

THE EUROPEAN UNION'S DIGITAL COPYRIGHT LAW REVIEW: MERIT THROUGH PUBLIC PARTICIPATION

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EUROPEAN UNION LAW—PUBLIC DISCOURSE—
MULTILEVEL GOVERNANCE—PUBLIC CONSULTATION—
COPYRIGHT LAW—LAW REFORM

ABSTRACT

A multilevel consultative approach to governmental decision-making is increasingly being adopted in the European Union. On the back of this shift, it is prudent to consider the use of such consultative approaches in reforming digital copyright law. The adoption of a multilevel consultative approach has the potential to significantly benefit European Member States and increase political integration in Europe. Such an approach can address the complex dispersion of power amongst different levels of public institutions in the European Union and support effective decision-making. The 2014 Charter for Multilevel Governance ('Charter') established a sophisticated governance framework to enhance operational and institutional cooperation and decision-making mechanisms among European Member States. Subsequently, the Charter and the concept of multilevel consultation formed an important facet of the European Union's review of copyright regulation. The objective of this article is to evaluate the merits of a multilevel consultative approach by analysing its use in the European Union digital copyright law review process.

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I INTRODUCTION

Adopting a multilevel consultative model when designing digital copyright laws in the European Union could help lawmakers better calibrate competing proprietary and public interests and formulate effective governance frameworks. The process of public consultation is a critical instrument that enables various segments of society—including individuals, industry stakeholders and government institutions—to participate in public policy decision-making effectively.¹ Public consultation incentivises different societal layers to participate in discussions and form a democratic foundation for the subsequent drafting of policies.² ‘Multilevel governance’ is a form of public consultation, first developed to consider the complex dispersion of power amongst different levels of public institutions in the European Union.³ This approach was formally adopted by the Committee of the Regions (‘CoR’) on 3 April 2014 and supported by the Congress of Local and Regional Authorities of the Council of Europe through the 2014 *Charter for Multilevel Governance* (‘Charter’). The *Charter* forms, in essence, a political manifesto that invites public authorities to make multilevel governance a reality in day-to-day policymaking and delivery. This is primarily achieved by creating partnerships between the different levels of government—local, regional, national, and European—and applying a set of principles to guide efficient policymaking. These principles include participation, cooperation, openness, transparency, inclusiveness, and policy coherence.

The public consultation on the review of European copyright regulations, held between 5 December 2013 and 5 March 2014, forms an interesting example of multilevel governance. The consultation covered a broad range of issues identified in the European Commission’s communication concerning the regulation of content in the *Digital Single*

¹ Rhion Jones and Elizabeth Gammell, *The Politics of Consultation* (CreateSpace Independent Publishing Platform, 2018) 41.

² Penny Norton and Martin Hughes, *Public Consultation and Community Involvement in Planning: A Twenty-First Century Guide* (Taylor & Francis, 2017) 73, 144.

³ Knud Erik Jørgensen, *Reflective Approaches to European Governance* (Springer, 2016) 39, 89.

Market ('DSM').⁴ Issues addressed included territoriality in internal market governance, harmonisation, limitations and exceptions to copyright in the digital age, fragmentation of the European copyright market, and ways to improve the effectiveness and efficiency of enforcement.⁵ The broad objective of this public consultation was to collect input from all stakeholders regarding the European Commission's opinion on the European copyright regulations, with particular focus on how existing copyright laws could be reformed to better address the digital age. More recently, the concept of multilevel governance has been used in all levels of government in policy design, helping entities learn from each other, share preferred practices, and advance participatory democracy.⁶

While it is widely accepted that public consultation has the potential to do public good by facilitating a two-way flow of information and opinion between civil society and governments,⁷ the benefit of a multilevel governance approach in the formulation of copyright policies and laws has not been the subject of detailed analysis.⁸ This article aims to analyse the copyright law review consultation process to determine the merits of adopting a multilevel governance approach. This article will begin by examining the nature of public consultation and multilevel governance and considering their conceptual underpinnings. Scaffolding on this theoretical understanding, this article will then use the above copyright public consultation process as an extended case study to analyse the merits of adopting a multilevel governance approach to public policy.

⁴ European Commission, 'Communication from the Commission: On Content in the Digital Single Market' (2012) <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0789&from=EN>>; Mirela Mărcuț, *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market* (Springer, 2017) 192.

⁵ Bernd Justin Jütte, *Reconstructing European Copyright Law for the Digital Single Market: Between Old Paradigms and Digital Challenges* (Nomos Verlag, 2017) 115, 162.

⁶ Carlo Panara, *The Sub-National Dimension of the EU* (Springer International Publishing, 2015) 51, 66.

⁷ Isabel Brusca and Juan Carlos Martínez, 'Adopting International Public Sector Accounting Standards: A Challenge for Modernizing and Harmonizing Public Sector Accounting' (2016) 82(4) *International Review of Administrative Sciences* 724, 726.

⁸ DeWayne Kurpius, 'Consultation Theory and Process: An Integrated Model' (2012) 56(7) *The Personnel and Guidance Journal* 18, 22.

II THE PROCESS OF PUBLIC CONSULTATION

The participation of civil society in the legislative process is advanced through the process of public consultation.⁹ In contemporary times, the process of public consultation has become common practice in Europe.¹⁰ Indeed, public consultation mechanisms constitute a significant part of the European Commission's activities, from policy-shaping prior to the creation of a proposal through to the final implementation of measures by legislatures at a Member State level.¹¹ Consultation provides opportunities for input from representatives of regional and local authorities, civil society organisations, as well as individual concerned citizens, academics and technical experts.¹²

The public consultation process has both benefits and potential pitfalls.¹³ Its central aim is to encourage the public to have meaningful input into the decision-maker's role in the context of national drafting regulations.¹⁴ Public participation thus provides an opportunity for enhanced communication among decision-making agencies and the public. Exchanging views can give an early warning system for public concerns, a means through which accurate and timely information can be disseminated, and contribute to sustainable decision-making.¹⁵ Additionally, it establishes an efficient way to collect experiences and opinions from citizens, key stakeholders, and experts to get a comprehensive overview of problems and their impact on the daily lives of people and businesses in Europe. Yet, consultations too often only

⁹ Patrizia Nanz and Jens Steffek, 'Global Governance, Participation and the Public Sphere' (2004) 39(2) *Government and Opposition* 314, 317; Jens Steffek and Maria Paola Ferretti, 'Accountability or "Good Decisions"? The Competing Goals of Civil Society Participation in International Governance' (2009) 23(1) *Global Society* 37, 38.

