DIGITAL SINGLE MARKET TASK FORCE

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The Digital Single Market

- **One of just ten** priorities of the Juncker Commission

- Strategy presented to Council 6 May 2015

- Three main areas of focus:

    1. Better access for consumers and businesses to digital goods and services
    2. Creating the right conditions for digital networks and services to flourish
    3. Maximising the growth potential of the Digital Economy

A few things to talk about …

- New stuff:
  - Proposed Copyright Directive
  - Free Flow of Data
  - Big Data – Fundamental Rights Implications
  - Revision of EU Interoperability Framework and Strategy

- Things we've mentioned before:
  - Accessibility of Public Sector Websites
  - Portability of Online Content Services
  - Contracts for Digital Content

Proposed Copyright Directive

Proposal for a Copyright Directive

- Central proposal of the copyright modernisation package unveiled on 14 September 2016

- Includes:
  - Use of out-of-commerce works by cultural heritage institutions
  - Access to audiovisual works on video-on-demand platforms
  - Rights for authors and performers to have their remuneration reviewed
  - Online protection of press publications
  - Monitoring by online platforms of material uploaded by users

Copyright Proposal: of particular interest to EuroGeographics members

- ## New <u>mandatory</u> exceptions to copyright:
  - Text and data mining by research organisations (where they have access)
  - Digital use for teaching by educational establishments (but not required if suitable licences are readily available in the market)
  - Preservation by cultural heritage institutions

Educational licences: an example
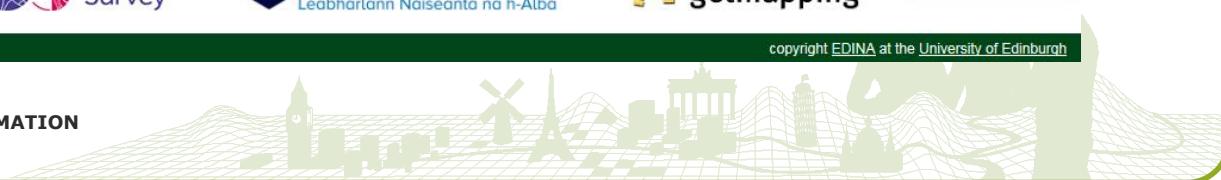
Copyright Proposal: progress

- Ordinary Legislative Procedure (codecision)
- Parliament Legal Affairs Committee (JURI) to hold a public hearing on 29 November (with Google and others)
- Discussed at Competitiveness Council 28 November
- Council Working Party on IP to start work at its meeting on 30 November

- **Action:** Work out how EuroGeographics or its members are likely to be affected, and whether we need to intervene

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Free Flow of Data

Free Flow of Data – means what?

- Few clues prior to the Commission's invitation-only conference on 17 Oct: '*Building a European Data Economy'*

- Included Member States, private sector and legal experts

- Oettinger: *Commission aims to unleash the potential of free movement of electronic data within the EU*

- Technical and legal restrictions to be overcome

Free Flow of Data – why?

Free Flow of Data – do they mean us?

- Hard to know at this stage!
- According to some:

  "The vast majority of today's national data localisation requirements relate to company data, tax data, book-keeping data, financial data, gambling data, and health data"

- But this is a complex area and the scope of the Commission's intervention has yet to be defined

Free Flow of Data – possible actions (according to the Commission)

- Address legal uncertainties
  - Ownership
  - Re-use
  - Portability
  - Liability

- Lay down principles for contracts about trading or using data?

- Modify liability law principles?

- Insurance schemes to cover the new risks?

Support for the initiative

Signatories to a letter to the Commission, 15 November 2016

Free Flow of Data – next steps

- Possible communication in November
- Legislative proposal January 2017?
- Related to possible Communication on Data-driven Economy – or not?
- External preparatory study expected to report in Spring 2017

- **Action:** monitor, understand; be prepared to act

Big Data – Fundamental Rights Implications

Big Data – Fundamental Rights

Proposed European Parliament Resolution expresses concerns about the implications of Big Data mining:

- privacy/data protection
- security
- non-discrimination

in public and private sectors
and in law enforcement

Big Data – Fundamental Rights

- Report acknowledges advances in big data analytics and recognises benefits

- But identifies risks of poor decisions due to:

