Submission to the EU Public Consultation

Making Europe's Online Content Market more competitive.

Introduction
The Bridgeman Art Library, established for nearly 35 years and with four international offices, is the world's leading source for images of fine art, history and culture. With some 250,000 images, plus 750,000 historical photographs, from over eight thousand locations. We represent museums, galleries and artists throughout the world by providing a central source of fine art for image users. We represent the collections of the world's leading museums, including the British Museum and British Library, the Dresden State Museums, the National Galleries of Scotland and Wales, Estonia, Sweden and South Africa, as well as leading collections from Russia, France, Italy, Spain, Poland and the USA.

Bridgeman Art Library maintains and develops a commercial picture library, which ranges from prehistoric to contemporary collections. Bridgeman Art Library also develops educational resource packages, publishes art catalogues, offers copyright advice, licenses reproduction rights and provides sales services. Bridgeman Art Library also has a long history of feeding monies back into Museums, of figures up to £1.5 million per year.

Bridgeman Education
Bridgeman Education has recently been developed as an online resource primarily aimed at educational publishers, academic tutors and their students providing greater access to the museums it represents around the world.

Bridgeman Art Library's innovative education subscription service, designed to stimulate and boost e-learning, offers a unique and flexible way to search over 8000 locations covering the world's major museums, art collections and historical sites with access to 200,000 images on a single website. The license permits any educational use for enrolled staff and students in an institution and the search and retrieval functions offer more advantages and flexibility for tutors and students.

The Bridgeman Art Library is delighted that the EU has created this opportunity to enable us to contribute given that we represent key stakeholders throughout the EU. We feel it is important that our contributors albeit they include national museum collections but also very small charitable or private organisations who rarely get the opportunity to have a voice.

Background

Question 1 - Do your offer creative content services online?
Bridgeman Art Library licenses four types of still digital image rights: reproduction rights, copyright, collective reprographic rights and database rights. These rights are similar to those offered in the analogue world.

The exception to this are the database rights. In this case, we offer our entire digital database to third parties and for schools, libraries and universities for educational purposes - www.bridgemaneducation.com.

Question 2 - Are there other types of content that should be considered?
We believe that the focus on certain types of content is too biased. As is the case with many EU and National Consultations, the enquiry is too focused on music and is not sufficiently diverse as to include the full spectrum of rightsholders, especially minority rightsholders and visual rightholders. The list of types of content described at the top of the questionnaire completely ignores digital images as a category in itself even though this is believed to be a $1.7bn industry world wide. Having said this, digital images (stills) appear in all the categories listed games, TV programmes, education, cd covers etc and, excepting music files Bridgeman Art Library services all these industries with images.

Question 3 - Legal, Technical and Business Environment - Conducive to developing take up of content services online?
Network speed and ability of individuals to receive large file sizes is always an issue with the growth of sophisticated

content but the industry will no doubt catch up. The key issue for Bridgeman Art Library is the legal environment and adequate protection of the digital file. Bridgeman Art Library has concerns that there is a sweeping culture across Europe that it is acceptable to 'lift' and reproduce images from Google and that because of (a) the ubiquity, (b) the immediate access to these images and (c) ignorance of copyright law, that there is no fee due to the photographer of the painting, artifact or scene portrayed, or the artist should it be a work in copyright. There is widespread ignorance among the general public, but also among businesses and surprisingly even within the creative industries of what is erroneously named 'public domain' content and Bridgeman Art Library suffers daily from its museums and photographers images being copied and used without due payment. This practice seriously affects the creative industries and the cultural heritage sector, both financially and by demeaning the value of such content, which is often hard to acquire in the first place.

Harmonisation is not an issue for Bridgeman Art Library - copyright has already been harmonised throughout Europe and pricing mechanisms for stills content have been in place for many years and pose no barriers to trade for picture libraries operating within the EU in terms of reproduction rights.

