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By advance mail and email

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OPEN LETTER REGARDING THE SPEECH “OUR SINGLE MARKET IS CRYING OUT FOR COPYRIGHT REFORM”

Dear Vice President Kroes,

We have read with interest the speech you gave at the IViR conference in Amsterdam on 2 July 2014, and on which you invited comments.

Canada is not an example to follow

We agree that the copyright system needs to promote creativity and innovation, and remunerate and reward creators. We fail to see that the measures proposed in your intervention would achieve that. You use Canada as an example of successful changes to copyright rules; but these changes have recently been criticised heavily by Canadian authors at an event at WIPO¹, and have led to the following consequences:

- In 2013, the first year following the changes to the copyright legislation, in the primary and secondary education sector, primary sales in Canada declining by 11%
- Immediate direct losses to authors and publishers, following the changes to the copyright act, in excess of CAD 22 million (€15.5million). The revenue from secondary uses of their works collected through collective licensing is expected to increase to a yearly loss of some CAD 40 million (€28 million) by 2016
- In February 2014, Oxford University Press Canada announcing it had closed the division of its publishing programme for primary and secondary schools (K-12)², and eliminated a number of jobs³; it blamed changes to the copyright legislation, which, among other things, led to a dramatic reduction of income from secondary uses of their work

¹ <http://accesscopyright.ca/media/news/canadian-educational-fair-dealing-policies-raised-at-authors%E2%80%99-meeting-in-geneva/>

² <http://marynersessian.ca/articles/oxford-shutters-dictionary-division.pdf>

³ <http://www.quillandquire.com/book-news/2014/05/29/why-the-loss-of-access-copyright-royalties-could-be-devastating-for-educational-publishers/>

- Examples of adverse impact on sales, including McGraw-Hill Ryerson's sales of the primary and secondary education (K-12) content dropping by 27% in 2013, following the changes to the copyright law; Fernwood Publishing lost an annual revenue equalling the salary of one full time employee²
- Other publishers reducing their overall investment into educational publishing in Canada: the number of titles produced; the level of their investment; and, most importantly, impacting investment in digital transition; smaller publishers are impacted the most
- More than 1/3 of the authors affiliated to Access Copyright, one of the Canadian RROs (Collective Management Organisation for text and image works), declaring that they will reduce the creation of new works following reduced income as a result of the educational institutions interpreting changes in the legislation to allow them to use content, which was previously remunerated under collective licensing schemes, without remunerating copyright holders
- Increased legal uncertainty

More specifically, in relation to your reference to Canada regarding user-generated content. Following the changes to the legislation, sales of the Broadview publishing house's anthology of poetry to Canadian educational institutions declined by 70%². According to the Broadview Press President, professors are now, for the first time, turning to coursepacks, on the basis of an interpretation of the legislation allowing them to use fragments of copyright works without paying licensing fees, instead of purchasing anthologies. It is obvious, that published anthologies cannot compete with compilation of copyright works created without paying royalty to authors and publishers, or a licensing fee.

A drop in yearly income of more than €20 million would impact negatively on any industry; the Canadian creative sector is no exception. We do not know whether one could describe it as "*the sky [having] fallen in*". It is, on the other hand, fair to conclude that it is not a recipe for success; it is not an example to follow for those whose ambition is to create a dynamic digital content market.

Authors and publishers depend on income from secondary uses of their works

We fail to see that anyone would benefit from seeing such a development in Europe, where the copyright sector – under the current copyright regimes - is a significant contributor to the economy and employment, in addition to being indispensable to culture and cultural diversity, education, research and knowledge. It also shows a positive balance in respect of the EU external trade⁴. The yearly income to European authors and publishers of text and image works for the secondary uses of their works amounts to some €0.5 billion. This is what is at stake, if Europe were to follow the Canadian example. Does anyone reasonably imagine that the loss of a yearly income of €0.5 billion would leave the creators and the publishing industry unharmed?

⁴ http://ec.europa.eu/internal_market/intellectual-property/docs/joint-report-epo-ohim-final-version_en.pdf

A strong publishing sector depends on income from secondary uses of works, as has been clearly demonstrated in Canada. In the UK, a PwC study documented that a drop of 20% in the income from secondary uses to UK authors would result in some 2,800 less new works being created annually, for the educational sector alone. For publishers, the income from secondary uses more or less equals their investment in new digital content and methodologies for making content available⁵. It is primarily the transition to digital, which the Commissioner aspires to encourage, that would suffer the most, as it already appears to be in Canada.

Text and Data mining in Japanese legislation

You conclude that the Text and Data Mining (TDM) exception in the Japanese legislation, which came into force for R&D in 2010, has not led to a position where “*the sky {has} fallen in*” in Japan. We were, in fact, unaware that an assessment of the impact of the TDM exception had been made, and would be pleased to be directed to any information on it.

What is the alternative to the Copyright system that the Commissioner advocates?

The current copyright system, which you claim is “*crying out for copyright reform*”, is made up of two key elements: (i) a set of exclusive rights granted to the author of the work, and a certain protection to those who invest in making it available; and (ii) certain exceptions to those rights, on defined criteria, to enable certain uses without prior consent of the copyright holder. Given your public critique of this approach, it is reasonable to ask what is the alternative system that you propose?

Dialogues on developing a legal digital content market is welcome

At IFRRO, we share the view that copyright fuels the digital economy, and that handling it correctly creates a win-win situation. To this end, we welcome a dialogue with the European Commission on the issues raised in the Commissioner’s intervention at the IViR conference. We would also welcome a dialogue on cooperation in developing a digital content market where it is easier to access content legally than illegally. This can only be achieved through an open dialogue, in which also the Commissioner has not made up her mind on the outcome before the dialogue starts, and where the Commissioner is open to the possibility that copyright works also can and should be used even when a royalty to the creator has to be paid.

Yours sincerely,



Rainer Just
President



Olav Stokkmo
Chief Executive

⁵ https://www.cla.co.uk/data/corporate_material/submissions/2011_pwc_final_report.pdf