Annex 1

EPC Copyright Vision Paper, (European Publishers Council), 26/06/2014

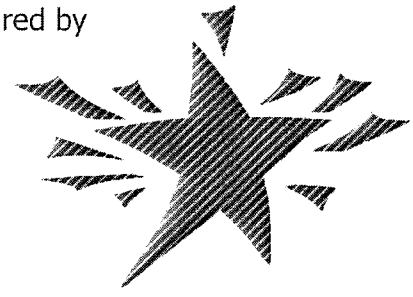
June
2014

From Vision To Reality

Copyright enabled on the network

Copyright, technology and practical solutions enabling the media and publishing ecosystem

A report prepared by



EPC European Publishers Council

EPC | European Publishers Council

The European Publishers Council is a high level group of Chairmen and CEOs of leading European media corporations. Members are the most senior representatives of European newspaper and magazine publishers. Their companies are involved in multimedia markets spanning newspaper, magazine, book, journal, internet, online database publishers, radio and TV broadcasting.

Since 1991, Members have worked to review the impact of proposed European legislation on the press, and then express an opinion to legislators, politicians and opinion-formers with a view to influencing the content of final regulations. The objective has always been to encourage good law-making for the media industry.

www.epceurope.eu

c/o Europe Analytica
Avenue Livingstone 26 | Box 3 | B-1000 | Brussels | Belgium
www.epceurope.eu

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COPYRIGHT ENABLED ON THE NETWORK

FROM VISION TO REALITY:
COPYRIGHT, TECHNOLOGY AND PRACTICAL SOLUTIONS ENABLING THE MEDIA & PUBLISHING ECOSYSTEM

www.epceurope.eu

Presented by
The European Publishers Council (EPC)

to the European Commission 2009-2014

June 2014

EPC European Publishers Council

Table of Contents

Preface by Francisco Pinto Balsemão
Chairman of the European Publishers Council

In April 2010 we published our VISION FOR COPYRIGHT IN 21ST CENTURY PUBLISHING since when Europe's consumers have enjoyed unprecedented benefits from the creativity, entrepreneurial spirit and investments of Europe's media and publishing companies, fired by astounding technological innovation within our own companies and that of our partners. I sometimes feel as if we are on a roller-coaster of risk and reinvention but the rewards are great as we deliver quality and choice to consumers throughout Europe and beyond. It is testament to our commitment to upholding freedom of expression through quality journalism that over 100 million newspapers are sold each day, many via apps and online subscriptions and over 360 million Europeans read magazines regularly. Europeans still watch almost four hours of TV daily and have over 3,300 online video services to choose from. The rich body of Europe's scientific, technical and medical journals are downloadable and searchable while 9 million book titles are published each year, 2.5 million of which are already in digital formats. None of this would have been possible without a stable EU copyright framework, the freedom to contract and innovation in licensing. By end 2014, there will be nearly three billion Internet users in the world – two-thirds of them from the developing world – with mobile-broadband penetration approaching 32 per cent. This represents not only astounding progress in technology and communications but an enormous opportunity for media and publishing businesses to expand their popularity.

Yet media and creative industries continue to be beset with rampant piracy and unauthorised reuse of our content without payment or permission. Enforcement remains a crucial element in copyright protection and rights management. Some of this activity is dealt with through the courts but intelligent and innovative approaches to reducing both will help alleviate the worst excesses. In this new publication we test our original Vision against the vibrancy of today's media and publishing ecosystem where professionals and amateurs take part in the creation and development of the creative media. Today there are 2.4 billion web content users and re-users from almost none only 20 years ago, so innovative but practical solutions are needed to respond to users' growing appetite to do more than read or view passively our professional content. In 2010 the EPC invited the European Commission to work with us to put in place a rights management infrastructure, based on global standards for identifying and trading in rights, in a seamless way fit

for complex digital markets. I am happy to say we have not been disappointed and with the support of the European Commission, the EPC and our colleagues throughout the creative and media business have moved that original vision closer to reality through the pioneering work of the Linked Content Coalition.

We once again invite the European Commission to work with us to put in place a seamless media and publishing ecosystem powered by a combination of 3 digital elements: technology, copyright and implementation of practical solutions – to deliver a true partnership between copyright and technology, to support rapid market developments and consumer demands. In this way we can look forward to a copyright-enabled internet to form the bedrock of a rich and diverse media economy providing a wide array of entertainment, sport and above all authoritative, quality journalism for years to come.

Francisco Pinto Balsemão
Chairman, European Publishers Council
June 2014

The Structure of the Vision Paper

Against the background of the explosive growth of content online ,this paper shows how the combination of what we call the '3 Digital Elements' – technical infrastructure, enabling copyright framework and practical solutions – will form the basis for meeting the needs of all users of the new media and publishing ecosystem:

- **Part 1** is an Executive Summary.

- **Part 2** analyses the ongoing development of the technical infrastructure and the priorities for further action.

- **Part 3** examines the case for specific adaptations to copyright in greater detail. informed by experience and based on principles of balance and adaptation.

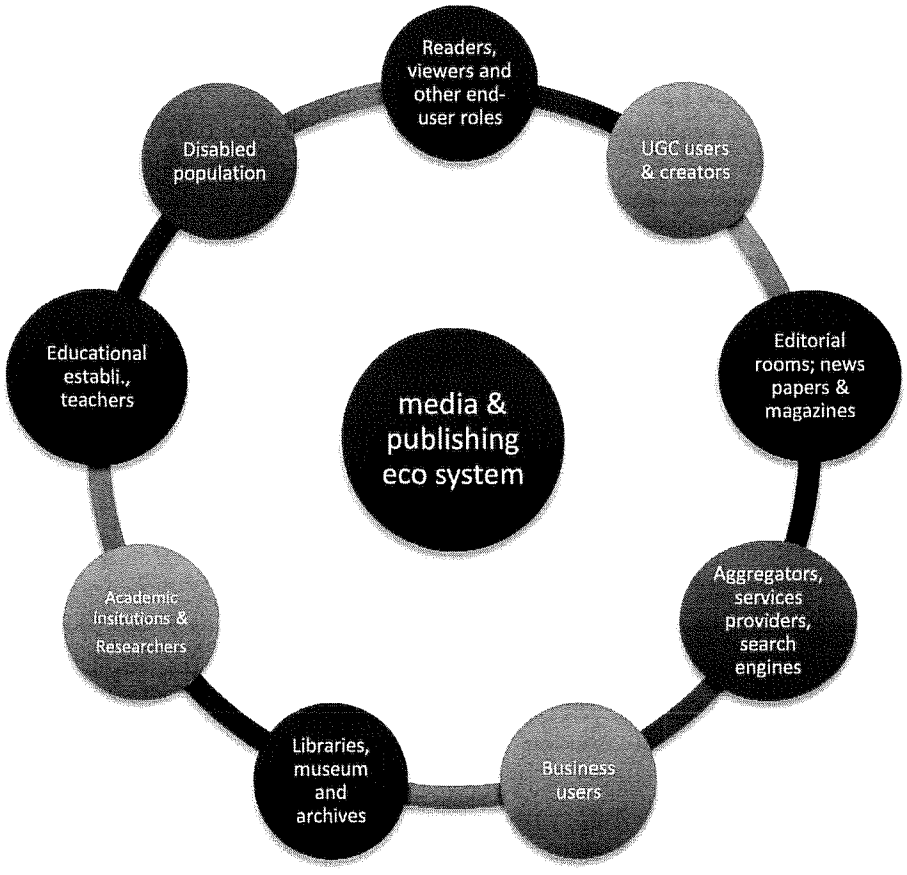
- **Part 4** identifies the challenges and difficulties faced by different users groups in the new ecosystem and shows, for each user group, how the third element - practical, licence-based and other solutions, combined as needed with the other two 'Digital Elements' – technical infrastructure & enabling copyright framework to meet the needs of all users of this new ecosystem.

- **Part 5** contains our recommendations for action.

PART I: EXECUTIVE SUMMARY

The European Publishers Council (EPC) is a high level group of Chairmen and Chief Executives of Europe's leading media groups, representing companies with newspapers, magazines, online and mobile publishing, journals, databases, e-Learning, books and broadcasting. The EPC has been communicating with Europe's legislators since 1991 on issues that affect freedom of expression, media diversity and the health and future viability of media in Europe. A list of the EPC's members is at Annex VIII.

The EPC's vision of the future - a vibrant media and publishing ecosystem for web 3.0



The emerging media & publishing ecosystem has a rich variety and diversity of participants. Not only that, in the words of the Bard *"one man in his time plays many parts"*[1]. For instance, an individual may act both as a consumer of professional content and as a creator of their own content. Today there are 2.4 billion Web **content users and re-users** from almost none only 20 years ago.

[1] From As You Like it by William Shakespeare

Whilst there are vertically integrated distribution models for digital content (e.g. Amazon), these co-exist and form part of a more complex, 'hub and spoke' ecosystem of content distribution, sharing and collaboration amongst these various participants and stakeholders.

Meeting customer needs in a changing world requires innovative solutions

As the media & publishing ecosystem becomes ever more complex, our members' primary goal is to maintain their role of producing and disseminating journalistic, entertaining or educational media material, in ways which recognise the changing nature of media consumption.

EPC members are responding to their customers' expectations by facilitating access and usage in multiple ways, legally and intuitively, whilst safeguarding a sustainable independent professional press and media.

Increasingly, we see a vibrant community of professionals and amateurs taking part in the creation and development of the final product/service. Beyond our readers and viewers, we serve institutional users such as libraries, universities and schools; researchers and academics, public authorities, and other businesses, ranging from multinational companies to SMEs and individuals.

The media, publishing and creative industries, and their customers and users, have benefited from the copyright framework as it has evolved over time, keeping pace with technological developments and consumer preferences. Through contracts, copyright enables the making available of a wide range of professional, multimedia journalistic and entertaining content, while rewarding creators and those investing in professional content creation. Furthermore, this legal framework allows wide flexibility in making media content available for free, as well as via subscription, or licensing deals with third party business partners, institutions and others. It also provides clarity and a sound basis upon which to challenge unauthorised use.

At the same time, innovative solutions are needed to respond to users' growing appetite to do more than read or view passively professional content, but in a way which sustains the ecosystem underpinning an independent European publishing/media industry whose raison d'etre is to meet its users' interests and needs. Some of these solutions need to be at a global level, other on a European level, and yet others at a local level.

Adaptive Innovation

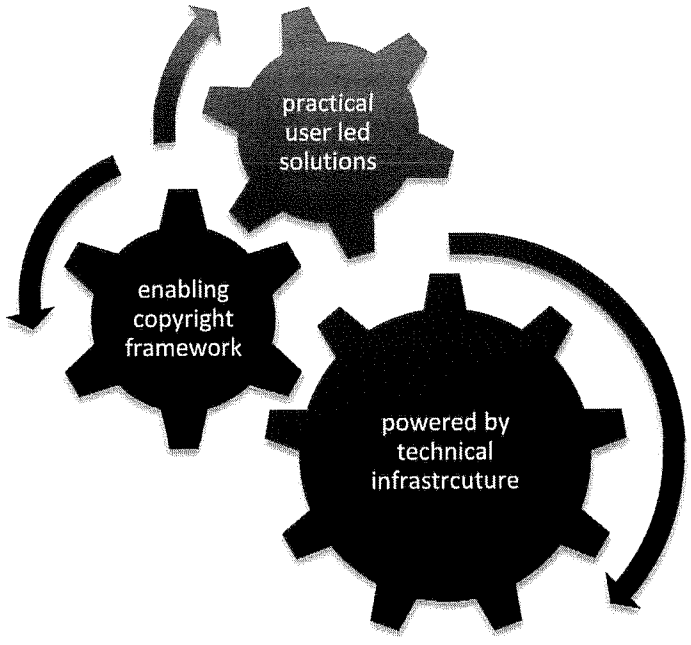
EPC's members recognise that there are areas where further work is required, either through further adaptation by law or by technical or practical solutions.

Through an holistic approach recognising the various and many players in our ecosystem, we will show how many of the solutions will be found through what we would call a process of adaptive innovation - building on the work which is already ongoing in the fields of technical standards and services and creative licensing solutions.

As is inevitable in a period of rapid change, and especially in a world of mobile devices, varied formats and global networks, much remains to be done to realise the full potential of the digital media and publishing ecosystem, both in Europe and internationally.

EPC's members embrace these changes and the opportunities they present to enrich their content offers to meet their users' evolving needs. EPC believes that the way to realise the full potential of this emerging seamless ecosystem is through the combination of **'3 digital elements'** – a true partnership between copyright and technology to power and deliver practical and viable, user-relevant solutions.

At the heart of these solutions is licensing. A thread which runs through this paper is the proliferation of 'direct to user' licensing by publishers and other rights owners. Powered by ubiquitous data standards, to identify works and those who have rights in those works, licensing will continue to innovate exponentially so that eventually the cost of serving a licence is close to zero. The role of technology is to make this process seamless and effective from the user's perspective, whether that user is the end consumer or another party in the digital content supply chain.



Element 1: the technical infrastructure

The role of the technical infrastructure is to be an enabler of access to content and to facilitate the development of the content industries for the benefit of consumers, creators and for those who add value to the market.

In Part 2, we analyse the different components of this infrastructure and focus on the work yet to be accomplished to link the different parts of the digital content networks together in a seamless, machine readable way. While EPC has come a long way since our last Vision Paper in 2010, which led to the creation of the Linked Content Coalition, there are some key areas of work which remain to be accomplished, in particular in the area of identifiers and Digital Rights Statements, and interoperable networks of hubs and registries. We explain the priorities further in Part 2 and in Annex VI.

Element 2: enabling copyright framework

Copyright law remains pivotal to the emerging ecosystem and has been in the process of adaptation to the digital world since the early 1990's. Copyright, powered by the technical infrastructure, provides the backbone of a seamless digital ecosystem serving all parts of the system.

The debate about copyright and the Internet (or 'cyberspace') has continued since the early 1990's. In legal terms, it is often expressed as the search for balance.[2]
This process of balance and adaptation will continue and become ever easier as systems, supply chains and business models expand. In Part 3 we have analysed where further adaptation may be appropriate to accommodate digital uses and summarised them as "Action points".

Element 3: practical user-led solutions for rapid market changes and consumer demands

With the expansion of consumption and usage of professional quality content across all platforms and devices, increased pressure is being put on our members to respond quickly to new markets and user demands. Practical solutions are increasingly a key element as these allow fast adaptation and complement the overall framework that makes up the ecosystem.

The challenges faced by media and publishing companies to serve our different user groups are set out in Part 3. In the case of each user group, we provide examples of those challenges and the solutions to them to be found in one or a combination of

[2] Recital (31) of Directive 2001/29/EC on copyright and related rights in the information society ("the InfoSoc Directive") expresses it in these terms: *"A fair balance of rights and interests between the different categories of rights holders, as well as between the different categories of rights holders and users of protected subject matter must be safeguarded."*

the '3 Digital Elements', whether through technical means, further adaptation of law or by practical solutions, with a particular focus on the last element.

Practical solutions take many forms. But at their heart is our members' willingness to respond, especially through innovative licence-based solutions, to new consumption patterns and demands, recognising the diversity of ways in which consumers enjoy and interact with content, as well as to create growth through innovative business models and creative partnerships for online content, allowing authors and creators to evolve. The world of press publishing and news media is no longer a 'one way' conveyance of news and information but a dynamic one of professional and user created content.

An exciting future

Europe's content industries stand at the heart of an age of unprecedented opportunity. The solutions to meeting the growing needs of users, and to reward all 'actors' in the supply chain, are inextricably linked through the '3 Digital Elements' – in technical innovation, adaptations to the copyright framework and in a range of licensing and other practical solutions.

