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THE EUROPEAN UNION**

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**NOTE**

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from:	Presidency
to:	Delegations
No. Cion prop.:	18555/11 TELECOM 212 PI 188 COMPET 619 CODEC 2426 AUDIO 83 CULT 120 +ADD1, ADD2 + ADD1COR1, ADD2COR1
No. prev.doc.	15065/12 TELECOM 185 PI 125 COMPET 632 AUDIO 98 CULT 127 CODEC 2406
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information

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At the next Telecommunications Working Party on 15 November, the Presidency would like to focus the discussions on the main outstanding issue of charging for re-use. To that end, delegations will find in the Annex text proposals for Article 6 and Recitals 12 and 18. The text suggestions are based on the discussion held in the Working Party meeting of 26 October and on the delegations' written comments submitted on doc. 15065/12.

As usual, changes proposed by the Commission as part of the proposal (doc. 18555/11) are in *italics*. Changes compared to the Commission proposal are in **bold** (and deletions in ~~strikethrough~~). Changes made by the Presidency as compared to the latest text (doc. 15065/12) are marked in **bold underlined** (and deletions in ~~strikethrough~~).

Article 6

Principles governing charging

1. *Where charges are made ~~for the re-use of documents, the total amount charged~~ by public sector bodies, those charges shall be limited to the marginal costs incurred for supplying and allowing the re-use of documents ~~their reproduction and dissemination.~~*
  
- ~~2. In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.~~
  
2. Paragraph 1 shall not apply to the following:
  - (a) Public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the following:
    - the performance of their public tasks or
    - performance of any particular activity falling within their public tasks and representing a substantial part of these tasks the performance of specific public tasks giving rise to the documents for which charges are made,
  
  - (b) Libraries (including university libraries), museums and archives.
  
- ~~3. Notwithstanding paragraphs 1 and 2, libraries (including university libraries), museums and archives may charge over and above the marginal costs for the re-use of documents they hold.~~

4. ~~Where charges are made, Public sector bodies referred to in under paragraph 2a, shall calculate the total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. and~~ †The total income from supplying and allowing re-use of documents **over the appropriate accounting period** shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be ~~cost-oriented over the appropriate accounting period and~~ calculated in line with the accounting principles applicable to the public sector bodies involved.
- 4a. **Where charges are made by public sector bodies referred to in paragraph 2b , the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.**
- ~~5. The burden of proving that charges comply with this Article shall lie with the public sector body charging for re-use.~~
6. **In order to contribute to a consistent implementation of this Article and after consulting the Public Sector Information Group, the Commission may adopt non-binding guidelines providing guidance for the implementation of the principles governing charging set out in the previous paragraphs.**

(12) Where charges are made for **supplying and allowing** the re-use of documents, they should in principle be limited to the marginal costs ~~incurred for their reproduction and dissemination, unless higher charges are exceptionally justified according to objective, transparent and verifiable criteria.~~ However, ~~T~~the necessity of not hindering the normal running of public sector bodies ~~covering that are required to generate revenue to cover a substantial part of their operating costs relating to the performance of their public tasks~~ or the costs relating to the performance of the specific tasks giving rise to the documents for which charges are made ~~from the exploitation of their intellectual property rights~~ should ~~notably~~ be taken into consideration. Such public sector bodies should be able to charge above marginal costs. The requirement to generate revenue to cover substantial part of their costs relating to the performance of their public tasks does not have to be a requirement in legislation and may result, for example, from administrative practices in Member States. In such cases charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Libraries, museums and archives should also be able to charge above marginal costs also for the reasons not to hinder the normal running of these public sector bodies. In case of those public sector bodies the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. For the purpose of libraries, museums and archives and bearing in mind their particularities, the prices charged by the private sector for the re-use of identical or similar documents could be considered when calculating the reasonable return on investment. ~~The burden of proving that charges are cost-oriented and comply with relevant limits criteria should lie with the public sector body charging for the re-use of documents.~~

- (18) ~~The Commission should assist the Member States in implementing the Directive in a consistent way by giving guidance, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties.~~  
The Commission may assist the Member States in implementing the Directive in a consistent way by making available, after consulting the Public Sector Information Group, non-binding guidelines on recommended standard licenses, ~~and~~ datasets and charging for the re-use of documents.
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