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NOTE

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Subject:	Policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI – Presidency stocktaking paper

Delegations will find attached a Presidency paper taking stock of the discussions on the Policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI.

Presidency Stocktaking Paper

Presidency Paper taking stock of the discussions on the Policy questionnaire regarding lessons learned on Article 15 of the CDSM Directive and on fostering a well-functioning framework for licensing in the age of AI

Foreword

While artificial intelligence offers new opportunities to enhance creative workflows, it has also given rise to a number of challenges. Since there seems to be a growing inequality between copyright holders and the tech industry, the Danish Presidency found it imperative to explore possible initiatives in this area. Copyright legislation must keep pace with technological developments, ensuring clear rules and a fair and a well-functioning market that stimulates innovation, creativity, investments and the production of new content.

The Danish Presidency provided Member States with a questionnaire on the lessons learned from Article 15 of the CDSM Directive with a twofold aim: to compare frameworks for entering into licensing agreements concerning AI and copyright, and to address AI and copyright as a stand-alone topic. The overarching objective was to explore the need for improving the existing framework at EU level and to find a solution-oriented approach, both with regard to the right in Article 15 and the issue of licensing in the area of AI and copyright.

This Presidency paper takes stock of the discussions within the Council **Working Party on Intellectual Property (Copyright)** as well as of the written comments received from Member States.

The first section of the stocktaking paper covers lessons learned on Article 15 of the CDSM Directive. The second section is dedicated to the relationship between right holders and AI-providers. The last section concerns the protection of image, voice, and likeness.

Article 15 of the CDSM Directive

Introduction

In this section, the Presidency focused on the topic of the press publishers' right, the need to find the right balance between the press publishers and users (ISSPs), possible measures to promote and ensure a well-functioning licensing market and on reaching the aim of Article 15 in the CDSM Directive (strengthening the position of press publishers in the digital environment and support the sustainability of the press sector).

The responses to the questionnaire indicate to the Presidency that, for press publications, collective licensing remains difficult to establish in practice. CMOs in several Member States have been authorised to conclude extended collective licensing agreements on behalf of both members and non-members to simplify rights' clearance and to ensure remuneration. However, few such agreements have been concluded, and in some cases no CMOs have been established, highlighting some difficulties in practical implementation.

Member States' responses with regard to possible EU-level initiatives

Member States have provided their contributions and comments with regard to possible new initiatives to strengthen the effectiveness of the press publishers' right. While recognising that around half of the responding Member States did not indicate a wish for action regarding further facilitation or adjustment of the regulatory framework at this time, it is important to note that the other half indicated that initiatives could be considered.

According to the replies gathered from several Member States, possible adjustments of the regulatory framework could entail:

- 1) Introducing minimum standards at EU level concerning enforcement: this could be done through an EU-level arbitration mechanism, for example an arbitration method that could encourage the participation in the negotiation proceedings and make the output enforceable, while preserving the negotiation autonomy of the parties. The suggested mechanism would have to provide the parties with sufficient flexibility to explore compromise etc.
- 2) Clarifying the scope of the terms "ISSP" and "press publication", since they are perceived as ambiguous.

- 3) Clarifying what constitutes an act of reproduction and what is the definition of “very short extracts”.
- 4) Introducing obligations for disclosing data or other criteria necessary to qualify what is to be paid for the online use of press publications.

Licensing in the context of AI

Introduction

On the topic of AI and copyright, the Presidency considers it essential to achieve a balanced copyright framework that ensures proper remuneration for creators and the creative industries, while allowing AI developers of all sizes to have competitive access to high-quality data. In this context, the emergence of generative artificial intelligence (GenAI) presents unprecedented challenges and opportunities, necessitating an assessment of existing legal frameworks and support mechanisms.

Based on the responses to the questionnaire, the Presidency found that Member States face many of the same challenges. Rapid technological developments and the growing influence of global market players have created concerns shared across borders, while the borderless nature of the internet continues to pose common difficulties for enforcement and an effective protection of rights. Right holders, artists and performers across the EU share common concerns regarding use of their creations, works, image, voice or performances in synthetic media and in training and deployment of generative AI – often without consent or remuneration. At the same time, limited means to detect, monitor and enforce infringements leave them with little practical ability to protect their rights, making enforcement a central challenge. There are many indications that contractual practices in this area remain limited and fragmented.

Member States' responses with regards to EU-level initiatives

While a few Member States wish to exercise caution when it comes to the need for additional measures to increase transparency and facilitate licensing, a majority of the responding Member States calls for immediate further action. Proper remuneration for the use of copyright-protected material, licensing models and functioning of the TDM opt-out are some of the topics brought up by the Member States on this issue. Some Member States report that legal uncertainty remains on as to which copyright-related acts take place in the training, distribution, and output generation phases of the AI models.

The uncertainty also impacts licensing and hampers the building of a license market.

Adjustments of the EU regulatory framework could entail:

- 1) Introducing legislation on the copyright-related acts such as training, distribution and output.
- 2) Introducing EU-wide recognised licensing terms.
- 3) Establishing enforcement tools and a collective licensing infrastructure.
- 4) Introducing a mechanism that requires AI providers to implement systems that would reject prompts and avoid outputs that may lead to copyright infringements.
- 5) Implementing additional measures to increase transparency complementing the provisions of the AI Act.
- 6) Introducing a sector-specific collective licensing model, and/or standardised licenses or smart contracts to support individual licensing.
- 7) Introducing a rebuttable presumption of use of copyright-protected content in the context of the development or deployment of AI.

The protection of image, voice, likeness, etc.

Introduction

The emergence of AI has made it much easier to replicate performers' features using their personal characteristics such as physical image/appearance, voice and likeness, based on their previous performances. Such uses often fall outside of the scope of current EU copyright legislation and there are varying levels of protection for personal rights across Member States, e.g. regarding unauthorised synthetic content such as deepfakes.

Most of the responding Member States do not have specific legislation addressing the impacts of AI on performers' rights. Instead, protection is derived from existing legal frameworks such as civil law, criminal law and data protection law, leading to divergent levels of protection across the EU. The majority of Member States express caution regarding the introduction of a specific EU-level right for performers' likeness. However, Member States have generally expressed interest in the Presidency proposal for better protection against digital imitations of personal characteristics.

Member States' responses with regard to EU-level initiatives

Some Member States suggest that any EU initiative in this area should focus on complementing existing legal frameworks, ensuring cross-border enforcement and ensuring that personal identity rights are not unduly commercialised or exploited.
