

# Steering Committee on Media and Information Society - CDMSI

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**CDMSI(2016)004**

31 May 2016

## **Draft Comments of the Steering Committee on Media and Information Society (CDMSI) on the Parliamentary Assembly Recommendation [2089\(2016\)](#) "Intellectual property rights in the digital era"**

1. The CDMSI has taken note of the Recommendation 2089(2016). The protection of intellectual property rights online is essential to effectively safeguard the right to property and to promote cultural and economic development.
2. In respect of point 2.1 of the Recommendation the CDMSI emphasises that if the Committee of Ministers decides to take follow-up action, there is a need to sufficiently balance the right to property against the right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights. The European Court of Human Rights (the Court) has affirmed that restrictions on the online use of copyright protected works and criminal sanctions for breaches of copyright law are interferences with freedom of expression and information and should, therefore, be compatible with the requirements of legitimacy, legality and necessity in a democratic society (including proportionality) as foreseen in Article 10 and as interpreted by the Court<sup>1</sup>. It is also important to take into account that in some Council of Europe member States domestic courts do not apply criminal charges on file sharing for private use.
3. If there will be follow-up action to point 2.1 of the Recommendation, it should take fully into account the need to balance the right to receive and impart information online and the necessity to protect copyright when applying criminal sanctions. It is important to assess in particular the proportionality of sanctions and award of damages for copyright infringement as well as evolving legislation in member States. The CDMSI is willing to offer its expertise and contribution if follow-up action is deemed necessary.
4. In respect of point 2.2. of the Recommendation, the CDMSI recalls that according to the Report by the Secretary General on the Review of Council of Europe Conventions ([SG/Inf\(2012\)12](#)) the European Convention on the Legal Protection of Services based on, or consisting of Conditional Access ([ETS No 178](#)) is an active convention which is not considered as key. This Convention has an interest for those States which have expressed their wish to become Parties and which wish to remain Parties. The last meeting of the Parties to the Convention took place on 22 October 2009. The questions falling under point 2.2. of the Recommendation could be considered if the Parties to the Convention consider it necessary to hold a multilateral consultation.

---

<sup>1</sup> Decision on Fredrik Neij and Peter Sunde Kolmisoppi v Sweden (2012)