



Volume 19 – Number 03 – April 2016

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EVENTS:

9 to 13 May 2016 [WIPO SCCR](#), Geneva, Switzerland

30 May 2016 [10th European e-Accessibility Forum conference](#), Paris, France

30 May 2016 [IFRRO European Group meeting](#), Brussels, Belgium

31 May 2016 [IFRRO Committees, WGs and FORA \(midterm/spring meetings\)](#) Brussels, Belgium

1 June 2016 [IFRRO Board meeting \(June 2016\)](#) Brussels, Belgium

5 to 7 June 2016 [PDLN Annual Conference 2016](#) Rome, Italy

23 to 24 June 2016 [International Conference on Private Copying](#), Amsterdam, Netherlands

LINKS TO OTHER NEWS:



World IP Day

World IP Day 2016 – Digital Creativity: Culture Reimagined

Today, April 26, is World Intellectual Property Day. The theme is “*Digital Creativity: Culture Reimagined*” and the World Intellectual Property Organization (WIPO) is promoting a discussion of the role of intellectual property in encouraging innovation and creativity. It has described the challenge of a flexible, adaptive intellectual property system to help ensure that the artists and creative industries in our digital universe can be properly paid for their work, so they can keep creating.

IFRRO recognises the close connection between a strong IP framework and the nurturing of national cultural industries and we welcome the emphasis placed on encouraging cultural activity by remunerating the creators. This is not a new idea – already in 2013 a UNESCO report on the creative economy concluded that “*widespread disregard for IP rights of creators acts as a disincentive for the production and distribution of cultural goods and services*” and in 2008 IFRRO issued its [Statement on Traditional Knowledge and Cultural Expression](#), in which it expresses its support for “*appropriate Intellectual Property Rights as a means to creating functional incentives for investment in it and thereby leading to a richer body of cultural, creative, scientific and academic works*”. Each year new reports appear confirming the crucial role of the creative and cultural industries in the economic well-being of countries across the globe. Just recently WIPO released a [report](#) on National Studies on Assessing the Economic Contribution of the Copyright Industries in Ethiopia, France and Moldova, which underlined the opportunities offered by digital technology to promote public access to cultural works, at the same time allowing “*for the fair remuneration of creators and an adequate level of funding for creative activities; such funding being indispensable for continued creativity*”.

The new digital technology has transformed the scene. It has put an unprecedented amount of creative work at the disposal of the consumers and has given them the technical ability to access it – legally or illegally. As Professor Michael Fraser, Faculty of Law at the University of Technology, Sydney, pointed out in his [Charles Clarke Memorial](#) lecture last week, the technology that was acceptable for delivering access 30 years ago is woefully inadequate now. On line consumers feel entitled to access copyright works when, how and where they like. The producers of the works – authors and publishers must learn to respond and recognise that new technology also enables them to offer new business models. IFRRO, as the umbrella organisation, uniting author’s and publishers’ organisations and collective management organisations – the RROs - in the text and image sector, has been helping them to do this by organising an open annual IFRRO Business Models Forum (IBMF) for its members and other interested parties.

The next IBMF will take place in conjunction with the IFRRO World Congress (IWC) in Amsterdam in October 2016. The Congress’ theme “At a Crossroads; Copyright, Collective management and Cultural Heritage” highlights the same challenge that we celebrate today – how to enable a flexible responsive rights management system that meets legitimate needs for access and ensures that authors and publishers can continue to produce high quality works that are properly remunerated. This theme will also be reflected in the IBMF agenda at the Amsterdam IWC.

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IFRRO

IFRRO and WIPO support new Collective Management Organisation (CMO) in Senegal

On 18-20 April, IFRRO and WIPO co-organised seminars and a conference to support SODAV, the new multi-disciplinary CMO in Senegal, which will also administer collectively reprography and certain other rights in text and image works sector.