In its Communication On Content in the Digital Single Market[3], the Commission notes that *"the digital economy has been a major driver of growth in the past two decades, and is expected to grow **seven times faster** than overall EU GDP in coming years."*

The OECD recently put it succinctly: *There is no such thing as digital companies rather than the digitalisation of the economy"*[4].

EPC members will continue to play a leading role in meeting these challenges and opportunities. Our specific recommendations are set out in Part 5, pages 50-54.

[3] COM(202) 789 final 18.12.2012

[4] http://www.taxjournal.com/tj/articles/special-tax-rules-web-giants-not-viable-says-oecd-22012014

EPC European Publishers Council

Summary of EPC recommendations for a vibrant Digital Content Market

COMPLETION OF THE TECHNICAL INFRASTRUCTURE

#1: Complete the data network with a focus on Digital Rights Statements

ENABLE THE COPYRIGHT FRAMEWORK

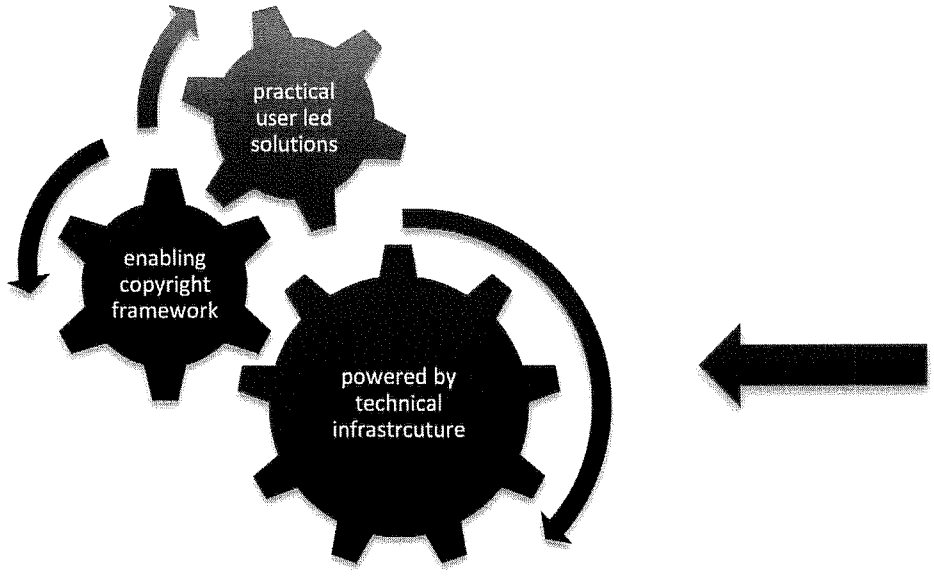
#2: Legal clarification between hyperlinks and licensing terms
#3: Hyperlinking to illegal copies to be treated as infringements
#4:Fair framework for unlicensed use of snippets
#5: Protection for Machine readable rights information
#6: Restrictive interpretation of the principles of exhaustion
#7: Monitor deep framing practices
#8: Fair browsing

PRACTICAL USER DRIVEN SOLUTIONS & RECOMMEDATIONS

 # 9: Improve the B2C digital experience for consumers and amateur creators
#10: Format, platform and rights data interoperability
#11: Standard licensing terms for public institutions
#12: Cross industry guidelines on permitted uses for increased transparency
#13: Toolbox of solutions for Text and Data Mining supporting researchers
#14: Avoid unfair competition with public libraries in the digital era

PART II: THE TECHNICAL INFRASTRUCTURE (ELEMENT 1)

In this Part, we analyse the ongoing development of the technical infrastructure, and the work that needs to be done in the field of rights data, to enable it to function as the 'engine room' and facilitator of today's vibrant media and publishing ecosystem.



In particular, we will examine the following:

- What is the technical the technical infrastructure
- What it will facilitate : a use case as an example
- Why it is important
- What has been achieved so far through the Linked Content Coalition
- What is still missing
- Priorities for action

What is this technical infrastructure?

In the world of consumer finance, banks cannot deliver the services their customers want, such as getting cash from an ATM anywhere, without the identifiers and technical infrastructure that links a customer's pin number to their bank account. This intricate web of transactions is underpinned by complex contractual agreements between many different companies and spanning many territories to deliver a seamless and effective service.

The same needs to be true of digital content as it continues to grow in volume,

nature and diversity of use on the network. The business of searching for creative content and materials, finding out who owns or administers the relevant rights, requesting permission, handling payment (where applicable) and finally delivering or making content available in an interoperable way on the user's device of choice – must be managed by the machine to reduce complexity. Automated processes will also help the traditional way of trading rights by saving time and money in finding out who owns which rights and from where licences are available, in order to close deals, set up new services or simply use the content.

The role of the technical infrastructure is therefore to facilitate this process so that the user and consumer can enjoy the full diversity of content online in in a seamless manner. Technology will hide this complexity from the user, in the same way that the complex electronics of today's cars are managed by a few buttons on the driver's dashboard.

There are four principal networks which underpin this new ecosystem and which must work more closely together to take the development of the digital economy to the next level. These are examined in Annex II. In brief, they are:-

1. The **Content** Network: the movement of digital *content* from rightsholder to user.
2. The **Payment** Network: the movement of *money* from user to rightsholder.
3. The **Rights** Network: the granting of *rights*, as a result of laws, agreements or policies.
4. The **Data** Network: the movement of *data* around the other three networks.

It is this last network – the Data Network – where the technical infrastructure is fragmented and incomplete. Once completed, it will bring meaning and intelligence to all the diverse materials available on the network. Machine readable identifiers are the prerequisite lynchpin for a fully functioning data network. As explained below, these identifiers will work across all sectors of the content industries and form a vital link in the digital content chain, connecting users, rights holders and service providers.

These will link to hubs and registries which will store declarations of rights data containing these IDs and link to the other Data Networks and content providers (whether content companies, collecting societies or others) who deliver or make content available with associated licences.

Essentially, this is not new. In essence, the Web is a federated structure of databases based on a standard protocol which enables documents and materials to be linked together in an automated manner and to be consumed via fixed and mobile devices. The development and implementation of the Data Network will take the Web and

the network to the next level to make it function as a true market for all forms of works and materials.

On pages 16-17, we focus on the achievements of the Linked Content Coalition in the sphere of rights automation and, more importantly, on what remains to be done in the area of rights IDs, Hubs and Registries. But first, we look at the benefits that completing the rights infrastructure will deliver.

What will it facilitate when it is complete?

To answer this question, it may be helpful to compare how a user uploads a video today and how, with the missing links of the technical infrastructure in place, he or she might do so in the future.

"Today"

Imagine a user who has created a video and now wants to upload it to a social media or newspaper site. He or she is willing to allow it to be used without modification for non-commercial purposes but wants to retain the right to licence its use for commercial purposes as well as retaining control over how it may be edited.

The user is sitting in front of their connected computer or tablet ready to upload. At present, the user goes ahead and uploads. Whilst he or she may be able to link the work to licence terms, such as one of those available through **Creative Commons**, the user cannot add a machine readable ID. There is no structured, machine-readable way to identify the user, the work he or she has created nor the rights associated with the work. The consequence is that, at present, there is no simple, automated way to find out who owns the rights in that video once uploaded. In that sense, the video will become a 'rights orphan' which can lead to the type of disputes such as the recent dispute between photojournalist Daniel Morel & Agence France-Press and the Washington Post.

In that case, a US judge ruled that the two news outlets should have asked permission before using a picture taken by Morel of a 2010 earthquake in Haiti which had been posted to Twitter and then disseminated without permission via Getty. AFP argued Morel's work was free to use once posted to Twitter. Instead, the Judge found that although retweeting of such photos is allowed, Twitter's Terms of Service required that news outlets first get permission before running tweeted photos.

Completing the Data Network will help eliminate these types of dispute.

"In the [hopefully near] future"

Now imagine this. The same user is ready to upload the video. There's a software application (app) running in the background on their device which prompts the user

from a drop down menu to choose a Creator ID which will identify them as the creator. Next, the app prompts them to select a Creation ID to identify the video. Then, the app will prompt the user to choose a Rights ID which gives a unique identity to a Right (e.g. ownership of copyright throughout the world).

The application will then automatically generate a '**Digital Rights Statement**' (or 'DRS') and publish it to the open Web or to a Rights Registry. The DRS links together all of these IDs (and more) so that in effect it has expressed in a way in which the 'machine' can understand i.e. that Creator ID 1234 owns the copyright throughout the world in Creation 5678.

The DRS will also enable the user to select an ID which will identify and link to a licence term, whether using Creative Commons or another means of rights expression, which will attach a licence which expresses the user's choice of a licence that allows use, sharing etc. without modification for non-commercial purposes.

Now the user then hits the 'Upload' button. All of that has taken a few seconds. In many cases, the app on the user's machine will have memorised the relevant ID and be able to generate future iterations for that user.

The networks and platforms that provide forums for sharing content can become key players in providing information about the benefits of identifiers and offering free apps for users to start creating their suites of IDs.

The key point about a DRS is that once it exists, it can be searched, read and actioned by any other machine connected to the Internet. And once the DRS is indexed by a search engine, through the machine readable IDs contained in the DRS it will always be possible to find the person or entity who owns or administers the rights and the rights associated with it. From there, it will be possible to link to the service from which the rights can be obtained and the content accessed and, if applicable, paid for.

Furthermore, this infrastructure is well suited to a world of 'mash-ups' where one work will incorporate parts or elements of other works, because the relevant IDs can identify the whole of a work or granular elements of it.

Why is this important?

Completing this infrastructure will fuel the rapid growth of the nascent market for self-published works and materials as well as opening new avenues for additional growth within the professional market.

The nascent market for self-published content

In the last five years, there has been exponential growth in volume and type of

media delivered to the network by authors and other users, both amateur and professional, through social media and other platforms. One hour of video is uploaded to YouTube every second and over 4 billion videos are viewed a day. On Twitter, there are now about a billion registered users and an average of 500 million Tweets sent per day. There are over 259 million users of LinkedIn.

These works are protected by copyright but generally self-publishers, if they want to, are unable to sell their works or stop infringements of their rights. This content could be contributing to economic growth in the digital market. If the automated identification process described above becomes standard practice, it will open up a new market for this digital content.

Professional content

At first glance, this may not seem particularly relevant to well established e-commerce sites from where music, films, journals e-books and other works in digital form can be searched, downloaded or streamed.

However, the wall between the world of self-published and professional content is increasingly porous and there is a 'two way' flow of creative content between our members and their readers and viewers.

EPC members' products and services interact and serve many user groups during the life-cycle of their content. First amongst them are our readers who play an increasingly enriching role in contributing comment or creative work of their own via our editors, our journalists, photographers and video makers. But our members content and services are an important part of digital content supply chain, as more and more multimedia applications take advantage of the enhanced possibilities offered by digital.

In addition, many our members offer their data and materials under very liberal licensing terms. See, for example, Guardian's Open Platform & 'Datastore' which offers a number of tools to developers to access Guardian content and which allows users to download and use Guardian datasets.

Mixed ecosystem

As more and more works and data are created and shared, we are moving towards a mixed ecosystem in which closed platforms and ecosystems co-exist with open platforms in which works, and parts of works (e.g. video and sound clips, illustrations, chapters from text etc.) are easily accessed, shared and distributed. In this new environment, it is self-evident that the technical infrastructure must facilitate this through ID's which link together creators, rights owners, works and rights in a seamless, machine readable way.

That is why completing this Data Infrastructure is so important.

What has been achieved so far

In Annex III we have summarised the achievements to date of the Linked Content Coalition[5] Project ("LCC") which was initiated by EPC, following our 2010 Vision paper for Copyright, together with a brief summary of what still needs to be done. Among the project's deliverables, the LCC Technical Framework, published in April 2013, showed that all types of rights data, however complex, from any and all sectors can be expressed in a single, extensible format. And through the effective use of interoperable identifiers and metadata across all media types and sectors we can facilitate and expand the legitimate use of content in the digital network.

Much of the groundwork to make "tomorrow" a reality is in progress or has been done. The focus of LCC's work to date has therefore been to create a model, applicable to all data and to document the generic metadata, messaging and identifier requirements of rights and of licensing. In short, to create the infrastructure to enable the linking of data so that the messages can be exchanged between computers about owners, works and rights and transactions in rights can occur.

A comprehensive digital rights data framework: What is still missing?

During discussions in several 'Licences For Europe' (L4E) working groups it became clear that two key things need to happen next to "up-grade" the digital network. Firstly, **Digital Rights Statements** (then called "Web Content Declarations"), to which we have already referred, of identity, rights and licenses. Secondly, an interoperable Network of hubs to simplify user access to content.

The LCC's work on the data network therefore focuses on two areas:

1. ID's & Digital Rights Statements ("DRSs").
2. Interoperable network of hubs and registries.

> *"This has the potential to make licensing more efficient, both with customers and suppliers. It will help avoid images becoming orphans. [...] In other words, identifiers are one of the basic building blocks for any kind of massive scaling as required by today's networked economy"*
>
> ***Sylvie Fodor, Executive Director CEPIC***

[5] www.linkedcontentcoalition.org

With those in place, it becomes possible to develop the kind of services that would make it easy to identify and link together works with one or two clicks as we described above - ***"In the [hopefully near] future"*** example.

(a) IDs

The picture industry is a sector where the development of identifiers is key:

"This has the potential to make licensing more efficient, both with customers and suppliers. It will help avoid images becoming orphans. This could be especially helpful as technology continues to advance and more customers are wishing to use more types of digital content at the same time, not just images. Identifiers, particularly globally unique identifiers, hold the promise of streamlining any kind of automated interaction with content: Looking up the precise metadata set for an image, retrieving the one correct set of license terms for a picture etc. are the goal for anyone who is trying to build workflows that require less human interaction. In other words, identifiers are one of the basic building blocks for any kind of massive scaling as required by today's networked economy", Sylvie Fodor, Executive Director CEPIC

- ***Rights ID***

As we noted, many standard ID's already exist for different creative elements. However, as we explained above, as yet there is no adopted standard to identify Rights. In the same way that a party (e.g. the composer of song or the author of a literary work) can be identified using an ID such as ISNI or DOI, a standardised ID for Rights is required.

With a Rights ID in place, it then becomes possible for DRSs to be automatically generated and published to the open Web or to a Rights Registry.

Whereas certain ID's may remain static – the person's identity and the ID of the works – rights are not static. For instance, rights may be sold and transferred. So the benefit of having DRSs published and stored in Hubs and Registries is that the ID's can be dynamically updated to reflect change.

- ***Linked IDs***

Also, even though an individual ID may not change, we all have multiple identities. For instance, an author will have an IDs generated by different collecting societies as well as other IDs. Hence, the importance of linking together all these IDs on the network.

- ***Digital Rights Statements***

Using all the IDs we have described, through the LCC we will provide a common or standard way, on either a global or sector basis, for a rights holder to declare their rights in an authorised, machine-readable, accessible form on the Web.

"XX owns the exclusive right to authorise the making available of yy content [globally] [in zz territory]"
Scale and interoperability of identifiers and information about rights will ease discoverability, access, use and re-use. Accordingly, LCC's goal is to get widespread adoption of DRSs. This will be the key driver of growth on the network. This will happen through new tools and through hubs.

(b) TOOLS

The huge self-publishing market (which without DRSs creates millions of "digital orphans" daily) provides new **commercial incentives** for the design of tools, such as new DRS plug-ins and apps, which can be used easily at the point of creation via content management systems, mobile devices including cameras, and at the point of upload and entry to the networks. These are the types of applications which we imagined ***"In the [hopefully near] future"***

(c) HUBS AND REGISTRIES

A hub is simply a tool for linking many potential users to many rights holders. For example, content aggregators are hubs.

The established registries run by collecting societies or publisher databases can convert DRSs automatically with relative simplicity. As described earlier, through shared "creation identifiers", the DRSs can join existing linked data, and establish an open standard for search engines, and other processing tools, throughout the network.

