



2015/2147(INI)

7.12.2015

OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection

on Towards a Digital Single Market Act
(2015/2147(INI))

Rapporteur (*): Angel Dzhambazki

(*) Associated committee – Rule 54 of the Rules of Procedure

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SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection, as the committees responsible, to incorporate the following suggestions into their motion for a resolution:

1. Stresses that stimulating growth, innovation, citizen and consumer choice, job creation, including high-quality jobs, and competitiveness is of the utmost importance and believes that the digital single market is key to achieving these objectives by removing barriers to trade, increasing productivity, streamlining processes for online businesses, supporting creators, investors and consumers and those who work in the digital economy, with a particular focus on SMEs, and making private investment in creative infrastructure commercially attractive, while minimising red tape and facilitating the creation of new start-ups; notes, in addition, the importance of facilitating legal access to academic and creative works and ensuring a high level of consumer and data protection in the digital single market; calls for future-proof regulation and an assessment of the impact of all new proposals as regards competitiveness, growth, SMEs, innovative potential and job creation, as well as their potential costs and benefits, together with an assessment of their environmental and social impact;
2. Welcomes the Commission communication ‘A Digital Single Market Strategy for Europe’ (COM(2015)0192) and the included commitment to modernise the current copyright framework in order to adapt it to the digital age; underlines that any modification of said framework should be considered in a targeted way and with a focus on fair and appropriate remuneration for creators and other right holders for the use of their works, economic growth, competitiveness and enhanced consumer experience, but also on the need to ensure the protection of fundamental rights;
3. Points out the role of intellectual property rights (IPRs) and recalls that exceptions and limitations to copyright are one of the aspects of the copyright system; highlights the crucial role of targeted exceptions and limitations to copyright in contributing to economic growth, innovation and job creation, encouraging future creativity and enhancing the EU’s innovation and creative and cultural diversity;
4. Highlights, in this regard, that the EU’s cultural and creative industries are an engine for economic growth, innovation and competitiveness as they employ, according to industry figures, more than 7 million people and generate more than 4.2 % of EU GDP¹;
5. Believes that the reform should strike the right balance between all the interests involved; points out that the creative sector has specificities and different challenges, notably arising from the different types of content and creative works and from the business models used; calls, therefore, on the Commission to better identify these specificities and take them into account when proposing modifications and solutions;
6. Emphasises that any reform of the copyright framework should take as a basis a high level of protection, since rights are crucial to intellectual creation and provide a stable, clear and flexible legal base that fosters investment and growth in the creative and cultural sector,

¹ EY study entitled ‘Creating growth – Measuring cultural and creative markets in the EU’.

whilst removing legal uncertainties and inconsistencies that adversely affect the functioning of the internal market;

7. Calls on the Commission to make sure that any reform of the Copyright Directive takes into account the results of the ex-post impact assessment of the 2001 Copyright Directive and is based on solid evidence, including an assessment of the possible impact of the modifying elements, especially regarding the production, financing and distribution of audiovisual works, and also cultural diversity; takes the view that a proper economic analysis, including the impact on jobs and growth, must be carried out;
8. Calls, furthermore, on the Commission to take into account Parliament's resolution of 9 July 2015 on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society¹;
9. Notes that 56 % of Europeans use the internet for cultural purposes and notes, therefore, the importance of several copyright exceptions; reminds the Commission that the majority of MEPs support the examination of the application of minimum standards across the exceptions and limitations to copyright and the proper application of those exceptions and limitations which are set out in Directive 2001/29/EC; underlines that the approach to copyright exceptions and limitations should be balanced, targeted and format-neutral and should only be based on demonstrated needs, and should be without prejudice to EU cultural diversity, its financing and the fair compensation of authors; emphasises that while the use of text and data mining needs greater legal certainty to enable researchers and educational institutions to make wider use of copyright-protected material, including across borders, any EU-wide exception for text and data mining should apply only when the user has lawful access, and should be developed in consultation with all stakeholders following an evidence-based impact assessment;
10. Stresses the importance of improving the clarity and transparency of the copyright regime, in particular with regard to user-generated content and to private copying levies in those Member States which choose to apply them; notes, in this regard, that citizens should be informed of the actual amount of the copyright levy, its purpose and how it will be used;
11. Underlines that the digital single market should give the opportunity to ensure accessibility for all, including people with disabilities, to products and services protected by copyright and related rights; is deeply concerned, in this regard, by the lack of progress regarding ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled and urges that it be ratified as soon as possible; eagerly awaits the ruling of the Court of Justice of the European Union (CJEU) in this regard;
12. Calls for targeted, evidence-based reforms to enhance cross-border access to online content which is legally available or has been legally acquired, but cautions against indiscriminately promoting the issuing of mandatory pan-European licences since this could lead to a decrease in the content made available to users; highlights that the principle of territoriality is an essential element of the copyright system given the importance of territorial licensing in the EU; calls for putting an end to unjustified geo-

