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

EVA represents collective management societies (CMS) for fine arts, photography, design, illustration, architecture and other visual works. Its members and observers manage the rights of over 50.000 authors. The EVA societies co-operate world-wide with CMS and thus ensure that the rights of the authors are defended world wide. They are regularly the main link of authors to the culture scene and users and industries exploiting works.

We appreciate to be consulted on the issues raised by the EC communication of 3 January 2008 and the opportunity to give our views on the project of a recommendation. The communication urges that “EU policies should aim at promoting fast and efficient implementation of new services and related business models for the creation and circulation of European content and knowledge online”. There is no doubt about the importance of these goals. However, the EVA societies regret that the Communication does not mention the important goal to protect the European Cultural Diversity. The authors’ contribution to the richness of European culture needs to be correctly recognised and rewarded. Authors’ rights are an important incentive for a sustained rich culture in the EU.

EVA supports the “SOS-Call to save the European Cultural Diversity” by the MEP Ms Ruth Hieronymi.

EVA is associated member of IFRRO and permanent observer of WIPO.

Questions 1-5 on Digital Rights Management

Most EVA societies do not apply DRM and TPM because there appears to be a limited request by the market for traditional products with works of art to be downloadable by the end user. Supposedly the existing offer for posters, postcards and merchandising products with works of art by traditional business models is satisfactory. TPM have their limits because works of fine art are registered and managed author- and not title oriented. Further, works can always be published on the world-wide-web from any pre-existing analogue copy and be scanned and digitised.

Due to this particular situation the EVA members licence online uses following the mandates of the authors. Besides, the authors are dependent on remunerations paid for secondary uses such as downloading of works of art accessible from Internet-websites for private purposes. Private copying remunerations have recently become subject of a new Commission initiative but there is a clear link to the facilitation of use of content online. Authors need to receive equitable remuneration which requires a community wide right to be remunerated.

Besides, the use of DRM by intermediary rights holders should not preclude authors from the management of their rights and the reception of equitable remuneration. In that respect the EVA societies tend to support interoperability of DRMs because they appear to allow for a more transparent market where authors are in a better position to pursue their rightful shares of revenues.

Authors should be free to decide whether DRMs and TPM are applied or not. An essential aspect of this freedom to decide whether or not to apply DRM or TPM, however, is, that the decision not to apply such measures may in no way be interpreted as a waiver to any further rights or remunerations

There appears to be low request by the market for uses which could be managed by DRMs. Traditional copyrighted products like reproductions of works of art on posters, post cards and so forth appear to be not affected by such market demands.

EVA societies observe the development of new DRM and TPM and enquire also the use of data collected in order to make use of such tools as soon as they are available and useful for our market sector.

Questions 6-8 on Multi-Territory Licensing

It might appear attractive to telecoms and service providers to force authors and other rights holders into multi-territory licensing. In the absence of a harmonised author's protection the possibility to obtain cross border licences where the level of protection is lowest. Without efficient authors protection by the support of creation and maintenance of CMS in all EU countries and contractual law and remunerations which cannot be waived equitable remuneration of authors would be at risk. As a consequence the source of content, the rich and lively cultural scene in Europe would suffer and dry out.

Beside these measures, EVA societies believe that there is no need for specific EU regulations to promote the EU wide licensing of content for online uses. Already in 2002 EVA societies have founded the International one stop shop [OnLineArt](#) to provide users with

world-wide licences for uses on Websites published on the World-wide-web. All users located in the EEA or Switzerland may choose one of the participating CMS in the same area in order to clear rights on equal conditions. 13 CMS participate today in OnLineArt, in the EEA, one in Switzerland, one in the U.S.A., one in Australia.

EVA believes it to be necessary to leave it to the different sectors of the field to provide for its appropriate model. The communication already hints in the same direction when stating on page 6 (English version) that “it should be noted that different practises apply to different types of content”.

Questions 9-11 on Legal Offers and Piracy

Awareness campaigns remain an important tool to prevent copyright infringements and we believe that the Commission should facilitate such activities for instance by financial contributions. Co-operation between different stakeholders is most important and should be extended.

The MoU signed in France is a good example to bring together all stakeholders to facilitate sector specific solutions.

Given the national differences of exceptions of exclusive rights deriving from the list of optional exceptions in Article 5.2 and 5.3. of Directive 29/2001 consumers might be confused. They could receive the wrong impression that works would not be protected although only the specific use was excluded.

The clear indication of the author's name is an obligation following several clauses in the above mentioned Directive but should be a general rule to provide the market with legal certainty.

Brussels, February 2008
Carola Streul
Secretary General