"The LCC has come up with solutions to the many non-trivial data problems that beset copyright licensing in the digital age"

Richard Hooper, CBE, Chairman of the UK's Copyright Hub

The UK's Copyright Hub launched July 2013, following the Hargreaves and Hooper reports, and other hubs, can be catalysts for adoption of DRSs. The innovation of the UK Copyright Hub is that it is user-focused. Its role is to make it easy for people to discover rights data of any kind, to enable licensing where appropriate.

Richard Hooper, CBE, Chairman of the UK's Copyright Hub said recently:
"The LCC has, most helpfully, provided the architecture and best practice which will underpin the design and implementation of the Copyright Hub. The LCC has come up with solutions to the many non-trivial data problems that beset copyright licensing in the digital age. The Copyright Hub also agrees with the fundamental philosophy of

the LCC, as set out in Charles Clark's iconic statement: "The answer to the machine is in the machine". Automated licensing, as with digital copyright exchanges provides a vital requirement for the middle and bottom of the market."
Although it focuses on UK users, it covers international rights and is rolling out in three key stages:

- The Initial phase in 2013 in which the UK Copyright Hub launched as an 'information only' resource, and linking around 35 sites at present.
- Stage 2 in 2014 will introduce "federated search" to enable queries to be sent to multiple databases and for the results to be aggregated for users.
- Stage 3 in 2015 will provide links for people to register data about their content and rights.

Whilst Web users can get access anywhere to online materials from anywhere through Web tools and search engines. But Hubs do more, aiding aid navigation of rights data, combining data from multiple sources and also enabling support services (e.g. licensing, tracking, payment and conflict resolution), according to the nature of the hub.

An important part of this work is the "mapping" of data from one schema (e.g. 'ONIX') to another (e.g. 'DIDEX'). For further information on this topic, see here. This is a practical issue because computers only speak their "own language". There is no computer language equivalent to Esperanto. As rights and other data are held in different schema across networks, there is a need to map or translate a term from one schema to its equivalent term in another schema.

Although the Web crosses borders, national or regional hubs can be ideal "points of entry" for local users especially if the hubs have access to global content like UK Copyright Hub, playing a significant role in the development of the Rights Data Network. There are also clear benefits in hubs serving local or language repertoires to an international user audience (e.g. new Danish Film Producers hub).

The UK's hub is already a network of hubs, and a network is already developing naturally in the marketplace, but to be effective across the European Union or globally, hubs should be federated and avoid duplication of effort and function, and especially the maintenance of multiple unsynchronised datasets.

Priorities for action to fill the missing infrastructure links

10 Key Steps

The ten key target steps which are needed to insert the 'missing links' into this infrastructure as part of LCC's ongoing work are **set out in Annex VI.** In brief, they cover the four following areas:

1. Adopted standards for all the required machine readable identifiers.
2. Adopted standards for interoperable metadata so that information moving from one machine can "understand" that data when translated by the other machine.
3. Adopted standard for Digital Rights Statements so that all the IDs that identify parties, works, rights etc. are fully searchable.
4. A way of managing disputes about Rights Statements.

A concerted effort to ensure implementation throughout the supply chain

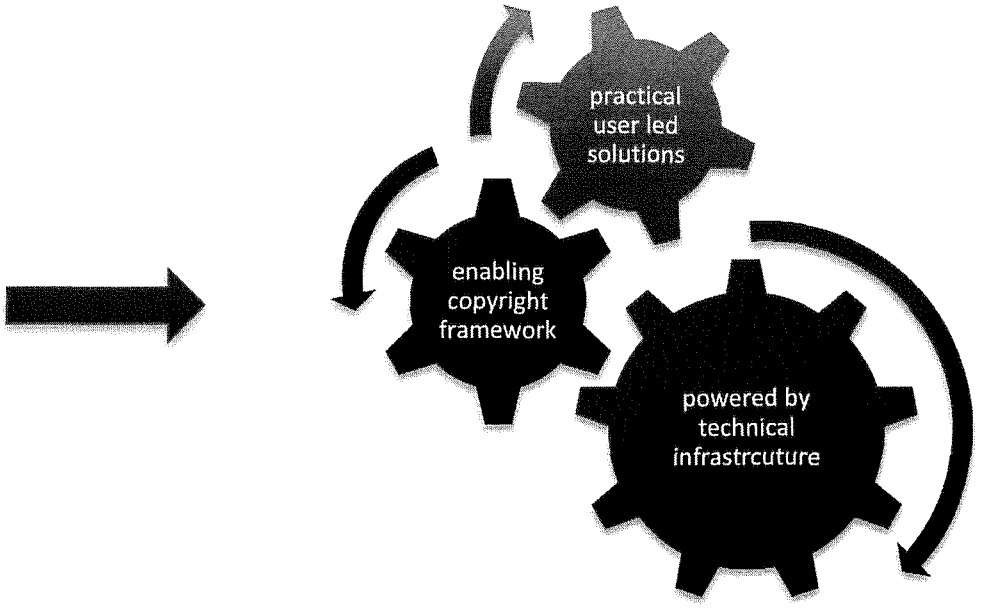
It is important to stress that developing standards is only one step; it is implementing them that it really important. This is where the supply chains in the media and entertainment industries are important. In the music industry, it was only when high street retailers insisted, that suppliers of music cassettes and then CDs, started to apply bar codes to their products. In the same way, it is incumbent on industry and consumer groups, encouraged by government, to implement these standards.

The EPC therefore calls on EU and member states to match the LCC's efforts by:

- establishing national or international competitions or calls for tenders to develop tools and technology to support implementation of **Digital Rightsholder Statements ("DRS").**;
- encouraging national or regional hubs, and provide projects to ensure interoperability between them; and designing or supporting initiatives to integrate "orphan works" and public domain registry services and databases with DRS s and the evolving Hub network.

PART III: ADAPTING COPYRIGHT (ELEMENT 2)

In this Part, we identify a number of key areas where further adaptation of the legislative framework is needed, informed by experience and based on principles of balance and adaptation



Principles based on experience

EPC's approach to Element 2 - an enabling copyright framework - is informed by the following guiding principles which reflect our members' experience over many years:

- Copyright is the pivot of the digital content market. The 'digital shift' moves the transaction in content away from the sale of a physical object to services which are based on exchange of rights and licences which enable users to consume works in a multitude of ways and on a range of devices.
- Copyright law has not "broken" the Internet; on the contrary it is more accurate to say that it adjusts and is shaped by the Internet and the network. This is evident in recent ECUJ case law referred to in this Part 3, but also by the unprecedented explosion of new content services launched over the last ten years
- Whilst technology has altered modes of locating, copying and distributing content, it does not alter the fundamentals of a permissions-based copyright system. That is, a user needs the express or implied consent of the owner to those acts, unless it is covered by an exception or limitation.
- That said, a permissions-based system must be easy to use on the network, hence the central role of Element 1 - the technical infrastructure. This places an onus on all creators and rights owners to express and communicate use

permissions in a clear and effective manner to the "public" to whom their content is being made available.

Law & Technology

Given the impact of the Internet and digital technology, it is to be expected that the current focus on copyright law relates directly or indirectly to the adaption of copyright to the digital age.

Inevitably, it takes time for the Courts to answer these questions. This is the subject of much academic research and is also dealt with extensively in the Study commissioned by the EC from De Wolf & Partners to support the EC Consultation ("the De Wolf Study").

A number of these issues are also covered by the EC's Public Consultation on the review of the EU copyright rules to which EPC has submitted a reply. Nonetheless, we have included a number of those issues in this paper because they go to the heart of how copyright and technology intersect and co-exist on the network.

These issues divided into two broad categories. Firstly, those which deal directly with the impact of technology on copyright – hyperlinks, framing, browsing, search and 'snippets', machine readable rights information and the re-sale of digital content. Secondly, the broader issues which apply to copyright both 'on' and 'off' the network.

We will look at the most important issues within each category and put forward our views as regards the actions needed. We have identified areas for consideration as **"Action Points"** below'

Category 1 issues – copyright and technology

Hyperlinks to sites on the open Web

The European Court of Justice (CEUJ) decision in Nils Svensson & others vs. Retriever Sverige AB dated 13 February 2014 considered important issues about the legal status of hyperlinks and what constitutes a "public" for the purpose of the right of communication to the public, including making available, under Article 3 of the InfoSoc Directive. The case concerned the status of hyperlinks on the Retriever site to articles on the Göteborgs Posten's open website and whether such hyperlinks required the prior authorisation of the owners of the copyright in those articles.

In our view, the judgment demonstrated four points:

1. Copyright law will not "break" the Internet nor is it antithetical to the way it functions.

2. Rights owners can take steps to restrict access (or, as we would express it, to licence use) to particular categories of the public.

3. This places the onus on the rights owner to ensure that rights to use protected matter are expressed effectively so as to ensure that the "public" to whom it makes its content available is clearly defined.

4. Legal clarification is needed about the relationship between hyperlinks and licence terms on the websites (or other platforms) to which they link.

The Svensson case

The critical paragraphs in the CJEU judgment are 26, 27 & 31. The judgment can be found here. Given the importance of these issues, we have reproduced these paragraphs below:

> *"26. The public targeted by the initial communication consisted of all potential visitors to the site concerned, since, given that access to the works on that site was not subject to any restrictive measures, all Internet users could therefore have free access to them.*
>
> *27. In those circumstances, it must be held that, where all the users of another site to whom the works at issue have been communicated by means of a clickable link could access those works directly on the site on which they were initially communicated, without the involvement of the manager of that other site, the users of the site managed by the latter must be deemed to be potential recipients of the initial communication and, therefore, as being part of the public taken into account by the copyright holders when they authorised the initial communication.*
>
> *31. On the other hand, where a clickable link makes it possible for users of the site on which that link appears to circumvent restrictions put in place by the site on which the protected work appears in order to restrict public access to that work to the latter site's subscribers only, and the link accordingly constitutes an intervention without which those users would not be able to access the works transmitted, all those users must be deemed to be a new public, which was not taken into account by the copyright holders when they authorised the initial communication, and accordingly the holders' authorisation is required for such a communication to the public. This is the*

case, in particular, where the work is no longer available to the public on the site on which it was initially communicated or where it is henceforth available on that site only to a restricted public, while being accessible on another Internet site without the copyright holders' authorisation."

The first point, that copyright will not "break" the Internet is made clear in paragraphs 26 & 27. They demonstrate that if a rights holder makes copyright works freely available on a website, it has authorised the communication to the public/making available to everyone. As paragraph 27 states, the fact that anyone could have gone to the newspaper's site directly and accessed the articles makes the users of the Retriever site part of the same public as that comprised by direct site visitors. They could not therefore constitute a 'new public', thereby requiring Retriever to obtain prior authorisation to hyperlink to the Göteborgs Posten's website.

The second point is demonstrated in paragraph 31 of the judgment. Paragraph 31 appears to confirm that right holders do have the ability to control the public to whom its works are made available. However, that paragraph refers to the situation where a *"...link appears to circumvent restrictions put in place by the site."* This raises a question about the scope and meaning of 'restrictions put in place'.

Clearly, if the Göteborgs Posten website had put the content behind a paywall and the only way to access it without permission was by circumventing technical protection measures, then based on the Svensson a link to those articles which circumvented those measures would have been an infringement.

But what if Retriever's users could link through to those articles which were behind a paywall without circumventing any technical protection measures, but the licence terms attaching to the relevant articles stated that these articles we're only made available to direct users and not customers of third party aggregators? This brings us to the fourth point. It is not clear from the CEUJ judgment that Retriever's customers would then be a 'new public', thereby requiring Retriever to obtain prior authorisation.

Action Point

Legal clarification is needed about the relationship between hyperlinks and licence terms on the websites (or other platforms) to which they link. It must be clear that rights owners may by their licence terms to "restrict" access to content on an "open website" to a specific category of "the public" (e.g. users who visit the site directly), whether or not accompanied by technical protection measures.

Hyperlinks to unlawful copies

A common pattern in copyright infringement cases is the separation of the actual copyrighted material reproduced and stored without permission in a cyberlocker and the posting of the hyperlink to such a pirated copy (as the only way to access and download the content).

Publishers spend substantial amounts of money to crawl the web for pirated copies, to send take down notices to cyberlockers, with varying degrees of their cooperation, but have limited options to require removal of the posted links.

Action Point

The making available of a hyperlink to an infringing copy is the single most egregious act enabling piracy on a large scale – and copyright law should thus be amended to treat as infringements only those acts of making available hyperlinks to copies which are clearly and obviously unlawfully-produced or obviously unlawfully made available to the public. In this context, it is worth noting that Article 53 German Copyright Act already successfully uses such terminology.

Deep framing

'Deep framing' occurs when one website – "W2" - is coded in a way that it loads content from another website – "W1" - to be displayed as an integrated part of W2. It is thus more than a mere link, which has to be clicked actively by the user to be re-directed to the other page.

Mere framing involves W2 showing the whole of W1. In contrast, deep framing involves showing only a part of W1 e.g. where W1 is a news site, only the news article might be shown on W2, without the newspaper banner, advertisement and navigation elements of the W1. This is significant, because deep framing replaces a visit to W1 and is in effect similar to a reproduction of the copyrighted content on W1.

Accordingly, the question here is whether the creator of W2 is making a reproduction of W1. Under current copyright law this may not be the case. It is not clear whether the creator of W2 is making a copy of W1 or whether the reproduction is deemed to be created only by the user navigating to the certain page on W2 which automatically loads W1's page content). However, since the effect is similar to a

reproduction by W2, this should not be regarded as mere hyperlinking and thus require the consent by the rights owner.[6]

Action Point
Further analysis into this issue should be carried out as part of a review of the copyright acquis.

Browsing

Reproduction right

The decision (here) of the UK's Supreme Court in *Public Relations Consultants Association Limited vs. The Newspaper Licensing Agency Limited* shows how members states' Courts are getting to grips with the intersection of technology and copyright. In this case, the Court dealt with the application of Article 5.1 of the InfoSoc Directive to analyse the copyright status of copies made on an end user's computer on screen and in the internet cache when browsing. Applying the acquis in *Infopaq I &II, the Premier League case* and other cases, the Supreme Court concluded that these copies made by the user's computer fell within the exception.

The Supreme Court's decision is now the subject of a referral to the EUCJ. The case demonstrates two things: - (1) copyright law does not "break" the Internet but (2) the way technology operates means that it takes time and care in drawing the legal boundary between copyright-restricted acts and copyright exceptions.

Whilst the general proposition that Internet browsing does not require a licence is reasonable, there remains a risk that an overbroad interpretation could mean that activities which ought properly to be licensable (e.g. the consumption of press cuttings) might cease to be so.

Action Point
Keep under review

[6] Further helpful explanations can be found at wikipedia: https://en.wikipedia.org/wiki/Copyright_aspects_of_hyperlinking_and_framing

Unlicensed use of snippets

The issue here is the unlicensed use of snippets from content on media and publishers' websites by search engines and aggregators which, as a distillation of articles, may substitute for the articles and result in substantial loss to the publishers of those sites.

In Germany, the 'Leistungsschutzrecht für Presseverleger' was introduced in 2013. The purpose of the legislation is to ensure that publishers in the online market are not placed at a disadvantage relative to other aggregators of works.

It grants ancillary protections for press publishing houses in the form of the exclusive right to make published press material publicly available on the Internet through search engines and equivalent aggregators for commercial purposes. However it does not apply to other users such as bloggers, private or unpaid users.

As regards authors, they are entitled to an appropriate share of the proceeds, either agreed under individual agreements with publishers or on the basis of a collective agreement.

Similar laws are under discussion in other Member States, most recently in Spain.

Action Point

We recommend that consideration is giving publishers in other member states equivalent legal protection to that conferred by the German Leistungsschutzrecht für Presseverleger'.

