

Rue du Prince Royal 85,  
1050 Brussels  
Belgium

PRESIDENT  
Rainer JUST

CHIEF EXECUTIVE & SECRETARY GENERAL  
Olav STOKKMO

Brussels, 15 June 2016

## **PUBLIC CONSULTATION ON THE ROLE OF PUBLISHERS IN THE COPYRIGHT VALUE CHAIN**

### **Submission by the International Federation of Reproduction Rights Organisations (IFRRO<sup>1</sup>)**

IFRRO, the International Federation of Reproduction Rights Organisations, represents national Reproduction Rights Organisations (RROs) and national and international associations of creators and publishers across the world, with some 145 members in some 82 countries worldwide, including in Europe. RROs administer reproduction and other relevant rights for certain secondary uses of already published text- and image-based works on behalf of publishers and authors, including visual artists, through different models.

Irrespective of any distinct exclusive publishers' right, both authors and publishers must be granted a right of remuneration or a claim for fair compensation when works are used under an exception in the EUCD. CMOs in the publishing sector, the RRO, administer certain secondary rights in already published works. It may be based on author and publisher mandates, directly or via their associations; granted by law to a RRO that is representative for the rightholders concerned; or a combination of the two. Usages is authorised on the basis of exclusive rights; under an exception, for instance for reprography or private copying; or a combination of the two.

Since their first establishments in 1973, the basis for RRO work has been the involvement of both authors and publishers, and their entitlement to a share of the remuneration. This follows logically from the work having been created by an author and published by a publisher, who is also responsible for financing the production, distribution, marketing etc., before the secondary reproduction administered by the RRO takes place. Both authors and publishers should therefore be entitled to a part of the proceeds, or, when usages take place under a limitation/exception, to the compensation for the harm they each suffer as a result of the

---

<sup>1</sup> Interest Representative Register ID number: 91217342449-83.

limitation. This is recognised in international copyright framework, e.g. the Berne Convention Art. 2.6, and Art. 3c of the EU CRM Directive 2014/26, where protection is granted to the author and the publisher.

Rights administration by RROs, now in more than 80 countries worldwide, has functioned in more than 40 years. The well-established system that benefits authors, publishers and users of published works, could be affected by the CJEU ruling in the HP Belgium-Reprobel case unless urgent action is taken to address the possible impact thereof in EU Member States. EU legislation must ensure that the systems for administration of reprographic rights and private copying are maintained. This will put the EU and its Member States in step with the rest of the world and Recital 37 of the EU Copyright Directive, which establishes that “Existing national schemes on reprography, where they exist, do not create major barriers to the internal market.” At the time of the adoption of the Directive both authors and publishers were, and are still, remunerated under reprographic schemes.

Although RROs were initially set up to address requests from the educational and research communities to facilitate legal access to certain uses of already published works, and those institutions remain main beneficiaries of the current system of right administration by RROs being carried forward, any user of already published copyright works benefits from the RRO one-stop shop representing both authors and publishers of relevant works. Depending on their mandates, RROs serve all user communities, including service providers.

Independently of a separate publisher right, when published works are used under exceptions established in the EU CD Art. 5.2a (Reprography) and 5.2b (Private copy), both authors and publishers must therefore be granted a right of remuneration, or a claim for fair compensation, done in a way that there is no negative impact on the rights of authors, including their right of remuneration. Enabling payment to both authors and publishers for uses administered by RROs will maintain the current well-established mechanisms for administration of certain secondary uses of already published works by RROs. In view of the CJEU decisions in the HP Belgium-Reprobel case and the German Supreme Court in the ‘Vogel case’, EU legislation must ensure that both authors and publishers are entitled to remuneration / compensation. The continuation of the well-functioning rights administration of certain secondary uses by RROs requires that, independently of a separate publishers right, authors and publishers, who must be confirmed as rightholders at the EU level, both suffering harm for uses made of the works, must be entitled to remuneration when their works are used under the exceptions established in the EU CD.

The CJEU ruling in the HP Belgium – Reprobel case may, in view of current uncertainties, disrupt well-established mechanisms of administration of reprographic rights. It did not consider that the EU Copyright Directive already acknowledges, in Recital 37, those systems and that they do not create an obstacle to the Internal Market. We request that EU legislation clarifies unequivocally the right of both authors and publishers to get a share of the remuneration paid for uses, which takes place on the basis of an exception in national

International  
Federation of  
Reproduction  
Rights  
Organisations



legislation, which refers to EUCD articles 5.2a (Reprography) and 5.2b (Private Copying). This is a matter of urgency. In the meantime, we ask that the EC formally recognises the right of Member States to provide, in their national legislation, for remuneration to publishers, without prejudice to the payment to authors.

-END-