



European Federation of Journalists

STAKEHOLDER CONSULTATION ON EUROPEAN COMMISSION COMMUNICATION ON CREATIVE CONTENT ONLINE IN THE SINGLE MARKET

European Federation of Journalists' Response

The European Federation of Journalists (EFJ) is Europe's largest organisation of journalists, representing about 260,000 journalists in over thirty countries. It defends press freedom and social justice through strong, free and independent trade unions for journalists.

The EFJ welcomes the release of the Communication on *Creative Content Online in the Single Market* and the opportunity it is given to respond to the consultation.

Today, a lot of journalistic works including photographs, films and texts are available online. Some works have been created specifically for online use and some works are re-used online from an analogue primary source.

In its response to the 2006 *Public Consultation on Content Online in the Single Market*, the EFJ emphasised the need for journalists (including photographers) to be recognised as authors of the work they create, to control further use of their work and to receive equitable remuneration for all its uses.

On top of the need to be identified as author of their work, off-line or online, the biggest challenges for journalists and press photographers involve economic, licensing and legal models.

The EFJ believes that any move to “*update/clarify possible legal provisions that unnecessary hinder online distribution of creative content*” should keep in focus authors’ rights protection as the only system to protect journalists’ economic and moral rights and maintain integrity, authenticity and quality of journalistic works online.

Digital Rights Management

Journalists have concerns regarding the development of DRM systems into the main way to support the development of online creative content, both from a creator’s and a user’s perspective.

In principle, as authors of copyright protected material, many journalists have a free choice to decide on the management of their rights either individually or collectively. In practice, however, they are dependent on collective societies as their trusted partners.

DRMs could be good devices to manage the use of journalistic works online, so long as their use were decided and agreed by all parties involved, including journalists. Ideally DRMs should be managed on behalf of journalists by collecting societies.

It is essential to establish who would benefit from DRM systems and how these devices would protect the economic and moral rights of authors. The experiences that journalists have had so far with DRM systems have been mostly negative. The systems have been connected to business models under the sole control of

publishers and neither journalists nor users have had influence nor real choice over their use.

We also believe that a use of DRM *may* involve a communication to the public in the sense of the “InfoSoc” directive and the WCT and WPPT-treaty. In such a case the entity using DRM could be seen as fulfilling an additional publishing activity. This is the case in Sweden where use of articles in databases are considered as a new publication. In this case, the database owners must be looked upon as users, unless specific exceptions are introduced in law for that activity or if the right holder decides to assign his rights in the "online situation".

Journalists do not get an opportunity to enter into negotiations with the management of the business model on the terms of use of their articles. They will be given a choice to accept or not the conditions - they are “offered” contracts on a “take it or leave it” basis. Terms are normally not negotiable and influence on further uses of the work is cut off. The same goes for users, who are also dictated a price and set terms and given only the choice to say “yes” or “no”.

Business models managed by DRM have so far been monopolistic by their nature. The lack of fair balance is not only harmful to authors; it would be harmful to users and society at large as well were it to become the dominant method for cross border rights clearance.

It is therefore very important not to take any step that would undermine the networks of nationally based collective management organisations.

It appears the Commission wishes to foster competition between collective management organisations with the aim of getting lower prices for users and lower costs for authors.

A survey of European reproductive rights organisations (RROs) released by their International Federation (IFRRO) showed that over one quarter of the RROs

deducted 10% or less for administrative costs. The rest of the RROs generally deduct between 11 to 15% for the same purposes. Any slight reduction of administrative costs which may be achieved by cross-border competition between collective management organisations would be no recompense for the extensive damage to cultural diversity and to the interests of authors and performers that cross-border competition between hitherto nationally based collective management organisations would cause.

If a choice is to be made between the advantages of free competition and the advantages of cultural diversity and of not tipping the balance further in disfavour of the great majority of authors and performers, the Commission should chose the latter.

