

Public Consultation on the review of the EU copyright rules

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I. Introduction

A. Context of the consultation

Over the last two decades, digital technology and the Internet have reshaped the ways in which content is created, distributed, and accessed. New opportunities have materialised for those that create and produce content (e.g. a film, a novel, a song), for new and existing distribution platforms, for institutions such as libraries, for activities such as research and for citizens who now expect to be able to access content – for information, education or entertainment purposes – regardless of geographical borders.

This new environment also presents challenges. One of them is for the market to continue to adapt to new forms of distribution and use. Another one is for the legislator to ensure that the system of rights, limitations to rights and enforcement remains appropriate and is adapted to the new environment. This consultation focuses on the second of these challenges: ensuring that the EU copyright regulatory framework stays fit for purpose in the digital environment to support creation and innovation, tap the full potential of the Single Market, foster growth and investment in our economy and promote cultural diversity.

In its "Communication on Content in the Digital Single Market"¹ the Commission set out two parallel tracks of action: on the one hand, to complete its on-going effort to review and to modernise the EU copyright legislative framework²³ with a view to a decision in 2014 on whether to table legislative reform proposals, and on the other, to facilitate practical industry-led solutions through the stakeholder dialogue "Licences for Europe" on issues on which rapid progress was deemed necessary and possible.

The "Licences for Europe" process has been finalised now⁴. The Commission welcomes the practical solutions stakeholders have put forward in this context and will monitor their progress. Pledges have been made by stakeholders in all four Working Groups (cross border portability of services, user-generated content, audiovisual and film heritage and text and data mining). Taken together, the Commission expects these pledges to be a further step in making the user environment easier in many different situations. The Commission also takes note of the fact that two groups – user-generated content and text and data mining – did not reach consensus among participating stakeholders on either the problems to be addressed or on the results. The discussions and results of "Licences for Europe" will be also taken into account in the context of the review of the legislative framework.

As part of the review process, the Commission is now launching a public consultation on issues identified in the Communication on Content in the Digital Single Market, i.e.: *"territoriality in the Internal Market, harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform"*. As highlighted in the October 2013 European Council Conclusions⁵ *"Providing digital services and content across the single market requires the establishment of a copyright regime for the digital age. The Commission will therefore complete its on-going review of the EU copyright*

¹ COM (2012)789 final, 18/12/2012.

² As announced in the Intellectual Property Strategy ' A single market for Intellectual Property Rights: COM (2011)287 final, 24/05/2011.

³ *"Based on market studies and impact assessment and legal drafting work"* as announced in the Communication (2012)789.

⁴ See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf.

⁵ EUCO 169/13, 24/25 October 2013.

framework in spring 2014. It is important to modernise Europe's copyright regime and facilitate licensing, while ensuring a high level protection of intellectual property rights and taking into account cultural diversity".

This consultation builds on previous consultations and public hearings, in particular those on the "Green Paper on copyright in the knowledge economy"⁶, the "Green Paper on the online distribution of audiovisual works"⁷ and "Content Online"⁸. These consultations provided valuable feedback from stakeholders on a number of questions, on issues as diverse as the territoriality of copyright and possible ways to overcome territoriality, exceptions related to the online dissemination of knowledge, and rightholders' remuneration, particularly in the audiovisual sector. Views were expressed by stakeholders representing all stages in the value chain, including right holders, distributors, consumers, and academics. The questions elicited widely diverging views on the best way to proceed. The "Green Paper on Copyright in the Knowledge Economy" was followed up by a Communication. The replies to the "Green Paper on the online distribution of audiovisual works" have fed into subsequent discussions on the Collective Rights Management Directive and into the current review process.

B. How to submit replies to this questionnaire

You are kindly asked to send your replies **by 5 February 2014** as a word or pdf document to the following e-mail address of DG Internal Market and Services: **markt-copyright-consultation@ec.europa.eu**. Please note that replies sent after that date will not be taken into account.

This consultation is addressed to different categories of stakeholders. To the extent possible, the questions indicate the category/ies of respondents most likely to be concerned by them (annotation in brackets, before the actual question). Respondents should nevertheless feel free to reply to any/all of the questions. Also, please note that, apart from the question concerning the identification of the respondent, none of the questions is obligatory. Replies containing answers only to part of the questions will be also accepted.

You are requested to provide your answers directly within this consultation document. For the "Yes/No/No opinion" questions please put the selected answer in **bold** and underline it so it is easy for us to see your selection.

In your answers to the questions, you are invited to refer to the situation in EU Member States. ***You are also invited in particular to indicate, where relevant, what would be the impact of options you put forward in terms of costs, opportunities and revenues.***

The public consultation is available in English. Responses may, however, be sent in any of the 24 official languages of the EU.

C. Confidentiality

The contributions received in this round of consultation as well as a summary report presenting the responses in a statistical and aggregated form will be published on the website of DG MARKT.

Please note that all contributions received will be published together with the identity of the contributor, unless the contributor objects to the publication of their personal data on the

⁶ COM(2008) 466/3, http://ec.europa.eu/internal_market/copyright/copyright-info/index_en.htm#maincontentSec2.

⁷ COM(2011) 427 final, http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm.

⁸ http://ec.europa.eu/internal_market/consultations/2009/content_online_en.htm.

grounds that such publication would harm his or her legitimate interests. In this case, the contribution will be published in anonymous form upon the contributor's explicit request. Otherwise the contribution will not be published nor will its content be reflected in the summary report.

Please read our [Privacy statement](#).

PLEASE IDENTIFY YOURSELF:

Name:

Federation of European Publishers

The Federation of European Publishers (FEP) represents 28 national associations of book and learned journal publishers of the European Union and of the European Economic Area and acts on behalf of its members in discussions and negotiations with the Institutions of the European Union particularly concerning legislation, regulation and taxation. FEP is the voice of the large majority of European publishers.

Book publishing is the largest cultural industry in Europe; it generates around 23 billion € of net revenues per year, for a retail market value of about 40 billion €. Book publishing is a very valuable asset for Europe, which is the global leader in this sector; all EU policies should take into account its potential for jobs and growth generation.

Reading a book is the second most common activity according to the EU Special Eurobarometers report on “Cultural Access and participation”⁹ with 68% of people reading books. Reading books by an author from another European country is the most common form of engaging with another country’s culture and the most accessible one according to the same report (31%)¹⁰. It is also a sector that employs directly at least half a million people across Europe (from authors, to publishers to independent booksellers). According to Eurostat, about 300 000 people are directly employed in publishing. All this does not count all the indirect jobs of graphic design, translators, printers, etc.

Publishing like any other sector of the cultural industries, needs copyright as a reliable and stable legislative tool that ensures the protection of creation and recouping of investments, thus allowing perpetuating the process of creation and reinvestment.

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its Code of Conduct.

- If you are a Registered organisation, please indicate your Register ID number below. Your contribution will then be considered as representing the views of your organisation.

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- If your organisation is not registered, you have the opportunity to [register now](#). Responses from organisations not registered will be published separately.

⁹ http://ec.europa.eu/public_opinion/archives/ebs/ebs_399_en.pdf, page 5

¹⁰ Ibid. page 38

If you would like to submit your reply on an anonymous basis please indicate it below by underlining the following answer:

- Yes, I would like to submit my reply on an anonymous basis

TYPE OF RESPONDENT (Please underline the appropriate):

- End user/consumer** (e.g. internet user, reader, subscriber to music or audiovisual service, researcher, student) **OR Representative of end users/consumers**

→ for the purposes of this questionnaire normally referred to in questions as "**end users/consumers**"

- Institutional user** (e.g. school, university, research centre, library, archive) **OR Representative of institutional users**

→ for the purposes of this questionnaire normally referred to in questions as "**institutional users**"

- Author/Performer OR Representative of authors/performers**

- Publisher/Producer/Broadcaster OR Representative of publishers /producers/broadcasters**

→ the two above categories are, for the purposes of this questionnaire, normally referred to in questions as "**right holders**"

- Intermediary/Distributor/Other service provider** (e.g. online music or audiovisual service, games platform, social media, search engine, ICT industry) **OR Representative of intermediaries/distributors/other service providers**

→ for the purposes of this questionnaire normally referred to in questions as "**service providers**"

- Collective Management Organisation**

- Public authority**

- Member State**

- Other** (Please explain):

.....
.....

II. Rights and the functioning of the Single Market

A. *Why is it not possible to access many online content services from anywhere in Europe?*

[The territorial scope of the rights involved in digital transmissions and the segmentation of the market through licensing agreements]

Holders of copyright and related rights – e.g. writers, singers, musicians - do not enjoy a single protection in the EU. Instead, they are protected on the basis of a bundle of national rights in each Member State. Those rights have been largely harmonised by the existing EU Directives. However, differences remain and the geographical scope of the rights is limited to the territory of the Member State granting them. Copyright is thus territorial in the sense that rights are acquired and enforced on a country-by-country basis under national law¹¹.

The dissemination of copyright-protected content on the Internet – e.g. by a music streaming service, or by an online e-book seller – therefore requires, in principle, an authorisation for each national territory in which the content is communicated to the public. Rightholders are, of course, in a position to grant a multi-territorial or pan-European licence, such that content services can be provided in several Member States and across borders. A number of steps have been taken at EU level to facilitate multi-territorial licences: the proposal for a Directive on Collective Rights Management¹² should significantly facilitate the delivery of multi-territorial licences in musical works for online services¹³; the structured stakeholder dialogue “Licences for Europe”¹⁴ and market-led developments such as the on-going work in the Linked Content Coalition¹⁵.

“Licences for Europe” addressed in particular the specific issue of cross-border portability, i.e. the ability of consumers having subscribed to online services in their Member State to keep accessing them when travelling temporarily to other Member States. As a result, representatives of the audio-visual sector issued a joint statement affirming their commitment to continue working towards the further development of cross-border portability¹⁶.

Despite progress, there are continued problems with the cross-border provision of, and access to, services. These problems are most obvious to consumers wanting to access services that are made available in Member States other than the one in which they live. Not all online services are available in all Member States and consumers face problems when trying to access such services across borders. In some instances, even if the “same” service is available in all Member States, consumers cannot access the service across borders (they can only access their “national” service, and if they try to access the “same” service in another Member State they are redirected to the one designated for their country of residence).

¹¹ This principle has been confirmed by the Court of justice on several occasions.

¹² Proposal for a Directive of the European Parliament and of the Council of 11 July 2012 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, COM(2012) 372 final.

¹³ Collective Management Organisations play a significant role in the management of online rights for musical works in contrast to the situation where online rights are licensed directly by right holders such as film or record producers or by newspaper or book publishers.

¹⁴ You can find more information on the following website: <http://ec.europa.eu/licences-for-europe-dialogue/>.

¹⁵ You can find more information on the following website: <http://www.linkedcontentcoalition.org/>.

¹⁶ See the document “Licences for Europe – ten pledges to bring more content online”:
http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf.

This situation may in part stem from the territoriality of rights and difficulties associated with the clearing of rights in different territories. Contractual clauses in licensing agreements between right holders and distributors and/or between distributors and end users may also be at the origin of some of the problems (denial of access, redirection).

The main issue at stake here is, therefore, whether further measures (legislative or non-legislative, including market-led solutions) need to be taken at EU level in the medium term¹⁷ to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders.

1. [In particular if you are an end user/consumer:] Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?

YES - Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software)

.....

- NO
- NO OPINION

2. [In particular if you are a service provider:] Have you faced problems when seeking to provide online services across borders in the EU?

YES - Please explain whether such problems, in your experience, are related to copyright or to other issues (e.g. business decisions relating to the cost of providing services across borders, compliance with other laws such as consumer protection)? Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software).

.....
.....

- NO
- NO OPINION

3. [In particular if you are a right holder or a collective management organisation:] How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.

[Open question]

¹⁷ For possible long term measures such as the establishment of a European Copyright Code (establishing a single title) see section VII of this consultation document.

In the book sector, the issue of territoriality is fundamentally different from other sectors. The author grants a licence directly to the publisher for the commercial exploitation of a work. Publishers usually acquire and manage worldwide exclusive rights for books in a specific language, or at least pan-European licenses. By way of illustration, a Lithuanian publisher can sell a book in Lithuanian to readers of Lithuanian all over Europe, exploiting the pan-European licence that has been secured. Publishers can therefore sell books through both online and/or brick-and-mortar retailers, across the whole internal market without limitations. This applies to both physical books and ebooks, as European publishers generally acquire digital as well as analogue rights.

In a small number of cases, authors may choose to limit the publisher’s right to publish in certain territories. This restriction is about author freedom, and not about copyright.

You will find in Annex 1 the “Contribution on the book sector by the Federation of European Publishers to the OHIM strategic report on legal offers available online”

4. If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?

[Open question]

.....
.....

5. [In particular if you are a right holder or a collective management organisation:] Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?

YES – Please explain by giving examples

.....

NO

Most exceptionally, some technical issues due to a very nascent e-book market (less than 1% in a majority of EU countries, 13% in the UK, 3% in France and Germany) may make it necessary to limit the licence to some regions, however this is not the rule and very rarely occurs in the digital book sector. In anticipation of forthcoming new VAT rules which foresee that from January 2015 VAT should be collected in the country of consumption, we foresee some difficulties due to the need to identify where the sale will take place. FEP is willing to work together with booksellers on this issue and wishes to gain the Commission’s support for this challenging transition. Another factor is related to forum shopping for legislation when it comes to defamation. An improvement of the Rome II regulation would be helpful in that respect.

Please see the publishers’ commitment in the framework of Licences of Europe: https://ec.europa.eu/licences-for-europe-dialogue/sites/licences-for-europe-dialogue/files/2-E-books-roadmap_0.pdf

NO OPINION

6. [In particular if you are e.g. a broadcaster or a service provider:] **Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipient (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?**

YES – Please explain by giving examples

.....
.....

NO

NO OPINION

7. **Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?**

YES – Please explain

.....
.....

NO – Please explain

FEP does not expect particular legislative measures in the copyright field to be required at EU level to increase cross-border availability of books in analogue and digital formats within the single market. As stated above, there is no evidence of a problem in the publishing sector. However, we would like to encourage the Commission to support us in finding technical solutions to identify the country of sale for VAT purposes (see question 5), to enhance the discoverability of e-books and also with regard to the interoperability of devices, platforms and content.

NO OPINION

B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

[The definition of the rights involved in digital transmissions]

The EU framework for the protection of copyright and related rights in the digital environment is largely established by Directive 2001/29/EC¹⁸ on the harmonisation of certain aspects of copyright and related rights in the information society. Other EU directives in this field that are

¹⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

relevant in the online environment are those relating to the protection of software¹⁹ and databases²⁰.

Directive 2001/29/EC harmonises the rights of authors and neighbouring rightholders²¹ which are essential for the transmission of digital copies of works (e.g. an e-book) and other protected subject matter (e.g. a record in a MP3 format) over the internet or similar digital networks.

The most relevant rights for digital transmissions are the reproduction right, i.e. the right to authorise or prohibit the making of copies²², (notably relevant at the start of the transmission – e.g. the uploading of a digital copy of a work to a server in view of making it available – and at the users’ end – e.g. when a user downloads a digital copy of a work) and the communication to the public/making available right, i.e. the rights to authorise or prohibit the dissemination of the works in digital networks²³. These rights are intrinsically linked in digital transmissions and both need to be cleared.

1. The act of “making available”

Directive 2001/29/EC specifies neither what is covered by the making available right (e.g. the upload, the accessibility by the public, the actual reception by the public) nor where the act of “making available” takes place. This does not raise questions if the act is limited to a single territory. Questions arise however when the transmission covers several territories and rights need to be cleared (does the act of “making available” happen in the country of the upload only? in each of the countries where the content is potentially accessible? in each of the countries where the content is effectively accessed?). The most recent case law of the Court of Justice of the European Union (CJEU) suggests that a relevant criterion is the “targeting” of a certain Member State's public²⁴. According to this approach the copyright-relevant act (which has to be licensed) occurs at least in those countries which are “targeted” by the online service provider. A service provider “targets” a group of customers residing in a specific country when it directs its activity to that group, e.g. via advertisement, promotions, a language or a currency specifically targeted at that group.

8. *Is the scope of the “making available” right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?*

[YES](#)

The application of the country of origin principle would have a negative effect on the ability of rightholders to effectively enforce their “making available” or any other exclusive rights of

¹⁹ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

²⁰ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

²¹ Film and record producers, performers and broadcasters are holders of so-called “neighbouring rights” in, respectively, their films, records, performances and broadcast. Authors’ content protected by copyright is referred to as a “work” or “works”, while content protected by neighbouring rights is referred to as “other subject matter”.

²² The right to “authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part” (see Art. 2 of Directive 2001/29/EC) although temporary acts of reproduction of a transient or incidental nature are, under certain conditions, excluded (see art. 5(1) of Directive 2001/29/EC).

²³ The right to authorise or prohibit any communication to the public by wire or wireless means and to authorise or prohibit the making available to the public “on demand” (see Art. 3 of Directive 2001/29/EC).

²⁴ See in particular Case C-173/11 (Football Dataco vs Sportradar) and Case C-5/11 (Donner) for copyright and related rights, and Case C-324/09 (L’Oréal vs eBay) for trademarks. With regard to jurisdiction see also joined Cases C-585/08 and C-144/09 (Pammer and Hotel Alpenhof) and pending Case C-441/13 (Pez Hejduk); see however, adopting a different approach, Case C-170/12 (Pinckney vs KDG Mediatech).

copyright. The making available right is most useful when an infringement can be brought against a party who does not make an unauthorised reproduction in a particular territory (but very often) has done so or assisted or facilitated the making of a copy in another jurisdiction. The making available right is also useful in that the exceptions from copyright infringement in relation to the reproduction right are not co-extensive with the exceptions from infringement relating to the making available right. There is no justification for changing this, and doing so would make it harder for rightsholders to enforce their rights.

