

Authors' Rights in the Digital World

New notions of intellectual
property, copyright, and
authors' rights

Access to the digital book –
challenges and opportunities
for authors

Activities and perspectives
at the policy level

Proceedings of the
5th European Conference
of the European
Writers' Council EWC
Brussels, April 2010



Authors' Rights in the Digital World

*New notions of intellectual property,
copyright, and authors' rights*

*Access to the digital book – challenges
and opportunities for authors*

Activities and perspectives at the policy level

Proceedings of the 5th European Conference
of the European Writers' Council EWC
Brussels, April 2010

Organized by The European Writers' Council EWC
Anna Dünnebier, Vice-President
Myriam Diocaretz, Secretary-General



We gratefully acknowledge the support
granted by MEP Helga Trüpel, Group of
the Greens/European Free Alliance



The Greens | EFA
in the European Parliament

and the European Commission DG EAC



*EWC activities are funded with support from the European Commission.
This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of
the information contained therein.*

The European Writers' Council EWC is the European network of writers' and literary translators' national and trans-national associations. Founded first in 1977 in Munich and established as an 'association internationale sans but lucratif' (AISBL) in Belgium in 2006, EWC today gathers 60 members in 33 countries across Europe.

© by the authors
Edited by EWC, Anna Dünnebieer
Printed: Raiffeisendruckerei GmbH, Neuwied 2010



The European Writer
ISSN: 1560-4217

Foreword

Will a young person, who is used to reading short blogs and to writing Twitter texts with no more than 140 characters, still be capable or have pleasure in reading a thousand–pages novel by Gabriel García Márquez or Ingo Schulze? Will in the contrary a young person who has read and appreciated a personal blog of an author go and buy one of his or her books to read more of this interesting writer? Will the exchange of opinions on books between users in the internet add to the pleasure of reading?

Already the concept of reading and writing has changed a lot in the digital age. Books can be looked through and bought online, huge digital libraries are being built up, the e–book market is growing. Scientific publication is for the greater part online. Authors communicate with their readers via online platforms.

Will the concept of moral rights and royalties survive? Users expect the internet not only to be free, but also for free. Authors´ texts are used without their consent. The copyright is regarded outdated by many. Piracy is an everyday phenomenon, threatening not only authors, but the whole creative industry.

What can we authors do to protect our rights in this changing world? Who are our allies? What can politicians do to guarantee the future of creation?

Important decisions will be made this year and in the years to come at EU level. So it was the right moment to invite in April 2010 authors from 35 countries, literary translators, other creators like visual artists and journalists, legal experts and members of the European Parliament and Commission, to discuss the issue of authors´ rights in the digital world. In this documentation we present to you the fruitful contributions of this conference and hope that they will be part of the ongoing discussions and decisions.

We thank all the participants and especially MEP Helga Trüpel who hosted our conference in the Parliament building.

Anna Dünnebier

Vice–President EWC (on behalf of the organizers)



*The European Writers' Council presents its
5th European Creators' Conference*

“Authors’ Rights in the Digital World”

Thursday, 15 April 2010

European Parliament, ROOM P7C050

Altiero Spinelli Building – 60, rue Wiertz / Wiertzstraat 60, Brussels

AGENDA

8:30–9:30 Registration/Accreditation

9:30–10:45 Opening

Welcome by **Helga Trüpel**, host, Member of the European Parliament, Vice-Chairwoman, Committee on Culture and Education, and **Pirjo Hiidenmaa**, EWC President; **Vladimir Šucha**, Director, Directorate Culture and Communication, DG Education and Culture European Commission; Keynote: **Dulce Maria Cardoso**, Winner of the 2009 EU Literary Prize for Portugal

10:45–11:15 Coffee break

11:15–12:30 Panel 1

New notions of “intellectual property”, copyright and authors’ rights
Copyright and the Digital – New ways of creating and publishing –
Alternatives to piracy – Consumers’ and authors’ needs.

Moderator/Rapporteur: **Nicole Pfister-Fetz**, Autorinnen und Autoren der Schweiz – AdS, Switzerland; **Dr. Lucie Guibault**, Institute for Information Law,

University of Amsterdam, The Netherlands; **Alain Absire**, novelist, President of the Société des Gens de Lettres – SGDL, France; **Hanna Harvima**, Policy Officer – UNI MEI, Brussels; **Oliver Money-Kyrle**, Assistant General Secretary, European Federation of Journalists – IFJ/EFJ

12:30–14:00 **LUNCH**

14:00–15:15 **Panel 2**

Access to the digital book: Challenges and opportunities for authors

Digital libraries – New business models – An enhanced role for collecting societies