Question 4 - public interests and user rights
Bridgeman Art Library believes that users should be protected from infringing copyright law and be enabled and encouraged to learn about rights in the new technological age. Furthermore, in light of user generated content - such as MySpace and Flickr - the user becomes creator and in turn have their own creators rights.

Bridgeman Art Library's licensing operations in Europe and indeed world-wide protect users from infringing creators rights through the issuing of licenses providing the legal right to use the image. Contract law generally covers most cases where we have direct contact with a user - it is however, where content is scanned from books or lifted from the internet that most infringements occur.
Watermarks and time bombs within digital files have also been introduced but are yet to prove entirely reliable and effective.

Question 5 - Different Devices
Bridgeman Art Library already has the appropriate licenses in place and supplies content for all platforms and digital devices, so the legal framework provides no barriers other than rights infringement mentioned already. - There can only be advantages in the growth areas this represents for the picture library and content industries. There are some technological difficulties still to be overcome in terms of interoperability and speedy access to the content. We see our overseas partners as pioneering this sector, however, with the growth of hand held devices in areas such as education in the UK we foresee potential. The contractual framework is the most complex in the mobile phone industry due to small margins available and the number of 'middle-men'.

Question 6 - Sustaining Cultural Diversity
Bridgeman Art Library represents over 500 artists, many from minority groups - their work gets promoted and treated equally alongside that of all our stakeholders - artists, photographers, archives and museums. The online environment provides a forum for them to present their work to a wider audience and to have their work credited. Bridgeman Art Library believes linguistic diversity is important and welcomes the advent of improved translation systems.

One issue is key here - the need to credit the work of an artist and to cite the museum, location and owner of the photograph in which the work is portrayed. The need to do so should be made explicit and promoted as good practice and also as professional academic practice where a work is being cited in a paper. If works are not credited more may tend to fall into the 'orphan works' category when they are not truly orphan works. This will exacerbate the level of infringements appearing in the online environment as more and more works get copied without the appropriate accompanying information.   Whilst files can be embedded with information, this can be costly for everyone to do and more a question of proving infringements than instilling good practice.

Question 11 - difficulties in securing revenue streams - distribution chains
In many cases with reproduction rights this largely comes down to the commercial acumen of the individual business organisations concerned and should not necessarily be a government responsibility.

However with secondary reprographic rights we feel the revenue stream between creator, photographer, agent and the collecting societies distributing monies for secondary rights could be improved. Sometimes there are too many people in the distribution chain, for example with the payback scheme where the C.L.A. distributes to DACS and DACS distribute through an exceptionally onerous system to other organisations.

Question 12/13 - how can payment systems be improved and what types of licensing arrangements exist
1) Licensing for reproduction rights:
Picture libraries issue a number of types of license for reproduction rights, 'rights managed' flat fees per use, royalty deals (eg art on demand), 'royalty free' and 'subscription images' models. These types of license exist world wide and are well established although fairly complex. A logical matrix of options currently exists to cover a multitude of uses within the creative industries as well as a multitude of territories both European and world wide.

There should be better recourse for companies attempting to deal with those who do not pay - even when an invoice has been issued and we would envisage that bad debts are a problem for many in the industry - particularly when dealing with certain countries such as Italy. Pursuing cases through lawyers is costly and time consuming and there should be better methods in place between European countries that do not allow users to default. Stronger iteration and potential damages for copyright infringement (copyright and reproduction right) would be extremely helpful.

2) Licensing for copyright
Where linked to reproductions, this operates on a similar basis with similar advantages and disadvantages - the exception being that copyright infringement is easier to pursue than reproduction right infringement. Bridgeman Art Library administers copyright on behalf of museums and individual artists, or their agent or gallery.

3) Licensing for Secondary Rights
Payment systems for secondary rights should be improved - see 11 above.

Question 14
Reproduction rights: See above - Europe wide and multi territory licensing already exist and have done so long before the digital environment - challenges as already cited.

