

An Excerpt From:

# K&L Gates Global Government Solutions<sup>®</sup> 2012: Annual Outlook



### Further Steps Towards the Harmonization of Copyright Law in the European Union: An Overview on the European Commission's Regulatory Approaches



Despite some substantial progress in its harmonization during the last decades, copyright law in the member states of the European Union is still heterogeneous in many respects. In order to accelerate the process of harmonization, the European Commission is preparing some significant regulatory developments, some of them planned to be adopted in 2012. One of the main objectives in this process is the development of a digital single market in Europe.

#### *Legislative Initiative on Collective Rights Management*

As a contribution to the development of a digital single market, the Commission plans to adopt a legislative initiative on the facilitation of collective rights management in March 2012. Collective rights management refers to the practice whereby individual right-holders entrust their rights to an organization such as a collecting society to manage rights on their behalf. The initiative was announced in the Digital Agenda for Europe and in the Commission's Intellectual Property Rights Strategy.

The Commission sees an increasing need for harmonization in order to facilitate the provision of services by collecting societies, above all the cross-border licensing of

online services. Considering the main policy objectives, the initiative will have a double focus. On the one hand, it aims at a general level of governance and transparency applicable to all collecting societies. On the other hand, it is planned to set specific rules for the licensing of online music.

#### *Green Paper on the Online Distribution of Audiovisual Works*

Beyond the facilitation of collective rights management, the Commission will report on the need for additional measures to contribute to a digital single market in Europe. The report will be the result of a debate initiated by the Green Paper on the online distribution of audiovisual works published in July 2011 and the reactions of stakeholders that have been contributed

by November 2011. A Green Paper released by the European Commission is a discussion document intended to stimulate debate and launch a process of consultation on a particular topic.

As a part of the debate, the Commission is assessing legislative options specifically addressing the clearing of copyright and related rights for cross-border online media services. The Green Paper has a focus on the right clearance for audiovisual works (e.g., online video and music transmission), but is not necessarily limited to these types.

One of the options being discussed in the Green Paper is to extend the "country of origin" principle as set out in the Satellite and Cable Directive to the delivery of programming online. Following this principle, the applicable law would be solely that of the country where the online transmission originates. As of now, the online distribution generally has to be in accordance with the law of any state in which the programming has an audience.



In the context of the Intellectual Property Rights Strategy, the Commission also examines the more far-reaching approach of the creation of a comprehensive unitary European Copyright Code. Such a code could be based on a consolidation of the existing EU copyright directives and harmonize all the essential aspects of copyright law in the European Union. It has to be noted, however, that such an ambitious project is not expected to be realized in the near future. In addition to such a code, the feasibility of creating an optional unitary copyright title on a voluntary basis and co-existing with national titles is being assessed.

As to the question of licensing, the Commission also discusses the options for developing data management systems for the ownership of rights in audiovisual works. This includes exploring the ways in which sources of rights ownership information could be shared across sectors, considering the need for rights clearance for pre-existing works and subject matters incorporated in the audiovisual work.

Beyond the discussion of the copyright licensing framework, the Green Paper covers the question of the remuneration of authors and performers for the online use of their works and assesses whether additional measures are to be taken to ensure that the remuneration is adequate. One of the measures being discussed is to ensure the remuneration of authors on a per-use basis.

Finally, the Green Paper deals with certain special uses of audiovisual works and beneficiaries of exceptions. It asks whether legislative changes are required to increase legal certainty for film heritage institutions and poses questions in relation to access by persons with disabilities to cultural materials.

#### ***Permitted Uses of Orphan Works***

The Commission has also published a proposal for a directive on certain permitted uses of orphan works that is expected to be adopted in 2012.

Its aim is to establish common rules on the digitization and online display of orphan works, e.g., books, newspaper and magazine articles, and films that are still

protected by copyright but whose authors are not known or cannot be located or contacted to obtain copyright permissions. The Commission fears that orphan works that are part of the collections held by European libraries might remain untouched if no common rules are developed to make their digitization and online display legally possible.

#### ***Members Reactions on the “Murphy Judgment”***

In October 2011, the “Murphy Judgment” of the Court of Justice of the European Union has drawn the attention of almost anyone involved in the distribution of audiovisual content. While its impact on current business models is still being discussed, members of the Commission have joined the debate in order to clarify certain aspects. Michel Barnier, Commissioner for Internal Market and Services, made clear that licenses still do not generally have to be offered or acquired for the whole of Europe. And Neelie Kroes, European Digital Agenda Commissioner, has also underlined that the voluntary decisions of right-holders are to remain at the center of the licensing system. For a comprehensive analysis of this case, please refer to the article “(Sports) Right-Holders at the Crossroads?”.

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