¹⁰ W Robert Lovan, Michael Murray and Ron Shaffer, *Participatory Governance: Planning, Conflict Mediation and Public Decision-Making in Civil Society* (Routledge 2017) 55, 91.

¹¹ Kurpius (n 8), 24.

¹² Keith Culver and Paul Howe, 'Calling All Citizens: The Challenges of Public Consultation' (2004) 47(1) *Canadian Public Administration* 52, 58; Christine Quitkat, 'The European Commission's Online Consultations: A Success Story?' (2011) 49(3) *Journal of Common Market Studies* 653, 660; Daniel Pop and Roxana Radu, 'Challenges to Local Authorities under EU Structural Funds: Evidence from Mixed Quasi-Markets for Public Service Provision in Romania' (2013) 51(6) *Journal of Common Market Studies* 1108, 1118.

¹³ Fred A De Laat, Bart van Heerebeek and Jaap J van Netten, 'Advantages and Disadvantages of Interdisciplinary Consultation in the Prescription of Assistive Technologies for Mobility Limitations' [2018] *Disability and Rehabilitation: Assistive Technology* 1.

¹⁴ Thomas A Birkland, *An Introduction to the Policy Process* (M E Sharpe, 2015) 43.

¹⁵ Denis Bouyssou et al, *Decision Making Process: Concepts and Methods* (John Wiley & Sons, 2013) 95.

encompass industry stakeholders and do not effectively involve all relevant stakeholders.¹⁶ Research suggests that the most common respondents to invitations to participate are industry entities and Member States.¹⁷ This serves to potentially reduce the nature and extent of participation and mitigate the value of the process. In such a context, it is helpful to consider the nature of multilevel governance and its potential to strengthen the process of public consultation.

III A CONCEPTUAL ANALYSIS OF MULTILEVEL GOVERNANCE

A *The Notion of Multilevel Governance*

The term ‘governance’ is associated with a wide variety of concepts and principles. Weiss defines ‘global governance’ as ‘collective efforts to identify, understand or address worldwide problems that go beyond the capacity of individual States to solve’.¹⁸ He suggests that global governance forms a ‘complex of formal and informal institutions, mechanisms, relationships, and processes between and among States, markets, citizens and organisations, both inter and non-governmental, through which collective interests on the global plane are articulated, rights and obligations are established, and differences are mediated’.¹⁹ Consistent with this definition of global governance, ‘European governance’ has been characterised as a system of rules and institutions established by the European Community and private actors to manage political, economic, and social affairs. The basic principles guiding European Governance, legally anchored in its various Treaties, are democracy, social equity, human rights, and the rule of law. This process of multilevel governance can help embed these principles in the

¹⁶ Christine Quittkat and Beate Kohler-Koch, *Involving Civil Society in EU Governance: The Consultation Regime of the European Commission* (Oxford University Press, 2013) 73.

¹⁷ Jenny Stewart, *The Dilemmas of Engagement: The Role of Consultation in Governance* (ANU E Press, 2009) 22, 32; Nathaniel Copsey and Tim Haughton, ‘The Choices for Europe: National Preferences in New and Old Member States’ (2009) 47(2) *Journal of Common Market Studies* 263, 372.

¹⁸ Thomas G Weiss, *Thinking about Global Governance: Why People and Ideas Matter* (Taylor & Francis, 2012) 37, 55.

¹⁹ *Ibid* 110.

institutions, rules, and political systems of European Union Member States, ensuring that they are respected by all sectors of society.²⁰

Historically, the concept of ‘multilevel governance’ flowed from the study of European integration in the nineties (e.g., the *Maastricht Treaty* and its subsidiary principles) and the notion of decentralisation.²¹ Scholars note that the European Union is characterised by two distinct phases of development. The first phase was dominated by international relations studies. The European Union was viewed as an international organisation alongside institutions such as NATO, the OECD, and the United Nations. In comparison, during the second phase, the European Union became a unique international organisation.²² The adoption of the principles of multilevel governance highlights the unique political features of the European Union system, characterised by interconnected institutions that exist at multiple levels.²³ As has been frequently noted, the European Union is a political system characterised by a European layer (European Commission, European Council and European Parliament), a national layer, and a regional layer. These layers interact with each other in two ways: (1) across different levels of government (vertical dimension); and (2) with other relevant actors within the same level (horizontal dimension).²⁴ Accordingly, the multilevel governance model serves to strengthen the effectiveness of decision-making in the European Union.

In addition, multilevel governance supports the European Union’s political objectives, including economic growth, social progress, sustainable development, and the development of the European Union as a global actor.²⁵ Multilevel governance reinforces the democratic dimension of the European Union and increases the efficiency of the applicability of its policies because

²⁰ *The Committee of the Regions’ White Paper on Multilevel Governance* [2009] OJ C 211/1.

²¹ Yannis A Stivachtis, *The State of European Integration* (Ashgate Publishing Limited, 2013) 107–10.

²² Mark Gilbert, *European Integration* (Rowman & Littlefield Publishers, 2017) 19.

²³ Ian Bache, *Europeanization and Multilevel Governance: Cohesion Policy in the European Union and Britain* (Rowman & Littlefield Publishers, 2007) 52.

²⁴ Dermot Hodson and John Peterson, *The Institutions of the European Union* (Oxford University Press, 2017) 66.

²⁵ Lea Pfefferle, *The EU: A Global Player?* (GRIN Verlag, 2012) 26.

it rarely applies symmetrically or homogeneously.²⁶ It is relevant to note that there are some significant differences between multilevel governance and other integration theories. The main difference is that it breaks the grey zone between intergovernmentalism and supranationalism, leaving in its place a descriptive structure. Further, multilevel governance does not directly address the sovereignty of States but instead enables sub-national and supranational actors to contribute to the creation of policy and law. In this context, the purpose of the next section of this article is to consider in greater detail how a multilevel governance approach can contribute to European integration.²⁷

B *Multilevel Governance in the European Union*

Since the emergence of the objective of European integration, there has been extensive discussion around both the underlying dynamics of the integration process and the nature of the emerging political system.²⁸ Within the two most important opposing schools of thought—neofunctionalism and intergovernmentalism—early discussion focused on the process of integration.²⁹ However, in the aftermath of the speeding-up of the integration process with the *Single European Act* (1986) and the *Maastricht Treaty* (1992), the focus of European studies shifted from aims and dynamics of the integration process to description and analysis of the actual day-to-day workings of the political system of Europe.³⁰

This shift from integration to analysis of the workings of the political process in European studies has been accompanied by an opening up of this area of study to a number of sub-disciplines of political science and public

²⁶ Erik Oddvar Eriksen and John Erik Fossum, *Rethinking Democracy and the European Union* (Routledge, 2013) 28.

