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STAKEHOLDER CONSULTATION ON EUROPEAN COMMISSION REFLECTION DOCUMENT “CREATIVE CONTENT IN A EUROPEAN DIGITAL SINGLE MARKET: CHALLENGES FOR THE FUTURE”

About Kopiosto:

Kopiosto, a joint copyright organization, administers licenses and distributes remunerations to copyrights owners. Kopiosto represents over 46 000 Finnish copyright owners who are members of Kopiosto’s 44 member organizations representing authors, photographers, performing artists and publishers in all fields of creative work. Kopiosto is an active member in the international copyright organizations IFRRO and CISAC.

1. General remarks

Kopiosto supports the objective of the Reflection Document to promote the creation of a modern and balanced legal framework for a genuine single market for creative content online. Unfortunately the Reflection Document seems to have a very narrow view on how to reach this objective. The Reflection Document concentrates on practical solutions to encourage new business models and to promote industry initiatives and innovative solutions. The proposed solutions seem to go deep into the fundamental idea behind copyright. In most parts copyright is only described as a right to remuneration. Although the right to remuneration is an important part of copyright the view is too narrow.

Proposals regarding new obligations and exceptions to legislation in force are aimed unilaterally to rightholders and their representatives. Especially the role of Copyright Societies is being criticized. It should be noted that the economy of Copyright Societies is marginal compared with the economy of the whole copyright industry. (In Finland approximately 1,5 %)

The Reflection Document describes copyright and collective management as the biggest obstacles for the development of the digital market. The question how service providers could improve their own practices is not discussed. In practice, it is the service providers that make the decisions on what conditions content is offered to consumers in the digital market. It is not usually copyright reasons that limit or otherwise affect adversely these decisions; the decisions are based almost solely on market conditions and requirements. That being said, business models and the digital market are still under development. If the negotiations between rightholders and service providers do not lead to an agreement immediately, the correction to that situation should be driven by market forces –as is already happening in many concrete cases. It is a fundamental right

of a rightholder to authorize or prohibit the acts of exploitation of her/his protected work. This right must not be questioned.

2. Consumer access

2.1 Extended collective license

Nordic countries have a broad experience of using extended collective licenses in different licensing sectors throughout the society. The extended collective license is a legal construction which interferes as little as possible with the freedom of contract and makes effective administration of rights possible. It also offers an incentive to both rightholders and users to reach an agreement. The overall purpose of the extended collective license is to create favourable conditions for the mass use of protected works. Benefits of the extended collective license are obvious for rightholders, users and the public at large.

As an example of new licensing areas in the digital market, Mobile-TV and IPTV are made available to the public in Finland by using the extended collective license. Extended collective license would also be ideal to solve the questions and challenges especially regarding orphan works and out-of-print works.

2.2 Harmonization of copyright exceptions

National exceptions and limitations to copyright have evolved in a long period of time and they reflect different cultural and copyright policies and traditions in respective countries. It is hard to imagine that they could be fundamentally harmonized on the Community level in a short period of time. In addition, national exceptions regarding i.e. private copying reflect directly on how the use is compensated to rightholders. For instance, the harmonization of Finnish, German and British exceptions in this field seems completely unrealistic.

Copyright directive's (2001/29/EC) list of possible exceptions offers an effective and flexible framework for the Member States to build a dynamic and balanced copyright legislation. It is our opinion that there is no necessity for new Community level exceptions or limitations in general. In some individual cases harmonization could be justified. The Reflection Document does not however set any grounds for that discussion.

3. Commercial users' access

3.1 Consolidating "online rights" and "one-stop-shops"

The Reflection Document's description of consolidating online rights (reproduction and making available) into a unitary license and the idea of one-stop-shops are too general. The Reflection Document does not specify the legal means of achieving this target. Therefore, it is not possible to evaluate them more specifically in concrete terms. The availability and dissemination of works in the digital market is the objective of all parties involved, but it cannot be carried out in a manner which would impair the conditions on which the rightholders should act in the developing digital market.

3.2 Freely accessible ownership and license information

Kopioisto supports the aim of facilitating the availability of ownership and license information. However, the protection of privacy and personal data must be well acknowledged.

3.3 Extending the idea of Satellite and Cable Directive (93/83/EEC) to online delivery of audiovisual content

The multi-territorial online licensing model of audiovisual content proposed in the Reflection Document seems to have its inspiration in the satellite provisions of the Satellite and Cable Directive.

It must be observed that the Directive contains provisions on the management of the cable retransmission rights. These provisions have been ignored in the Reflection Document. If the idea of the Directive is to be adapted into online licensing, Koptisto suggests that the focus is set on the cable rather than satellite provisions of the Directive. It is important to notice that the model for managing the retransmission rights in the Directive, where local Copyright Societies license the retransmission rights in their territories, functions well and is widely used in Europe. For example, the model has enabled the retransmission of European public service broadcasts in cable networks in the Nordic countries already since the 1980s.

The Commission has previously emphasized (Contribution on the Communication from the Commission on Creative Content Online in the Single Market COM (2007) 836 final) that digital markets as broad as the EU offer scale benefits and cultural diversity. In order to preserve the vitality of small language and culture areas, cultural diversity is an especially important objective. More importantly, cultural diversity is a competitive advantage for the creative contents of the EU.

The multi-territorial model proposed in the Reflection Document would in practice result in narrowing the repertoire offered to consumers and would thus have a negative effect on the Commission's objectives of promoting cultural diversity. The proposed model would result in a situation where the rights clearance would be concentrated in a few larger Member States. For the majority of the users this would cause significant expenses in acquiring licenses, as they would have to acquire licenses separately in the few Member States. Also, there would no longer be a real incentive to offer the content of smaller Member States, which in commercial terms is marginal. The licensing services should be situated near local rightholders and users, and the services should include a repertoire as wide as possible to be cleared nationally. This way cultural diversity and the Commission's objective will be safeguarded and the rightholders as well as the users will have the possibility to acquire the services that they need in the EU.

Koptisto does not support the adaptation of a multi-territorial licensing model into EU legislation as presented in the Reflection Document. The cable retransmission model designed in the Satellite and Cable Directive is well-functioning, effective, provides the basis for secondary markets (of more marginal content) and furthers cultural diversity. If the model for online licensing is to be taken from the Directive, it should therefore be taken from the cable provisions.

3.4 A European Copyright Law

Kopioisto does not see a European Copyright Law as an appropriate objective. The softer approach of Community copyright title, which would exist in parallel to national copyright titles, would only complicate the field.

3.5 Alternative forms of remuneration

Kopioisto encourages the Commission to promote the idea that copyright levies could be collected from a broader basis i.e. from internet service providers. All the devices and services which benefit from the increasing private copying should be equally subject to copyright levies. In addition, the basis of the levies should actively follow the development of technology and services.

It should be noted that levies can only concern the remuneration of legal private copying. Alternative forms of remuneration cannot be alternative to traditional licensing between rightholders and users. In addition, the Community must impose effective enforcement legislation to fight the illegal use of protected works.

4. Protection of rightholders

The protection of rightholders' exclusive rights must be guaranteed in the evolving digital market. The sustainable development of the digital market is above all constructed on intellectual creativity. Effective and functioning copyright system works as an incentive for creativity and encourages the discovery of new ways of using protected works. Without an effective copyright system creativity is in danger to fade.

We thank the European Commission for the opportunity to comment on the Reflection Document of DG INFSO and DG MARKT. This opinion is public.

Yours sincerely,
Kopioisto ry



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CEO