



Commission Consultation on the future "EU 2020" Strategy

EVA SUBMISSION

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European Commission

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Introduction

EVA represents European collective management organisations (CMOs) for fine arts, photography, illustration, design, architecture and other visual works. EVA's members manage rights of over 50000 authors on behalf of living authors, heirs and estates. The EVA societies are connected with CMOs working in the same field world-wide and are experts in cross border and multi territory licensing. In 2002 EVA societies created OnLineArt, an international body for multi territory licensing granting world-wide uses of fine arts works on web sites based on equal conditions.

EVA welcomes the Commission's consultation on a strategy to develop market conditions until 2020. This submission is limited to the issues of concern for EVA which is the priority 1 on Creating value by basing growth on knowledge.

We agree with the Commission that education and research, innovation and creativity make a difference.

The CMOs gathered under the roof of EVA are the link between individual artists and the markets where their works are used. The task of Collective management societies is to license the use of protected works and therefore to provide access to works while defending the just interests of the authors to share in profits that are gained by others when exploiting there works. The major market sectors where visual works are being used are the art market, cultural heritage institutions, educational institutions and the print and publishing sector.

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The CMO's services are indispensable to provide access to copyright protected works, legal security on one side and for a sustained healthy environment for authors creating the highly demanded content. While the Commission working document correctly lists as key elements for a well functioning system of intellectual property rights "efficient and cost-effective protection" (of intellectual property rights) and "provides authors with a transparent management of their rights", the EVA members would like to emphasise further elements: equitable remuneration that reaches the authors and respectful treatment and protection of moral rights.

Some Facts on Visual Works

EVA societies in general manage primary and secondary rights authors of fine arts and therefore to a larger extent than for photographers and illustrators. Authors of fine arts are mainly painters, sculptors and artists using other techniques such as photography or video but in a way that create original works. For the main marketing of the works of these authors no creative industry acts as intermediary producing a protected item to be disseminated on the market. These artists finish a work and the end-product regularly all-by-themselves. An original work of fine art is made in order to be sold on the art market. In other creative fields such as music, literature and film an industrial player, such as a record producer, a film producer or a publisher decides to take works into his program and produces copies that are then sold on the market. Artists usually work with galleries that promote their work on a primary art market.

As a consequence artists have in general not transferred copy rights on their works of fine art to any industrial intermediary. The rights usually remain entirely with the author and will be managed by a CMO when the author or his heirs decide to adhere to one. CMOs are trustees and manage rights only on behalf of the authors. Licenses granted to a user are limited to the necessary extent required for a given use.

In case of book publishing with works of fine arts included, the CMO would only grant the license to print images of their repertoire for a clearly defined printed edition. If further uses of a publication in the same or modified form or technique are required at a later stage the user has to return to a CMO to ask for further separate licenses. Because images of fine arts in books are in general – and in particular when the license was granted by a CMO – only authorized for a precisely defined printed edition, the publisher is regularly not in a position to represent the rights on the entire content of a publication including such images. The same applies for works of photography and illustrations if licensed through agencies.

For other authors of images, for instance photographers, illustrators, designers and architects the CMO would in most cases not manage primary rights and limit its services for authors to the management of secondary rights. As an example a photojournalist would market his images directly to a newspaper publisher and negotiate a best price. Such promotion of works of single artists would not be in line with CMO activities that as trustees manage the rights of all their members in an equal way and based on tariffs.

However, in the advent of the request by large scale users such as CHI (Cultural Heritage Institutions) in the frame of new uses envisaged by Europeana or Google CMOs extent their services and offer in some countries the administration of primary rights to the necessary extent also for the second group of image authors. Thus, the service for authors is extended and the repertoire on offer for libraries, museums and other users working in the public interest is enlarged which facilitates the access to required licenses for digitisation and making available of books and other publications for non-commercial uses.

Education and Research

CMOs are efficient in providing educational and research institutions with licences required for the intended uses. The existing legal framework allows sufficiently to develop models for licensing that respond to market demands. Additional exceptions appear to be not needed to increase efficiency while any solutions based on negotiations would allow for opt out of individual authors and tailor made solutions which can be easily adapted to further developments. Besides, CMOs are already well equipped and created international networks that can also manage remuneration rights for authors.

Clear distinctions between commercial and non commercial uses become more difficult since public funds for traditionally non commercial institutions are reduced. Institutions, such as museums are increasingly required to make profit by exploiting works in their collections. However, savings of the public hand should not be made on the accounts of the authors.

