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Committee on Legal Affairs

Working Group on Intellectual Property Rights and Copyright Reform

Meeting of Wednesday 16 December 2015 from 15:00 - 17:00

in Strasbourg

Minutes

1. Adoption of agenda.

The agenda was adopted.

2. Approval of minutes of meeting of 15 October 2015.

The minutes were approved.

3. Exchange of views with Mr Andrus Ansip, Commission's Vice-President for Digital Single Market

Mr Jean-Marie Cavada opened the roundtable discussion by thanking Vice-President Ansip for joining the meeting. Mr Cavada recalled that it has been exactly one year since this Working Group has started working and has been holding a meeting every month since last December. At the meeting of December 2014, Commissioner Oettinger talked about his views on the future Reform on Copyright. The Commission just recently presented its Communication on the general framework for Copyright and its proposal on the cross-border portability of online content.

- **Presentation by Commissioner Ansip**

Commissioner Ansip recognised that Parliament is very efficient when dealing with digital market issues. The two proposals based on DSM strategy made by the Commission aimed at making life easier for citizens and businesses in the future. As regards portability of the online content the Copyright Reform contains two distinguishable parts: (1) portability and (2) cross-border access to digital content and enforcement of IPR.

As regards portability 20% of Internet users use VPN to access digital content and 68% use free downloads today. At the same time 35% of European citizens spend at least 10 days during the year in another country and there are 271 million trips with at least one overnight stay in another Member State. Consequently there is a real demand for portability of the content. Therefore there is time pressure in view of the abolition of roaming charges in 2017 as there is an increased use of mobiles across the borders and the provision of legal avenues to access digital content is necessary. The next proposal by the Commission for the Copyright reform will come in June 2016 on the basis of the DSM strategy. It will concern the cross-border access of digital-content, while protecting the principle of territoriality (used for financing new movies, for instance).

- **Q&A**

The following spoke: Dietmar Köster, Julia Reda, Adina-Ioana Vălean, Helga Trüpel, Catherine Stihler, Jean-Marie Cavada.

Mr Köster wondered whether the protection of performance levels may not be the best way forward. He highlighted on 9 December 2015, during the presentation of the program, that not enough attention was paid to culture in the reform process and wondered how to ensure fair remuneration.

Commissioner Ansip answered that creators lose huge amounts of revenues due to piracy which is partly due to the lack of legal avenues to access creative works. He highlighted that just one American movie lost 100 million dollars due to piracy. Moreover absolute territorial exclusivity does not exist today. Protection of culture and creators is the main focus and remuneration of creators is the aim of this reform via legal access to content. The ‘follow the money’ principle is important.

Ms Reda emphasized the remuneration issue. She said a quick passing of the portability proposal should not be problematic in Parliament but linguistic minorities still cannot benefit from the proposal as it stands. She asked whether other legislative instruments exist to address cross-border access. The reason why film-makers were asking for territorial exclusivity is because some Member States ask for such exclusive rights in order to fund films. This cannot be circumvented by contract. Ms Reda asked whether same solutions

should be adopted for harmonization of exceptions and limitations to copyright in accordance with Parliament's resolution on the implementation of the Infosoc Directive.

Commissioner Ansip answered that ancillary copyright is not part of the Commission's plans. These exist in Spain and Germany and people are not happy with them. He added that some platforms based on subscriptions have 190 million subscribers who contribute to 1 billion euros of revenues. At the same time other platforms with a lot more subscribers contribute considerably less. He made reference to the notice and action principle. As regards linguistic minorities and low demand, Commissioner Ansip explained that for instance 400.000 Swedish people are living in another Member State and there is no legal way to access Swedish movies from those Member States. Demand is too low to pay for a territorial license. This concerns cultural protection and film archives. Consequently copyright restriction access cannot be provided or be binding on the Member States. He questioned the link between portability and temporality. Some people ask for a time limit. But Commissioner Ansip wondered if this means that we need to harmonize the length of holidays in the EU.

Ms Vălean asked whether there would be abuses with the portability. Indeed some will try to buy products where it is cheaper. Commissioner Ansip answered that temporary limitation is exactly to avoid this problem and to protect creators. If people do not move across borders they cannot benefit from portability. Ms Vălean explained that it mainly deals with sports events because people do not usually need language description.

Ms Trüpel argued new licences need to be found and platforms need to work together with collecting societies. She asked about cultural minorities and how to solve this problem.

Ms Stihler focused on the issue of the BBC i-player and portability because Parliament was much lobbied on this question. She added that she is very pleased with what can be found in the proposals regarding text-and-data mining and on the Marrakesh Treaty. She wondered how to ensure that books are made accessible in those formats.

Commissioner Ansip answered that sports are losing huge amounts of money. It is a problem for English TV sports channels because everyone understands English. As regards the release windows system there is no intention to change this. The Regulation will override all licence agreements even if signed 20 years ago. Passive sales are the favourite option of the Commission but there is quite strong resistance. There are some other solutions to solve low

demand content, but Commission will take a step-by-step approach which means a cautious and evolutionary approach. Concerning BBC i-player and public broadcasters, the dividing line is subscription and identification system. Even if one is paying as tax-payer a subscription will be required. If BBC does not provide for such a subscription service the proposed Regulation cannot help. Today Europe has a leading position on text-and-data mining. Commissioner Ansip expected that the European Union would be able to ratify the Marrakesh Treaty. All disabilities will have to be treated all together and the legal services are working with these issues. The Dutch Presidency will work in this direction. Competences issues have not been solved yet.