NO – Please explain how this could be clarified and what type of clarification would be required (e.g. as in "targeting" approach explained above, as in "country of origin" approach²⁵)

.....
.....

NO OPINION

9. *[In particular if you are a right holder:] Could a clarification of the territorial scope of the “making available” right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief²⁶)?*

YES – Please explain how such potential effects could be addressed

.....
.....

NO

FEP does not believe that the territorial scope of the making available right needs clarification. The “lex loci protectionis” conflict of law rule for copyright provides adequate means to enforce copyright. For criminal matters, a greater cooperation in the Internal Market would be helpful.

NO OPINION

2. Two rights involved in a single act of exploitation

Each act of transmission in digital networks entails (in the current state of technology and law) several reproductions. This means that there are two rights that apply to digital transmissions: the reproduction right and the making available right. This may complicate the licensing of works for online use notably when the two rights are held by different persons/entities.

²⁵ The objective of implementing a “country of origin” approach is to localise the copyright relevant act that must be licenced in a single Member State (the “country of origin”, which could be for example the Member State in which the content is uploaded or where the service provider is established), regardless of in how many Member States the work can be accessed or received. Such an approach has already been introduced at EU level with regard to broadcasting by satellite (see Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission).

²⁶ Injunctive relief is a temporary or permanent remedy allowing the right holder to stop or prevent an infringement of his/her right.

10. *[In particular if you a service provider or a right holder:] Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?*

YES – Please explain what type of measures would be needed in order to address such problems (e.g. facilitation of joint licences when the rights are in different hands, legislation to achieve the "bundling of rights")

.....
.....

NO

This is not applicable to the print sector where publishers generally acquire all rights which are fully transferred to him by the author(s) for commercial exploitation. Publishers hold rights for reproduction and distribution simultaneously. We therefore do not see any need for legislation in that respect as in our field the two distinct rights do not create any problem.

NO OPINION

3. Linking and browsing

Hyperlinks are references to data that lead a user from one location in the Internet to another. They are indispensable for the functioning of the Internet as a network. Several cases are pending before the CJEU²⁷ in which the question has been raised whether the provision of a clickable link constitutes an act of communication to the public/making available to the public subject to the authorisation of the rightholder.

A user browsing the internet (e.g. viewing a web-page) regularly creates temporary copies of works and other subject-matter protected under copyright on the screen and in the 'cache' memory of his computer. A question has been referred to the CJEU²⁸ as to whether such copies are always covered by the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

11. *Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?*

YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it does not amount to an act of communication to the public – or to a new public, or because it should be covered by a copyright exception)

Hyperlinks per se should not be considered as making available when the link leads to an authorised copy of a work or other subject matter. They therefore should not be subject to prior approval provided that the rightholder is entitled to set restrictions on access to the materials at the end of the link.

²⁷ Cases C-466/12 (Svensson), C-348/13 (Bestwater International) and C-279/13 (C More entertainment).

²⁸ Case C-360/13 (Public Relations Consultants Association Ltd). See also

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0202_PressSummary.pdf.

However, links should be covered by the making available right in cases where:

- the link leads to illegally made available material
- the link leads to copyright material not previously made available to the public, as it is with pirate sites offering link collections,
- it is a deep link leading directly to the content.

Automated restrictions on access such as prohibitions on crawling must be followed by search engines, or the search engines will be deemed infringers and/or contributory infringers. More generally, FEP is able to endorse the views and conclusions expressed in a report of ALAI, available at: <http://www.alai.org/en/assets/files/resolutions/making-available-right-report-opinion.pdf>

NO OPINION

12. *Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?*

YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it is or should be covered by a copyright exception)

The actual viewing of a page (from a user's perspective) should not be subject to authorisation when it involves a genuine act of temporary reproduction as a necessary technical process.

However, the making available of copyright protected content on a webpage so that internet users can view it can and should only be done under authorisation of rightholders. Illegal display of pdf on websites and illegal streaming constitutes an increasing form of piracy of e-books, which becomes even more crucial at a time when commercial services are being developed that provide this same function, for example Skoobe or Paper C in Germany. Moreover, rightholders should be able to decide whether a work is available for indexing by search engines.

NO OPINION

4. Download to own digital content

Digital content is increasingly being bought via digital transmission (e.g. download to own). Questions arise as to the possibility for users to dispose of the files they buy in this manner (e.g. by selling them or by giving them as a gift). The principle of EU exhaustion of the distribution right applies in the case of the distribution of physical copies (e.g. when a tangible article such as a CD or a book, etc. is sold, the right holder cannot prevent the further distribution of that tangible article)²⁹. The issue that arises here is whether this principle can also be applied in the case of an act of transmission equivalent in its effect to distribution (i.e. where the buyer

²⁹ See also recital 28 of Directive 2001/29/EC.

acquires the property of the copy)³⁰. This raises difficult questions, notably relating to the practical application of such an approach (how to avoid re-sellers keeping and using a copy of a work after they have “re-sold” it – this is often referred to as the “forward and delete” question) as well as to the economic implications of the creation of a second-hand market of copies of perfect quality that never deteriorate (in contrast to the second-hand market for physical goods).

13. [In particular if you are an end user/consumer:] Have you faced restrictions when trying to resell digital files that you have purchased (e.g. mp3 file, e-book)?

YES – Please explain by giving examples

.....

NO

NO OPINION

14. [In particular if you are a right holder or a service provider:] What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.

[Open question]

As recognised in this consultation, the ability to resell previously purchased digital content would have severe economic implications on the book sector. Applying the principle of exhaustion to digital products would also stymie the development of new business models and it is hard to foresee that the exhaustion rule applied to electronic content would be compliant with the three-step-test of the Berne convention.

There are several reasons why the conditions and approaches which apply with regard to physical goods should not also obtain in the digital marketplace. The simple assumption that because a certain approach works for physical it should, almost axiomatically, be made to apply to digital is overly simplistic. The attempt to straightforwardly transplant physical terms to the digital market ignores hugely significant key differences between how the markets operate. Ignoring these differences places the strength of the creative economy in jeopardy, in that creators’ rewards and incentives would be eroded, along with the incentives and abilities of creative companies to invest in them.

The underlying philosophy of the copyright framework is to give the author exclusive rights in the first-hand market, because this is where the greatest value can be derived and where they are likely to maximise their reward. It also ensures that their moral rights are maintained.

In the physical domain, it follows that it can be tolerated for the author not to also have full exclusive rights in the second-hand market: specifically the exhaustion of the distribution right can be tolerated as the author is deemed to have earned sufficient reward in his first-hand market.

³⁰ In Case C-128/11 (Oracle vs. UsedSoft) the CJEU ruled that an author cannot oppose the resale of a second-hand licence that allows downloading his computer program from his website and using it for an unlimited period of time. The exclusive right of distribution of a copy of a computer program covered by such a licence is exhausted on its first sale. While it is thus admitted that the distribution right may be subject to exhaustion in case of computer programs offered for download with the right holder’s consent, the Court was careful to emphasise that it reached this decision based on the Computer Programs Directive. It was stressed that this exhaustion rule constituted a *lex specialis* in relation to the Information Society Directive (UsedSoft, par. 51, 56).

However, this logic is drastically changed in the digital world because here the second-hand market is largely indistinguishable from the first-hand, owing to three vital characteristics of digital goods.

(1) Digital works in the second-hand market are identical to the original of the work only in the sense that they contain the same work; however, physical works in the second-hand market are identical in the strictest interpretation of the term “identical”: i.e. the second-hand work is one and the same thing as the first-hand work.

(2) Digital copies can be numerous, to a near-infinite degree, and therefore the second-hand market can be bigger than the first-hand market. In the physical world, this is impossible since the second-hand market can only ever be as big as the first-hand market and is always likely to actually be smaller. Given the trivial ease with which Digital Rights Management tools can be hacked and cracked, it is no comfort to say that “forward and delete” approach could solve this issue.

(3) From these two points it follows that whereas digital copies are and remain pristine and faithful, physical copies suffer from deterioration. This means that goods in the physical second-hand market are inferior to the first-hand (increasingly so over time) and so goods in each market are less substitutable. For example, a dog-eared copy of “The Da Vinci Code” on its fourth outing on the shelves of a charity shop is clearly inferior to the brand new copy in a high street bookshop.

The upshot of these three factors is that the ability of the author/publisher to earn just reward in the first-hand market would be severely curtailed by the untrammelled reselling of digital content. They would face unfair competition from the second-hand market, in which the providers of goods have borne none of the risk of investment in the creation of the product, nor have borne any of the production costs, other than the trivial cost of reproduction. This would generate unfair price competition to the distinct disadvantage of the first-hand market.

Furthermore, the impact on levels of online copyright infringement would be likely to be significant. Monitoring unauthorised distribution is difficult enough in the prevailing conditions; however, it would become untenable to monitor and track infringement in a newly legitimised second-hand market in which there was no discernible difference in the product. Pirate copies would be indistinguishable from the legitimate copies.

Further, it is more difficult to determine whether a digital good has been sold; unlike a physical sale where there is a transfer to another user and the denial of the continuing use of the physical good by the seller, in the digital environment this is not the case – both the seller and purchaser can continue to use the digital product. The implications for widespread copyright infringement – and concurrent difficulties in enforcement – are clear.

Nor is there a significant consumer loss if the sale of digital second-hand books remains prohibited. First, because the on-going sale of second-hand physical books would be in no way affected; secondly, because there is no clear discernible potential value to the consumer of selling second-hand ebooks.

There is a further potential for harm to the consumer. A rational response from authors/publishers to the challenge of lost value in the second-hand market would be to raise prices in the first-hand market in order to cover anticipated losses. This would be a perilous strategy as it would entail losing further market share to lower prices in the second-hand market. It would also impose higher prices on those consumers who wanted first-hand works.

This idea is also based on a wide-spread false apprehension of the fact that e-books are cheaper than paper books. E-books are in fact not much cheaper to produce than print books; we estimate

that digital production allows savings of about 15-20% (printing, storage and distribution) – everything else (paying authors, editorial, marketing, etc) is still there in digital. In any event, only a tiny marginal proportion of publishers only publish ebooks, almost all publishers need to publish in paper and in digital form, so the reduction of costs, for a market that is no more than 1% in the majority of Member States is not significant at all (the UK is an exception with 15% market share of e-books, France, Italy, Spain and Germany between 2 to 3% but most of the countries across the EU are counting less than 1%). Moreover, the digital market is still so nascent that there are still big initial investments needed to move to digital. So all in all for the time being producing ebooks costs about the same, if not more. Please refer to the Annex I at the end of the document on the “Contribution on the book sector by the Federation of European Publishers to the OHIM strategic report on legal offers available online”.

So for these reasons it has to be clearly acknowledged that the digital marketplace is importantly different to the physical one.

C. Registration of works and other subject matter – is it a good idea?

Registration is not often discussed in copyright in the EU as the existing international treaties in the area prohibit formalities as a condition for the protection and exercise of rights. However, this prohibition is not absolute³¹. Moreover a system of registration does not need to be made compulsory or constitute a precondition for the protection and exercise of rights. With a longer term of protection and with the increased opportunities that digital technology provides for the use of content (including older works and works that otherwise would not have been disseminated), the advantages and disadvantages of a system of registration are increasingly being considered³².

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

YES

NO

The book publishing sector already has a voluntary registration system for the identification of books (ISBN), works (ISTC), and party names (ISNI), to assist with identification, discoverability and licensing. (cf. *The LCC Principles of Identification v1.0*, www.linkedcontentcoalition.org/home_page.html#!documents/cvjv). The book industry was the first cultural sector to create an international standard to identify books with the ISBN, which was introduced in 1965 and now applies also to e-books and educational software.

European publishers do not believe that any additional system of registration needs to be created and applied to the publishing sector. We also reject the notion that registration should be a prerequisite for the protection and exercise of rights.

The new environment is challenging in this area, since it requires standards for identification, description (to facilitate retrieval in the Internet) and formats, to ensure interoperability between different devices. European publishers are actively committed to the development of open standards along the production chain, including identification (ISBN, ISTC), metadata (ONIX), web resolution (DOI) and – very important for e-book portability – digital format (.epub).

³¹ For example, it does not affect “domestic” works – i.e. works originating in the country imposing the formalities as opposed to works originating in another country.

³² On the basis of Article 3.6 of the Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, a publicly accessible online database is currently being set up by the Office for Harmonisation of the Internal Market (OHIM) for the registration of orphan works.

Dialogue with other players along the book value chain will be essential for full deployment of such standards.

The identification and licensing of works and other subject matter is better served by improvements in facilitating discoverability; and in the streamlining of licensing. Publishers are working to improve both of these, at national and European level.

NO OPINION

16. What would be the possible advantages of such a system?

[Open question]

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17. What would be the possible disadvantages of such a system?

[Open question]

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18. What incentives for registration by rightholders could be envisaged?

[Open question]

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D. How to improve the use and interoperability of identifiers

There are many private databases of works and other subject matter held by producers, collective management organisations, and institutions such as libraries, which are based to a greater or lesser extent on the use of (more or less) interoperable, internationally agreed ‘identifiers’. Identifiers can be compared to a reference number embedded in a work, are specific to the sector in which they have been developed³³, and identify, variously, the work itself, the owner or the contributor to a work or other subject matter. There are notable examples of where industry is undertaking actions to improve the interoperability of such identifiers and databases. The Global Repertoire Database³⁴ should, once operational, provide a single source of information on the ownership and control of musical works worldwide. The Linked Content Coalition³⁵ was established to develop building blocks for the expression and management of rights and licensing across all content and media types. It includes the development of a Rights Reference Model (RRM) – a comprehensive data model for all types of rights in all types of

³³ E.g. the International Standard Recording Code (ISRC) is used to identify recordings, the International Standard Book Number (ISBN) is used to identify books.

³⁴ You will find more information about this initiative on the following website: <http://www.globalrepertoiredatabase.com/>.

³⁵ You will find more information about this initiative (funded in part by the European Commission) on the following website: www.linkedcontentcoalition.org.

content. The UK Copyright Hub³⁶ is seeking to take such identification systems a step further, and to create a linked platform, enabling automated licensing across different sectors.

19. What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

[Open question]

The Federation of European Publishers supports the Linked Content Coalition (LCC) and its valuable work to create tools for rights management in any licensing activity. We are also very supportive of the UK Copyright Hub (in which our British member, the Publisher Association is actively participating) and believe that, while respecting national preferences in adopting such models, the EU may contribute through encouraging possible pan-European application or interlinking with other similar initiatives. A significant first initiative to implement the LCC framework is Rights Data Integration, a European Commission supported project, where our Italian member is involved for developing concrete use cases in the book sector.

FEP is also one of the driving forces behind ARROW, which is a tool to facilitate rights information management in any digitisation project involving text and image based works. The ARROW Rights Information Infrastructure is based on standard identification systems to support the process of identification of authors, publishers and other right holders of a work, including determining whether it is orphan, in or out of copyright or its commercial availability status. In this, it is based on the same principle than LCC.

We believe that supporting technological and business innovation in this field is a much more effective policy than introducing new pieces of legislation. In particular, registration systems in the field should remain voluntary and independent (self-regulating) since they demonstrated over the time to be more efficient.

FEP took part actively in Working Group 2 within “Licenses for Europe”, especially with regard to the micro-licensing strand (previously small scale users) and signed a toolkit for licensing including micro-licensing for the text and image sector. In this context, we encourage both:

- Solutions for the identification of authors and publishers, their agents or other representatives (such as CMOs) from whom permission can be sought;
- Solutions to give users information about licensing and licensing conditions: how the licensing process works and what users can do with a work under a chosen licence.

E. Term of protection – is it appropriate?

Works and other subject matter are protected under copyright for a limited period of time. After the term of protection has expired, a work falls into the public domain and can be freely used by anyone (in accordance with the applicable national rules on moral rights). The Berne Convention³⁷ requires a minimum term of protection of 50 years after the death of the author. The EU rules extend this term of protection to 70 years after the death of the author (as do many other countries, e.g. the US).

With regard to performers in the music sector and phonogram producers, the term provided for in the EU rules also extend 20 years beyond what is mandated in international agreements,

³⁶ You will find more information about this initiative on the following website: <http://www.copyrighthub.co.uk/>.

³⁷ Berne Convention for the Protection of Literary and Artistic Works, <http://www.wipo.int/treaties/en/ip/berne/>.

providing for a term of protection of 70 years after the first publication. Performers and producers in the audio-visual sector, however, do not benefit from such an extended term of protection.

20. Are the current terms of copyright protection still appropriate in the digital environment?

YES – Please explain

We believe the current terms of copyright are still appropriate. Book publishers do not benefit from a copyright term of protection but acquire rights from their author(s) for a certain period or the length of the author copyright term. The author(s) in turn receive(s) royalties for the exploitation of his (their) work. Intellectual property is a fundamental right which like other property should be passed to the owner’s heirs, at least for one generation and there is no reason, be economic or philosophical, to deprive an author from this right in the digital environment. This is based on a false assumption that the creativity input and dissemination effort would be less in the digital context.

A reduction of the term of protection could also be detrimental to the exploitation of a work as often authors need to wait for the publication of more than one work before achieving commercial success, or often gain broader audiences at a later stage, e.g. after an on screen adaptation of their book takes place.

