solutions. The delegation met a lot of small business people as well as representatives of companies such as Google. As regards copyright issues, Mrs Stihler said that the delegation had the opportunity to learn some of the civil legal aspects of the Digital Single Market.

5. First discussion on the preliminary draft of the Working Document

The following spoke: Jean-Marie Cavada

Mr Cavada explained that the draft document was under development and that a first draft prepared by the Secretariat had been discussed at a meeting of the project team last week. He also said that the discussions helped to refine the aim of this working document and that the groups agreed that the document should be a (activity) report which had to remain neutral and technical.