



Anne Bergman-Tahon
FEP Director

Hearing on collective management organisations RELATIONSHIP BETWEEN COLLECTIVE RIGHTS MANAGERS AND COMMERCIAL USERS

This panel will look at issues such as public information on the breadth of the repertoire represented by a collective rights manager; and the territorial scope of available licenses. The panel should also examine issues involving prior information on applicable rates and tariffs, and information regarding applicable deductions, including cultural funding, cross-border commission and cross-border taxes. The panel will also address issues around non-discriminatory licensing to all potential users that find themselves in a comparable situation, licensing to individual users, and the availability of independent dispute settlement in the event that agreement cannot be reached between parties.

The first cultural industry in Europe: book publishing does not need collective rights management for the exploitation of primary rights with commercial users. Why?

In terms of sales to commercial users, the Book world functions totally differently from other cultural industries, indeed

1. The author is assigning the exclusive rights to exploit his/her rights to the publisher through a detailed contract; this in turn allows the publisher to fully exploit the work without needing to have recourse to a third party. If there are more than one author, then they sign several contracts with the publisher. In case of collective works such as an anthology or encyclopedia in which a number of contributions constituting separate and independent works in themselves are assembled into a collective whole and the publisher is often deemed to be the author of the work.

2. The publisher acquires at minimum the exclusive rights to publish the book in a said language (since the generalisation of internet, most contracts are signed for both analogue exploitation and digital one). The publisher may have acquired other rights such as the right to sell translation of that book into other languages or other rights (paperbacks, etc).

The publishers therefore acquire the exclusive authors' rights and exploit them on their behalf.



3. To sell the use of an entire work to a commercial entity such as a bookshop or a company, we just need to conclude a contract with that company; this is true for the analogue world and will remain true in the digital world. We are selling our books to booksellers directly or through wholesalers/distributors. We do the same whether it is a brick and mortar bookshop or an internet retailer.

4. We can sell our books in any said language all over Europe without having to clear further rights. A French book can be sold in Belgium, Spain or Hungary, provided that it found readers able to understand that language. This is also the case in the online world; any European user can buy an ebook offered by European edistributors on basis of existing EU copyright law.

5. We need Reproduction Rights Organisations to provide licenses for certain secondary uses of works by both non-for-profit (reprography of part of a book in a library) and for profit companies (use of parts of the books within the company). The idea is that collective management should be used only when it is too difficult or unpractical to manage them directly. This may happen in the online world for instance for scanning practices by schools in application of a statutory exception.

6. On the internet, if a work is made available, it is crucial to make sure that there is non unfair competition with commercial retailers. Therefore any collective licensing intending to allow the making available on the internet needs to be on a strictly voluntary basis.

Conclusions

When considering a Community initiative, we ask the European Commission to bear in mind that book publishing is indeed different from other cultural sectors. It should remain the liberty of the publishers to exploit direct the exclusive rights of their authors.

In addition to reply to the comment of CMOs that we 'cherry pick' our authors, FEP would like to insist that amongst the many roles of publishers, the selection of authors is paramount. And if we cherry pick, we do it in large numbers as we publish some 500.000 new books each year.