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COMMISSION CONSULTATION ON EU 2020: A NEW STRATEGY TO MAKE THE EU A SMARTER, GREENER SOCIAL MARKET

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO¹). Members of IFRRO include national Reproduction Rights Organisations (RROs), and national and international associations of creators and publishers worldwide. RROs administer reproduction and other relevant rights, including certain forms of digital uses, in copyright text- and image-based works on behalf of publishers and authors, including visual artists. These rights are normally referred to as reprographic rights.

IFRRO agrees that creating value in the EU economy will, to a large extent, be based on knowledge and a purposeful digital agenda. We welcome the Commission's initiative to develop a strategy to address these issues and agree with the Consultation paper that "what makes the difference is education and research, innovation and creativity"². These factors depend fundamentally on the supply of Intellectual Property (IP). As far as print works are concerned access to IP is provided through direct licensing by rightholders (publishers and authors) or through collective licensing for secondary uses, for instance through RROs, when the rightholders do not want to act directly in the market place themselves, where it is more efficient for themselves and the market to act collectively and on the basis of carefully defined exceptions and limitations to exclusive rights granted to copyright holders in the legislation. The authorities need to ensure appropriate framework conditions to further the development of the IP-based sectors to enable them to contribute as implied in the Consultation Document to creating value in the EU economy.

This submission limits its comments to Intellectual Property Rights (IPR) related questions.

PROVIDING ACCESS TO INTELLECTUAL PROPERTY IN EDUCATION AND RESEARCH

Intellectual Property is indispensable to knowledge, education and research. Educational establishments seeking to provide their students with material need seamless solutions. Rightholders, complemented by services offered by RROs for uses that the rightholders

¹ Interest Representative Register ID number: 91217342449-83.

² Commission Working Document, Consultation on the "EU 2020" Strategy, 24 November 2009, COM(2009)647 final, page 5, first paragraph.

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cannot or do not wish to handle directly themselves can effectively and efficiently address these requirements. Successful examples of licensing schemes with publishers, enabling online use of works for teaching or research purposes, already exist. Furthermore, there are also RROs in virtually all EU Member States.

Thus, throughout the EU, there are purchase opportunities, individual licensing schemes and collective management services available, adapted and especially suited for dealing with access to text- and image-based works for teaching and research purposes. The Commission's strategy for 2020 should include an active dialogue with the copyright holders and their representatives, for instance in a target-specific task force, on how to protect and strengthen the IP sectors with the view to facilitating the further development of their business models for the digital agenda. IFRRO would be pleased to take part in such a dialogue.

FULLY EXPLOITING THE SINGLE MARKET; CROSS-BORDER ACCESS TO CONTENT

Current legislation is of no hindrance to the development of multi-territorial solutions. This is also confirmed in other documents from the Commission³. In the text- and image-based works sector there are business models, channels and licensing mechanisms which allow broad access to works in a variety of forms and formats, both nationally and across borders. The publication of books, journals, newspapers and the like is to a large extent language-dependent. Publishers usually acquire pan-European/worldwide rights, which enable them to offer multi-territory licences. Users can generally ask for permission to use a work directly from the publisher or author or through their agents or booksellers and obtain it on a contractual and worldwide basis.

Equally, RROs are used to administering rights for secondary uses across borders on the basis of different legislation and models of RRO operation. Rights for foreign authors and publishers are administered through the network of bilateral agreements between RROs. The IFRRO-recommended Repertoire Exchange Mandate (REM) for digital licensing by RROs⁴ does not impose any territorial limitations, which enables them to offer multi-territory licensing agreements.

BUSINESS MODEL DEVELOPMENT REQUIRES STABLE FRAMEWORK CONDITIONS

The European copyright legislative framework is well-equipped to foster innovation in the knowledge-based economy sectors. It also provides the necessary conditions to encourage related uses. There is therefore no need for additional Community rules to foster cross-border access to text- and image-based content.

³ For instance, the Reflection Document of DG INFSO and DG MARKT on Creative Content in a European Digital Single Market: Challenges for the Future, 22 October 2009, page 12, second paragraph, lines 5-7, states that "the present legal framework does not in itself prevent rightholders from commercialising their works on a multi-territory basis".

⁴ <http://www.ifrro.org/show.aspx?pageid=library/agreements%20between%20rros/rem&culture=en>.