¹ Texts adopted, P8_TA(2015)0273.

blocking by prioritising the cross-border portability of legally acquired or legally available content as a first step for greater legal certainty, and for the introduction of new commercial models for flexible and innovative licensing schemes; notes that such models should deliver benefits to consumers to ensure linguistic and cultural diversity, without undermining the principle of territoriality or the freedom to enter into a contract;

13. Welcomes the Commission's ambition to strengthen EU research and innovation by improving cross-border use of copyright-protected material; considers that this effort is central in enhancing access to knowledge and online education, and in improving the global competitiveness of EU educational institutions;
14. Stresses the importance of access to information and content in the public domain; underlines that public domain content in one Member State should be accessible in all Member States; believes that the EU institutions' public content should be placed in the public domain wherever possible;
15. Takes the view that any modification of the Audiovisual Media Services Directive should take into account new ways of accessing audiovisual content and should be consistent with the current reform of legislation relating to copyright;
16. Takes the view that certain online intermediaries and online platforms generate income from cultural works and content, but this income may not always be shared with the creators; calls on the Commission to consider evidence-based options to address any transfer of value from content to services that will make it possible for authors, performers and right holders to be fairly remunerated for the use of their work on the internet without hampering innovation;
17. Points out that the rapid rate of technological development in the digital market calls for a technologically neutral framework for copyright;
18. Urges the Commission to ensure that the EU strategy for a digital single market is developed in cooperation with countries that are the frontrunners in the field of good digitisation practices so as to easily factor in technological innovations from countries outside the EU, especially with regard to intellectual property, thereby improving interoperability and increasing opportunities for the growth and expansion of European companies on the international market;
19. Calls on distributors to publish all available information concerning the technological measures necessary to ensure interoperability of their content;
20. Encourages the Commission's pursuits in ensuring interoperability between digital components and emphasises the importance of standardisation that can be achieved both via standard-essential patents (SEPs) and open licensing models; welcomes the Commission's efforts in the development of a balanced framework for negotiations between right holders and implementers of SEPs in order to ensure fair licensing conditions; invites the Commission to take note and apply the spirit of CJEU ruling C-170/13 (Huawei v. ZTE), which strikes a balance between the SEP holders and standard implementers, to overcome patent infringements and to ensure the effective conclusion of fair, reasonable and non-discriminatory (FRAND) licensing agreements;

21. Welcomes the Commission's action plan to modernise the enforcement of intellectual property rights online with regard to commercial scale infringement; highlights the importance of copyright law and related rights being respected in the digital age; considers that copyright enforcement as laid down in Directive 2004/48/EC across Member States is extremely important and that copyright and related rights are only as effective as the enforcement measures in place to protect them; highlights that the EU faces a significant number of IPR infringements and that, according to the Commission's data, customs authorities noted more than 95 000 detention cases in 2014, while the value of the 35.5 million articles seized is estimated to be more than EUR 600 million¹; emphasises the role of the European Observatory on Infringements of Intellectual Property Rights to provide reliable data and objective analyses of the impacts of infringements on economic actors; calls, therefore, for an effective, sustainable, proportionate and modernised approach to the enforcement, implementation and protection of intellectual property rights online, particularly with regard to commercial-scale infringement, to be adopted; notes that in some cases copyright infringements may result from difficulty in finding legally available desired content; calls, therefore, for a wider range of user-friendly legal offers to be developed and promoted to the public;
22. Welcomes the 'follow the money' approach and encourages the actors in the supply chain to take coordinated and proportionate action to combat infringements of intellectual property rights on a commercial scale, building on the practice of voluntary agreements; emphasises that the Commission, together with the Member States, should promote awareness and due diligence along the supply chain and encourage the exchange of information and best practices as well as enhanced public and private sector cooperation; insists that any measures taken by the actors in the supply chain to combat commercial-scale infringements should be justified, coordinated, proportionate and include the possibility of effective and user-friendly remedies for adversely affected parties; considers it necessary to raise consumer awareness of the consequences of infringement of copyright and related rights;
23. Believes that discussions should be launched by the Commission and evidence-based analyses should be carried out on whether all actors in the value chain, including online intermediaries, online platforms, content and service providers, and also offline intermediaries such as resellers and retailers, should take reasonable and adequate measures against illegal content, counterfeit goods and intellectual property rights infringements on a commercial scale, while safeguarding the ability of end-users to access and distribute information or run applications and services of their choice; stresses the need to give consideration to clarifying the role of intermediaries, in particular regarding the fight against intellectual property infringements, following a thorough, targeted and evidence-based analysis and taking into account all relevant public consultations by the Commission; stresses that internet service providers and online intermediaries should, in any case, have strictly specified obligations and should not play the role assigned to the courts in order to avoid any privatisation of law enforcement; calls on the Commission to conduct an evaluation study on the effectiveness of the judicial blocking of websites and of notice and take-down systems;
24. Recognises the role played by content providers in the development and dissemination of

