



EWC Position Paper on the review of the EC legal framework (*acquis communautaire*) in the field of copyright and related rights

The European Writers' Congress (EWC) congratulates DG Internal Market for their sustained work on this review and gratefully acknowledges their open attitude toward consultation with the stakeholders. EU legislation on Intellectual Property Rights should constantly be monitored, because of the technological developments and globalisation that have opened new possibilities for distributing, storing, marketing and using protected works and content.

With this contribution the EWC would like to put forward some proposals that it hopes to see reflected in any further legal initiative of the European Commission in the field of Intellectual Property Rights and in any revision of the existing *acquis*.

The EWC is the federation of 55 authors' associations in 29 countries of Europe, representing some 54.000 professional writers and literary translators. It was founded in 1977; the EWC stands for the democratic principles of freedom and equality – in particular the Human Rights to freedom of expression and freedom of information.

Significant for the authors' rights system in the European Union are the disparities between the different systems of the Member States that make it impossible to ensure that Intellectual Property Rights enjoy an equivalent level of protection throughout the European Union.

The national structures in this field are based on different legal and cultural traditions. However, there is a need to raise the level of protection in the European Union if the European approach to authors' rights is to be maintained.

The Acquis Communautaire

For more than a decade, since 1991, the EU framework of authors' rights and related rights has developed with eight Directives on substantive copyright law to create a functioning network of horizontal and vertical instruments, which harmonised rights and exceptions and certain other features of substantive law in the field of Intellectual Property Rights. One of the most important instruments is the EC Directive 2001/29 on Copyright in the Information Society (22 May 2001) as a horizontal instrument, which has been a big step forward for development in this field and should certainly not be amended substantially in the near future. On the other hand the management of rights has been dealt with only marginally by the *acquis communautaire* and has been largely left to the laws of Member States.

This situation is, from our point of view, not satisfactory; important features were not harmonised with the result that there is a gap in the management of authors' rights and related rights, in particular:

Moral Rights

One important instrument that should be available for every author in Europe requires an upward harmonisation of Moral Rights, so that authors cannot be pressured into waiving them.

We are therefore very disappointed to see that once again this has been left out of consideration by DG Markt.

Moral Rights are still unprotected at European level, even though moral rights are required to be introduced for authors by Member States under the Berne Convention. These include the right to be identified as an author (the right of paternity) and the right to object to modifications and other derogatory treatment of a work (the right of integrity). In the digital environment new forms of communication provide further possibilities to extract and combine information with the result of a negative impact in cross border situations. Functions such as linking and framing are very often relevant to the right of paternity and right of integrity for the authors, when their works are being used in a different context from the original one.

The legal situation in the United Kingdom and Ireland, but also in Italy, is not sufficient to protect authors' identity and work; as matters stand, authors can even be excluded from the control, and any further use, of their work.

Contract law

The revision of contract law is urgently needed to safeguard the right of remuneration that is proportionate with the rights of use that have been licensed. Under the influence and power of the globalised multi-national corporations who control and own the media industries an individual author is largely powerless against such forces without supporting legislation.

Corrections are needed in order to rescind outrageous contracts or declare void certain contractual obligations, and to protect the structurally weaker party to the contracts. There should be active minimum standards against any kind of unfair or inadequate contracts.

The EU should intervene with regard to the legal framework for standard terms and conditions, to keep the authors' rights system in balancing especially regarding questions of abusively low remuneration and broad transfers of rights. The aim should be to give more security to the often self-employed author.

However, the German legislation and experience of enacting special contract rules in order to secure for authors the payment of an adequate participation in the proceeds of the exploitation of their works has demonstrated how difficult it is to reconcile the interests of creators with those of profit orientated media enterprises, and both of these with the interests of users.

Nevertheless the EWC believes that this area requires greater attention and research than it has hitherto received to find a solution to some of the problems that arise, in particular with the imposition of buy-out contracts which deprive authors of just those rights conferred by the acquis - often to avoid the statutory obligation of equitable remuneration or even fair compensation. Such practices must in themselves constitute a distortion of the Internal Market.

Collective Management

Regarding collective rights management for digital use a legislative approach is desirable, based on rules and principles within the authors' rights and related rights framework. The principles of good governance, non-discrimination, transparency and accountability are of particular importance; it should offer authors a reasonable degree of flexibility in its duration and scope. Furthermore, in the light of the deployment of Digital Rights Management systems, the authors should have, in principle, the possibility if they so desire of managing certain of their rights individually.

Therefore the EWC fully supports the collective rights management of all secondary rights that cannot be individually managed, by collecting societies in which they are at least, equal partners.

Rental and Lending Directive

Concerning the EC Directive 92/100 on the Rental and Lending Right and Certain Related Rights a number of Member States have failed to implement the Directive so that authors throughout the EU do not have an equal opportunity to benefit from the regulations. Confronted with new technologies and their increasing role the conflicting problems need urgently to be solved between librarians, writers, translators and book publishers.

Therefore we strongly support the recent initiatives on infringement proceedings taken by the European Commission.

Maureen Duffy
President

October 2004