²⁷ Maurizio Carbone, *National Politics and European Integration: From the Constitution to the Lisbon Treaty* (Edward Elgar Publishing, 2010) 24.

²⁸ Robert Thomson, *Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement* (Cambridge University Press, 2011) 78; Katrin Milzow, *National Interests and European Integration: Discourse and Politics of Blair, Chirac and Schröder* (Springer, 2012) 46.

²⁹ Ilyas Saliba, *Neofunctionalism vs Liberal Intergovernmentalism: Are the Theories Still Valid Today?* (GRIN Verlag, 2010) 11; Tanja A Börzel, *The Disparity of European Integration: Revisiting Neofunctionalism in Honour of Ernst B Haas* (Routledge, 2013) 56.

³⁰ Klaus H Goetz and Simon Hix, *Europeanised Politics? European Integration and National Political Systems* (Routledge, 2012) 134.

administration.³¹ Since then, numerous studies have addressed issues that had previously not been investigated, such as the impact of the European Union on the Member States and legitimacy in Europe. It follows that local and regional governments are now effectively part of European multilevel governance.³² Firstly, sub-national layers are directly connected with the policy process in the area of regional policy—albeit the opportunities to shape different stages of policy vary from country to country.³³ Secondly, since the *Maastricht Treaty* established the CoR, local and regional governments are now formally part of the European decision-making framework.³⁴ Thirdly, many European policies have a direct impact on the tasks of sub-national governments (e.g. in the areas of public environment).³⁵ This is reflected in the literature relating to European studies, now being an increasingly important facet of research in the field of comparative political science.³⁶

Federalism and public-private partnerships reflect two distinct types of multilevel governance.³⁷ The first tradition adopts a state-centred view and argues that, like other international organisations, the European Union should be treated as a forum of cooperation for Member States to enhance their problem-solving capacities.³⁸ Based on this model, multilevel governance underpins theories on how the distribution and functioning of political authority in the world have been and are being reshaped. This type of multilevel governance theory highlights above all the changing role and relevance of the traditional nation-state. Accordingly, multilevel governance

³¹ Pamela M Barnes and Thomas C Hoerber, *Sustainable Development and Governance in Europe: The Evolution of the Discourse on Sustainability* (Routledge, 2013) 30, 231.

³² Markus Perkmann, 'Policy Entrepreneurship and Multilevel Governance: A Comparative Study of European Cross-Border Regions' (2007) 25(6) *Environment and Planning C: Government and Policy* 861, 880; George C Homsy and Mildred E Warner, 'Cities and Sustainability: Polycentric Action and Multilevel Governance' (2015) 51(1) *Urban Affairs Review* 46, 58.

³³ Nicholas Charron, Lewis Dijkstra and Victor Lapuente, 'Regional Governance Matters: Quality of Government within European Union Member States' (2014) 48(1) *Regional Studies* 68, 82.

³⁴ Thomas Christiansen and Simon Duke, *The Maastricht Treaty: Second Thoughts after 20 Years* (Routledge, 2016) 88.

³⁵ Philip Lynch et al, *Reforming the European Union: From Maastricht to Amsterdam* (Routledge, 2014) 57; Helen Wallace, Mark A Pollack and Alasdair R Young, *Policy-Making in the European Union* (Oxford University Press, 2015) 63.

³⁶ Theofanis Exadaktylos and Claudio M Radaelli, *Research Design in European Studies: Establishing Causality in Europeanization* (Palgrave Macmillan, 2012) 34.

³⁷ Bache (n 23) 51.

³⁸ George Pagoulatos and Loukas Tsoukalis, 'Multilevel Governance' [2012] *The Oxford Handbook of the European Union*, 25–6.

is located among those international relations paradigms that have examined the transformations of the state-centric system over the past few decades.³⁹

However, this growing body of research does not mean that it has been easy to analyse the application of the multilevel governance approach to the complex political system of the European Union.⁴⁰ As a preliminary issue, there is considerable disagreement regarding how the European Union shapes multilevel governance discussion.⁴¹ Without doing injustice to the nuanced and detailed arguments that can be found in the literature, two broad lines of argument can be distinguished. One view is that multilevel governance theory should best be built on a broad and abstract definition, which includes Europe as the vanguard of the political change that extends beyond the European Union and contributes to global political transformation.⁴² This theory pays more attention to the structural dimensions of multilevel governance rather than to its processes. This is due both to its primary focus on the state and its loss of authority and functions in the international order, and the practical need to embrace and analyse a vast range of areas and empirical phenomena. Finally, this theory prioritises the study of public and territorial levels of governance over the analysis of non-state actors.⁴³

In contrast, the second model of multilevel governance focuses on delineating the creation and implementation of public policy.⁴⁴ This is a more concrete variant of multilevel governance theory, with less focus on the historical break with the Westphalian order and greater focus on the actual working of political and administrative frameworks.⁴⁵ The main focus of this

³⁹ Tiziana Caponio and Michael Jones-Correa, 'Theorising Migration Policy in Multilevel States: The Multilevel Governance Perspective' (2018) 44(12) *Journal of Ethnic and Migration Studies* 1995, 1996.

⁴⁰ Eriksen and Fossum (n 26) 36.

⁴¹ Søren Dosenrode, *The European Union After Lisbon: Polity, Politics, Policy* (Routledge, 2016) 157–159.

⁴² Frank H Aarebrot, *The Handbook of Political Change in Eastern Europe* (Edward Elgar Publishing, 2014) 1–12; Maria T Grasso, *Generations, Political Participation and Social Change in Western Europe* (Routledge, 2016) 13–25.

⁴³ Dominic Stead, 'The Rise of Territorial Governance in European Policy' (2014) 22(7) *European Planning Studies* 1368, 1368–70; Natal'ya V Buley et al, 'Public Administration and Municipal Governance and Its Significance for a Modern Democratic Society' (2016) 6(8) *International Journal of Economics and Financial Issues* 220, 220–2; Bob Jessop, 'Territory, Politics, Governance and Multispatial Metagovernance' (2016) 4(1) *Territory, Politics, Governance* 8, 18.