¹ See report on EU customs enforcement of intellectual property rights – Results at the EU border 2014, DG TAXUD, 2015.

works, including on the internet, and the fact that the growth of online platforms has been driven by consumer demand; recognises that existing intermediary liability principles have enabled the growth of online platforms and warns that the creation of new legal uncertainty in this area could have a negative impact on economic growth; notes the growing role and the potential negative impact of certain internet intermediaries' dominant positions on the creative potential and fair remuneration of authors and the development of the services offered by other distributors of works;

25. Suggests that the forthcoming legislative proposal on online platforms should take as a basis the interests of consumers, creators and the digital workforce, in particular the protection of the vulnerable;
26. Stresses that in order to achieve a meaningful enforcement of copyright, full information as regards the identity of the right holders and, where relevant, the duration of legal protection, should be easily accessible to the public;
27. Recalls that pursuant to Article 5 of Directive 2000/31/EC, providers of online services are obliged to clearly indicate their identity, and that compliance with this requirement is vital to ensuring consumer confidence in e-commerce;
28. Notes the Commission's aim to withdraw the proposal on a Common European Sales Law and recalls, in this context, Parliament's position at first reading of 26 February 2014; insists on the need to gather and analyse as much evidence as possible and to consult with stakeholders before any approach is pursued, in particular regarding the impact it would have on the current protection provided to consumers under national law, especially with regard to remedies for non-conformity with the contract for online sales of tangible goods or digital content and legal certainty regarding the application of the Rome I Regulation;
29. Believes that contractual rules for digital content need to be principles-based in order to be technologically neutral and future proof; stresses, furthermore, with regard to future Commission proposals in this area, the importance of avoiding inconsistency and overlap with existing legislation as well as any risk of creating an unjustified legal divide in the long run between online and offline contracts and different distribution channels, also bearing in mind the REFIT consumer acquis;
30. Considers that the amended proposal by the Commission should also clarify how the existing rules apply in a digital environment when selling cross-border online, including the application of the Services Directive to address unfair online price discrimination based on nationality or location;
31. Encourages the Commission to analyse the protection level of substantive EU consumer protection laws within the so-called 'sharing economy' and any imbalances between parties in 'C2C' contractual relations, which are being fostered by an ever wider use of services provided through sharing economy platforms;
32. Stresses the need to improve the processes for businesses to establish and operate online across all Member States, which should be streamlined and digitalised, and calls on the Commission to consider this further in its internal market strategy;
33. Calls on the Commission to ensure that particular attention will be paid to issues that

prevent consumers and businesses from benefiting from the full range of products and services, whether digital or those offered through digital channels in the EU, and that prevent businesses from starting and scaling up, operating across borders and innovating;

34. Calls on the Member States to apply common standards and good practice with regard to digital administration, focusing in particular on judicial bodies and local authorities;
35. Stresses that digital developments also provide for a meaningful change in public administration, establishing much more effective, simplified and user-friendly e-administration; considers, in this regard, that it is very important for citizens and businesses to have interconnected commercial registers;
36. Supports the establishment during 2016 of an EU-wide dispute resolution platform for consumer protection; emphasises that consumer rights cannot be guaranteed without effective legislation and access to legal instruments; takes the view that e-commerce could also flourish if consumers are able to shop online with similar terms applying throughout the EU;
37. Stresses that online security is one of the preconditions for a digital single market, and for this precise reason believes it necessary for network and information security to be ensured on this rapidly expanding market; welcomes, in this respect, the Commission's initiative to establish a public-private partnership on cybersecurity in the field of technologies and solutions for online network security;
38. Calls for a more efficient legal framework for EU funding for ITC training in order to enable an increase in EU competitiveness;
39. Points out that the technological gap existing in the EU has to be tackled through the legal framework of the digital single market policies; emphasises that a proactive approach is needed to reduce the gap between regions, between rural and urban areas and between generations;
40. Points out that in order to support a strong legal framework on digital single market policy, direct support for development and innovation in EU companies is needed; emphasises, therefore, that SMEs need to be encouraged to use digital technologies and develop ITC skills and services;
41. Points out that digital innovation generates growth and that a strong legal framework on digital market policy must stimulate entrepreneurship; emphasises that stimulation programmes designed for young innovators must be developed in order to take advantage of the potential of young Europeans.

RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

Date adopted	3.12.2015
Result of final vote	+ : 21 - : 3 0 : 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Evelyn Regner, Pavel Svoboda, József Szájer, Tadeusz Zwiefka
Substitutes present for the final vote	Angel Dzhambazki, Jytte Guteland, Heidi Hautala, Stefano Maullu, Rainer Wieland, Kosma Złotowski