Moderator/Rapporteur: **Trond Andreassen**, author, General Secretary, The Norwegian Non-fiction Writers and Translators Association, former EWC president, Norway; **Rainer Just**, VG Wort, Germany; **Carola Streul**, Secretary-General, European Visual Artists – EVA, Brussels; **Mette Møller**, Attorney-at-law, General Secretary, Norwegian Authors' Union – DnF, Norway; **Lidia Joanna Geringer de Oedenberg**, Poland, Member of the European Parliament, S&D, Committee on Legal Affairs; **Tilman Lüder**, Head of Unit, Copyright, DG Internal Market and Services, European Commission

15:15–15:45 **Coffee break**

15:45–17:15 **Panel 3**

Activities and perspectives at the policy level

The creators' indispensable role and contribution to the development of Europe's educational systems and the knowledge-based economy – Creative industries and creators' rights – European policies to ensure the survival of creators and creativity

Moderator/Rapporteur: **Pirjo Hiidenmaa**; **Prof. Dr. Matthias Leistner**, Chair in Intellectual Property and Competition Law, University of Bonn, Germany; **Maureen Duffy**, novelist, former EWC President, United Kingdom; **Xavier Troussard**, Head of Unit, Culture Policy and Intercultural Dialogue, Directorate-General for Education and Culture, European Commission

17:15–18:00 **Conclusion**

Conclusions & Recommendations to the European Union Institutions

Rapporteurs: **Nicole Pfister-Fetz**, **Trond Andreassen** and **Pirjo Hiidenmaa**.

Concluding Remarks: Helga Trüpel

Helga Trüpel

Member of European Parliament, first Vice-Chairwoman,
Committee on Culture and Education

Welcome

Ladies and gentlemen, dear friends,

I wish you a very warm welcome today to this very important conference of the European Writers' Council. I am happy to have you here and to host this conference.

For me it is crucial to have a very open debate on copyright in the digital age, because it is indeed a very important issue and it is about the fundamental values of our European societies and of course it is a global issue as well.

My policy is to maintain copyright and to find fair solutions between easy access to the internet for users and appropriate and fair remuneration of authors and artists and all producers of creative content.

In order to maintain creativity and cultural diversity, we need an approach which I call: DIGITAL RIGHTS' FAIR TRADE. As in other fields of politics I do favour those approaches of "fair trade" in order to balance different interests.

To be very frank, I do not like the pirates' approach to think that culture should be for free. That would destroy cultural richness, cultural diversity and quality content, and authors and producers could no longer make a living out of their works. But that they can do this, is crucial. Producers of creative content are regarded and should be regarded to be at the origin of the cultural value chain. They are at the heart of creativity, and therefore the information and knowledge society, which we want to build up, depends on them.

Therefore I want to raise awareness that we have to change contract law in order to put producers of creative content in a better position. That means we have to stop "buy-out contracts".

I think meanwhile that a legally based cultural flatrate cannot solve

the problems. What we need are new business models, new legal offers in the digital environment with micropayments, or maybe – market based–flatrates for certain data–packages. If there are flatrates, they have to be market–based. But the main message is: We have to pay for cultural content. Free and easy access does not mean: For free. So we need this general political debate that we have to pay for creative content.

Even Yaron Larnier, the former guru of virtual reality, New York based professor at Columbia University, who was defending the concept of free culture for a lot of years, now in his new book argues that the “digital Maoism” should be over.

After all the debates we had in recent years and after all the troubles and conflicts I hope that we have a window of opportunity now to make clear that we want easy access, open culture, but that we have to pay for it. Therefore I come back to the slogan “digital rights fair trade”.

I wish us a successful conference, a nice day in the European Parliament, and I hope we will have a common success.

Pirjo Hiidenmaa

EWC President

Welcome

There are three concepts that are of great value for us: *author*, *literature* and *author's rights*. In the last years, there has been a strong tendency to replace these with competing concepts: *content producer*, *digital publishing* (or *e-book* etc.) and *consumers' rights*.

Author is a creative person. She or he needs time to write – create – her or his works. Authors are professional and often specialized writers who develop their skills. They are not – and they should not be – starving romantic caricatures with their painful inspirations.

Authors are the pillars of the knowledge-based society. We need people who can dedicate their time and competence in story-telling and exposing knowledge. Without authors there would not be novels and escapism, descriptions of alternative realities, debate books and social criticism, analysis of reality, research and education. Neither would there be translations.

Authors are responsible for their work. They deserve good working conditions and fair remuneration. The utterance “content-producer” is pejorative. It changes the professional writers to workers in the industrial chain.

Literature is much more than the platform or the concrete object which carries the text. Platforms have change and they keep changing, from papyrus to paper and to digital documents. The way of writing and producing the books or copies may change but that does not change the value of the work.

