

Dear Council attaché,

The EU aims to build a Digital Single Market that encourages and supports innovation, research and the cultural values of Europe. In this context, and over the course of the following weeks, you and your colleagues in the Council's working party will discuss and negotiate on reforming Copyright legislation to ensure it is fit for purpose in the digital age.

The impact of the proposed Copyright in the Digital Single Market Directive on the entire digital economy cannot be underestimated. From text and data mining (art. 3), to the use of text snippets (art. 11) and user uploaded content (art. 13), countless European creators, innovators, and companies are dependent on a balanced and workable outcome to these discussions. Europe's competitiveness is at stake.

The Presidency compromise proposal¹ outlines fundamental issues which Member States are called upon to express their views. We find that the current proposals regarding the aforementioned art. 3, 11 and 13, require more discussion and analysis.

In this light, DIGITALEUROPE and ZIPSEE's membership in the ICT field, spanning numerous businesses in Europe, both big and small, would like to highlight the following key points:

- Regarding art. 3 (text and data mining exception/TDM), we support the proposal by Member States to create scope for national legislators to maintain or extend the space for businesses to use text and data mining analytics on content that they have lawful access to, without introducing additional licensing obligations ('right to read, right to mine').
- Regarding art. 11, we urge the rejection of the creation of a new neighbouring right which also catches short extracts of texts and is for example attached to videos and photographs (i.e. art.11 Option A). Given the large amount of criticism from the academic and legal sector, we advocate for the deletion of this proposal (as suggested by several delegations). Alternatively, we would support a presumption of right as a basis for further negotiations and refinement (i.e. art. 11 Option B).

It should also be clarified, as part of art. 12, that including publishers as a beneficiary of the fair compensation regime should not lead to an overall increase and duplication of fees.

- Regarding art. 13, the introduction of self-standing obligations to *ex ante* filtering content would further disrupt the online ecosystem and risk causing vast unforeseen consequences and damage. Businesses, citizens, human rights and free speech advocates have in unison voiced their concern.²

We see that the latest Council proposal on art. 13 goes a step even further and would, in absence of prior consultation, evidence, and against established ECJ and national case law, re-define the crucial and complex right of 'communication to the public'. The proposal would in practice hollow out the E-Commerce Directive's liability regime and 'safe harbour' principle.

DIGITALEUROPE and ZIPSEE are committed to an evidence-based policy making process and encourage a thoughtful debate. There is a wealth of independent expertise, input from renowned academics and respected legal practitioners on the Copyright reform proposal. Many of the proposals are facing incredible scrutiny and negative criticism, as being ineffective at best and damaging at worst.

¹ Council Presidency compromise proposal (consolidated version) and state of play, 13 December 2017 (document ref. ST 15651/17).

² See for example: [open letter in light of the Competitiveness Council on 30 November 2017](#) (November 2017); [Digital stakeholders urgently requests clarity on article 13 of the proposal for Directive on Copyright in the Digital Single Market](#) (September 2017).