

Directorate-General Information Society and Media
The European Commission
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Brussels, 11 October, 2006

IFRRO SUBMISSION ON CREATIVE CONTENT AND SERVICES ONLINE

The **International Federation of Reproduction Rights Organisations (IFRRO)** represents collective management organisations in the field of print media, called Reproduction Rights Organisations (RROs). RROs are set up and governed by all categories of rights holders concerned, to administer reproduction rights in a number of different ways according to the laws and circumstances of each country. RROs represent publishers and authors / visual creators (right holders) equally, also on governing bodies. For more information on RROs and the different models of operation please refer to our publications under www.ifrro.org.

Members of IFRRO are also national and international associations of writers, creators and publishers, such as the Federation of European Publishers, European Writers Congress, European Visual Artists, the European Newspaper Publishers, the International Federation of Journalists, the Publishers Licensing Society, Authors Licensing and Collecting Society and the Design and Artists Copyright Society in the UK as well as the Syndicat national de l'Édition, the Société Civile des Auteurs Multimédia, and the Société des Auteurs dans les Arts Graphiques et Plastiques in France.

TYPES OF SERVICES ONLINE (QUESTIONS 1-2)

RROs mainly licence or administer legal licenses for the online use of content which the user already has. Convergence has affected the publishing and content industries profoundly. E-commerce for multimedia content including printed materials is one of the few types of transactions that can be performed entirely online: search, locate, browse, order, pay and receive the content, all online. The ability to use online channels expands the opportunities for business models.

Right holders to copyright works wish to provide the widest possible legal access to their works. Rights clearance is an essential element in the online environment to enable this. Most users seek access to online material directly from and purchase a licence for the provision and use of digital materials directly with the creator or publisher. However, in case of a 'many-to-many' relationship, i.e. when there are many different right holders and users involved, some form of centralised or joint licensing e.g. through a Collective Management Organisation (CMO) is often an option. In this respect RROs work with right holders to develop voluntary licensing mechanisms.

RROs are CMOs which offer services to users of copyright works on behalf of publishers and authors including visual creators. A key activity is the administration and licensing of reprographic reproduction of printed and published material as well as certain digital uses such as the digitisation of a work e.g. for the posting on internal networks. Several IFRRO members offer the option to obtain permission online to copy a work¹. RROs generally store metadata describing the works and

¹ See for instance Newspaper Licensing Agency (NLA, UK) and Copyright Clearance Center (CCC, USA)
http://www.nla.co.uk/index.php?option=com_content&task=view&id=39&Itemid=66
<http://www.copyright.com/ccc/do/viewPage?pageCode=ac1-n>, section "Get Permission"

licensing conditions, and authorise the user to make a copy of the work. Some IFRRO members also have the mandate to store content, and to authorise the user to access the stored material.

The type of services offered by RROs in the online environment are not substantially different from the ones offered offline. The copyright principles that apply to the use of a work in the paper environments are the same as those which apply in the digital arena. However, the services may be broader, take different forms and offer other opportunities to monitor uses.

CONSUMPTION, CREATION AND DIVERSITY OF ONLINE CONTENT (QUESTIONS 3-6)

The current legal environment is sufficiently conducive to develop trust in and take-up of new creative content services. There is no need to make substantial changes which could easily distort the carefully build up balance in the Intellectual Property (IP) framework. A fair balance of rights and interests between the different categories of right holders, as well as between the different categories of right holders and users of protected works must be safeguarded (recital 31 in the Directive 29/2001 (Information Society Directive)).

Whereas the sale and delivery of tangible products such as books and newspapers can rely on the ownership or possession of the copy / material, delivery of intellectual property in the digital arena is a license-based transaction that depends totally on legal protection. Predictability and stability in the legal framework conditions, especially in respect of copyright legislation is therefore crucial. It is equally important that users comply with the laws and that public authorities assist in achieving this.

