



COPYRIGHT AND AUTHORS' RIGHTS

The European Writers' Congress - the Federation of 50 writers' organisations in 27 countries of Europe, representing more than 50,000 authors and literary translators - and the individual writers gathered at the EWC Mediterranean Forum MARE NOSTRUM II "Literary Lines across Live Languages" in Barcelona on 15th - 18th November 2001 unanimously resolved to address the following

APPEAL

to the
European Parliament, Council of Ministers and European Commission
and to the
Governments of EU Member States and Associated Countries

- I - Implementation of the Info-Directive

We welcome the fact that the European Directive on *Harmonisation of certain aspects of copyright and related rights in the information society* has now been issued and call upon EU member states to ensure its rapid incorporation in their national legislation by the required date of 31 December 2002.

However, we regret that the initial proposal for equitable remuneration has been reduced to an entitlement to fair compensation only. We also beg to draw attention to problems that may arise from the adoption into national law of exceptions that are permissible under Article 5 (see enclosure).

The declared aim of the European Union and Commission in undertaking harmonisation is to protect authors and intellectual property rights "at the highest level". This aim has been only partially achieved through the so-called "Information Directive".

Unfortunately, the Directive makes it possible for national legislators to create limitations and exceptions to the principle of fair remuneration, allowing for certain rights in protected works to be made use of by public institutions for "legitimate purposes"; and by private individuals/commercial companies simply to save themselves money. This may well facilitate access to literary works but since the exceptions concern uses "for the purpose of education and information", naturally the affected works of literature, art and science are ones that are valuable and much in demand. The authors stand to be deprived of a not inconsiderable part of their (already modest) income and to be disadvantaged even more in the future with the anticipated expansion of technology in the information society.

Creativity and the need to reward it properly are essential for the well-being of society: for maintaining and developing the cultural traditions that are the lifeblood of Europe. To deprive authors of their means of existence in any way - particularly to deprive them of fair remuneration - can be neither in the interest of individual countries and regions nor appropriate to the European concept of "diversity in unity".

Therefore:

□ We ask you, the legislators and elected members of parliament in the different countries of Europe, to bear this in mind in the way you frame your forthcoming decisions on the harmonisation of copyright, specifically in the area of Article 5 of the EU Directive.

- II - Authors' contractual rights

Writers, literary translators and all those who are the original owners of copyright/authors' rights make individual contracts with the people who wish to use their original work. Freelance writers usually receive royalties on the sales or performances. The contractual terms depend on many different factors: first and foremost on which rights are to be exploited but also on the differing standpoints and economic circumstances of the two parties to the agreement.

Invariably, individual authors are by far the more vulnerable party when dealing with commercial companies. They are also weighed down by legal and trade-tariff precedents. On the whole in Europe there are no set rules on either the scope of the rights that should be conveyed or what they are worth, neither a maximum for the one nor a minimum for the other. In the absence of clear and harmonised principles there are many legal loopholes which in the past have given rise to unclear court decisions that increase the number of rights that are assumed to have been handed over, unwittingly, by the author.

Therefore:

□ We ask the European Parliament to take the initiative of harmonising authors' contractual rights throughout the European Union, standardising

- (i) the requirement to respect the author's inalienable and unwaivable moral rights of paternity and integrity,
- (ii) explicit limits to the extent and duration of the grant of rights,
- (iii) the prevention of so-called buy-out contracts,

and establishing that model contracts based on these norms, as well as appropriate minimum levels of remuneration for each different type of right and use, are to be negotiated collectively between authors' societies / organisations and the other parties' representatives, subject to arbitration by a designated public authority.

- III - Administration of authors' electronic rights

Along with the technological advances of the information society have come attempts to interpret old but still valid contracts as having granted to the publishers of *printed* books the right to license *electronic* rights, although these separate rights were not originally conveyed. Even in many new contracts, the various types of electronic rights are included in an undifferentiated way and with no provision for appropriate payments to the author. In many cases authors are being denied the chance to offer their works direct to readers via the new electronic media, without the intervention of print publishers - an intervention that threatens to make electronic access to literature more expensive than necessary.

Therefore:

□ We also call upon the European Commission to frame a Directive on the administration and collection of payments for authors' electronic rights which provides for these rights - insofar as they are not licensed under authors' individual contracts - to be administered solely and exclusively by Collecting Societies representing authors, such as the ones that already exist in most European countries for the management of other types of authors' rights.

- IV - Research on social and economic conditions for creative artists

Finally, the writers' and translators' community itself is well aware of the harsh conditions under which most professional artists in Europe have to work. The general public and political decision makers, however, ask for independent findings, comparable figures and additional details.

Therefore:

□ We urge the European authorities to initiate Europe-wide independent surveys and analyses – including the candidate countries – establishing facts about the economic and social conditions for creative artists, that is writers, literary translators, composers and visual artists, thus following up the initiatives already taken by the EU Presidency in connection with the Seminar in Visby/Sweden on 30 March – 1 April 2001 concerning Conditions for Creative Artists in Europe and by the European Parliament in its Resolution on Cultural Cooperation in the European Union, dated 5 September 2001.