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Political opinion on Commission proposal for reform of EU copyright rules

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The Cultural Affairs Committee and the European Affairs Committee of the Danish Parliament have considered the Commission proposal for reform of EU copyright rules at several meetings and on 18 January 2017 held a consultation on the theme safe harbour and online intermediaries. Members of the Committees had meetings with actors in Brussels on 25 January 2017. Against this background, the Danish Parliament wishes to make the following comments on the proposal for reform of the Copyright Directive (COM (2016)593) and the proposal for the Broadcasting Regulation (COM (2016)594):

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Creative industries are important for European societies in both cultural and economic terms. It is important that EU copyright rules achieve a fair balance ensuring rightholders' revenues in order to enable the further development of European cultural life and ensuring consumers' access to creative content online.

It is sensible to revise the copyright rules (InfoSoc Directive 2001/29/EC) in light of technological developments since 2001. The Committees find it positive that the Commission proposal (Recital 38) addresses the problem of information society service providers operating as online intermediaries that disclaim liability for breach of copyright rules on the basis of the safe harbour rules laid down in the E-commerce Directive as it is not clear whether the service providers play an active role when providing access to the public to copyright protected works or other subject-matter uploaded by their users.

The Committees find that the proposal for Article 13 and accompanying Recital 38 constitute a balanced solution with a view to ensuring that competition in the internal market is not distorted. The provision contributes to creating a negotiation forum for rightholders to discuss the conditions for fair and appropriate remuneration, etc. with the owners of these services.

Therefore, the wording of Article 13 or Recital 38 may not be reduced or diluted.

At the same time, the Committees find it of key importance to ensure legal certainty for consumers when private, commercial actors are to enforce the rules in case of breach of copyright. Transparency is, therefore, a decisive factor. Similarly, it is crucial that consumers should have the possibility to complain and receive redress. It is therefore of great importance to retain Article 13 (2) regarding complaints and redress mechanisms that must be available to consumers. Furthermore, an obligation should be introduced for service providers of online content to inform users of the reason for the removal of their content.

Due to rapid technological progress, a reform of the Copyright Directive must take into account the future technological development. The Committees call for an evaluation of the new legislation after a few years with a view to ensuring that the provisions have the desired effect and for example urge service providers operating as online intermediaries to conclude licensing agreements with rightholders.

With respect to the proposal on the use of works in teaching activities, the Committees consider it of great importance that this provision continues to enable the use of the Danish licensing agreement model. Under the Danish model, educational establishments conclude licensing agreements with rightholders according to which the educational establishments pay for using the works in question. This ensures both optimal flexibility through agreements and financing for the development of new teaching materials.

A majority of the Committees are positive about the proposal for protection of press publications as set out in Article 11 as it may contribute to better opportunities for publishers to create sustainable business models.

A minority (The Alternative) are concerned about the proposal to introduce new rights for press publications as it may prove detrimental to freedom of expression and limit the free exchange of online information. Experience of similar provisions in Germany should be included in the considerations as these are not unequivocally positive.

With respect to the proposal for a Regulation on online transmissions of broadcasting organisations, the Committees are concerned about the proposed rule on applicable law, which will move the legislation applicable to online transmissions of broadcasting organisations from the country of reception to the country of origin. This will make it difficult for Danish rightholders to conclude agreements on fair and appropriate remuneration for the use of their rights as the proposed Regulation would imply for example

that the use of Danish works in a programme transmitted from a TV station with its headquarters in the UK must be considered under UK rules before UK courts, not under Danish rules and before Danish courts even if the transmission is exclusively directed at Danish consumers. It is also a matter of concern that it has not been clarified whether a provision on country of origin will undermine the possibilities of obtaining contractually fair and appropriate conditions for rightholders in relation to broadcasting organisations through licensing agreements.

The Committees refer otherwise to Resolution no. V 37 of 18 March 2016 of the Danish Parliament.

Yours sincerely

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