Public interest and user interests are well served in the Member States through existing copyright laws and provide for a balance between the exclusive rights granted to creators and publishers and exceptions / limitations to these rights. When the legislation establishes fair compensation for an exception / limitation through a copyright levy e.g. in accordance with Article 5.2(2) of the European Commission Directive 2001/29, the levy should apply to all devices which can be used to make copies either alone or in conjunction with other devices.

Publishing will continue to develop new business models for the digital environment that can better respond to user demands. In this context, publishers and authors should continue to be free to choose between individual or collective management of rights depending on their needs and economic development. The same principle applies to Digital Rights Management: (DRM): All publishing sectors should continue to be allowed to freely choose whether or not to use DRMs.

In order to ensure that publishers and authors remain free to make this choice, it is important to consider levies and DRMs as being complementary rather than substituting each other. This analysis and decision can only be made on a case-by-case basis, in agreement with the right holders concerned.

The work of RROs further cultural diversity and identity by nurturing local cultural expressions. A national RRO represents a large constituency of local right holders and ensure that they receive remuneration which stimulates the creation of further local works. To ensure that the online environment is conducive to cultural diversity it is important that national structures can further cultural development and that diversity be sustained and enhanced. This includes supporting the basis for and work of national clearance and subscription. They also want an easy and convenient way to access the material, which includes for some uses centralised rights clearance mechanism. How these user requirements are met depends on the interest of and mandating by right holders.

In Australia and the Northern American countries the right holders have been active in offering licenses online also through RROs. The Copyright Agency Ltd. (CAL), the Australian RRO, licenses access to content from participating right holders for systematic downstream uses at right holders set

prices and conditions². In the USA, the Copyright Clearance Center (CCC) offers *inter alia* a Republication Licensing Service; and Access Copyright (Canada) clears rights online on behalf of a large number of creators and publishers through the Rights Management System (RMS)³.

NEW BUSINESS MODELS AND TRANSITIONS OF TRADITIONAL ONES INTO THE DIGITAL WORLDS (QUESTIONS 8 - 11)

The online supply of scientific and academic journal articles is partly conducted by publishers, partly by document delivery services such as libraries e.g. on the basis of a license. RROs licence document delivery services normally at publisher set prices. Press digests are to some extent licensed by the publishers, to some extent by RROs. Both article supply and press digests are licensed on a transactional basis, and generally there are no problems with maintaining the revenue stream.

For further comments on these questions we refer to and commend submissions made by ENPA, EVA, EWC, FEP, IFJ and STM.

PAYMENT PRICE SYSTEMS (QUESTIONS 12 - 13)

RROs use the following pricing and payment systems in the online environment::

1. right holder set fee payable per transaction; the fee for all such transactions within a specified period may either be paid by the licensee to the RRO periodically, or paid by the user online per transaction by credit card.
2. standard fees per transaction under contractual arrangements with institutions, by which the fees are normally paid periodically by the institution
3. blanket fees payable under contractual licences with organisations, by which the fees are paid periodically by the organisation to RRO
4. fees under levy systems which are negotiated or fixed by law, and which are paid by the manufacturers or importers of devices and / or certain operators to the RRO.

LICENSING, RIGHTS CLEARANCE, RIGHT HOLDERS REMUNERATION (QUESTIONS 14-16)

Due to language and other reasons the use / reproduction of national works by RROs generally prevails in the print media sectors, especially for secondary uses within educational institutions as well as public administration and corporations. This makes Europe-wide licensing schemes in these circumstances less of an issue. The user of print or print related works would often need additional services to the mere delivery of the content. National structures therefore generally provide the preferred alternative. Exceptions to this are document delivery across borders and transactional licences where RROs e.g. act as agents for the right holders⁴.

RROs offer on behalf of right holders transactional (case by case) and so called “blanket licences”, i.e. that the licence grants the user preauthorisation to use or reproduce a work at a set of standardised conditions. They also administer legal licences which operate in a similar way to blanket licences. Foreign repertoire is most often included on the basis of bilateral agreements between RROs.

In respect of the licensing by RROs the network that results from the bilateral agreements is rather comprehensive. In most cases a user will be able to access a global repertoire through the national RRO in a one-stop-shop. As far as we know, there is no data to show that any other approach would reach a similar density of coverage.

