



# Modernisation of EU copyright rules

**Presentation on DSM Directive  
25.04.2018**

## Background

- **Digital Single Market Strategy** (May 2015): need to address in the EU copyright framework the key obstacles to the functioning of the DSM
- **Commission's Communication on the modernisation of the EU copyright framework** (December 2015): targeted actions and long-term vision
- **Regulation on cross-border portability of online content services** – adopted in June 2017, applicable in all EU Member States on 1 April 2018
- **Copyright package** adopted on 14 September 2016

# Copyright modernisation package adopted on 14 September

- 4 legislative proposals and an accompanying Communication:
  - ✓ Regulation on online transmissions and retransmissions of TV and radio programmes
  - ✓ Directive on copyright in the Digital Single Market
  - ✓ Implementation of the Marrakesh Treaty for people with print disabilities through a Directive and a Regulation (adopted on 13 September 2017)

# State of play of the negotiations

**Commission**  
Package proposal **14 September 2016**

## Parliament

- Competent committee: **JURI**
- Vote postponed to **June 2018**
- New Rapporteur : **Axel VOSS** (PPE)
- Draft Report (10.03.17): **Therese COMODINI CACHIA**: 924 Ams
- Associated committees: **IMCO, CULT, ITRE, LIBE**

**Next step: Vote in JURI**

## Council

First reading

### Consolidated versions:

- First one - **06/17** - Maltese Presidency
- First covering the whole Directive - **30/10/17** - Estonian Presidency
- Current one - **23/04/2018** - Bulgarian Presidency

**Next step: COREPER (mandate to open trilogues)**

Institutional negotiations - trilogues

# Directive on copyright in the DSM

Main objectives:

- 1) Modernising EU rules on key exceptions and limitations in the areas of research, education, and preservation of cultural heritage
- 2) Facilitating licences in order to ensure wider access to content
- 3) Introducing fairer rules of the game for a better functioning copyright marketplace

# 1 - Modernisation of exceptions

## Context

- The beneficiary of the exception is allowed by law to use protected content without the need to seek prior authorisation from right holders
  - Harmonisation of a certain number of exceptions in the existing EU copyright legal framework – but most of them are optional for MS
  - Reform: focus on exceptions which are relevant for access to knowledge and which have a significant cross-border dimension
- **Introduction of new mandatory exceptions**

# 1 - Modernisation of exceptions

## Scope of the new exceptions

- Exception for **text and data mining** → to allow research organisations to use new automated technologies to analyse large sets of data for scientific research in all legal certainty
- Exception for **digital uses of protected content to illustrate teaching**, including across borders → to provide full legal certainty to educational establishments and teachers
- **Preservation** exception → to allow cultural heritage institutions to make copies (including digital) of protected works for preservation purposes
- Scope, conditions and beneficiaries of the new exceptions defined taking account of the impact on the licensing market

## 2 - Facilitating licences

### Out-of-commerce works

- Legal framework to help cultural heritage institutions to digitise and make available across borders **out-of-commerce works**
  - Objective: reduce transaction costs in large scale digitisation projects
  - Member States to introduce the possibility of extended collective licensing or presumption of representation for licensing OOC works for non-commercial uses
  - Safeguards for right holders: possibility to opt-out; publicity requirements, representativeness of a CMO
  - Cross-border effect
  - Stakeholders' dialogue to facilitate the use of such mechanisms for different categories of works



## 2 - Facilitating licences

### Negotiation mechanism

- Negotiation mechanism to be set up by Member States to facilitate the licensing of films on VoD platforms:
  - Objective: improve the availability of European audiovisual works on VoD platforms
  - Negotiation mechanism open to parties (VoD platform, producers, distributors) wishing to conclude an agreement, on a voluntary basis
  - Member States to identify or create an impartial body with relevant experience to provide assistance with negotiation and help reaching licensing agreements

## **3 –A better functioning copyright market place**

### **Rights in publications**

- Background and identified problems:
  - In the transition from analogue to digital, press publishers face problems in the exploitation (licensing) and enforcement of the rights transferred to them by the authors of press publications
  - Social media/search engines have become important ways people access the news online
  - Press publishers do not always benefit from the reach and referral traffic: they miss out on advertising revenues which puts the recoupment of their investments at risk

## **3 –A better functioning copyright market place**

### **Rights in publications**

- Introduction of a new related right for press publishers:
  - Rights granted: reproduction and making available for the digital use of press publications
  - Will facilitate the licensing of publications for online uses by third parties and the enforcement of rights
- Possibility for Member States to consider that transfers of authors' rights or licences allow publishers to receive a share of the compensation for the uses of works under exceptions

## 3 – A better functioning copyright market place

### Use of protected content by user uploaded content services - 1

- There is a transfer of value from rightholders to platforms which use rightholders' content to reap financial benefits without passing on a fair amount of revenues (a so-called '*value gap*')
- The service providers targeted by the intervention have become main sources of access to content and they are more than "mere intermediaries": in certain cases they may perform an act of communication to the public and need licences
- Very few agreements in place: usually not "licensing" but "monetisation" agreements

## **3 – A better functioning copyright market place**

### **Use of protected content by user uploaded content services - 2**

- Objective: allow right holders to better control the use of their content and to negotiate on a fairer basis with players which have become important content distributors
- New rules requiring that online services providing access to large amounts of content uploaded by users put in place appropriate measures (such as content recognition technologies) and cooperate with right holders:
  - to ensure the functioning of agreements concluded with right holders
  - or to prevent the upload of works which have been identified by right holders

## 3 – A better functioning copyright market place

### Remuneration of authors and performers

- New rules to ensure **increased transparency to authors and performers** on the exploitation and remuneration of their works and help them to obtain appropriate remuneration
  - Obligation for the direct contractual partner of authors and performers to share information on modes of exploitation and corresponding revenues
  - Contract adjustment mechanism when the agreed remuneration turns out to be disproportionate to the success of a work
  - Dispute resolution mechanism for disputes concerning transparency obligations and contract adjustment mechanism



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**Thank you !**