STRIKING THE RIGHT BALANCE BETWEEN ACCESS, FAIR REMUNERATION AND AUTHORS' RIGHTS

Proceedings of the European Writers' Council 2012 Authors' Rights Conference

Brussels, 4 June 2012

The European Parliament

With the patronage of Marielle Gallo Member of the European Parliament

Sponsored by the Authors' Licensing and Collecting Society

ALCS protecting and promoting authors' rights

EUROPEAN WRITERS' COUNCIL EWC

EUROPEAN PARLIAMENT

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Editor: Myriam Diocaretz

Editorial assistant: Ciara Healy, 2012 EWC Trainee, University of Limerick, Ireland.

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The European Writers' Council / EWC is the non-profit international federation of professional writers' and literary translators' national and trans-national associations in the European Union and beyond, including Belarus, Montenegro, Turkey, Iceland, Croatia, Norway, and Switzerland, working in 40 languages. It was established in Belgium in 2006 as an "association internationale sans but lucratif" (AISBL), and first founded in 1977 in Munich as a private association under the name of European Writers' Congress.

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Last but not least, we thank all the attendees, including Mr. Christian Engström MEP, who took part in the discussions and granted us permission to publish their statements.

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2012 Authors' Rights Conference

Brussels, 4 June 2012, The European Parliament

- Highlighting Access for the Benefit of Society: the Role of Writers in the Promotion of Digitisation in the EU
- Sustaining the Work of Writers in the Digital Age
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Myriam Diocaretz
Editor and EWC conference organiser

Background

The European Writers' Council / EWC - Fédération des associations européennes d'écrivains / FAEE AISBL is the independent, non-profit, non-governmental federation of European national and trans-national associations of authors in the text-sector (books in all genres, TV and film scriptwriters, theatre, etc.) in 34 countries of Europe representing over 140.000 professional writers and literary translators, working in 40 languages.[1]

The EWC's 2012 Authors' Rights Conference "Striking the Right Balance between Access, Fair Remuneration and Authors' Rights" was held at the European Parliament in Brussels, on 4 June 2012, with the patronage of Marielle Gallo MEP, and sponsored by the Authors' Licensing and Collecting Society (ALCS United Kingdom). This event was a follow-up of the 2010 conference "Authors' Rights in the Digital World"[2] held at the European Parliament in Brussels on 15 April 2010 with the patronage of Helga Trüpel MEP, Group of the Greens/European Free Alliance (Germany), Vice-Chair Committee on Culture and Education.

The 2012 Approach

Authors' rights are at the heart of current European Union policy debates, due to the growing variety of emerging business and access models and forthcoming initiatives in the digital environments. Therefore it is crucial for EWC to engage writers and literary translators in a direct dialogue with politicians who are very active in the European Parliament's legislative processes, addressing authors' rights in the contexts of legal and societal challenges and opportunities, of intellectual property rights, and in search of the delicate balance between authors, consumers and users of technology, or between the authors and readers/viewers. The aim of the conference was to inform MEPs about the authors' and EWC's contribution in the field of access to culture in the last seven years, and to show the ways for possible actions that are urgently needed at EU level to improve the economic and social situation of authors.

The large scale digitisation of works that are copyright protected requires a multi-stakeholder approach and an understanding of the sustainable working conditions needed by writers, as in any other profession.

1 http://www.europeanwriterscouncil.eu/

2 Authors' Rights in the Digital World, Proceedings of the 5th European Conference of the European Writers' Council, Brussels, April 2010, edited by Anna Dünnebier, 103 pp., The European Writer Series ISSN: 1560-4217 available online in the publications section: http://www.europeanwriterscouncil.eu

The social, cultural and legal aspects of access to culture need a very concrete focus in relation to copyright as an enabler for the creation and production of millions of works published in Europe in the present and the future. Therefore, the general subject of "*Striking the Right Balance between Access, Fair Remuneration and Authors' Rights"* was divided into four sessions: 1) to present what authors have done in collaboration with other stakeholders in support of EU initiatives for a better access to writers' works, using the advantages of the digital innovations for the benefit of readers; 2) to formulate some of the key challenges faced by authors, and to put forward some suggestions on what can be done to ensure a better remuneration to sustain their creative work; 3) to put in the foreground the role of the collective management of rights from the authors' perspective as an indispensable contribution to provide support to professional writers, and what is needed to go forward in the digital age; finally, 4) to carry out a discussion on the proposal around the copyright reform by the Pirate Party in Germany.

Several topics surfaced as major concerns and recurred in different contexts of the presentations, including but not limited to the following: the urgent need to address the production, distribution and uses of digital works, and in particular of eBooks at European level; the call for harmonisation of a set of basic guiding principles to correct the imbalance caused by the current unfair contractual conditions which set authors in a weaker negotiating position in the publishing agreements; the right of writers to form unions, and the question of free access which must not be confused with access free of charge.

The discussions were informed and lively, sometimes passionate (see especially session 4), in the presence of MEPs, writers from over 25 European countries, representatives of international and European creators' associations, collective management organisations, as well as of the trade publishers. The debates are included after each session. Of interest was also the (unplanned) direct dialogue between some of the authors with Christian Engström MEP, from the Swedish Pirate Party who was in the audience and was given ample opportunity to present his views.

In addition to Kerstin Jorna representing the European Commission, three MEPs provided the EU policy and political highlights as guest speakers: Marielle Gallo and Cecilia Wikström are published authors, so they both spoke with an insiders' understanding of the writing profession, which added a special dimension to their contributions as they know from personal experience the true exercise and art of writing professionally and of publishing as well as the importance which readers have for writers. Together with H. Trüpel they are devoted to paying special attention to authors' rights at the European Parliament and in Europe.

The Themes and Approaches for the Right Balancing Act

The conference opened with the Tour d'horizon by *Marielle Gallo* MEP, French lawyer and fiction writer, who started by underlining EWC's advocacy of cultural diversity as an asset and the growth of the cultural sector and the cultural and creative industries in spite of the economic crisis. In the context of the opportunities and challenges brought in by the technological revolution, M. Gallo warns that the distribution of authors' works to wider audiences does not necessarily result in remuneration for authors.

MEP Gallo is actively engaged in the achievement of a consensus around the large scale digitisation of orphan works and out-of-commerce works, which in her view must be one which keeps a balance between more access to cultural heritage and the respect for the moral and economic interests of authors. Finally, she emphasises that the current and forthcoming legislative proposals are part of Commissioner Michel Barnier's strategies for his ground-breaking establishment of a single market for intellectual property in Europe.

In the keynote speech *Kerstin Jorna* of the European Commission presents the Intellectual Property strategy for Europe as an all-encompassing framework, and welcomes the underlying principle of the conference, which is not based on "the Hamlet question" that would split the subject into the fruitless binary of copyright or no copyright. K. Jorna considers the Internet as an opportunity for authors and publishers to find new audiences, yet, she stresses, these opportunities prompt new contracts and licensing agreements.

With great clarity K. Jorna proceeds to present the European Commission's legislation as a tool, and the institution as an enabler within a framework that will allow authors to publish their works which then can be sold easily across Europe. Next she outlines the core philosophy behind Commissioner M. Barnier's 'enabling' framework: Intellectual property is indispensable for innovation, employment, and cultural diversity.

The Berne convention serves as a context for K. Jorna to look from the past in order to move forward: since it has survived the technologies that have emerged during all these years, why should it not survive the Internet as well? Relying on the Berne convention, however, is not enough according to her, since several points of "pain" have to be addressed and solved, concretely: the questions of orphan works, diligent search and compensation for the reappearing authors; the out-of-commerce works; the collective management societies, and the private copying levies.

Highlighting Access for the Benefit of Society: the Role of Writers in the Promotion of Digitisation in the EU

In the overview of the EU initiatives endorsed by authors in the book and text-sector, *Pirjo Hiidenmaa,* EWC President, writes on the contribution by researchers through Open Access, which is beneficial for both writers and readers. P. Hiidenmaa explains the OA principles and their scope, and shows the advantages of the access to education and the licensing systems which allow, for instance, European schools to use high quality material. Access does not mean without remuneration or compensation, she concludes.

Myriam Diocaretz, EWC Secretary-General, presents a synopsis of the key EU initiatives endorsed by authors within large scale digitisation plans to facilitate the access to books and other text materials. Next to this she stresses that the immediate priorities should include policy regulation of eBooks in the EU internal market determining whether they are products or services, a crucial distinction given the cloud and other emerging and future technology.

Carola Streul, EVA Secretary-General, presents the four key guiding principles for authors jointly drafted with EWC, and EFJ for the EC stakeholder dialogue facilitated by the European Commission's Copyright Unit (2010-2011) and discussed in detail with the other stakeholders in that period, namely, the libraries, publishers, and collective management organisations to reach a consensus which culminated in the Memorandum of Understanding on Out-of-Commerce Works. In addition to the appeal not to replace the term "Authors" by "Rightsholders" in policy documents, she explains in a nutshell the authors' principles covering the key dimensions of "Respect", "Search", Opt-out", and "Remuneration".

Cecilia Wikström MEP, also a published author, concentrates on the opportunities for writers in the digital and globalised world which have changed the distribution methods for printed works; technology and the Internet allow writers to publish in innovative ways. The current Internet population turns the 'making available' into an attractive act as writers can reach more people who may be willing to pay for content through micro-payments. In the prolific production of content C. Wikström foresees an increasing demand for high quality works, which in turn may introduce new services.

On the subject of copyright she maintains that no change is needed because the current regime remains valid. Where change would be needed, however, is in the harmonisation of exceptions and limitations, with a focus on adequate information for citizens to be fully aware of what is allowed and what is not. Another point she develops is the need for access to digital archives, in particular to the historical and institutional documents from the political institutions, and part of this is to allow writers to access these sources which often provide the context for new work.

Sustaining the Work of Writers in the Digital Age

In this session the experts discuss the status of the author through the working conditions of journalists as freelancers; the relevance of the status of the "artist" for authors; the non-inclusion of authors by the European Economic and Social Committee (EESC) in their opinion on "Book publishing on the move", and how to tackle the balance between authors' rights in the digital age in the context of sustainable models.

Addressing one of the key questions of the conference, 'How can the authors' negotiating positions be improved? The challenge of competition law', *Arno König,* President of the European Federation of Journalists, reveals the bottleneck in which freelance journalists find themselves by the inequality they face in negotiations when they are categorised as entrepreneurs by governments, preventing them from negotiating on fair grounds with the publishers as their employers. The result is the dominant occurrence of having to work under the duress of unfair contracts. Therefore, he brings to mind the 2012 ECSA official complaint to the European Commission and EFJ's public campaign to put an end to unfair contractual practices with an appeal to allow collective bargaining as a solution for journalists and the role which trade unions can have in the negotiations.

Significantly, a month after the conference (11/07/2012) the European Parliament's Committee on Culture and Education proposed a ban on buy-out contracts, as a result of a report on the online distribution of audiovisual works in the EU, drafted by Jean Marie Cavada, French MEP. While the proposal is a reason for hope, the case is ongoing.

Nowadays it is indispensable to review the 1980 UNESCO Recommendation *on the Status of the Artist of 28 October 1980, Article V 5,* to explore the progress made on the situation of the individual 'artist' in Europe. In many EU Member States and other European countries, the rights mentioned in the UNESCO document remain unacknowledged by governments (as in the case for journalists presented by A. König). *Nick Yapp,* member of the Writers' Guild of Great Britain and EWC Board member, took the challenge to address the issues from the perspective of authors/writers. His method of substituting the term "author" for "artist" helps to test effectively the relevance of such Recommendation. What stands out clearly in N. Yapp's analysis is that several aspects of the UNESCO Recommendation have never been followed, such as the support through certain social benefits for work conditions, support to educate the public on the value of their work, and the recognition of trade unions to defend their interests. N. Yapp therefore reflects upon whether authors fit in the UNESCO "artist" category, and if the answer would be positive, he shows the long overdue necessity to assess the adoption and implementation of the 1980 Recommendation in the European Union. Concretely, he puts forward a call to review 'the status of the author in the EU'.

From his conclusions, one in particular deserves further investigation: The fate of authors should matter to politicians and decision-makers, given that many *other* jobs stem from the work of writers, which makes the publishing chain possible.

The next two presentations are a response to the European Economic and Social Committee (EESC) opinion on "Book publishing on the move" adopted on 25.04.2012.[3] This recent opinion strongly states that an analysis of the book publishing industry should be a priority. *Mathias Lair Laudet,* Secretary-General of the Union des Écrivains calls attention to the fact that the EESC, on the one hand does not take into account or mention the authors as being part of the publishing chain, and on the other hand assumes that author's rights are publishers' rights. Therefore, within an educational spirit, M. Lair Laudet clarifies this misconception by focusing on authors as the foundation of the establishment of literary value. He further explains the problem of the sales price of eBooks, gives a warning about the current economic conditions under the digital production which will lead to a further impoverishment of the author, and emphasises that actions at EU level are needed on matters of digital publications.

Jean Claude Bologne, President of Société des Gens de Lettres, deplores that authors have been ignored in the preparatory work for the EESC report and are not mentioned in the proposed measures, since it is insufficient to refer to authors merely as 'other players involved'. J. C. Bologne proceeds to prove the inaccuracy in the figures used for the presumed total of 100,000 writers, literary translators and illustrators in Europe. Moreover, he proposes an investigation in three areas: the defence of moral rights; the payment for creative work in terms of a division of benefits linked with the distribution and uses of copyright protected works, including not just publishers but also internet providers and search engines reaping profits; finally, he underscores that it is important to address the need for EU harmonisation of the contractual practices between authors and publishers.

Helga Trüpel MEP, Group of the Greens/European Free Alliance, Vice-Chair of the Committee on Culture and Education, presents ten points to reflect, as the title suggests, "Towards a fair balance between access for the readers as consumers and remuneration for authors in the midst of high conflicts around copyright." H. Trüpel's commitment and support to authors' rights in the European Parliament is no doubt an important pillar for creators, yet for her as a cultural politician who aims at finding solutions that will address the authors, producers and 'users' this is a challenging task. Her vision deserves close consideration in particular because she has a comprehensive view dealing with the different stakeholders, and formulates systematically fundamental points that need to be discussed by all.

[3] References: "Book publishing on the move". CESE 1048/2012 - CCMI/092. Own-initiative. Rapporteur: Ms. Attard (Various interests - GR III / Malta). Co-rapporteur: Ms. Van Laere (Employers - GR I / Belgium). The full text of this recent opinion in all EU languages is available:http://www.eesc.europa.eu/?i=portal.n.ccmi-opinions.1970

In her presentation the subjects for debate include but are not limited to: The intergenerational conflict between the digital natives and non users (of ICT and the Internet); the analysis of new patterns of digital uses, the new culture of sharing content, and the borders between commercial and non-commercial file-sharing. Equally important, she is resolute about remuneration whenever it concerns "cultural content as a product of the work and efforts of an individual."

Collective Management: An Author's Right?

During the April 2010 public hearing on the Governance of Collective Rights Management in the EU by the Copyright Unit, DG Internal Market and Services, authors and other stakeholders addressed specific questions conceived by the EC as a preliminary fact-finding exercise about the types of mandates that exist, the CMO-author relations (governance, transparency) and the scope of the territorial reach. In the context of the 2012 proposed Directive on Collective Management the third session of the EWC 2012 conference proposes to go beyond the previous inquiry, and from the authors' perspectives: What collective management organisations do for authors and what they can do in the digital environments to make sure that authors are rewarded for all uses of their works.

Vanda Guerra, Director of the Sociedade Portuguesa de Autores offers a cogent view on the role of CMOs: first of all, the economic aspect is to guarantee the fair exploitation of the works and to ensure remuneration through monitoring and licencing in particular nowadays also for the digital uses of works; secondly, the social and cultural role that some CMOs fulfil through pension schemes, help to authors in financial stress, and the promotion of cultural activities; thirdly and equally important is the CMO's function to grant wide access to the works they represent. Moreover, V. Guerra points to flexibility, transparency and efficiency as desirable qualities of CMOs which in current times have to adapt to the new trends and structures, in order to fulfil the authors' and users' "demands" in the changing environments. She shows that some CMOs already have professional best practice rules, and expands on a few practices involving transparency in the collection and distribution of funds. Moreover, she sums up a number of principles practiced by many CMOs relevant to the author-CMO relationship, and reminds us that the members have the ultimate power of decision, since the defence of their rights is what in the end CMOs exist for.

The writer's experience with CMOs is introduced in retrospective and with an outlook to the digital age by *Maureen Duffy,* author and one of the founding members of a collecting society in the United Kingdom. She demonstrates why a CMO established by the authors themselves became indispensable to deal with Public Lending Right, since it became evident that this could not be administered on an individual licensing basis, and at a time when authors were already the "weaker partner" in the negotiations with publishers. The income from secondary rights – through CMOs – has become increasingly important due to the uncertainty about receiving advances, royalties and other moneys from primary rights in the

changing conditions of the publishing industry. In the UK there is a proposal for a voluntary code of conduct for CMOs which is relevant to the current plans at EU level. Furthermore, the role of authors must be at the centre of the management of their CMOs because these organisations will have an even more important role in managing collective digital secondary rights. Finally, M. Duffy is constructively adamant about the painful expectation focused on the author as the one from whom "free access" is demanded, so she asks, "why should the author be the only one to contribute unpaid for the public good?", and she raises awareness about the scarce alternatives to sustain a European professional writer's life.

On the German Pirate Party Plans for Copyright Reform

The Swedish experience with the piracy "movement" is considered important to understand the later developments of the pirate party (and evangelism), as lessons learned; therefore *Thorbjörn Öström*, Legal Counsel (L.L.M.) of the Swedish Writers' Union provides for this purpose an interesting and useful historical and political outline covering 2006-2010, with a focus on the respective evolutions of the debates on copyright, illegal file-sharing, the Pirate Party, the Pirate Bay trial, and the Swedish Copyright Act. T. Öström illustrates that the solution for the piracy issue requires parallel approaches, among which he points towards three methods that would be effective to protect copyright.

Anna Dünnebier, EWC Vice-President and German writer reports on the experience of a fierce public debate caused by the Pirate Party's new proposals following their success in the latest elections. A. Dünnebier examines critically the party's proposal on copyright and the right of use (2011) and a document on copyright issued in May 2012. On the right of use, she questions the pirate's notion that considers a work of art as "free good" and "free wealth" which subsequently not only overlooks the "division of labour" involved in its creation but also erases the function of the professional creators. She also notes their denial of the concepts of authenticity and originality, which are fundamental in the authors' works. She provides an overview of the German creators' response, for instance, on the issue of "remixing", and of the scriptwriters' reaction on the "free access" claim which is different from an "access free of charge" – also discussed by other speakers. As a result, the German creators and the public have brought the debate on authors' rights in the digital environments to the centre stage.

The more recent pirate document selected by A. Dünnebier for her critique proclaims "to strengthen the rights of creators and users and to guarantee free access to education and culture", formulated in ten points. She concentrates on seven of them to reveal how the pirate plan weakens authors' rights, and concludes that the Pirate Party's paper "strengthens the conflict between creators and users" instead.

In conclusion, the conference was instrumental for the identification of authors' new priorities for a long-term strategy.

Welcome and Tour d'Horizon

Marielle Gallo

A. Introduction – Organisation of the Conference

I am delighted to welcome you today to the European Parliament for the conference of the European Writers' Council. I am happy not only because in my role as an MEP I focus on the protection of cultural diversity and the defence of culture, but also because I am a writer. I am therefore aware of the difficulties of the profession and the determination and passion that writers must have.