Authors and their publishers must be able to enjoy return on investment, which the current term of protection provides. For example, the “Le Petit Prince” (The Little Prince) by Antoine de Saint Exupéry benefits from 88 years protection after his death, because he died for France in the war. This regime is justified, as every year, numerous new creations are drawn from his work, benefiting his heirs.

NO – Please explain if they should be longer or shorter

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NO OPINION

III. Limitations and exceptions in the Single Market

Limitations and exceptions to copyright and related rights enable the use of works and other protected subject-matter, without obtaining authorisation from the rightholders, for certain purposes and to a certain extent (for instance the use for illustration purposes of an extract from a novel by a teacher in a literature class). At EU level they are established in a number of copyright directives, most notably Directive 2001/29/EC³⁸.

Exceptions and limitations in the national and EU copyright laws have to respect international law³⁹. In accordance with international obligations, the EU acquis requires that limitations and exceptions can only be applied in certain special cases which do not conflict with a normal

³⁸ Plus Directive 96/9/EC on the legal protection of databases; Directive 2009/24/EC on the legal protection of computer programs, and Directive 92/100/EC on rental right and lending right.

³⁹ Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (1971); Article 13 of the TRIPS Agreement (Trade Related Intellectual Property Rights) 1994; Article 16(2) of the WIPO Performers and Phonograms Treaty (1996); Article 9(2) of the WIPO Copyright Treaty (1996).

exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interest of the rightholders.

Whereas the catalogue of limitations and exceptions included in EU law is exhaustive (no other exceptions can be applied to the rights harmonised at EU level)⁴⁰, these limitations and exceptions are often optional⁴¹, in the sense that Member States are free to reflect in national legislation as many or as few of them as they wish. Moreover, the formulation of certain of the limitations and exceptions is general enough to give significant flexibility to the Member States as to how, and to what extent, to implement them (if they decide to do so). Finally, it is worth noting that not all of the limitations and exceptions included in the EU legal framework for copyright are of equivalent significance in policy terms and in terms of their potential effect on the functioning of the Single Market.

In addition, in the same manner that the definition of the rights is territorial (i.e. has an effect only within the territory of the Member State), the definition of the limitations and exceptions to the rights is territorial too (so an act that is covered by an exception in a Member State "A" may still require the authorisation of the rightholder once we move to the Member State "B")⁴².

The cross-border effect of limitations and exceptions also raises the question of fair compensation of rightholders. In some instances, Member States are obliged to compensate rightholders for the harm inflicted on them by a limitation or exception to their rights. In other instances Member States are not obliged, but may decide, to provide for such compensation. If a limitation or exception triggering a mechanism of fair compensation were to be given cross-border effect (e.g. the books are used for illustration in an online course given by an university in a Member State "A" and the students are in a Member State "B") then there would also be a need to clarify which national law should determine the level of that compensation and who should pay it.

Finally, the question of flexibility and adaptability is being raised: what is the best mechanism to ensure that the EU and Member States' regulatory frameworks adapt when necessary (either to clarify that certain uses are covered by an exception or to confirm that for certain uses the authorisation of rightholders is required)? The main question here is whether a greater degree of flexibility can be introduced in the EU and Member States regulatory framework while ensuring the required legal certainty, including for the functioning of the Single Market, and respecting the EU's international obligations.

21. Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

YES – Please explain by referring to specific cases

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NO – Please explain

⁴⁰ Other than the grandfathering of the exceptions of minor importance for analogue uses existing in Member States at the time of adoption of Directive 2001/29/EC (see, Art. 5(3)(o)).

⁴¹ With the exception of certain limitations: (i) in the Computer Programs Directive, (ii) in the Database Directive, (iii) Article 5(1) in the Directive 2001/29/EC and (iv) the Orphan Works Directive.

⁴² Only the exception established in the recent Orphan Works Directive (a mandatory exception to copyright and related rights in the case where the rightholders are not known or cannot be located) has been given a cross-border effect, which means that, for instance, once a literary work – for instance a novel – is considered an orphan work in a Member State, that same novel shall be considered an orphan work in all Member States and can be used and accessed in all Member States.

We do not see any specific problems arising from the fact that most limitations and exceptions are optional for the Member States. There is no reason to make some of them “compulsory”. Exceptions for public interest are implemented in virtually all Member States, and the system of optional exceptions allows the flexibility required by differences in national culture and traditions.

The reason why Directive 2001/29/EC does not provide an exhaustive list of mandatory exceptions is because Europe had to take into account the cultural traditions of 15 different Member States (now it would be 28) and the discussions on the Copyright Directive generated unprecedented debate. Notwithstanding this fact, differences between national copyright laws do not represent an obstacle to the creation of an online market for the publishing sector which is healthy and thriving. In fact, publishers themselves frequently rely on exceptions such as quotation in one member state for the exploitation of a work across the EU. Indeed, the sector is hampered more by factors such as labour laws or lack of harmonisation of taxation.

Instead, the real obstacle to the online market is the threat of illegal downloading which prevents legal offers from being marketed on a level playing-field. We would need to see evidence that a harmonised set of exceptions would bring proven benefit without harming the current publishing market.

NO OPINION

22. *Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?*

YES – Please explain by referring to specific cases

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NO – Please explain

As explained in question 21, we disagree with the idea that some or all exceptions should be made mandatory. The fact that they are optional leaves room for the right amount of flexibility needed in a fast changing environment. Conditions of use of right are better served both for the users and the rightholders when handled through licence agreements, which add to the flexibility and serve users across borders if needed.

EU.

NO OPINION

23. *Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.*

[Open question]

We do not see the need to add new exceptions to the existing catalogue. Any new exception should answer a market failure and the inability to serve users with licensing solutions. The exercise of “Licences for Europe”, in which FEP and its membership actively participated, shows that licences are well suited to catering to user demand. Licenses are the most flexible instrument available in order to meet each user’s individual needs in the relevant use case. New

exceptions set prematurely in a fast moving world where technologies evolve very rapidly would certainly stifle business innovation and the ability of publishers to develop offers to serve new needs.

24. Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

YES – Please explain why

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NO – Please explain why

The current 20 optional exceptions with broad scope and wording offer the necessary flexibility, balanced with legal certainty. We do not believe that broader wording of exceptions would serve the purpose of better harmonisation. Broader wording – or any such change - would lead to legal uncertainty for both rightholders and users. Publishers invest in content and increasingly licence it for digital transmissions, and need to be able to rely on a firm set of rules to continue to deliver economically for the EU and morally for creator. We believe this is currently delivered via the 2001 Copyright Directive.

National courts and the ECJ already play a central role in the legal interpretation of exceptions. However, introducing more flexibility and especially a general rule such as Fair Use into the EC legal system would only bring huge legal uncertainty, thereby challenging the ability of publishers to conduct business. It would probably be the most efficient way of destroying the value of EU cultural businesses and of reinforcing non-EU economic actors’ influence.

Fair Use in the U.S. provides a statutory defence mechanism to what could actually be infringement of exclusive copyright. This effectively means that rightholders are forced to challenge uses in court *after the event*. The test is based on a century of U.S.-jurisprudence and this jurisprudence would not be readily available to the legal framework in Europe - indeed it would impose an unreasonably heavy burden of interpretation on EU courts as they struggle to reconcile two such dramatically different regimes. Interestingly, the US Copyright Office states on their website that the safest option for prospective users of content is to get clearance and that if there is any doubt, it is advisable to consult a lawyer. Ultimately, the Fair Use principle entails being able to pay lawyers’ fees. In addition, users will lose legal certainty as the whole system will be far more dependent on the circumstances of each case. Cases such as the Google Book Settlement illustrate how big commercial players can exploit the legal uncertainty around the US doctrine to economically exhaust rights holders, who are often not big players, and who therefore cannot afford expensive litigation.

There seems to be a contradiction in calling for more harmonisation and mandatory exceptions and at the same time calling for more flexibility. We believe that there is currently flexibility in the EU copyright system thanks to the freedom left to Member States when transposing the EU copyright framework.

Any further legislation, however technology neutral, runs the risk of being too closely tailored to business models and technologies of its day rather than allowing for future developments. In contrast, licences are by far the quickest, most flexible and most effective way of achieving technology neutral and targeted solutions.

NO OPINION

25. If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

[Open question]

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26. Does the territoriality of limitations and exceptions, in your experience, constitute a problem?

YES – Please explain why and specify which exceptions you are referring to

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NO – Please explain why and specify which exceptions you are referring to

Publishers frequently rely on exceptions, e.g. for quotations in one member state, for works exploited across the EU. They do not encounter problems when relying upon the exception in the country where they publish the book and then selling the book across Europe. Anyway, when possible, publishers favour licences which are flexible and balanced. Licences foresee uses across borders and can, unlike legislation, rapidly adapt to changing environments. The main issues with territoriality are addressed in the following questions of this consultation. Again, licenses are the mechanism best suited to addressing them.

NO OPINION

27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of “fair compensation” be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?)

[Open question]

This is the core of the problem from our point of view. In the current economic setting and with budget cuts occurring in all EU Member States, especially in the areas of culture and education, we do not believe that public authorities would be willing to compensate exceptions with cross-border effects if that meant spending taxpayers’ money on benefitting tax-payers in another Member State. This would especially affect uses of works in widely read languages such as English, but also French, German or Spanish and Italian. Licensed solutions are acceptable in closed networks of schools, universities or libraries, but if exceptions allowed uses involving communicating content on the internet (having potentially wide cross-border effects), it would be difficult, if not impossible, to compensate in a fair and balanced manner. It should also be remembered that Member States also have very distinct and separate systems for fair compensation, for example levies, which are not present in other Member States – and are unlikely ever to be introduced.

A. Access to content in libraries and archives

Directive 2001/29/EC enables Member States to reflect in their national law a range of limitations and exceptions for the benefit of publicly accessible libraries, educational establishments and museums, as well as archives. If implemented, these exceptions allow acts of preservation and archiving⁴³ and enable on-site consultation of the works and other subject matter in the collections of such institutions⁴⁴. The public lending (under an exception or limitation) by these establishments of physical copies of works and other subject matter is governed by the Rental and Lending Directive⁴⁵.

Questions arise as to whether the current framework continues to achieve the objectives envisaged or whether it needs to be clarified or updated to cover use in digital networks. At the same time, questions arise as to the effect of such a possible expansion on the normal exploitation of works and other subject matter and as to the prejudice this may cause to rightholders. The role of licensing and possible framework agreements between different stakeholders also needs to be considered here.

1. Preservation and archiving

The preservation of the copies of works or other subject-matter held in the collections of cultural establishments (e.g. books, records, or films) – the restoration or replacement of works, the copying of fragile works - may involve the creation of another copy/ies of these works or other subject matter. Most Member States provide for an exception in their national laws allowing for the making of such preservation copies. The scope of the exception differs from Member State to Member State (as regards the type of beneficiary establishments, the types of works/subject-matter covered by the exception, the mode of copying and the number of reproductions that a beneficiary establishment may make). Also, the current legal status of new types of preservation activities (e.g. harvesting and archiving publicly available web content) is often uncertain.

28. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

(b) [In particular if you are a right holder:] Have you experienced problems with the use by libraries, educational establishments, museum or archives of the preservation exception?

YES – Please explain, by Member State, sector, and the type of use in question.

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NO

We are not aware of any problems in this area. However, we are aware of some public libraries requesting to be able to engage in certain preservation activities despite the fact that they are not heritage libraries. We believe that heritage libraries including national libraries have an essential role in the preservation of cultural heritage. However this mandate does not extend to all libraries. It may therefore be useful to clarify which establishments are responsible in law for the long term preservation and can therefore benefit from a certain exception. This being said, legal deposit is dealt with at national level as every country has its own definition of

⁴³ Article 5(2)c of Directive 2001/29.

⁴⁴ Article 5(3)n of Directive 2001/29.

⁴⁵ Article 5 of Directive 2006/115/EC.

cultural heritage. Therefore, there should not be any European harmonisation on legal deposit schemes.

NO OPINION

29. *If there are problems, how would they best be solved?*

[Open question]

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30. *If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?*

[Open question]

31. *If your view is that a different solution is needed, what would it be?*

[Open question]

Not all libraries need to preserve their collections. Where paper books are concerned, public libraries review their collections after certain periods, discarding some of their holdings. FEP is discussing with heritage libraries to find the most appropriate solutions to their specific needs. Since 1996, European publishers are engaged in a joint Committee with the Conference of European National Librarians (CENL) to develop guidelines for a system of voluntary “legal deposit” for offline and online works. The scheme is voluntary and aims to help all national libraries, while taking into account each country's individual concept of national heritage.

2. Off-premises access to library collections

Directive 2001/29/EC provides an exception for the consultation of works and other subject-matter (consulting an e-book, watching a documentary) via dedicated terminals on the premises of such establishments for the purpose of research and private study. The online consultation of works and other subject-matter remotely (i.e. when the library user is not on the premises of the library) requires authorisation and is generally addressed in agreements between universities/libraries and publishers. Some argue that the law rather than agreements should provide for the possibility to, and the conditions for, granting online access to collections.

32. (a) [In particular if you are an institutional user:] *Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?*

(b) [In particular if you are an end user/consumer:] *Have you experienced specific problems when trying to consult, including across borders, works and other subject-matter held in the collections of institutions such as universities and national libraries when you are not on the premises of the institutions in question?*

(c) [In particular if you are a right holder:] *Have you negotiated agreements with institutional users that enable those institutions to provide remote access, including across borders, to the works or other subject-matter in their collections, for purposes of research and private study?*

[Open question]

Publishers in particular in the academic field have developed models to facilitate licensed access, including remotely, to research, including across borders. For instance, the French-Belgian Cairn.info portal provides offers for remote access to Humanities and Social Sciences journals, primarily to academic libraries but also to public libraries. Similarly, the Torrossa.it platform offers a wide range of licences to libraries and end users internationally to access scholarly publications published by small and medium sized publishers from Italy, Spain and Portugal, Torrossa.it has an increasing success also outside the EU, and in particular in US and China, so fostering also European export.

We do not believe that the two conditions of “dedicated terminals” and “physical premises” can be removed under an exception without endangering the commercial market, however, rightholders should be free to allow this under licences agreeable to both parties.

33. *If there are problems, how would they best be solved?*

[Open question]

Any perceived “problems” can be solved by market-based solutions, but we are not aware of any such problems.

34. *If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?*

[Open question]

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35. *If your view is that a different solution is needed, what would it be?*

[Open question]

We believe that licensing should be encouraged. Any library exception allowing making available online would only create unfair competition with business models, and be contrary to the 3 step test.

3. E – lending

Traditionally, public libraries have loaned physical copies of works (i.e. books, sometimes also CDs and DVDs) to their users. Recent technological developments have made it technically possible for libraries to provide users with temporary access to digital content, such as e-books, music or films via networks. Under the current legal framework, libraries need to obtain the authorisation of the rights holders to organise such e-lending activities. In various Member States, publishers and libraries are currently experimenting with different business models for the making available of works online, including direct supply of e-books to libraries by publishers or bundling by aggregators.

36. (a) [In particular if you are a library:] *Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?*

(b) [In particular if you are an end user/consumer:] Have you experienced specific problems when trying to borrow books or other materials electronically (e-lending), including across borders, from institutions such as public libraries?

(c) [In particular if you are a right holder:] Have you negotiated agreements with libraries to enable them to lend books or other materials electronically, including across borders?

YES – Please explain with specific examples

Publishers believe that libraries have an important mission in giving access to books to the wider public in the digital world. In this context, licensing solutions are being developed in all Member States to support e-lending. Each licensing model has its own terms and is negotiated between rightholders and libraries.

A certain degree of competition between library lending and sales of e-books is inevitable. Remote borrowing services and the fact that digital files do not deteriorate with multiple “loans”, mean that this degree of competition is higher than is the case with physical books. It is also important to realise that library acquisitions make for only about 4-5 % of publishers’ turnover at the very best (5% in the UK, 4-5% in France, but less than 2% in Italy, less than 1% in Spain). This illustrates why it is necessary to find balanced ways to sustain the commercial market which represents 96%, for most cases 98-99%. In Sweden, where libraries are only purchasing 3-4% of all books sold, they are taking up to 90% of the e-book market and next to 10% in Denmark. Any exception in this area would jeopardise this balance and would put a stop to the development of regular e-book sales through bookshops and online retailers as well as new innovative services such as Izneo (French and Belgian rental service of comic e-books) Mobifo (Danish “Spotify” for e-books), Paper C and Skoobe (German “Spotify” for e-books), MLOL and Rete Indaco in Italy to name only a few.

FEP together the European Writers Council has started a series of seminars to present best practices in this field (we have looked at examples from Denmark, Finland, France, Italy, the Netherlands, Norway and the United Kingdom so far). We held a first seminar in May 2013 in Helsinki, and a second one in December in Paris. Authors, publishers, distributors, booksellers and librarians (represented by EBLIDA) attended these seminars. We also launched a questionnaire to be filled in by these stakeholders by March 2014 in order to obtain a better overview of licensing practices.

Please refer to the Annex II at the end of this document for a “non-exhaustive list of experiences in library digital lending across Europe”.

NO

NO OPINION

37. If there are problems, how would they best be solved?

[Open question]

Any perceived problems can be solved by encouraging licensing and sharing best practices, but not by creating legislation which would prejudice commercial exploitation of books and inhibit the launch of new services and technical and business innovation.

The following two questions are relevant both to this point (n° 3) and the previous one (n° 2).

38. [In particular if you are an institutional user:] What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?

[Open question]

39. [In particular if you are a right holder:] What difference do you see between libraries' traditional activities such as on-premises consultation or public lending and activities such as off-premises (online, at a distance) consultation and e-lending? What problems have you encountered?

