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Per advance e-mail

Brussels, 16 January 2006

IVIR REPORTS ON “THE FUTURE OF LEVIES IN A DIGITAL ENVIRONMENT” AND “THE REPROGRAPHIC LEVIES ACROSS THE EUROPEAN UNION”

We have been informed that the European Commission, Copyright and Knowledge-based Economy Unit will be carrying out a study on levy systems in the Member States. We also understand that the 2 reports by IViR dated March 2003 – “The Future of Levies in a Digital Environment” and “The Reprography Levies across the European Union” (henceforth referred to as the “*Levy report*” and the “*Reprography Report*”) – are available to the Unit.

The *Levy report* contains both an analysis of current levy systems in the EU and an examination of them in relation to the Directive 2001/29. Both sections entail comments and corrections on statements made in relation to issues relevant to IFRRO and its membership. However, the purpose of this letter is only to comment on the first part, and in particular the use of terminology and description of the concepts as a basis for the analysis made in the second part.

It is in the interest of all parties concerned that the Unit’s examination is based on precise information. To that end we have assessed the factual information in the reports on reprographic reproduction and Reproduction Rights Organisations (RROs). We would offer to assist you further in collecting accurate information on the fields relevant to the IFRRO membership. The use of consistent terminology is particularly important in order to ensure that a correct description of the concepts is available to the Copyright and Knowledge-based Economy Unit in conjunction with the study that is being carried out.

TERMINOLOGY NEEDS TO BE CONSISTENT

The factual information in the IViR reports needs updating and corrections. More importantly, it is essential that documents used to assess reprography (as well as other subject matters) employ a correct, commonly used and consistent terminology. This is not always the case in the 2 IViR reports. For instance, the term “levy” is used to describe all types of remuneration systems in respect of reprography. This is incorrect and leads to unsustainable conclusions.

In general, the reproduction of copyright works needs prior authorisation and should be paid for. This is one of the cornerstones of copyright legislation. In respect of reprography, there are different ways of doing this. The licensing of copyright works is often made on the basis of exclusive rights granted to rightholders. Levies are used in a context of legal licences where authorisation is granted by legislation. The Directive 2001/29 permits national legislation to provide that in certain cases prior authorisation by rightholders need not be obtained, but under most exceptions fair compensation must be paid to them.

Levy systems are one way of ensuring that fair remuneration is paid for uses permitted under exceptions. A study of the different models of RRO operation in practice would enable a better understanding of the concepts and make the gathering and assessment of the collected information on remuneration for and administration of reprography easier.

‘LEVY’ IS NOT A COMMON TERM FOR REPROGRAPHIC REMUNERATION

The IViR reports seem to regard also various non-levy systems as levies¹. For instance, this confusion of terminology results in an erroneous enumeration of countries that “put in place such a levy system” in the *Reprography report*² and the *Levy report*³. Only 6 of the countries listed (Germany, Spain, Belgium, Austria, Greece and Portugal) have introduced levies on reprographic devices, and 3 of these countries (Spain, Greece and Portugal) have introduced it only partially as it applies just to a limited portion of the reprographic reproduction that takes place, namely copies made for private use. The error is repeated in the Conclusion, of the *Reprography report*⁴.

There also seems to be some uncertainty with respect to the definition of ‘levy’. The *Levy Report* draws in section 4.1.3⁵ a distinction between “reprographic” and “private copying”. Even though proceeding by conjuncture may lead to an assumption that the report intends to distinguish between the audiovisual and reprographic sectors, the terminology used is inexact. Reprographic reproduction may be for private, as well as for other uses.

Moreover, there is no levy on reprographic devices in the Nordic countries, as stated in for instance section 3.4, on page 12 of the *Levy report* and chapter 2, paragraph 1 of the *Reprography report*.

We would also advise consistency in the use of the term ‘impose’. When a payment is *imposed*, the notion is that the sum to be paid is fixed unilaterally and that means may be used to force the user to pay a unilaterally set tariff. This terminology should not be applied for remuneration that has been agreed upon in negotiations. *Amendment to cover point that fees may be payable by manufacturers/importers rather than users* When the *Levy report* states for instance in section 4.14 on page 17 that France “imposes” a payment for reprographic reproduction it omits the fact that the remuneration for the different categories of users is negotiated with the users on the basis of a standard basic fee per category of publication.