I will begin with some practical information on the organisation of this afternoon's event. The conference is divided into four parts: The first part underscores the important role that writers play in promoting digitisation in Europe. The second part examines the various options for supporting writers in the digital era. The third is devoted to the collective management of copyright, and finally the fourth part provides answers to the copyright reform programme proposed by the German Pirate Party. We will be joined this afternoon by two MEPs who are very familiar with these issues and who defend intellectual property and copyright within the European Parliament: Cecilia Wikström and Helga Trüpel.

B. Challenges of the Technological Revolution

As you are aware, the European Writers' Council defends the diversity of literature in Europe. It raises awareness among politicians of the role that culture and creators play in the accomplishment of the European Union's political and economic objectives. Cultural diversity is an asset, not an obstacle for Europe, and the cultural sector, our cultural and creative industries, are formidable growth drivers, especially in this period of economic crisis. Consequently, I fully endorse your objectives and you can rely on my support to get your message across in Brussels.

We are today in the midst of a technological revolution which creates not only many opportunities for writers, but also a certain number of challenges. The Internet facilitates the rapid dissemination of works and also promotes broader access for the general public to our cultural heritage but, at the same time, creators are not always properly remunerated.

In Brussels, the three European Union institutions, namely the European Commission, the Parliament and the Council, are discussing the difficult balance to be found between, on the one hand, access to culture and, on the other hand, the remuneration of creators and the protection of their rights.

We are in the process of putting in place a legal framework which will promote large-scale digitisation. However, all these efforts must be accompanied by effective copyright protection measures.

C. Progress in Large-scale Digitisation: Orphan Works and the Memorandum of Understanding for Out-of-Commerce Books

Contrary to what some might say, things are happening. We will have the opportunity to hear a presentation by Kerstin Jorna, who will give us an overview of the existing and future legislative proposals of the European Commission and which are contained in Michel Barnier's strategy for the creation of a single market for intellectual property rights unveiled on 24 May 2011.

I wish simply to stress that this communication from Michel Barnier is the first overall strategy in the field of intellectual property rights ever proposed in the European Union!

I will mention two initiatives in particular:

First of all, the *proposed Directive on orphan works* is in the process of being adopted at a first reading by the European Parliament and the Council. I will have the opportunity to participate in the trilogue negotiations this week and I am confident that we will reach a compromise on the last pending issues. This will then enable our public libraries and broadcasters to make available to the public a considerable part of our cultural heritage. However, this digitisation must not harm the economic and moral interests of writers and creators. I am particularly keen to ensure that the proposed solutions respect this balance.

This Directive complements a *memorandum of understanding* on the key principles for digitisation and the making available of out-of-commerce works which was signed on 20 September 2011 by libraries, publishers and authors. This agreement, which will serve as a model for the conclusion of further voluntary licensing agreements, will promote the creation of digital libraries and proves that copyright is not an obstacle to the digital era.

D. Conclusions

I would like to stress one last point. All rights must be enforced. Although this principle is simple, it is constantly called into question by certain political forces. By advocating an ideology of "everything should be available free of charge" these forces represent a serious threat to your remuneration.

The pirate party and its allies naturally spring to mind. But let me go even further, because I am known for my plain-speaking. The socialist group which was the traditional ally of men and women of letters and culture, abandoned them, abandoned you a long time ago. Calls for "copyright to be adapted" or "new business models to be proposed" hide a very sad reality: the fact is that for purely electorally motivated reasons they have given up defending the rights of those who create and those who innovate. You must therefore make an even greater effort to make your voice heard and undertake initiatives to demonstrate clearly to the decision-making politicians that they must not indulge in populism.

It is not my intention to monopolise your time, so I would like to give the floor to Kerstin Jorna, Head of the Intellectual Property – Industrial Property Unit at the European Commission's Internal Market Directorate-General, and also acting Director.

Thank you for your attention.

Tour d'horizon[4]

Marielle Gallo MEP

A. Introduction – Déroulé de la conférence

Je suis particulièrement heureuse de vous accueillir aujourd'hui au Parlement européen pour la conférence de la Fédération des Associations Européennes d'Écrivains (FAEE/EWC). Je suis heureuse non seulement parce que mon activité de député européen se concentre sur la préservation de la diversité culturelle et la défense de la culture, mais également parce que je suis écrivain. Je connais donc les difficultés de ce métier et la détermination et la passion qu'il faut avoir pour écrire. Je commencerai par quelques informations pratiques sur le déroulé de cette après-midi. La conférence est divisée en 4 parties. La 1ère souligne le rôle important des écrivains dans la promotion de la numérisation en Europe. La 2ème examine les différentes options pour soutenir les écrivains à l'ère numérique. La 3ème partie porte sur la gestion collective du droit d'auteur, et enfin la 4ème apporte des réponses au programme de réforme du droit d'auteur proposé par le Parti Pirate allemand. Seront présentes dans le courant de cette après midi 2 députés européens qui connaissent très bien ces questions et qui défendent la propriété intellectuelle et le droit d'auteur au sein du Parlement européen: Cecilia Wikström et Helga Trüpel.

B. Défis de la révolution technologique

La Fédération des Associations Européennes d'Écrivains (FAEE/EWC) défend, comme vous le savez, la diversité des littératures en Europe. Elle sensibilise les décideurs politiques du rôle que jouent la culture et les créateurs pour la réalisation des objectifs tant politiques qu'économiques de l'Union européenne. La diversité culturelle est une richesse et pas un frein pour l'Europe, et le secteur culturel, nos industries culturelles et créatives, constituent un levier de croissance formidable, surtout en cette période de crise économique. Par conséquent, je partage pleinement vos objectifs et je vous assure de mon soutien pour faire avancer ces messages à Bruxelles.

[4] Original French version.

Nous vivons aujourd'hui une révolution technologique qui offre de nombreuses opportunités aux écrivains mais qui pose également certains défis. Internet favorise une dissémination rapide des œuvres et aussi un accès plus large du public

à l'héritage culturel mais, en même temps, la rémunération des créateurs n'est pas toujours assurée.

A Bruxelles, les trois institutions de l'Union, la Commission européenne, le Parlement et le Conseil, mènent une réflexion sur le difficile équilibre à trouver entre l'accès à la culture, d'une part et la rémunération et la protection des droits des créateurs d'autre part. Nous sommes en train de mettre en place un cadre juridique qui favorise une numérisation à grande échelle. Toutefois ces efforts doivent être accompagnés par des mesures efficaces de protection du droit d'auteur.

C. Avancées dans la numérisation en masse : Œuvres orphelines et memorandum d'entente pour les livres épuisés

Contrairement à ce que certains prétendent, les choses évoluent. Nous aurons l'occasion d'écouter Kerstin Jorna qui nous donnera un aperçu des propositions législatives existantes et à venir de la Commission européenne et qui sont contenues dans la stratégie de Michel Barnier du 24 mai 2011 pour la création d'un marché unique des droits de propriété intellectuelle.

J'insisterai simplement sur le fait que cette communication de Michel Barnier est la 1ère stratégie globale en matière de propriété intellectuelle jamais proposée dans l'Union européenne !

Je citerai 2 initiatives en particulier:

Tout d'abord, *la proposition de directive sur les œuvres orphelines* est en cours d'adoption en 1ère lecture par le Parlement européen et le Conseil. J'aurai l'occasion de participer aux négociations en trilogue cette semaine et j'ai bon espoir que nous trouverons un compromis sur les derniers points qui restent en suspens. Nous permettrons ainsi à nos bibliothèques et nos radiodiffuseurs publics, de mettre à la disposition du public une partie considérable de notre héritage culturel. Toutefois, cette numérisation ne doit pas porter atteinte aux intérêts économiques et moraux des écrivains et des créateurs. Je suis particulièrement attachée à ce que les solutions proposées respectent cet équilibre.

Cette directive vient compléter *un memorandum d'entente* sur les principes clés de la numérisation et la mise à disposition des œuvres indisponibles qui a été signé le 20 Septembre 2011 par des bibliothèques, des éditeurs et des auteurs. Cet accord, qui servira de modèle pour la conclusion de nouveaux accords de licences volontaires, favorise la création de bibliothèques numériques et prouve que le droit d'auteur n'est pas un obstacle à l'ère numérique.

D. Conclusions

Permettez-moi d'insister sur un dernier point. Tout droit doit être appliqué. Ce principe, pourtant simple, est constamment remis en question par certaines forces politiques. En prônant une idéologie de « tout doit être accessible gratuitement » ces forces portent gravement atteinte à votre rémunération.

Vous pensez bien évidemment au parti pirate et à ses alliés. Laissez-moi aller plus loin parce que je suis connue pour mon franc parlé. Le groupe socialiste qui était l'allié traditionnel des gens des lettres et de la culture, les a délaissés, vous a délaissé, depuis longtemps. Derrière de formulations qui demandent à « adapter le droit d'auteur » ou à « proposer de nouveaux business models » se cache une réalité bien triste : l'abandon de la défense des droits de ceux qui créent, de ceux qui innovent dans un but purement électoraliste. Vous devez donc faire entendre votre voix plus fort, prendre des initiatives pour montrer clairement aux décideurs politiques que ce n'est pas la voie du populisme qu'ils doivent suivre.

Je n'ai pas l'intention de monopoliser votre temps, je cède la parole à Kerstin Jorna, chef de l'Unité « Propriété intellectuelle - Propriété industrielle » à la direction générale marché intérieur de la Commission européenne et aussi directeur faisant fonction.

Je vous remercie de votre attention.

Keynote Speech

Kerstin Jorna

Ladies and gentlemen, thank you, first of all, for organising this event, which really helps to advance our collective understanding and reflection.

The question really is: which area of copyright do we need in the Internet age? The Berne Convention is the legal text by which all Member States are bound, and by which the European Union is bound. It has already enshrined authors' rights, and the concept of intellectual property for two hundred years! It is not a grey and dusty concept. The Berne Convention has survived the arrival of radio, television, satellite broadcasting... why should it not be able to deal with the Internet?

Six percent of employment in Europe is in the creative industries. That is a very large number of jobs. The Internet is an opportunity for creative artists and for authors. It is an opportunity for them to reach out to new audiences, to new groups of citizens, to young and old, to people speaking other languages. It is also an opportunity for citizens, five hundred million in Europe, to have access to what your members write. To have access to exchanges and dialogues taking place in different shapes and forms. It is also an opportunity for publishers to develop their trade, to discover, and to promote talent – and to give talent a chance above and beyond the printed book.

Of course, new opportunities always also mean changing old ways. And that is not always simple, because if you have done something for the whole of your life in one way, you are generally less open to change. For authors and publishers changing could mean: new contracts, new licensing arrangements, new advertising and promotion channels. For citizens it also means a change. It means new ways of consumption and it also means new curiosity.

What does it mean for the European legislator? Legislation has no purpose on its own; it is a tool. It removes borders, and allows companies and citizens to reach out to their fellows. European legislation establishes a level playing field. It gives legal security; what rules apply in a given context? That is important if you want to invest. But the legislator, can only enable. We can enable you. We can enable citizens. We can enable authors and publishers. We cannot determine what is on offer, or who reads what and when. These are determined by the business models that you will have to develop. The legislator only determines the framework in which you can write and publish your works. As Marielle Gallo already mentioned, the Commission adopted in May 2011 the EU IPR Strategy, based on the resolution from the European Parliament.

We need intellectual property in Europe, in order to stimulate innovation, stimulate cultural diversity, and, indirectly, stimulate jobs. The strategy we devised is a strategy of solving the "pain points", rather than creating from scratch a completely new

system. We don't have to re-invent the wheel. One pain point in the area of copyright, that Marielle already mentioned, is the question of orphan works. Thanks to you and your fellow writers, we have treasures in our libraries and public institutions. They should be online, and they should be accessible to everybody, not only to those who make the effort to go and ask for the physical copy. Digitising has two implications: one, it costs a lot of money, and two, you need to have the author's permission. But sometimes it is impossible to find the author. We proposed a text that would allow public institutions to go on with digitisation and to make documents available after a diligent search for the author. If they can't find the author at that stage, they can use the work and make it available. Should the author afterwards reappear, then there would be compensation. We will hopefully be able to conclude the work this week. First pain point solved!

The second pain point: out-of-commerce works. Where publishers don't want to invest and republish a book, it would be great if the book could at least be available online. That is what this memorandum of understanding on out-of-print works is about. Second pain point addressed!

We also have the issue of collective management of rights. The Internet means mass-use of works, and, if you have a large number of works being used, you cannot efficiently negotiate with every single author. It is not efficient for the author, and it is not efficient for the user either. For the last two hundred years collecting societies have been operating on a national basis, within their territory. What they lack is experience in licensing cross-border. That is new. And it is very complex. Because it is one thing is to license cross-border, but quite another to monitor and make sure that the author in question has been paid for the way the work has been used. That is a new part of their trade. We want to make sure that all collecting societies in Europe are very efficient at licensing cross-border. Before the summer break the Commission proposed to harmonise a number of basic rules on the operation of collecting societies. Third pain point addressed!

Another pain point: private copying levies. Twenty-seven Member States have twenty-seven rules. And it is a big frustration for consumers because they pay a levy, but they don't really know why, and what for. And sometimes it is very difficult to sell equipment across borders because of the amounts and the way levies are collected are not comparable.

We started a mediation process, under the chairmanship of Mr. António Vitorino, former Commissioner, in order to find out how we can streamline the current twenty-seven systems into a more rational and efficient system that would both satisfy the authors, the users, and the citizens in particular. That is a pain point that is not yet solved - but we are working on it!

Finally, we are also looking at the question of how the current copyright system functions. We have seven Directives, and the basic directive, with the centerpiece

being the Directive of 2001. Ten years after its adoption, it seems justified to assess the way in which this Directive is working. Under the Directive we have rules on what kind of acts are subject to licensing, what kind of acts are subject to remuneration, and what kind of acts are subject to neither. We will look at this issue next year.

And a last word on the method: legislation is only one possible tool, we can also work with a Memorandum of Understanding between stakeholders, which could result in licensing agreements, but on a broader scale. In terms of method: we also work through consultation papers, such as the green paper on audiovisual works, and we work through hearings. We recently had a hearing on certain aspects of the enforcement of rights. I want to encourage you to work with us, and to have this input, and hopefully support our 'solving the pain points'-strategy. Thank you very much.

I. Highlighting Access for the Benefit of Society: the Role of Writers in the Promotion of Digitisation in the EU

Open Access

Pirjo Hiidenmaa

Open Access means free access to research results when researchers use tax-payers' money, i.e. when they have obtained their funding from public research funding organisations (governments). This initiative was taken by researchers themselves in the 1990's as a critique towards scientific publishing houses which were making huge business in scientific publishing. Nowadays there are thousands of researchers, research funding organisations, research institutes and universities that have signed the principles of Open Access. This is the policy in research funding at European level, in Framework programmes and in the new Horizon2020 programme.

There are several ways to organise the Open Access (Golden line: free journals, Green line: free repositories, free articles in journals, etc.). As we all know, there are no free publications; someone has to pay for publishing. Usually the costs are divided between researchers who need extra work if organising free journals, and institutes which organise the publishing repositories or pay for free articles. After all, there are good signs of open access in relation to scientific results.

I want to underline that Open Access principles concern only scientific publishing, i.e. academic textbooks, handbooks, theoretical overviews, etc. not everything that researchers and academicians might publish.

Education is another area where access to materials is needed in order to guarantee the democratic educational system, access to education and *bildung*. During the print era this was simple: schools bought the materials with taxpayers' money. In spite of free access on the user's side, these books were widely photocopied. The remuneration was organised by licensing the copies. In Nordic countries the system is collective and it has worked well. In the digital era, authors have negotiated licensing systems which are flexible and reasonable. Due to these systems, there are some excellent examples in European schools where high quality materials can be used in education. Usually, authors have been the first ones to organise the licensing while publishers have hesitated.

Access to materials should not mean that authors and right-holders give their creative work without compensation or remuneration, but that legal systems are applied to create business models which are good for readers and writers.

An Overview of the EU Initiatives Endorsed by Authors in the Book and Text-sector

Myriam Diocaretz

The EU Digital Libraries: Orphan Works, Out-of-Commerce, and Access for the visually impaired readers.

The digitisation of books and text works place authors'[1] rights and the copyright protection in a conundrum between two main areas that intersect: On the one hand, the copyright law and new business models of the private publishing sector for digital production, and on the other hand, the large scale digitisation of books and other text materials through national digital strategies within a European framework.

The European national authors' associations have been working intensely and in a continuous line to cooperate for a wider access of their published works, and have, in the majority of cases, embraced the digital advantages that Information and Communication Technology (ICT) offers for their work and for the benefit of readers. For writers and translators the more readers/listeners/viewers they have, the more they reach their ultimate goal to contribute to the societal evolution of culture and knowledge.

Libraries and authors share a crucial human and societal mission: it is their common interest that the European cultural heritage becomes publicly accessible. Moreover, libraries and authors cherish and nurture the citizens as readers. Therefore, it is important to underline the authors' support to the i2010 Digital Libraries Initiative launched by the European Commission in 2005 at European and national levels, which continues developing to the present under a new policy framework.

The European Writers' Council/ la Fédération des Associations Européennes d'Écrivains (FAEE/EWC) played a key representative role on behalf of authors in the book and text-sector through its collaboration in the Copyright Subgroup of the i2010 Digital Libraries Initiative - High Level Expert Group (2006-2008), which delivered a final stakeholder consensus report on "Digital Libraries: Recommendations and Challenges for the Future" (December 2009) on Orphan and Out-of-Print Works, with key principles for databases and rights clearance centres, and also outlining the then yet to come ARROW project. At present the EWC is a partner in the ARROW Plus project to promote and implement the use of the ARROW[2] system for the diligent identification of orphan works.

1 In the context of the present conference, the notion of 'authors' will refer predominantly to include writers and literary translators in the text-sector.

2 ARROW is the acronym for 'European Registries of Rights Information and Orphan Works'. It is a tool to facilitate rights information management in any digitisation project involving text and image based works. http://www.arrow-net.eu/ It was followed by ARROW Plus. See http://www.arrow-net.eu/what-arrow-plus

Equally important – in the previously mentioned 2009 report – was the proposal for a "Memorandum of Understanding on Diligent Search Guidelines for Orphan Works"[3] paving the way for the subsequent drafting and signature of the final Memorandum of Understanding,[4] which was co-signed by EWC. However, it must be mentioned that from the beginning of the discussions it has not been easy to find a common solution that is satisfactory to all stakeholders. For example, authors need to assess the options that allow them to maintain the equilibrium between the interests of libraries, of publishers and of their own. The same is valid for each of the stakeholders, from their own perspectives. It should also be noted that "No agreement was reached by the stakeholders on the possible need for specific due diligence criteria for mass digitisation."[2009 report, p.4] This matter was left for future consideration.

Next to this, the EWC's full support of greater access to copyright protected works for visually impaired readers, dyslexic or people with other print disabilities deserves special mention; this important initiative is a way to solve the "book famine" which these communities have been experiencing. On 14 September, 2010, after a year of systematic dialogue, an agreement was reached as another Memorandum of Understanding signed by authors (through EWC), publishers, CMOs, and endorsed by the print-disabled European and international organisations. The MoU directly addresses one of the objectives of the Digital Agenda for Europe, namely "to enable people with disabilities to gain full access to the benefits of the digital society."[5] In 2012 the Commission's Copyright Unit has further facilitated a dialogue between this group of signatories with providers of accessible formats for the print-disabled people, to constitute the European Trusted Intermediaries Network (ETIN)[6] through which publishers can provide easier access, while the trust about the authenticity and the integrity of the work and other authors' moral rights can be guaranteed in the distribution of copyright protected works. Another added-value is that a cross-border distribution can be carried out on the basis of mutual recognition and trust between the authors, publishers, and users/readers through a European system built in each Member State.