Journalists are not only authors of works protected by copyright: they are also among their heaviest users (for quotation or reporting purposes for instance), and have special interests in unhindered access to works for purposes that include reporting news in the public interest - which is essential to the functioning of any democracy.

To date, DRMs have not provided sufficient leeway to allow use of copyright protected works under the copyright exceptions. The important need to fight piracy should not hinder the upholding of the principles laid out in article 10 of the European Convention of Human Rights: freedom of expression, including the rights to express opinions and to receive and impart information. DRMs must therefore allow for exceptions in the public interests such as quotations for the purposes of news reporting, for review and criticism, for educational purposes, and for private study.

The need to enhance privacy protection is another crucial concern to be resolved prior to any widespread use of DRMs on journalists' works. DRMs must also take

into account authors' rights' protection 70 years post mortem and bear in mind that there are no perpetual authors' rights: to impose "perpetual copyright" through technical protection measures (TPMs) would restrict creation of new works and would also undermine freedom of information.

Consumer information with regard to interoperability and personal data protection features of DRM systems should be improved to enable users to use protected works on different platforms. In particular, consumers' information could be strengthened through the use of metadata attached to a journalistic work - whether text, photographic or audiovisual - would improve the author's identification and prevent situations arising where a work is considered "orphaned".

Together with IFRRO, the EFJ believes that alternative dispute resolution mechanisms should remain licence-based for the time being: there is no need for Community intervention.

The EFJ wishes to stress that in all discussion of "DRMs" it is essential to distinguish between: (i) providing Rights Management Information (RMI) that assists would-be users in complying with the law; and (ii) Technical Protection Measures that may form part of economic interests' goal to supplant the operation of the law with technology and (iii) situations where the use of a DRM itself supports a new use of a work. This can be the case in some member states in relation to databases in the sense of the WCT and the "infosoc" directive.

We have identified, in the context of debates about "orphaned works" a need to ensure *effective* measures to prevent removal of RMI from works in all member states - including for example the UK, where it is now apparent that the implementation of the InfoSoc Directive on this point is not adequate.

Multi-territory rights licensing

To date, cross-border trade in the exploitation of journalists rights takes place either through media companies and private syndication agencies or through collective licensing through collective management organisations which are able, to some extent, to manage cross-border licensing through bilateral agreements.

Both systems can be developed and can become more efficient within the existing legal frameworks. The EFJ therefore shares the opinion that there is no need at present for the Commission to take further initiatives towards the adoption of new legislation to facilitate multi-territory licensing.

No recommendation on multi-territory licensing should be agreed upon prior to ensuring that good nationally-based licensing schemes including the development of online licensing systems are in place.

Legal offers and piracy

Strengthening the dialogue between all stakeholders - in particular between creators and consumers - on piracy is essential and the Commission has a clear role to play in initiating and sustaining this dialogue.

To improve respect for copyright in the online environment, education and awareness-raising on the importance of authors' rights for the availability of content online are essential. Copyright protection is falsely perceived as the result of big media organisations' craving to maintain their profits in perpetuity.

Journalists make - must be able to make - a living from for example writing their stories and reporting on current affairs. Some risk their lives to provide users with objective, accurate and authentic information from conflict zones. Encouraging dialogue between journalists and consumers on the value of intellectual property

rights - particularly in enabling journalists to survive as independent, dedicated professionals and thus in maintaining and improving the quality of information available to the general public and on which it bases its democratic choices - could pave the way for better understanding of the value of authors' rights protection.

The French Memorandum of Understanding is at a very early stage and the EFJ reserves its position to assess whether it will strengthen the protection of journalistic works in the future.

The use of filtering measures could prevent authors' rights infringement and should therefore be further encouraged, as long as applications of these measures are decided by both publishers and journalists in a democratic process and do not interfere with the privacy of the individual.

We note, however, concerns about freedom of exchange of information and will be responding more fully at a later date.

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