  – biased algorithms
  – low quality of data
  – spurious correlations
  – error
  – underestimation of legal, social and ethical implications
  – marginalisation of the role of humans

Big Data – Fundamental Rights

- Report stresses the need for:

  - Rigorous scientific standards
  - Public trust
  - Legal certainty
  - Enforcement of fundamental rights

- Calls for action are framed broadly, without specific recommendations

Progress to date

- Allocated to LIBE Committee (Civil Liberties, Justice & Home Affairs)
- Rapporteur's draft report 19 October
- Debated in committee on 8 November
- Public hearing expected 8 December
- MEPs amendments by 15 December
- Committee vote possibly in early February

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EU Interoperability Framework and Strategy (EIF/EIS)

EU Interoperability Framework & Strategy

- Both annexed to Commission Communication of December 2010:

  "*Towards interoperability for European public services*"

- Main implementation mechanism for the strategy is the ISA work programme

- Public consultation April-June 2016

- Results now published

EU Interoperability Framework

- Results of consultation draw attention to greater perceived need for interoperability at national, rather than EU, level
- Priorities identified:
  - security and privacy
  - openness and transparency
  - administrative simplification
  - open data
  - …
- Could a new EIF affect us more than the last? Risks/opportunities?

Accessibility of Public Sector Websites

Accessibility of Public Sector Websites

- Proposal for a Directive on the Accessibility of Public Sector Bodies' Websites published in December 2012

- Parliament and the Council reached provisional agreement during a trilogue meeting on 3 May 2016

- The agreement …
  - Extends the scope of the Directive to mobile applications, as well as extranets and intranets published or substantially revised after the new rules come into force
  - Excludes certain types of content, such as third party content (e.g. user-generated content in a twitter feed), heritage collections held by libraries and museums, and live audio-visual material
  - Excludes online maps and mapping services, as long as an alternative is available for navigational uses
  - Allows exceptions for 'disproportionate burden'

Compromise text approved by EP 26 Oct 2016 – awaiting publication in CJEU

Accessibility of Public Sector Websites

- Commission to adopt implementing acts to refine standards (examination procedure)

- Transposition: 21 months

- Implementation for new sites 12 months later; existing sites 24 months later; mobile applications 33 months later.

- **Action:** ensure web/mobile teams are aware, to assist planning

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Cross-border Portability of Online Content Services

Cross-border Portability of Online Content Services

- Proposal for a <u>Regulation</u> presented by the Commission in December 2015

- Aims to ensure that consumers can use online services they have signed up to in their home country, when travelling in the EU (films, sports broadcasts, music, e-books, games)

- Only paid services, though suppliers of free services could opt in

- Definition of 'online content service' is any service 'the main feature of which is the provision of access to and use of works [or] other protected subject matter'

- Could apply to an online consumer mapping service …?

Portability of Online Content - progress

- Legal Affairs (JURI) Committee has the lead in Parliament, with Internal Market and Culture as Associated Committees

- Rapporteur's draft report issued 21 June 2016

- Committee discussion 12 October

- Committee vote 29 November

- Issues: how to verify habitual Member State of residence and whether to define temporary absence; avoiding harm to copyright

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Contracts for Digital Content

Contracts for Digital Content

- Proposal for a Directive presented in December 2015

- Common rules for EU consumer (not B2B) contracts

- Covers supply of data (inc. games, video) and digital services (e.g. cloud storage, social media)

- Key features:
  - Supplier's liability for defects: no time limit
  - Burden of proof: if consumer claims content is defective, onus is on the supplier to disprove
  - Termination: consumers will have the right to terminate long-term contracts, and contracts which the supplier changes
  - Contract in exchange for data: where service is provided in exchange for personal data, supplier must stop using them when the contract ends

Contracts for Digital Content

- Parliament's IMCO (Internal Market) Committee and JURI (Legal Affairs) Committee act as Joint Committees for the Directive

- Rapporteur's draft report to be discussed in both committees 28-29 November; amendments due by 11 January 2017

- Proposal to be discussed at Justice and Home Affairs Council meeting 8-9 December

- Council Working Party on Civil Law Matters (Contract Law) will take the lead in Council

- Concerns centre on what is digital content and what is its physical underpinning

- How does the Proposal compare with existing laws in your country? Likely impact?