Another important strand of activities refers to the Out-of-Commerce works, which concerns authors more directly. Following the original stakeholder proposal of a "Model Agreement for Out-of-Print Works" (2009 report), another milestone was reached through the ground-breaking "Memorandum of Understanding: Key Principles on the Digitisation and Making Available of Out-of-Commerce Works" for books and journals. It was signed by the European representatives of publishers, authors, libraries, and CMOs, on 20 September 2011, witnessed by Michel Barnier, Commissioner for Internal Market and Services.

3 See http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/hlg_final_report09.pdf

4 The MoU was signed in Brussels on June 4, 2008.

5 IP/10/1120, 14/09/2010. Copyright: Commissioner Barnier welcomes agreement on greater access to books for the visually impaired. http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1120. See also IP/10/581, MEMO/10/199 and MEMO/10/200).

6 ETIN is developing parallel to the TIGAR – the Trusted Intermediary Global Accessible Resources –project launched and led by WIPO on November 1, 2010, to enable publishers to make their titles easily available to trusted intermediaries. See the TIGAR WIPO website: http://www.visionip.org/tigar/en/

It was in the 2010-2011 stakeholder dialogue on out-of-print works that the term was changed to 'out-of-commerce', consequently, the MoU provides a new standard definition:

"For the purpose of the dialogue on out-of-commerce works, a work is out of commerce when the whole work, in all its versions and manifestations is no longer commercially available in customary channels of commerce, regardless of the existence of tangible copies of the work in libraries and among the public (including through second hand bookshops or antiquarian bookshops). The method for the determination of commercial availability of a work depends on the specific availability of bibliographic data infrastructure and therefore should be agreed upon in the country of first publication of the work."

During the year of dialogue and as part of the spirit of consensus amongst all participating stakeholders, EWC, EVA and EFJ drew a set of authors' guiding principles that remained as a point of reference in the discussions; these are presented today by Carola Streul. Currently there is a task force for the implementation of this MoU on out-of-commerce works, led by the publishers, the libraries, CMOs and endorsed by EWC, within the same group of signatories.

The acknowledgement and involvement of all stakeholders in the dialogues is a *sine qua non* for success. Keeping the role of authors visible instead of commonly implied in the term "rightsholders" is a constant challenge. This explains the EWC's insistence to request an explicit formulation in the various EU reports and Memoranda stipulating that "rightholders" refers to authors of literary and artistic works in the first place, and publishers and other rightsholders second (as in the MoU on out-of-commerce works).

Furthermore, the same is necessary at a Member State level. Authors run the risk of remaining only presumably included as they may not often be mentioned explicitly as such in the agreements. It is also important to stress that the national authors' associations have been instrumental in the achievement of different agreements made for the digitisation of books and text works in several EU countries, set up under the specific Member States digitisation strategic governmental frameworks. In short, authors often need to make their existence explicit.

One example is the Swedish Writers' Union which, together with the Swedish Publishers Association and the National Library of Sweden signed a Memorandum of Understanding on "Sweden's Digital Library" as early as in December 2009. At the same time, the Swedish Writers' Union and the National Library signed an agreement for a small pilot project on the digitisation of older books called "The 40-ies". Both documents were the result of the Swedish Writers' Union's efforts (together with the library) to put pressure on the legislator and the publishers to get an Extended Collective License on the digitisation of library collections.[7]

[7] I thank Thorbjörn Öström for this information.

Through the previously mentioned and emerging agreements at national and EU levels the authors' societal contribution in collaboration with libraries is being fulfilled to a great extent.

Now that in the EU there is a set of clear definitions around orphan and out-of-commerce works, other steps need to be taken which are outside of the realm of digital libraries but remain relevant, depending on how the libraries and Europeana develop their new business models including the private-public partnerships.

What Needs to be Done?

In view of the previously mentioned Europe-wide contribution from authors to the building of digital libraries, the next steps would be to look deeper into what needs to be done; therefore, as a social exchange, it seems fair to ask for the protection of authors' rights in their full dimension.

The many *varieties of digital uses* of published works demand new approaches: to name just a few, we have the digitised formats, the digital born publications, and the parallel production (printed and digital). Equally important is the new life which out-of-commerce works can have through digitisation by a library or through a new publisher, which are works in which the rights in the majority of cases have reverted fully to the author; next to these we have the related hybrid model of print-on-demand. Another important change comes with the emerging online library services, in which the making available of copyright protected works in digital format prompts an update on the Public Lending Right to include digital lending.

The eBook is a result of innovation and should be a welcome source of knowledge, information and entertainment for readers instead of a challenge. eBooks comprise the fuzziest area, including their very nature. The question "What is an e-book?" has been asked since around 2000-2001, and is still fundamentally relevant. Is it a 'service' that can be used, or a 'digital' – intangible – 'product' which can be acquired and owned? How it will be defined will determine not only its pricing regulations in the market, but also the business models and the remuneration to which authors are entitled, in addition to the distinct regulatory frameworks that apply as a service or a product in the EU Internal Market. Moreover, the eBook concept in the cloud technology and streaming media, as well as other emerging digital services may fall within different legal and market approaches.

Digitisation is changing the role of libraries to digital public library services. In most countries the digitisation practices are also pushing innovation in preservation. For example, as it has been officially declared, in the Nbdigital initiative of the National Library of Norway legal deposit is becoming increasingly digital, and printed books and documents exist parallel to the digitised collections. In the EU context, this is one more example where making available of digital works makes an update of the Public Lending Right to include digital lending urgent.

Where More Help is Needed:
In order to achieve a much needed balance between access granted by authors directly or through the intermediation of publishers and collective rights management organisations, the contractual agreements need a renewal of basic guiding principles towards equitable balanced conditions for authors to negotiate: authors need fair contracts; these can be partly regulated at EU level, to make it possible to bring to an end the authors' situation as recipients of unfair contracts; and partly through the bilateral agreement between authors and their publishers. The emerging set of digital uses of works is an evident area that needs urgent revisions for regulations in terms of minimum requirements to protect the professional authors who, no one can deny, are the foundation of the creative and production chain in the book, text sector.

For politicians engaged in the field of culture and intellectual property rights and copyright it is important to be aware of the existing unfair contracts or unfair contractual practices which perpetuate the position of authors on the weaker side of the negotiations; unfair contracts lead to endangering the social, economic, humane conditions that are indispensable as in any other profession of the creative sector. Moreover, there are gaps of knowledge to be addressed at EU level, such as more data, statistics analysis and independent research on writing, reading, in addition to the publishing and the content industry. Impact assessments are needed not only on the 'industry' as such but on the social and economic dimensions of writing as a profession, as the primary source of the book, reading, and publishing value chain.

Given the new and emerging technologies and ICT services it is also important to gather evidence about who or what entities are reaping the benefits of access, drawn to a large extent from the exploitation of the works of authors and creators.

Imagine contemporary life without writing, without reading, without stories, characters, without essays, without translations, without history, without philosophy, without plays, without scripts, without fairy tales, without fantastic worlds created from originality and of quality. It would be the oral, preliterate tribalism age, as M. McLuhan called it. Imagine on the other hand that each day there are hundreds of thousands, perhaps millions of works being created for readers of all ages, cultures and languages.

In conclusion, it is crucial to empower authors not just to ensure their economic sustainability but also so that they continue fulfilling the needs and desires of millions of readers to get information, to be entertained and to grow through learning, because the readers of today – of all ages and cultures – are the potential resource and the hope for the knowledge of tomorrow.

The Authors' Key Guiding Principles

Carola Streul

The European Writers' Council /EWC, the European Federation of Journalists /EFJ and the European Visual Artists /EVA have a history of joint work representing the interests of different authors in print media. EWC represents the writers and literary translators, EFJ the journalists which includes writers and photojournalists and EVA represents authors of visual works, art work, photography and illustrations – the latter coming into play mostly as embedded images in print media. Together we drafted and presented four key guiding principles at the Stakeholder dialogue on the use of out-of-commerce books.[1] The dialogue started in November 2010 and ended successfully with a MoU signed in September 2011 by libraries, publishers, authors and collecting societies.

Looking back we realised that the four key principles have a meaning not just for the purpose we drafted them for, but also for a joint position of authors and authors' representatives beyond the specific stakeholder dialogue.

This is why the four authors' key guiding principles are shared with you today:

In the introductory part it is emphasised that authors appreciate new models and platforms to disseminate their works.

They acknowledge the need for legal certainty for all parties concerned that are investing in scanning and digitisation and in the development of new platforms and models.

But authors also need legal certainty.

The four principles may be titled as follows: RESPECT, SEARCH, OPT-OUT, REMUNERATION and I will finish with a notion advocating the use of the term AUTHOR instead of an implicit inclusion into the term rights holders.

1. RESPECT

Principle 1

Respect for authors' rights including moral rights and economic rights, and in particular for the requirement of prior authorisation by the author for each use, such as scanning, digitisation, public display and making available, as well as the respect for the integrity of the work and the complete and correct mention of the author's name.

[1] The stakeholder dialogue was facilitated by the Copyright Unit, DG Internal Market and Services, European Commission.

Respect for the authors' rights, as we worded it comprises moral and economic rights.

a. Moral rights have a function in protecting the value of a work which is not material and the relation of the author to his or her work. The moral rights of indication of authorship and protection from modification of a work have an effect on the economic rights as well.

i. Crediting the author

Where the author's work is used he or she has the right to be credited as the author. The credit maintains the link to the author when the work is disseminated. In the analogue and digital environments it is indispensable to identify the author. If authors were not credited in analogue publications the damage was limited to a limited paper edition. But with the digital shift the damage is extended without technical boundaries. The phenomenon of untraceable authors – the orphan works – has its main source in the lack of correct and full crediting.

ii. Integrity of the work

A work may not be altered and published in its altered version with out the author's consent. Authors create original works that contribute to the pool of cultural goods which are an inspiration for creations by others. The national laws in Europe provide for rules that strike a balance between the different interests and rights. Respect for the original creation merits to be promoted and that requires that authors dispose of effective tools to protect the integrity of their works.

In the United Kingdom authors are often forced to waive moral rights within buy-out contracts. When their works appear in an altered version and without credits on the Internet it is difficult to prove their authorship and claim rights.

b. Prior authorisation of each use

The principle of prior authorisation has been infringed most spectacularly by Google in the Book Search project in the United States. In general authors are ready to negotiate rights for digitisation as long as conditions are fair. Licenses can be negotiated collectively by collecting societies which facilitate the process for large scale uses. For instance the visual collecting societies have set up OLA a multi-territory licensing body for worldwide online use of art work.

2. SEARCH

Principle 2

Diligent search to identify and/or confirm the status of the work as Out-of-Commerce, and of the author of text in books or other print media; whenever relevant, separate diligent search for the authors of embedded works which are part of the main work.

a. Diligent search for rights holders on books should also include the authors of text and images because to search only for the publisher might be insufficient. Even if a publishing house has given up production for any historical or specific reason, the author may be identified and located. In particular when books were published long before the introduction of digital rights by the two World Intellectual Property Organisation/ WIPO Treaties and Directive 29/2009, it is questionable that all rights concerned are fully transferred to an intermediary. Art works belonging to the repertoire of a collecting society are regularly not licensed beyond a limited edition.

b. ARROW is a project of libraries, publishers, collecting societies and authors to set up a service to facilitate diligent search. EWC participates for writers and EVA works on a feasibility study investigating whether images can be included into ARROW. There are promising elements when embedded images carry credits but legal certainty for all images in books cannot be granted – libraries do not register all information of images and illustrations in books. Without a reliable full record there is no certainty that all rights of books are cleared. Several picture agencies apply image recognition software and are confident that they will find many matches once the book is already digitised but not before its transformation into a digital format.

3. Licenses: OPT-OUT

Principle 3

Voluntary individual or collective licensing with an opt-out possibility through collective management organisations which include authors in their governance to a proportional extent or, if the latter is not applicable, a guarantee of the involvement of the authors concerned and/or their representatives in the rights clearance negotiations.

4. INALIENABLE REMUNERATION

Principle 4

Inalienable remuneration for authors for all uses of the work, and clear stipulations that differentiate between commercial and non-commercial uses.

a. In principle all uses are to be remunerated even if the author is not identifiable or cannot be traced. To allow for unpaid usage of protected works sends out the wrong message and indirectly damages other – identifiable – authors. They have to compete with works that can be used without authorisation and license fee. Authors need to make a living out of their work, the same as in other professions. Bearing in mind that many authors have insufficient social insurances and young authors need promotion, remuneration for all protected works should be obligatory with the option to create social and cultural funds for authors as well as support for non-commercial collections that invest in the digitisation of works.

b. The differentiation between commercial and non-commercial uses should be maintained. In the Directive 29/2001, there was still a clear distinction between commercial and non-commercial uses. Recently, this distinction disappeared as can be seen in the draft Orphan Works Directive. The need of funding for cultural institutions that digitise their collections is acknowledged. However, the contractual terms are of importance for authors in particular when exclusivity on the digitised registry is granted for indirect commercial usage.

On terminology: "AUTHOR"
The term "AUTHOR" has its own specific meaning and shall not be replaced by "RIGHT HOLDERS", although it appears practical. The author certainly is the original right holder on a work but he or she is much more to the work and the work to him or her than the right holding status. After all, there would not be a value chain without the author.

Highlighting Access for the Benefit of Society

Cecilia Wikström

First of all, thank you Marielle for inviting me to this conference. It is an honour as always and a pleasure at the same time. I do feel at home in these surroundings here today, because I am an author myself. I've published several books as well as plays for the theatre, so I feel quite at home to share my views this afternoon with you. Even though for the time being I am working, as is Marielle, for democracy in Europe, I have no time to write anything anymore, except from very political, boring texts. So the angle I will take on today's topic is to share with you some of my thoughts and views on the opportunity for writers in the digital and globalised age, where we all live.

Indeed, we live in a world that is developing extremely quickly. A hundred years ago it could take a very long time before a book published by an unknown author in Europe would make its way to other countries, as well as other continents. It was almost unheard of. Sending books around the world could take weeks and months, and very few or maybe even none of the authors at that time had any chance of distributing their works themselves. I happened to read in the last two years, a biography on August Strindberg, who we're celebrating in Sweden in 2012. It is his hundred anniversary since he passed away and it's really interesting to think about the difference between being an author today and being an author a hundred years ago in Europe. Indeed Strindberg did not reach out to many outside Sweden, except for the time when he happened to live in France, and when he lived in Switzerland. However, he had to distribute his work by himself, with a copy in his hand, in search for publishers in the various countries where he wanted his work to be published.

Today the situation is completely different. There are 2.2 billion internet users and thus potential readers in the world. We can fly across the world in a matter of hours and more and more people move and live in other countries and on different continents than where they were born. More technology has enabled the writer to publish his or her text in a variety of new and innovative ways. A text published on the internet may be immediately available to all these 2.2 billion internet users in the world. The platforms offer the possibility of making available works that have previously been out of print, due to a lack of commercial interest, as a fully new print run, either by digital distribution or by print on demand. Therefore, one of the obvious potential strengths of the internet is the possibility for the gathering of a critical mass of people who are willing to pay for content, through micro-payments. This is an interesting point because small niche genres, or new, hidden, lesser known writers can generate interest for their work and gather a fan-base online. This is significant as it would have been impossible to find in an offline context, in a small city, maybe in the north of Sweden where I grew up.

In a world where more and more people have an ever-increasing access to huge quantities of written text, I do believe, and this is a profound belief, that there will be an increased demand for quality in days to come as well as for an in-depth understanding, because there is a lack of that today. Every young person believes that he will have access to the truth, by pushing a digit on his computer and this is so fundamentally wrong and a big mistake. An increased demand for quality will arise if it is not already here and this will in turn lead to a good potential for services to identify quality. This service is of course already offered to some extent by publishers, magazines, reviewing texts, etc., but I am sure we will see an increase in the amount of services directing users towards high-quality content, in many, many ways.

For writers all over Europe, the access to digital archives, as we have just heard, to historical documents as well as relating to the activities to our political institutions is also a very positive element of digitisation. In this context I do believe that in Europe and our institutions we should be pushing for additional access to EU-documents. Currently, there are strong forces amongst our Members' States and the European Commission, to limit the access to EU information and to documents for citizens, for journalists and also for authors and writers, which is a shame! I think that we here in the European Parliament must stand up for transparency and access to documents, and this is a core issue. I know this is not the main topic of our discussion today, but I wanted to take the opportunity to even extend to you this very strong felt belief that I have. We should not forget that writing, as well as politics, is not something that comes out of nothing. It is not done in a vacuum, but in a context. Writers may publish their work through digital platforms or with the help of digital technology, but they can also acquire the information needed for their work, through digital services.

Coming back now to the core of today's debate. As a legislator on the Legal Affairs committee, I am faced with the question: do we need to fundamentally change copyright, in order to adapt to this new reality where we live? My answer to that question is no. We do not need a fundamental change. At least not something that I would define as 'fundamental'. The basic idea for copyright is and remains to give the author of a work, control over how he or she uses the work, commercialises it, or chooses not to commercialise it at all. There is a free choice, and it must remain as such. It gives both moral and economic rights. These rights are then limited in time, with our limitations such as the right to quote.

Concerning the academic world, again, this fundamental core of copyright is still valid. Even if we are now in a digital age, and live in a digital age; however, in my opinion, we should be considering whether we don't need to harmonise some of the more detailed rules on copyright in Europe, in order to give citizens, and indeed also to writers, a very fair chance to know and to learn the rules in all Member States in our union, in order to be able to publish everywhere throughout the Union, throughout the twenty-seven Members in the European Union today.

After all we are a Union, not a state, but a union of human beings relating to each other, through print, through the spoken word, and through sharing with each other the fundamental thoughts what it is to be a human being, what it is to live in the European society today.

However, one aspect of copyright that could benefit from some harmonisation is the area of exceptions and limitations. I do think that in principle a European citizen should know what he or she is permitted to do with a legally acquired work. This could also keep writers informed of what they can do with other people's texts while also informing what others are allowed to do with their texts. The Directive on Orphan Works currently being discussed at the European level could also help to bring clarity for the use of orphan works. Personally I believe that a reasonably balanced directive that increases the possibility for archives and libraries to give access to orphan works, while respecting the fundamental principles of copyright, could be of a great value to authors.

I do have some thoughts I would like to share but we are discussing the pirates later on and I would be happy to come back on that topic. Again, I would like to remind you all of the previous discussion. Authors need access to other people's work; historical data, political documents, etc. since the creative process happens in a context; always in a context. I hope that in days to come we will be able to make full use of the possibilities offered by modern technology. I hope that we will be able to do this at the same time as we keep the fundamentals of copyright intact, and do necessary modifications, to adapt it, to function well in a modern, globalised society in the digital era. Thank you very much.

Discussion Session I

Patrick Ager, European Composers and Songwriters Alliance (ECSA):
—I have one question and one comment indeed, and I would like to start with the comment to Cecilia Wikström, mentioning fan-based, online and micro-payment services or crowdfunding. I think it surely is an interesting idea for performing artists, but it should be taken carefully that it is not the business model for all. My members are writers; they are not those who sell t-shirts after concerts, they write music for film, for TV, etc. so they have no fans as such. So I think it is a good idea, but let us be careful not to generalise too much. And secondly, I was very struck by the statement on contracts and on unfair practices for artists, for many writers. Certainly from our point of view a fair remuneration for authors ought to be included as well.

Cecilia Wikström, MEP, Group of the Alliance of Liberals and Democrats for Europe (Sweden):
—Thank you very much, very interesting indeed. When I was thinking of this seminar today, I focused entirely on authors of books, and not on songwriters, and I would love personally to have an online fan club on the Internet, that would be terrific, there are so few authors that would have that, so let's really open people's minds, to open that up. That would be fantastic. The musicians have the fan clubs anyway.

