

09.09.2008 D/001765

Prof. Dr. P. Bernt Hugenholtz  
Institute for Information Law  
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Dear Professor Hugenholtz,

Thank you for your letter of 18 August 2008 to President Barroso in which you voice concerns as to the treatment of two studies that you provided to the copyright unit of the Directorate General for Internal Market and Services. The President has asked me to provide a reply on his behalf.

The issues you raise in your letter concern the status of studies that are commissioned by specialist units within the European Commission. This issue is not particular to your study but pertains in general to all external studies that are undertaken for the European Commission.

In your letter you suggest that the Commission, once it has commissioned a study on a particular topic within the remit of its policies, would need to cite the findings of this study not only in its regulatory impact assessment but also in the explanatory memorandum that accompanies proposed legislation.

Both of your studies have been cited in the impact assessment on the "Legal and Economic Situation of Performers and Record Producers in the European Union". Your study was not only cited in a footnote, but also described in the introductory part of the impact assessment on page 13. Both your study and the impact assessment are publicly available on the website of the DG Internal Market and Services copyright unit. As you state, these documents have sparked a vigorous public debate on the merits of an extended term of protection for both performers and producers of phonograms. I believe that this debate is to be welcomed and would hope that you agree that the Commission's impact assessment has not shied away from highlighting the most salient arguments exchanged in this debate.

On the other hand, I do not believe that the explanatory memorandum serves the purpose of expanding or commenting on all studies that preceded the proposal. This is especially true after the introduction of the regulatory impact assessment – a document that serves precisely this purpose.

Your relationship with the Commission's services was that of a contractor. The terms of reference make clear that studies are there to provide some expert opinion to the Commission in formulating its policy. These circumstances do not elevate a study to a preparatory act in the legislative process. Moreover, they do not entail that the Commission should rely exclusively on the data and findings of the study it has commissioned. In particular, better

regulation principles and impact assessment guidelines require the Commission to look at a wide range of information sources available, commissioned studies being only one such source.

In any event, the impact assessment, which makes reference to your study, will be considered in Council and Parliament alongside the explanatory memorandum and will therefore continue to play a decisive role in the ongoing legislative process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Charlie', with a long, sweeping horizontal stroke extending to the right and ending in a small downward-pointing arrowhead.

Charlie McCreevy