² http://www.copyright.com.au/online_projects.htm

³ <http://www.accesscopyright.ca/rms.asp>

⁴ For primary use, e.g. online licensing directly from the right holders' own database we refer you to submissions by ENPA, EVA, EWC, FEP, IFJ and STM

It is for the right holder to set the price and other conditions for the use of his / her product taking into consideration a number of factors including ordinary market mechanisms. The copyright sector is in this respect no different from any other commercial sector. RROs do not interfere with the contracts between authors and publishers, and unless fixed in legislation, tariffs and other conditions are negotiated with users based on initial price settings by the right holders. Negotiated tariffs are often to be further approved by a representative Board of right holders and often also by a public body. The online environment does not alter the normal or requires other price setting mechanisms.

Nor does the online environment have an automatic effect on levy systems and systems for compensation for private copying. Digital Rights Management systems (DRMs) can afford customers a great choice in content selection, flexibility, speed, ease of access and price precision provided that efficient DRMs are available.

However, DRMs correspond to the exploitation of the exclusive rights and might not be dealing with all practices permitted by exceptions in the legislation. Also, trust compliance models, contractual arrangements or other mechanisms may supplement DRMs when they are used to register the initial sale, and thus replace Technical protection Measures (TPMs).

Right holders may not want or need to track every single use of the work within a company or in the private sphere. Moreover, in the print media sectors, material in paper format prevail and DRMs cannot be used. Therefore, at present DRMs offer partial solutions only. Levies provide fair compensation to right holders when their works are drawn on beyond their primary exploitation which is typically to purchase the content, be it in the form of a hard copy of a book or a journal or in electronic format. The majority of the European Union Member States have introduced them to compensate right holders for use under exceptions to the exclusive rights, and since the application of DRMs for certain uses is limited, levy systems will continue to co-exist with DRMs as long as that situation persists.

LEGAL OR REGULATORY BARRIERS (QUESTIONS 17-18)

Unequal treatment of copyright works depending on their formats hampers the development of online content. It is proven that the result of the higher costs for electronic publications due to high VAT rates influence negatively on the behaviour of user communities⁵. Publications should be treated equally regardless of their formats. In all but 2 European Member States products in the paper environment are exempted from or subject to a reduced VAT rate, including the 0 rate which in some countries has been considered the appropriate means to stimulate the print media. Allowing digital copyright products to benefit from the same fiscal measures would represent a strong incentive to the industry.

Lack of stability in the legal framework may constitute another barrier. Predictability in framework conditions is essential. This is particularly important in respect of copyright, be it the economic or moral rights. Consistent adequate copyright protection is indispensable for the copyright industries. The constant reviewing of copyright directives, sometimes combined with indications that radical changes in the copyright framework may be in the making, does not have a positive effect on the creative industries. Stability in the fundamental principles and the established balance in the Intellectual Property framework are crucial.

Moreover, it is important to note that copyright is not a barrier or hindrance to the development of the information society but the mechanism which ensures its continued development, *inter alia* by ensuring a possibility for the right holders to be remunerated for their efforts.

⁵ See for instance study carried out by Soziologisches Forschungsinstitut Göttingen on behalf of the Frankfurt Group. <http://www.sub.uni-goettingen.de/frankfurtgroup/statements.html>

PIRACY AND UNAUTHORISED UPLOADING AND DOWNLOADING OF COPYRIGHT PROTECTED WORKS (QUESTIONS 21-23)

Unauthorised use of materials poses a challenge to the print media sectors. Digital technologies offer a wide range of possibilities for further use, which makes unauthorised uploading and / or downloading of material even more damaging to these sectors than in the analogue environment. Right holders aim at providing easy and affordable access to their works through different means, including the licensing of legitimate use of portions of works through RROs. This largely benefits the user community and makes it un-necessary to treat unauthorised reproduction leniently. When pursuing piracy and unauthorised use there is no need to make a distinction between “small” and “big” infringers. It is important to convey the message that unauthorised use is not acceptable and that requires tracking down any form of it.