Bernie Corbett, Writers' Guild of Great Britain:
—I too would like to address what Ms Wikström said about micro-payments. We are enthusiastic about the possibility of micro-payments. If I wish to read one of Ms Wikström's books, it would be very easy for me if I could go to her own website and consult her book, look something up and maybe only look at one page, maybe only pay one cent. These things sound very trivial, ten cents or half a cent, but these things are part of the future. They add up. If I can persuade a million people to pay me one cent each then my payment is ten thousand Euros and that is a substantial sum of money. The trouble is, these systems are only available by going through the huge global corporations: Google, Amazon, iTunes, etc. Will the European Union give less attention to struggling over the details of legislation, and do something practical to set up a micro-payment system that 500 million Europeans can use, so they can trade with one another directly?

Cecilia Wikström, MEP:
—And my very quick response to that would be: it should already have been done. It should have been put in place already. Of course, what we are already doing now, I think politicians should never do this, put up a wet finger and follow the opinion. We should lead the opinion. And lead the people to do the right things so that people can get paid for what they achieve. And if that would have been done five, ten years ago we would not have the situation where we have ended up today. Because this would have been taken care of properly, and would have been addressed properly, long before all the pirates came up from everywhere.

II. Sustaining the Work of Writers in the Digital Age

How Can the Author's Negotiating Positions be Improved? The Challenge of Competition Law

Arne König

The European Federation is the regional body of the International Federation of Journalists which represents around 600.000 members around the world. Its European members represent over 320.000 journalists.

Increasingly, a majority of journalists we represent are becoming freelancers, or in one way or another, not employed. Journalists used to be employed much more. But this is no longer true due to the changing nature of work in the media and cultural sector, and because of the fact that employers no longer want to have employed staff.

The word 'freelance' originally comes from England when knights were selling their service of lance to many different parties. When I was an active freelancer, I earned my living like that for around twenty years. In a year, I could sell my works to around forty different media companies to earn a decent living. I was able to earn one third of my income from re-selling my work, often outside my country, Sweden, while I could maintain the right to re-use my own works. Today, this is impossible for freelance journalists. The major challenge facing journalists today is the unfair contracts which demand them to assign all the rights to use their works to employers and media companies.

One of the reasons for this situation is that freelancers are increasingly seen and classified as entrepreneurs by employers and governments. Employers welcome the change because they can replace employed journalists with freelancers for less money. All of a sudden, I found myself as an entrepreneur, with VAT rights and so on. Freelancers can have some benefits from being entrepreneurs but lose out when it comes to concluding contracts with employers. For example, a freelance journalist would be seen as an equal partner when negotiating a contract with Warner Brothers. In reality, such a contractual relationship is far from equal because in this case, the freelance journalist would have little negotiating power compared to Warner Brothers.

Faced with the new challenge, the European Federation of Journalists has been working on encouraging its member unions to collective bargaining on behalf of the individual freelance journalists who are often at the weaker end of the bargaining table. But media companies often respond to us saying "sorry, you cannot interfere with this because we are conducting business at a company to *company* (i.e. freelancers as entrepreneurs) level and it is a matter of freedom of contract".

This has become a legal issue for freelancers. In Ireland, the trade union was accused of violating competition laws because they bargained collectively on behalf

of their freelance members. In Denmark, there was a similar case where the Labor Court came to the conclusion that most of the freelancers are considered as entrepreneurs, and so their union was not allowed to bargain collectively on their behalf.

This is in contradiction with the international labour standards of the International Labour Organisation (ILO). According to the *ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87*) and *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*, everyone shall have the right to organise, and from that follows the right to be represented in collective bargaining. In a public meeting the ILO representative Karen Curtis re-affirmed these rights for freelancers.

How can trade unions represent their freelance members? Of course a solution must be sought to confront this problem facing freelancers. The international labour standards must be observed to ensure that freelancers can exercise their rights as workers. But in reality, how can we achieve that when we are confronted with a daily dilemma like this: You want to sell your story to a magazine. You present your idea and the editor of the magazine says: "Fine, we are interested. You will have to sign a buy-out contract otherwise you don't get the job." The contract says that you will give away all your rights to the magazine. It includes the right to use your work in all formats, in all publications for unlimited period and time for a one-off payment. There is only one option for the freelance journalist – take it or leave it.

This is the problem. If you say no, and hope to sell your work to another company, the likelihood is that you will find that the second company belongs to the same media organisation as the first one. Today, we have fewer and fewer media companies which are pursuing profits and working based on the same business models. So if you are really unlucky, you will end up in the old German *berufsverbot*, you will not be able to do your job anymore. And this is what is happening for many journalists. I think the group among us who are hardest hit are the photojournalists. Photojournalists are in great difficulties. They can hardly earn a living. Many media houses no longer employ photojournalists as staff members. Most photojournalists have become freelancers. This is a wider issue facing the media and cultural industry. Recently, the European Composers and Songwriters Association (ECSA) launched an official complaint to the European Commission against media companies which were allegedly forcing composers and songwriters into signing buy-out contracts as a pre-condition for their work. We do hope that the outcome will be positive. Following the complaint, the European Federation of Journalists initiated a public campaign together with ECSA and other creators' organisations in Europe to petition against the unfair contractual practices in the media and cultural industry. We proposed a set of principles that respects the rights of authors and ensure a level playing field when negotiating and concluding contracts with employers and media companies. These principles will be helpful.
In the long term, we want to be able to negotiate with employers collectively on an equal footing. In order to achieve this, employers and media organisations have to

be willing to engage in dialogues with trade unions. However, previous experience did not give us much hope. Although regular dialogues between trade unions and employers are taking place in the audiovisual sector, such dialogues do not exist in the print sector. We previously reached an international framework agreement, with one of the German media groups, WAZ, Westdeutsche Allgemeine Zeitung. Unfortunately, we had to terminate the agreement after three years as the employer was not willing to fulfill the agreement.

Our German colleagues are able to find a solution to the unfair contract problem – that is to resolve the matter in court. The German authors' right law allows our colleagues to demand fair payment. There are several victories on court which granted freelancers and their unions their rights to claim compensation from the use of their work. The court re-affirmed that it is not justified for employers and media organisations to demand authors' rights that they don't need. Employers and media organisations must justify their demands for certain rights. Although our colleagues in Germany were granted the victory, it was difficult for individual journalists to bring their employers to court. In reality, they rarely win because when they are winning in court, they are also losing their jobs, their possibilities to sell their work. This is the situation we must overcome.

Thank you very much.

The Status of the Author

Nick Yapp

The author in the European Union and the UNESCO Recommendation on the Status of the Artist of 28 October 1980, Article V 5.

I'll start with a confession. To my shame, only after thirty-two years as a writer have I finally read the UNESCO Recommendations on the Status of the Artist. Reading them, I thought for one moment that I must have died at my laptop and passed on to the authors' Land of Dreams, for the Recommendations not only affirm that there is a need to improve the "social security, labour and tax conditions of the artist, whether employed or self-employed", but also that member states should provide both "assistance" and "material and moral support" for authors. This goes hand in hand with the process of education to create a public "capable of appreciating the work of the author". And, crucially, the Recommendations recognised the right of trade unions and professional associations of artists to defend the work of their members.

The Recommendations were drawn up following a conference in Belgrade in the autumn of 1980. The term 'Artist' was taken to mean any person "who creates… or contributes to the development of art and culture and who asks to be recognised as an artist". The Recommendations were to apply to everyone from ballet dancers to puppeteers, from actors to circus performers, "irrespective of race, colour, sex, language, political or other opinion, national or social origin, economic status or birth" – so I guess that must include every one of us here… or does anyone feel left out?

In preparing this paper, I have substituted the word 'author' for 'artist', in the hope that this will make it easier for us to focus on the issues we're dealing with – it might complicate matters if you have puppeteers in mind all the time. And beyond mentioning this now, I shall plead no special case for the fact that authors (with poets and painters) are the most solitary of creative artists. One other small point – the website version of the UNESCO Recommendation has been poorly proof-read – but we authors are used to this.

As for 'status', well, there is a whole section on this. "The word signifies on the one hand, the regard accorded to authors in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which authors should enjoy."

So far, so wonderful. But many changes have taken place in the world of authors since 1980. Indeed, the reality is that we are not only living through the greatest revolution in writing since the invention of the printing press, but also in the greatest

ever revolution in the dissemination of ideas. Put an idea on the Internet, and it can reach millions of people around the world in a matter of minutes. The speed and irresistible power of this process makes you wonder why and how any regime can still think it worthwhile to operate a policy of censorship.

Let us take a look at what the Digital Age is doing to and for authors. First of all, it has created giant repositories for our work – in and out of copyright – and in so doing, has I think imposed on us two tasks:

- to distinguish between what is and what is not in copyright,
- and to protect that which is copyright.

Even with the help of our brave allies in the Collecting Societies, this is extremely difficult, for there is a strong lobby demanding that once an author's work has been placed on the Internet, it should become common property, for all to share without payment. What are we to think of this idea? Well, not much, because a by-product of this process is that authors are being deprived of payment that they should receive, and recognition that they should be given. I shall have quite a bit to say about money in this paper, not because I'm greedy (I wouldn't have chosen to be a writer if I was a greedy person), but because money buys us valuable writing time and allows us to continue working – just as salaries do for entrepreneurs and designers and engineers and politicians, etc., etc… the list is almost endless, but I think I've made the point. If people are encouraged to think that authors should be paid nothing for their work, then we are living not in a Land of Dreams, but in a Land of Nightmares.

A second serious issue attaches to this. Those who download copyright work from the Internet increasingly do so in the name of Freedom. Everything on the Net, they argue, should be free. This is just a new example of a very old misunderstanding – that getting something for nothing constitutes a Freedom, with a capital 'F'. This is an appalling abuse of the word 'Freedom', making an act of theft sound as though it had something to do with an heroic campaign in pursuit of Freedom of Speech or Freedom of Expression. History teaches us that abusing these words is a very dangerous thing to do indeed.

For the Digital Age has – as yet – done nothing to make words less dangerous than they have always been. In the words we write, we sometimes assemble the most dangerous weapons in the world – ideas. And it is the mark of a civilised society that all of us – not merely authors, not merely non-authors – are allowed to use words to express the ideas, ambitions and criticisms that may help the world to become a better and a more just place. To deny authors this right is to deprive any society of the richest and most constructive means of debate. Time and again, the denial of the right to free speech has ultimately resulted in the use of far more dangerous substances than words, substances that destroy rather than create, that instil fear rather than hope. And once the right to free speech has been established, though it

may have to be zealously guarded, it proves its worth for all time.

To liken the theft of an author's work to Freedom of Speech is like… well, I have to admit to myself, and to you, that my powers as an author have failed me… I can't come up with a simile strong enough to convey my disgust.

It's now thirty-two years since the UNESCO Recommendations were drawn up. Even then, it was recognised: "that national and international legislation concerning the status of authors is lagging behind the technical development of new communication and reproduction media, and of cultural industries…" The pace of change has dramatically accelerated since then. Given the changes we are grappling with, I should like to suggest that it is time for a new examination of the Status of the Author – an examination under the auspices of the European Community that would hopefully produce a new set of recommendations. These could cover such issues as:

- The publication and marketing of eBooks. At the moment, there is little or no regulation, no Minimum Terms Agreement no meeting of minds between publishers and writers' representatives to explore eBook publishing – though this now accounts for 25% or more of book sales in some countries.
- The examination of alternatives to traditional methods of book publishing, with special consideration given to young and first-time authors.
- An investigation into ways in which the technology of the Digital Age could widen the scope of the work of such institutions as public libraries, by exchanging books electronically with each other – even across national borders.

Should the fate of authors be of any concern to society? I think it should – for two reasons; one purely economic, the other more important than economics could ever be. This may be what distinguishes authors from many other people – we think there are some things that are more important than the economy. What dreamers we are!

Here's an economic argument. A few years ago I did some amateur research for an article in the journal of the Writers' Guild of Great Britain. I wanted to see how large are the spin-off industries we authors create – taking into account publishers, printers, agents, editors, the staff of film and television production companies that turn books into films or TV series, and people who work in libraries and bookshops. I was looking solely at UK figures, but the result surprised me. I discovered that more people owed their jobs partly or completely to the work of authors than were employed in British agriculture.

Some may argue that this is a clumsy yardstick, but they are probably every bit as prejudiced in their opinion as I am in mine – which is that what authors do is to provide the initial creative stage from which so much more flows. And that is not something that anyone can do. It requires skill, dedication, a touch of inspiration, and immense hard work. Authors earn their money.

Two responses to the European Economic and Social Committee (EESC) opinion on "Book publishing on the move" adopted on 25.04.2012.

1. The Authors' Rights in the Digital Book

Mathias Lair Liaudet

In its opinion on "Book Publishing on the Move" the European Economic and Social Committee holds that "the immediate priority of the EU should be to undertake a global analysis of the publishing industry in the social, economic, cultural, scientific and artistic development of Europe with a view to defending rights and responding to needs of the other players involved". It can be concluded that in this case the term 'global' is limited to the 'publishing industry'. The Committee has not taken account of the entirety of the publishing chain, digital or otherwise, which extends from the author to the bookshop, parties which are deemed 'other' players. This approach in favour of the industry generates ambiguities. For example, when the EESC declares that "for an industry such as publishing, authors' rights constitute the basis of the legal recognition of the value it has created", it makes the assumption that authors' rights are actually publishers' rights, as being the only factor to generate value.

Impoverishment of the Author

Even so, the EESC states that "European literature is one of the essential artistic and cultural legacies of Europe". It might then be hoped that it would defend the conditions under which the literature of the future is to be created, that it might take account of the fact that the initial creation of value is intellectual and literary, and that the editor then turns this into financial value. Our belief is that a reductionist, purely economic perception of the concept of value is unsatisfactory.

The question of the creation of literary value seems to us to be crucial. Why? Because if digital publishing develops under the current conditions, authors will be impoverished in such a way as to seriously threaten the creative process. What we witnessed with the appearance of the paperback will repeat itself, and in an exponential fashion. We should bear in mind that in France authors at best can earn 10% of the retail price for a current edition but that they receive only 5% for a paperback. This is one of the reasons why the conditions under which authors live in France are deteriorating.

The downward trend in the sales price of digital books will produce the same effects. We are in danger of seeing remuneration deriving from the creation of literary value halved within a few years from now. This is the opposite of the promise of the EESC when it states that "workers should be guaranteed decent work, including freelance workers". This declaration of intent should be backed by actual proposals. As far as we are concerned, we feel that the proportional income paid to the author of a digital book should be the equivalent, in absolute value, of that for a printed work.

Towards a Governance of Authors' Rights

The EESC also highlights the fact that "a governance of intellectual property rights is crucial for the prosperity of the culture", and we are fully in agreement with this. This is why the concept of authors' right must be reaffirmed: authors enjoy the moral and patrimonial right over the work which they have created. This is what French law calls their "intangible property"; that is, authors grow by their creation. They transfer the exploitation of their patrimony to a third party, the industry publisher, for a finite, and hence limited, period of time, while always retaining their moral right. The intellectual property right therefore always remains with the author, and the publisher enjoys only a transfer of the exploitation rights.

In other words, any effort to homogenise authors' rights at the European level could only take place on the condition that current rights in the various European countries must not be eroded. This means that the «copyright system» cannot be used as the model for this homogenisation process. The authors' rights system current in the Latin countries and Germany must be taken into consideration.

So how can these principles be converted in real terms into governance of intellectual property rights in the digital world? Here we include a few suggestions as guidelines for the way in which this governance might be directed:

- Just as in France contracts of graphic publication are different from audio-visual contracts, so contracts for digital publishing should be different from those covering the printed book. Indeed, the fact is that digital exploitation conditions are different from those relating to graphical exploitation.
- Developments regarding digital publication are very far from reaching stability, and particularly as far as the economic model is concerned, it turns out that it is impossible for an author to transfer exploitation rights for 70 years! In any case, this maximum period for literary ownership would seem unsuited to the digital world, since it works in real time, as we say – in short, at a very high speed. The duration of the transfer of rights should therefore be limited to just a few years, between three and five.
- Digital publication should preserve the author's moral right. The environment of the work should take account of this moral right. All digital publications should be subject to a "suitable for digital publishing" statement agreed to by the author.
- The base of the rights should consider all revenues arising from digital distribution, particularly revenues from advertising associated with the publication.
- The conditions governing permanent exploitation and subsequent arrangements should be specified, as they are not comparable to those of the printed book. Otherwise, it would suffice for the publisher to store a file on a server with a view to meeting exploitation obligations. In particular, the publisher should ensure accessibility by the public to the work, regardless of changes in digital formats.

In conclusion, I should mention the fact that in France, on the matter of digital publication, negotiations between the Conseil Permanent des Écrivains (which includes seventeen authors' organisations) and the Syndicat national de l'édition have been under way for four years without having yet reached an agreement. What this means is that action on the part of public authorities, French as well as European, is needed to ensure governance for authors' rights. A European regulatory system would be welcome… assuming it to be a good one! What we mean by that is that it should be crafted with the entire book-chain in mind, which is not limited to the publishing industry, but one which most definitely includes authors. After all, there are several reasons that qualify authors as "creators": they are at the very foundation of the value-added chain.

The recommendation made by the EESC to the Commission that a high level group be set up including representatives from publishing, the graphic and the paper industry therefore seems to us incomplete. This dialogue should include all the actors in the book-chain, which means that bookshops and authors should also be represented.

1. Les droits de l'auteur du livre numérique[1]

Mathias Lair Liaudet

Dans son avis sur "l'édition du livre en mouvement", le Comité économique et social européen estime que « la priorité immédiate de l'UE devrait être de faire une analyse globale du rôle de l'industrie de l'édition dans le développement social, économique, culturel, scientifique et artistique de l'Europe tout en défendant les droits et en répondant aux besoins des autres acteurs concernés ». On peut constater que la globalité ici définie se limite à « l'industrie de l'édition ». Le Comité ne prend pas en compte l'ensemble de la chaîne du livre, numérique ou pas, qui va de l'auteur au libraire : ces derniers sont considérés comme des acteurs « autres ». Ce parti pris en faveur de l'industrie génère des ambigüités. Un exemple : quand le CESE déclare que, « pour une industrie culturelle telle que l'édition, les droits d'auteur constituent le fondement de la reconnaissance juridique de la valeur qu'elle crée », il laisse à entendre que les droits d'auteur sont en fait les droits de l'éditeur, lequel serait le seul à générer de la valeur…

La paupérisation de l'auteur

Néanmoins, le CESE déclare que « la littérature européenne est l'un des héritages artistiques et culturels essentiels de l'Europe ». On pourrait donc s'attendre à ce qu'il défende les conditions de création de la littérature à venir, à ce qu'il prenne en compte le fait que la première création de valeur est intellectuelle, littéraire, que l'éditeur transforme ensuite en valeur financière. Puisque, selon nous, on ne peut se contenter d'une conception réductionniste, seulement économique, du concept de valeur.

[1] Original French version.

Cette question de la création de la valeur littéraire nous paraît fondamentale. Pourquoi ? Si l'édition numérique se développe dans les conditions actuelles, les auteurs connaîtront une paupérisation qui menacera profondément la création. Ce qui s'est passé au moment de l'apparition du livre de poche se reproduira, et de façon exponentielle. Rappelons qu'en France, l'auteur, rémunéré, dans le meilleur des cas, à hauteur d'environ 10% du prix public de vente pour une édition courante, voit ses droits d'auteur ramenés à 5% pour un livre de poche. C'est une des causes de la détérioration de la condition des auteurs en France.