Machine readable rights information

It is also important to recognise the role an enabling technical infrastructure can play in enforcement. Many copyright disputes are about ownership and which rights to licence. In the online context, this can be seen following the service of takedown notices.

Tools such as the **Digital Rightsholder Statement ("DRS")** to which we referred in 'Element 1' which provide links and data about rights ownership, provide the information which is vital to resolving these disputes or, at the very least, providing the data needed by the Courts or any other entity which deals with them.

The legal basis for the protection of rights management information is found in **Article 7 of the InfoSoc Directive**, which in turn reflects the provisions of Article 12

of the WIPO Copyright Treaty and Article 19 of the WIPO Performances and Phonograms Treaty.

This paper has highlighted the key role which machine readable identifiers and expressions of licence terms play in realising the potential for digital content on the network. It is therefore clearly essential that the legal effectiveness of such licence terms is not in doubt.

In that context, there is a specific problem which arises when copies of works or other subject matter are gathered by an automated process. It has particular relevance to the actions of search engines and other operators who 'crawl' the World-wide web. Because copies are gathered and often further stored or processed by an automated process, no human mind will normally read rights management information which is associated with or embedded in the protected subject matter. The law is presently unclear about the circumstances in which the operator of the automated process will be deemed to have rights management information drawn to his attention.

Action Point

Consideration should be given to amending or at least clarifying the InfoSoc Directive to provide certainty in this regard. By way of example of how an appropriate amendment to copyright law might appear at member state level to address this problem is set out in Annex VII.

Exhaustion of rights

The InfoSoc Directive is clear on the point that the principle of 'exhaustion of rights' applies only to the distribution right and not to the right of communication to the public, including the making available right.[7]

EPC supports the principle enshrined in the InfoSoc Directive that rights exhaustion should only apply to the distribution right and this should be narrowly interpreted.

But as the ECJ's decision in the *UsedSoft* case [8] showed, the concept of "distribution" can be quite wide when applied to content distributed online and the boundary between the distribution right and the making available right can be a blurred one.

[7] Articles 3.3 & 4.2.

[8] Case C-128/11 Court of Justice 3 July 2012. I t concerned the legality of the re-sale of licences to use 'Oracle' software by UsedSoft as 'second hand' copies, despite the fact that the Oracle licences were expressed to be non-transferable. The Court decided they were legal, as the original transaction between Oracle and its customer was a distribution or sale, to which the exhaustion principle therefore applied

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There is legal debate as to whether, in light of the particular provisions of the Software Directive, the case is limited to computer software or could apply to all forms of content. In the USA the situation is quite clear as demonstrated in the case of *Capitol Records LLC v ReDigi, Inc*[9] that the US doctrine of "first sale" does not apply to digital content.

This is an area where the digital world does not mimic the physical world. Whereas the re-sale of a physical object such as a book necessarily involves the removal of that object from the first owner, and the work it embodies, from the first owner that is not necessarily the case in the digital world. A digital copy may well remain with the first owner and it may be impossible to enforce a rule which requires the first owner to delete the original copy.

The application of the concept of exhaustion can have significant and detrimental effect to the investments in new European content and therefore to the provision of diverse European contents such as novels, learning materials, even magazine and premium newspaper content. By enabling the resale of previously purchased digital content, it would weaken the advertising market of the press or create new competition that would be in practice based on the publishers' content investment, thereby operating against the consumer interest.

Action Point

For that reason, EPC supports a more restricted interpretation of the scope of the exhaustion principle.

[9] USDC, 2013

Category 2 issues – broader issues applying to the copyright framework

Whilst we are supportive of looking at alternative approaches, we are of the view that by a combination of the '3 digital elements', the current copyright framework in partnership with and powered by technology can provide the solutions to meet user needs.

With that in mind, we will now examine some of the more far reaching issues affecting copyright.

Copyright territoriality vs. global network

Copyright law is based on the principle of territoriality in the sense that a State cannot prescribe legal rules such as copyright law to govern activities outside its national borders.[10] That is why the Berne Convention introduces the concept of 'national treatment' to give protection under a country's copyright law for a foreign work. It also brings with it the need to have legal rules to determine the territorial location of a copyright act such as 'making available' a work, which national law applies to an act of exploitation, and a mechanism to deal with situations where the same act (e.g. 'making available') is treated for copyright purposes as occurring in more than one territory.

This is the subject of much academic research and is also dealt with extensively in the Study commissioned by the EC from De Wolf & Partners to support the EC Consultation ("the De Wolf Study").

We can therefore understand those who say that a system of national copyright laws is outmoded in a world in which a copyright work can be made instantly accessible to a global audience by a single click. This is the thinking behind the idea of a single EU Copyright Title which, as the EU Consultation observes on page 36: *"...would totally harmonise the area of copyright law in the EU and replace national laws."*

However, we think there are pragmatic and legal reasons which leads the EPC to the conclusion that pursuing a path towards a single EU Copyright Title would not be worthwhile, certainly at the present time.

Firstly, the fact that copyright law is territorial does not mean that licences must be granted only territory by territory. Many licences granted by EPC members are on a multi-territorial or even global basis. Licences are granted on a territorial basis where appropriate e.g. to suit local markets on the basis of language or other local requirements. Pan European and global licensing already exists for books and

[10] This principle was affirmed in the CJEU's ruling in *Lagadère Active Broadcast (C-192/04).*

newspapers, as well as in other sectors, including music, is becoming increasingly common.

Secondly, the introduction of a single EU Copyright Title would not necessarily mean that a licence would, of necessity, cover the entirety of the single market. In that context, it is interesting to draw a comparison with the Regulation for Unitary Patent Protection for the whole of the EU adopted in September 2012[11]. Article 3.2 of that Regulation makes it clear that a European patent will provide: *"...uniform protection and shall have equal effect in all the participating Member States."* However, it goes on to say that *"It may be licensed in respect of the whole or part of the territories of the participating Member States."*

If a similar approach was taken to a unitary copyright, the position would be the same.

Thirdly, whilst pan territorial licences may often be in the consumer interest, this is not always the case. Pan European licences for content can be expensive to acquire. This can discriminate against smaller players who want to provide a service to provide digital content to a local market. If only a pan European licence was available, they may be priced out of the market. In that way, pan European licences could lead to a concentrated market which would not be in the consumer's interests.

Fourthly, from a pragmatic perspective with think that there are other more pressing issues, especially in the area of rights automation, that call for solutions. EPC maintains an open mind on this issue but considers that it does not currently feature high on the copyright 'to do' list and the subject would need further analysis of the costs and benefits associated with moving towards a wholly new copyright basis in the EU.

Action Point

Whilst a unitary code merits further work, perhaps on a voluntary basis, we consider that the priority is adapting the existing framework, where appropriate to facilitate innovation in licensing.

The case for harmonisation of exceptions

Exceptions and limitations to copyright are an integral part of the copyright framework. As publishers, EPC's members are both creators of copyright work as well as users under licence and, in limited cases such as reporting news as current events, under exceptions. We can therefore see all sides of this issue.

[11] Regulation 1257/2012 of 17.12.12

There are two key questions: (1) are differences between member states in their exceptions and limitations to copyright having an appreciable negative impact on the development of the digital content market? (2) If so, is there a case for making all exceptions and limitations an exhaustive list and making them mandatory?

EPC sees the arguments in favour of greater harmonisation as well as those against. What is needed first is the evidence for harmonisation, and in case of harmonisation of certain exceptions, a degree of flexibility would be necessary. In our view the 'Licences for Europe' process did not make the case for harmonisation and we therefore wait to see the outcome of the current EU Consultation.

In the meantime please note that:-

- In the experience of EPC members, the existence of certain differences between member states in their implementation of Article 5 of the InfoSoc Directive is not a barrier to the development of new digital content services for EPC members' customers and users.

- Harmonisation would cause problems on specific issues e.g. the issue of fair compensation and levies if the exception for private copying contained in Article 5 2 (a) was made mandatory.

Action Point

Independent research would first need to be conducted on the impact (negative or neutral) that differences between members states' copyright exceptions are having on the market for digital content in Europe.

The relationship between copyright contracts and exceptions

This is an important issue, although it is not necessarily one affecting all member states. It has come to the fore in the UK in the context of the forthcoming reforms to UK copyright law. Many of the proposed changes to exceptions to UK copyright law include the following provision: *"to the extent that any term of any contract purports to restrict or prevent the doing of an act which would otherwise be permitted by this paragraph, that term is unenforceable."*

EPC does not oppose that principle and, indeed, it is already reflected in the Software Directive. It is right that exceptions should not be overridden by the inclusion of clauses into contracts which have the effect of stopping lawful users from taking advantage of the exceptions.

However, the problem is that contract override provisions can cause confusion by removing rights holders' ability to have certainty over what can and cannot be licensed under contract. For that reason, we have included some further observations on this issue.

In our comments in relation to Elements 1 and 3, we have already emphasised the role that the automation of rights management in machine-readable formats will play in handling content on the network.

For example, in the world of journals, ONIX for Publications Licenses (ONIX-PL)[12] is an XML format for the communication of license terms for digital publications in a structured and substantially encoded form, specialized to handle the licenses under which libraries and other institutions use digital resources. ONIX-PL enables libraries to express licenses in a machine-readable format, load them into electronic resource management systems, link them to digital resources, & communicate key usage terms to users and compare terms from different licenses.

Machines are binary: its software programs it to perform an action in compliance with the conditions that have been programmed. A computer is not concerned whether the action in questions derives from an exclusive right or from the exercise of an exception.

The 'machine' can therefore be programmed to facilitate the use of works both under licence and under copyright exceptions.

The introduction of 'contract override' provisions risks creating uncertainty about what may or may not be legitimately included in the machine readable licence.

Accordingly, further analysis and evidence of the issue would be needed. For example, evidence would be needed to see whether it would be detrimental to consumers by adversely affecting the ability of contracts and licences to maintain balance, flexibility, contractual certainty and mutual benefit into the rights licensing system.

Action Point

consider the need to conduct independent research that the impact that 'contract override' provisions will have on the development of machine readable and actionable licences.

[12] See further here

'Flexibility' and Fair Use

The advocates of introducing a 'fair use' exception in Europe along the lines of the exception in the USA make a case that it offers some flexibility to users in the application of exceptions which come within its scope. These advocates feel it is more suited to a digital age of multimedia content and uses because it is not limited to the types of uses, or types of works, and in particular the concept of 'transformative use' as developed by the US Supreme Court interpretation and application of the exception to new uses.

Whilst the EPC takes note of the views expressed by those who advocate the introduction of 'fair use' into European copyright law, we have a number of reservations about both the motivation of some of those who call for such an exception but mostly about its suitability and applicability in the European Union.

Nevertheless we do recognise that the number of, and requirements of users have expanded and that more and more uses, particularly in the production of transformative works, are emerging. Therefore it is incumbent upon first rightsholders but also regulators to ensure that reasonable demands and uses are satisfied through market forces.

It is our view therefore that the priority of the regulators is to address the emerging requirements and see how best these can be met within the existing framework of law and exceptions, and innovations in licensing.

The US style Fair Use is not unique in offering flexibility in copyright exceptions. The UK doctrine of 'fair dealing,' which applies to a number of specific copyright exceptions in the UK such as research, private study and criticism and review, has also been developed in a flexible way. The English Courts, like the US Supreme Court in its decisions on 'fair use', apply a range of factors in their definition of "fair." These include the amount and quality of what is taken, whether the work has been published and whether it competes commercially with the source work or does something new. If it does not, then that will weigh heavily in favour of fairness.

All this makes us extremely sceptical as to whether it would be feasible or desirable to abandon the approach in Europe of 'case by 'case' exceptions under the InfoSoc Directive, together with the wealth of legal precedent at a European and member state level about the scope of those rights.

Above all, the doctrine of 'fair use' has been developed by the US courts on a case by case basis over several hundred years, the same way that the Courts in Europe now interpret the range and scope of copyright exceptions permitted under European law. To introduce 'fair use' without the accumulated legal acquis would introduce legislative uncertainty at precisely the time when certainty is needed.

It is also important to recognise that Europe is a different market for copyright protected materials than the US. Accordingly, the current framework of individual exceptions and limitations is well adapted to the diversity in language, culture and markets in member states.

Also, the US 'fair use' exception needs to be seen in the context of US copyright law as a whole, which differs in other important respects from the EU copyright framework. In particular, these include the position on first ownership of commissioned works and those created in the course of employment, as well as the link between fair use an the relevant provisions of the US Constitution.

Accordingly, this is an issue which would require considerable evidence-based research in order to make a reasoned evaluation of the benefits of introducing a fair dealing exception compared with the uncertainty and other risks which would be caused by its introduction.

Europe would be better positioned to reach a dynamic flexibility for increased uses by providing incentives to small scale licensing, both B2B and B2C, and automated licensing solutions. Moreover, creators who upload their creations directly to the web would benefit from a system of **Digital Rights Statements** at the point of entry to the network to provide identifiers to help keep track of usage, and monetise their user generated created content should they so wish.

Action Point

We do not support the introduction of a general 'fair use' exception but do support more analysis of the requirements of users and solutions being provided by rightsholders in both B2C and B2B markets.

Enforcement

Whilst the growth of legal services for the delivery of online content, including innovative licensing, is the cornerstone of the digital content market, improving the legal framework for the enforcement of intellectual property rights has a vital role to play as a means to guarantee the growth and jobs in Europe.

We have set out our position in our Contribution to the EC's Public Consultation on civil enforcement of IPR: the Efficiency of Proceedings and Accessibility of Measures.[13] Amongst other things, that makes certain recommendations regarding

[13] http://epceurope.eu/wp-content/uploads/2013/10/EPC-response-to-the-civil-enforcement-of-IPR_30March2013_final.pdf

the role and responsibilities of intermediaries.

As we point out in our Introduction in that document, the widespread theft of media and create content damages the potential for professional journalism and entertainment to thrive in the future and limits the growth of the European digital economy.