⁴⁴ Christopher Alcantara, Jörg Broschek and Jen Nelles, 'Rethinking Multilevel Governance as an Instance of Multilevel Politics: A Conceptual Strategy' (2016) 4(1) *Territory, Politics, Governance* 33, 40.

⁴⁵ Robbie Waters Robichau and Laurence E Lynn, 'The Implementation of Public Policy: Still the Missing

theoretical model is how multilevel governance frameworks function day by day.⁴⁶ This type of multilevel governance is built by combining existing partial theoretical and empirical considerations of a coherent system covering several interrelated subjects. First, the origins and dynamics of policy related political mobilisation phenomena specific to multilevel governance, including subnational lobbying and the formation of political alliances (e.g., sectoral boundaries and the divide between public and private).⁴⁷ Second, the formulation, territorial structuring, and temporal advancement of multilevel policies.⁴⁸ The use of such an approach is reflected in the public consultation surrounding the 2014 review of copyright regulations in Europe.⁴⁹ European policy networks played a central role in the formulation, deliberation, and implementation of European policies.⁵⁰ The review accumulated different copyright stakeholders' opinion and aimed to contribute to enhanced regulation. Such regulation, which results from public consultation and involves innovations of governance that trace down the lifecycle of regulations and laws, has been termed 'better regulation'.⁵¹ The purpose of the following section is to consider in greater detail the concept of 'better regulation' and its connection to multilevel governance.

C *Innovations in Governance: Multilevel Governance as an Instrument of Better Regulation*

Multilevel consultations can be a useful tool for achieving innovations in governance. As mentioned, the use of innovations in governance to achieve better outcomes has been termed 'better regulation'. The 'better regulation'

Link' (2009) 37(1) *Policy Studies Journal* 21, 33.

⁴⁶ Homsy and Warner (n 32).

⁴⁷ Seong-Jin Choi, Nan Jia and Jiangyong Lu, 'The Structure of Political Institutions and Effectiveness of Corporate Political Lobbying' (2014) 26(1) *Organization Science* 158, 162.

⁴⁸ Elodie Fabre and Wilfried Swenden, 'Territorial Politics and the Statewide Party' (2013) 47(3) *Regional Studies* 342, 360.

⁴⁹ Tanja A Börzel and Karen Heard-Lauréote, 'Networks in EU Multi-Level Governance: Concepts and Contributions' (2009) 29(2) *Journal of Public Policy* 135, 142.

⁵⁰ Michael Blauberger and Berthold Rittberger, 'Conceptualizing and Theorizing EU Regulatory Networks' (2015) 9(4) *Regulation & Governance* 367, 374.

⁵¹ Claudio M Radaelli and Anne C M Meuwese, 'Better Regulation in Europe: Between Public Management and Regulatory Reform' (2009) 87(3) *Public Administration* 639, 644.

scheme was first formally introduced through the 2001 European Commission White Paper entitled *European Governance*,⁵² and expanded through a subsequent an expert group report.⁵³ Scholars suggest that multilevel consultation affects the way in which rules are assessed before adoption, how stakeholders intervene in rulemaking, and how the executive and parliaments should appraise the evidence-base of policy proposals, down to the level of inspections and enforcement.⁵⁴ This framing indicates that the rationale of ‘better regulation’ is well-aligned with the objectives of public consultation. In other words, involved participants should have a word in the policy formulation, rulemaking, rules adoption and enforcement.

Proponents of the ‘better regulation’ scheme articulate its threefold objective, namely to: (1) change governance and law-making processes by increasing the role of evidence in public decision making, creating opportunities for affected interests to be consulted at an early stage when options are being devised; (2) increase competitiveness by minimising regulatory burdens and providing efficient regulations; and (3) address legitimacy problems of the regulatory state by improving consultation procedures.⁵⁵ It will be suggested below that this threefold approach could be usefully adopted to the formulation of the European copyright regime.

Consideration of the 2014 copyright regulations review process can help elucidate how a multilevel governance approach can contribute to innovations in governance and a better copyright regulatory framework for Europe.⁵⁶ In examining the copyright review process, it is useful to consider

⁵² European Commission, *COM(2001) 428 Final: European Governance* (2001).

⁵³ Mandelkern Group, *Mandelkern Group on Better Regulation Final Report* (Report, 13 November 2001) 91, 96.

⁵⁴ Paul Cairney, *The Politics of Evidence-Based Policy Making* (Springer, 2016) 31.

⁵⁵ Katherine Elizabeth Smith et al, ‘Corporate Coalitions and Policy Making in the European Union: How and Why British American Tobacco Promoted “Better Regulation”’ (2015) 40(2) *Journal of Health Policy Law* 325, 325–7; Morten Jarlbaek Pedersen, ‘Qui Exanimis Nascitur: Can Better Regulation in the European Union Really Be a Servant of Technocracy’ (2017) 8(2) *European Journal of Risk Regulation* (EJRR) 387.

⁵⁶ Christophe Geiger, Oleksandr Bulayenko and Giancarlo Frosio, *Opinion of the CEIPI on the European Commission’s Copyright Reform Proposal, with a Focus on the Introduction of Neighbouring Rights for Press Publishers in EU Law* (Social Science Research Network, 5 December 2016) 9; Victor Rodríguez-Doncel et al, ‘Legal Aspects of Linked Data: The European Framework’ (2016) 32(6) *Computer Law & Security Review* 799, 808; ‘General Opinion on the EU Copyright Reform Package’ *European Copyright Society* (Web Page, 24 January 2017) 4–6

<<https://europeancopyrightsocietydotorg.files.wordpress.com/2015/12/ecs-opinion-on-eu-copyright->

the stakeholders who were involved. Was it a broad range of stakeholders, including individual citizens or was it largely confined to industry? It is also relevant to consider whether all levels in the multilevel governance system participated, not just the established Member States. Finally, it is necessary to consider whether and to what extent this approach impacted on the final draft of the *InfoSoc Directive*.⁵⁷ The objective of the next section of this article is to examine the 2014 copyright review process and consider these critical issues in detail.