La baisse tendancielle du prix de vente des livres numériques va produire les mêmes effets. Dans le numérique, nous risquons de voir la rémunération de la création de valeur littéraire divisée par deux d'ici quelques années. Ce qui va à l'encontre des vœux du CESE qui déclare « qu'un travail décent doit être garanti aux travailleurs, y compris ceux qui ont un statut d'indépendants ». Cette déclaration d'intention doit s'accompagner de propositions concrètes. Pour notre part, nous estimons que les revenus de l'auteur issus d'un livre numérique homothétique devraient équivaloir, en valeur absolue, à ceux du livre imprimé. Ce qui n'est pas impensable, étant donnée la baisse des coûts de fabrication et de diffusion du livre numérique par rapport au livre imprimé.

Pour une gouvernance des droits d'auteur

Le CESE souligne par ailleurs « qu'une gouvernance en matière de droits de propriété intellectuelle est cruciale pour la prospérité de la culture », ce en quoi nous sommes d'accord. C'est pourquoi le concept de droit d'auteur doit être réaffirmé: l'auteur jouit de la propriété morale et patrimoniale de l'œuvre qu'il créée. Celle-ci, dit le droit français, est sa « propriété incorporelle » ; c'est-à-dire que l'auteur s'est augmenté de sa création. Il cède l'exploitation de son patrimoine à un tiers, l'industriel éditorial, pour une période définie, et donc limitée, tout en conservant pleinement son droit moral. Le propriétaire intellectuel est donc toujours l'auteur, l'éditeur bénéficiant uniquement d'une cession de droits d'exploitation.

C'est dire que toute homogénéisation du droit d'auteur au niveau européen ne pourra se faire qu'à condition de ne pas dégrader les droits actuels existant dans les divers pays européens. Le système du « copyright » ne pourra donc représenter le modèle de cette homogénéisation. Le système du droit d'auteur en cours dans les pays latins et en Allemagne doit être pris en compte.

Comment ces principes se traduisent-ils, concrètement, dans une gouvernance en matière de droits de propriété intellectuelle dans le domaine du numérique ? Voici quelques propositions qui devraient selon nous orienter cette gouvernance:

- De même que, en France, les contrats d'édition graphique sont distincts des contrats audio-visuels, les contrats relatifs au numérique doivent être distincts de ceux du livre imprimé. En effet, les conditions d'exploitation numérique diffèrent en tout de celles de l'exploitation graphique.

- Les évolutions de l'édition numérique étant loin d'être stabilisées, et notamment son modèle économique, il s'avère impossible pour l'auteur de céder un droit d'exploitation pour 70 ans ! De toutes façons, cette durée maximale de la propriété littéraire semble inadaptée au monde numérique, lequel fonctionnera en temps réel, comme on dit ; c'est-à-dire sur un rythme accéléré. La durée de la cession des droits doit donc être limitée à quelques années, entre trois et cinq ans.
- L'édition numérique devra préserver le droit moral des auteurs. 'environnement de l'œuvre devra tenir compte de ce droit moral. Toute publication numérique devra faire l'objet d'un « bon à publier numérique » accordé par l'auteur.
- L'assiette des droits doit prendre en compte tous les revenus produits par la diffusion numérique, notamment les produits des annonces publicitaires as sociées à la publication.

Les conditions de l'exploitation permanente et suivie doivent être spécifiées, elles ne sont pas comparables à celles du livre imprimé. Sinon, il suffirait à l'éditeur d'héberger un fichier dans un serveur pour prétendre répondre de ses obligations d'exploitation. Notamment, l'éditeur doit assurer l'accessibilité du public à l'œuvre quels que soient les changements des formats numériques.

Pour conclure, je dirai que, en France, à propos du numérique, une négociation entre le Conseil permanent des écrivains (qui regroupe dix sept organisations d'auteurs) et le Syndicat national de l'édition est en cours depuis quatre ans sans avoir encore débouché sur un accord... C'est dire que l'intervention des pouvoirs publics, français mais aussi européens, est nécessaire pour assurer une gouvernance du droit d'auteur. Une réglementation européenne serait donc la bienvenue… à condition qu'elle soit bonne ! C'est-à-dire qu'elle soit conçue en tenant compte de l'ensemble de la chaîne du livre, laquelle ne se limite pas à l'industrie éditoriale, mais comprend aussi, et notamment, les auteurs. C'est, après tout, pour plusieurs raisons qu'on qualifie ces derniers de « créateurs » : ils sont au départ de la chaîne des plus-values.

La recommandation faite à la Commission par le CESE de créer un groupe à haut niveau incluant des représentants de l'édition, de l'industrie graphique et de l'industrie du papier nous paraît donc incomplète. Il faut que l'ensemble des acteurs de la chaîne du livre participent à ce dialogue, dont les libraires, et les auteurs.

2. On the Opinion Expressed by the EESC on "Book publishing on the move"

Jean Claude Bologne

On April 25 2012, the European Economic and Social Committee adopted an own-initiative opinion on book publishing on the move. La *Société des Gens de Lettres*, the main organisation working in defence of the moral and patrimonial interests of authors in France, now counting six thousand members and associated for nearly two centuries with all significant reforms regarding author's rights, welcomed the aim of this report, which aims at "defending the rights and meeting the needs" of the sectors in question, and specifically of writers. We strongly regret that authors were not involved in the preparatory work, that there was apparently no plan to consult them in the subsequent work, and that, in this thorough report, they were not the subject of either a specific analysis or of proposed measures.

Authors are by no means secondary players in the world of publishing, as suggested by the wording "other players involved": they are the very foundation of the publishing process. The weakening of this link, which we note over a period of some ten years, constitutes a direct threat to the book-chain as a whole. Undoubtedly, we share the concerns and requests of publishers. We unhesitatingly associate ourselves with the goals of the defence of the author's rights, of the fight against piracy, and of the harmonisation of Value Added Tax rates on paper and digital editions. However, on a number of other points we feel that it is essential that authors or their representatives be consulted directly.

The absence of a specific analysis makes it difficult to interpret this report. We are amazed, for example, to discover that there are only 100,000 writers, illustrators and literary translators in Europe. Bear in mind that the figure for France in 2010 for these three categories stated that 62,501 people had collected authors' rights (source: AGESSA, 2011). We really do not claim to represent 63% of Europe's writers, translators and illustrators, nor can we accept the suggestion, included in this report, that the employees in the publishing business, assessed at 130,000, outnumber the 100,000 writers to be found in Europe. The paid labour force in France involved in book publishing was 13,792 in 2009 (source: MCC, March 2012). Please excuse the figures, but it is important to be clear on what we are talking about. Reducing the number of writers to this extent may lead to the assumption that they do indeed play a secondary role in the book-chain.

We are therefore requesting that, before any decision is taken at the European level on the sensitive matter of authors' rights, an enquiry be carried out into writers' specific problems and demands, and likewise for all other creators. As far as our sector is concerned, we feel that this enquiry should cover three essential points:

1) The specific defence of moral rights, which is guaranteed by the Berne Convention, but in accordance with the various terms and conditions of national legislative systems. We should bear in mind that this is perpetual and inalienable in the countries with the authors' rights system, characteristics which are not sufficiently taken into account in the copyright-covered countries. In all cases relating to digitisation (out-of-commerce works, orphan works, etc.), as well as in the implementation of exceptions to authors' rights, this is an essential dimension of the debate, which only authors can express. In particular, the prevention of the occurrence of orphan works should be achieved by the establishment of national files listing authors and their assigns. Naturally, registration on this file would be voluntary for authors. Non-registration would in no way deprive authors nor their assigns from the full exercise of their rights. To make it easier to establish this file, la *Société des Gens de Lettres* has suggested that notaries could be required to question heirs about the possible devolvement of authors' rights in case of any succession situation. The responsibility of the notary would not be bound by the reply, but by the sole obligation to ask the question. At the end of a generation the problem of orphan works would thus be solved. The diligent search required by various national or European frameworks would thus be similarly simplified.

2) Greater attention to be paid to payment for creative work. We are all well aware of the claim that a work which is free of charge is a myth, as easy to raise as to dismantle. To access our works a reader must buy a computer and often a tablet or a reading device, pay the access provider, run search engines which have their own ways of receiving payment which they are not prepared to share. It would be profoundly unfair for the creator to be the only one not harvesting the legitimate fruit of his/her labour. The problem arises in the same way for orphan works. Favouring a procedure to make material available free of charge means that authorities must bear the considerable costs involved in research, maintaining files, paying the assigns who have been discovered, and so on. We are afraid that up to now these factors have been neglected if they are not funded by the marketing of the digitised works. We feel that collective management would provide an adequate and ongoing solution to this problem. We are all aware f the rights of the general public to "harvest the benefits of the digital revolution". A better division of the resources associated with the distribution of our works would be the only way to monitor the prices charged for them. The manufacturers of material, the Internet access providers, and the search engines can and must be involved in this collective effort which authors cannot undertake by themselves.

3) And lastly it is our opinion that the report by the European Economic and Social Committee failed to adequately stress the harmonisation of the contractual practices between authors and publishers. Yet this is one of the keys to the real involvement of authors in the digital revolution. Since the Internet world has no borders, these matters can no longer be settled by means of national solutions.

Organisations which represent authors, la *Société des Gens de Lettres* in particular, are open to a dialogue about the above and any other subjects. Most authors deeply believe in the digital, since it opens up new horizons for them as regards creation as well as the distribution, and remuneration for their work. Contrary to popular belief, they do not want that these authors' rights become a hindrance to the free movement of ideas. They all hope to build with you tomorrow's world. And they strongly request that you do not leave them on the side of the road.

Intervention au Parlement européen, 4 juin 2012[1]

Jean Claude Bologne

Le 25 avril 2012, le Conseil économique et social européen a adopté un avis d'initiative sur l'édition du livre en mouvement. La Société des Gens de Lettres, principale organisation de défense des intérêts moraux et patrimoniaux des auteurs en France, forte de six mille membres et associée depuis près de deux siècles à toutes les grandes réformes concernant le droit d'auteur, a salué l'objectif de ce rapport, qui entend « défendre les droits et répondre aux besoins » des secteurs concernés, et notamment des écrivains. Nous regrettons d'autant plus que les auteurs n'aient pas été associés aux travaux préparatoires, qu'il ne soit apparemment pas prévu de les consulter dans les travaux postérieurs, et qu'ils n'aient pas fait l'objet, dans ce rapport très complet, d'une analyse spécifique ni de propositions de mesures. Les auteurs ne sont pas des acteurs secondaires dans le monde de l'édition, ce que pourrait laisser croire la formulation « autres acteurs concernés » : ils sont à la base même du processus éditorial. La fragilisation de ce maillon, que nous observons depuis une dizaine d'années, constitue une menace directe sur l'ensemble de la chaîne du livre. Sans doute, nous partageons les inquiétudes et les demandes des éditeurs. Nous nous associons sans réserve aux objectifs de défense du droit d'auteur, de lutte contre la piraterie et d'harmonisation des taux de TVA entre imprimé et numérique. Sur d'autres points, cependant, il nous semble indispensable de consulter directement les auteurs ou leurs représentants.

Cette absence d'étude spécifique rend difficile l'interprétation de ce rapport. Nous nous étonnons, par exemple, de ne trouver que 100.000 écrivains, illustrateurs et traducteurs littéraires en Europe. Rappelons qu'en France, en 2010, ces trois catégories réunies comptaient 62.501 personnes ayant touché des droits d'auteurs (source : AGESSA, 2011). Nous n'avons bien entendu pas la prétention de représenter 63 % des écrivains, traducteurs et illustrateurs européens, mais nous ne pouvons accepter l'impression, donnée par ce rapport, que les salariés de l'édition, évalués à 130.000, soient plus nombreux en Europe que les 100.000 écrivains. En France, l'effectif salarié pour l'édition du livre était de 13.792 en 2009 (source: MCC, mars 2012). Pardon pour ces chiffres, mais il est important de bien s'entendre sur ce dont on parle. En minimisant à ce point l'importance des écrivains, on en vient à penser qu'ils jouent un rôle secondaire dans la chaîne du livre.

[1] Original French version.

Nous demandons par conséquent qu'avant toute décision au niveau européen sur la question sensible du droit d'auteur, une enquête soit réalisée sur les problèmes spécifiques et les demandes des écrivains, ainsi, bien entendu que de tous les autres créateurs. Pour ce qui concerne notre secteur, il nous semble que cette enquête doit prendre en compte trois points essentiels:

1) La défense spécifique du droit moral, garanti par la convention de Berne, mais selon des modalités distinctes au regard des législations nationales. Rappelons qu'il est perpétuel et inaliénable dans les pays de droit d'auteur, caractéristiques qui ne sont pas suffisamment prises en compte dans les pays de copyright. Dans tous les dossiers ayant trait à la numérisation (livres indisponibles, œuvres orphelines…) ainsi que dans la mise en œuvre des exceptions au droit d'auteur, c'est une dimension essentielle du débat, que seuls les auteurs peuvent porter. En particulier, la prévention de l'orphelinat doit passer par la constitution de fichiers nationaux répertoriant les auteurs et leurs ayants droit. Bien entendu, l'inscription sur ce fichier se ferait sur la base du volontariat pour les auteurs. L'absence d'inscription ne priverait en rien les auteurs ni leurs ayants droit du plein exercice de leurs droits. Pour faciliter la constitution de ce fichier, la Société des Gens de Lettres a proposé que les notaires soient tenus d'interroger les héritiers sur une éventuelle dévolution en droits d'auteur lors de toute succession. La responsabilité du notaire ne serait pas engagée sur la réponse, mais sur la seule obligation de poser la question. Au bout d'une génération, le problème des œuvres orphelines serait ainsi résolu. Les recherches diligentes prévues par plusieurs textes nationaux ou européens s'en trouveraient également simplifiées.

2) Une attention accrue à la rémunération de la création. Nous savons combien la gratuité est un mythe aussi facile à formuler qu'à dénoncer. Pour avoir accès gratuitement à nos œuvres, un lecteur doit s'acheter un ordinateur et souvent une tablette ou une liseuse, payer un fournisseur d'accès, faire vivre des moteurs de recherche qui ont mis au point d'autres modes de rémunération qu'ils ne sont pas prêts à partager. Il serait profondément injuste que le créateur soit le seul à ne pas récolter les fruits légitimes de son travail. Mais le problème se pose de la même manière pour les œuvres orphelines. Privilégier une démarche de mise à disposition gratuite fera peser sur les pouvoirs publics les frais considérables de recherche, d'entretien des fichiers, de rémunération des ayants droit retrouvés… Nous craignons qu'à terme, ces aspects ne soient négligés s'ils ne sont pas financés par la commercialisation des œuvres numérisées. La gestion collective constitue à nos yeux une réponse adéquate et pérenne à cette question. Nous sommes tous sensibles au droit de tout citoyen de « récolter les bénéfices de la révolution numérique ». Un meilleur partage des ressources liées à la diffusion de nos œuvres pourrait seul permettre un contrôle de leur prix. Les fabricants de matériel, les fournisseurs d'accès à Internet, les moteurs de recherche peuvent et doivent participer à cet effort collectif que les auteurs ne pourront assumer seuls.

3) Nous estimons enfin que l'accent n'a pas été suffisamment mis, dans le rapport du Comité économique et social européen, sur l'harmonisation des pratiques contractuelles entre auteurs et éditeurs. Là se trouve pourtant une des clés d'un véritable engagement des auteurs dans le numérique. Le monde d'Internet ne connaissant plus de frontières, ces aspects ne peuvent plus se contenter de solutions nationales.

Les organismes représentant les auteurs, et la Société des Gens de Lettres en particulier, sont ouvertes au dialogue sur tous ces sujets, et bien d'autres. La plupart des auteurs croient profondément au numérique, qui leur ouvre des horizons nouveaux tant au niveau de la création que de la diffusion et de la rémunération de leurs œuvres. Ils ne souhaitent nullement, contrairement à une idée reçue, que ces droits d'auteur deviennent une entrave à la libre circulation des idées. Ils souhaitent tous construire avec vous le monde de demain. Ils vous demandent instamment de ne pas les laisser sur le bord du chemin.

Towards a Fair Balance between Access for the Readers as Consumers and Remuneration for Authors in the midst of High Conflicts around Copyright.

Helga Trüpel

The question of how to ensure the rights of authors in the digital era, of how to develop sustainable models which provide for the future production of high quality cultural content and how to strike a balance with the legitimate other interests in that field is one of the central questions of my work as an MEP and cultural politician.
I am therefore very pleased to be given the chance to elaborate my position on that matter. In the following I will present my views. Let me start with a remark on ACTA. It is true that I will vote against ACTA – because the document is vague and not sufficiently defined. That opens too much room for very different interpretations. This however does not put into question my conviction that more than ever we need a substantial debate about the related matters. It is my belief that the in face of the digital revolution we need a broad discussion including the various implicated players on how to deal with the interest of users, producers and authors as well as the collective societies.

1. With the establishment of the World Wide Web a new form of public space has developed which is partly characterised by a conflict of different generations. Those not belonging to the group of the internet-natives are considered to have certain difficulties to fully understand the digital phenomena. The younger generations use the web for forms of "digital punk", embrace the web as a space where established gender roles can be overcome, where direct democracy can be experienced and a culture of sharing appears to be possible. Interestingly, all such elements which are well known left-winged topoi, contrast with a strictly neo-liberal interpretation put forward, for example, by the Swedish Pirates that, rejecting any state intervention, embrace the idea of the market as the exclusive driving force.

2. The current debate must, of course, consider a review of the existing intellectual copyright regime in the light of the digital revolution and its adaption to new patterns of use in this field. All attempts to demonise the collective societies, to put forward a regime which is one-sided and preferential to the interests of users, and all claims that describe the authors as "systematically irrelevant" must, however, be strongly rejected. The attempts to portray the interest of authors and creators as the special interests of a minority which hampers the legitimate and general interests of the public to access knowledge and cultural content or information is misleading and dangerous.

3. Different to the existing claims – it is not only the prosecution of violation of existing intellectual property rights that has become stricter – it is also the scale of such violations which has grown considerably.
4. The current practice of cease-and-desist letters is badly constructed as it targets the consumer and its fines are too high.

5. The claim that the sharing of cultural content over the internet would not be different from previously existing ways of sharing, as for example via the exchange of tapes is simply unfounded, since the latter has always been limited to a number of seven exchanges, as it was compensated by a non-commercial use levy and as it has never reached the quantitative scope of digital sharing.

6. The legalisation of file-sharing without the introduction of an adequate monetary compensation is by no means a sustainable model as it would endanger the financing of creative work.

7. The debate around cultural production and remuneration shall not be based on the conception of human intelligence as a natural resource but rather on an understanding of cultural content as a product of the work and efforts of an individual.

8. The legalisation of non-commercial file-sharing establishes the need to clearly define the criteria describing the line between commercial and non-commercial file-sharing. Flat-rate tax models, user levies and cloud computing shall be carefully assessed. However, it must be ensured that such approaches do not endanger the existing business models.

9. Targeted reforms of the current regime striving, for example, at a facilitation of licensing, a reform of the collective societies or the legal status of orphan works are important. They must however be based on the rights of authors to determine the future use of their work.

10. Future reforms must respect existing law, as for example, fundamental property rights, data protection and paragraphs one and two of Article 27 of the Universal Declaration of Human Rights protect both everyone's rights to freely participate in the cultural life and the interest resulting from the various forms of cultural production.

Discussion Session II

Tiziana Colusso, (Sindacato Nazionale Scrittori) Italy:
—There are lots of cultural magazines. I began a magazine on the Internet three years ago. Many people now have online publications, but there is no money for these artistic magazines and initiatives. So, we publish a lot of works from authors for free, because otherwise there are no means. Of course, we are for the defense of the rights of authors. This speech about balance is very important. On the one hand, it takes the general laws and on the other hand, for example as MEP Trüpel said, the willingness of authors to give their words for free. So do you think the legislator can find a way to maintain this balance in making laws and exceptions?