There are, however, reasons to differentiate between blatant piracy for commercial purposes and unauthorised use for non-commercial purposes. Education and awareness raising campaigns are crucial elements to curb unauthorised use and reproduction. The Commission could invite stakeholders to collaborate in a joint campaign with the scope to focus *inter alia* on the importance of intellectual property for the development of knowledge, culture, cultural diversity and the economy of the EU and its Member States.

DIGITAL RIGHTS MANAGEMENT SYSTEMS (QUESTIONS 25-29)

IFRRO favours and defends the right of creators and publishers to use or not to use DRMs. RROs themselves use them and have been and are involved in developing such systems. Creators and publishers rely increasingly on technological measures to manage and protect their rights when disseminating material electronically online. Access to content online is a rights transaction. Once a work is received it is frequently repurposed and re-communicated downstream. This “super-distribution” is of great economic value. It sometimes exceeds the value of the initial sale of the work itself. A rights management system which captures the value of the super distribution in a networked environment is vital.

For instance CAL, the Australian RRO, facilitates transactional online e-commerce for granular content using the Digital Object Identifier (DOI)⁶. The DOI is, however, not a complete DRM. DRMs are in an early stage of development and in respect of licensing by RROs still need development before robust systems are available.

In respect of the current use of DRMs and TPMs we refer to and commend submissions made by the Federation of European Publishers (FEP), the European Newspaper Publishers Associations (ENPA) and the International Association of Scientific, Technical and Medical publishers (STM).

In the print media sectors, notwithstanding that non-fiction works are often accessed by consumers in paper form, business models that imply online delivery and / or licensing of content are far more common for factual information than for fiction literature where paper is expected to remain dominant for the foreseeable future. Nonetheless, while non-fiction articles are increasingly obtained digitally, users still often want to print out a paper copy. For several types of uses DRMs will therefore only play a limited role or cannot play one at all. This is for instance the case for the licensing by e.g. RROs, be it on- or offline, of digitisation of copyright works for the purpose of a print out on paper. When the user uploads the printed document to the computer, DRMs will not play a role. DRMs will therefore continue to co-exist with other licensing systems and levy systems.

COMPLEMENTING COMMERCIAL OFFERS WITH NON-COMMERCIAL SERVICES (QUESTION 30)

⁶ The DOI is a standards-based metadata tagged to digital content to enable online rights management.

Non-commercial services can on certain conditions complement commercial offers. An example of this is the making available of copyright works online by libraries to users. However, it is imperative that such services do not conflict with the normal exploitation of the work. E.g. digitisation of copyright materials can threaten the marketability of the authors' and publishers' rights in the works as it unfairly competes with commercial stakeholders such as virtual bookshops. If the right holders' possibility to commercialise the product is jeopardised by non-commercial services, this would not be complement to but lead to a reduction of the commercial offering and thus the scale of works available. It is therefore essential that the complementing of commercial offers by non-commercial services be made subject to licensing arrangements with right holders.

WHAT ROLE FOR PUBLIC AUTHORITIES? (QUESTIONS 32 – 33)

The public authorities play an important role in ensuring stability in the legal and other framework conditions. We reiterate in this respect that there is no need for drastic changes to existing copyright legislation in the Member States.

Also, the public authorities could stimulate private and public partnership with the scope to encourage new services and business models. Governments outside Europe have provided financial support to networked digital repositories fuelled by free access initiatives⁷. Similar types of funding could be offered to sustain right holders' e-business initiatives.

Users, right holders and the society at large would benefit from registries that provide reliable information on the status of rights and facilitate the clearance of them. Examples are registries of orphan and out-of-print works. The public authorities could stimulate the development of such registries *inter alia* thorough financial support.

Finally, public authorities should co-operate in and (co-)finance awareness campaigns to sensitise on the importance of the copyright sectors to society.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'. The signature is fluid and cursive, with a large initial 'O'.

Olav Stokkmo
Secretary General

⁷ For example CORDA in the US, eduSource in Canada and ARROW in Australia