



## **EWC – FEP joint statement on the report from MEP Medina Ortega adopted by the Legal Affairs Committee (JURI) of the European Parliament**

*Authors' associations represented by the European Writers Council and publishers' associations represented by the Federation of European Publishers support the approach followed by the above mentioned own-initiative report adopted unanimously (minus one vote) by the Legal Affairs Committee.*

The report promotes a balance approach to copyright legislation, an approach based on the promotion of creation and on equitable exceptions which don't prejudice the normal exploitation of the works.

Those who are lobbying the European Parliament to vote against this report suggest that the 2001 'copyright in the information society' Directive (the Directive) has not achieved beneficial results for users. **EWC and FEP disagree. Indeed, the exceptions provided for by the Directive together with both individual and collective managements of rights at national level, allow users, individual, institutional or business, once they have had a lawful access to the works, to use these works for their own benefit.**

We are aware that you have received a letter from EBLIDA on this issue and would like to answer some of the allegations contained in this letter

EBLIDA says '*Libraries have traditionally striven for an equitable balance between the interests of the rightsholder and those of the user. The Ortega paper however is unbalanced, paying little attention to the important role of exceptions to copyright.*' **Authors and publishers point out that the report of MEP Medina Ortega stresses that the exceptions pursuant to Article 5(5) of Directive 2001/29/EC, are only applicable in certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder ('three-step test' clause). Writers and publishers would like to insist that exceptions must not become the general rule of copyright which must remain an enabler and promoter of creation.**

*EBLIDA says 'The list of exceptions is exhaustive. It keeps the exceptions firmly in the twentieth century by limiting those available to provisions that have been found useful in the past. In a matter as important to Europe as the knowledge economy, the Directive shows a failure of nerve, in this respect, that can only be damaging for the future. No new exceptions*

may be added by Member States in national legislation. It is strange that an exclusive list can be thought to be adequate in the light of the evolving Internet technologies. It is also unfortunate that (apart from the first) the list of exceptions is optional. Member States have chosen different exceptions, with the result that harmonisation has not been achieved'.

**Authors and publishers point out that asking for opening the list of exceptions and then making them mandatory is contradictory. Authors and publishers believe that the Directive is forward looking legislation, very much in the 21st century, seeking to provide exceptions when pragmatic voluntary licensing solutions cannot be found.**

*EBLIDA says with regard to Orphan Works, the Ortega Report displays a regrettable lack of understanding around the issues, and disregards the positive work embarked upon by libraries and rightsholders with the InfoSoc DG. By definition an Orphan Work does not have a traceable owner and therefore, in contradiction to the Ortega statements, it cannot be digitised with the permission of the rightsholder. The inadequacy of the Information Society Directive is illustrated by the fact that the Commission's i2010 Digital Library Initiative includes no significant numbers of orphan works. This limit on its usefulness will remain because there are no proper exceptions to cope with the Orphan Works problem - unless new statutory solutions are introduced. **Authors and publishers have been involved in the discussions with the European Commission to find solutions to allow orphan works to be made available on the internet, after due diligent search. Authors and publishers are also supporting the ARROW project, in which libraries are partners, which works at creating a network of rights' information sources to provide the necessary due diligence search instrument to the institutional users.***

**2009 is the European year of innovation and creativity.  
Europe needs its authors and cultural entrepreneurs to promote the social and cultural cohesion of society.  
Copyright is the fabric of creation!  
We urge you to support this report.**

EWC and FEP are available to further comment on the report.

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