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DG Internal Market  
Copyright and Knowledge based Economy Unit  
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## **Stakeholder Consultation on the European Commission “GREEN PAPER ON COPYRIGHT IN THE KNOWLEDGE ECONOMY”**

This response is submitted by the **“European Writers’ Congress” « EWC » / la “Fédération des Associations Européennes d’Ecrivains” «FAEE»**. EWC members include European national and trans-national authors’ organisations representing writers and/or literary translators.” Established in 1977, EWC has evolved into a federation of 60 associations in 32 countries of Europe, including Iceland, Norway, Switzerland, and Turkey. As an advocacy network in the field of culture, the EWC champions the diversity of literatures while raising awareness about the common need of writers and literary translators to have their moral and economic rights respected in the analogue and digital environments.

### **General Remarks**

We welcome the Green Paper’s [GP] aim of fostering a constructive debate on knowledge dissemination in online environments; however, we observe that the GP is intended to *“address all issues in a balanced manner taking into account the perspective of publishers, libraries, educational establishments, museums, archives, researchers, people with a disability and the public at large.”*<sup>1</sup> In accordance with our aims, first of all, our submission seeks to redress the fact that the authors’ perspectives appear to be excluded in this consultation, or have been implicitly embedded under the “publishers” category. We therefore

<sup>1</sup> “Green Paper. Copyright in the Knowledge Economy” COM (2008) 466/3, I.1. p. 3

respectfully recommend that the forthcoming consultation documents rectify or justify the omission of authors in its address and in its perspective. Authors are the basis and the core human resources and human capital in the creation of knowledge. Moreover, authorship exists in different forms; we therefore suggest that its different dimensions are taken into account in place of using a generic term without a proper consideration of the actual moral and economic differential contexts. For instance, a professional author creates knowledge in the form of a work protected by copyright which begets the remuneration needed for his/her daily livelihood/subsistence. Academic or scientific authors, in the majority of cases, are employees of a higher education institution which funds their work, research, and publications; as authors, researchers function within a model linking private-public funding, academic intellectual property, and research benefits.<sup>2</sup> Furthermore, the GP addresses researchers mainly as “users”, while in fact they are also authors, although they are not necessarily right holders. A confusion emerges further in the GP in terms of who are the users and who are the right holders. In our understanding of the issue, the original right holder is the author; subsequently, a publisher/producer may or will acquire the rights under the terms and conditions in the contractual agreement for specific uses of the work in the market; in this context, the publisher/producer is also a user of the work. We conclude that the Green Paper has a user-circumscribed approach, in which researchers are taken solely as users, on equal terms with “consumers”; we consider the GP’s framework fractional in contradistinction with the wide-ranging theme of copyright in the knowledge economy. Future consultations on the issues would benefit from a conceptual explicitness that will facilitate the response and the debates.

Regarding the scope of the GP and in relation to the “Fifth Freedom” to promote the free movement of knowledge, we propose a consideration of the roles which multilingualism and translation actually play and how they can contribute as pillars to sustain the knowledge flow both within one’s national language/s and amongst the Member States, as well as for a wider dissemination of knowledge from Europe into the world. In the knowledge-based economy dominated increasingly by the digital environments, a balance is needed between, on the one hand, the monolingualism and the isolationism of the lesser known languages, which can be a major barrier for the free circulation of educational and cultural resources, and on the other hand, the right to use one’s native, and chosen/ adopted languages which must be respected and promoted under the principle of cultural diversity.

The Directive 2001/29/EC has proven to be effective as the key instrument of European copyright legislation. The existing limitations and exceptions contained therein have offered the opportunity to counterbalance the exclusive rights provided under copyright law. In digital and online environments, it is the applications of the Directive the ones which have developed given the flexibility offered at national level; therefore, we do not think that the limitations and exceptions themselves “should evolve”.<sup>3</sup> We uphold that the limitations and exceptions have been adequate and do not need modifications. The Directive still needs to be fully implemented in many Member States; it would be worthwhile to have an evaluation of its EU

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<sup>2</sup> See, for instance, “Intellectual Property and Research Benefits” by Professor Paul Wellings, Vice-Chancellor Lancaster University, a report prepared for the Rt. Hon. John Denham, MP, Secretary of State for Innovation, Universities and Skills 30 September 2008.

<sup>3</sup> Green Paper, p.3.

implementation. We consider any modifications without a previous evaluation would be premature; there is a serious potential risk of disturbing the specific resolutions adopted or in the process of being executed by the different Member States. Within the framework of the *acquis communautaire*, the Directive has provided a guarantee for authors (writers and literary translators) to rely on the sustainability arising from their creative work, and has been, in turn, an incentive for publishers and the content sector to depend on our original contributions for their investments, and has motivated them to design new business models in the digital age.

Given the above, we fully agree with the Green Paper's recognition that:

*"A high level of copyright protection is crucial for intellectual creation. Copyright ensures the maintenance and development of creativity in the interests of authors, producers, consumers and the public at large."*<sup>4</sup> We consider it important to foster a non-interventionist attitude from the EU community level; it is equally essential to continue to promote the need for respect towards the Member States' possibilities to adjust the options according to their national legislation under the Directive. Furthermore, as the GP stresses, Member States have formulated narrower exceptions than the current non-mandatory "exhaustive list of exceptions and limitations" allowed in the Directive, which makes the need to extend the list unnecessary.