Conference participants surrounding the Minister of Culture and Communication of Senegal - photo Daniel Gomez

The series of events was opened by Senegal's Minister of Culture and Communication, Honourable Mbagnick NDIAYE, who committed to supporting SODAV, the IFRRO CEO Olav Stokkmo, who, in his opening remarks emphasised the important role SODAV could play in developing intellectual property and maintaining a national Senegalese culture, WIPO's Carole Croella and the SODAV Chair Angèle Diabang.

A conference open to all stakeholder and the public addressed collective administration of rights in reprography and access to published works in education, with regional contributions by Chantal Forgo and Yé Minata Soma of BBDA (Burkina Faso), Alphonse Bombogo of SOCILADRA (Cameroon) and SODAV's DG Bouna Manel Fall. IFRRO's Pierre-Olivier Lesburguères gave an overall presentation of levy systems in the text and image sector, which have been introduced in several countries in West Africa.

Separate workshops, which were held for authors and publishers, aimed at strengthening their associations as well as the sector, included invaluable sharing of experience and knowledge by Cécile Deniard of IAF and CPE (Conseil Permanent des Ecrivains, France), and by IPA's Secretary General José Borghino.

SODAV is a new CMO, established by the law signed by the Senegal President as late as 4 February this year. A full day was therefore dedicated towards the governance of CMOs,

involving also the organisations in Burkina Faso, Cameroon, Côte d'Ivoire and Mali, focusing transparency and accountability. This took as a starting point IFRRO's Code of Conduct and the Compendium developed by the TAG (Transparency, Accountability and Good governance) initiative, which, in addition to IFRRO, involves other international federations representing CMOs, and WIPO.

Collective management in text and image works is about to take off in French speaking Africa. IFRRO aims at assisting these initiatives, also through collaboration with WIPO and OAPI (Organisation Africaine pour la Propriété Intellectuelle), under the signed cooperation agreements with those organisations.

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RRO News

ZARRSO signs new licensing agreement

The Zambian RRO ZARRSO has signed another licensing agreement. The Agreement was signed on 15 April 2016 with Zambia Centre for Accountancy Studies (ZCAS) an institution with 2500 students and 70 lecturers. Although there was no formal signing ceremony, both parties executed the agreement and ZARRSO awaits payment as per the issued invoice for the year 2016.).

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CopyGhana, the Reprographic Rights Organisation of Ghana, signs licences with 9 Polytechnics

CopyGhana, a member of IFRRO, is the Reprographic Rights Organisation of Ghana. As the national RRO, CopyGhana is collecting remuneration on behalf of authors and publishers on the basis of a levy scheme and of licencing agreements signed with institutions where large-scale copying is taking place.

During a meeting of the IFRRO African Development Committee (ADC) in Ghana in September 2015, CopyGhana had announced the successful negotiations concluded with the ten Polytechnics of Ghana, which would, when implemented, facilitate the legal access to works for students and provide a remuneration to rightholders for the copying of their works.

At the beginning of 2016, the CopyGhana team travelled across the country to visit the ten Polytechnics and this resulted in the signing of agreements with nine of them, and a tenth agreement to be soon signed. This breakthrough is excellent news for students in Ghana's Polytechnics and for Ghanaian rightholders, and should pave the way for more agreements to be signed with higher education institutions in the country.

Find [here](#) CopyGhana's website.).

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CEDRO on the radio

IFRRO's Spanish member, [CEDRO](#), has recently started a broadcasting slot on Radio 5, RTVE (the state-owned public corporation for Spanish radio and television). The programme, a short slot entitled *Creando que es gerundio* ("Making creation work"), is intended to be a tool to disseminate news and stories about publishing, the creation process and rights administration, including rights collective management. Special attention is given to topics

related to writers, translators, publishing houses and their connection with the world of intellectual property.

Past episodes of the programme, which are transmitted each Friday, can be downloaded on line via the *Creando que es gerundio* [website](#).

