

AIPPI Milan Congress 2016

Panel Session VII

High Technology

No frontiers: the European Digital Single Market

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Hughes
Critical matters. Critical thinking.®
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The EU Commission's proposals of September 14, 2016

Adapt copyright exceptions / limitations	<ul style="list-style-type: none"> • Text and data mining • Cross border teaching • Preservation of cultural heritage
Ensure wider access/ licensing	<ul style="list-style-type: none"> • Out-of-commerce works • VOD-negotiation mechanism
Well-functioning market place	<ul style="list-style-type: none"> • Press publishers' right • Online service providers – cooperation requirement • Fair remuneration – transparency
Online transmission and retransmission of radio / TV	<ul style="list-style-type: none"> • Ancillary transmission – country of origin • Retransmission – compulsory collective management
Access for visually impaired persons	<ul style="list-style-type: none"> • Adapting the exception to copyright to the Marrakech Treaty requirements

The EU Commission's Draft Impact Assessment

The following table from the EU Commission's draft Impact Assessment sets out its preferred options:

Area		Preferred policy option
Ensuring wider access to content	Online transmissions of broadcasting organisations	Option 2 - Application of country of origin to the clearing of rights for broadcasters' online services ancillary to their initial broadcast
	Digital retransmissions of TV and radio programmes	Option 1 - Mandatory collective management of rights to retransmission of TV / radio broadcasts by means of IPTV and other retransmission services provided over "closed" electronic communications networks
	Access to and availability of EU audiovisual works on VoD platforms	Option 2 - Stakeholders' dialogue + Obligation for Member States to establish a negotiation mechanism to overcome obstacles to the availability of audiovisual works on VoD
	Out-of-commerce works in the collections of Cultural Heritage Institutions	Option 2 - EU legislative intervention (i) requiring MS to put in place legal mechanisms to facilitate collective licensing agreements for all types of OOC works and to foster national stakeholder frameworks, and (ii) giving cross-border effect to such legal mechanisms.

The first two sub sections are embodied in a draft Regulation, the remainders in a draft Directive.

The EU Commission's Draft Impact Assessment - suite

Adapting exceptions to digital and cross-border environment	Use of protected content in digital and cross-border teaching activities	Option 3 - Mandatory exception with a cross-border effect covering digital and online uses in the context of illustration for teaching, with the option for MS to make it (partially or totally) subject to the availability of licences
	Text and data mining	Option 3 - Mandatory exception applicable to public interest research organisations covering text and data mining for the purposes of both non-commercial and commercial scientific research
	Preservation of cultural heritage	Option 2 - Mandatory harmonised exception for preservation purposes by cultural heritage institutions

The EU Commission's Draft Impact Assessment - suite

<p>Achieving a well-functioning market place for copyright</p>	<p>Use of protected content by online services storing and giving access to user uploaded content</p>	<p>Option 2 - Legal intervention imposing an obligation on online services which store and give access to the public to large amounts of content uploaded by their users to seek, in good faith, to conclude agreements with right holders for the use of their content and to put in place appropriate and proportionate measures, in cooperation with right holders, to avoid unauthorized content in their services</p>
	<p>Rights in publications</p>	<p>Option 3 - Introduction in EU law of a related right covering online uses of news publications + introduction, in EU law, of the possibility for MS to provide that publishers may claim compensation for uses under an exception</p>
	<p>Fair remuneration in contracts of authors and performers</p>	<p>Option 3 (transparency obligations supported by a contract adjustment right and a dispute resolution mechanism) or Option 2 (transparency obligation) plus dispute resolution mechanism</p>