Rather, the Commission can contribute to the business development in the IP sectors by maintaining stable framework conditions on a Community level, including the copyright regime and legislation. It has also an important role to play in promoting, facilitating and sustaining the use of tools that have been developed or are under development by stakeholders through voluntary cooperation⁵. Along with investment stimulating measures, these are the key elements to facilitate the further development of business models in the IP sectors for the digital agenda.

EFFICIENT PROTECTION OF RIGHTS PROMOTES BUSINESS MODEL DEVELOPMENT IN THE IP SECTORS

The establishment of a sustainable legal offer of content, reflecting the cultural diversity of the European written sector, can only take place in an environment ensuring the full respect of copyright. Business model development in the IP sectors and the furthering of access to IP-based works, within and across borders, requires adequate protection of rightholders as established in other European Commission documents⁶.

Wider legal access to works can be achieved through appropriate mechanisms, which include direct licensing by authors and publishers and collective management of rights when authors and publishers cannot or do not want to operate directly in the marketplace themselves, combined with financial incentives, protection against infringement and copyright enforcement. We reiterate that the Commission should maintain stable and predictable legal and other framework conditions, and promote their rationale and enforcement by all players. If required, IFRRO would offer to contribute to the further specification of the content and development of a copyright awareness-raising, education and enforcement program to be run under the auspices of the Commission.

A WELL-FUNCTIONING IPR SYSTEM

Efficient clearance of relevant rights for online exploitation is a key issue. In the text- and image-based works sector, publishers usually manage the rights for the primary exploitation of the works, including in the online environment, for instance for the sale of electronic publications. Collective management of secondary acts of exploitation is a common practice and is also indispensable to complement individual administration of rights when it is impracticable or impossible for rightholders to administer them individually.

The current European and international (Berne Convention; WCT; WPPT; Agreement on Trade Related Aspects of Intellectual Property Rights/TRIPs) legal framework offers sufficient flexibility and a workable equilibrium between the rights of copyright holders and the interests of users to address challenges posed by changing technological environments.

⁵ For example the ARROW project, sponsored by the European Commission and partnered by a broad range of stakeholder representatives, represents a model for how the Commission could facilitate the development of solutions and sustainable business models.

⁶ For instance in the Reflection Document of DG INFSO and DG MARKT on Creative Content in a European Digital Single Market: Challenges for the Future, 22 October 2009, page 20, first paragraph.

Focus needs to be on the application of the existing framework and the deployment of solutions available. Flexibility can only be built on general international (including Community-wide) principles, leaving implementation to the Member States and the parties concerned.

Solutions elaborated on a voluntary basis through collaborative efforts by parties concerned clearly demonstrate that trust and understanding between stakeholders can bring partners to flexible solutions, with the ability to change over time, within and outside the EU⁷. The Commission is invited to use means available to it to encourage the use of existing instruments developed or under development through stakeholder cooperation.

EFFICIENT AND TRANSPARENT RIGHTS MANAGEMENT

It is in the interest of both rightholders and users that there is a maximum of transparency around rights management. Practices and governance of Collective Management Organisations (CMOs) should be publically available, as they normally are. That is not to say, however, that the rules should be uniform, since external rules are matters for each Member State in accordance with its legal and cultural traditions, and it is vital to maintain the principle that internal rules are determined democratically by the rightholders represented.

The IFRRO Board has adopted a Code of Conduct⁸, principles for exchangeable mandates between RROs and basic criteria to comply with when soliciting negotiations of agreements with other RROs, in which transparency and information exchange are key elements. All IFRRO members are recommended to observe these instruments. The Code sets out the standards of service that rightholders and users can expect to receive when dealing with RROs, and promotes awareness of and access to information about copyright and the role and function of RROs in administering copyright on behalf of rightholders. If required, IFRRO will accept an invitation to be engaged in a dialogue to assess further the transparency and other code of conduct issues in relation to its membership.

We thank the European Commission for the opportunity to comment on the Commission Consultation “EU 2020: a new strategy to make the EU a smarter, greener social market” and appreciate your consideration of our views. If required, we will be pleased to provide further information or answer any questions about this submission.

Respectfully submitted,



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Chief Executive

⁷ Examples: tools for the digital libraries in Europe; the ARROW project to facilitate the identification of rights, rightholders and rights status; means to facilitate access to copyright works by persons with print disabilities.

⁸ [http://www.ifrrro.org/show.aspx?pageid=about/code of conduct&culture=en](http://www.ifrrro.org/show.aspx?pageid=about/code%20of%20conduct&culture=en).