IV THE MERITS OF MULTILEVEL GOVERNANCE: AN ANALYSIS OF THE EUROPEAN COPYRIGHT REGULATION REVIEW PROCESS

A Overview

The European copyright regulation review process forms a valuable case study in which a multilevel consultation approach was applied.⁵⁸ The objective of this multilevel consultation was to gather input from all relevant stakeholders on the Commission's review of the European copyright rules. As part of this review process, extensive multilevel public consultations were conducted between 5 December 2013 and 5 March 2014. These multilevel consultations were intended to provide opportunities for input from representatives of regional and local authorities, civil society organisations, the individual citizens concerned, academics, and technical experts. Arguably, this public consultation formed the first visible sign of the second track of the European Commission's attempt to modernise the European copyright regulations. The first track consisted of the Licenses for Europe stakeholder dialogue.⁵⁹ According to the European Commission, the focus of

reform-def.pdf>.

⁵⁷ Péter Mezei, 'A Comprehensive Guide to the InfoSoc Directive' (2020) 15 (1) *Journal of Intellectual Property Law & Practice* 71, 71-72.

⁵⁸ Rainer Eising et al, 'Who Says What to Whom? Alignments and Arguments in EU Policy-Making' (2017) 40(5) *West European Politics* 957, 970; Arthur Benz, Andreas Corcaci and Jan Wolfgang Doser, 'Multilevel Administration in International and National Contexts' in Michael W Bauer, Christoph Knill and Steffen Eckhard (eds), *International Bureaucracy: Challenges and Lessons for Public Administration Research* (Palgrave Macmillan UK, 2017) 151, 153-5.

⁵⁹ Eleonora Rosatti, *Originality in EU Copyright: Full Harmonization Through Case Law* (Edward Elgar Publishing, 2013) 48.

the effort was on ‘ensuring that the EU copyright regulatory framework stays fit for purpose in the digital environment to support creation and innovation, tap the full potential of the Single Market, foster growth and investment in our economy and promote cultural diversity’.⁶⁰

This objective of multilevel participation is reflected in the diversity of stakeholders who were invited to participate from different Member States (see Annex 1). Significantly, among the parties responding were respondents from European Member States which entered the European Union during the last decade, including Slovakia (2004), Slovenia (2004), Latvia (2004), Hungary (2004), Estonia (2004), Bulgaria (2007), Romania (2007), and Croatia (2013). Hence, the copyright regulations review did not only attract the views of ‘old’ Member States, but it also attracted expressions of concerns from ‘younger’ Member States.⁶¹ As such, the consultation process was inclusive and encompassed various forms of stakeholders (see Annexes 1 and 2).

A comprehensive picture of the consultation process is obtained by examining the different types of respondents involved in the consultation process. An analysis of the participants (6915 in total) illustrates that all the European Member States were involved (see Annex 2). Respondents represented different societal facets, including end-users, institutional users, authors, publishers, service providers, public authorities, and collective management organisations. Moreover, respondents expressed views on various topics, including information archiving, preserving and disseminating, and relevant licensing regimes.

It is also valuable to interpret the results of the questionnaire used for the public consultation on the review of the European copyright regulations. Of particular relevance is the section which interprets responses to research

⁶⁰ Giuseppe Vitiello, ‘The Economic Foundation of Library Copyright Strategies in Europe’ (2021) 31(1) *The Journal of the Association of European Research Libraries* 1, 28.

⁶¹ Marc Arbyn et al, ‘The Challenges of Organising Cervical Screening Programmes in the 15 Old Member States of the European Union’ (2009) 45(15) *European Journal of Cancer* 2671, 2673.

related questions (Questions 47–49). This section of the questionnaire addressed the research exception set out in art 5(3)(a) of the *InfoSoc Directive* and was intended to gather the respondents’ experiences of the use of copyright-protected works in the context of research projects, including across borders, and their views on how problems—if identified—should be solved. In the present context, it is particularly relevant to examine responses by actors involved in the scholarly publishing research cycle, in particular: (1) end users (also considered as consumers); (2) institutional users; (3) authors and performers; (4) publishers, producers and broadcasters; and (5) service providers and intermediaries. The responses of these parties are discussed below.

B *End Users*

For the purposes of the responses, the terms ‘end users’ or ‘consumers’ refer to researchers. The consultation found that such researchers were generally unsatisfied with the current situation. Even though a research exception existed in some Member States, respondents still reported problems in accessing scientific publications or scholarly articles. Students and researchers highlighted that access to the greatest possible range of academic publications was key for the completeness and accuracy of their research.⁶² They indicated that they were often unable to access online certain material they need for their academic work. Some respondents considered that the more reputable and high-quality scientific journals commonly made access to their content difficult, through ‘paywall’ restrictions.⁶³ The cost of subscriptions was considered disproportionate and excessive for individual researchers. Researchers considered that this situation was particularly difficult in the case of publicly funded research. They argued that publications

⁶² Ana Maria Ramalho Correia and José Carlos Teixeira, ‘Reforming Scholarly Publishing and Knowledge Communication: From the Advent of the Scholarly Journal to the Challenges of Open Access’ (2005) 29(1) *Online Information Review* 349, 355.

⁶³ Mikael Laakso and Andrea Polonioli, ‘Open Access in Ethics Research: An Analysis of Open Access Availability and Author Self-Archiving Behaviour in Light of Journal Copyright Restrictions’ (2018) 116(1) *Scientometrics* 291, 301.

which presented the results of publicly funded research should always be made available without restriction.⁶⁴

Most respondents considered that open-access publishing was a suitable solution to increase access to research content. They noted some effective examples of open-access archives and networks. However, many respondents also argued that there were barriers that prevented open access from working in an optimal way and considered that open access should be better supported.⁶⁵ It was also mentioned that open-access journals are sometimes considered to lack prestige or have low citation index scores, making it less attractive to publish in such a journal. A frequently raised problem was that scientific publishers often require that authors of scientific publications to agree upon unduly restrictive contract conditions, for example, that their work cannot be put in open-access databases.⁶⁶

The opinion submitted by 25 leading European research centres on the ‘*EC Copyright Directive*’—part of the European copyright regulations review—warrants special attention. The research centres submitted that the proposed exception for text-and-data mining in art 3 of the ‘*EC Copyright Directive*’ would not achieve its goal to stimulate innovation and research if restricted to certain organisations. Additionally, they submitted that the proposals for a new publishers’ right under art 11 would favour incumbent press publishing interests rather than innovative quality journalism, and that the proposals for art 13 could threaten the user participation benefits of the *e-Commerce Directive (2000/31/EC)*.⁶⁷

C Institutional Users

⁶⁴ Quan-Hoang Vuong, ‘Plan S, Self-Publishing, and Addressing Unreasonable Risks of Society Publishing’ (2021) 33(1) *Learned Publishing* 64, 66.