[Open question]

As stated above, libraries remain essential institutions for readers and are a relevant part of the book world. We acknowledge their request to shift their traditional activities of on-premises and public lending towards online developments. However, we should be mindful that any move forward by libraries should not jeopardise a nascent e-book market. If all or a majority of library services were to be offered online, there would be no more reason to maintain local libraries, as a single central service would be sufficient. We are seeing already that due to budget cut in the UK, local libraries are regrettably being closed down. The distinction between their mission of consultation and public lending right, which tends to blur when considered online, should be maintained in combination with “frictions” in order to preserve the commercial market.

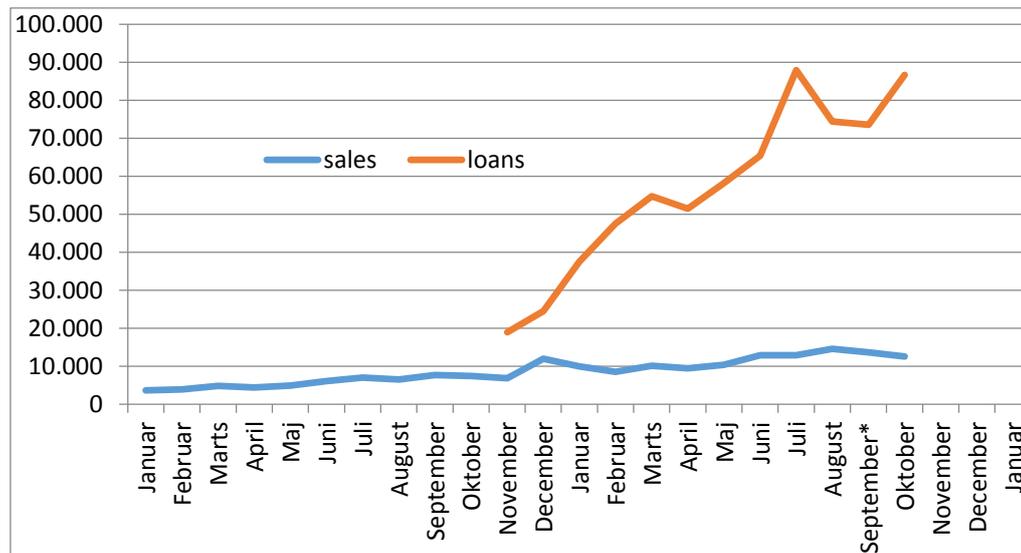
Unlike what is commonly thought, the EU Special Eurobarometers report on “Cultural Access and participation”⁴⁶ shows that it is mostly white collars, educated people, managers and students who are most likely to visit a public library (page 15). Lack of interest (47%) is the main reason for not visiting a public library followed by lack of time (27%) whereas lack of choice (7%) is a minor reason (page 21-22) and education is an important indicator of engagement with visiting public libraries (page 33).

Publishers are increasingly developing innovative and accessible licences to allow a high level of granularity in giving users the appropriate licences for their individual needs. There are strong economic arguments in favour of maintaining some form of limitation to electronic “lending” in the online environment which make the library patron’s experience comparable to borrowing a physical book. The example of Denmark, where a very permissive lending system called eReolen was launched, showed that whereas e-lending rose exponentially, the nascent market of e-books came to a complete standstill at during the lending period. Moreover, most of the pirated books to be found online came from eReolen, which as a consequence shifted to a streaming system. The digital market is in its earliest stages, and no one can predict its development at this stage. We need therefore to be prudent and make sure not to freeze specific business models in time by way of legislation.

Moreover, a distinction should be made between academic and public libraries. Sales to consumers represent the majority of the trade book market. When it comes to public library, we can imagine that by making work available online, libraries compete with online commercial exploitation of works by offering a substitute of access to a work. The balance with the commercial offer is all the more difficult to find, this is why we need “frictions”. The fine line with e-lending is also blurred. In the off-line world, the friction is either the fact that you need

⁴⁶ http://ec.europa.eu/public_opinion/archives/ebs/ebs_399_en.pdf

to go to the premises to access a work in any event, be for a on premises consultation or be to borrow and bring a book home with you.



Development of Sales and Loans from Publizon 2011-2012
(sales in blue and load through eReolen in red).

4. Mass digitisation

The term “mass digitisation” is normally used to refer to efforts by institutions such as libraries and archives to digitise (e.g. scan) the entire content or part of their collections with an objective to preserve these collections and, normally, to make them available to the public. Examples are efforts by libraries to digitise novels from the early part of the 20th century or whole collections of pictures of historical value. This matter has been partly addressed at the EU level by the 2011 Memorandum of Understanding (MoU) on key principles on the digitisation and making available of out of commerce works (i.e. works which are no longer found in the normal channels of commerce), which is aiming to facilitate mass digitisation efforts (for books and learned journals) on the basis of licence agreements between libraries and similar cultural institutions on the one hand and the collecting societies representing authors and publishers on the other⁴⁷. Provided the required funding is ensured (digitisation projects are extremely expensive), the result of this MoU should be that books that are currently to be found only in the archives of, for instance, libraries will be digitised and made available online to everyone. The MoU is based on voluntary licences (granted by Collective Management Organisations on the basis of the mandates they receive from authors and publishers). Some Member States may need to enact legislation to ensure the largest possible effect of such licences (e.g. by establishing in legislation a presumption of representation of a collecting society or the recognition of an “extended effect” to the licences granted)⁴⁸.

⁴⁷ You will find more information about his MoU on the following website: http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm.

⁴⁸ France and Germany have already adopted legislation to back the effects of the MoU. The French act (LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du xxe siècle) foresees collective management, unless the author or publisher in question opposes such management. The German act (Gesetz zur Nutzung verwaister und vergriffener Werke und einer weiteren Änderung des Urheberrechtsgesetzes

40. *[In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:] Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?*

YES – Please explain why and how it could best be achieved

In France and Germany, authors, publishers and libraries have negotiated solutions for out of commerce works (oeuvres indisponibles in French) before those being codified in the law. The important element is that they have been negotiations which allow to tailor the solution to the needs of the libraries, to provide a fair remuneration for the rights holders and a possibility to remove their works to either bring them back into the market or to respect the moral rights of the authors.

Successful projects are been conducted in dialogues with the authors and publishers' associations and their collective management organisations and demonstrate that when there is a political willingness and good will from all sides, solutions can be brought to the fore.

In those countries, the implementation of the MoU on out of commerce works signed by FEP, EWC, STM, IFRRO and library representatives, has thus required the adoption of legislation to ensure the largest possible effect of the voluntarily negotiated licences. However, if Member States implement the MOU across the EU following all of its conditions, we do not believe that any further legislation is needed at European level.

Unlike the Google Book Settlement, the MoU on out of commerce works foresees some safeguards when rightholders are not represented. It is up to Member States to decide according to their legal tradition whether further national legislation is needed. Signatories have created OMIT (Out-of-Commerce MoU Implementation Task Force) and meet very regularly to take stock of libraries projects across the EU and monitor implementation of the MoU. What was found by the group is that by large it is not copyright which prevents digitisation projects but a lack of public funding. In France and Germany where the MoU was successfully implemented, financial mechanism and public money was available to make those project come to life.

NO – Please explain

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NO OPINION

41. *Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?*

YES – Please explain

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NO – Please explain

vom 1. Oktober 2013) contains a legal presumption of representation by a collecting society in relation to works whose rightholders are not members of the collecting society.

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 NO OPINION

B. Teaching

Directive 2001/29/EC⁴⁹ enables Member States to implement in their national legislation limitations and exceptions for the purpose of illustration for non-commercial teaching. Such exceptions would typically allow a teacher to use parts of or full works to illustrate his course, e.g. by distributing copies of fragments of a book or of newspaper articles in the classroom or by showing protected content on a smart board without having to obtain authorisation from the right holders. The open formulation of this (optional) provision allows for rather different implementation at Member States level. The implementation of the exception differs from Member State to Member State, with several Member States providing instead a framework for the licensing of content for certain educational uses. Some argue that the law should provide for better possibilities for distance learning and study at home.

42. (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?

(b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used for illustration for teaching, including across borders?

YES – Please explain

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NO

Most publishers are developing innovative offers in the field of educational publishing, including digital uses of educational material for example for display on interactive white boards or available through virtual learning environments. Educational publishers are also increasingly licensing modules and parts of books, as well as whole works. Publishers are in the business of tailoring their offerings to meet user needs, and these offers are increasingly available on a cross-border basis.

NO OPINION

43. If there are problems, how would they best be solved?

[Open question]

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44. What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?

⁴⁹ Article 5(3)a of Directive 2001/29.

[Open question] Book publishing entered the digital age many years ago. First, ICT was integrated in the production processes, and more recently, technological developments have allowed reaching out to readers with digital products. Educational publishers are no exception to this; it is in the nature of their business to meet the needs of their users, and thus they have been producing and making available digital learning materials for a number of years. All major educational publishing houses in the EU have nowadays the capacity to provide content in digital formats and the capital and management skills to develop special software or applications. Also small and medium sized publishers are often innovative in the field. For example, in Italy 95% of new textbooks produced in 2011 were issued linked to web-based resources (test, demo, short movies, images, simulation, virtual environment, etc.).

Educational publishing represents a strategic part of the trade book publishing market which cannot afford to be put at risk by a broad exception. A vibrant European educational publishing industry is a guarantee of freedom of expression and plurality of views and economic independence and prosperity for the EU. According to FEP estimates, educational publishing is a very important component of the publishing industry, representing between 18 and 20% of the market at EU level, and up to one third of the total in some Member States. It reaches higher figures in some countries: 25 to 30% in Spain, close to 30% in Flanders, more than 60% in Ireland, 22 to 25% in Italy, 25 to 30% in Poland. If scholarly and professional publishing were added, the share of the market at European level would be close to 35-40% if educational publishing were jeopardised.

Publishers serve a wide range of markets related to education, at different levels and with very different implications in terms of sector dynamics. A basic distinction can be made by identifying the following areas:

- Primary and secondary education: school education, usually the free, mandatory part of education. Publishers produce textbooks that implement national and sometimes even regional curricula, designed by Member States in application of their exclusive competences, addressing the needs of specific age classes and often closely linked to a country's history and culture; they are bought by parents or public authorities.
- Educational consumer market: complementary material for primary and secondary level students ('after school' market). Publishers offer additional materials to complement that in use in schools; they are usually bought by parents.
- Higher education: post-secondary education, university (undergraduate and graduate). Publishers produce academic books that students use as a complement to their courses; they are bought by students or university libraries.
- Vocational training (initial and adult) and lifelong learning: education that prepares people for specific trades, crafts and careers, or the on-going, voluntary, and self-motivated pursuit of knowledge for either personal or professional reasons. Publishers offer a range of books and materials for all kinds of needs; they are bought by users or training institutions.
- Scientific or academic communication: scholarly communication based on research. Publishers produce materials that are usually written by scholars and for scholars; they are normally acquired by university libraries, commercial companies (e.g. pharmaceutical) and interested laymen, offered in a broad variety of business models, including open access.

Publishers hold the intellectual property rights on the books they produce for the educational systems, having acquired from creators and/or intermediaries the relevant IP rights in the several pieces of content included in any textbook.

Publishers would like to remind the Commission of the central role of high quality educational resources, whether paper or digital ones, for knowledge dissemination, effective learning processes and for the success of each student in application of the equality principle. The issue of learning tools should be addressed by referring to pedagogy issues and the aims that such tools should contribute to achieve, thus bearing in mind also the importance of the classroom environment for learning. Educational outcomes should be the first and foremost concern when considering initiatives affecting the educational sector.

In order to improve access to the content we publish, the best way forward is through licensing either through individual licenses or through voluntary agreements with collective management organisations. Educational institutions, students, teachers and society at large need good local educational resources. Flourishing local cultural industries and a healthy educational system with broad access also to local resources contribute significantly to a country's economy and employment. Where access to works based on individual and collective licensing is stimulated, there are increased opportunities for local authors to create good works and for local publishers to invest. This helps to build a sustainable national creative industry and a range of teaching materials adapted to local and special user needs.

All Member States have exceptions allowing for the illustration of teaching which publishers complete by developing innovative offers in the field of educational publishing, now including digital uses of educational material for example for white boards. A distinction has to be made between primary and secondary teaching which is national and higher education where publishers licence the use in intranets. Educational publications are nowadays coming together with versatile and flexible mechanisms, which can also de facto be made accessible cross-border. However, so far such cross-border needs have never been reported to publishers in primary and secondary education, because of the national nature of curricula, and thus of the demand of educational content.

Educational publishers are also increasingly licensing modules and parts of books, rather than the entire book. It is in the interest for them to tailor their offer to the needs of their users. In France, Germany, Austria and Spain, the exception for illustration excludes textbooks and academic books from its scope. Indeed experience shows that schools and universities tend to make particularly intensive use of works of school books and text books, i.e. those works whose primary (and only) market is directly affected by those uses. Surveys by VG Wort have shown that over 400 million copies from school books alone are made each year in schools in Germany.

To quote just a few examples, in France, all publishers offer most of their content in both digital and printed formats, and have done since 2008; more than 2000 digital textbooks are available through a huge array of licences. Publishers developed digital platforms and portals (Canal Numérique des Savoirs et Kiosque Numérique de l'Éducation, accessible via a single portal, WizWiz), which allow teachers (or parents) to consult, order, download and use these resources in the classroom or in any digital learning environment (or elsewhere). Wizwiz is a single entry portal, displaying a catalogue of all digital educational resources from over 60 French publishers. Around 1,000 digital textbooks are available, among more than 2,500 digital educational resources. Publishers own and operate the portal: each teacher or school can order digital resources online, which will be delivered by the two main publishers' platforms (CNS and KNE). More in general, French educational publishers have been developing digital resources and digital textbooks since the early 2000s: most of them display websites, apps, commercial offerings, innovative digital tools in order to enhance and accompany digital uses. The portal has proved very effective so far; yet, the majority of digital orders are delivered by paper mail.

Knooppunt (www.knooppunt.net) in Flanders and Digiportail (www.digiportail.be) in Wallonia are platforms developed by Belgian (Flemish) educational publishers; one platform gives access to all (mostly paid-for) digital material from all educational publishers, with no visible complexity for students and teachers. The use of the platform is for free and it provides a helpdesk; different materials are available for teachers and students: manuals, online magazines, interactive exercises, films, audio, games, digital whiteboard products, for a total of some 2,300 products, mainly aimed at secondary schools but primary school and higher education. The basic concepts behind the project and its future developments are: evolving with a speed workable for its users (also not producing materials for which there is no infrastructure in schools or no training available for teachers); being accessible and understandable for all users; offering quality content (indeed allowing publishers to compete on quality, not on technology or infrastructure).

In Germany, 27 publishing houses started an initiative in 2012 called ‘digital textbooks’ early this year (www.digitale-schulbuecher.de). This is the first time that complete textbooks are made available in a digital version. The basic idea is that all schools which are interested in getting digital textbooks may use a free digital bookshelf to organise, read and use the books. Publishers then offer a variety of digital textbooks which may be used with this software. Schools do not have to adapt to different technological standards: they use one software, and different books from different publishers. In addition, basically all German educational publishers offer providing online educational content, apps or websites.

In Estonia, publishing house Avita has created a platform (e-Lesson) in partnership with an ICT company that is being experimented in 50 schools across the country; it allows organising classes according to the teachers’ needs and integrating publishers’ materials and OERs. So far it has produced very good results, as teachers save a lot of time and do not need to go through endless searches for material on the web; it has also improved students’ performances.

In Italy, 93% of new text books are complemented by digital resources, and close to 8,000 titles addressing primary and secondary education have been published in the country in digital format in the last two years. Schools, teachers and students can access these resources either from the individual publishers’ services, or through platforms such as Scuolabook.it. However, the demand for these titles is still limited: only 1,4% of the text books adopted by Italian teachers are digital, and the use of digital resources enriching the paper textbooks is equally limited. This is related to the lack of digital infrastructure in the schools and to the fact that the average age of Italian teachers is very high (the median is over 52) and almost no training programme to support them in the use of technologies has been developed. Another demonstration that the attention to copyright often hides obstacles of very different nature when it comes to the use of digital materials.

The list of examples could go on for much longer, in many other countries (Poland, Netherlands, Spain, UK just to name a few). In practice, for the time being most publishers publish supplementary materials to their textbooks online: teacher support material, student support material, practice tests, and so on. There is no barrier to the provision of digital material for illustration for teaching, as the above indicates.

45. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

[Open question]

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46. If your view is that a different solution is needed, what would it be?

[Open question]

It is not clear that there is any problem that requires a solution. There is no evidence that a harmonised compulsory broader exception would not harm the market, nor is there evidence of a market failure where some learning needs are not being catered for. Current exceptions are broad enough to allow a lot of uses, and licences complement these by allowing more, including cross border uses. Instead, Member States should be encouraged to maintain adequate budgets for education, including the acquisition of educational resources, both physical and – where possible – digital.

We also need the Commission to ensure that interoperability is a criterion in public procurement, when providing for e-reading and/or e-readers material at school. There is a great need for a European policy of development of interoperability, standards and indexation. This would avoid the locking up of markets and the creation of dominant positions (for example on behalf of providers of technological solutions or internet access).

C. Research

Directive 2001/29/EC⁵⁰ enables Member States to choose whether to implement in their national laws a limitation for the purpose of non-commercial scientific research. The open formulation of this (optional) provision allows for rather different implementations at Member States level.

47. (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject matter in the context of research projects/activities, including across borders?

(b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used in the context of research projects/activities, including across borders?

