

28 February 2013

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

We are writing you to express our serious concerns about the terms under which the "User Generated Content" working group of the Licenses for Europe stakeholder dialogue are taking place. While we welcome the Commission's intention to explore short-term solutions for pressing issues related to copyright in the digital environment, we have grave doubts that the current framing of the discussions in the working groups of the stakeholder dialogue will help to achieve this objective.

General Considerations

The services of the Commission tasked with facilitating and moderating the Working Group meetings have made it very clear that the scope of the discussions is limited to licensing and contractual and technological solutions. Discussions may only proceed on the basis of the existing legislative framework.

We believe that it is fallacious to argue that the legal framework must remain outside the discussions, when we are being effectively asked to design workarounds for the shortcomings of the current *acquis*. Any such workaround will inevitably have the effect of reinforcing the inertia which has led to the current problems remaining unsolved for over a decade. Furthermore, an *ad hoc* approach to solving the current problems would remove pressure in some Member States for legislation which, if adopted, would serve to improve the harmonisation of the single market. In essence, we are being asked to influence the legal framework on an EU and a Member State level, while being denied the opportunity to explicitly address the legislation in question.

Working Group 2

With regard to Working Group 2 on "User Generated Content and licensing for small scale users of protected material" these limitations mean that we are prevented from fully exploring the issues at stake and weighing different approaches based on their respective merits. From our perspective, the issues surrounding participative culture (designated by the incorrect term "User Generated Content") not only raise questions related to licensing but also fundamental questions related to freedom of political, artistic and cultural expression that cannot be adequately dealt with by licensing alone.

A large part of user-generated content is creative material which is an expression of artistic, political or other views and which does not interfere with the normal exploitation of copyrighted work(s) that it includes. This is, to a greater or lesser extent, permitted without licensing in some Member State legal systems. Such works should be subject to specific harmonised copyright exceptions under a coherent EU *acquis*. However, due to the failures and disharmonising effect of the 2001/29/EC Directive, they are not. As the underlying problem (the 2001/29/EC Directive) cannot be discussed, it appears that the only approach that can be contemplated is a semi-harmonised, voluntary removal of the rights that exist in some Member States for parody, satire, etc, which would then be replaced by a licensing model. Such a restriction on fundamental rights via a self-regulatory measure would be in obvious breach of the 2003 Interinstitutional Agreement.

Conclusion

As a result, we believe that it is essential for future working group meetings to be fundamentally restructured, including a possibility to allow the participants to address the issues at stake that require solutions other than licences. We understand that the College of the Commissioners wants the stakeholder dialogue to work on licensing based solutions, but we believe that it cannot have been the College's intention to stifle debate and to prevent a full and open discussion that addresses the issues in a holistic and productive manner.

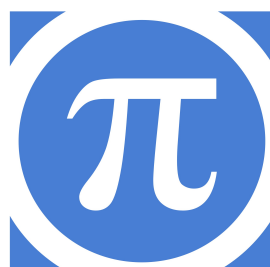
We believe that it is essential for these concerns to be taken fully into account in order for us to have confidence in this process. The above-mentioned concerns are of fundamental importance to us.

As a result, we would be grateful if you could provide us with a response to this letter before the upcoming meeting of the working group.

Yours sincerely



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