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EU News

European Commission launches consultation on the role of publishers and the panorama exception

The European Commission launched on 23 March a public consultation on the role of publishers in the copyright value chain and on the “freedom of panorama” exception – the exception under Article 5.3 (h) of the European Union Directive 2001/29 for the “use of works, such as works of architecture or sculpture, made to be located permanently in public places”.

The consultation is open until the 15th of June and is available in English, French and German, while respondents can reply using any of the EU official languages.

The consultation can be found [here](#).

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European Commission presents Action Plan on VAT, including proposals for e-publications

On 7 April, the European Commission presented a Communication on an Action Plan on VAT in order to “reboot the current EU VAT system to make it simpler, more fraud-proof and business-friendly.”

VAT is an issue of particular importance for writers and publishers given that, until now, current rules on VAT have prevented national governments from applying reduced VAT rates to e-books and digital newspapers and magazines, although these reduced rates exist for printed works. As IFRRO had [reported](#) at that time, the Court of Justice of the European Union confirmed in 2015 that applying reduced VAT rates to e-books was not possible, e-books being considered as an “electronically provided service” which, as such, cannot benefit from reduced VAT rates.

In the Action Plan, the European Commission acknowledges the problem and is committed to address it in the context of the Digital Single Market Strategy:

[...]“Current rules do not fully take into account technological and economic developments. This is for example the case for e-books and electronic newspapers, which cannot benefit from reduced rates available for physical publications. This issue will be addressed in the context of the Digital Single Market strategy.”

In an accompanying factsheet, the EC announces that it “will attempt to align VAT rates policy for e-publications across the EU”.

Find the Action Plan [here](#), the official press release [here](#) and the factsheet [here](#)).
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European Commission presents initial findings of e-commerce inquiry

In May 2015, the European Commission (EC) launched an antitrust inquiry into the e-commerce sector with the aim of gathering “market information to allow the Commission to better understand if and to what extent any barriers erected by companies affect European e-commerce markets”, including geo-blocking. The initial findings of the inquiry have been presented by the EC on 18 March 2016 in the form of a [fact sheet](#).

These findings show that geo-blocking is widespread in the European Union, which is not surprising as such, and it does not necessarily infringe EU competition law: as highlighted in the official EC press release,

“In some cases, geo-blocking appears to be linked to agreements between suppliers and distributors. Such agreements may restrict competition in the Single Market in breach of EU antitrust rules. This however needs to be assessed on a case-by-case basis.

In contrast, if geo-blocking is based on unilateral business decisions by a company not to sell abroad, such behaviour by a non-dominant company falls clearly outside the scope of EU competition law.”

When it comes to online content, 68% of providers reported that they geo-block users in other EU Member states, and 59% of content providers said that they were contractually required by suppliers to geo-block.

The findings of the inquiry will be presented in a preliminary report open for public consultation in mid-2016 while the final report will be published during the first quarter of 2017. The EC press release can be found [here](#) .

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CRM Directive

Implementation of the Collective Rights Management Directive in the UK

On Friday, 8 April, the UK Intellectual Property Office (IPO) released a communication on the implementation of the EU Collective Rights Management Directive that has become a law as from 10 April. In the [press release](#), the IPO explains the most relevant aspects of the implementation, which includes improvements to the control of rights; decision-making; payments and transparency.

The 28 Member States of the European Union had until 10 April 2016 to transpose the provisions of the Collective Rights Management Directive into national law.).

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Creative Industries

Visual Arts Associations issue white paper on copyright small claims

The US Congress has been discussing the creation of a small claims process for visual arts. At the beginning of March 2016, some IFRRO members (APA, ASMP, GAG, NPPA) together with others proposed in a white paper to include in the discussed legislation the creation of a small claims tribunal within the US Copyright Office. Instead of cost-intensive and burdensome lawsuits of copyright infringement claims at the Federal district courts, a small claims process within the US Copyright Office would provide a far more fair, cost-effective and streamlined opportunity to receive fair compensation for modest copyright infringement claims of visual artists.