⁶⁵ Andrea De Mauro, Marco Greco and Michele Grimaldi, ‘What Is Big Data? A Consensual Definition and a Review of Key Research Topics’ (2015) 1644(1) *AIP Conference Proceedings* 97, 101

⁶⁶ See, eg, Mohashin Pathan et al, ‘FunRich: An Open Access Standalone Functional Enrichment and Interaction Network Analysis Tool’ (2015) 15(15) *Proteomics* 2597.

⁶⁷ Arno R Lodder, ‘Directive 2000/31/EC on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market’ in Arno R Lodder, Andrew D Murray (eds), *EU Regulation of E-Commerce: A Commentary* (Edward Elgar Publishing, 2017) 15.

Many institutional users reported problems in the practical implementation of the research exception at national level. Many believed that this exception had been implemented too narrowly by some Member States, which they argued had resulted in a limited use of the exception by its intended beneficiaries. Institutional users commonly further noted that only a few Member States (e.g. Estonia) had applied the exception in a technology-neutral manner.⁶⁸

More generally, institutional users highlighted that considerable online content was only available for payment and was burdened with digital rights management tools. They stressed that remote access to university libraries collections should be further facilitated in the area of research as it formed a much more practical alternative to onsite consultation. Some respondents further noted that licenses for scientific articles often limited the number of users that could access the material at the same time. They argued that this was problematic, given that research projects often involved several researchers, sometimes from different universities or institutes, including across borders, who needed to have access at the same time. Several institutional users from Northern Europe reported their experiences with extended collective licenses. Some pointed out that such mechanisms have not been very useful in the area of research as they are cumbersome to negotiate and limited in scope. As a solution, these respondents recommended that a mandatory and technology-neutral research exception be adopted at the European level.

D *Authors and Performers*

Most authors considered that there were generally no problems with access to content for research purposes and expressed no pressing concerns in relation to the current research exception. These respondents noted that the combination of licenses and exceptions offered users considerable flexibility

⁶⁸ Brad Greenberg, 'Rethinking Technology Neutrality' (2015) 100(4) *Minnesota Law Review* 1495, 1557.

to access content for research purposes. Authors and performers generally stated that licenses are a good addition to whatever use would not be covered by a national exception. However, some authors and performers noted logistical difficulties in tracking use and receiving appropriate remuneration.

E *Publishers, Producers and Broadcasters*

Respondents in this category largely felt that the current exception worked well. Any possible shortcomings with access to research publications could be easily dealt with through licensing agreements. They considered that licenses were the preferred option in the field of research as they ensured quality and security and protected against possible abuses. Licenses terms were sufficiently broad to allow for the exchange of information necessary to carry out research, including across borders.⁶⁹

Some respondents pointed out that scientific publishers already offered some ninety percent of their products through licensing to educational institutions, which allowed researchers, students, and teachers to have access to that content. Representative of Scientific Technical and Medical ('STM') publishers reported alternative access models were being developed, such as 'pay-per-view' or rental for online viewing, which they considered particularly useful for researchers not affiliated to an institution or requiring only occasional access. Specific market-led initiatives were also mentioned, such as one in France where textbook publishers had been making works available in digital format via certain online portals. Notable examples cited included 'Canal Numérique des Savoirs' and 'WizWiz'. Other licensing projects mentioned included the 'RightsLink' platform and 'Conlicencia' in Spain.

F *Intermediaries, Distributors and Other Service Providers*

⁶⁹ Tomas A Lipinski, *The Librarian's Legal Companion for Licensing Information Resources and Services* (American Library Association, 2013) 153; Robert W Gomulkiewicz, *Licensing Intellectual Property: Law and Applications* (Wolters Kluwer Law & Business, 2014) 85.

Respondents in this category felt that the prevailing European copyright framework did not adequately fulfil the mission of online service providers concerning museums in the digital environment. The problems largely related to copyright issues that have formerly been frequently discussed in the context of ‘Europeana’ and other digitisation efforts.⁷⁰ While it was felt that there had been some progress, most notably the *2012 European Directive on Certain Permitted Uses of Orphan Works*, there were still obstacles facing memory institutions wanting to operate in the digital environment. They therefore welcomed the fact that the European Commission was reviewing the European copyright rules and that issues relating to memory institutions formed part of the review. This gave these institutions the opportunity to draw attention to the problems they were facing and present the policy outcomes that they needed in order to fulfil their public missions.⁷¹ They further noted that new models of access and use of digital collections are needed to respond to technological innovations that reshape the role and mission of one-memory institutions such as museums.⁷²

V THE CONTRIBUTION OF PUBLIC CONSULTATION TO COPYRIGHT POLICY FORMULATION AND LAW REFORM

After the public consultation was completed, the European Commission went through a lengthy process of collating and considering the findings. Subsequently, in 2016, the European Commission proposed a new Directive to update its copyright framework entitled ‘*Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market*’ (‘*EC Copyright Directive*’ henceforth).⁷³ The ‘*EC Copyright*

⁷⁰ Carlo Meghini et al, ‘Introducing Narratives in Europeana: A Case Study’ (2019) 29(1) *International Journal of Applied Mathematics and Computer Science* 7, 10.

⁷¹ Yiwen Wang et al, ‘Recommendations Based on Semantically Enriched Museum Collections’ (2008) 6(4) *Journal of Web Semantics* 283, 289; Graeme Were, ‘Digital Heritage, Knowledge Networks, and Source Communities: Understanding Digital Objects in a Melanesian Society’ (2014) 37(2) *Museum Anthropology* 133, 135.

⁷² Enrico Bertacchini and Federico Morando, ‘The Future of Museums in the Digital Age: New Models of Access and Use of Digital Collections’ (2011) 15(2) *International Journal of Arts Management* 1, 10.

⁷³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market* Doc No 2016/0280, 14 September 2016.

Directive’ sought to reflect the diversity of views gathered through the consultation process.⁷⁴ Since then, there has been further negotiation and several amendments to the proposal.⁷⁵ The most controversial parts of the ‘*EC Copyright Directive*’ are art 11 which relates to press publishers rights, and art 13 which is intended to address the so-called ‘value gap’. Article 13 (use of protected content by information society service providers storing and giving access to large amounts of works and other subject-matter uploaded by their users) is aimed at large consumer-focussed platforms like YouTube. The ‘*EC Copyright Directive*’ creates an obligation for hosts of such services, where no licences are in place, to monitor what content is being uploaded to their platforms, in order to remove any infringing materials.