Helga Trüpel, MEP, Group of the Greens/European Free Alliance:
—To a certain extent, the existing laws give the possibility to do that. Nobody is hindering you if you say: "I will give away my works", so you can do it. There is the possibility to work with Creative Commons, but there is a need in detailing the concept; I think there is one problem and that has to be addressed by the Commission when they hopefully come up with their Communication on the reform of collecting societies. And that is indeed the question from some collecting societies, not all of them: how to deal with the concept of Creative Commons. Some are ready to do it, others are not, and I think that we need a new form of coexistence of different regimes of copyright models, because Creative Commons is based on copyright. And for me it is very regrettable that the Commission announced for months and months that they would come up with a new paper on the reform of collecting societies, and now it is postponed until September. As we have already heard, there are some open questions, and we know there is, at least for some collecting societies, a lack of transparency. Not always, but sometimes. We need a certain kind of reform there. And we are waiting for that paper. And especially that was for me another problem that Mrs Jorna touched upon: the problem of e-books, whether it is a service or not – but there is no answer so far. But it is part of the whole question if are we able to reduce the VAT for e-books, or not, if it is a service you cannot do it, and it is a question for the development of public libraries for copyright-protected e-books. And there we see that obviously there are some unsolved problems and open questions, and we urgently have to address them.

III. Collective Rights Management: An Authors' Right?

Collective Management: An Author's Right?

Vanda Guerra

What collective management organisations do for authors and what they can do in the digital environments to make sure that authors are rewarded for all uses of their works.

In spite of the troubled times we are going through and of the fierce attacks that have been launched on Collective Management Organisations (CMOs), very few have the courage to openly refute that these entities are indispensable for authors and for an effective management of their rights. On the contrary, many people continue to argue that it is not possible to face the future of copyright without the existence of authors' societies. Collective management societies have been created to answer the need, felt by authors, for an efficient and effective management of their works as the uses of the works started to diversify and to spread over wider territories, now tending to go global.

An author is a creator of intangible cultural goods. Therefore, to ensure his/her survival, those goods have to be monetised through their materialisation and their use. However, talented creators don't always have the skills and the means to promote and ensure the fair exploitation of their works. That is the role of CMOs. They act in representation and in the interest of the authors who are their members by managing the rights they are entrusted with by them and ensuring their protection, also building the necessary bridge between the authors and the users of their works, making sure that authors are remunerated for the uses of their works.

Knowing if the existence of these organisations still makes sense nowadays or if, on the contrary, authors could live without them today is to answer the question whether the reasons that justified their creation still exist. We believe that there is only one answer to that question.

Simply put, collective management is based on the following schematic model: creators entrust CMOs with their rights so that they may grant licenses to users on their behalf; CMOs agree with potential users the conditions and the cost of using the works; they collect the monies due for the use and pass the collected money to the rightsholders, after deduction of a percentage to cover the administration costs incurred by the CMOs.

But, in general, the role of CMOs is not limited to the performance of those actions. Consequently, there are many differences among collective management organisations in the EU, mostly depending on the type of repertoire they manage and the tradition of the country where they are based. So, we may find a monorepertoire or multirepertoire management. In small countries like mine, the importance of a single multirepertoire managing entity cannot be ignored, since each one of our actions is supported by

the strength of the 25,000 authors we represent.

Authors may grant all or part of their rights to the CMO, especially those whose exercise on an individual basis would be unfeasible or legally impossible. Nevertheless, there are many cases, at least in my country, of authors granting CMOs the rights even when they can be handled on an individual basis, since they trust that these entities may do a better job managing them.

As far as the literary work is concerned, in most of the countries, but not in all, the mandate generally covers secondary rights only, which may include private copying, reprography, public lending right, educational uses, broadcasting, etc. In short, the mandate may cover a whole series of works' uses regarding which it would be extremely difficult for the author to ensure the granting of the respective and necessary licences, or even to ensure the mere collection of the rights they generate. Moreover, the mandate may cover all the other uses related to the digitisation of the works. There we may find a vast field of commercial activities based on the use of protected works, regarding which the author usually feels unprotected due to the dimension and power of the users that have to be dealt with, especially in those cases where there is a mass digitisation of works.

Let us recall the situations which, although of a completely different nature, have been generated by such projects as EUROPEANA, Google Books or the Google Art Project.

Who stood up for authors then? Who analysed the strategies that could best deal with the massive use of authors' works without their consent? Who tried to protect their rights? Which entities did the authors turn to with their queries and concerns?

Definitely, the answer is yes. The existence of CMOs continues to make complete sense. Indeed, considering the current situation, they are all the more indispensable for authors. Therefore, it is not an overstatement if we say that their existence corresponds to a real author's right.

CMOs will continue to play an important part in a future world dominated by the new media. They are necessary structures for both authors and users, they facilitate the dissemination of the works of creators and they play an important public role by facilitating compliance with the law, allowing users to have access to legal content and helping authors to be duly remunerated for the use of their work, in a context where it is increasingly difficult to track said uses.

The management of authors' rights, the administration of the respective works, is now an increasingly difficult task. The need to evaluate innovative ways to use the works, namely in the digital world, the creation and implementation of new types of licensing and the monitoring of a number of uses that is growing exponentially every day requires the concentration and the use of huge resources and extremely

sophisticated IT systems that individual authors cannot afford.

CMO's have been contributing to the creation and/or development of a large number of tools to help and improve rights management, such as (to name just a few): ISAN (International Standard Audiovisual Number), which identifies more than 730,000 audiovisual works; the IPI System (Interested Party Information), a global database of rightholders in all repertoires with approximately 3.4 million interested parties; ISTC (International Standard Text Code), which identifies textual works such as articles, essays, novels, poems, screenplays and short stories; ISNI (International Standard Name Identifier), which identifies the millions of contributors to creative works, including writers, artists, authors, performers, film-makers, researchers, producers and publishers.

The role played by CMOs is essential, relieving both authors and users of the logistic burden related to the licensing and collection of the respective rights, as well as from the monitoring of the uses of the works.
And, we should not forget to mention the social and cultural role played by many societies. The importance of providing pension schemes and financial help to creators facing financial difficulties must be underlined, especially in these times of economic crisis. Most CMOs also contribute to the financing of cultural activities and to the promotion and dissemination of the works of the repertoires they manage. They also ensure equal access to works, thus playing a very important role in the preservation of our cultural heritage which has to be recognised and encouraged in the global society we live in.

However, times have undeniably changed. And the old structures which, traditionally, the CMOs were functioning upon were also forced to evolve in order to satisfy authors' new demands, as well as the demands of users, and even those of consumers. Nowadays, CMOs must be more flexible, more transparent and more efficient. This need for change became inevitable. And the answer to this need started gradually, on several levels and at different paces. Some changes came up within each society, as a result of an internal discussion that involved the members themselves, and which have been applied gradually. Others came up within the societies' community, with the improvement and modernisation of the professional rules endorsed by the CISAC General Assembly, with which all its member societies must comply. Part of those rules are also adapted to the type of repertoire managed by each society (musical, audiovisual, literary and visual arts).

The Professional Rules bring together best practices for the governance, administrative, business and financial aspects of collective administration. They represent a major achievement for CISAC and reflect the membership's long standing commitment to the highest standards of modern collective administration.

Today, however, the changes which the political superstructure is planning to introduce are also under discussion. The proposal for the EC Directive on Collective

Management is expected before this summer, and I believe an appropriate EU legal framework will contribute to create an atmosphere of confidence and security, in which the activities of the CMO's may be developed in a much more transparent and easy way.

There are, of course, a few key principles that must be complied with in terms of the governance of CMOs, the transparency of their activities and the relationship with their members. To refer to just some of them, it must be very clear to everybody, especially to the members of CMOs, how collections are made and how the monies flow, from the collection to the distribution to the authors: how the rights' revenue is determined and when the collection takes place; what is deducted from the amounts collected and for which purposes; clear and transparent distribution rules; a clearly determined distributions schedule. The set of internal rules and regulations that determine the way each CMO operates, such as its statutes, membership terms, management rules, distribution rules, standard licensing contracts and licensing fees, must also be very clear to everybody, especially to the members of CMO's.

In what concerns specifically the relationship between authors and CMOs, there are also a few principles that must be complied with, which is already done by many societies:

— The principle of non-discrimination between authors, not only in what refers to the admission requirements but also in what concerns providing access to the market to each author and repertoire, even the least popular.

— The rightsholders should be recognised and have the freedom to choose the collecting society they want to join, the rights and the category of works they want to have administered, as well as the respective territory of administration.

— Members should be represented in the decision-making bodies of the society in order to be involved in the management process. They should also have, to some extent, the possibility to exercise control over the activities of their CMO.

— And when the time comes, authors should have the possibility to terminate their mandate or withdraw their rights from the CMO upon the satisfaction of reasonable requirements.

However, we must not forget that all CMOs are already controlled by national and European competition authorities and by national laws in the countries where they are based. Therefore, while we may look forward to achieving the application of a set of key principles to the operation of CMO's, we must be very careful about providing ready-made models, since CMOs are organic entities whose current

shape is not only the result of an internal balance, but also of the unique legal framework in which every one of them was created, has evolved and operates. Above all, the membership of the CMOs should always have the last word, since members are the reason why CMOs exist, and the best defense of their rights and interests should always be the only justification for their existence.

Collective Management: An Author's Right?

Maureen Duffy

Thirty five years ago a small group of the United Kingdom's authors who had been fighting for the Public Lending Right in the UK decided to set up their own Collective Management Organisation. It was to be founded by writers, managed by writers and for writers. We understood that the way in which our work was presented to the public was about to change with the development of new technologies, then photocopy machines. It was no longer a matter of a purchase of single physical copies. Now whole sections, whole books, could be copied for multiple use.

That period of technological change continues today, at an ever faster pace and providing greater and greater facility of access and therefore of distribution. Unlike many continental countries Britain had not evolved a system of CMOs except in the case of music. Instead for literature and the visual arts, American style agents managed rights for those lucky enough to attract an agent while thousands of authors managed their own affairs on an individual basis, with advice from the Society of Authors or, in the case of screen and radio writers, the protection of the agreements negotiated by the Writers' Guild of Great Britain.

The rights involved were the so-called primary rights of publication, or making available to the public. This left writers in particular in the position of the weaker partner in negotiating contracts with publishers. Publishers themselves thirty-five years ago had seemingly not understood the changes which were just beginning as the result of the new technologies, or that they would come to change the whole structure of publishing, and even the way we read, by the 21st century.

From the beginning we understood Public Lending Right as a collective right, that is one that cannot be negotiated individually by private licence, at least not for authors though some big publishing conglomerates like Random House, Hachette or Reed Elsevier may believe that they can go it alone.

In the case of PLR pre-computer data had to be gathered by sampling the UK's public libraries. Individual authors had no means of knowing what books were being read, where, and in what numbers. Individual libraries had no means to contact and reimburse 20,000 plus authors. The right had to be administered collectively and mechanisms invented to collect reliable data, process it and distribute the funds fairly, according to entitlement.

It had been suggested that money should be given to publishers who would then pass it, or some of it, on to authors. We objected to this on the several grounds that contracts might have expired and rights reverted, publishers might set the money against unearned advances, or be slow in accounting, and in any case there was no existing mechanism for them to deal with the mass of data.

We insisted that the money should be paid directly to individual authors on the basis of accurately collected data. When we came to set up our own collective management organisation this was the model, the blue print, which we followed for photocopying, this time in conjunction with the publishers by encouraging them to set up a sister organisation, the Publishers Licensing Society, and combining the two under the umbrella of the Copyright Licensing Agency. Over the years the moneys collected by the CLA from education, business and government have been split between authors and publishers according to an agreed formula and passed to the relevant societies, PLS for publishers, the Authors' Licensing and Collecting Society for writers and The Design and Artists Copyright Society for illustrators, for onward distribution to individual recipients. I must stress that this is income that the individual author would have no means of accessing and, in the changed conditions of the publishing industry where primary rights, advances and royalties, have shrunk for the many in favour of the celebrity few, every bit of income from secondary rights is of immense importance.

Recently under the auspices of the British Copyright Council, a voluntary body of CMOs, trade unions, professional societies and associations, a code of conduct for CMOs has been drawn up, embodying principles of good governance, transparency and complaint resolution which individual CMOs can adapt to suit their own medium: music, visual arts or literature. The code of practice will, we hope, be endorsed by the UK government and the European Commission. It is envisaged as a voluntary code but there is no reason why it could not be translated into a legislative form if that is required. (If anyone would like to see what we have achieved please let me know.)

It is vital that authors should be involved in the very heart of governance, in either their own or collaborative societies. The ALCS for example is governed by a board of practising writer directors, and administered by an executive staff. Under UK company law it is the directors who are responsible for the governance of the company. In the case of a joint company like the CLA authors and publishers are joint stakeholders, and the managing board reflects this duality.

In the evolving digital context it is even more important that authors should take a central role in the management of their CMO, even more so when it is a shared organisation. The rise of eBooks and digital 'self' or 'independent' publishing means that increasing numbers of writers, and indeed copyright authors generally, will find themselves as sole rights owners. However although some writers will be interested and competent in this hands on world many will feel that their function is to write, not to chase micro-payments around the global internet. I foresee an increased role for CMOs in the service of writers and literature itself, and for the collective management of digital secondary rights. The alternative advocated by the anti-copyright lobby is the increased pirating of authors' rights, either by governments under legal exceptions, for instance in education, or privately in versions of peer-to-peer copying without compensation.

The argument that we thought we had won with PLR, no use without payment, or put alternatively, why should the author be the only one to contribute unpaid for the public good, has reared its head again as the demand for free access to our work. It was not an argument that either Shakespeare or Dickens would have accepted.

There is a perception within some quarters, and among many of the public, that the only ones who suffer as a result of legal or illegal piracy are large multi-national companies who can absorb it. This may be the case in countries with large resources such as the United States, where the concept of Fair Use applies, but in a Europe fragmented by national boundaries, largely under-resourced and most importantly, with literary markets divided by language, it is not enough to rely on large up-front advances and primary royalties to sustain a writing life, nor are there many sponsored academic posts to provide an income in circumstances that still give authors time and energy to create. The European writer needs every support to sustain national literatures and cultures.

The loss, for example, of the educational market to a legal exception, as is being discussed currently at WIPO/OMPI, and by the UK government among others, would mean that it would no longer be viable to spend time writing, or indeed publishing, textbooks in such subjects as geography, history and science. The unauthenticated and sometimes doctrinaire or politicised material on the Internet, or the educators' own contributions, could, some propose, take the place of the textbook or the peer-reviewed article. This I believe is a very dangerous path for us to take. The free-for-all is unlikely to provide quality material and there is the parallel danger that totalitarian governments will find ways to control or pervert material that exists only as internet ephemera. CMOs can act not only as conduits for authors' rights, incomes and the integrity of their works, they can, and I believe must, increasingly act as their watchdogs. The individual author, with a few notable exceptions like J. K. Rowling, can neither know about nor prosecute for acts of piracy. Google has at least nine of my books on its database, taken without permission or payment. Could I sue Google? Of course not. Nor could my trade union on my behalf since they do not have the resources either. But the combined weight of Europe's literary CMOs might do so on behalf of all their pirated members.

I have used ALCS as the UK example not because I believe it is the only or best one but simply because, as Shakespeare said, the poet should give 'to airy nothings a local habitation' and a name. Without such an organisation as a CMO the author is alone and exposed in a globalised, digitised cultural world.

Discussion Session III

Robert Taylor, Writers' Guild of Great Britain:
—From our point of view as a trade union, we completely respect and understand the need for collective management and I agree that in the future we are going to need more of it. But I think what we also need to remember, going back to our previous contributions, is the need for collective bargaining. Because we believe that the way you really get good deals and increase the strength of authors, is by collectively bargaining. So that the authors can form a union and can thresh out their own deals that they can collectively negotiate. And it might be that after that is done, after the primary deals are done, collective management is needed in order to ensure that the new means of distribution and payments of that can flow back to the authors. But the primary thing, the primary right must be collective bargaining. And to go back to Mr. König and what he said, you know, that is really under threat. There are countries in the European Union who are attacking the rights of authors to form unions. And that is not something that is just a theoretical threat; it is happening today, it has already happened in the Netherlands, in Ireland, it is happening in Spain. The right of writers to form unions is under threat and I think that a fundamental thing for us is, actually, fighting against that, ensuring through whatever means we can, through the international labour organisation and through whatever other means we can, through the European Union that writers have the right to form unions and to collectively bargain.

Maureen Duffy, Honorary President of the Authors' Licensing and Collecting Society (ALCS):
—Can I just say that I would absolutely support that. We did at one time in the United Kingdom try to expand the excellent agreements which the Writers' Guild has in screen and radio, into the publishing world. We achieved it for about five years. But then it was simply that the conglomerates became too bad, too big, and the union or the traders' association too weak, unfortunately, to sustain it. But I agree that is the first run. Collective management is there to mop up everything else. First, we do need strong organisations that can negotiate on that level.

Myriam Diocaretz, EWC Secretary-General:
—This is a follow-up on the possibility of negotiating conditions that are fairer for authors. I receive regularly questions from authors from different countries on what can be done to make changes. We are following, for example, the case of the Netherlands, where they are in the process of changing the copyright law to improve the negotiating position for all creators, which is fundamental; it is also connected with collective management as an important mechanism. This is the basis. So my question is for Helga Trüpel, to help us answer those queries: how can this be addressed through the European Parliament? Is there any possibility to take any initiative, how do you see this?

Helga Trüpel, MEP:
—The normal possibilities of the Parliament are to do it through oral questions and written questions, to have self-organised public hearings, press releases, and that is of course what we can do. And as another legal possibility, we have the instrument of written declarations, but normally as you know, according to the treaties the Commission has to come up with the proposals. But of course we can always try to indicate important issues and what we would like to see. But the normal way of dealing at European level is that the Commission has to come forward, but we can try to push them and ask them again and again. And then we work on their proposals, we change them, we adapt them, and hopefully make them better, and then we negotiate with the Council, but we cannot completely change the system. As long as we are not the United States of Europe.

Myriam Diocaretz, EWC Secretary-General:
—Can I just add that perhaps we can help you, as you said, "in the normal way", and any other way, that we can provide information. That is why I had the question so that we can initiate something, today, tomorrow. Thank you.

Arne König, President of the European Federation of Journalists (EFJ):
—I think, as the Cavada report on the audiovisual sector has been mentioned earlier today, a similar report on the print sector seems to be needed, and that is something of course that has to go through the Commission, but of course it would be very helpful if the European Parliament would support it. And maybe that could be a very practical demand from this meeting today, that the organisations participating here would join forces in the call for such an initiative report in the print sector.

Helga Trüpel, MEP:
—To add to that, of course, it is always possible if there is a majority in the Cultural Committee to go for such an initiative report; it is not a problem to launch the ideas and to introduce them, but the Commission has to come up with legal rules. But to go for that, and to make it public, and to have a debate on that, that is always a possibility. Now as you said it was done with the Cavada report, but anyway then the Commission has to do its job as legislator.

Virpi Helena Hämeen-Anttila, Sanasto Ry, the Finnish Author Copyright Society:
—I would like to say that when there is no European Union legislation on the authors' right for bodies that can negotiate, where are we? In Finland for example, we have a copyright society for all writers, but we only can manage secondary rights, not the primary rights. We can't deal with the contracts, the publishers are very strongly against it.

In practice they lobby against the idea of any union that could represent the commercial rights of the writers on equal footing. Our writers' union is not recognised as a trade union. The publishers maintain that it is only a conglomeration of private entrepreneurs, who can negotiate only as individuals and by individual contracts. At the moment I feel that we, in Finland, are alone fighting these much stronger parties. Our only hope is either EU legislation, or much more cooperation of the collective rights organisations in Europe. What do you think?