The white paper is a collaboration between American Photographic Artists (APA), American Society of Media Photographers (ASMP), Digital Media Licensing Association (DMLA), Graphic Artists Guild (GAG), National Press Photographers Association (NPPA), North American Nature Photography Association (NANPA) and Professional Photographers of America (PPA) and can be found [here](#).

More information is available [here](#).

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Copyright Protection

Piracy of leisure books in Spain in 2015

The [Spanish Creators Coalition](#), to which our member [CEDRO](#) belongs, presented recently their [Piracy Observatory 2015](#). The study that was aimed at analysing the impact of piracy in the country, has revealed alarming results in terms of the damage to the creative industries.

So far as the book industry is concerned, the study only addressed leisure books and revealed that piracy grew up to 36% last year, and that as a consequence some 103 million euros will not be perceived by authors and publishers and that 45 percent of pirated books are what it is considered as new releases.

The study also suggests that ending piracy and illegal access to digital content in Spain could mean the creation of over 21.600 direct jobs. Besides the creation of jobs, the tax contribution would also be higher.

More information (in Spanish) is available [here](#) .).

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Chinese government launches campaign against illegal photocopying in university copy-shops

The China IP Newsletter has reported that the Chinese government has launched a special programme to stem illegal photocopying in university copy-shops. The cross-cutting National Anti-pornography and Anti-illegal Publications Office, the National Copyright Administrative of China (NCAC) and several other government ministries have announced a special enforcement campaign against small photocopy shops operating around university campuses. Many copy shops are suspected of illegally reprinting textbooks and other written

works. The campaign – given the operation name “Autumn Wind” – will run from February to September and cover 40 cities. More [here](#) (in Chinese).

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Legislation

German Government agrees on reformed draft copyright contract law legislation

During the currently ongoing reform process of the German copyright contract law, the German cabinet agreed on draft legislation impacting the intellectual property rights of authors, filmmakers, designers and composers in their contracts with publishing houses, broadcasters and film studios on Wednesday, 16 March 2016. In 2002, the German copyright contract law established in law for the first time a claim of authors and performing artists for ‘appropriate remuneration’ which the government aimed to enhance with this reform.

The draft foresees, inter alia, changes to a clause in ‘Article 40a’ providing for recall rights of artists, which allows, for instance, the author to retract his or her book after a 10-year period and sell it to another publisher. According to ‘Article 40a, section 3 of the draft, artists are entitled only under certain conditions to sell upfront their intellectual property rights for an unlimited time, thereby giving up their recall right. In the agreed draft legislation, total buy-out clauses are still allowed so that publishers can purchase comprehensive rights to a work even in forms not being invented yet. But by taking up such a new form ‘Article 79b’ provides now a right to the artist to receive a separate appropriate remuneration which needs to be claimed and processed through the reproduction rights organisations. The draft also provides for the right of associations e.g. author associations to apply for injunctions in court against companies if they do not adhere to the negotiated terms.

The draft still needs to be formally approved by the German parliament (Deutscher Bundestag) and can be found (in German only) [here](#).

More information (in German only) is available on the website of the [German Ministry of Justice](#).

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Court Cases

US Supreme Court Declines to Review Fair Use Finding in Book Copying Case Against Google

The U.S. Supreme Court has refused to review the Second Circuit Court of Appeals’ decision in *Authors Guild v. Google*, a copyright infringement case originally filed in 2005. This leaves standing the Second Circuit’s unprecedented expansion of the fair use doctrine—holding that Google’s copying and providing access to some 4 million copyrighted books for profit-making purposes was a fair use. With only seven justices voting whether or not to grant review (Justice Kagan recused herself), the petition faced an uphill battle to gain the four votes necessary for a grant of review.