In May 2018, the European Council’s permanent representative committee (‘COREPER’) agreed to amendments to the Commission’s draft ‘*EC Copyright Directive*’. Further, on 29 June 2018, the European Parliament’s lead committee, the Legal Affairs Committee (‘JURI’), agreed to amendments to the Commission’s proposal in consultation with three other parliamentary committees: the Committee on Civil Liberties, Justice and Home Affairs (‘LIBE’); the Committee on the Internal Market and Consumer Protection (‘IMCO’); and the Committee on Industry, Research and Energy (‘ITRE’). Before progressing to the next stage of ‘trilogue’ negotiations, the European Parliament approved and adopted the draft proposal agreed upon by the JURI committee as the formal Parliamentary negotiating position. However, in July 2018, the European Parliament rejected the ‘*EC Draft Directive*. This seemed to be in response to the European citizens who rang,

⁷⁴ European Commission, Directorate General Internal Market and Services, *Report on the Responses to the Public Consultation on the Review of the EU Copyright Rules* (July 2014) 101 <http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/docs/contributions/consultation-report_en.pdf>.

⁷⁵ Staffan Albinsson, ‘The Resilience of Music Copyrights: Technological Innovation, Copyright Disputes and Legal Amendments Concerning the Distribution of Music’ (2013) 5 *Culture Unbound: Journal of Current Cultural Research* 401, 405; *Ibid* 101; Jeremy Fleming, ‘Artists Fight Internet Users over Europe’s Copyright Future’, *Euractiv* (Web Page, 13 January 2015) <<https://www.euractiv.com/section/digital/news/artists-fight-internet-users-over-europe-s-copyright-future/>>.

emailed, and visited in significant numbers their Members of the European Parliament to ask them to oppose art 13.⁷⁶

The European Union's internet governance rules are likely to be substantially amended in the near future.⁷⁷ The final version of the '*EC Copyright Directive*' has been under examination and discussions for the last three years and was published on 17 April 2019.⁷⁸ It is expected the '*EC Copyright Directive*' will be transposed within the next two years into the national laws of European Union Member States, once finalised.⁷⁹ The European Commission stated that the '*EC Copyright Directive*' pursues to establish the right equilibrium between stakeholders' interests—such as users, authors, creators, and press—while setting up obligations on online platforms, accordingly.⁸⁰

Nevertheless, the proposed text of the '*EC Copyright Directive*' has been criticised by some Member States, including the Netherlands, Luxembourg, Poland, Italy and Finland, and has been characterised as conservative rather than progressive approach to the governance of the Digital Single Market.⁸¹ The most critical and contentious facet of the '*EC Copyright Directive*' rules is the rigid liability rules concerning online content-sharing platforms, such as YouTube and Facebook.⁸² Since 1998, under laws in place in the European Union and the United States, internet service providers

⁷⁶ Annemarie Bridy, 'The Price of Closing the Value Gap: How the Music Industry Hacked EU Copyright Reform' (2020) 22(2) *Vanderbilt Journal of Entertainment & Technology Law* 323.

⁷⁷ Christina Angelopoulos, 'Study on Online Platforms and the Commission's New Proposal for a Directive on Copyright in the Digital Single Market' (Research Paper No 2947800, University of Cambridge, 6 April 2017) <<https://doi.org/10.17863/CAM.23091>>.

⁷⁸ *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC* [2019] OJ L 130/92 (Directive 2019/790). See also Vincent Ferrer, 'Right This Way: A Potential Artificial Intelligence-Based Solution for Complying with Article 13 of the EU's 2018 Copyright Directive' (2019) 948 *Law School Student Scholarship* 1.

⁷⁹ Wim Voermans, 'Transposition of EU Legislation into Domestic Law: Challenges Faced by National Parliaments' in Patricia Popelier et al (eds), *Lawmaking in Multi-Level Settings: Legislative Challenges in Federal Systems and the European Union* (Nomos Verlagsgesellschaft, 2019) 243, 244.

⁸⁰ Aleksandra Kuczerawy, 'EU Proposal for a Directive on Copyright in the Digital Single Market: Compatibility of Draft Article 13 with the EU Intermediary Liability Regime' (Research Paper No 3309099, Social Science Research Network, 19 December 2018) 9.

⁸¹ Council of the European Union, 'Joint Statement by the Netherlands, Luxembourg, Poland, Italy and Finland' (2019) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_7986_2019_ADD_1_REV_2&from=EN>.

⁸² Christina Angelopoulos and Joao Pedro Quintais, 'Fixing Copyright Reform' (2019) 10(2) *Journal of Intellectual Property, Information Technology and Electronic Commerce Law* 147, 151.

(‘ISPs’) have enjoyed a safe place from liability for infringing only if they failed to investigate after receiving notice from copyright holders about where such materials were located.⁸³ Article 17 of the ‘*EC Copyright Directive*’ (art 13 in earlier drafts) imposes severe liability on parties who use online content-sharing sites to commit acts of copyright infringements, and imposes obligations on entities to use ‘best efforts to ensure the unavailability of specific works’.⁸⁴ Assuming that the European Member States will state that the concept of ‘best efforts’ requires platforms to use filtering technologies, this provision has been called an ‘upload filter’ use.⁸⁵

The ‘*EC Copyright Directive*’s severe liability rules may however interfere with user freedoms relating to copyright works—especially the creation of parodies or critical commentaries—as filtering technologies are not adept at differentiating such protected uses from clear infringements. It has been suggested that the new rules will bring loss, ‘damage’ for freedom of expression, and information privacy interests of individual proprietors and end-users.⁸⁶ The extent of loss will depend on how ‘*EC Copyright Directive*’ is implemented on a Member State level and how courts interpret its provisions, some of which are ambiguous. Thus, despite the long history of public consultation, and the many revisions and iterations of the ensuing ‘*EC Copyright Directive*’, there are still areas of ongoing disagreement and debate which justifies reasoning based on which it is not yet finalised.⁸⁷

VI CONCLUSION

⁸³ Thomas Spoerri, ‘On Upload-Filters and Other Competitive Advantages for Big Tech Companies under Article 17 of the Directive on Copyright in the Digital Single Market’ (2019) 10(2) *Journal of Intellectual Property, Information Technology and Electronic Commerce Law* 173, 175.