YES – Please explain

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NO

European publishers are satisfied with the current exception and are not aware of specific issues. Content for research purposes falls either under the exceptions or is licenced (90% of scientific technical and medical publishing content is licenced in digital form). New licensing solutions going beyond the research exceptions are being developed such as with initiatives such as RightsLink (<http://www.mvb-rightslink.com/>) or Conlicencia (www.conlicencia.com).

NO OPINION

⁵⁰ Article 5(3)a of Directive 2001/29.

48. *If there are problems, how would they best be solved?*

[Open question]

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49. *What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?*

[Open question]

In the case of scholarly journal publishing, publishers are offering 90% of their products in digital form having successfully covered the objective of providing access to the content. Higher education establishments and research institutes can make use of the licenses offered to provide those services for distance learning purposes, including on a cross-border basis.

D. Disabilities

Directive 2001/29/EC⁵¹ provides for an exception/limitation for the benefit of people with a disability. The open formulation of this (optional) provision allows for rather different implementations at Member States level. At EU and international level projects have been launched to increase the accessibility of works and other subject-matter for persons with disabilities (notably by increasing the number of works published in special formats and facilitating their distribution across the European Union)⁵².

The Marrakesh Treaty⁵³ has been adopted to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. The Treaty creates a mandatory exception to copyright that allows organisations for the blind to produce, distribute and make available accessible format copies to visually impaired persons without the authorisation of the rightholders. The EU and its Member States have started work to sign and ratify the Treaty. This may require the adoption of certain provisions at EU level (e.g. to ensure the possibility to exchange accessible format copies across borders).

50. (a) [In particular if you are a person with a disability or an organisation representing persons with disabilities:] *Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?*

(b) [In particular if you are an organisation providing services for persons with disabilities:] *Have you experienced problems when distributing/communicating works published in special formats across the EU?*

⁵¹ Article 5 (3)b of Directive 2001/29.

⁵² The European Trusted Intermediaries Network (ETIN) resulting from a Memorandum of Understanding between representatives of the right-holder community (publishers, authors, collecting societies) and interested parties such as associations for blind and dyslexic persons (http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm) and the Trusted Intermediary Global Accessible Resources (TIGAR) project in WIPO (<http://www.visionip.org/portal/en/>).

⁵³ Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, Marrakesh, June 17 to 28 2013.

(c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?

YES – Please explain by giving examples

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NO

Agreements between rightsholders and trusted intermediaries are more important than the mere application of limitations or exceptions to facilitate the production of special formats when needed, and facilitate access to accessible copies of books.

In Europe, publishers are collaborating with institutions supporting the visually impaired by providing them the original files for the requested books, which result in a decrease of the production costs of special formats. We believe that projects such as ETIN, the European Trusted Intermediaries Network, which suffers from lack of finances, is very valuable to overcome any technical or practical hurdles.

NO OPINION

51. If there are problems, what could be done to improve accessibility?

[Open question]

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52. What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

[Open question]

Myriad mechanisms exist in the market to facilitate accessibility to content. Publishers are increasingly publishing books in ePub3 format which incorporate the specification for accessibility outlined by the Daisy consortium and can therefore be made easily accessible for visually impaired people. Such files enable changes to colour, font, spacing etc, to assist the print impaired, and also reduce the number of cases in which unadapted files need to be converted under exception.

The Italian project LIA – Libri Italiani Accessibili, demonstrated how much technological innovation can help in reaching the objectives of the Digital Agenda for Europe in this field (Pillar VI, Action 65) in allowing visually impaired people to access the books at the same time and with the same quality of sighted readers – and without the need for an exception. The LIA platform was launched in July 2013 and already reached the result of having c.ca 35% of the e-books produced in the country fully accessible at the time of publication. Furthermore, the visually impaired can access the same information about book production, enjoy the same search tools available for other readers, select and buy their preferred books in their preferred shop, and borrow the books in a library thanks to the collaboration between two e-lending platforms.

There are plans to replicate the same experience in other European countries and in all Europe we note a recent increase of the ability of the commercial market to serve the need of the visually impaired community who are now able to buy accessible books at the same time and at the same costs as a sighted person. In the UK, for example, over 76% of the top 1000 titles are available as accessible copies in digital form.

In addition individual member state initiatives, projects such as ETIN or TIGAR continue to facilitate access to backlist titles or to titles not published in e-book format. In any event, we wish that commercial availability remains prevalent over the exceptions.

E. Text and data mining

Text and data mining/content mining/data analytics⁵⁴ are different terms used to describe increasingly important techniques used in particular by researchers for the exploration of vast amounts of existing texts and data (e.g., journals, web sites, databases etc.). Through the use of software or other automated processes, an analysis is made of relevant texts and data in order to obtain new insights, patterns and trends.

The texts and data used for mining are either freely accessible on the internet or accessible through subscriptions to e.g. journals and periodicals that give access to the databases of publishers. A copy is made of the relevant texts and data (e.g. on browser cache memories or in computers RAM memories or onto the hard disk of a computer), prior to the actual analysis. Normally, it is considered that to mine protected works or other subject matter, it is necessary to obtain authorisation from the right holders for the making of such copies unless such authorisation can be implied (e.g. content accessible to general public without restrictions on the internet, open access).

Some argue that the copies required for text and data mining are covered by the exception for temporary copies in Article 5.1 of Directive 2001/29/EC. Others consider that text and data mining activities should not even be seen as covered by copyright. None of this is clear, in particular since text and data mining does not consist only of a single method, but can be undertaken in several different ways. Important questions also remain as to whether the main problems arising in relation to this issue go beyond copyright (i.e. beyond the necessity or not to obtain the authorisation to use content) and relate rather to the need to obtain “access” to content (i.e. being able to use e.g. commercial databases).

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results. At the same time, practical solutions to facilitate text and data mining of subscription-based scientific content were presented by publishers as an outcome of “Licences for Europe”⁵⁵. In the context of these discussions, other stakeholders argued that no additional licences should be required to mine material to which access has been provided through a subscription agreement and considered that a specific exception for text and data mining should be introduced, possibly on the basis of a distinction between commercial and non-commercial.

⁵⁴ For the purpose of the present document, the term “text and data mining” will be used.

⁵⁵ See the document “Licences for Europe – ten pledges to bring more content online”:
http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf.

53. (a) *[In particular if you are an end user/consumer or an institutional user:] Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?*

(b) *[In particular if you are a service provider:] Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?*

(c) *[In particular if you are a right holder:] Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?*

YES – Please explain

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NO – Please explain

For the time being, TDM requests are still rather limited although they are expected to grow steadily in the coming years. For non-commercial researchers wanting to mine the articles and data contained in published journals and books for which they have a subscription, STM publishers have committed to provide licenses under standard terms at no additional cost. The commitment has been made in the framework of L4E. Obviously the circumstances are very different when one deals with commercial players who will mine content and data for their own commercial purposes and one should beware of piracy and parasitism risks. Yet, publishers are very willing to allow the mining of their publications provided that this is dealt with under licensing terms.

NO OPINION

54. *If there are problems, how would they best be solved?*

[Open question]

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55. *If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?*

[Open question]

.....

56. *If your view is that a different solution is needed, what would it be?*

[Open question]

No problems have been identified, and none were presented in the L4E process.

57. *Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?*

[Open question]

Yes, we believe that data protection issues may arise if anyone was able to mine all content on the open internet, without appropriate checks and balances. There are also competition concerns regarding the unauthorised and unrestricted scrapping of content by search engines and other robots, especially if this sweeps up and then displays pirated material. Competition issues such as the one related to remedies provided by search engine in scrapping the internet and re-using the content, including when it does not come from a page that opted out, but from another illegal content (pirate site). TDM may also imply that the publisher may set up a specific technical environment, such as an API, where the researcher may download the content before mining it, which is not cost-free. An exception would not be helpful at all to manage such technical issues.

F. User-generated content

Technological and service developments mean that citizens can copy, use and distribute content at little to no financial cost. As a consequence, new types of online activities are developing rapidly, including the making of so-called “user-generated content”. While users can create totally original content, they can also take one or several pre-existing works, change something in the work(s), and upload the result on the Internet e.g. to platforms and blogs⁵⁶. User-generated content (UGC) can thus cover the modification of pre-existing works even if the newly-generated/"uploaded" work does not necessarily require a creative effort and results from merely adding, subtracting or associating some pre-existing content with other pre-existing content. This kind of activity is not “new” as such. However, the development of social networking and social media sites that enable users to share content widely has vastly changed the scale of such activities and increased the potential economic impact for those holding rights in the pre-existing works. Re-use is no longer the preserve of a technically and artistically adept elite. With the possibilities offered by the new technologies, re-use is open to all, at no cost. This in turn raises questions with regard to fundamental rights such the freedom of expression and the right to property.

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results or even the definition of UGC. Nevertheless, a wide range of views were presented as to the best way to respond to this phenomenon. One view was to say that a new exception is needed to cover UGC, in particular non-commercial activities by individuals such as combining existing musical works with videos, sequences of photos, etc. Another view was that no legislative change is needed: UGC is flourishing, and licensing schemes are increasingly available (licence schemes concluded between rightholders and platforms as well as micro-licences concluded between rightholders and the users generating the content. In any event, practical solutions to ease user-generated content and facilitate micro-licensing for small users were pledged by rightholders across different sectors as a result of the “Licences for Europe” discussions⁵⁷.

⁵⁶ A typical example could be the “kitchen” or “wedding” video (adding one's own video to a pre-existing sound recording), or adding one's own text to a pre-existing photograph. Other examples are “mash-ups” (blending two sound recordings), and reproducing parts of journalistic work (report, review etc.) in a blog.

⁵⁷ See the document “Licences for Europe – ten pledges to bring more content online”:
http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf.

58. (a) *[In particular if you are an end user/consumer:] Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?*

(b) *[In particular if you are a service provider:] Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?*

(c) *[In particular if you are a right holder:] Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?*

YES – Please explain by giving examples

.....
.....

NO

There is no legal void for the use of a protected work in the print sector. There are exceptions for short quotation or parody/ pastiche/ caricature; licence available from the right-holders’ new tools offered by the platforms or Creative commons regime). Note that even “non-commercial” UGC often harms creators’ rights, competes with legitimate sales, and is offered on sites with advertising and/or profit motives.

NO OPINION

59. (a) *[In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to ensure that the work you have created (on the basis of pre-existing works) is properly identified for online use? Are proprietary systems sufficient in this context* (b) *[In particular if you are a service provider:] Do you provide possibilities for users that are publishing/disseminating the works they have created (on the basis of pre-existing works) through your service to properly identify these works for online use?*

YES – Please explain

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NO – Please explain

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NO OPINION

60. (a) *[In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to be remunerated for the use of the work you have created (on the basis of pre-existing works)?*

(b) *[In particular if you are a service provider:] Do you provide remuneration schemes for users publishing/disseminating the works they have created (on the basis of pre-existing works) through your service?*

YES – Please explain

.....
.....
 NO – Please explain
.....
.....

[NO OPINION](#)

61. *If there are problems, how would they best be solved?*

[Open question]
.....
.....

62. *If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?*

[Open question]
.....
.....

63. *If your view is that a different solution is needed, what would it be?*

[Open question]

There is no evidence of a problem that has not already been solved – or could not be solved – by licensing. Publishers are developing click-through seamless micro-licensing system for cases that go beyond the quotation exceptions. We believe that licensing schemes could also be put in place with blogs or platforms hosting text and images, as has worked well with YouTube for the music and AV sectors. “Non-commercial” transformative uses are often commercial in the sense that they generate advertising revenue for the platforms on which they are published.

IV. Private copying and reprography

Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use and photocopying⁵⁸. Levies are charges imposed at national level on goods typically used for such purposes (blank media, recording equipment, photocopying machines, mobile listening devices such as mp3/mp4 players, computers, etc.) with a view to compensating rightholders for the harm they suffer when copies are made without their authorisation by certain categories of persons (i.e. natural persons making copies for their private use) or through use of certain technique (i.e. reprography). In that context, levies are important for rightholders.

⁵⁸ Article 5. 2)(a) and (b) of Directive 2001/29.

With the constant developments in digital technology, the question arises as to whether the copying of files by consumers/end-users who have purchased content online - e.g. when a person has bought an MP3 file and goes on to store multiple copies of that file (in her computer, her tablet and her mobile phone) - also triggers, or should trigger, the application of private copying levies. It is argued that, in some cases, these levies may indeed be claimed by rightholders whether or not the licence fee paid by the service provider already covers copies made by the end user. This approach could potentially lead to instances of double payments whereby levies could be claimed on top of service providers' licence fees⁵⁹⁶⁰.

There is also an on-going discussion as to the application or not of levies to certain types of cloud-based services such as personal lockers or personal video recorders.

64. In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions⁶¹ in the digital environment?

YES – Please explain

.....

NO – Please explain

When a use is permitted by law and impacts a rightholder in our sector, it requires remuneration, and levies are one of the ways to remunerate. But no exception may prejudice the normal exploitation of a work, even when compensated by a levy. Current levy systems, where in place, have their own merits and are one of the ways of providing remuneration for private copying and reprography. In most cases, publishers are perfectly satisfied with their collective management organisations and the levy system in place. However, some countries choose not to have levy systems and this should be respected. Indeed, every country deals with its situation within a national and cultural context which cannot be exported to the rest of Europe on an arbitrary basis. We do not believe that there is currently a need to harmonise further the functioning of the levy systems, or that this would even be possible. However, it must continue to be a requirement that certain exceptions are only permissible if fair compensation is provided to the rightholders, both the authors and the publishers.

NO OPINION

65. Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies?⁶²

YES – Please explain

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⁵⁹ Communication "Unleashing the Potential of Cloud Computing in Europe", COM(2012) 529 final.
⁶⁰ These issues were addressed in the recommendations of Mr António Vitorino resulting from the mediation on private copying and reprography levies. You can consult these recommendations on the following website: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf.
⁶¹ Art. 5.2(a) and 5.2(b) of Directive 2001/29/EC.
⁶² This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies

NO – Please explain

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.....

[NO OPINION](#)

66. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?

[Open question]

Private copies made purely for the purposes of back up and not linked to any online service are of a different order to private copies which are transferred to the cloud and can therefore be used in online services. Therefore it is not necessarily the case that the same compensation mechanisms should apply in both cases. Thanks to licences, cloud services can allow copying of books to a certain extent, so as to access them on different media. However, private copying of entire books and putting them on the cloud without a licence is not private copying but an illegal act.

67. Would you see an added value in making levies visible on the invoices for products subject to levies?⁶³

YES – Please explain

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NO – Please explain

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.....

[NO OPINION](#)

Diverging national systems levy different products and apply different tariffs. This results in obstacles to the free circulation of goods and services in the Single Market. At the same time, many Member States continue to allow the indiscriminate application of private copying levies to all transactions irrespective of the person to whom the product subject to a levy is sold (e.g. private person or business). In that context, not all Member States have ex ante exemption and/or ex post reimbursement schemes which could remedy these situations and reduce the number of undue payments⁶⁴.

68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?

⁶³ This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

⁶⁴ This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

YES – Please specify the type of transaction and indicate the percentage of the undue payments. Please also indicate how a priori exemption and/or ex post reimbursement schemes could help to remedy the situation.

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.....

NO – Please explain

.....
.....

NO OPINION

69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).

[Open question]

.....
.....

70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?

[Open question]

.....
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71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?

[Open question]

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V. Fair remuneration of authors and performers

The EU copyright acquis recognises for authors and performers a number of exclusive rights and, in the case of performers whose performances are fixed in phonograms, remuneration rights. There are few provisions in the EU copyright law governing the *transfer* of rights from authors or performers to producers⁶⁵ or determining who the owner of the rights is when the work or other subject matter is created in the context of an employment contract⁶⁶. This is an area that has been traditionally left for Member States to regulate and there are significant

⁶⁵ See e.g. Directive 92/100/EEC, Art.2(4)-(7).

⁶⁶ See e.g. Art. 2.3. of Directive 2009/24/EC, Art. 4 of Directive 96/9/EC.

differences in regulatory approaches. Substantial differences also exist between different sectors of the creative industries.

Concerns continue to be raised that authors and performers are not adequately remunerated, in particular but not solely, as regards online exploitation. Many consider that the economic benefit of new forms of exploitation is not being fairly shared along the whole value chain. Another commonly raised issue concerns contractual practices, negotiation mechanisms, presumptions of transfer of rights, buy-out clauses and the lack of possibility to terminate contracts. Some stakeholders are of the opinion that rules at national level do not suffice to improve their situation and that action at EU level is necessary.

72. [In particular if you are an author/performer:] What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?

[Open question]

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73. Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?

YES – Please explain

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.....

NO – Please explain why

Publishers are naturally very much in favour of fair remuneration for their authors. Ensuring this is a vital part of their core mission. Authors are associated to the success of their work, they usually receive an advance to complete their work and then royalties proportionate to the sale of their work. There are only exceptionally situations of buy-out clauses and lump sums to authors, as is the case with performers and audiovisual authors.

Contracts in publishing are based on individual negotiations. Collective author agreements are not practiced in the book publishing sector and collecting societies do not play the same role as in the other sectors. Our collecting societies, the RROs, only manage secondary rights and authors and publishers are both members of the same collecting societies. Therefore any solution (to an unclear problem) based on an unwaivable equitable remuneration right managed by a CMO would not apply to the publishing sector. If publishing companies were no longer directly financially involved in the exploitation of their books, they would have fewer incentives to invest in promoting new authors and to innovate through new concepts, to the detriment of cultural diversity.