Copyright: Very simple where Bridgeman Art Library artists are concerned but complex when trying to clear rights for an artist in another country or even within the UK. Copyright handlers whether individuals, estates or collecting societies are not always realistic about the extra level of financial burden that a project can carry. Collecting societies, in particular, tend to be unrealistic and the Bridgeman Art Library often receives requests for works by any contemporary artist who is not represented by DACS (the UK artists' collecting society) because more often than not, they cannot afford their fees.

Secondary Rights
As touched on in Question 11, photocopying rights in schools and universities are handled by the C.L.A. and DACS in the Payback Claim. The current system is extremely onerous and expensive for the claimants to administer. The end result, and perhaps this was the intention, means that some organisations do not feel it is worth their right to claim. The slide scheme has been abandoned by DACS in favour of the Payback scheme but as they have been very slow in providing a digital license for PowerPoint presentations in schools and universities there is still a need for a levy on slides made form images photographed from books to remain in place. Lecturers still use 35mm slides and carousels for their lectures.

Question 15 - SEE 14 ABOVE

Question 16: How should distribution of creative content online be taken into account in the remuneration of the rights holders - what should be the consequences of levy systems etc?
Both creators and artists and the rights holders be they picture agencies, photographers, museums or publishers should be remunerated and it appears that there is not full penetration of distribution of monies collected at present. Improvements could be made to the levy system as currently implemented in Germany and to the UK payback scheme as discussed in Question 14.

Question 21 - Piracy

Bridgeman Art Library suffers continually from Piracy from within and without the creative industries. We take a number of measures such as verifying reproductions in newspapers, visiting trade fairs and bookshops, tight contractual arrangements and image tracker systems on the internet.

Whilst infringements can be found - this is time consuming to follow up and requires tenacity and is not cost effective for the small pirates. However these can be the 'thin end of the wedge' and we believe all infringements should be followed up on to eliminate ignorance of copyright law. We find unauthorised downloading damaging. Hopefully the IP Enforcement Directive (2004/48/EC) will bring good results to this area.

Question 22 - awareness
Bridgeman Art Library strongly believes European governments should be carrying out awareness campaigns and that the ISPs should be encouraged wholeheartedly to do the same? Bridgeman Art Library has clear copyright information page on its website and all companies selling content on the internet should do the same. Bridgeman Art Library also requires acceptance of its terms prior to registering on the website.

Stakeholders should be included and should assist governments in working towards good awareness campaigns for all aspects of the industry - images, footage & film, audio etc. There is an opportunity for public-private partnerships here and Bridgeman Art Library would welcome involvement in such an initiative given its considerable experience in dealing with infringements and different types of licensing arrangements.

Questions 25-29 DRM
Whatever DRMs are used, there is still an enormous administrative fee in identification, verification, follow up and legal action. This presents a burden to businesses. Furthermore many DRM systems are inadequate and only work with internet infringement - there is still significant infringement in the analogue world too which seems to be becoming overshadowed by other issues.

Bridgeman Art Library protect their images with visible watermarks, password protection prior to access to high resolution images and image tracking systems. We further protect ourselves by embedding IPTC captions in the content we send out - removal of such being an offence.

We would welcome cost effective and efficient DRM systems for content providers and clear standard for the format these would take.

Question 30 - Non Commercial services
Bridgeman Art Library strongly believes that the distinction between non-commercial and commercial must be treated with EXTREME caution or the livelihood of EU rights holders will become eroded. There is a significant business in the SOHO market sector and many small firms and sole traders benefit from supplying the 'bottom end' of the market. Opening free archives online would result in unfair competition for the many museums, galleries and archives that Bridgeman Art Library represents and they would lose valuable business. Many materials from archives represent someone else's copyright (eg reproduction of photographs etc) and this can mean further infringement of copyright. Creative Commons and 'fair use' should be viewed with caution.

Question 32/33 Role of national governments in fostering of new business models for the online environment - actions that could be taken at EU level?

National governments should be assiduous in closely monitoring Google and other free on-line search engines. The Patent Office has discussed with the British Copyright Council the best way to educate the public on copyright issues, beginning with education in schools and this should be implemented.