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Brussels, 29 February, 2008

## **STAKEHOLDER CONSULTATION ON EUROPEAN COMMISSION DRAFT COMMUNICATION ON CREATIVE CONTENT ONLINE IN THE SINGLE MARKET**

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO). IFRRO represents and links Reproduction Rights Organisations (RROs) world-wide. RROs administer reproduction and other relevant rights including certain forms of digital uses in copyright text and image based works on behalf of creators and publishers. These rights are normally referred to as reprographic rights. Members of IFRRO include national RROs, and national and international associations of creators and publishers, such as the Federation of European Publishers, the European Writers Congress, European Visual Artists, the European Newspaper Publishers Association, and the International/(European) Federation of Journalists at the European level.

We thank the European Commission for the opportunity to comment on the draft Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market (COM (2007) 836 final). We will limit our submission to commenting on the questions which are relevant to the activities of the IFRRO membership.

### **GENERAL AND SCOPE OF THE CONSULTATION**

The declared Objectives of the Communication are “to launch further actions to support the development of innovative business models and the deployment of cross-border delivery of diverse online creative content” in the form of “the adoption of a Recommendation on Creative Content Online”. There are currently a large number of activities, on-going as well as those under preparation, to develop, test out and deploy business models for the digital arena, including those which will enable online access to content. Some of these projects are co-financed by the Commission under the E-content+ program, others are financed by the private sector and need to be given time to develop before they can be properly assessed. It would be advisable to allow these initiatives to mature before conclusions on further Community actions are drawn.

For instance, criteria for online accessibility to copyright books out-of-print are being examined under the EC i2010 Digital Libraries initiatives. A Model Licence establishes conditions for the making available of copyright works that are no longer commercialised to authorised users in closed networks, also when such access takes place online. Further work is carried out to assess the basis for the making of such creative content accessible online also beyond closed networks. This is coupled with projects, some of which co-financed by the EC, to examine best practices and test beds for solutions with relevance to the making of creative content accessible online.

### **SCOPE OF THE CONSULTATION**

The consultation document addresses “online accessibility” to content. The consultation would have benefitted from a clear definition of its scope including clarification of what is meant by “online” in this context. Creative content is currently being made available online to authorised users both in and beyond closed networks. It appears, however, that the main concern of the Communication is online access to content outside closed networks. IFRRO takes this as one of the starting points for its comments.

### **DIGITAL RIGHTS MANAGEMENT (QUESTIONS 1 – 5)**

Freedom to decide whether to manage rights individually or collectively through CMOs is a basic requirement for right holders to text and image based works in the digital environment. In this perspective DRM systems (Digital Rights Management) play an important role. They support the development of sustainable business models and make it easier to allow copyright content to be made available on the nets. IFRRO favours and defends the rights of creators and publishers to use or not to use DRM and TPM (Technical Protection Measures) in deciding to manage their rights.

Interoperability is a key issue in relation to the use of DRMs. This should be ensured through the development of standards and protocols such as those under the ONIX<sup>1</sup> family, the International Standard Text Code (ISTC) and the ACAP<sup>2</sup>. The Commission should encourage and continue to support the development, test beds for and the deployment of such standards and protocols.

As an example of a means to facilitate user access to licensing information we also wish to draw attention to Rightsphere<sup>3</sup>, a rights management service to users developed by the US IFRRO member, Copyright Clearance Center (CCC). Rightsphere is a desktop tool for users to inform them of the licensing terms, conditions and options for content they wish to access. It is offered without the condition of taking up a CCC licence and is widely used by major companies both within and outside the US. Rightsphere was named a Trend-Setting Product of the Year by KMWorld magazine in 2007<sup>4</sup>.

In addition to RRO-developed user access systems and tools, there are also numerous developments underway being created by rightsholders and their organisations. For example, the

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<sup>1</sup> For instance ONIX for licensing, ONIX for books, ONIX for RROs, etc.

<sup>2</sup> Automated Content Access Protocol, [www.the-acap.org](http://www.the-acap.org)

<sup>3</sup> <http://www.copyright.com/ccc/viewPage.do?pageCode=bu11>

<sup>4</sup> <http://www.copyright.com/ccc/viewPage.do?pageCode=au145>

ACAP, when applied by the search engines and others, will play an important role as an information provider to conditions for the use of creative content. The PLUS Coalition<sup>5</sup>, formed by visual creators and their organizations worldwide, is creating a system of standards for the communication and management of image rights. These and other systems developed and offered by right holders and their representatives contribute to reducing uncertainty and enhancing the accessibility to licensing conditions.