In Germany, where a right to “adequate remuneration” was introduced, we noticed as a consequence only lawsuits from translators and a translation market that dropped, as publishers have such a tight margin that they can often no longer afford to take the risk associated with publishing translated works.

NO OPINION

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

[Open question]

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VI. Respect for rights

Directive 2004/48/EE⁶⁷ provides for a harmonised framework for the civil enforcement of intellectual property rights, including copyright and related rights. The Commission has consulted broadly on this text⁶⁸. Concerns have been raised as to whether some of its provisions are still fit to ensure a proper respect for copyright in the digital age. On the one hand, the current measures seem to be insufficient to deal with the new challenges brought by the dissemination of digital content on the internet; on the other hand, there are concerns about the current balance between enforcement of copyright and the protection of fundamental rights, in particular the right for a private life and data protection. While it cannot be contested that enforcement measures should always be available in case of infringement of copyright, measures could be proposed to strengthen respect for copyright when the infringed content is used for a commercial purpose⁶⁹. One means to do this could be to clarify the role of intermediaries in the IP infrastructure⁷⁰. At the same time, there could be clarification of the safeguards for respect of private life and data protection for private users.

75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

YES – Please explain

We believe that the current EU legal system framed by the 2006 Enforcement Directive is satisfactory, although some measures could be introduced to improve the civil enforcement system across the EU. We refer to our answer to the Commission’s public consultation on the “efficiency of proceedings and accessibility of measures.”

The Enforcement Directive has broadly provided a harmonised framework of enforcement rules but these still diverge in practice, as some Member States have failed to implement some of the provisions correctly. Furthermore, the rapid evolution of the internet has created new ways to infringe copyright, which was not envisaged when the Enforcement Directive was discussed and adopted. European publishers welcome the recognition by the Commission that some aspects of the Directive could therefore be improved to better reflect the needs of the market in these changed circumstances.

Specifically, the Enforcement Directive needs to extend the presumption of ownership to holders of exclusive licenses or to assignees of copyright owners, as the findings of the staff working paper also point out. Publishers do not benefit from a “related right”, in the same way producers of sound recordings or films do as holders to the “related right”, which results in

⁶⁷ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

⁶⁸ You will find more information on the following website:

http://ec.europa.eu/internal_market/ipenforcement/directive/index_en.htm

⁶⁹ For example when the infringing content is offered on a website which gets advertising revenues that depend on the volume of traffic.

⁷⁰ This clarification should not affect the liability regime of intermediary service providers established by Directive 2000/31/EC on electronic commerce, which will remain unchanged.

publishers lacking “locus standi”. However, structurally, it is rarely the author but mostly the publisher that will have the resources to take legal action but most of the time they waste time and resources on proving ownership.

The distinction between commercial and non-commercial is an unclear one, as even “non-commercial” websites often benefit from advertising revenue and, although this is difficult to measure, file exchange and download do represent a loss sale. However, the position of European publishers is not to go after individuals but rather after the source where the illegal websites are originating.

Please refer to our Annex III hereunder on the “Contribution on the book sector by the Federation of European Publishers to the OHIM strategic report on online copyright infringements”.

NO – Please explain

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.....

NO OPINION

76. In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

[Open question]

European publishers believe that some clarification would be welcome when it comes to the involvement of intermediaries. We understand that there is no political will to reopen the E-Commerce Directive, and we agree. However, we need to have a clearer legal framework on intermediary responsibility under the E-commerce Directive.

European publishers share the opinion that search engines can and should do more to reduce online copyright infringement through preventive measures such as preventing automated searches returning unlawful links and by responding efficiently to ‘notice and take down’ notifications. Similarly, links that receive a high number of notice and takedown requests should be deranked from search results. We understand that the cooperation of ISPs will be of primary importance in securing better respect for intellectual property rights online.

ISPs must also do more, as the providers of access to the Internet underlying networks, host websites and servers. We strongly agree that it would be useful to “clarify [that] injunctions should not depend on the liability of the intermediaries”, and that the notion of liability of ISPs should be clarified when they can have several functions (hosting or editing). ISPs have a responsibility to assist in tackling copyright infringement online, regardless of their accountability for the content itself. There is limited capacity in the national courts (as well as the limitation of rightholders’ time and money) to bring the number of actions against infringers necessary to curb infringement. Besides, as a first step, notice and take down procedures should be simplified across Europe. Indeed the main problem arises from the difficulty to gather all the elements necessary for the notice and in particular to determine who the publisher of the website is, so as to send him the notice at the same time as to the ISP. FEP has put forward solutions as the basis for further discussion, but regrettably ISPs walked away from the dialogue on illegal up-and-download in 2010, facilitated by the European Commission. European

publishers would like to be able to continue working in this voluntary way with ISPs, in order to come to workable solutions to tackling online copyright infringement.

77. Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?

YES – Please explain

.....
.....

NO – Please explain

Of course data privacy rules are capital to the respect of European citizens' right to privacy, however, they should not act as a shield to illegal activities. Instruments such as the Enforcement Directive (2004/48/EC) are essential to provide rightholders with the means to fight against piracy i.e. article 8 on the right to obtain information about infringements and infringers. The 2006 Data Retention Directive (2006/24/EC) requires ISPs to store data and communicate it to relevant authorities.

Despite the ECJ's clarification in the two rulings *Promusicae* in 2008 (C-275/06) and *Tele 2* (C-557/07), there remains some uncertainty about whether EU law presents an obstacle to the applications of article 8 of the Enforcement directive. The second ruling referred to the first and states that a Member State can prescribe an obligation to disclose personal data to private third parties to ensure that these can take legal action in a civil case relating to breach of copyright. The Swedish Supreme court asked for a preliminary ruling to know whether provisions relating to discovery orders are compatible with the Data protection Directive.

One non-legislative solution could be to adapt contractual practices of ISPs to facilitate the transmission of data to rightholders. Currently, it is very challenging in most countries for publishers to face time-consuming and expensive court procedures every time their intellectual property rights are infringed online.

According to French Hadopi law, ISPs are required to provide the Hadopi structure with the personal data of the internet users whose telephone line is involved in counterfeiting and to shut down their web access after those users received two warnings and ignored them. Although the system will evolve, it will still maintain a balance between the need to enforce copyright and the need to protect Internet users' private data, which is not disclosed.

NO OPINION

VII. A single EU Copyright Title

The idea of establishing a unified EU Copyright Title has been present in the copyright debate for quite some time now, although views as to the merits and the feasibility of such an objective are divided. A unified EU Copyright Title would totally harmonise the area of copyright law in the EU and replace national laws. There would then be a single EU title instead of a bundle of national rights. Some see this as the only manner in which a truly Single Market for content protected by copyright can be ensured, while others believe that the same objective can better

be achieved by establishing a higher level of harmonisation while allowing for a certain degree of flexibility and specificity in Member States' legal systems.

78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

- YES
- [NO](#)
- NO OPINION

79. Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that this is a longer term project?

[Open question]

We do not believe that a single EU Copyright title will bring any benefits to the development of content online, which is progressing well in the publishing sector. Differences between national copyright laws do not constitute an obstacle to the creation of an online market for the publishing sector. As mentioned previously, the publishing sector benefits from a healthy pan-European licensing system which is not stifled by the level of difference among the Member States legislation.

On the one hand, it is highly unlikely that an EU Copyright law that takes precedence over national copyrights would be able to take into account the diverse cultural and legal traditions within the Member States. It seems particularly difficult in view of the fundamental differences between the system of "droit d'auteur" in continental Europe and the British-Irish Copyright model. But even within the tradition of "droit d'auteur" substantial differences exist. The question of moral rights or the different notions of "originality" that give rise to copyright protection as well as the well-established UK definition of 'Fair Dealing' for copyright exceptions are just a few examples of such differences. On the other hand, if such a Community title is construed in parallel to national titles, the risk is to add an unnecessary layer of legal complexity and burden in Europe. It is also relevant to note that an EU Copyright title would risk lowering copyright protection standards, which would certainly discourage investment in the digital content market.

It is not the first time that the Commission has asked about the pros and cons of an EU Copyright Code. It has considered the possibility of using the new Article 118 of the Lisbon Treaty as a legal basis for this future legal instrument. However, it is not clear whether the Treaty confers specific competency to the EU in this regard, especially for copyright, since its Article 118 was drafted for industrial property purposes. According to the UK House of Lords, "the new Article 118 of the TFEU is a restatement of existing powers. Although the Treaty of Lisbon would not confer additional IP powers on the EU, it marks a statement of political intent and a commitment to achieving the Community patent". It has not been fully confirmed as to whether Article 118 of the new Lisbon Treaty confers competency to the EC for the creation of a single "Community copyright title". Article 118 was foreseen for industrial property and therefore there is a risk of legal uncertainty including a possible annulment before the European Court of Justice for lack of legal basis.

Copyright is acquired without registration. This is the core principle of Copyright as enshrined in the Berne Convention, and any parallels drawn between patent titles which need to be registered and Copyright is extremely perilous.

The introduction of a European copyright code or an optional unitary copyright title is therefore highly unlikely to produce the intended practical results and might in fact take at least a decade to achieve. European publishers would therefore prefer to have the Commission work on the enforcement of existing rules, the facilitation of pragmatic dialogues and the promotion of voluntary solutions such as the Memorandum of Understanding on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works signed by all stakeholders concerned.

VIII. Other issues

The above questionnaire aims to provide a comprehensive consultation on the most important matters relating to the current EU legal framework for copyright. Should any important matters have been omitted, we would appreciate if you could bring them to our attention, so they can be properly addressed in the future.

80. Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.

[Open question]

ANNEX I: Contribution on the book sector by the Federation of European Publishers to the OHIM strategic report on legal offers available online

Digital technologies have been employed in book publishing for a long time, but only when they allowed offering the end user a satisfying reading experience did a real e-book market start emerging. This happened in the past 5 years, which have seen the rapid development of an e-book market across Europe basically from scratch, driven by the increasing sophistication of e-books and e-reading devices, the increasing availability of titles, the increasing penetration of the internet and the increasing uptake of technological devices by consumers.

Such market is still at an early stage of development: except for the UK, where digital sales accounted for 12% of the book market in 2012 and in Scandinavia around 6%, in the rest of the EU the share is around 2-3% in the most developed markets (Germany, France, Spain, Italy) and probably lower elsewhere. Nonetheless, growth rates have been impressive and the large majority of publishers have engaged in this new market, which opens up a series of opportunities as readers access e-books on several devices (PCs, tablets, e-readers, mobile phones) and in different formats.

New business models have emerged, as technology allows experimenting with the commercialisation of access models and the fragmentation of uses. New services have become available: digital bookstores, digital libraries, purchase or rental of e-books or single chapters, subscriptions to online consultation of individual works or collections, full-text search of books, etc.

Readers wanting to access e-books have therefore now a wide array of choices, made available by online booksellers, such as large internet companies, dedicated e-book platforms independent online booksellers and publishers themselves.

All EU countries are thus served by a number of local suppliers. National publishers generally distribute their e-books in ePub⁷¹ format on e-bookstores, often integrated with low-cost e-readers (e.g. Germany's Tolino Shine). Apple's iTunes offers a localised e-book storefront to each of the EU countries (except Croatia), and Google Play is accessible throughout 18 EU countries (U.K., Austria, Belgium, France, Germany, Ireland, Italy, Portugal and Spain, plus the recently added Netherlands, Denmark, Sweden, Finland, Greece, Hungary, the Czech Republic, Poland and Romania). Amazon's Kindle editions are served in the top 5 markets (UK, Germany, France, Spain, Italy), giving consumers more choice than in other Member States. New entrant Kobo is also generally accessible but only serves a handful of languages (UK, Germany, France, Italy and the Netherlands), whilst the Nook only serves the UK and Germany, where it entered in 2012. In addition, independent online booksellers managed by physical bookshops or pure players also play a significant role in the e-book market.

All in all, an estimated 2 million e-book titles are available to European consumers, with at least one e-book storefront in each EU country. The most common model allows customers to buy e-books from one of many retail platforms available. Just to make a few examples for the main markets:

Germany

The main platforms are weltbild.de, buecher.de, amazon.de, thalia.de, kobobooks.de, buch.de, ebook.de and the iBookstore. Around 400,000 e-book titles are available in German. Notably, the digital catalogue of ebook.de in German went from 25,000 titles in 2011 to over 200,000 in the third quarter of 2012, an eight-fold increase in less than two years. Libreka is a platform launched by the German publishers and booksellers association Börsenverein in 2006, offering e-books since 2009; Libreka has recently announced several partnerships — such as with Kobo and Apple in 2011 — to position itself as a link between retail platforms and publishers. This year Deutsche Telekom and various retailers, such as Club Bertelsmann, Thalia, Hugendubel and Weltbild, joined forces to create an integrated system of e-book distribution and selling, Tolino; it is completed by the production of an e-reader, the Tolino Shine.

UK

The most developed digital market in Europe, it is served, among others, by: amazon.co.uk, barnesandnoble.com, waterstones.com, ebooks.com, foyles.co.uk, Google Play, kobo.com, whsmith.co.uk and the iBookstore. More than 1.5 million e-book titles are available in English (also from the US catalogue). The portal econtentmap.com/books provides links to many different providers of e-book legal offers.

France

The main retailers include the iBookstore, amazon.fr, kobobooks.com, fnac.com, numilog.com, epagine.fr and feedbooks.com; the French market is also characterised by a large number of relatively small e-bookstores, often linked to individual publishers (e.g. numerique.livredepoche.com) and independent booksellers (livre.relay.com/fr). About 200,000 titles are available in e-book format in French.

⁷¹ <http://idpf.org/epub>

Spain

The main platforms are casadellibro.com, fnac.es, booquo.es, bubok.es, popolarebook.com, leer-e.es, todoebook.com, amazon.es, elcorteingles.es and the iBookstore. An estimated 75,000 e-book titles are available in Spanish.

Italy

The market is served by several retailers, including ibs.it, amazon.it, cubilibro.it, lafeltrinelli.it, inmondadori.it, hoepli.it, libreriauniversitaria.it and the iBookstore. The available e-book catalogue comprises some 60,000 titles (twice as many as a year ago).

Also the other EU countries outside of the big five markets are covered in terms of e-book offers. In the Netherlands, where Apple, Google and Kobo launched localised platforms in 2012 (and Amazon is expected to follow suit), there are some 20,000 titles available in Dutch; other platforms include bol.com, libris.nl, cosmox.nl, eBook.nl, polare.nl. Significant offers are available also in the Nordic countries (elib.se, publit.se, publizon.dk, saxo.com, wsoy.fi), and e-book stores are present everywhere else, from Poland (empik.com, virtualo.pl) to Portugal (leyaonline.com), from Belgium (filigranes.be, meslivresnumeriques.be, e-boek.org – and several French sites) to smaller markets like Hungary (adamobooks.hu) and Lithuania (skaitykle.lt), where e-books are just starting to get on the radar.

In a market that is still very young, various experiments are taking place, including subscription services that allow access to collections of e-books upon a monthly fee; notable examples include cyberlibris.com, youboox.fr and izneo.com (specialised in comics), and also very specific cases like bardowl.com (an audiobook subscription app). The bookstore at Google Play can also be considered peculiar in that it is a cloud-based service; regardless of the purchase mode books are accessed on the cloud.

The subscription model is also the basic model in the domain of academic and professional publishing (scientific, technical, medical, humanities, etc.). The main market here is constituted by academic, university and research libraries, who often deal directly with publishers. As a rule, scientific, technical and medical literature is available globally and on the internet due to publishers' programmes at national, international and regional levels. Digital and online access to journals has been available since the mid-1990s, including access to individual articles on a transactional basis for persons who do not have journal subscriptions. In addition to their own document delivery services, STM member publishers have licensed national, university and research libraries to carry out document delivery, both to their own patrons and to patrons of their correspondent libraries (e.g. www.subito-doc.de; www.infotrieve.com).

On a global scale, STM publishers offer transactional or “pay-per-view” access to content, as well as rental models that allow individuals to view content for up to 24-hours, such as Deepdyve, where thousands of journal articles are available for rent - www.deepdyve.com/browse/journals.

Furthermore, there are nonetheless many platforms offering such materials (mainly journals, but also e-books) to libraries but often also to individual customers. Some examples (beside the websites of many individual publishers): cairn.info, ebrary.com.

Several experiments are taking place as well in the area of e-lending, with publishers and distribution platforms offering licences to libraries that allow them lending e-books to their patrons. Some are run by platforms that already offer other types of e-book services, such as cairn.info, cyberlibris.com, izneo.com and numilog.com (France). Others have been created

specifically for the purpose; just to name a few: ereolen.dk (Denmark), divibib.com (Germany), Media Library Online – medialibrary.it (Italy), Public Library Online – publiclibraryonline.wordpress.com, Overdrive – overdrive.com, ebooks.com (UK).

ANNEX II: FEP- Non-exhaustive list of experiences in library digital lending across Europe

DENMARK

[Ereolen.dk](#)

[ebog.dk](#)

[Ebib.dk](#)

FINLAND

[Pilot project - Next Media, a tivit programme \(FIN\)](#)

FRANCE

[Cairn](#)

[Cyberlibris](#)

[IZNEO](#)

[NUMILOG](#)

[The PNB Project](#)

GERMANY

[Divibib](#)

[Public Library Online](#) (UK service launched by Bloomsbury) is also available in Germany.

ITALY

[Media Library Online](#)

[Casalini](#)

[Rete Indaco](#)

NETHERLANDS

[Bibliotheek.nl \(pilot\)](#)

[Unnamed project](#)

NORWAY

[The Norwegian Association of Publishers - Biblioteksentralen AL](#)

POLAND

[ibuk.pl](#)

[PWN “e-book.pl”](#)

SPAIN

[Libranda](#)

[OdiloTK](#)

[XeBook](#)

SWEDEN

[eLib](#)

UK

Public Library Online
Ebrary
Overdrive

DENMARK

Ereolen.dk

Original project group: Denmark's two largest publishers and representatives from local libraries.