Action Point

Actions proposed in its Contribution the EC's Public Consultation on civil enforcement of IPR on the Efficiency of Proceedings and Accessibility of Measures:

- *A robust civil enforcement framework to ensure both effective and uniformly applied measures involving all players in the creative and distribution chain, including those internet based businesses which both facilitates and profit from infringing activity.*

- *Ensure the right balance between fundamental rights such as intellectual property rights and the right to protection of personal data to avoid misuse of one to the detriment of the other.*

- *Improve enforcement in the B2B market by a thorough analysis of the role and effect of search engines and content aggregators and ensure that reproductions or displays of copyright material for commercial purposes are treated within copyright law as a distribution of making available to the public and as such subject to permissions.*

- *Explicit provisions for internet intermediaries eligible for liability privileges with respect to IPR infringements through a Recommendation or interpretative guidelines: clarification in order to rule out any irresponsible actors who are not solely neutral intermediaries and who seek to take advantage of the broad scope of the current definition.*

- *Reassessment of commercial scale: address unlawful file-sharing services, which do not have the traditional notion of commercial activity, but which activities amounts to mass distribution of IPR infringement content.*

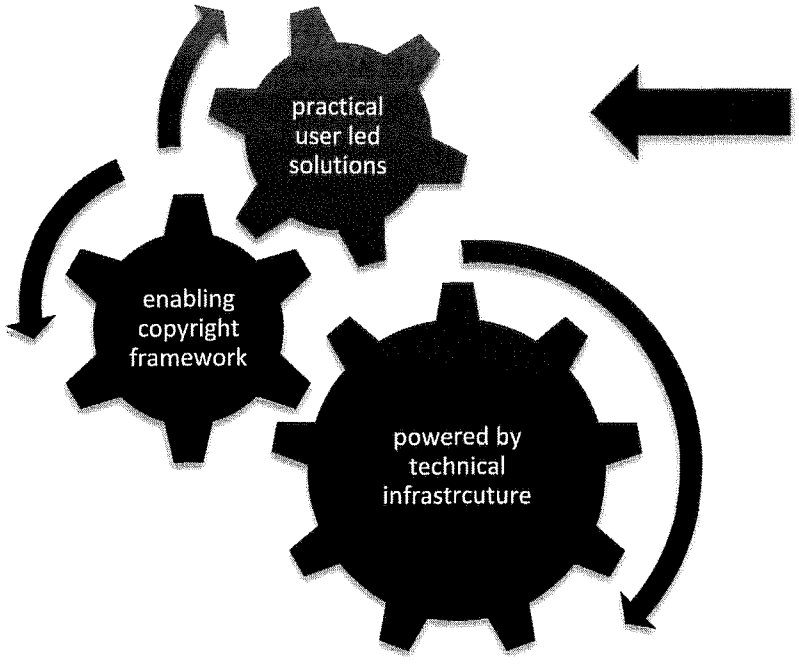
- *Need for better implementation at national level of the current legal framework; the lack of clarity of certain provisions aggravates the situation.*

- *Rightholders must engage in pervasive ways to identify, grant and communicate information about their rights throughout the supply chain and with end-users, both through human readable licences and automated licences.*

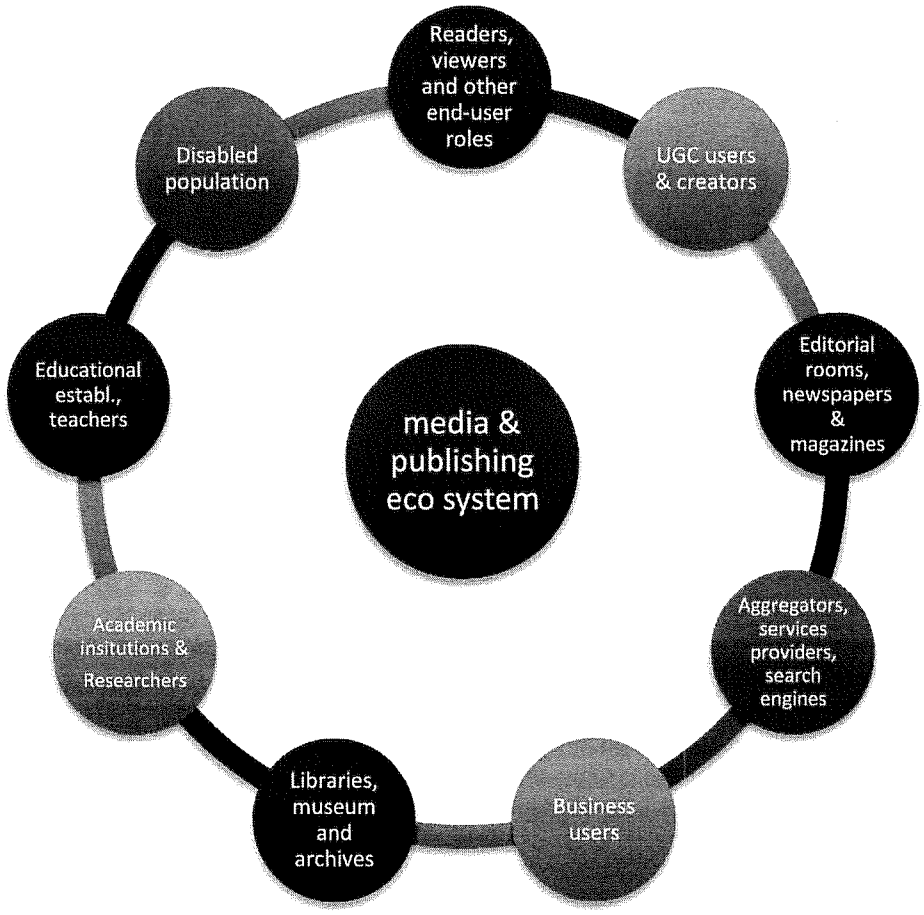
- *Pre-emptive action against new forms of piracy of self-published works through the development of multimedia identifiers for such works and user generated content incorporating copyright content.*

PART IV: MEETING USERS' NEEDS IN THE NEW MEDIA & PUBLISHING ECOSYSTEM (ELEMENT 3)

In this Part,, we identify the challenges and difficulties faced by different users groups in the new ecosystem and demonstrate how solutions to them are found, or can be found in a combination of the 3 digital elements - technical innovation, adapting copyright framework and in a range of practical solutions, and the role which each element may play in overcoming these challenges In particular, we focus here on the range of practical solutions, especially creative licensing, as such solutions are often the most suitable to quickly adapt to the needs expressed by the various user groups.



New ecosystem – many players, many parts



When considering our various user groups, EPC's members recognise that there are areas in which further work is required.

By looking at these issues through the eyes of the users and stakeholders, we show how many of the solutions will be found through what we would call a process of 'adaptive innovation' – building on the work which is already ongoing in the fields of technical standards and services and creative licensing solutions. In the case of each user group, we tentatively identify the challenges or difficulties they face and then summarise the actual or potential solutions.

Of necessity, this analysis is a "snapshot" of current challenges and solutions. It cannot be complete but it does illustrate how solutions are constantly emerging.

1. User group B2C Users: readers, UGC creators & UGC users

The reader is at the heart of what media and publishing do. The raison d'être is to serve its readership and consumers. We have tried to summarise the key challenges and/or difficulties faced:

- **Lack of interoperability:** the priority for readers is to be able to access and use the lawfully acuired content on all their devices and wherever they are for their own private use. Rather than a legal issues this is a technical and business issues. There is much discussion and debate about interoperability. It is therefore essential to define terms. "Interoperability" of what?" is the first question to ask - of format (e.g. EPUB3); technical protection measures or expressions of digital rights

Solution: Both format and platform interoperability needs to be enabled as widely as possible to ensure the reader has flexibility. Ensure that any public procurement related to professional content is based on such principles, so as not to favour proprietary systems.

- **Enjoy content cross border or when travelling:** while newspapers, magazines and e-books do not really face issues related to territorial restrictions as such, when publishing is becoming multimedia and for example acquires web TV rights (i.e. sports rights), geoblocking issues may arise to respect exclusivities granted for certain territories. This leads to frustration on the part of the consumer/reader who can not access their paid for content when abroad.

Solution: For geolocations issues related to multimedia content, some EPC members offer tailormade solutions to their customers, who can use their creditcard or ID number to overcome territorial restrictions. These solutions are based on negotiated agreements with rightsholders.

- **Post purchase redownload:** the post-purchase re-download issue sometimes poses problems for consumers, and they may run into difficulties when they buy a new device and want to re-download the content they already bought to their new device.

Solution: While the EPC believes it is important that the principle of exhaustion does not apply to digital content for the reasons explained in part 3, EPC believes it is important that consumers who have bought – but not rented or acquired another time-limited right - a digital content file (book, music etc), can re-download the file for private uses according to the private copying exception, so that they can continue to enjoy the content. EPC believes that the development of interoperable metadata rights expressions language, and databases and registries informing on

rights will help to address this issue, together with appropriate contractual solutions.

- **UGC creators and users:** Publishers are keen to support and facilitate users participation and interaction with our content, including in "mash-ups", blogs, etc. for non-commercial use. So far there has been little evidence that legislative intervention is necessary in this area: UGC content is flourishing and publishers are increasinly offering their readers and users ways to interact with them by uploading own content or by re-using the professionally curated content. However improvements are needed to clarify this type of usage and creation for the avoidance of doubt on the part of consumers.

The UGC creators are facing two key challenges:

- Lack of clarity for creators what they can or cannot do with part or the whole of content they would like to include in their UCG creations.
- Loss of control over re-use of *their* UGC. For example, a creator posts a video to a social media site which is re-posted without consent by another social media user or by a commercial organisation which re-publishes without permission.

Solutions: the availability of applications and services described in Part 2, such as standardised, machine-interpretable public statements about creations, and rights and permissions which apply to them, will make it easier for UGC creators, to use content to create new content to which they can include information allowing them to keep control over *their* creations. The technical framework will automate the linking together of data about creators, works, rights and licences. Once the Data Network[14] is complete, the entire process for expressing, managing and granting rights in copyright work, including uses which are covered by copyright exceptions, will be automated and managed by the machine.

- **For users of UGC, whether for non-commercial or commercial purposes** there are also a number of challenges or difficulties, in particular the inability or difficulty in finding out who owns or controls the rights to use an item of content (e.g. a video or soundtrack) on a website, social media or other digital platform.

Solutions: the solutions are a combination of technological tools and and innovative approach to services. In particular:

[14] The Data Network is the movement around of data around the rights network, the content network and the payment network – see Annex II for further details.

1. Press publishers are keen to facilitate and promote users' access to content, participation and interaction by adopting tools to provide comments, upload photos, and share links in social media and elsewhere. This is set out in greater detail in the EPC, EMMA, ENPA paper here.

2. The Hubs and Registries described in Part 2 will help users to search or browse for and find owners or controllers of rights in UGC and find and obtain appropriate licences.

3. Cross-industry guidelines can also have a role, to explain in clear and non-technical language which uses of UGC are covered by copyright exception purposes e.g. for non-commercial research, reporting news or quotation), how much can be used and for what purposes.

2. *User group: Institutional users: libraries, museums & archives, educational establishments, academic & researchers, public authorities*

Challenges or difficulties faced.
As the roles of these public institutions changes and evolves, and the needs of their users change with the digital development, this inevitably raises a variety of challenges to be met and overcome on all sides.

- Problems faced by libraries and other institutions from managing a multiplicity of licences and licence terms from suppliers of content – "Issue 1".
- Problems arising from non-mandating rights holders i.e. where a collecting society holds mandates of some but not all of a particular category of rights holder – "Issue 2".
- The desire of these institutions to 'mass digitise' their collections and then make those collections available to to the public – "Issue 3".
- Their desire to facilitate remote access to content library users, including e-lending – "Issue 4".

Solutions

Issue 1: managing a multitude of licenses
This is a commercial issue regarding contract and procurement and not a copyright issue as such. The solulution will be found in the ongoing development of standard terms in contracts with content suppliers.

Issue 2: non mandating rightsholders

Extended Collective Licensing (ECL) schemes will play a key role in solving this issue, while respecting copyright principles, such as remuneration and possibilities to opt out. Examples of the expanding role of ECL schemes can be found in a number of member states including the UK and Finland. Details of the recent consultation in the UK on draft secondary legislation for collecting societies looking to apply to operate extended collective licensing (ECL) schemes can be found here. Details on a sectoral ECL model in Finland are set out in Annex IV.

Issue 3: mass-digitisation

The Orphan Works Directive provides a legal solution to the issue of 'orphan works', based on the principle of diligent search to ensure that the digitised work is indeed orphan, provide possibilities to put an end to the orphan works status and includes provisions on remuneration. The Directive, combined with licensing solutions as envisaged by the Memorandum of Understanding on Out of Commerce Works, provide tools to address mass-digitisation. Member States should be encouraged to further promote dialogue between the interested parties regarding implementation of the MoU. Consideration also needs to be taken into account of various traditions of how Member States choose to deal with these issues at national level. For example, in Norway due to their long extended collective licensing tradition, based on negotiation between the different parties, they are moving forward with digitally adapted solutions. Details here. This example illustrates how licensing solutions can address an issue faster than a change in copyright law.

One point that is worth considering in relation to the Orphan Works Directive is that publishers, and in particular news media publishers deal with a large number of rights clearances on an everyday basis. It is perhaps a missed opportunity that publishers are not beneficiaires under the Directive.

An important aspect to take into account is that the development and deployment of **Digital Rights Statements** will limit the creation of new digitial orphans. Interoperable registries and databases will make it easier to find authors and rightsholders, and thus faciliate licencing.

Issue 4: remote access to library content, including e-lending

The solution lies in licensing and, in some instances, by 'digitally adapting' members states' copyright laws.

This form of use will typically be covered by direct and collective licences. There is an increasingly varied range of licences available from content providers e.g. licensing solutions offered by Bloomsbury Public Library Online, Overdrive and Amazon; &/or

under collective licences e.g. those available for educational institutions from the Copyright Licensing Agency in the UK – details here.

E-lending by libraries must be consistent with physical lending, e.g. in terms of number of copies that can be lent to a restricted number of readers and the duration of the lending period. If such conditions are not put into place, such an activity would constitute direct competition and substitue the primary market.

In certain instances, the copyright laws of certain member states may require updating to be 'digitally adapted'. For instance, the UK is intending to introduce a new section 43A to the Copyright, Designs & Patents Act under Article 5. 3 (n) for all forms of copyright work which are made available to the public through dedicated terminals on the institution's premises for non-commercial research or private study. Greater and easier machine-enabled licensing will also help solve some of the issues surrounding copyright exceptions by building in to these licences certain uses which are enabled 'by default'. In that way, licences will be 'exceptions plus'.

More generally on this point, careful reflection needs to be undertaken to avoid public libraries' public service mission in the digital environment resulting in any unfair competition that would undermine the viability of commercial publishing in the digital age.

2a) Educational establishments

Challenges or difficulties faced

There are two principal challenges:

1. The uncertainty on the part of teachers and their educational institutions about the scope of the exception to the rights of reproduction and communication to the public/making available under Member States' laws for "the sole purpose of illustration for teaching" for non-commercial purpose derived from Article 5.3 (a) of the InfoSoc Directive.

2. Existing copyright exceptions in certain Member States' laws require 'digital adaptation' to make them technologically neutral, either to ensure that they allow teachers to use the digital equivalent of physical aides (e.g. interactive whiteboards v. 'chalk and drawing board') or they contain other legal gaps, such as not covering all forms of copyright works.

Solutions

Practical: As regards the first, cross-industry Guidelines, supported by trade associations, can provide a practical solution by explaining in clear and non-technical language which uses are covered by a copyright exception (e.g. for display on

whiteboards in the classroom), how much can be used and for what purposes. This would increase the transparency for teachers.

More broadly, publishers are making a range of educational offers available which provide practical solutions to enhance teaching and learning. They demonstrate how licensing solutions can overcome many of the challenges discussed in this part of our paper. An example of a range of new licensing solutions from one publisher appears in Annex V.

In Finland an extended collective licence scheme for educational purposes agreed between the rights holders and the CMO in 2011. The scope ECL License has been agreed by the relevant right holders. The terms of the licence are balanced and do not compete with the direct licensing of educational or press publishers. The license is restricted to a limited use for example regarding the amount of pages/and number of pupils, the possibility to include extracts in teachers' power point slides / ancillary material only, as well as no right to communicate works to the public in the open internet.

Legal: As regards the second, in general the EPC members consider that this exception is already sufficiently digitally adapted. However should it be proven necessary to clarify the current scope to take into account distance learning, this needs to be narrowly defined so as not to risk undermining the e-learning licence model, and thus jeopardise the development of quality educational material. Regarding all forms of work, the solution lies in updating current exceptions under member states laws where necessary to apply to all works. For instance, the new section 32 in the UK Copyright, Designs & Patent Act will allow "fair dealing for the purpose of instruction" and will extend the existing teaching exception to cover all forms of work, and not just from literary, dramatic, musical or artistic works which is important in the digital age.

2b) Researchers & Academics & Publishers

Challenges or difficulties faced

A new exception for text and data mining at EU level carries a huge risk from 'the law of unintended consequences'. A key theme running through our paper is the enabling role of technology in managing copyright. Given the increasing automation of rights management, the full potential of which we have yet to realise, including in the area of specific permissions, access to and use of content, we urge the European Commission to look at practical solutions first for serving the genuine needs of the research community before legislation.

Let's be clear: publishers of books, journals, newspapers and periodicals enable users to mine their content already today. Publishers continue to invest in existing and

new infrastructure for a reliable and robust TDM ecosystem to occur. We deploy new technology and are willing to collaborate and build new partnerships ensuring secure, reliable and responsive access to content, even in large quantities. Enabling maximum gain for users from published content is what publishers do, so enabling TDM based on customer demand is just another part of our mission.