Most relevant standards to ensure interoperability among DRMs are being developed on an open access platform and should therefore offer an appropriate solution also for SMEs or others which ask for non-discriminatory access. Community actions should thus not be required.

Alternative dispute resolution mechanisms should remain licence based. As an example, the Model Licence developed under the EC i2010 Digital Libraries initiative for works that are out of print/distribution/commerce offers an alternative mechanism. There should be no need for community intervention in this respect.

#### **MULTI-TERRITORY LICENSING (QUESTIONS 6 – 8)**

Unlike for instance the music sector, publications of books, journals, newspapers and the like is to a large extent language dependent. With the exception of the English language, the publisher usually acquires pan European/worldwide rights and will be in a position to offer multi-territory licences. There should thus be no need for additional Community rules to foster this. Community or Member State legislation does not prevent multi-territory licensing of rights to use/have access to creative content and it should be left to the market to develop such schemes under the existing legal framework.

In text- and image-based publishing such licensing already takes place. An online content service provider would normally be able to obtain a license for the distribution of digital text- or image-based content (e.g. a journal article, an e-book or part of it) or multimedia content through a contract with the rights holder concerned directly. The offer of e-books to download on PCs or PDAs from Online distributors such as Numilog or Ciando and the making available online of digital content in the scientific, research and educational sectors as well as audio-book sold in MP3 format are examples of this.

Multi-territory collective licensing schemes apply for example to International Document Delivery, applicable in particular to journal articles. Also, the IFRRO recommended Repertoire Exchange Mandate for digital licensing by RROs does not impose any territorial limitations and a number of RROs already offer multi-territory licenses.

#### **LEGAL OFFERS AND PIRACY (QUESTIONS 9 – 11)**

Awareness raising activities would generally benefit from co-operation among stakeholders concerned. Sensitising initiatives in the online environment is of course no exception to that and the Commission may facilitate initiatives in this respect through financial contributions to awareness campaigns.

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<sup>5</sup> <http://www.useplus.com/home.asp>

IFRRO supports strongly co-operation initiatives for instance between the rightholder communities and Internet Service Providers to raise awareness and combat unauthorised use of copyright works. As reported also in the daft Communication the Memorandum of Understanding (MoU) signed in France between music and film producers, Internet Service Providers and the Government dates back to 23 November 2007, which means that it is 3 months old only. Instruments foreseen under the MoU are still to be established. Whereas the initiative is welcomed and should represent a positive move it is still too early to assess its effect on the combating of unauthorised use of copyright works on the nets. One should therefore have to follow closely the effect of the MoU signed in France before further recommendations are made.

The use of filtering technologies by Internet Service Providers and others as well as systems to inform about authorised use (e.g., through search engines using the ACAP<sup>2</sup>) are highly welcomed and should be encouraged. These are mechanisms which help enforcing contractual terms and preventing the networks from being used to infringe on intellectual property. Their use is therefore assumed to have a positive effect on authors' and publishers' willingness to make their valuable content available on the nets.

#### **OTHER ISSUES**

##### **Value Added Tax (VAT)**

Creative content in digital and analogue form are subject to different VATs. As observed in the Staff Working Paper, this is perceived by the publishing industry as a disincentive to create works in digital formats. Whereas the December 2007 Council decision to reform the VAT rules on online content distribution to allow it to be taxed according to the law of consumption as from 2015 is welcomed, is equally important to harmonise the VAT rates for digital and analogue content which should both be made subject to a reduced or 0 rate.

##### **Consequences for primary sales**

Online access to creative content which is not made subject to the authorisation by the pertinent right holders and/or, when required, adequately remunerated risks having a serious negative impact on the publishing industry including its content creators. Before any Recommendation is considered, a consultation on online accessibility needs to be accompanied and balanced by an analysis of the consequences which different planned measures might have on right holders. We would expect such studies to be a part of the Commission's further work on the online accessibility to creative content.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'.

Olav Stokkmo  
Chief Executive