Exceptions to copyright in order to enable educational and research uses are already in place in different forms in all EU legislations, such as quotation or - remunerated - exceptions for uses in school books and in intranets.

EVA societies would appreciate if the Commission introduces a platform to discuss with the different players possible solutions within the existing acquis communautaire, national legal frame and International treaties (Berne Convention; WCT; WPPT; TRIPS)

Multi-Territory Licensing OnLineArt

Traditionally the EVA societies work together Internationally in order to provide cross border licensing of the complete repertoire of all EVA societies. Based on reciprocal agreements, the CMOs exchange all communications, request to authors and estates when prior consultation for a license is required and exchange of revenues. For example it is common practice in the analogue world that an editor in one country obtains all necessary licenses from authors situated in different countries that are included in one publication.

Additionally and for the digital environment EVA societies created OnLineArt (OLA) back in 2002 an international gathering of CMOs in order to facilitate access to worldwide licenses on works of fine arts for website uses. OnLineArt is a society based in Belgium and has at present 14 members in the

EEA, US, Switzerland and Australia. Instead of a network of bilateral contracts OLA creates a pool of mandates that are managed centralized and under equal condition. It enables competition between participating societies exclusively on the service and not on the level of author's remuneration.

OLA is a tool that adapts to the developing and changing business models by providing tailored licenses and by ensuring that the artists are remunerated. The tool is flexible to adapt to the constant developments of new uses, business models and market demands. It also increases efficient monitoring and tracking of illegal uses for a sector where DRMs have only very limited effect.

Orphan works

Any solution on orphan works needs to ensure that authors of fine arts, photography and other visual works are included in the process. CMOs for fine arts could play a role to appropriately deal with the issue. However, firstly the real extent of the problem has to be defined and addressed.

For fine arts the extent of the problem appears to be rather small. If works of fine art are being reproduced in publications they are regularly from a known artist and most likely the name is indicated. Also museums and other works collections will have a record of the works in their possession. If the author is not represented by a CMO, contact details are still in many cases within the CMOs' knowledge and database on authors that enables to trace an artist. An orphan work problem might more likely appear for works of photography where often names of authors were not or not properly indicated.

EVA believes that any orphan works solution should include a licensing scheme with collective management that is applied only after a diligent search has come to the conclusion that a work has no traceable author or other rights holders and where remuneration is provided for all works included in the work. Any book with embedded works such as images of fine arts and photographers should not be regarded as orphan if the images are not orphan. Any mechanism should also provide an opt-out provision for authors. Extended collective management could be a solution and has been proposed in the reflexion document. The Commission should enquire carefully which solution is most appropriate and serves best in a balanced way for all players – in particular the authors.

In our contributions to the working groups within the frame of the EDL HLEG to define sector specific due diligence search guidelines we emphasized the need to regard separately embedded visual works in publications and this issue was entered into both reports, the joint report and the report for the visual sector. Any publication deemed an orphan could still include protected works of fine art and other images whose authors are well traceable. A publication should only be deemed as orphan when there is also no author traceable for embedded works or such embedded works are also orphan after due diligent search. The EVA societies could offer a service in order to clear images in book publications. It might be the case that the user, being in most cases a cultural institution observes difficulties to track an author because of a lack of knowledge and skills, while the CMOs for fine arts and photography dispose of the needed competences. A book with embedded image should therefore always be subject of an additional check by the international network of the EVA societies. Any further use for the as "orphan defined" publication should be subject of a particular clearing

process in order to enable all licensing of the content which is feasible. For the image sector a centralized international approach would be favoured instead of a territorial one. Images are managed by authors' identity and not by work titles which facilitates international clearance. The EVA societies provide for the necessary International network.

Transparent Collective Management by EVA societies

EVA's members are fully accountable to their members and act with large transparency. The code of conduct of EVA societies is published on our website and is in place since 2003. Its basic principles are the following:

- Standards of good practice,
- Democratic structures,
- Transparency towards all parties involved,
- Fair and effective licensing, collecting, distributing
- Dispute settlement procedures.

The EVA societies include authors in governance and decision taking by democratic means and voting in member assemblies.

EVA societies have set up multi territory licensing body back in 2002 facilitating access to international licenses and enabling competition between EEA societies only on the services provided and not on the level of revenue due to the authors.

Carola Streul,
Secretary General
Brussels, 15 January 2009