Jørgen Lorentzen, President of the Norwegian Non-Fiction Writers and Translators Association:
—Thank you. At least we still have the right to vote, so they haven't taken that away from the writers yet, so let's use that one! Of course the writers associations are unions, and we have to fight like unions. There is no way around that. We have to take the power and be strong.

Maureen Duffy, Honorary President of ALCS:
—Can I just say that Google is using exactly that argument in order to refuse the right of the Authors' Guild of America to take a class-action against them in the matter of the Google settlement.

Vanda Guerra, Sociedade Portuguesa de Autores (SPA):
—I would just like to say a few words about this. Because in Portugal there is no tradition of writers unions and that is why my society, as a CMO, simultaneously plays the role of a union. We congregate the writers and discuss with them their needs and what they want to put in the agreements and then we discuss with the publishers. Because we manage not only secondary rights but also primary rights. Because it is very common in Portugal, the publishers don't get the author's rights through the contracts. So, we manage also those rights. And the important thing is not the nature of the organisation, the important thing is that if we have got the authors together and we can build a strong entity, whatever it is, a union or a CMO or whatever, that can have true negotiating power. Because if not, if it is through individual bargaining, we always lose.

IV. On the German Pirate Party Plans for Copyright Reform

The Swedish Piracy Experience

Thorbjörn Öström

I have been asked to talk about the Swedish experience of piracy, since Sweden has been a country where the piracy issues have been heavily debated for quite a few years now. There are many reasons for this, but the most important one is probably that Sweden was one of the first countries where Internet access was provided to a large part of the population. Also, Sweden was early in investing in broadband access. Just to give you an example, in 2006 more than half of the population between the ages 16-74 had access to broadband in their homes. The number of people who had been involved in file-sharing at that same time was 1,3 million.

However, I should mention that The Swedish Writers' Union haven't been very active in the public debate on piracy, for a number of reasons. For instance, books – apart from audio books – have so far not been as exposed to piracy as music and film. Furthermore, entering the piracy debate a few years ago tended to take a lot of resources, since you immediately got drowned by very aggressive e-mails from pirates. Instead, we have focused on trying to revise the Swedish Copyright Act, and I will get back to this later.

The Swedish public debate had started already in the early years of the century, but in order to describe the development in a nutshell one could focus on the following highlights:

- **January 2006:** The Pirate Party is formed. They get only 0,63 % of the votes in the following general election, but receive a huge amount of press coverage. Copyright is heavily debated.
- **October 2008:** The Swedish Prime minister Fredrik Reinfeldt states in a TV-interview:
  "We want to protect copyright, but we don't want to criminalise a whole generation of youths".

This was, of course, a rather strange statement, since illegal file-sharing had been criminalised for a long time at that point.

- **January 2008:** The first of a total of two prosecutors with a clear focus on intellectual property crimes was appointed.
- **April 2009:** The Stockholm District Court sentences the four persons responsible for the Pirate Bay to prison for one year each and 3 million Euros jointly in damages. All four of them appealed.
- **April 2009**: IPRED – the directive on enforcement of Intellectual Property Rights – was implemented in Swedish legislation. The directive is from 2004.

- **June 2009:** The Pirate Party gets 7,1 % of the votes in the election for the European Parliament.
- **September 2010**: The Pirate Party gets 0,65 % of the votes in the Swedish General election.
- **November 2010:** The verdict from the Svea Court of Appeal in Stockholm on the Pirate Bay-case is presented. Only three of them were tried since one didn't show up in court. The jail sentences decreased to ten, eight and four months respectively. The three persons were liable to pay a compensation of roughly 5 million Euro.

During this period, the debate about Copyright was intense and very polarised both on the Internet, but also in traditional media. At some point, quite recently, the debate about copyright became more subdued and sensible. I think there were mainly three reasons for this:

- **First**: *The Pirate Bay trial*. It sent a clear message to the public that society didn't think it was OK with massive copyright infringement.
- **Second**: *The 2010 election.* This showed to both journalists and politicians that the hard core Pirate-movement was not as huge as it was commonly thought.
- **Third**: *Spotify*. This music streaming service started in 2006, but it was not until 2009 that they started to make profit. In August 2011 they had almost 2 million paying members. With Spotify, the argument "there are no legal alternatives" became less common.

From my perspective this could serve as an illustration that the piracy issue – which is basically about protection of the core values of copyright – doesn't have one single solution, but must be solved using several parallel approaches.

Personally I think there are three main methods that you have to use in order to protect copyright:

- **First**: *Enforce copyright.* It is crucial that society sends a very clear message that it is ready to protect the laws made in a democratic order and it is crucial also to make it possible and interesting to establish new companies exploring new business models in the field of copyright. This is very basic – you simply cannot compete with 'free'!
- **Second**: *Adjust copyright.* Make well thought and appropriate modifications in the copyright legislation in order to make it more efficient in the digital age. This has been done and will be done in the future. But we have to remember that copyright is a very delicate eco-system, and be careful not to "throw out the baby with the bathwater". For instance, for many years until now in Sweden we have argued for better possibilities to collective rights management through the Extended Collective License system.

The point is that it must be simple to act legally!

- **Third**: *Explain copyright*. In order to do this, I think we have to start from the fundamental purpose of copyright – to promote creativity and make it possible for authors to get remunerated for their work. Unfortunately, this perspective has been blurred due to, for example, buy-out contracts which make copyright more of a producer's right, rather than an author's right. If you distance the author from his or her copyright, it is much harder to make copyright legitimate in the eyes of the public. We really need to strengthen the author's position as a contracting party – through legislation – in order to make the copyright eco-system a healthy and sustainable one. And a healthy copyright system is one that does its primary job – to stimulate the creation of culture.

Authors' Rights and the Pirates: A German Experience

Anna Dünnebier

In Germany we witness something similar to a real public war in relation to copyright and authors' rights – witness and take part in it. The ferocity of the actual discussion is due to the programme with which the pirates appeared on the political scene, and to their success in our recent elections. I quote some points from their election programme of 2011, the chapter called "Copyright and Right of Use". It starts as follows:

"The right of use is more and more removed from the creator and develops toward a right of the exploiters. Music and film industries profit, while users are criminalised. We pirates want to entitle private persons without commercial interest to copy and use works freely." And later: "Systems to hinder copying works reduce intentionally their availability in order to transform a free good, a free wealth into a commodity for the market. We regard it as unethical to create shortage artificially for commercial reasons."

Are works of art a "free wealth" which must not be touched by the market? The pirates speak from the viewpoint of the user and do not show great knowledge of the division of labour in creating books, films or other works of art. For them the role of the creative industries is "outdated. To eliminate these middlemen will enable creators to retain a larger part of the royalties and to obtain it more directly."

It is clear from these statements that the pirates deny the concept of professional creators, and see the cultural industries, publishers, music labels, film producers, galleries as unnecessary middlemen. They also deny the concept of authenticity and originality: "Usually a work is created by using the public wealth of former creations. To give those works back to the public space is legitimate." One tool to give works "back to the public", as they say, is to shorten the term of protection. The first idea of the pirates was to shorten it to ten years after the publication of the work.

Obviously German creators were alarmed. To deny the process of creation, to reduce the work of creators to remixing, to make their works a piece of public wealth floating in the digital world means strictly denying the concept of intellectual property while also denying the necessity of cultural industries.

Two months ago, fifty-one scriptwriters of films and TV series wrote an open letter to politicians and to the Net community. They made a point of free access: Yes, human rights guarantee the free access to art and culture, but not an access free of charge. Those who equate free with free of charge, try to reappraise the interest of users, try to raise the "culture free of charge" to the status of a human right; and make a violation of law an act of freedom.

The scriptwriters point to the fact that creators' rights and intellectual property are protected by the German constitution, in the Declaration of Human Rights and by many international agreements. "Those who maintain that this constitutional right is now disposable, live a lie."

The fifty-one scriptwriters were not the only ones. The Kulturrat, an umbrella organisation of some hundred cultural institutions and associations, declared: "The protection of copyright is an essential question for hundreds of thousands creators in our country and for a whole branch of commerce." Authors' unions, individuals, musicians, and a network of creators raised their voices. Now at least the long-lasting debate about authors' rights in the digital world was brought to public attention. It made headlines in the newspapers; whole pages were given to statements for and against, the subject so far unknown by the public was dealt within long and detailed radio and TV discussions.

The well known and well read weekly magazine *Die Zeit* devoted two pages to publish a declaration with the title: *We are the Creators,* which more than 5.000 authors had signed. They explain that creators need the creative industries, publishers, galleries, producers and others, to bring their works to the public and capitalise on them. They state: "Copyright enables that we artists and authors can live on our work and protects us, also from the big global internet corporations, which make profit by accepting that artists and authors are deprived of their rights."

A storm of protest and even abuse was raised on the Internet, not always in appropriate language: "We are file-sharers. We shit on your copyright, shit on your laws, shit on your intellectual property!" Anonymous. Even worse, another anonymous person collected private data of the signatories: the address, telephone, mail, and listed them online, accompanied by a remark: "Fuck your copyright". This is nothing less than a call for personal attack and violence.

The Chaos Computer Club said: "The problem is not a confrontation of creators and consumers, but on the one hand there are pre-digital ignoramus who make the exploitation of rights a fetish, and on the other hand we who have to accept their contracts." Others spoke of the "content mafia", meaning – no not the great players in the internet, not Facebook, YouTube, Google, but music labels, publishers, film producers, the creative industries.

The pirates changed some of their positions during recent months. One of their copyright experts, Daniel Neumann, web-designer and musician, knows from experience that authors and musicians are dependent on long-term sales. Therefore, the idea to shorten the copyright protection to ten years after publication changed to ten years after the death of the author. Concerning file-sharing, he says: "We are allies with authors against illegal file-sharing portals that make money with copied content". Interestingly, he warns that Facebook can become a problem, because sharing of music or film is very easy. He suggests combining a micropayment

system directly with this sharing system. Perhaps it is a good idea, provided that it will be the authors and not Facebook earning the money.

Two weeks ago the German pirates published a new paper on copyright "Die zehn wichtigsten Punkte einer Urheberrechtsreform" (21.5.2012). It contains ten points. They call their objective "to strengthen the rights of creators and users and to guarantee free access to education and culture". Yet most points in their reform programme seem to be abolishing the rights of creators rather than strengthening them:

- First point: The term of copyright protection shall be shortened. This means that authors or their families who receive the inheritance are deprived of a potential income.
- Third and Fourth points: Free access, without payment, to copyright-protected content for educational purposes. It means that authors carry the financial burden for educational material, not the state, universities, or students. Who will ask a plumber to repair the lavatory of a university for free?
- Seventh point: Private file-sharing shall be de-criminalised. Fine, but who pays? We have regulations for private copy, since the remuneration comes from the levy on hardware. Is there any system that can pay for file-sharing? Micropayment via Facebook?
- Fifth and Tenth points: Remix and mashup of creative works shall be allowed, and all "creative uses" of digital content. This means a clear abolition of the moral rights of authors and of the integrity of their works.

All these points strengthen consumers' rights, and take away from the authors. Concerning creators' rights, the pirates demand that the cultural industry shall give a larger part to their creators. Two specific items: licenses shall be limited to a maximum of twenty-five years, so that the authors regain their rights faster. Buy-out contracts shall also have a limit in time. Certainly authors need better contract laws, need a stronger legal position of their associations towards their exploiters when negotiating common agreements on royalties, and want buy-out contracts to be banned. Twenty-five years is a small piece of that cake.

- Eighth point: The pirates want new business models such as micropayment, crowdfunding, levies. Not much…. To sum up: The Pirate Party's paper does not strengthen the rights of creators and users, but rather strengthens the conflict between them.

The good result of the ongoing discussion is that all parties are more eager to find solutions – including those who are in power. Our government has been inactive for years. It did not pass a law to give legal security for the use of orphan books, which is urgently needed. Other decisions are pending. Hopefully the pirates' approach will activate the politicians who are on the creators' side.

Discussion Session IV

Christian Engström, MEP, Swedish Pirate Party:
—I'd like to mention, just to avoid any misunderstanding, that none of the people you see on the podium represent the Pirate Party. Mr. Öström does not represent the Swedish party, Mrs. Dünnebier, as far as I know, does not at all represent the German Pirate Party. If you are interested in what the Pirate Party thinks in Sweden and Germany, actually thinks, please feel free to invite a panelist from the Pirate Party. I am usually available here in Brussels. If you want to organise a seminar in other places, there are people there. I would recommend you go to the website copyrightreform.eu. That is copyrightreform as one word, dot eu. You can download this book [showing it] there, or you can order it on print-on-demand, and you get to see what the Pirate Party actually feels about copyright reform. Thank you!

Nicole Pfister-Fetz, Secretary-General, AdS, Swiss Authors' Association:
—[To Mr. Engström] May I ask you something, please? Could you explain to us in two sentences what you think about copyright for our authors so that we know a little bit more about the book that you presented just in this moment. Just briefly, please.

Christian Engström, MEP:
—Of course I can. We want to reform copyright. We don't want to abolish copyright, we want to reform it. We want to keep copyright for commercial purposes, but the big problem is that for the last ten or fifteen years copyright has expanded from what it used to be. It used to be strictly legislation for business-to-business transactions. Everything that you could do or wanted to do as a private person, up until fifteen years ago, was either completely legal or at least nobody ever got prosecuted for it. But then there was this enormous copyright expansion, so that what used to be legislation that only was relevant to people sitting in boardrooms is now something that every teenager has to worry about every day in his private bedroom. Copyright was never designed for that, that's why you have all these problems. We the Pirate Party have a constructive solution to solve this, to scale copyright back to where it was. So that it can still continue to be the basis for the entertainment industry, pretty much as we see today. Everything, all business models that are sustainable today, would be sustainable on our reformed copyright as well. But you would end this pointless war on reality that you are all pretty much engaged in, your war on reality, and on young people in particular. We do have a proposal for you, so please go to copyrightreform.eu and have a look at it.

Thorbjörn Öström, Legal Counsel for the Swedish Writers' Union:
—May I just comment on that. You say it is an enormous copyright expansion, isn't that an enormous expansion of the use of copyright-protected material?

Christian Engström, MEP:
—Well, yes and no. I mean, a fantastic thing has happened with the Internet and information technology. I mean, it used to be the dream of all politicians who like culture and everybody in society who likes culture. That we could have great libraries everywhere, that would have been fantastic, wouldn't it? Well, now we can. And the Internet is the most fantastic library ever invented, and every citizen with a connection has access to all the world's culture, just one mouse-click away. Or rather, he doesn't. Because publishers and authors' associations are incredibly hostile to making our common cultural heritage accessible. We had a dossier on orphan works, it is going through the final phases here in the European Parliament. And we see that the lobbyists, I mean you all, the collecting societies, etc., are extremely hostile in making culture available. You are only interested in locking the things away, so that you possibly, hopefully, might be able to extract a euro or two. But this general concept that culture is actually good for society is completely absent from all the lobbyists who have been driving this. So fortunately, most of our common cultural heritage is available, only apart from the 20th century that cannot be digitised and will not be digitised because various publishers' organisations and authors' organisations work very, very hard to make sure that that does not happen.

Bernie Corbett, Writers' Guild of Great Britain:
—I note that the representative of the Pirate Party invited us to go on his website and buy a copy of his book. He might give us one! Anyway, despite that inconsistency, I do want to say something that some people might find a bit heretical, and I'll try to collapse it into a few sentences. First of all like somebody said earlier, I do agree that we are living through a revolution comparable to the introduction of movable type printing by Gütenberg approximately five-hundred years ago. And I think we actually have to keep that context in our minds. One of the perhaps unexpected early consequences of that revolution is a huge, and I think unstoppable migration of power, away from the producer, towards the consumer. And we would be silly to stick our heads in the sand to that, I think, historical change. This is not just about creators, artists and copyright incidentally. The wonderful U.K. National Health Service refuses to prescribe me the medicine I need, but I can now go on the Internet and buy it from Mumbai, thank you very much. I am a consumer, and I now say what medicine I can have, not some F- doctor. That is another example to prove that it is not just here in copyright, we are not specifically the only victims, if victims is the word. The key to the resolution of this Pirate Bay issue, which has been very well described in a lot of very real and helpful comments, is that the material that the consumer wants to consume must be made legally available promptly and at a reasonable price. And this is one of the big problems that we have not really tackled. We have been given the example of Spotify, which does something like that. In the U.K. the famous BBC has announced that next year all its television programs will be available free online, for the first seven days after broadcast, and on day eight they will still be available online, but you have to pay to watch them. And by the way, the Writers' Guild of Great Britain has negotiated the terms so that writers will be paid for the right, a special payment for the free period, and a royalty for day eight onwards.

Other broadcasters, film studios, publishers, are going to have to follow these ideas, can set up these kind of business plans. They have got to do the same. By the way the CMOs will have a big part to play in this as well. And as creators, one of the things we have got to do is to get it clear in our heads who are our friends and who are our enemies. Principal friends are the people who read our works or watch our works. Our enemies, in many parts of our lives, are in fact the publishers and producers who rip us off and have done for decades; we have heard examples of that today as well. I think we need to stand back and look at this from a slightly different perspective. I think we need to take into account the actual popularity of the Pirate Bay movement. The fact that they have a representative here in the European Parliament. These are not things we should ignore or pretend are not happening. There are lots of things we could rethink and there is no time to go through them now, but let me just give you one example. What about the term of copyright before the material enters the public domain, are we really comfortable about that? Just this year the words of the famous Irish writer James Joyce finally came into the public domain, after seventy years of greedy, ignorant exploitation and suppression by Joyce's son and grandson. How much credibility do we really think that system has? I will give you another example. Should he live to be a hundred, which he well may, Sir Paul McCartney's songs and lyrics will not enter the public domain until the year 2112. Perhaps we need to rethink these things with a bigger picture rather than things we are just used to become automatic responses. Perhaps it is a heresy, perhaps I am being a devil's advocate, but my final sentence is an old quotation: when the facts change, I change my mind. What do you do?

Helga Trüpel, MEP:
—Yes, I do agree on the point that we all have an interest in easy access to works, to culture, and I take the big revolution of Gütenberg and the possibility of printing books. Yes, there is a similarity, in the revolution of technical tools. It is clear that our society has a big interest in providing access to culture and education. But the printed books have not been for free. For good reasons they have not been for free. Even if there is the general interest in giving access to books, culture, information and so on. Therefore, what Christian Engström says, that the internet is the most wonderful public library, for me that is not true. Because for public libraries there are clear rules, in a democratic society, how they do function, and normally they are financed by taxes and contributions by the users, so that the authors are compensated. The models now, on the Internet, if they are not legal offers, there we don't have this sort of regulation, that there is no tax system, or other rules how the works are paid. That for me is the crucial question. It is not about closing things down or not giving access, it is about the good rules we have to find to give access to the users and to give a fair remuneration to the creators. That for me is the big task. Therefore I am ready, of course we can discuss terms of protection, but if you say, and that was the first figures we had, go back to ten years or twenty years, not after death but generally, then of course I think that is not only an adaption of copyright but it is questioning the whole concept that artists can make a living, because obviously there are good reasons that they need the long tail of sales. I am ready to recognise

the impact of this digital revolution. But we have to regulate cultural digital markets as we should regulate financial and good markets. And there is no sustainable model in thinking the things can be for free. Because when you say it is only for private, non-commercial use, the problem is: in the analog world the private and the copyright legislation, is that what you can share with seven friends. In the digital environment you can potentially do it with thousands, millions of people. And of course, not every download is a not made act of buying, but to that extent what we have that on the internet it is clear it is detrimental to the interests of authors. And there we have to find a model that really is sustainable and can work. We are all users and readers and sometimes writers and therefore we all know a certain conflict that is given, but for me the answers of the Pirate Party are not appropriate. You put the user in the driver seat and not the author. The Pirates Party's proposal to reform copyright are very one sided and detrimental to the interest of creators. Therefore I do not share them.