Lending practicalities: Loans for one month, renewable for one more month within 90 days. Libraries can limit the number of e-books per lender.

Payment model: Libraries pay for every e-book loaned.

Other information:

- Agreement originally entered into force on November 1st 2011 and lasts for one year.
- Service offer to all libraries
- The website was developed and is owned by the libraries
- Covers lending of Danish trade e-books – about 100 publishers participate
- Participating publishers offer their full trade e-book catalogue
- e-books can be read on several devices including the iPad; Streaming access
- Free access to read 3% of the book.

Libraries pay for every e-book lent out. **Notes:**

The library service has been extremely popular so the publishers have experienced an immense increase in e-book lending whereas the commercial market only has grown very little. The situation calls for more restrictions on the library lending.

Ebib.dk

Project group: Danish publishers

Lending Practicalities: Libraries choose what titles to offer and how many licences they want to buy. One licence can be used for four loans but only used by one patron at a time

Payment model: The price of one license will normally be the net-price which is the publishers sales price excl. VAT and trader profit. **Other information:**

- The book will be opened in an online-reader that can be used on PC, MAC, Tablets (iPad og Android) and smartphones.
- Streaming access
- Offered to all libraries
- Participating publishers offer their entire trade e-book catalogue
- Inter-urban loans are possible
- 4400 titles (April 2013)

FINLAND

Pilot project - Next Media, a tivit programme (FIN)

Project group: publishers and library organisations, pilot project with Helsinki area libraries

Lending Practicalities: Licence allows one person to loan a book at a time (1 book, 1 lend). *May* incorporate download and streaming (Download to own device (one chapter in uploading and then disappear): no programme to download, easy. Streaming: Internet connection is needed nearly all the time, reading on browser, easy to use.)

Payment model: unknown

Other information:

- In Finland publishers are working closely with library organisations to find win-win-win solution (publisher-library-reader). The pilot project is going on with Helsinki area libraries. It is testing readers' response to different kind of lending models as well as how the money moves from libraries to publishers and in the end how authors get their share. The model is one acquire e-books through a licence means that library can lend it to one person at the time. They expect to develop a standard system for the whole country in which individual library can acquire e-book licences from individual publisher.
- Streaming or Adobe DRM, first more used but balanced in the end.
- Customer feedback: overwhelming positive, wish to have more e-books (36 books only), those reading read library e-books are willing to buy e-books

FRANCE

There are about ten actors. Several models for e-lending exist, but the discussions about the coexistence between BtoB and BtoC models for trade e-books lending are still going on. Thus, in 2013 there are still few trade e-books available for e-lending.

The list below is non-exhaustive but shows the multiplicity the systems available in France:

Cairn www.cairn.info,

Project group: launched in 2005 by 4 Belgian and French publishers, Cairn is nowadays the leader in providing access to Humanities and social sciences digital publications to academic libraries.

Lending Practicalities: A usage-based model, in which libraries are also proposed to get unlimited access. An administrative fee is paid in the first year, after the first year the fee is calculated by multiplying the usage observed the year before by a fixed cost per use and adding an administrative flat fee. An on-demand access mechanism is managed and supervised by the library itself; Users request content, the library then validates their request from a pre-paid amount retained by the library.

Payment model: Annual licensing.

Other information:

- On site or off site access possible

- French language, dealing with humanities and social sciences.
- In 2012, more than 300 journals and 3 000 e-books from around 100 French, Belgian and Swiss major publishers are gathered on the platform enabling libraries to propose the access to more than 200 000 current journals articles / book chapters in full-text.
- Cairn has steadily experimented models for individuals and for libraries, that have now enabled hundreds of libraries in more than 60 countries to propose access to the content gathered on Cairn.info for their publics, including a growing number of public libraries

Immatériel

Project group: e-book aggregator

Lending Practicalities: The library buys a subscription to an e-book package and picks up the titles wanted. It defines how these titles can be used by the reader: they can be either read in streaming inside or outside the library (but no download available). Subscribers can access the content thanks to a unique online platform, which allows the library to follow the readers' practices.

Payment model: The library buys the subscription to the e-book package to Immatériel or to a bookseller. The price is fixed by the publisher.

IZNEOProject group: Joint publishers platform providing access to comice-books via streaming.

Lending Practicalities: Rental or purchase via streaming by individual readers. In 2010, Izneo launched a specific offer for public libraries based on licence providing an unlimited access to its catalogue within the premises of the libraries. The access is only in streaming via the library's devices (tablets and computers).

Payment model: Annual subscription with a decreasing price regarding the number of simultaneous users per title:

- 1st user: 599€; 419€ for 2 to 5 simultaneous users; 299€ for 6 to 10 users.
- 419€ fee for technical set-up;
- 239€ for maintenance and reporting

NUMILOG

Project group: Numilog is an e-book aggregator; its role is that of a commercial distributor of copyrighted books in electronic format on behalf of their right owners. The main services it offers are the storage, protection and delivery of e-books on behalf of publishers and the connection of publishers with the retail channels.

Lending Practicalities: 3 options:

- Libraries can choose to acquire and loan e-books (one user per title; time limited loans; DRM).
- Libraries can go for a subscription model where in this case, e-books are made available on an annual basis to the library, allowing for them to be simultaneously accessed by up to 3 users.

For these 2 models, access can be read online or download (time limited with DRM) and the time limited is chosen by the library.

- The library can buy a collection of e-books for an unlimited access but for reading only in streaming in its premises.

Payment model: By titles or with an annual licensing.

Other information: When titles are downloaded by readers DRM systems ensure files are only usable for a limited amount of time.

The PNB Project (*Helsinki presentation*)

Project group: Offered by Dilicom, a limited company created by the book trade to manage electronic data exchange between distributors and booksellers in Paris. 30 organisations: French and Belgian booksellers, libraries, publishers .

Lending practicalities: To be defined by the publisher or aggregator. Read on line (in situ or ex situ), or read after have downloading an ePub or PDF file. The offers are defined by publishers and may provide for a time-limited licence (one or two years). The number of simultaneous accesses, the number of lendings and a maximum time-limited of lending are defined by libraries.

Payment method: Depends on publisher offer and libraries choices.

Other information:

- Searchable database, metadata in ONYX format
- Libraries deal directly with booksellers
- Libraries and booksellers build their own e-lending interface in order to freely arrange their catalogue

GERMANY

Divibib

Project group: Private company aggregates publisher offers and libraries sign up.

Lending Practicalities: only on your device, no copy, no print, no transfer to another device. different packages for libraries, can be one use per e-book or multiple simultaneous downloads (XL Licence). Duration of loan and number of titles that can be downloaded is set by the libraries.

Payment model: Lending is based on licenses granted by publishers. DiViBib GmbH get licences from publishers at normal retail price. The library pays for the use of the same amount as for a printed book.

Other information:

- Offers libraries the possibility to “open a branch online”.
- Libraries have joined forces into ‘regional networks’ to participate
- **March 2012 had 400 libraries participating, of which 350 were German. The platform is also present in Austria, Switzerland and Italy and is due to launch in Norway.**
- In 2007 ; titles, in 2009; 30,000 titles, in 2011; more than 20,000 different media in the stock of DiViBib. In June 2012, the eLibrary quantified their offer themselves to "more than 40,000 content".
- Not popular with users because of use limitations
- Download only in ePub or PDF

Public Library Online (UK service launched by Bloomsbury) is also available in Germany.

ITALY

Media Library Online

Project group: A private company, Horizons Limited, coming from the publishing world, has proposed a platform to the libraries, named MLOL - Media Library Online (www.medialibrary.it: the site has an English version).

Lending Practicalities: Essentially, users can access the e-book in a “ing only” model, and there is a limitation in the number of concurrent users for the same book and a number of loans per year. They can also download for 14 days onto their computer or mobile device

Payment model: Many Italian librarians joined MLOL and acquired licenses from publishers

Other information:

- Created in March 2009 it immediately aggregated about 400 libraries in 3 regions. At the beginning of 2010 it has more than doubled its members with about 1.000 libraries in 4 regions and a potential audience of 8,5 million people.
- Covers the entire spectrum of digital contents that may be of interest for non-academic and non-specialized libraries in Italy. It will also host the first experience ever with commercial e-books within public libraries in Italy.
- Over 30,000 open access e-books selected from digitization projects like Internet Archive, Progetto Gutenberg, Liber Liber, Logos Library and many others
- Around 7,500 e-books in streaming format from the catalogues of countless Italian publishing companies: Morellini, Liguori, Sossella, Laterza, Guaraldi, Il Saggiatore, to name just a few.
- The digital catalogues of Feltrinelli, Garzanti, Rizzoli, Longanesi, Guanda, Adelphi, Bompiani, Fazi, minimum fax, Codice, ISBN, Iperborea, Il Saggiatore, 40K and many others, which you can download easily and legally. Depending on the publisher, e-books for download may be protected by Adobe DRM or by Social DRM (for further explanation, see [FOCUS: E-book Download](#)).

Casalini

Project group: Private

Lending practicalities: unknown

Payment model: unknown

Other information:

Casalini, which sells books since decades has started also an offer for public libraries (academic and non-fiction).

NETHERLANDS

Bibliotheek.nl (pilot)

Project group: Developed and maintained by Foundation Bibliotheek.nl.

Lending Practicalities: E-books can be downloaded onto tablet, PC etc with an app. With a library card users can also stream online. Books on the VakantieBieb app are available to everyone with or without a library card.

Payment model: free (but only out of copyright)

Other information:

- 200 titles, hoping to be 500 by the end of 2013
- Epub or pdf format

Unnamed project

Project group: Dutch Libraries Association reached an agreement with individual publishers (on individual bases) regarding lending e-books to their members.

Lending Practicalities: one loan per copy simultaneously

Payment model: Libraries pay a (modest) advance and a 'royalty' per download. Exact figures but it will be higher than the fee they pay for a physical book (about 11 cents per loan). Exact amounts are negotiated with individual publishers.

Other information:

- Mainly books older than three years, one lending per copy simultaneously.
- The project will last until January 1st 2015.
- Currently an experiment. Publishers might also face the interesting problem that an author in general gets about 25% on net receipts from an e-book (suppose the e-book is 10 euro's it will come after Tax (21%) and retailer discount (30% or so) an author gets about 1,45 per download) but when it comes to the split author / publisher from public lending fees it comes down to 70 / 30 (in favor of the author).
- By the end of the year, libraries are aiming for about 2,000 available e-books, all of them at least one year old. Of course more e-books are available in the public domain.

NORWAY

The Norwegian Association of Publishers - Biblioteksentralen AL (from Helsinki presentation)

Project group: ?

Lending Practicalities: 1 licence = 1 loan. Loans for 21 days.

Payment model: Same price as private market, 15% lower than print market, including 25% VAT.

Other information:

- licence period for at least 3 years, until 2015 (you don't need to buy a new e-book, doesn't get damage);
- Adult fiction and science, Children's literature, E-audiobooks
- Have all the bibliographic info and users can look at the ten first pages.
- If an e-book is already on loan, when it's free you get an SMS or an email
- 24 municipalities.
- Library card and pin-code needed. Accessible to people living across border with foreign IP.

POLAND

ibuk.pl

Project group: Private e-book retailer

Lending Practicalities: subscription, 6 months, 50 titles.

Payment model: can buy or borrow. Borrowing can be for a day, week, month or semester (5 months). For academic books there is a model called a iBUK Plus; students can keep a personal bookshelf without having to download (they can also select offline access), they can read 15 books independently per semester and print 5, 10, 15, or 20% of the pages depending on their purchase options. There is no time limit (but the semester runs for 5 months).

Other information:

- Offers primarily academic books but has also added trade titles.
- May have adobe DRM protection

PWN e-book.pl

New business model inspired by “Netflix” for academic (students get, for a 25 euros fee for 6 months, 50 titles of their choice, including a trade offer).

- ePub, Mobi or pdf, can be read on ereader, tablet or smartphone

SPAIN

Libranda

Project group: Company owned by 7 Spanish publishers : Planeta, Random House Mondadori, Santillana, Roca Editorial, Grup62, SM et Wolters Kluwer. Has agreements with 140 publishing houses.

Lending Practicalities: Traditional download (using Adobe DRM) or reading from the cloud using DRM of Libranda. Every library has a ‘shelf’ which can also contain books from publishers that do not have agreements with Librada.

Payment model:

Other information:

- Some publishers didn’t want to join because the remuneration conditions are not satisfactory

OdiloTK

Project group: Spanish company, Biblio 3000

Lending Practicalities: Content is actually bought elsewhere but stored on the platform; OdiloTK allows libraries to manage their loans. Access through downloads or streaming. Duration of loan depends on the title, but generally 21 days.

Payment model:

Other information:

XeBook

Project group: Technical platform

Lending Practicalities: ePub or PDF, DRM protected (Adobe), accessible at any time from a PD, smartphone or ereader. Simultaneous access possible, depending on the licence.

Payment model:

Other information:

- Open code platform with possibilities for social interaction
- can add content from Google Books, Amazon, etc
- Works with library management system KOHA
- Libraries can choose to subscribe to the service or install it on their servers

SWEDEN

eLib

Project group: Private: Scandinavia’s leading producer and distributor of downloadable and rentable e-books

Lending Practicalities: Library users can access e-books and audio books from any remote location, not only from the premises of the library, upon identification. E-books and audio books are loaned on an individual basis, with a time limit like printed books. Audio books are made available in streaming, and are accessed through a login that expires after 28 days. E-books are made available via download; files have a “timer” that only allows opening the book for 28 days after the loan. Titles can be borrowed again after the expiring, and the library pays another fee.

Payment model: In the libraries model, libraries pay the annual fee and have access to the entire collection of eLib. Subsequently, they pay around 2 € for each loan they make to their users; of those, eLib forwards 1 € to the publisher of the book, which in turn pays royalties to the author.

This model was created after consultation with libraries on feasible prices and other details; it applies mainly to public libraries, since university libraries prefer to operate on a subscription basis to bundles of journals and monographs or entire collections. Libraries can limit access of their users to only part of the eLib catalogue, according to their policies; they can also limit the total number of loans, especially for budget reasons. Swedish libraries have a special budget for this kind of initiatives and they tend to stick to it. eLib also serves libraries in other Scandinavian countries.

Other information:

- DRM systems are used, in different solutions (Adobe, Microsoft, Mobipocket), especially for e-books;
- Audio books are in general digitally watermarked, i.e. some additional information is added to the mp3 files to make them recognisable and traceable.
- The intention for the future is to try and adopt watermark solutions for PDF books as well, since DRM systems are not extremely user-friendly.
- This system is criticized by both sides. The libraries find the current system too expensive, while the publishers are not earning any money at all from libraries sales. The commercial market is very small and undeveloped, while sales to libraries are quite big (90%) and the 2€ fee per book is too small. As a result, the overall market of e-books is stagnating at 1% of the publishing market. However the discussions between the Swedish PA and the Swedish Library Association held for a year did not reach a solution. Some Swedish publishers are now negotiating with three libraries so as to find a solution to the issue of payment and the possible delay before having access to the e-book.

UK

General:

Despite the lack of progress on follow up legislation after the DEA to “legalise” e-lending, a great many libraries are already offering e-lending services with the full support of publishers. Commercial companies are jumping in and do digital lending. Vodafone after games and music sees a natural step to offer books.

E-book collections are now available from all major academic publishers including Cambridge University Press, Elsevier, Oxford University Press, Palgrave, SAGE, Taylor & Francis, Springer, and Wiley-Blackwell, as well as from some of the other sectors.

There has also been a growth in aggregator services that provide a single interface and point of access to e-books from a wide range of different publishers. E-book aggregators currently supplying the UK academic market include Dawson, EBL (e-bookLibrary), ebrary, MyiLibrary, and NetLibrary.

Examples (non-exhaustive):

Public Library Online

Project group: Launched by Bloomsbury. The project is sponsored by Google and run by Public Library Online.

Lending Practicalities: As of January 2012, public libraries across the UK will be able to offer their members digital editions of books on 'virtual bookshelves' accessible on library terminals and online. The two shelves on offer are The Arden Shakespeare, with 10 plays that are on the GCSE National Curriculum and Our Environment, with 10 books including The Hot Topic by Gabrielle Walker and Sir David King.

Payment model: Public Library Online is a subscription service for libraries, allowing them to give their users online access to books.

Other information:

- It offers themed digital bookshelves of children's, teen, adult fiction and non-fiction bestsellers from a range of publishers including Allen & Unwin, Alma Books, Bloomsbury, Canongate, Faber, Macmillan Education, Mercier Press, Oneworld Classics, Quercus and Verve. The service is built on the goal shared by publishers and libraries to support reading and literacy through public libraries.
- Libraries will be able to join the programme throughout January 2012, with the shelves being made available through February 2013. Libraries that already have these shelves through the Public Library Online service will be able to pick from a range of alternate digital shelves.

Ebrary

Project group: Aggregator service

Lending Practicalities: Offers libraries access to e-books on a commercial basis according to the two most common models: ownership and subscription. The company offers flexible options for purchasing individual e-books in perpetuity: libraries may hand pick individual e-books and choose an access model for each title. While libraries own and control their purchased titles, they are hosted and maintained by ebrary.