Equating levies and negotiated fees/remuneration is not consistent with the terminology commonly used and it may easily lead to incorrect conclusions. While new ways of analysis are welcome, they must still be accurate. Where, for example, a comparison between prices is intended, the actual prices must be compared, taking into account how the systems in the countries compared function and what is paid for. On page 20 of the *Reprography report*⁶ there is a comparison between the Netherlands, Denmark, Finland, France and Italy that is based on misunderstandings of the different systems and models of operation. The comparison purports to compare systems and their actual effect but fails to take into consideration the following:

The Dutch system may to some extent be compared to the system partially applied in Italy. It is, however, completely different from the systems in the 3 other countries mentioned which operate under a voluntary system (with legal support). The Dutch system would be comparable to the ones in Switzerland, Australia and Singapore.

¹ Footnote 2 of the *Reprography report* on page 1 claims that the information reproduced in paragraph 1 on page 1 uses the IFRRO home page as a source. This is surprising, which the Commission may verify itself by accessing our home page on www.ifrrro.org. To give but one example, Sweden, the Netherlands, Finland, Denmark, France or Italy are not once referred to in the *reprography report* as countries with a levy system. Nonetheless, these countries are all referred to as levy system countries using the IFRRO Home page as a source (page 1, paragraph 1)

² Page 1, paragraph 1

³ Page 12, section 3.4, first paragraph

⁴ Page 20, 1st paragraph

⁵ Page 20, section 4.1.3, 2nd line

⁶ Page 20, the paragraph immediately before the bullet points

Moreover, when the *Reprography report* on page 21⁷ states that the Dutch system is comparable to the Finish *system*, this is completely wrong. The Dutch system is a statutory licence, whereas the Finish system is a voluntary licence, with a legal back-up to ensure the representation of rightsholders that are not represented directly through membership/mandates, with an option to opt out. None of these countries have introduced levies on reprographic devices and may, in respect of reprography, not be referred to as countries with levy systems

LEVIES

Uses allowed by law and covered by levies for reprographic reproduction vary from one country to the other. In some countries the levy only covers private use; in others it also covers other uses under copyright exceptions. The 2 IViR reports fail to make distinctions between types of uses covered by the levy, which leads to misunderstandings and unsustainable conclusions. When comparing prices, it is essential to take into account the products they relate to. The *Levy report* includes for instance information in section 3.4⁸ on reprographic uses covered by levies. Contrary to what is stated, in most cases levies on reprographic devices cover private and to some extent personal/own use.

RRO MODELS OF OPERATION

It is helpful to keep in mind that collective administration of reprographic reproduction is commonly divided into the following 3 main different models of operation.

- ✚ Voluntary licensing a) without any form of back up in the legislation or b) with a potential back up in the legislation
- ✚ Voluntary licensing with an automatic back up in the legislation or Mixed licence, such as a) the Extended Collective Licence or b) the Compulsory collective management of a voluntary licence
- ✚ Non voluntary licence, such as a) a statutory licence without levies, b) levies on reprographic devices and an operator levy, i.e. levy per page copied and c) levies only on equipment.

For further elaboration on the models, we refer to “Collective Management of Reprography”, pages 15-25 in the English version, and the IFRRO Home Page on www.ifrro.org, Copyright Legislation.

DISTRIBUTION OF COLLECTED REVENUES

Section 4.1.3.1 of the *Levy report* on page 20, which deals with distribution of collected revenues for reprography needs completion and corrections. Generally, RRO distribution schemes are established by the rightsholders or their representatives. There is a comprehensive presentation of the different distribution methods used by RROs on IFRRO’s home page: <http://www.ifrro.org/upload/documents/Distributionof-Remuneration-1998.pdf>

CONCLUSION

In analysing copyright management systems, it is essential to use clear and consistent terminology, which distinguishes between different types of RRO operation, of which levy systems are but one example. IFRRO, as the specialist INGO in the field of reprography and related reproduction rights in the digital environment is willing to assist the European Commission in obtaining information and a clear understanding of all reprographic systems, including levies.

Respectfully submitted



Olav Stokkmo
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⁷ Page 21, paragraph 4

⁸ Page 13, section 3.4, 1st paragraph