Read more from [Authors Guild](#)
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Supreme Court of Sweden rules in favour of visual art society in case related to online publication of artworks

In a case opposing Bildupphovsrätt – the Visual Copyright Society of Sweden, a member of the European Visual Artists (EVA) and of IFRRO – to Wikimedia Sweden, the Swedish Supreme Court ruled on 4 April 2016 that the online publication of artworks that are placed in or at a public place outdoors is forbidden without permission first being granted.

The case started when Wikimedia Sweden opened an online database of public artworks located in Sweden, and rejected the offer of Bildupphovsrätt to discuss a licencing agreement that would have enabled visual artists to receive a compensation for the communication of the public of their works that was made possible through the database.

In its ruling, the Supreme Court of Sweden confirmed Bildupphovsrätt's approach, according to which the exception in Swedish law for the reproduction of images of works located in public space does not entail the communication to the public of such works, and it did so by applying the well-known three-step test to the case at hand. The Court also noted the significant commercial value of making these works available in an open database, which "shall be reserved for the artists creating the works":

"The Supreme Court declares that the regulation in Article 24, paragraph 1 of the Swedish Copyright Act, where the restriction in the artist's exclusive rights is limited to reproductions, does not entitle Wikimedia, from its database of photographs of artworks permanently placed in or at a public place outdoors, to communicate the works to the general public via the internet. Whether this disposition takes place for commercial purposes or not is of no significance."

Find [here](#) the full decision (*in Swedish*) and [here](#) Bildupphovsrätt 's press release.
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Court of Justice of the EU decides that compensation for IPR infringement includes moral prejudice

The Court of Justice of the European Union (CJEU) was asked, in Case C 99/15, to decide whether the victim of an infringement to Intellectual Property could claim compensation not only for the material damage suffered but also for the moral prejudice.

On 17 March 2016, the Court answered that the provisions of the EU Directive 2004/48 on the Enforcement of IP rights must be interpreted as permitting the victim of an infringement to be compensated not only for the material damage but also for the moral prejudice suffered. According to the Court, "setting the amount of damages due as a lump sum on the basis of hypothetical royalties alone covers only the material damage suffered by the intellectual property rightholder concerned; consequently, for the purposes of providing compensation in full, that rightholder must be able to seek, in addition to the damages thus calculated, compensation for any moral prejudice which he has suffered."

Find the full judgement [here](#).
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Enabling Access

The Accessible Books Consortium announces the winners of the International Excellence Award 2016

The Accessible Books Consortium (ABC) has announced the winners of the International Excellence Award for Accessible Publishing 2016, during an awards ceremony at the London Book Fair on 13 April.

Elsevier won in the publisher category, whilst the Action on Disability Rights and Development (ADRAD), an NGO, and the DK Braille Concept Development Team (part of Penguin Random House) won in the project initiative category.

All three above mentioned organizations were recognized for providing outstanding leadership and achievements in advancing the accessibility of commercial e-books or other digital publications for persons who are blind, visually impaired or otherwise print disabled.

Further information on the awards and the winners is available on the [ABC website](#) .).

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Self-publishers can now help change lives and bring eBooks to a wider audience

Authors can bring their books to millions more readers with the International Authors Forum's (IAF) new guide for self-published authors on how to make their eBooks accessible for people who are blind or face other challenges to reading books in standard print.

'Accessible eBook Guidelines for Self-Publishing Authors' is co-produced with the Accessible Books Consortium (ABC) and written by accessibility expert Dave Gunn. It describes how those with 'print disabilities', like sight loss or dyslexia, use technology to read eBooks, and what steps authors can take to ensure their books are compatible with that technology.

The guide offers easy to follow instructions on how to make eBooks more reader friendly for all users. It includes a handy checklist and explains how to avoid common pitfalls which hinder the reader experience by taking a few simple steps when creating and formatting a word processing document.

See full [press release](#) from IAF.).