Libraries can purchase single-user access to titles or simultaneous multi-user access. There is no check-out period: if an e-book is available, a patron can instantly access it. If it is in use, a patron is notified with an instant message and placed into a queue, where they are alerted immediately when it becomes available. There are no document downloads: e-books are delivered to a patron online, page-by-page with the ebrary Reader.

Ebrary offers a number of pre-selected subscription databases of thousands of titles for academic and public libraries and corporations. All of the subscription databases are available under a simultaneous, multi-user access model and continue to grow at no additional cost.

Payment model: Single user access is sold based on the list price of the e-book; or simultaneous, multi-user access titles that are sold at 150% of the list price of the e-book.

Other information:

- Ebrary offers more than 100,400 titles for purchase from over 350 leading publishers, including Oxford University Press, Cambridge University Press, Taylor & Francis, Harvard University Press, Yale University Press, Palgrave, and many others. Documents submitted into the ebrary platform can be cross-referenced and are full-text searchable. Purchased e-books are delivered via the ebrary platform.

Overdrive

Project group: Overdrive is leader in providing a library platform through a “virtual branch” to a network of 18,000 worldwide. Overdrive creates a custom website to match libraries website.

Lending Practicalities: The library chooses its collection and its lending period and pays a licence fee accordingly. Overdrive is fitted to both large and small libraries and also schools.

Payment model: Depends on collection and lending period

Other information:

- It has more than 300 000 titles and is compatible with all leading devices.

ANNEX III: Contribution on the book sector by the Federation of European Publishers to the OHIM strategic report on online copyright infringements

FEP recognises that copyright infringement and online piracy are key issues that affect the European Creative industries, including publishing. FEP is therefore grateful to be able to share some data on piracy in our sector. In the first instance it should be noted, however, that the e-book market is still in a relatively early stage of development, and that e-book piracy has only come under the radar of enforcement authorities in the last few years. As such, while a number of studies have been conducted on the music or film industries, few have touched upon the levels of e-book piracy. For example, the 2011-2012 UK Police Annual IP Crime Report showed that e-book crime was investigated by only 9% of UK Police authorities.

Another factor to bear in mind is the different rates of advancement of e-book markets between different language areas. While language differences are not a key inhibitor for the movement of music, for books language is key. As such, different language markets must be borne in mind when using the data detailed below. For example, the French EbookZ⁷² study focuses on piracy of books published by French publishers only and excludes translations of French works sold abroad; as such, the figures may not be representative of the entire scale of e-book piracy in the country.

This said, it must be also noted that the fragmented, sometimes anecdotal information available so far indicates that piracy has indeed reached the e-book market –and to a significant, though relatively limited level. This has been facilitated by some inherent characteristics of e-books, especially their relatively limited size (in comparison, for example, with audio and video files). Individual e-books nowadays can be downloaded in a matter of seconds, and it can take just up to a few minutes to download the entire bibliography of an author. However, this does not mean that e-book pirated files are on average very small, especially those with illustrations (and comics in particular); in addition, the quality of illegal copies tends to be quite good. And whereas many sources indicate that illegal e-book downloads are increasingly widespread, the impact on sales is not easy to determine. Nonetheless, considering the time it takes to read a book, it is easy to figure that pirated e-books are likely to have a high rate of substitution with regard to legally acquired ones.

FEP members have taken positive action already to combat online piracy. SINBAD is an anti-piracy web crawler developed by the Flemish book trade, which searches the web for illegal links to book downloads and serves automatic notice-and-takedown requests. From July 2011

⁷² http://www.lemotif.fr/fichier/motif_fichier/368/fichier_fichier_etude.ebookz.3.pdf

through February 2012, 56,000 illegal links to books were tracked and removed through this system. The UK CIP Search has also been developed in cooperation with the UK Publishers Association. The site facilitates the identification of online copyright infringement using a web crawler and has a user interface that allows searches to be defined to locate infringing web pages and then serve takedown notices. It also shows the ‘most reactive’ sites, on the basis of how many take down notices are responded to. From 2009 – April 2012, the CIP issued 196,018 take down notices, with a successful removal rate averaging 93%. From now on, the members of the French publishers association will also be invited to use this tool.

In Germany, the publishers association (Börsenverein) cooperates since 2012 with Gesellschaft zur Verfolgung von Urheberrechtsverletzungen e.V. (GVU, German Federation against Copyright Infringement). GVU is an organisation funded by companies and associations in the movie and entertainment software industries. Its assignment is to identify infringements of the copyrights of its Members and communicate these infringements to the prosecution authorities. Apart from this, the GVU provides technical and legal assistance to the public prosecution authorities in criminal proceedings. This way has been chosen due to the opinion that even though take down notices allow quick reactions, they don’t tackle the root of the problem because the respective content pops up under a new link soon.

Data available to date:

Type of copyright infringer:

- Evidence so far seems to indicate that infringers are individual or small groups. Organised activities come mainly from dedicated websites, sometimes (such as those in the field of educational and academic books) specialised and sometimes located outside of the EU.
- Many surveys attest to the presence of sizeable groups of consumers pirating books and other cultural products in the EU. According to the first major and on-going peer-reviewed study of piracy, conducted by UK regulator Ofcom, the single most important motivation of piracy by far is “because it’s free”, cited by 56% of (pirating) respondents.
- In the UK there was a large-scale consumer tracking study⁷³ commissioned by Ofcom with financial support from the UK IPO which provides some insights. Although the findings should be treated with caution given the low base relating to e-books (probably due to the relatively early stage of market development as compared to e.g. music), the results show that a small percentage (1%) of UK internet users aged 12+ were estimated to have downloaded or accessed at least one e-book illegally over the period November 2012 – January 2013, and 8% of these had done so illegally. The study showed that ‘consumers’ of illegal e-books had an older age profile than those for other content types assessed’ (25-34 year olds accounted for 48% of infringers).

Scale of piracy:

- As mentioned before, it is difficult to measure precisely the scale and impact of piracy on the e-book market. This is due to the small scale of the market itself in most EU

⁷³ <http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/copyright-infringement-tracker/>

countries, as well as to the common difficulties in measuring this kind of phenomenon in any sector. However, piracy is affecting the book market.

- In 2012, at a stage when the e-book market was only getting on the map there, the Italian PA estimated that 75% of bestsellers were available on the net in a pirated version. They also recently estimated that some 28,000 pirated Italian book files were available; each of those could contain dozens or even hundreds of books.
- The French EbookZ study estimated that in 2011 there were around 3,000 to 4,000 different e-book titles, and 8,000 to 10,000 comic book titles in illegal circulation. Pirated comics accounted for 20-25% of all title offers. These figures are likely to have grown considerably. In March 2013, the French Publishers Association (SNE), the SNE, the French Authors association (SGDL) and SOFIA issued their third survey on practices related to e-books undertaken by OpinionWay⁷⁴. It showed that 15% of e-book readers (i.e. 2% of the population) admitted to piracy, and 54% of the 72% who had never downloaded books illegally said this was in order to respect copyright.
- Regarding the frequency of uploading, the EbookZ study observed that in January 2012 the average was 89 titles per month per site, although this varied from 15 to 130 titles, likely influenced by the holiday seasons in particular.
- The Survey on Digital Content Usage in Germany that first measured the impact of piracy on the e-book and audiobook-market was released in 2011. The survey was carried out among 10,000 people in the GfK Media*Scope, who stand representative of 63.6 million Germans aged 10 and older.⁷⁵ According to the study, in 2010, 1.9 million people downloaded on average 12 e-books legally or illegally – some 23 million e-books in total; among them, 800,000 people downloaded e-books illegally, at an average of 18 e-books each, so about 14 million books, 62% of all downloaded titles. 60% of e-book downloaders used legal offers, 35% used illegal offers. Only 6% used both legal and illegal offers.
- The 2013 study⁷⁶ found that satisfaction among consumers about the legal offers of e-books was increasing: 76% of the respondents said that the legal offer for buying or downloading e-books online was sufficient (2012: 72%) while for 53% legal offers were perfect (2001: 46%). Consumers know about the central copyright regulation. Only 5% of the consumers think that circulation of an unauthorised e-book-copy is legal, but only 39% of the consumers think that is easy to distinguish legal from illegal online offers. 91% of the consumers accept the fact that publishing houses try to enforce law in order to protect their products.

⁷⁴ <http://www.sne.fr/actualites/troisieme-vague-du-barometre-sofia-sne-sgdl-sur-les-usages-du-livre-numerique.html>

⁷⁵ http://www.musikindustrie.de/fileadmin/piclib/presse/Dokumente_zum_Download/DCN-Studie_2011_Presseversion_FINAL.pdf

⁷⁶ http://www.boersenverein.de/sixcms/media.php/976/DCN-Studie_2013_Vollversion_Final.pdf

- According to surveys made in France and Spain in 2012, 81% of French people and 68% of Spanish people who read e-books do not purchase them. Of course, due to the wide availability of free public domain works, these data can only be considered as a proxy for the actual impact of piracy on e-book sales.
- An interesting case occurred in February 2012, when a large coalition of publishing firms and related trade organisations from the US, the UK and Germany took legal action against what the Association of American Publishers described as “one of the largest pirate web-based businesses in the world”. The website library.nu provided links to illegal PDF files of books, virtually all hosted on iFiles.it; the two sites were allegedly hosting and providing links to illegal PDF files of more than 400,000 books.⁷⁷

Type/trends in illegal activity:

- Although this is not an indicator of illegal behaviour (this section of the UK Ofcom consumer tracking study covers *all* access, download and sharing), it seems that consumers are only downloading e-books occasionally. The study indicated that in the past 3 months it was most common for those surveyed to download or access e-books every 2-3 weeks or once a month. Sharing seems to take place only about once a month, for those who do it at all. The small scale of the e-book market is again shown in these figures: only 13% of those surveyed had downloaded an e-book in the past 3 months, while 7% had accessed one and only 1% had shared.
- The French EbookZ study seems to indicate that e-book piracy is different from other media, in that the majority of pirated e-books were published between 1991 and 2009. They note that this could indicate that e-book piracy is instigated by an immediate need to get the book, rather than a search for ‘what’s new’.
- It can also be noted that some types of works seem to be more susceptible to piracy than others: according to the UK Publishers Association, professional, text books, comic books, audiobooks, bestsellers are at the highest risk. The French EbookZ study confirms this by showing the long tail between the top 5 pirated categories: 51.9% of books surveyed are ‘practical’ (including leisure, STM, teaching, computing, dictionaries, tourist guides), 29.7% are general literature, 15% are essays, 2% youth and 0.6% coffee table books.
- Pirated book files used to come mainly as PDF, but other formats are becoming increasingly available, including proprietary formats such as those distributed by Amazon and Apple. It is interesting to note how people will go to the extent of scanning entire printed books in order to make them available for free illegally.

Type of online distribution:

- A simple search for ‘e-book downloads for free’ on the internet reveals a plethora of websites dedicated to offering illegal e-book downloads, usually via direct download, P2P networks or bit torrents. Distribution channels of pirated books are indeed very

⁷⁷ http://www.huffingtonpost.com/2012/02/15/librarynu-book-downloading-injunction_n_1280383.html

different from one another. Direct downloads – in all forms – are on the rise, as they tend to be safer than other methods, whereas P2P and torrent channels appear often in decline.

- The main forms of direct download include: websites that directly host the contents (pirate sites strictly speaking); “featuring sites” that index links and/or information to get the contents; small communities (online or offline) of sharers in which members buy DRM-protected content, remove the protection and make the content available to the other members.
- It is becoming common to use “side services” such as various “URL shorteners” that make it harder to identify the contents and send proper N&TDs; and offer a small additional amount of money to the uploader that uses them (e.g. www.adfly.com pays the uploader 5/7 \$ for each 1.000 downloads completed through its shortened URLs).
- Cloud systems are increasingly used almost as if they were traditional cyberlockers (e.g. many one-page-documents can be found on Scribd containing Google Docs or Dropbox links to the actual contents).
- The use of social websites (Facebook, Anobii) to offer each other illegal copies of e-books, which are very often delivered through email or private message, is becoming extremely popular.
- The UK Ofcom consumer tracking study indicated that most users downloaded, accessed or shared e-books through Amazon (81%) and other e-bookstores (Apple’s iBookstore, Google search, ebooks.com). However, 4% declared that they used the P2P service uTorrent. When all P2P services were aggregated (Bittorrent software, uTorrent, Pirate Bay, Isohunt, Limewire, eDonkey/eMule, Gnutella, KickAssTorrents, and Torrentz), the total figure for use was 6%, while only 3% used Cyberlockers (Rapidshare, MediaFire and YouSendit). Again, the relatively small size of e-book files would explain this, at least in part.
- The UK Publishers Association, in the context of the CIP Search portal has noted that illegal activities relating to e-book piracy can take place on websites that provide open & searchable access to infringing copies for free download (such as Scribd), P2P networks, cyberlockers and feeders, and social networks. From its launch until April 2012, CIP had resulted in near 100% take down rates upon notices being served through the systems. The most activity in this respect took place on 3 sites: 28,725 notices were served on Map-Filesonci.com (100% of content was taken down as a result), 11,160 on Rapidshare (all but 6 items of content were taken down), and 11,063 on Map-Fileserve.com (all content was taken down). Other domains in the top 10 receiving notices were WUpload.com, Map-Depositfiles.com, Map-Hotfile.com, Map-Uploading.com, Map-4Shared.com, Scribt and Map-Megaupload.
- The French EbookZ study indicates that for the samples tested, direct download (DDL) is more common than P2P sharing. It showed that 7% of files are accessed by eMule,

14.4% by Torrent, 75.3% by DDL, 2.6% by Usenet and 0.7% by other sources. It noted that DDL may take place through aggregators, ‘team’ sites, personal webpages, private file transfer protocols (FTPs, such as Dropbox), and hosting sites. It showed that of the pirated e-books studied, 2 host sites (FileSonic and Megaupload) represent more than 50% of files and the top 5 host sites correspond to 80% of files.

- The UK Creative Content Campaign released a study⁷⁸ which said that one of the best-known websites for free book downloads was ‘Textbook Torrents’ (now closed, but which had more than 5 000 titles available for download).
- The French ‘Etude Hadopi’⁷⁹ (2011) showed that 31% of 1500 persons interviewed said that consumed (in the past 12 months) cultural products in an exclusively illegal or mixed legal-illegal manner. Of the cultural goods examined, when it came to illegal consumption e-books were in the 7th (next to last) position.
- The latest Baromètre HADOPI⁸⁰ indicates that 5% of people surveyed opt for illegal e-book downloads only, while 9% use a mixture of legal and illegal sources. Unfortunately, the base for the e-book section (only 35 responses) was too low to determine the reasons for this behaviour. The report also indicates that 3% of users use illegal sites most of the time to access e-books.
- The Six Business Models for Copyright Infringement⁸¹ study, although not specific to the publishing sector, looked at the way in which copyright was infringed. Relevant to e-book piracy could be their figures on P2P networks (showing an average increase in global page views of around 17% per year), live TV gateways (typically containing links to downloads/streams with hosted content; perhaps surprisingly, this segment scored number 1 for e-books and games), music transaction sites (which may also contain e-books), subscriptions (the least-used method, used by only 5% of the sites sampled), rewarded freemium (using mixed free/paid content, the study showed this segment to be in decline), embedded streaming (12% of sites surveyed, but showing the fastest decline).

Type of disguise:

- The UK Ofcom consumer tracking study showed that in the past 3 months 4% of users had downloaded e-books using a mix of legal and illegal sources (compared to 92% who said their e-books were downloaded legally), but does not elaborate further. The remaining 4% said they had downloaded their e-books illegally.
- The Creative Content Campaign study noted problems with search engines displaying illegal content in search results above legal content.

⁷⁸ <http://www.ipso.gov.uk/ipreview-c4e-sub-ccc.pdf>

⁷⁹ <http://www.hadopi.fr/download/hadopiT0.pdf>

⁸⁰ <http://www.hadopi.fr/sites/default/files/page/pdf/36926%20IFOP%20-%20HADOPI%20-%20Rapport%20Baromètre%20Usages%203%20version%20longue.pdf>

⁸¹ <http://www.baesystemsdetica.com/resources/the-six-business-models-for-copyright-infringement/>

- In the library.nu case, difficulties in identifying and locating the site's owners came from the fact that it appeared to be hosted in Ukraine but its Web address was registered on the small Pacific island of Niue, giving false names and addresses.
- One (rather new) form of piracy is the so called "flat rate shop". It's a kind of "all you can read" offer. Of course, these books are not licensed by the copyright holders. As an example, on "Books Online", by paying a subscription fee of about 40 Euros a month the user gets an unlimited access to over 200,000 e-books, most of them highly expensive textbooks - and may download them. This new method of piracy works without advertising payments. Possibly many users of this kind of "shops" are not aware of the fact, that these sites are illegal.

Types of financial remuneration

- Some websites offering infringing material are funded via advertisements or donations, others offer illegal content against direct payment. For many small sites, administrators make available the contents and are paid by the various cyberlockers they use. In general, it is not uncommon for websites to remunerate uploaders.

Target group:

- Users can be found everywhere in the EU and beyond, with language of course playing an important role in the choice of books to pirate. Languages with a larger international exposure see books being more susceptible to piracy.
- The 2011-2012 UK Police Annual IP Crime Report highlighted that UK publishers sell across the world and the UK PA pursues also piracy in international markets. It has run anti-piracy campaigns in India, China, Nigeria, Bangladesh, Turkey and Pakistan (targeting anti-piracy for both print and e-books).

General, transversal issues:

- In terms of types of equipment, financial remuneration and payment systems, e-book piracy is not substantially different from other types of online piracy. Infringing material is hosted in dedicated servers and in personal computers.