EPC welcomes the CrossRef Text and Data Mining services launched on 29 May 2014. Publishers participating in CrossRef Text and Data Mining services may deposit full-text links in the metadata for their DOIs, as well as license URIs by which researchers can determine whether they have permission to mine a particular content item. Through CrossRef's Application Programming Interface (API), researchers will then to be able to access the full-text, CrossRef DOI-identified content across participating publishers' sites, regardless of their access models. This service is provided at no cost to researchers[15].

Legislation at this juncture would be highly premature especially as the publishing industry is moving fast to deliver solutions such as the one above via CrossRef or in the case of newspapers, the UK Guardian's Open Platform & 'Datastore' which allows users to download and use Guardian datasets. Successful TDM requires consent of rightsholders and access protocols and agreements are still needed for successful TDM even where exceptions exist.

Any exception for text and data mining, however carefully defined or limited, for example to non-commercial use, could effectively destroy the very primary market of the content that could be mined. Even if an exception were to be limited to non-commercial research, it is impossible adequately to delineate the boundaries between research and other activities and between non-commercial and commercial. Therefore the EPC is adamantly opposed to the introduction of a new exception in this field.

The focus of demands for an exception hitherto has been on the potential for research through automated text and data mining technologies of the world's corpus of academic and scientific journals. In our view this is "a snare and a delusion" perpetrated by those intent on gaining free access to the widest possible body of copyright works in the name of research, going way beyond scientific journals, to works of all published authors, as well as Europe's news media and entertainment. This would lead to an unjustified and unfair transfer of economic value to third-parties, e.g. tech companies and toolmakers for the cost of a single subscription, leading to under-investment in quality content.

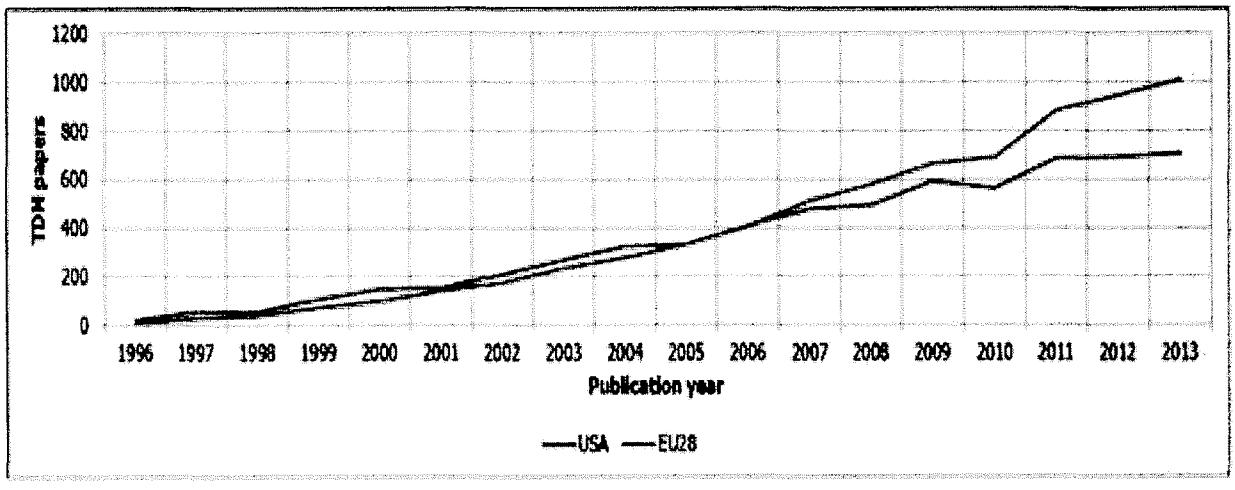
[15] CrossRef 's news release dates 29 May 2014:
http://www.crossref.org/01company/pr/news052914.html

The key challenge therefore is providing the right conditions for balancing (i) the desire of researchers and academics to have easy access to publishers' databases and materials for data mining for non-commercial research purposes within the scope of Article 5.3 (a) with (ii) the legitimate need for publishers safeguard their commercial interests by facilitating that that access in a licence-based, secure manner to ensure that they can effectively prevent unauthorised use outside the scope of that exception.

Whilst members of the research and academic community advocate a new exception to cover text and data mining, EPC members consider that there are real difficulties in achieving a clear definitions of key terms such as "data analysis" or "text and data mining" and "non-commercial.

As a result, EPC's reasons for questioning the need for an exception are that:-

- we have not seen evidence of a market failure as regards the mining of content within or beyond the field of scientific journals. Furthermore, the case for an exception has been made in sometimes emotive terms (about finding cures to fatal diseases) but on the basis of questionable and unsubstantiated evidence of its potential. *"When it comes to the deployment of TDM, there are worrying signs that European researchers may be falling behind, especially with regard to researchers in the United States."* (Report from EU Commission Expert Group, 2014)
- Fact: EU/US deployment was similar until 2007; EU28 started growing at a higher rate of 12.1% than USA (6.8%), (2007-2013 CAGR); EU28 publishing 1011 papers in 2013, vs 709 for the US (see graph below).



- our concerns about achieving a precise definition of the scope of any such exception, especially whether it would extend beyond mining of scientific journals, given that the 'mining' of content is an intrinsic feature of the Internet;

- the difficulty in adequately distinguishing between commercial and non-commercial use in this context;
- the increased risks of infringement arising from an exception – see below.

And most importantly, use for this purpose by a lawful user can be adequately covered by licence.

Moreover, an exception implies the copying of whole collections by a user with access, which increases the infringement risk, creating a major risk of abuse (e.g. the files shipped to Russia or China from where they could be made available with impunity, and difficulties to pursue the infringer). This would matter less if the scale of copying could be limited, but the point is that no limitation on the extent of copying is being accepted by advocates of the exception.

EPC members and publishers in the STM community are committed to playing their role and where needed to removing stumbling blocks in order to simplyfy the process; provide new technology standards and solutions; commonality in normalised formats and for content and data to sync (TDM services launched in May 2014 by CrossRef and project underway by DataCite); consistent licensing including sample terms, interoperable licensing and content negotiation terms and a facilitating collaboration of all in the information chain, to ensure combined, mutually beneficial solutions.

Solutions

EPC members recognise that data mining is part of the daily work of a researcher. The solution lies in a 'toolbox of solutions', using the appropriate platforms, technical infrastructure and standard licence terms to obviate the need for "case-by-case" negotiations.

EPC welcomes the text and data mining services launched by Crossref, a service which will be provided at no cost to the researcher.

Moreover, EPC members support the Statement of the International Association of Scientific, Technical and Medical Publishers (STM) issued on 13 November 2013 which can be found here. Details of a sample clause can be found here. This solution is also mirrored in 'Ten Pledges to bring more content online', which was an outcome of the Commission sponsored 'Licences for Europe Stakeholder Dialogue which can be found here "Easier text and data mining of subscription-based material for non-commercial researchers."

An 'exception plus' approach to licensing: in the context of licensing solutions, we recognise the need to make the licensing process as easy as possible. We therefore commend the commitments made by STM publishers the use of a sample clause for non-commercial text and data mining in scientific research, to develop the 'mine-ability of content and to develop the required platforms. In that statement, STM publishers have committed to move from granting TDM licences for non-commercial purpose on request to granting them by default in the form of a clause within their standard agreements with libraries. Thus, researchers will not even have to ask for the rights – they will be embedded by default in the contracts with the customer i.e. the library.

3. User group: B2B Users

3a) Aggregators/Service providers/Search engines

Service providers do face problems in clearing rights on a multi-territorial basis for pan European services, and media companies and publishers face problems regarding unauthorised use of their content through indexing making available of snippets and un-licenced use of entire articles from media and publishers' websites via hyperlinking on a commercial scale, as the distillation of articles, which may substitute for the original article and result in substantial loss.

Solutions

Clearing rights on a multi-territorial basis: Identifiers and interoperable databases will increasingly support new services aiming for multi-territorial offers: it will be easier to find out who owns what rights for which territory for example. In addition, pledge 3 in *'Ten pledges to bring more content online'* is a commitment that will help solve this issue. In the music sector, a new Directive has just been adopted on collective management of copyright and multi-territorial licensing of online music. See here.

Unauthorised use of content: in Part 2, we examine the case for exploring a new, limited neighbouring right modelled on the 'Leistungssschutzrecht für Presseverleger' law in Germany.

2b) Business users generally

Broadly speaking, businesses are able to obtain the rights they require under an increasingly wide range of licences available from publishers and collecting societies. However, there may be instances where businesses experience similar problems to

those referred to above by other user groups in discovering and clearing rights e.g. where they may want to re-use 3rd party content and incorporate into own products and services

Solutions

Solutions are similar to those above regarding automated rights managements as well as the continued innovation by publishers to offer their works under a broad range of licences, including uses without charge.

Our members are often at the forefront of business innovation. Alongside paid for and subscription services, our members take a liberal approach to their works and materials. They publish, broadcast, stream or syndicate. Many of our members offer their data under very liberal licensing terms. See, for example, Guardian's Open Platform & 'Datastore' which offers a number of tools to developers to access Guardian content and which allows users to download and use Guardian datasets.

2c) Access to events

An important part of the daily work in a news media company is to report on a great variety of events, such as pop concerts, art exhibitions, red carpet events and of course many sports events. Increasingly news media organisations face problems when accessing certain events due to imposed restrictions imposed by event organisers. Some event organisers have demanded a share of revenue from published accounts of their events; some others have attempted to charge journalists to cover their events; and some event organisers especially in the sports sector insist that journalists can only create content at their events under a license or "grant of rights".

Solutions

To ensure the ability of the media to inform accurately on sport and other public events, and therefore to ensure that the public have access to information and news about such events, it is important to avoid any extension of intellectual property rights to events organisers as requested by the sport event organisers.

Therefore the EPC, member of the News Media Coalition, oppose an invented 'sports copyright' or 'competitions organizers right' which could give the organisers of an event the ability to control commercial and editorial activities relating to the event. In this regard we draw your attention to the report published recently by Asser International Sports Law Centre and the Institute for Information Law of the University of Amsterdam, which can be found here.

EPC fully endorses the conclusions of the study that the case made by sports organisers for recognition of a 'sports organisers' right' is "not very strong" and that "the main concern of the sports organisers seems to relate to the lack of immediate and effective enforcement remedies, rather than to any real or imaginary gaps in substantive legal protection."

4. User Group: Editorial rooms, newspapers and magazines

Challenge or issue faced

In some Member States, difficulties are faced in exploiting the archives of publishers, as they may not have the necessary rights.

Solutions

Examples of potential solutions to be considered further are found in countries such as Finland where an extended collective license model has been introduced to facilitate publishers' online use for the exploitation of their own press/media archives. See presentation of the new sectorial ECL in Appendix IV.

5. User Group: Those with a disability

Challenge

There are undoubted challenges faced by this user group in being able to access digital content although publishers have been investing in voluntary solutions, including via ePub3 and voice-enabled services online.

Solutions

The Marrakech Treaty is a recent exemplar. It provides a legal framework to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled.

Many industry bodies are taking a lead. For instance, in the UK the Publishers Association's initiative, 'Accessible Publishing', has produced a set of best-practice guidelines to support publishers **world-wide** as they make books accessible to people with print impairment.

PART V: RECOMMENDATIONS

We have based our recommendations set out below on the '3 Digital Dlements' – a true partnership between copyright and technology to power and deliver practical and viable, user-relevant solutions.

EPC makes the following recommendations which are designed to help realise the full potential of the new media and publishing ecosystem and realise benefits at various levels of the value chain.

1. Recommendations necessary for the completion of the technical infrastructure and the Digital Content Market

Recommendation 1
Complete the data network with a focus on the Digital Rights Statement to fully reap the benefits of digital and the semantic web.

In order to accelerate the completion of the technical infrastructure, it is essential to implement the '10 Targets' set out by the Linked Content Coalition in Annex VI. Part of this will be done by relevant standards bodies and through the continuous work of the LCC but this will be more speedy and effective if supported by the European Commission and by WIPO.

Above all, identification of Rights is key to completing the data network. Many standard ID's already exist for different creative elements. Our vision and recommendation is to do this through Digital Rights Statements (DRS) of identity, rights and licenses.

Without DRSs, millions of "digital orphans" will continue to be crated daily. To have DRSs in place will also provide new commercial incentives for the design of tools, such as new DRS plug-ins and apps, which can be used easily at the point of creation via content management systems, mobile devices including cameras, and at the point of upload and entry to the networks.

To achieve this, the priorities are:

- Adopting cross-industry standards for all the required machine readable identifiers.
- Adopting cross-industry standards for interoperable metadata so that information moving from one machine can "understand" that data when translated by the other machine.
- Adopting cross-industry standard for Digital Rights Statements (DRSs) so that all the IDs that identify parties, works, rights etc. are fully searchable.
- A way of managing disputes about Rights Statements.

Translating these priorities into action will ensure that the media and publishing ecosystems fully reap the benefits of digital and the semantic web. This will not serve one part of the value chain but will bring benefit to all parties in the ecosystem from readers, to UGC contributors, to teachers, to freelance photographers, to search engines etc. Increased transparency, clarity, increased licensing possibilities, increased possibilities to remuneration and above all, easier access to content.

We call on the EU and member states to match the LCC's efforts by:

- establishing national or international competitions or calls for tenders to develop tools, technology and services to support the implementation of Digital Rights Statements;
- encouraging national or regional hubs, and provide projects to ensure interoperability between them; and
- designing or supporting initiatives to integrate "orphan works" and public domain registry services and databases with DRSs and the evolving Hub network.[16]

2. Recommendations necessary for the enabling copyright framework

While EPC believes strongly that technology is there to help copyright work on the web, it has become clear that in certain limited areas legislative changes may be required to avoid that technology diminishes the value of creation.

We have summarised our key recommendations concerning copyright made in Part 3, firstly those that require action (2-5), and second those that need to be closely monitored (6-8).

[16] See Part 2 ("Priorities for action to fill the missing links")

Recommendation 2
Legal clarification between hyperlinks and licensing terms

Legal clarification is needed about the relationship between hyperlinks and licence terms on the websites (or other platforms) to which they link. It must be clear that rights owners may by their licence terms to "restrict" access to content on an "open website" to a specific category of "the public" (e.g. users who visit the site directly), whether or not accompanied by technical protection measures.

Recommendation 3
Hyperlinking to illegal copies to be treated as infringements

Amendments to copyright law are necessary to treat as infringements those acts of making available of hyperlinks to copies which are clearly and obviously unlawfully obtained or obviously unlawfully made available to the public.

Recommendation 4
Fair framework for unlicensed use of snippets

Establish a fair framework to facilitate the making available to commercial users of snippets on a permissions- based system in partnership with news media organisations and their authors[17], and examine the case for a new limited neighbouring right modelled on the 'Leistungsschutzrecht für Presseverleger' law in Germany.[18]

Recommendation 5
Fair framework for unlicensed use of snippets

Machine readable rights information: It is essential that identifiers and associated rights information contained in standard formats benefit from legal protection. This is already the law under Article 7 of the InfoSoc Directive but is flouted constantly. As more and more content will be associated with identifiers and messaging the

[17] The fact that several European countries are taking action in this field is an indicator of the problem. For example, in Germany a legislative framework has been established to address this issue in the field of news media. In Spain a new legislative proposal announced in February 2014 will allow news media companies to be able to charge search engines for displaying copyrighted content

[18] See Part 4 ("User Group: Aggregators, Service Providers, Search engines") and Part 3 ("Unlicensed use of snippets")

rights data becomes an integral part of the protected work. Therefore intermediaries that wilfully ignore this rights data should not benefit from limitations of liability for infringement under either the eCommerce or Copyright directives.