Ms Stihler asked about ebooks. Commissioner Ansip explained that it is difficult to understand what kind of exceptions there are in the Member States.

Mr Cavada highlighted that the minority question is not necessarily a technical one, but it is a market issue. Commissioner Ansip stated that there is a lot of migration of EU citizens from one State to another State and this is an increasing trend. The question is how to provide legal access to digital content to those people. The principle of territoriality will stay for a quite long period of time and it will also be important to protect cultural diversity in the European Union.

4. Exchange of views with Google (YouTube)

Mr Jean-Marie Cavada opened the roundtable discussion by recalling that a number of parties are interesting in taking part of the stakeholders' consultation on the Copyright Reform in the digital context. The Working Group is now meeting directly with technology companies, in particular companies which are specialised in services provision and Internet products.

- **Presentation**

The following spoke: Mr Cedric Manara, Copyright Counsel EMEA, Mr Ben Smith, YouTube Partner Technology Manager and Ms Clara Sommier, Public Policy and Government Relations Analyst.

Content ID is a system built by YouTube in order to help rightholders to control and generate revenue from their creative work on YouTube and to fight piracy. YouTube is an online video sharing service. Around 400 hours of videos are uploaded for sharing every single

minute. There are entrepreneurs, artists, NGOs, activists, cultural institutes so this is a multicultural community. Over a quarter of all the time spent watching YouTube videos is on European channels and creative work. There are a lot of exchanges within Europe so there is a huge amount of cross-state cultural exchanges. YouTube has a partnership program enabling YouTube creators to make money directly when their videos are watched on the website and over 3 million creators in Europe are making money today as a result of this program. If a video contains any copyright infringing material, YouTube can block, track or monetize it. There is a lot of flexibility for the rightholders, depending on a partial or entire reuse of their work. They can do different things based on the view allocation and territorial rights agreement.

- **Q&A**

The following spoke: Jean-Marie Cavada, Helga Trüpel, Julia Reda, Dietmar Köster.

Mr Cavada asked how the negotiation with the creator takes place. Mr Manara explains that some authors are not at all interested in any form of remuneration because they simply want to share their videos. Others want to monetize their work. Mr Cavada asked whether authors give an authorisation to YouTube allowing for full use. Mr Manara explains that all users sign up to the general terms and conditions. Then there are additional contracts between YouTube and the users to monetize the content.

Ms Trüpel asked how the collecting societies are getting involved and how the amount of money to rightholders is established. Mr Manara answered that both YouTube and Google Play have licences with many collecting societies in Europe. Those two companies put together represent more than 3 billion dollars to the music industry since 2006.

Mr Smith explained several rights are represented in the video and the revenue is divided up according the agreement YouTube and Google Play have with each party. From 2006 content ID was about blocking videos and fighting piracy. Since 2009 they started monetising.

Ms Reda underlined the not so good economic situation of genuine YouTube artists. In Germany there have been complaints about commercial practices of multichannel networks (MCN). In addition there were concerns about the possible knock-on effects of content ID related to changes in general terms and conditions. How does YouTube deal with exceptions?

Mr Manara answered that technology is not very good at recognising exceptions, for instance parody videos. Therefore, it must be the rightholders that need to follow closely and a counter-claim can be lodged by rightholders. As regards complaints against MCNs contracts are with these networks rather than YouTube. If Youtubers do not make certain number of viewings they cannot be remunerated.

Mr Köster said revenues come primarily from advertising but viewers are more interested in creative content. YouTube is generating a lot of revenues from those adverts. But 0,001€ of revenue for artists is given so YouTube is getting the lion's share of these revenues. What sort of revenues is generating for YouTube itself and for creators?

Mr Manara answered revenues coming from the internet are increasing Artists receive between 0 and 12% of revenues but there is a whole chain of intermediaries between YouTube and authors and everyone takes that cut. Hence there is low revenue turn out for individual creators. YouTube is just a hosting service, working with collecting societies. Mr Smith explained that when it comes to advertising, the majority of advertising revenue goes to the rightholder.

Mr Cavada asked about the turnover for YouTube in Europe. Mr Manara said YouTube is owned 100% by Google and under American financial law he cannot answer this question.

Mr Cavada asked where YouTube and Google pay their taxes. Ms Sommer answered they pay their taxes around the world, meaning in Europe but mainly in the USA. Both companies are taxed based on profit which due to international property law, resides in the US.

Mr Cavada said that it is one of these companies generating revenues in one country but paying taxes in another one. Ms Smith answered all they do is applying the law. They argue in favour of a more transparent and effective taxation undertaken by OECD.

5. Debriefing on the IPR meetings during the JURI delegation to Washington DC (3-6 November 2015)

Mr Köster explained that discussions focused on copyright and the free trade agreement. In one discussion the delegation dealt with corporate secrets and confidentiality and there is a different approach to copyright in the US than in Europe. There was a roundtable-discussion that made clear that Internet platforms have real interests in having a single market in the US. The market there is fragmented and this makes more complicated for platforms to find

audience for their products here in Europe. Ms Stihler underlined that all minutes of the Judiciary Committee are up on Congress. In addition they do not have 20 different copyright regimes to look at in the US.

6. Working Document

The Working Document summarizes the positions of all of the guests the Working Group has received over last year but we have not completed that because a couple of files are still arriving or on-going, according to what Commissioner Ansip said. This document is going to be completed mid-way through March, including the new themes which are coming at this moment in line with the Working Group's position that this document should be as comprehensive as possible.