Anna Dünnebier, European Writers' Council Vice-President:
—Just a short remark, Mr Engström: I think it is very unfair when you say that authors and publishers do nothing for creating digital libraries. I suppose you came late this afternoon, because we had a long discussion on what EWC and publishers do for establishing digital libraries.

Elisabeth O. Sjaastad, film director, Chief Executive of FERA Federation of European Film Directors:
—I need to make two comments, and one is of course that we can't talk about all sectors in one. When the BBC can set those terms for their own programs, it is because they have financed those programs themselves – well actually through the tax-payer's money. But for those of us who are in the independent sector, we rely on a specific chain of contributors to finance films and programs, and unfortunately that also comes with a certain chronology of how those films and programs can be released. Of course we may need to rethink that system, but for some of the sectors and for the various players in the different sectors, these kinds of decisions come more easily for some than for others.

But I also need to say something about the Orphan Works Directive. FERA as an organisation, proposed something that we felt was a win-win situation, by saying that if one could respect the principles of copyright by saying that we will not simply expropriate a work because we haven't done our homework or haven't even searched for a potential author of that work. We would rather set aside some rights money, and if that money remained unclaimed it would be reinvested in digitisation in the name of public interest. A lot of people who are claiming to speak in the name of public interest are actually supporting article 7 (in the Commission's proposal for an Orphan Works Directive), which encourages public-private partnerships. So rather than being prepared to fund the public institutions themselves with adequate resources, financial and human, they would rather give Google a seven-year exclusive license in return for paying the digitisation bill. I don't think that's fair.

Maureen Duffy, novelist, Honorary President of the Authors' Licensing and Collecting Society:
—What about a slice of the advertising revenues of all these global corporations who are making vast fortunes by allowing our material to be put up there for nothing.

Thorbjön Öström, EWC Board Member, legal counsel for the Swedish Writers' Union:
—Just a quick comment on that as well. Isn't one of the key teachings with market economy that we play on the same playing field. We have the same regulations to, sort of, get rid of the bad ideas, and push for the good ideas.

Christian Engström, MEP:
—Yes, we are proposing the same regulation, and I mean, yes, the same copyright should apply to everybody, not just people of some particular religion or anything like that, so I don't quite understand the question.

Thorbjön Öström, EWC Board Member, legal counsel for the Swedish Writers' Union:
—Oh, of course, I wouldn't suggest that the Pirate Party says it is okay with illegal file-sharing, but I mean, you must admit that it could be a problem, creating new business models that you have a huge amount of consumers not paying anything today.

Christian Engström, MEP:
—Yes, that might be problematic, but as I said there are a number of academic studies showing that the cultural sector has in fact already proceeded to do this. And I would say I am very, very happy that there is illegal file-sharing, I am not allowed to encourage people to do it, but the fact that people are doing it without any encouragement from me or anybody else, it is something that gives me great joy, I think it is absolutely fantastic. In the same way that I think it is fantastic that people go to a physical library to borrow books, and pay nothing for that. I think it is great. I think culture is good for society. But that is my personal beliefs, so that is not something I can prove, it is just something I believe.

Gerlinde Brigitte Schermer-Rauwolf, translator:
—I had a few discussions with the Pirates in Germany. And I have to say, I am in favour of free access of all my works, because I am very interested in the fact that people read what I have translated. But I have an interest also to live from my work, and your colleagues said to me: if I want to live from my work, creative things, then I have a faulty living model. And if I had been living from it for the past twenty-five years, that was a nice thing for me to have, because I had a lot of fun by doing my work. But I could make a living if I put my things for free on the Internet and so make a name, and then be invited on interesting panels and so on and be paid for this. And I honestly can say that this is not a model for me.

Arne König, President of the European Federation of Journalists:
—Well if we do have functioning market models, how come Maureen Duffy cannot take Google to court and win her own rights? I think that is a question that needs to be asked. So we see there are many problems with the existing systems. We need to balance them in the laws. I would like to make a comment concerning the business models, and I think it is a problem that in one way these forums here represent freelancers, and I myself represent both freelancers and employed journalists. And there is a problem in the fact that we are going into micro-payment. The problem is the fact that this model has an impact on also wages for employed people. This is a problem which we tend not to debate so much. But there is an impact. I mean, we see very clearly that when freelancers are getting fees for their submitted material, and the employers are now trying to get them to accept getting micro-payments instead. And you can also debate this on a language level. If you are happy to live in an English-speaking country, then you can perhaps expect that millions of pounds that you were talking about before, Bernie. But if you come from a small language speaking area, like the Swedish one, with a small amount of people speaking that language, you are talking about quite another market. So I mean, I think it would be very useful to use these connections here actually, to debate in another occasion, not here and now, business models. Because I agree, we need to develop them, but we need to debate them in another way than we have been doing, I think.

Nicole Pfister-Fetz, Secretary-General, AdS, Swiss Authors' Association:
—Thank you very much. Just a remark from my side: also in Switzerland we have a lot of discussions about these problems. We have also a Pirate Party now, but the bigger problem is not the Pirate Party, in my view there are all the other traditional parties, the young representatives of the traditional parties who are sharing more and more the same opinion that everything must be free. I think it is also a question of respect to the work that we do as professional artists, and then we should talk about the remuneration, and it's not that everything is free. I really want to be paid for my work.

Contributors

Marielle Gallo is a postgraduate in general private law, Paris I (1977). She has been practicing as a lawyer in Paris since October 1978. Marielle is also known under the name of Gallet as author of novels. In 2007, she joined the Modern Left Party, the left-wing ally of former President Nicolas Sarkozy. In the 2009 European elections, she was the candidate on the Union for a Popular Movement list in the Ile-de-France region and was elected to the European Parliament. She is a member of JURI and IMCO committees. She has been Chair of the working group on Copyright of the European Parliament and set up in November 2011 a new platform, the IP Forum. She was the rapporteur of the initiative "On enforcement of intellectual property rights in the internal market" which was adopted on September 21, 2010.

Kerstin Jorna is a German national. She joined the Commission in 1990 as a civil servant. During the last twenty years Kerstin held various positions in the Internal Market Directorate, amongst others as assistant of the director general as well as in the secretariat general as member of the negotiating team for the Nice treaty. After a stint as a commission spokeswoman for regional policy and institutional affairs, Kerstin joined successively the cabinets of Michel Barnier, Günter Verheugen and Jacques Barrot. Kerstin studied law in Bonn, Hamburg and Bruges. She is married and has four children.

Pirjo Hiidenmaa's areas of expertise are linguistics, Finnish language, text analysis, stylistics, language planning and language policy. She has worked at the University of Helsinki as researcher and teacher (1992-1994). After that she was head of unit at the Research Institute of languages in Finland (1995-2006). Furthermore, she was head of unit at the Academy of Finland (national research funding agency (2006-2011) and the chair person of the Finnish association of non-fiction authors (2003-2011). She now is the director the Open University, University of Helsinki, since 2011.

Myriam Diocaretz is the Secretary-General of the European Writers' Council since 2006. She holds the "Socrates Extraordinary Chair in Humanism and the Digital Society" (2007-2012), at the Tilburg Centre for Cognition and Communication (TiCC) at Tilburg University (Netherlands). She has lectured extensively on digital issues, eCulture, and Human Aspects of Information Technology. She has published research and reports on ICT innovation, e-publishing, e-content, and mobile Internet services. She is the author, editor, and co-editor of 20 books and 50 scholarly essays in English, French and Spanish on poetics, translation studies, gender, dialogical criticism. As an academic editor she established five book series in French, English and Spanish respectively, including Critical Studies in 1989 (Rodopi, Amsterdam/ New York), which she still directs. Since 2004 she has been selected as Independent Expert, project evaluator and reviewer for the European Commission DG Information Society, DG Research, and DG Education and Culture. Studies: PhD in Comparative Studies, State University of New York; MA Stanford University.

Carola Streul is a German copyright lawyer who started in the early nineteen nineties her career as head of the legal sector of the German collective management society VG Bild-Kunst in Bonn. Since 1997 she is secretary general of EVA in Brussels, the interest group for European collective management societies for visual authors. She represents the interests of these societies and defends the positions of visual authors towards the European institutions. EVA is involved in all important developments in this field at European level. Since 2002 she is also manager of On-LineArt the International one-stop-shop for multi-territory licensing of fine art works on websites. She is work package leader for the visual sector within the European Commission co-funded ARROW PLUS project that deals with setting-up a service facilitating the search for authors and rights holders on books that are subject to mass digitisation.

Cecilia Wikström became a Member of the European Parliament in 2009, and currently sits as a full member and ALDE coordinator in the Committee on Legal Affairs and as a full member of the Committee on Civil Liberties, Justice and Home Affairs. She is also a member of the advisory committee on the code of conduct of members. She is part of the delegation to the EU-Kazakhstan, EU-Kyrgyzstan and EU-Uzbekistan Parliamentary Cooperation Committees, and for relations with Tajikistan, Turkmenistan and Mongolia, the Delegation to the ACP-EU Joint Parliamentary Assembly and the Delegation to the Euronest Parliamentary Assembly. Cecilia got her Master of theology at the Department of Theology at Uppsala University in 1993. She has had various positions in the Church of Sweden, such as Parish Pastor, Student Pastor, Pastor for Prisoners and Cathedral Canon of the Uppsala Cathedral. Between 1999-2000 she was senior consultant at Michael Berglund Chefsrekrytering and since 2001 she is the owner and executive Director of Wikström Consulting LTD. Between 2002 and 2009 Wikström was a Member of the Swedish Parliament for the Swedish Liberal Party. She was then Deputy Chairman of the Committee on Cultural Affairs and Member of the Committee on Foreign Affaires. Cecilia has written and published several books and has held various positions in national and regional boards, such as the Swedish UNESCO Board, the Police County Board and Liberal Women group in Uppsala County.

Arne König has been working as a journalist for the print and broadcasting media since the mid-70s. He has dedicated his professional life reporting on human rights and media issues. König is now a full-time unionist. He is the Vice-President of the Swedish Union of Journalists and the President of the European Federation of Journalists, the largest trade federation in Europe.

Nick Yapp, LLB, MA, was a teacher for 27 years before becoming a writer and broadcaster. He has had over 50 books published, has contributed to the New York Times, and has written the scripts for more than 100 Radio programmes and more than 50 television comedy and documentary programmes. He became a member of the Writers' Guild of Great Britain in 1984, and is currently Chair of the WGGB Books Committee. He is a member of the Board of the European Writers' Council. He is married to the artist Ruby Lescott, and has three children. He lives in London and the Pays Basque.

Mathias Lair Liaudet was born in Elbeuf (France) in 1945. He is a poet, critic and an occasional journalist. He publishes in journals and with small publishers. Some of these titles include: Inzeste (Gros textes); Pas mot pour (éclats d'encre). He also publishes works of psychoanalytic character under the name of J.- C. Liaudet. Recent publications include: Du bonheur d'être fragile (Albin Michel), La névrose française (Odile Jacob). For many years he has been defending authors' rights. He founded CALCRE (Comité des auteurs en lutte contre le racket de l'édition) in 1978, and chaired SELF (Syndicat des écrivains de langues française). Currently he serves in the boards of the Société des Gens de Lettres, of MOTif, of CPE (Conseil permanent des écrivains). He is the general secretary of the Union des Écrivains.

Jean Claude Bologne, born in Liège (Belgium) in 1956, since 2010 he is the president of the French Writers' Society (Société des Gens de Lettres). After a master in roman philology, especially in medieval philology, he became a literary critic and writer. He teaches medieval iconology at Icart (Institute of artistic careers, Paris). He is a member of several literary juries. Since 1986 he lives essentially from his copyrights and since 2002 he is committed to defending the rights of the writers to the Société des Gens de Lettres, of which he was Secretary General during six years before assuming the presidency. Since the success of the History of Modesty (1986), he has published about thirty books in three principal areas: novels, essays (mostly historical) and dictionaries. Latest published titles: History of male foppery (Perrin, 2011), The female modesty (Seuil, 2010), The angel of tears (Seuil, 2010), Dictionary of historical allusions (Larousse, 2007).

Helga Trüpel, born 21.7.1958 in Moers, Germany, studied psychology, German literature and religious pedagogy and obtained a doctorate in 1988 in literature at the University of Bremen. Since 1980 she is member of the Green Party and was engaged as a member of the Bremen Parliament (1987-1991 and 1995-2004) in particular for subjects on Culture and Science. In 1991, she became Senator for Culture and foreigners integration of the Hanseatic city of Bremen and held this office for four years. Since 2004, Helga Trüpel is Member of the European Parliament. She is Vice President of the Cultural and Education Committee and member of the Budget Committee and responsible for the parliamentary relations with China.

Vanda Guerra is a lawyer with SPA – Sociedade Portuguesa de Autores (Portuguese Society of Authors) since 1985 and she was appointed as Director of its Legal Department in 1997, a position she held until 2007. She regularly participates in training activities on Authors' Rights attended by students from different art courses; she has also participated in the training courses of the Police College (Escola Superior de Polícia), the Police Training School (Escola Prática de Polícia) and the National Republican Police Training Centre (Centro de Instrução da Guarda Nacional

Republicana – GNR), about Authors' Rights. For three years, she gave classes on "Authors' Rights Issues" at the Design College (Escola Superior de Design) and on "The Legal Aspects of Culture within the scope of the Valuation and Conservation Course of the Decorative Arts College of the Ricardo Espírito Santo Foundation. Since 2007, she is the Director of SPA's International Relations Department.

Maureen Duffy is the author of 31 published works of fiction, including six collections of poetry, non-fiction, and sixteen plays for stage, screen and radio, the most recent, being Sappho Singing; she is a fellow of the Royal Society of Literature and of King's College London, and a Vice President of the Royal Society of iterature, as well as President of Honour of the British Copyright Council and the ALCS, and a CISAC gold medallist. She was recently awarded a D.Litt by Loughborough University for contributions to literature and equality law reform.

Thorbjörn Öström is Legal Counsel for the Swedish Writers' Union. He leads SWU's negotiations with authorities, publishers, radio and TV corporations and other media companies and is a member of the boards of the collecting society ALIS and the RRO Bonus Presskopia. He is participating as an expert in law-making matters in Sweden, mainly in the area of copyright and has been a member of the board of EWC since 2011.

Anna Dünnebier is an author of novels, non-fiction books (mainly on cultural history), radio drama, film scripts. Born in 1944, grew up in Bremen.Lives in Köln (Cologne), Germany. She studied Literature in Berlin and London 1964-69, MA. Worked mainly as an author, but also as a journalist for radio; as director of TV documentary and TV series; as photographer for magazines and books; as researcher in womens' history; as organiser of literary events; in the film board of Nordrhein-Westfalia; in the Council of Public Radio and TV; in the Cultural Committee of the City of Köln Council. Member of the Council of Administration (Verwaltungsrat) of VG Wort (collecting society for authors and publishers).

Ciara Healy is a 3rd year Law Plus (LLB) undergraduate student at the University of Limerick in Ireland. She was born on the 7th of November 1992 and is originally from County Kerry, Ireland. In 2012 she completed her Co-Operative Education as a trainee at the European Writers' Council. In Ireland, she has participated in various voluntary programmes such as the Higher Education Access Volunteer Programme as well as having a strong involvement in several Peer-Mentoring programmes throughout her education.

Bram Erven was a trainee at the European Writers' Council in 2012. He is a Dutch student in communication and information sciences, business and marketing at Tilburg University. Additionally, he participated in the Outreaching Programme, an extracurricular program for motivated, high-achieving students.

ALCS protecting and promoting authors' rights

EUROPEAN WRITERS' COUNCIL EWC

EUROPEAN PARLIAMENT

The European Writers' Council

2012 Authors' Rights Conference

STRIKING THE RIGHT BALANCE BETWEEN ACCESS, FAIR REMUNERATION AND AUTHORS' RIGHTS

Monday, 4 June 2012, 14:00-18:00
European Parliament, Brussels, Room PHS P7C50

With the patronage of Marielle GALLO MEP, Group of the European People's Party (Christian Democrats)

Sponsored by the Authors' Licensing and Collecting Society (United Kingdom)

PROGRAMME

Simultaneous interpretation English/French will be available.

14:00 • **Marielle GALLO** MEP (France), Welcome and Tour d'horizon

• Keynote speech: **Kerstin JORNA,** DG Internal Market and Services, European Commission

1. Highlighting Access for the Benefit of Society: the Role of Writers in the Promotion of Digitisation in the EU
Chair: **Lena STEFANOVIC,** writer, Secretary-General, The Montenegrin Independent Writers' Association (Montenegro)

14:25 • *Overview of the EU initiatives endorsed by authors in the book and text-sector.*
Pirjo HIIDENMAA, EWC President, Director of the Open University (Finland),
Myriam DIOCARETZ, EWC Secretary-General (the Netherlands)

14:35 • *The authors' key guiding principles.*
Carola STREUL, Secretary-General, European Visual Artists (Germany)

14:45 • **Cecilia WIKSTRÖM** MEP, Group of the Alliance of Liberals and Democrats for Europe (Sweden)

15:00 **Discussion, questions from the audience**

2. **Sustaining the Work of Writers in the Digital Age**
Chair: **Carmel AZZOPARDI**, scholar, President, The Maltese Language Academy (Malta)

15:15 • *How can the authors' negotiating positions be improved? The challenge of competition law.*
Arne KÖNIG, President, European Federation of Journalists (Sweden)

15:25 • *The author in the European Union and the UNESCO Recommendation on the Status of the Artist of 28 October 1980, Article V 5.*
Nick YAPP, writer, European Writers' Council Board Member, member of the Writers' Guild of Great Britain (United Kingdom)

15:35 • *Two responses to the European Economic and Social Committee (EESC) opinion on "Book publishing on the move" adopted on 25.04.2012.*
Mathias LAIR LAUDET, poet and critic, Secretary-General of the Union des Écrivains (France)
Jean Claude BOLOGNE, critic and scholar, President of Société des Gens de Lettres (France)

15:55 • *Towards a fair balance between access for the readers as consumers and remuneration for authors, in the midst of high conflicts around copyright.*
Helga TRÜPEL MEP, Group of the Greens/European Free Alliance (Germany), Vice-Chair Committee on Culture and Education

16:10 **Discussion, questions from the audience**

3. **Collective Rights Management: An Authors' Right?**
Chair: **Jørgen LORENTZEN**, President, the Norwegian Non-Fiction Writers and Translators Association, Norway

16:40 *What collective management organisations do for authors and what they can do in the digital environments to make sure that authors are rewarded for all uses of their works.*
Vanda GUERRA, Director, Sociedade Portuguesa de Autores (Portugal)
Maureen DUFFY, novelist, Honorary President of the Authors' Licensing and Collecting Society (United Kingdom)

17:00 **Discussion, questions from the audience**

4. **On the German Pirate Party Plans for Copyright Reform**
Chair: Nicole PFISTER-FETZ, Secretary-General, AdS, Swiss authors' association writing in German, French, Italian and Rhaeto-Romance.

17:15 **Thorbjörn ÖSTRÖM**, European Writers' Council Board Member, Legal Counsel (L.L.M.), the Swedish Writers' Union (Sweden)
Anna DÜNNEBIER, writer, European Writers' Council Vice-President (Germany)

17:35 **Discussion, questions from the audience**

17:55 Conclusion
Pirjo HIIDENMAA, President, European Writers' Council

18:00 **Closing cocktail - ROOM PHS 5 B 1 (5th floor)**