In the same paragraph quoted above, however, a different theme is addressed which we welcome but for which we suggest a separate consultation because it is not directly relevant to the Directive or to the limitations and exceptions; namely, that *"the Commission solicits the views of researchers on new ways of delivering digital content. These new modes of delivery should allow consumers and researchers to access protected content in full respect of copyright."*<sup>5</sup>

The new ways of delivering content in digital environments are being supported systematically through different EU funded projects, particularly in the Sixth and Seventh Framework Programmes (FP6, FP7) through DG Research and DG Information Society & Media, under different programmes such as technology enhanced learning and digitisation of cultural heritage; in the latter some of the key projects that provided support to the i2010 digital libraries initiative have been and continue to be supported (MINERVA, MINERVA+, TEL, MICHAEL, TEL-ME-MOR, EDL, EDL+ to name just a few); the same can be said for the e-TEN and the ContentPlus programmes. There are also numerous public-private funded initiatives that can provide a series of best practices in this domain. The Commission would enhance its support if the achievements of already existing services could be better known by the general public and the research communities.

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<sup>4</sup> Green Paper Copyright in the Knowledge Economy, p.4

<sup>5</sup> Ibid.

## Specific Remarks

The Copyright and Knowledge based Economy Unit should note that we have endorsed the submission by the International Federation of Reproduction Rights Organisations (IFRRO). Our response to specific questions will therefore be limited to a few complementary points.

Collective management societies administer the rights of authors and creators. The authors/creators relationship with collecting societies exists on the basis that they receive our mandates to act on our behalf for the licensing, collection and distribution of royalties and remunerations, in addition to the authors' individual contractual agreements entered into with the publisher/s. Collecting societies are working intensively towards solutions for the globalised networked world. The making available of copyright protected digitised works through electronic delivery to end users at a distance by libraries, museums, archives and educational institutions at large,<sup>6</sup> can be realised provided that the appropriate available model agreements are signed with the relevant right holders or collective management societies.

There should be contractual arrangements between right holders and digitising institutions; there is also a need to guarantee that authors are also engaged in the development of guidelines. Model licences and model agreements already exist and have been used effectively. In the ever growing Internet-based communication society, the approach of adding a new list of non-mandatory exceptions would soon prove to become obsolete and in need of revision due to the state-of-the-art and emerging technology development.

We strongly support voluntary solutions amongst the right holders and stakeholders. The online environments and Internet based services to disseminate knowledge can continue to work positively under the principles of commonly formulated solutions. Even though national legislations differ from one another, libraries, archives and museums, are working together with authors, collecting societies, publishers, producers, in the establishment of solutions which are addressing directly the changes needed due to the growing uptake of new information and communication technologies.

The EWC participated in the important work of the i2010 High Level Expert Group– Copyright Subgroup, DG Information Society & Media, and would like to highlight the Final Report on Digital Preservation, Orphan Works and Out-of-Print Works.<sup>7</sup> After two years of systematic deliberations and drafting of consensus documents and conducting a series of stakeholder workshop validations and dialogues amongst cultural institutions, stakeholders in the content sector, authors' and creators' organizations, the Copyright Subgroup delivered to the Commission a pioneering set of solutions in the areas of orphan and out-of-print works. As a member of the Copyright Subgroup and signatory of the "Memorandum of Understanding on Orphan works", the EWC fully supports the proposed solutions. If the Member States have not applied or adopted these solutions yet is it partly due to the lack of dissemination and information about the ensemble of solutions, including the diligent search guidelines, and the model licence agreements for online access of digitised material and for

<sup>6</sup> Recital 40 of the Directive and GP pp. 9-10.

<sup>7</sup> See [http://ec.europa.eu/information\\_society/activities/digital\\_libraries/experts/hleg/meetings/index\\_en.htm](http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm)

closed networks. Awareness campaigns about the existing solutions will facilitate the next steps required at national level for their implementation. These important instruments enable the process of digitisation and making available of material while maintaining a respect for copyright and the voluntary licensing agreements between the digitising institutions and the right holders, regardless of whether the latter are the publishers or the authors. It is a well-known fact that in many Member States, the rights of out-of-print works, to name just one example, revert to the authors.

With reference to IFFRO's comments on the Nordic licence we would like to emphasize that in the Nordic countries the extended collective license provisions of their respective copyright acts has since decades proven to be a successful method to clear rights and to claim remuneration on contractual basis.

Finally, on the exception for the benefit of people with a disability, we support the possible establishment of a stakeholders' platform at WIPO "to facilitate secure access to copyright protected works [...] which may involve copying and transforming a given work into a large-text or other format."<sup>8</sup>

We thank the DG Internal Market, Copyright and Knowledge based Economy Unit for the opportunity to contribute from the perspective of the role of authors in Europe.

Sincerely,

John Erik Forslund  
**EWC President**

Mette Möller  
**Board Member & Attorney-at-Law**

Myriam Diocaretz  
**Secretary-General**

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<sup>8</sup> WIPO Press Release 2008/575, Geneva, November 10, 2008.