

European Copyright Society

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Mr Günther Oettinger

Commissioner for Digital Economy and Society
European Commission
Brussels

Strasbourg, 19 December 2014

Subject: unification of copyright law

Dear Mr. Oettinger,

The members of the European Copyright Society (ECS) congratulate you on your appointment in the new Commission as Commissioner for Digital Economy and Society. Our society was founded in January 2012 with the aim of creating a platform for independent and critical scholarly thinking on European copyright law.¹ Our members are leading European scholars and academics seeking to promote their views of the overall public interest. The Society is not funded, nor is it instructed, by any particular stakeholders.

The ECS understands that your policy portfolio includes primary responsibility for developing EU copyright policy. From the Mission Letter that you received from President Juncker we conclude that reforming copyright law in the EU in order to promote the digital economy and to foster the creative sector in Europe will be one of your priorities. This is an important challenge.

In our Society's response to the Public Consultation on the review of the EU copyright rules of March 2014, we suggested a number of improvements of the existing (harmonized) EU rules on copyright law, which need not be repeated here.² Surely, reviewing and amending the rules of the copyright *acquis* will be on your agenda for the years to come, and we trust that our Society's opinions will be taken into account when new proposals are being developed.

¹ See for example our recent Opinion on the Judgment of the CJEU in Case C-201/13 *Deckmyn*, Limitations and Exceptions as Key Elements of the Legal Framework for Copyright in the European Union, 1 November 2014, <http://infojustice.org/archives/33520>.

² The response is available at <http://infojustice.org/wp-content/uploads/2014/03/ECS-answer-to-EC-consultation-on-copyright-Review.pdf>.

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In this letter, however, we would like to go a step further and underscore the need for a more forward looking and further reaching reform of copyright in the EU – in the form of actual Union-wide unification (not further harmonization) of copyright. The Members of the European Copyright Society are convinced that the time is now ripe to start work on a European Copyright Law that would apply directly and uniformly across the Union.

Despite almost 25 years of harmonization of copyright in the EU, copyright law in Europe has essentially remained national law. Each Member State still has its own law on copyright and neighbouring (related) rights that applies strictly within its own territory. This territoriality has led to fragmentation of markets along national borderlines, critically impeding the establishment of a Digital Single Market for creative content, and undermining the Union’s international competitiveness.

In the Mission Letter that you recently received, President Juncker writes: “We must make much better use of the opportunities offered by digital technologies which know no borders.” To do so, the letter continues, it is necessary to “break down national silos” [inter alia] in the field of copyright. We could not agree more.

Previous Commission policies have sought to redress the problems of territorial fragmentation of online content markets mainly by promoting multi-territorial or pan-European collective licensing. While developing models of supranational licensing may somewhat alleviate these problems, it has raised new transactional and legal problems (e.g. by undermining existing models of blanket licensing at the national level), and the problems of market fragmentation persist. In the opinion of the European Copyright Society a more ambitious solution is now called for: true unification of copyright by way of a European Copyright Law (Regulation) that would replace national legal titles. Article 118 of the TFEU, introduced by the Lisbon Reform Treaty, creates a specific competence for the European legislature to establish intellectual property rights with direct Union-wide effect.

While copyright unification may be considered undesirable, or perhaps too drastic, by certain stakeholders and national legislatures, this is in our opinion the only way a fully functioning Digital Single Market for copyright-based goods and services can ultimately be achieved. It is in fact the logical next step for the EU legislature to take in this field.

The European Copyright Society sees several major advantages of unification. A European Copyright Law would establish a truly unified legal framework, replacing the multitude of – often opaque and sometimes conflicting – national rules that presently exists. It would have instant Union-wide effect, thereby creating a single market for copyrights and related rights, both online and offline. A European Copyright Law would enhance legal security and transparency, for right owners and users alike, and greatly reduce transaction and enforcement costs, including those resulting from the still pending issues of jurisdiction and applicable law to copyright infringements online. Moreover, codifying a European Copyright Law would enable the EU legislature to reestablish itself as a global leader in copyright norm setting.

Of course, we realize that any unification of copyright law in the EU will be a project of the middle or long term. This has led those opposing such an initiative to label it as 'unrealistic'. In the opinion of the members of the European Copyright Society, however, the fact that unification of copyright will be time-consuming is no reason not to initiate it. Quite to the contrary: given its potentially positive impact on the European creative economy, work on such a project should, in our opinion, be initiated as soon as possible.

The members of the European Copyright Society would be pleased to discuss this with you if you would so desire.

Sincerely,

On behalf of the European Copyright Society:

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