Recommendation 6
Restrictive interpretation of the principle of exhaustion

This is an area where the digital world does not mimic the physical world. Whereas the re-sale of a physical object such as a book necessarily involves the removal of that object from the first owner, and the work it embodies, from the first owner that is not necessarily the case in the digital world. A digital copy may well remain with the first owner and it may be impossible to enforce a rule which requires the first owner to delete the original copy. The application of the concept of exhaustion can have significant and detrimental effect to the investments in new European content and therefore to the provision of diverse European contents such as novels, learning materials, even magazine and premium newspaper content.

Recommendation 7
Monitor deep framing practices

The uncertainty to whether deep framing is a reproduction is posing increasing problem. It replaces a visit to the original website and is more than providing a link. In our view an authorisation is necessary and we recommended the EC to monitor this issue closely.

Recommendation 8
Fair browsing

Whilst the general proposition that Internet browsing does not require a licence is reasonable, there remains a risk that an overbroad interpretation could mean that activities which ought properly to be licensable (e.g. the consumption of press cuttings) might cease to be so. EPC recommends keeping this issue under close review.

3. Recommendations for practical solutions

Recommendation 9
Improve the B2C digital experience for consumers and amateur creators

The following proposals will help to improve the consumer experience online: (i) tailor made solutions to allow access to content when abroad & (ii) promote UGC creation and uses through DRS (see recommendation #1).

Recommendation 10
Format, platform and rights data interoperability

In line with the 'Ten Pledges to bring more content online', we call on the European Commission and Member States to encourage increased 'interoperability' of content formats, platforms as well as rights data.[19]

Recommendation 11
Standard licensing terms for public institutions

We call on all interested parties to collaborate on the development and use of standard licensing terms to ease the procurement of works and materials by public institutions.[20]

Recommendation 12
Cross industry guidelines on permitted uses

For representatives of industry and relevant user groups, with government support, to develop relevant and practical cross-industry guidelines to explain to users in non-technical language issues such as what uses are permitted of works under copyright exceptions.

[19] See Part 4 ("User Groups: "B2C")
[20] See Part 4 (User Groups: "Public Libraries, Museums & Archives")

Recommendation 13
Toolbox of solutions for Text and Data Mining

We call for continuing work and collaboration between publishers and the research community to provide a 'toolbox of solutions' to facilitate text and data mining.[21] EPC welcomes the Text and Datamining Service launched by CrossRef providing free access to researchers.

Recommendation 14
Avoid unfair competition with public libraries

Careful reflection is needed to prevent public libraries using their public service mission to create unfair competition in the digital environment that would undermine the sustainability of publishers in the digital age.

[21] See Part 4 ("User Group: Researchers & Academics & Publishers)

Impact of key recommendations on the ecosystem

EPC believes that our recommendations will have an overall positive impact on the ecosystem as a whole, certain recommendations will have a direct impact on some parts of the ecosystem, while other parts will indirectly benefit from these. The table below attempts to illustrate this. However it is clear that Recommendation #1 is at the heart of a vibrant Digital Content Market, benefitting the whole value chain by facilitating access to content, facilitate the creation of new content, and licensing of content whether it is B2B or B2C. Likewise recommendation #10 on rights data interoperability will also have an impact on the whole value chain.

	Readers, viewers and other end-users	*UCG Users & creators*	*Newsrooms, Employees & freelancers*	*Aggregators, service providers, search engines*	*Other business users*	*Libraries, museums & archives*	*Academic institutions, researchers*	*Teachers & educational establishments*	*Disabled population*
R1									
R2									
R3									
R4									
R5									
R6									
R7									
R8									
R9									
R10									
R11									
R12									
R13									
R13									

Color Coding Eplanation:

Powered by technical infrastructure
Practical user-led solutions

Annexes

ANNEX I

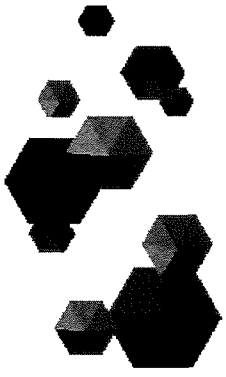
Data provided by Creative Media Business Alliance on the growth and availability of content online

- European readers can choose among 9 million book titles, 2.5 million of which are available in digital format.
- The music sector drives social networking and online engagement with 9 out of the 10 most "liked" people being artists.
- TV is at an all-time high as Europeans watch almost 4 hours of TV per day.
- Consumer spending on the more than 3,300 services has led to a growth of online video transactions by more than 2000".
- 100 million national, regional and local newspapers are sold each day in Europe.
- 360 million Europeans read magazines on a regular and consistent basis.
- Virtually all Science Technology and Medical journals are now available online. Researchers download almost 2.5 billion full text articles every year.

Source: CMBA

EPC European Publishers Council

CMBA Creative Media Business Alliance



CAPITALISING CULTURE TO CREATE GREATER CONSUMER CHOICE

The rich cultural landscape we experience today is a result of a decade of exceptional innovation and investment by creative and media businesses.

TEN YEARS OF UNPRECEDENTED INNOVATION, ENTREPRENEURIAL SPIRIT AND INVESTMENT.

The success of our media has been possible because creative and media companies embrace risk, change and adapt their business models to provide citizens with ever greater choice and diversity of services.

Since 2003, digital music experienced over 100 fold growth in the size of its online catalogue, and a tenfold increase in the number of services available to European citizens. Globally the music sector is 35% digital today. 20 MILLION paying subscribers to streaming services, and over 4 billion songs downloaded from other licensed services.

10 years ago, less than 5 million book titles were available to readers in Europe, now it is well over 8 million. This dramatic increase was supported by the development of the e-book market. 2 MILLION E-BOOKS are now available to European citizens.

Citizens today can enjoy films and television in more ways, on more devices than ever before. There are now over 3,000 on-demand audiovisual services available in Europe. Consumer spending on online video transactions has rocketed by more than 2000%.

Virtually all Science Technology and Medical journals are now available online.

Researchers download almost 2.5 BILLION full text articles every year.

The annual investment of Europe's largest commercial broadcasting groups into content comes to over Euro 15 billion.

Euro 41 MILLION per day equals the annual investment of Europe's largest commercial broadcasting groups.

91 MILLION national, regional and local newspapers are sold each day in Europe.

380 million Europeans read magazines on a regular and consistent basis.

A SUCCESS STORY FOR CONSUMER CHOICE.

European citizens are able to enjoy creativity in more ways and in better quality than ever before. We have moved from a standard definition, two dimensional world to one where we can receive and watch high definition and 3D content in our homes, on our devices and on the go.

Consumer choice is even broader when we add the large range of continuously changing offline choices, from cinemas to reading a print version of a newspaper or magazine, indulging in your favourite songs on CD or watching a DVD or Blu-ray, and reading a book, cover to cover.

More than half of tablet owners say they consume news on their tablet daily, and 30% say they spend more time with news than they did before purchasing the tablet. In 2011, accessing news was the third most popular activity on a tablet.

46 billion mobile apps were downloaded in 2012, taking the cumulative all-time total downloads since applications were first launched to 83 billion. Difficult to imagine as mobile apps only appeared five years ago.

Conditions for Success: a sustainable legal framework for continuous investment in consumer choice.

Take a moment to consider that the investment of creative genius and skill, time, money, and the heart to innovate and change to reach European audiences would have been unthinkable without one thing the creative and media business can rely on: a stable and sufficiently flexible EU Legal Framework to license this highly competitive market. Commercial and contractual freedom, anchored on the solid legal infrastructure of European intellectual property law, gave and gives our sectors the means to create media history.

CREATIVE MEDIA BUSINESS ALLIANCE

www.cmba-alliance.eu

Annex II

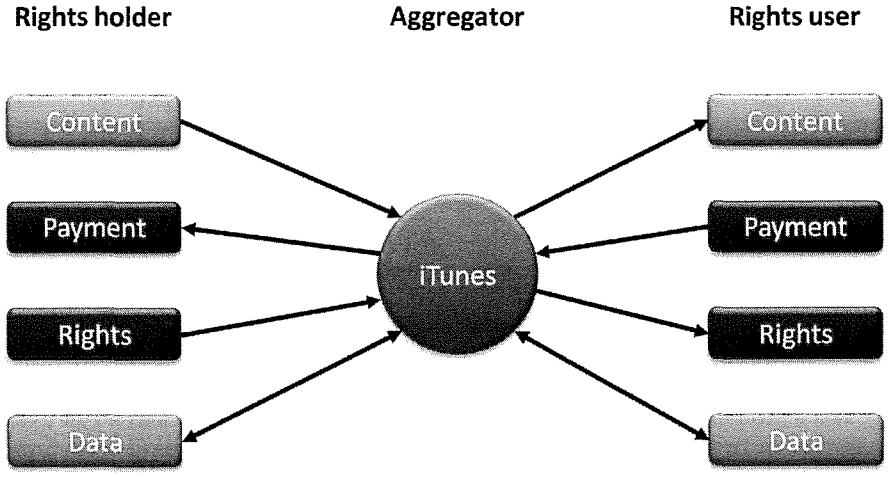
The Four Networks in the Digital Content Market

The Digital Content Market comprises four different networks (or supply chains) which exist for communicating different things:

i The **Content** Network: the movement of digital *content* from rightsholder to user.
ii The **Payment** Network: the movement of *money* from user to rightsholder.
iii The **Rights** Network: the granting of *rights*, as a result of laws, agreements or policies.
iv The **Data** Network: the movement of *data* around the other three networks.

These four networks frequently interact with one another.

- At one extreme the movements in all four networks are co-ordinated in a single process: for example, when buying and downloading an mp3 file from an e-commerce enabled site like iTunes or Amazon the movement of content, money, rights and data happens together.



- At the other extreme, such as for example a B2B "blanket" license for the use of content for broadcast, the movement of all four may happen at different times, and between different parties.

There may be any number of variations between these extremes.

Market inefficiencies arise when:

- One or more of the supply chains cannot support business models: for example where the Rights Network doesn't support cross-border trade, or the Data Network doesn't support the creation of multi-media content.

- The supply chains get out of synch with one another: for example, if content moves but the rights don't, or if the data doesn't account correctly for what has happened in any of the other networks, or if money and rights have moved but content hasn't been delivered.
- rightsholders and/or their creations or the right to use them cannot easily be identified by the network : for example" orphan works". Increasingly, identification needs to be automated (by a computer system) rather than interpreted by a human being.

Existing networks like retail payments and mobile telephony demonstrate the ability to manage large quantities of data to a very granular level on an automated basis efficiently and globally. There is no reason why rights data, or at least the data relating to high volume, low value rights, cannot be managed in the same way.

Source: Rightscom

Annex III

Summary of the work of the Linked Content Coalition ("LCC")

The LCC was initiated by the EPC, based on the EPC's "Big Idea for the Digital Agenda" (The Answer to the Machine is in the Machine), which was selected by the European Commission in a competition launched by Commissioner Neelie Kroes in October 2010.

The Big Idea itself was based on the EPC's Copyright Vision Document of April 2010.

The LCC was established in January 2012, with the EPC as a driving force, to develop a common, non-proprietary standards framework for the expression and management of rights and licensing across all media types.

The LCC is global in scope and participation. Over 40 partners come from all media and creative industries and all parts of the digital content supply chain: EMI Music Publishing, RTL Group, ITV, IFPI, Microsoft, Pearson, Elsevier and Axel Springer.

Phase 1 of the LCC (January 2012 to April 2013) documented the generic metadata, messaging and identifier requirements of rights and of licensing.

The LCC Framework and Best Practice Guidelines were published 8 April 2013.

The work of the LCC changed demonstrably the direction of policy development at EU level by shifting the focus from reforming copyright law to management of rights. Often cited in Commission policy documents LCC was a key factor in the decision to establish the 9 month Licences for Europe programme during 2013.

Upon publication of the LCC Framework, the original LCC Project Board was replaced by a new Governing Body; a legal entity comprising the main media standards bodies and associated partners.

The new LCC will oversee further technical development work focusing on eLearning, digital content identification and direct-to-web multi-media publishing. This body will be supported by a wider stakeholder Forum of the LCC which will be launched in Q4 of 2014.

Phase 2 of the LCC (kicked off in May 2013) involves two operational implementations:

a) Via an EU co-funded project run by a multimedia, multinational consortium called "Rights Data Integration (RDI)" starting Q 4 2013

b) The UK Copyright Hub, where the LCC technical framework will be used to design the Hub.

The LCC Rights Reference Model (RRM) is part of the innovative "best practice" technical framework being developed by the LCC to support automated access to content rights and rights data across the internet. The RRM covers all types of media, usage and content, whether text, image, sound or audio-visual, and any business model, including free use.

The RRM is expected to have two main uses. One is as a "hub", to enable information held in many different forms to be converted into a common language. There will never be a single "rights language" to suit everyone, and the RRM is designed so that any existing language or message whether it is a standard like ODRL, RightsML, XRML, PLUS or the rights messages in ONIX and DDEX, or one of the thousands of "proprietary" forms used by individual companies - can be converted to RRM without losing any of its meaning.

The next big LCC project - the "RDI" project uses the RRM in this way as the design for its hub. The second use of the RRM is as the basis for developing multimedia rights systems of all kinds. This includes new messages and languages where needed. There is already version of the RRM available in XML (the "Common Rights Format" or CRF). though this is deliberately "rich" schema for use in hub processing. One of the RRM's features is that it can be "flattened" in a number of ways so that any particular application does not need to be any more complex than necessary.

The RRM will be used in this way in the LCC's initiative for capturing rights data "at the point of entry" of content on the Web. Apart from its inbuilt ability for "flattening and expanding", the RRM has several other unique features. One is that it has a single "Right" entity, through which permissions and entitlements of all kinds (including ownership claims and permissions) may be expressed to any level of detail with their associated prohibitions and conditions. This provides a breadth and simplicity to the model that other rights-based models typically lack.

Technically, the RRM is a formal, abstract, general and extensible reference data model that identifies eight types of entity, their core attributes and the relationships between them. It can be expressed or implemented in many different syntactic forms (such as a relational database schema, an object model, an RDF or XML schema or a formal ontology) without changing its meaning.

Annex IV

Nordic ECL model – case study in Finland: Publishers' and Broadcasters' Archive Extended Collective License

1. New sectorial Extended Collective License to facilitate licensing and online exploitation of Publishers' and Broadcasters' own archives

- This **new sectorial Extended Collective License ("ECL")** aims to **facilitate acquisition/in-licensing of "missing online rights"** by Publisher/Broadcaster to Publisher's/Broadcaster's own old publications/programmes (i.e. productions).

- New ECL License will allow Publishers and Broadcasters to **use their own archives** in online environment, creating a framework for licensing.

- Background: a Copyright Committee was appointed by the Ministry of Culture to prepare during 2010–2011 initiatives for a (partial) renewal of copyright legislation. **All stakeholders** were represented in the Committee. The Copyright Committee's **unanimous recommendation for a** Publishers' and Broadcasters' Archive ECL was handed to Ministry of Culture in May 2011

- The Publishers' and Broadcasters' Archive ECL came into force in Copyright Act in Finland on 1 November 2013

- Next step is to start **discussions on the scope** of ECL License with the representative CMO as well as with the rightholders and publishers/broadcasters.

2. Scope of the ECL

The ECL covers the newspapers and magazines published before **1 January 1999**, and programmes broadcasted before **1 January 2002**.

- In today's digital environment **direct rights acquisition/in-licensing is key**: "Today's rights" have to be acquired directly!

Author/rightsholder has an **opt-out veto right** to prohibit the use of his/her/its individual work(s).

