



Brussels, 3 July 2013

Dear Vice-President Kroes, dear Commissioner Vassiliou, dear Commissioner Barnier,

EDRi would like to thank you for your answer of 23 May 2013 to our letter on Working Group 1 of the "Licences for Europe" initiative.

We are very pleased to see that our constructive participation in the Working Group has been noticed and appreciated. However, we deeply regret that the concerns expressed during the discussions are not reflected in the minutes of the meetings, which appears to be a common theme across the whole project.

We are grateful that you recognised the importance of the users' point of view but, in the absence of commercial users in the meetings and so few representatives of civil society, it is very difficult to have a balanced discussion that will give due consideration of all perspectives of the problems encountered with regard to cross-border access and service portability in the European Union. While you refer in your letter to a win-win situation for all stakeholders, it is very hard to understand how such a situation can be achieved in Working Group 1, when not all interests are represented during the meetings. Stakeholder dialogues may be useful if all stakeholders are represented, but unfortunately it is far from being the case here.

In your letter, you plead in favour of a market-led solution that can improve the situation for users and this does indeed sound like an appealing solution. However, most of the presentations have simply elaborated on current practices and did not consider the issue to be discussed: how to facilitate better cross-border services for citizens. We can probably agree that if current practices were the solution, this stakeholder dialogue would not be happening.

European citizens are still facing a weak and poorly serviced market. A market-led solution improving the situation for users is only possible if the legal framework enables service providers to offer proper EU-wide services. Unfortunately, in this context we face problems that have their roots in the EU legal framework. The overarching problem is the territoriality of national copyright laws. Therefore, we strongly believe that the current legal framework should be discussed in this stakeholder dialogue. We are pleased to hear that the European Commission is working on a review of the legal framework and we are not arguing that "Licences for Europe" should be the instance deciding on a reform or not, but we do believe that the current legal framework and the barriers it creates to the realisation of a digital single market should be part of the discussion.

In our opinion, the European Commission made fundamental mistakes when launching this initiative. In particular, it started the search for a solution to certain problems without defining what the problems actually were and then created the four working groups to solve, it appears, four sets of undefined problems. The methodology of the Commission of being "in" this process (launching it, chairing the sessions, preparing minutes, etc), but "outside" the process (and therefore unable to facilitate the creation of clear problem definitions from the outset) is simply not credible and cannot produce credible results.

EDRi strongly believes that the lack of access for EU citizens to more and, more importantly, better legal offers cross-border is a horizontal problem. The division into sub-groups was decided during the first meeting and supported by some members. In the absence of a problem definition, the only thing that was clearly defined is what could not be discussed – the legal framework.

As you have noticed, the representation of civil society and users is a very small minority of the participants, making it difficult to make our concerns heard – this situation being exacerbated by the multiplication of working groups. In reality, the root problem is the same for all sectors: the lack of availability of cross-border access and service portability caused by the application of the current legal framework which should have been the starting point of the discussion. The sub-division would have been justified if reasons had been identified that called for such an approach.

You kindly offer to facilitate our participation to the stakeholder dialogue and to provide financial assistance, for which we thank you. However, we will have to decline this offer as in our view the problem of this dialogue in the discussion is much deeper than only budgetary constraints.

We would be really pleased to meet and discuss further on a potential reform of the EU copyright legislation with the relevant Directorates-General. Nevertheless, due to the lack of productive discussions in Working Group 1, we regret to inform you that we see no other option than to leave Working Group 1 of Licences for Europe. We hope that you will understand our decision and that you will still be open to discussion with us in the future.

Yours sincerely,

Andreas Krisch, President of EDRi (European Digital Rights)