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Get it Right from a Genuine Site – Campaign urges book buyers to respect creativity

The Book Seller's Association has launched The Get It Right from a Genuine Site including a TV ad. The campaign aims to show consumers that every time they read, watch, listen or play, they make a choice, either to support the things they love and help them flourish and grow, or to contribute nothing. Statistics from the Publishers' Association's Copyright Infringement Portal have revealed that over 3.3m notices to infringing websites have been served, in the last five years, with over 1.5m links delisted from Google Search in that time.

See full [Book Seller Article](#). Go to [the site](#).

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Value of Copyright

WIPO report shows Copyright Industries key role in Ethiopia, France and Moldova

WIPO has just released 3 reports on the economic importance of the copyright industries in 3 different countries – Ethiopia, France and Moldova. The studies all follow the methodology recommended by the 2003 World Intellectual Property Organization (WIPO) Guide on surveying the economic contribution of copyright industries.

In 2012, the value added of the copyright industries in Ethiopia was 23,989,211,925 Birr (1,100,420,000 US\$). As a percentage of Gross Domestic Product (GDP) at constant prices, this amounted to 4.73 per cent. The copyright industries also provided jobs to 240,287 persons, which is 4.2 per cent of the urban population employed by the different economic sectors.

In France, copyright industries (CIs) accounted for 7.02 per cent of GDP, 7.29 per cent of the volume of full-time equivalent employment, 6.48 per cent of the number of persons engaged in an occupation, 9.54 per cent of exports and 11.46 per cent of imports in 2012.

In 2013, the GVA of the copyright industries in Moldova was approximately 3.33 billion lei (264,320,000 US\$). This represents 3.98 per cent of the total national GVA. The copyright industries employ about 39,280 people (in FTE), according to the 2013 estimate. This represents a moderate increase over the period under analysis.

Click here for the [full surveys](#)).

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Talking Copyright

What are Publishers for? – Michael Fraser challenges today’s misconceptions on copyright

In a powerful Charles Clarke Memorial Lecture, Professor Michael Fraser, Faculty of Law at the University of Technology, Sydney, asserted copyright’s role as a champion of freedom of expression, a gateway to public access to culture and creativity and an enabler of high quality professional original works.

Professor Fraser rejects the need to find a “copyright balance” between copyright owners’ rights and the public interest in access. Both are guaranteed under Article 27 of the Universal Declaration of Human Rights and both benefit from an effective copyright framework. Indeed it is the vocation of authors and publishers to provide access to their works.

In the intellectual property market, copyright guarantees the independence of authors and publishers and promotes excellence. Without copyright they would be dependent on sponsorship and patronage. With copyright they are free to make their living as professionals. The distinction between professional and amateur creation is an important one. To make original works of high quality requires long and continual, professional dedication by authors and publishers.

Professor Fraser argues that respect for copyright is vital to the health of a modern

democracy and that those societies which fail to respect it will fail in the same way as those that did not respect real and personal property failed in the 20th century. He concludes that copyright is essential to authors and publishers' independence. Independent and autonomous authors and publishers who express and publish their own ideas in their own works are indispensable to democratic society.

Click here for the [full speech](#)

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“Private copying in Spain: A slap in the face for authors”, Fernando Carbajo Cascón at EurActiv

Fernando Carbajo Cascón, a Professor in Commercial Law at the University of Salamanca (Spain), wrote a [column](#) on Euractiv about the changes to compensation for private copying in Spain that were defined in 2011 (the column is also available in Spanish [here](#)). The changes that he describes as a “slap in the face to authors and performers as well as to the culture industry and collective management organisations” were accompanied by “another blow –that- was the increase of VAT on cultural goods and services to 21%, at a time of rampant music and film piracy”.

In recent years, the Spanish government decided to include the compensation for private copying in public expenditure and by doing this, the left out the legitimate interests of rightsholders, explains Professor Carbajo Cascón and adds that “it should be noted that the abolition of the levy did not result in an appreciable reduction in the prices of recording equipment and media to the advantage of consumers.”

IFRRO reported about the background of the changes to the Spanish system [here](#) and [here](#).

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