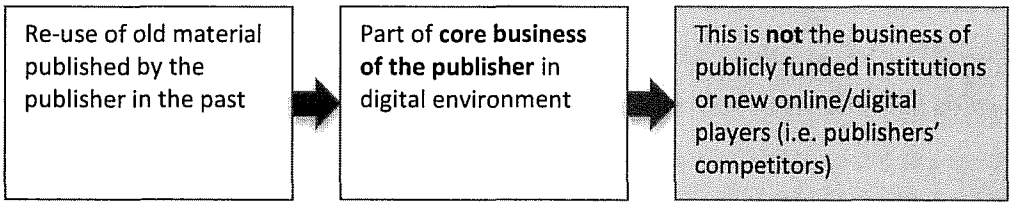
- The ECL is not a tool to produce collections of works based only on the works by a single author, i.e. it is not a tool allow production of online comics or short story collections based on single author's works.

3. Benefits of the Archive ECL: it helps publishers to contribute to opening of their archives to the public

- Increasing **digital demand** for old newspapers' and magazines' articles and other published works

- Old newspapers' and magazines' content can play an important role in online service and digital product development Tablets and other digital devices & platforms

- Old content could be provided to the public by the publisher for example as
  1. background material for current news and other digital articles;
  2. part of new online services; and/or
  3. whole publications



- Publishers do not always have online copyright to content of their older publications → The 'Archive ECL' is a model offering a **solution** for publishers to "acquire missing online copyrights".

  ➔ Publishers should not be put in a situation where they have to compete with their own content investment

4. Why a Publishers' and Broadcasters' Archive ECL?

- The value of the publisher's (and national broadcaster's) archive (i.e. repertoires, back catalogues) consists of a great number of collections of works (i.e. old newspapers, magazines, programmes). It is not based on individual works as such.

- As to the individual works, which are included e.g. in one newspaper, the costs of acquiring the missing online rights directly from the original author would exceed the economic benefit to be gained from their re-use.

- Points to take into account, underpinning the rationale for the new sectorial ECL:

    - The publisher has taken the business risk and made major investments in compiling, marketing and publishing publications
    - The publisher contributes in key in building up publication's brand, reputation and reliability
    - The publishers has the skills, experience, know-how and readiness to provide the public with professional content in attractive and interesting format, regardless of distribution channel
    - The publishers carries liability for the published content with the Editor-in-chief
    - The publisher as the assignee, is the rights holder of a compiled work
    - The publisher Is the original rightsholder on the basis of database right

Source: EPC Member, Sanoma, May 2014

Annex V

Examples of licensing solutions from Pearson plc

"In our K12 market, we provide **ActiveTeach**, a front-of-class online teaching tool that teachers are able to use through white boards to interact with the learning resources they might be using. Teachers and students can annotate and draw on images and content from the shared textbook, for instance. See here.

ActiveLearn Go allows learners to download core learning content straight to their personal mobile device, with added tests, multimedia and case studies to support learning. The product is suitable for vocational learners, whether studying at college, in work-based training or learning from home.
http://www.activelearngo.co.uk/

The Financial Times has recently released a new licence allowing its content to be used specifically for educational and teaching purposes. Through an API, students have free access to FT articles to enhance their learning resources. The FT also offers a royalty free licence for educational customers to reuse FT content.

In the Higher Education market, through Pearson Learning Solutions we can customise ebooks for instructors, taking chapters and relevant texts from a range of different resources to create a bespoke learning product for students. We have provided customised ebooks for a range of Universities. One customised ebook acts as an accessible and affordable alternative to the usual habit of students buying a range of expensive books that they often won't read. Use of the customised ebook has also resulted in students meeting a key learning outcome of improved engagement with reading matter, independently outside of the lecture hall.

Pearson's **MyLabs** and Mastering tools integrate with textbooks and learning resources to offer homework assignments, tests and extra activities between classes to promote better understanding of the subject matter. The tools also integrate with virtual learning environments, such as those offered by Blackboard Learn."

ANNEX VI

The LCC Manifesto

Version 1.0, April 2014

The Linked Content Coalition (LCC) is a not-for-profit global consortium of standards bodies and registries. LCC members are organizations who create and manage data standards associated with content of one or more types, particularly for identifiers, metadata and messaging.

The purpose of the LCC is to facilitate and expand the legitimate use of content in the digital network through the effective use of interoperable identifiers and metadata.

The LCC supports interoperability between the computer systems of any and all legitimate participants in the digital network, including creators, rightsholders, publishers, aggregators, rights and content exchanges, retailers, consumers, cultural institutions (including libraries, museums and archives) and their agents and associations. Participation may be on any scale, from that of private individuals to multi-national organizations.

The LCC facilitates and support the legitimate use of copyright, public domain and "orphan" works, under any business model, including "free use" where enabled by law or rightsholder choice.

LCC projects do not compete with the activities of its members, but deal with matters of common interest across existing standards bodies. These can include

- interoperability between existing standards
- the development of specific all-media standards or tools, and
- collective input to, and collaboration with, related activities in other domains.

The LCC has set out **Ten targets for the rights data network** which describe those developments in identifier and metadata interoperability which it believes will best ensure that the digital network operates in future as effectively as possible. LCC projects will general relate to the furtherance of one or more of these Targets, and LCC will support initiatives by other organizations which do the same.

The LCC owns and maintains **LCC specifications**[22] and makes these generally available under free use licensing arrangements.

The LCC is partnered with the **LCC Forum**, whose members are organizations and individuals who are not standards bodies but wish to show their support for the goals of the LCC, and where appropriate participate in its activities.

Membership of the LCC or the LCC Forum indicates support for LCC principles in general as expressed in this manifesto, but member organizations are not required to make a commitment to support or implement any particular LCC standard or specifications.

[22] Currently these comprise the *LCC Rights Reference Model (RRM)*, the *Common Rights Format (CRF)* XML schema, and the two 'best practise' guides *Principles of Identification* and *Principles of Messaging*.

inked ontent oalition

Ten targets for the rights data network

Version 1.0, April 2014

The effective operation of the digital content market relies on the establishment of a global identifier network (described here as the **rights data network**) in which parties, creations and rights are identified and linked in the internet in a way that enables the automated discovery of rightsholdings, and the licensing and reporting of usage.

This may be described as a **network of authoritative linked data** in which

- all key entities in the rights data network have standard, resolvable identifiers;
- these identifiers are linked in standard ways; and
- the management of the identifiers and links is under registry procedures[23] which ensure that they are under appropriate authority, and that parties with a legitimate interest in an entity can make sure that interest is correctly and publicly recognised.

The goal of this is to enable the widest possible access to appropriate rights information, and the widespread automation of rights trading, whether for commercial or "free use".

The Linked Content Coalition has identified what it understands to be essential elements of this network, and sets out below ten targets for data standards which, if fully implemented, would provide the necessary infrastructure. Most, though not all, of these are partly in place at the beginning of 2014. The primary role of the LCC is to promote their implementation as fully as possible.

The targets here are focussed on the *declaration* (or publication) of data in the network: there is arguably a need for parallel targets for the *consumption* and use of the data, though solutions there are inherently more likely to be technology- and market-driven. The ten LCC targets do not address standards of usage reporting or financial reporting.

LCC's ten targets

Terms with initial capital letters (eg "Party", "Creation") are used as defined in the LCC Rights Reference Model.

1. **A global Party ID "hub".** Rightsholders and "asserters" should be identified with an identifier linked to the ISNI "hub".

[23] "Registry procedures" does not necessarily mean that there have to be managed "registry databases", although of course these play a major role. In some cases the procedure may be a standard way of declaring data within a distributed network, as is described in target 8, the **Digital Rightsholder Statement ("DRS").**

A Party is a person or an organization (this includes different "public identities" of Parties, such as pseudonyms adopted by creators). Unambiguous identification of Rightsholders and those who assert Rights declarations is the most basic building block of the rights data network. The ISNI (International Standard Name Identifier) is a relatively new ISO standard identifier which can be used as an ID in its own right, but whose main role is to be a global "hub" where different IDs for the same party can be linked together so that they can be automatically matched to or substituted for one another in systems when necessary. ISNI does not therefore *replace* other IDs, but enables them to interoperate with one another.

2. **Creation IDs for all.** Creations of all types should be identified to any required level of granularity.

   Public identifiers, supported by minimum metadata, are essential for Creations of all types in which Rights are asserted (physical and abstract works as well as digital, because Rights in all these are assigned in the digital network). Identifiers are needed at whatever level of granularity (sets, parts, fragments or derivations) specific Rights are assigned for. Not all types of Creation have public ID standards, and those which do are not all as fully implemented as needed.

3. **Right IDs.** Content rights should be identified distinct from, but linked to, the Creations to which they relate.

   A "Right ID" which identifies a Right as a distinct data entity, separate from the Creation(s) it applies to and the agreements or policies which bring it into existence, is the most significant gap in the network's data. Because Rights data is changeable, it cannot be reliably embedded into digital content itself, but should be accessible separately via linked identifiers. The LCC Rights Reference Model supports this by defining a Right as a distinct data entity.

4. **Resolvable IDs.** Identifiers should have a URI form so that where they may be persistently and predictably resolved to multiple services within the internet.

   A resolvable identifier is one that enables a system to locate the identified resource, or some information about it, such as metadata or a service related to it, elsewhere in the network. URI-based resolution requires both a URI format for the identifier and an implementation of suitable protocols (such as http or Handle). Some identifiers already have a URI form, but many standard IDs do not yet have a URI expression, and this is the scope of this target.

5. **Linked IDs.** "Cross-standard" links between identifiers should use interoperable terms and be authorised by interested Parties at both ends of the link.

   Where one Creation (for example, a sound recording identified by an ISRC) has a dependent relationship with another (for example, a musical work which it contains, identified by an ISWC) then the vocabulary term describing that relationship should be standardised in some public schema, and it should be

possible for Creators or Rightsholders of either of the identified Creations to agree or dispute the validity of the link under some registry procedure.

6. **Interoperable metadata.** Standard content and rights metadata schemas and vocabularies should have authorised, public mappings which enable terms and data to be automatically transformed from one standard into another.
   As with other identifiers[24], it is neither possible nor necessary for everyone to use the same schemas and terms, although the more common usage there is, the better. What is needed is for authoritative mappings (authorised by those who govern the schemas) available as services supporting automated "translation" of metadata.

7. **Provenance of Rights data.** The provenance ("asserter") of Rights declarations should be made explicit.
   In a distributed data network like the internet, the provenance of Rights declarations must be explicit if systems or users are to be able to trust it (or not). The asserter of a statement of Right may or may not be the same Party as the rightsholder. Without the ability to identify the asserter of a Right (with or via an ISNI), there is no basis for secure automated identification of Rights in the network, or for the identification and management of conflicts (see target 9).

8. **Digital Rightsholder Statement ("DRS").** Anyone should be able to make standardised, machine-interpretable public statements about rightsholdings in Creations.
   Using the elements described in 1-7 above, rightsholders and their agents require a means by which any Party can simply identify and describe themselves, their content and their rightsholdings on the Web or in other network environment. This is especially useful for the huge volume of "direct-to-Web" publishing which now takes place, but can be applied by anyone. Such a DRS standard should be built into services which support the publication and management of content and related Intellectual property in the network.

9. **Conflict management.** Conflicts between public Rights declarations should be automatically identifiable so that their resolution can be managed.
   Conflict and dispute management has always been an important task for CMOs (collective rights management organizations) because they receive conflicting rights claims from different Parties. As Rights data becomes more publicly accessible within the network, the same issues occur, but will be on a larger scale and not always under control of a single organization. Standard ways are needed of identifying, reporting and tracking these.

[24] Note that terms in controlled vocabularies are identifiers, as they are unique names within their domain and type. When expressed as URIs they just become more identifiers in linked data.

10. **Linked fingerprints.** Where digital "fingerprints" or embedded "watermarks" exist, they should be mapped to registered Creation identifiers.

    Proprietary digital content recognition systems[25] provide the means for a variety of functions, including the tracking of digital usage. Linking the fingerprints created by these systems to registered Creation identifiers ensures that such functions can be fully integrated with the rights data network.

[25] For example, proprietary systems such as Content ID (video), PicScout (images), Soundmouse (audio) and Digimarc Guardian (text)

Annex VII

The legal status of rights management information

It is proposed that the Copyright Designs and Patents Act 1988 be amended by inserting after the existing section 296ZG on "Rights Management Information", a new section as follows:-

296ZH Effect of electronic rights management information when material gathered by an automated process

(1) This section applies where electronic rights management information is associated with a copy of a copyright work, or appears in connection with the communication to the public of a copyright work, and a person (F) in the course of a business makes a copy of or performs any other restricted act in relation to that work by an automated process.

(2) If the conditions in subsection (3) are satisfied, F is deemed to have notice of the contents of that electronic rights management information ("the information") for all purposes relating to his further use of, or access to, the copyright work.

(3) Those conditions are that:

(a) it is reasonably practicable for F to instruct the equipment or software which conducts the automated process to recognise, read and interpret the information;

(b) the meaning of the information may be ascertained from published standards which F knows about or ought to know about;

(c) the meaning of the information is sufficiently clear that it is reasonably practicable to instruct F's equipment or software to comply with any restrictions contained in the information regarding the further use of, or access to, the copyright work.

(4) Where, apart from this section, F would be regarded in law as having notice of any of the information, nothing in this section prevents F from having such notice.

(5) Subsections (1) to (4), and any other provisions of this Act as it has effect for the purposes of those subsections, apply, with any necessary adaptations, to rights in performances, publication right and database right.

(6) Subsection 296ZG(7) (definition of certain expressions) extends to this

section.

EXPLANATORY NOTES:

1. Section 296ZG of the Act (text attached as Appendix) was inserted by the Copyright and Related Rights Regulations 2003 in order to give effect to Article 7 of Directive 2001/29/EC on copyright and related rights in the information society. Article 7 of the Directive in turn reflects the provisions of Article 12 of the WIPO Copyright Treaty and Article 19 of the WIPO Performances and Phonograms Treaty, as well as extending similar protection to databases which are protected by the EC's sui generis database right.

2. Section 296ZG provides protection for electronic rights management information, by giving a cause of action to rights owners when such information is removed or altered by a third party without authority, provided that the third party has the necessary mental element. However, neither section 296ZG nor the Directive nor the WIPO Treaties specify what is the legal effect, if any, of electronic rights information attached to or associated with the work or other protected subject matter. In these circumstances it is a matter for national law to determine the effect of that information in terms of e.g. any restrictions which it may impose on the scope of a licence under relevant right.

3. The proposed amendment seeks to deal with the specific problem which arises when copies of works or other subject matter are gathered by an automated process. It has particular relevance to the actions of search engines and other operators who 'spider' the World-wide web. Because copies are gathered and often further stored or processed by an automated process, no human mind will normally read rights management information which is associated with or embedded in the protected subject matter. The law is presently unclear about the circumstances in which the operator of the automated process will be deemed to have rights management information drawn to his attention.

4. Therefore the amendment seeks to provide certainty in this regard. The amendment does *not* expand the scope of any rights belonging to the copyright owner or other right-holder; a person gathering materials is free to disregard any restrictions which may be communicated by means of rights management information if, for example, the acts he is carrying

out are protected by a fair dealing defence or for any other reason do not fall within the scope of the copyright or other right.

5. Subsection (1) makes it clear that the effects of the new section are restricted to persons who gather or access copyright or other protected materials in the course of a business. Thus, the circumstances in which consumers

might be affected by any restrictions in electronic rights management information are outside the scope of the proposed new section and remain governed by the general law.

EPC European Publishers Council

ANNEX VIII

Members of the European Publishers Council

Chairman:

Mr. **Francisco Pinto Balsemão,** *Chairman, Impresa, Portugal*

Members:

Dr. **Carlo de Benedetti,** *Chairman, Gruppo Editoriale L'Espresso, Italy*

Mr. **Oscar Bronner,** *Publisher & Editor in Chief, Der Standard, Austria*

Dr. **Hubert Burda,** *Chairman, Burda Media, Germany*

Mr. **Juan Luis Cebrian,** *Executive Chairman and Editor-in-Chief, Groupo Prisa, Spain*

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Dr. **Mathias Döpfner,** *CEO, Axel Springer AG, Germany*

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