



**EBLIDA submission to the European Commission Consultation:
“Content Online”**

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EBLIDA is the European Bureau of Library, Information and Documentation Associations. We are an independent umbrella organisation of national library associations in Europe, indirectly covering over 70,000 individual libraries throughout the EU. We promote unhindered access to information in the digital age and the role of archives and libraries in achieving this goal.

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EBLIDA welcomes the opportunity to comment on the Commission’s paper *Creative content in a European digital single market: challenges for the future*. On the whole this paper is a fair and balanced assessment of the challenges.

We specially welcome the recognition in section 5.1 that ‘community rules have harmonised the scope and tenor of the exclusive rights without, however, providing clear boundaries for these rights by means of uniform exceptions’. This is crucial. Universally, copyright is viewed as a balance - a balance between the monopoly granted by the State to the rightholder, and the limited uses of copyright works reserved to the citizen, without harm to the rightholder. We are pleased at the prospect in section 5.1 of mandatory harmonisation of exceptions. This will help to restore the balance.

We give a cautious welcome to the proposal in section 5.1 for extended collective licensing as a possible solution to the problem of orphan works, but we prefer to have, as well, an exception permitting the use of orphan works in certain circumstances. This dual approach would avoid the creation of monopolies in the control of orphan works (something that threatens to happen in the USA through the Google Books settlement).

We also welcome the proposal in 5.3 for measures focusing on the governance and transparency of collective rights management organisations. Their activities affect consumers and non-commercial players just as much as creators and distributors. The legal status of these entities allows them to act almost like State tax-collectors, though they are virtually unregulated.

Two fundamental points seem to deserve more attention.

The importance of non-commercial players

The distinction between 'user-created content' and 'professionally produced content' (section 2) is too simple. Likewise the three main groups in the value chain (section 4) are supposedly 'consumers, commercial users, and rightholders'. Many important groups of people fall outside these definitions. Obvious ones from our point of view are cultural and educational institutions and academic authors. New roles and opportunities are presented for non-commercial, non-consumer, players in the digital age. They should not be overlooked. In particular they should not be included, by default, in extended or mandatory collective management systems designed for commercial players (section 5.3).

Well-understood copyright law versus infinitely variable contract

The paper correctly identifies in section 4.2 the crucial point that 'the principle of exhaustion only applies to *tangible* goods sold in the EU'. It does not grasp the obvious corollary of this - namely, that the use of digital materials is not governed by copyright law at all, but by contract. *The inevitable result is that the use of almost every digital work is governed by different contractual terms.* For the sake of a coherent, respected, copyright regime in Europe, it is essential that contracts should not interfere with the exceptions established in law. Some Member States have secured this position but most have not.

In summary

Libraries exist for the public good and are scrupulous about adhering to the law. It is important for us that the law should be fair to non-commercial individuals and entities, and that it should be manageable. The exceptions to copyright are particularly important to us. Orphan works represent a resource which many libraries own and could exploit digitally for the public good if the law is changed.

Amongst the actions suggested in section 5 we support the solution of extended collective licensing for orphan works though we wish to see an exception for the same purpose also; we support harmonised, mandatory, exceptions; and we support the regulation of collecting societies. We urge a very important additional action, namely a mandatory, community-wide provision to protect the exceptions from limitation by contractual terms.