⁸⁴ Directive 2019/790 (n 78).

⁸⁵ Jacob Jensen, ‘Dissecting the EU’s Directive on Copyright: Implications for Creative Tools, Collaboration Sites, and End-Users’ (2019) 33(1) *Brigham Young University Prelaw Review* 1, 6.

⁸⁶ Lorna Woods, ‘Digital Freedom of Expression in the EU’ in Sionaidh Douglas-Scott and Nicholas Hatzis (eds), *Research Handbook on EU Law and Human Rights* (Edward Elgar Publishing, 2017) 394, 188–190.

⁸⁷ Gerald Spindler, ‘Copyright Law and Internet Intermediaries Liability’ in Tatiana-Eleni Synodinou et al (eds), *EU Internet Law in the Digital Era: Regulation and Enforcement* (Springer International Publishing, 2020) 3.

As the world becomes increasingly interdependent, governments and socio-economic and civil society actors need to pursue opportunities to collaborate and explore areas of mutual concern to formulate effective laws. It is especially crucial for the European Union to be in a position to put forward, defend, and flexibly adapt its unique multilevel model of governance in this evolving multi-actor networked modern world. This article argues that a paradigm shifts away from isolated governance towards interacting and interrelated collaboration in Europe can be achieved through multilevel consultation.

The above analysis of the copyright reform multilevel consultation process suggests that the first objective of such a ‘better regulation’ scheme should be to change governance and law-making processes by increasing the role of evidence in public decision making and by creating opportunities for affected interests to be consulted at an early stage when policy options are being devised. Indeed, the copyright consultation process reveals how European society’s perspectives and priorities on copyright can shape the formulation of policy and law. Furthermore, the examination of the copyright review process reveals the value of integrating the views of critical stakeholders—for example, the Independent Film & Television Alliance (‘IFTA’) and the Association of European Research Libraries (‘LIBER’)—at a primary stage before transposing the ‘*EC Draft Directive*’ into national law policy making.

However, it is evident that the second objective of the above-mentioned scheme—to increase competitiveness by minimising regulatory burdens and providing efficient regulations—has not yet been fully actualised. Indeed, at this stage it is not even possible to monitor whether this objective is being pursued at a national level. It appears that European institutions are not yet fully aware of potential regulatory burdens on a national level. Additionally, even during the transposition phase, started in April 2019, it is not feasible to precisely assess how the consultations have impacted the final forms of the national copyright laws. Further, the form and content of the ‘*EC Copyright*

Directive’ suggests that the last objective of this scheme, to address the legitimacy problems of the regulatory state by improving procedures, has also not been investigated on a national level yet. A mechanism to address legitimacy issues at a national level has not been specified as part of the public consultation process.

Thus, while multilevel consultation is a sound model of public participation, the copyright review process and the ‘*EC Copyright Directive*’ reveal that there are a variety of practical obstacles to the successful implementation of such a process. There is at present a lack of efficient communication of the main topic of the public consultation process to national stakeholders who can potentially have an affected interest. Moreover, the public consultation process to date has led the European Commission to focus on and engage with its own discussion—termed the ‘trilogue’ process—rather than with the outcomes of the consultation process. Further, instruments required to support the public consultation process, such as measures to address legitimacy problems at a national level, have not been introduced. Despite such challenges, it is suggested that it is important to keep pursuing the ideal of multilevel consultation and governance. Addressing the above identified problems and refining the process of multilevel consultation has the potential to offer effective solutions for European Member States to advance public-private partnerships and strengthen collaboration towards the overarching objective of political integration.

VII ANNEX 1—TYPE OF RESPONDENTS

The following tables of statistics have been produced by the undersigned author to reflect the accentuated multilevel perspective based on participants involved from different Member States:

	Type of respondent	Number of Responses
1	End user/consumer or Representative of end users/consumers	4210
2	Institutional user or Representative of institutional users	219
3	Author/performer or Representative of authors/performers	1596
4	Publisher/producer/broadcaster or Representative of publishers/producers/broadcasters	623
5	Intermediary/distributor/other service provider or Representative of intermediaries/distributors/other service providers	75
6	Collective Management Organisation	47
7	Public authority	11
8	Member State	15
9	Other	120
	TOTAL	6915

VIII ANNEX 2—MEMBER STATES

Member State	TYPE OF RESPONDENT				
	1	2	3	4	5
1. Austria	5.2%	4.1%	18.6%	10.4%	41.3%
2. Belgium	1.1%	21%	2.9%	16%	9.3%
3. Bulgaria			0,12%	0,6%	
4. Croatia	0.23%	0.9%	0.18%		
5. Cyprus					
6. Czech Republic	2.3%	3.2%	0.9%	0.6%	
7. Denmark	0.9%	2.3%	1.9%	2.2%	1.3%
8. Estonia		1.8%	0.06%		
9. Finland	1.2%	3.6%	0.7%	0.8%	
10. France	8.8%	2.3%	12%	20.9%	2.7%
11. Germany	29.7%	8.2%	14.3%	18%	6.7%
12. Greece	0.4%	0.9%	0.62%		
13. Hungary	0.23%	0.9%	0.12%		
14. Ireland	0.47%	1.8%	0.56%	0.5%	1.3%
15. Italy	1.6%	1.8%	1.62%	3%	1.3%
16. Latvia	0.23%	0.4%			
17. Lithuania	0.23%	0.9%			
18. Luxembourg					1,3%
19. Malta					
20. Netherlands	3%	11%	8.6%	4%	4%
21. Poland	6.6%	1.8%	3.3%	4%	2.7%
22. Portugal		0.9%		1.1%	
23. Romania	0.4%	1.8%	0.2%	0.5%	
24. Slovakia	0.23%		1.4%	0.2%	
25. Slovenia	0.23%	2.7%	0.4%		1.3%
26. Spain	6.9%	10.5%	2%	2.7%	
27. Sweden	5.2%	3.2	1.8%	2%	2.7%
28. United Kingdom	7.6%	11.9%	8.1%	7.4%	5.3%
29. Not mentioned/Not indicated	14.2%	2.7%	8.1%	5%	16%
TOTAL	4210	219	1596	623	75

Type of respondents (codification):

1. End-user/consumer
2. Institutional user
3. Author/performer
4. Publisher/producer/broadcaster
5. Intermediary/distributor/other service provided