Literature is a large phenomenon, essential to all communities. It tells our past and it makes our future. It changes our attitudes and gives us fresh knowledge. There are several genres and several ways to create works and several functions that literature serves. As individuals, we can develop ourselves by means of the whole cultural heritage that is built on books and literature. The same is true of communities and

societies.

Authors' rights are for authors. They make it possible to create new works and disseminate the works to the benefit of the humankind. If we forget authors' rights and underline only the readers' – or with the contemporary jargon: consumers' – access, we might harm the welfare and growth of the whole culture. Who would write new books? So, the authors' rights are for readers, too.

The world is changing. We are facing technology that we could not imagine some years or decades ago. We can see new literary genres and new ways to use the language. Ways of writing and procedures of publishing are rapidly changing. And so on. All we can see, is the change and acceleration of changes.

The change is not the whole truth. Much is as before: the exquisiteness of books and reading, the flow of ideas and literature that makes the world rich, and the work of authors that needs to be guaranteed and protected.

I wish you all a rich and fruitful conference!

Vladimír Šucha

Director, Directorate Culture and Communication,
DG Education and Culture European Commission

Authors' Rights in the Digital Worlds

I remember sending my first e-mail in 1992. Then in the mid nineties, when we were doing some computer calculations, we left our computers overnight for 12, 14 hours to finalize them. Doing this today takes a few milliseconds. Why do I mention this? I want to illustrate the fundamental change which we are facing now, a fundamental change of technology development. If you look to the number of the technological developments and scientific discoveries in the past 300 years, you see that the curve is very flat, in spite of the industrial revolution during this period. If you come to the 20th century, this curve starts to become extremely steep, almost exponential. But for the last two decades, we cannot have a curve, it is simply a vertical!

Yes, we are facing a profound paradigmatic change triggered by the revolutionary technological development. The digital age is bringing completely new qualities to our life. The change brings positive, negative, and also unknown elements; as always in the history of a mankind. We have to find the answers to these challenges. We have to be flexible to adapt ourselves to the new realities.

A fantastic access to culture, democratic access to knowledge, to the content is clearly linked with the digital shift. A large access is, at the same time, removing more and more the borders between the culture and the economy. The dual character of the culture is clearer. The content has an important economic value. The content is an integral part of the chain of the cultural and creative economy. The authors are the content. They must be fully integrated in the chain and must take full and fair benefit out of it.

To make the best out of the potential of the creative content in the economy, the Commission is finalizing, in these days, a "Green Paper on Cultural and Creative Industries". The Green Paper is highlighting the need to put the right enablers in place. It means to increase the

capacity to experiment, innovate and succeed as entrepreneurs. The easier access to funding, the right mix of skills as well as the friendly local and regional environment, and a stronger global presence are key elements of the success. The document also aims to focus the attention on the “spill-over effects” of the cultural and creative industry. The attractive education, the environment conducive for the innovations, the new skills, the capacity to regenerate on the basis of the local content, the capacity to create an inclusive society are all features closely linked and triggered by the creative industries.

I fully agree with Ms. Trüpel that the fair remuneration of the source of the content is a must. It should be recognized by everybody. However to find the solution is not a trivial task. We have to find the right business models; we have to find the answer to very complex questions. That is why the Commission welcomes this initiative of the European Writers’ Council to organize the conference. I am sure it will be an important step forward in the right direction. I am sure it will be an important input to the EU wide discussion about our Green Paper.

Let me encourage you to push for the discussion about it at every level of your professional life. The Commission is open to hear the opinions coming from regions, professional organizations, and national administrations as well as from individuals.

Talking about the books and the writers we must talk about the languages and reading as well. Languages, translation are the key elements in ensuring the intellectual exchange and the mobility of ideas in Europe. The European project will be dead if we do not ensure the mobility of intellectual content, of ideas. We need to boost the quantity and the quality of the translations across the EU. How to do it? Simply by increasing the money for grants? Or we need to invent the new instruments? How to bring the people to reading? These are all challenges which we need to face. The multilingual challenges are huge. Here the Commission is hundred-percent open to all new ideas, to all suggestions from your side. We will be extremely happy to incorporate them to our policies.

If you forget everything what I said today (it is happening often after the speeches), please retain one element: the openness of the Commission for your proposals. If you want to shape the future Culture

Program, Media Program, Lifelong Learning Program, all programs supporting the software of the European Union, please come now. If you come in one year, it may be too late.

The last word: looking at Dulce Maria Cardoso, winner of the European Literary Prize sitting here in the room: I must mention the excellent cooperation the Commission has with the Writers' Council, with European publishers and booksellers. This trio is working very closely with the Commission on the literary prize and Dulce Maria is one of the winners of the first edition. This may be a small, but extremely important contribution to the European culture.

I wish you a very fruitful, exciting, and an interesting day. We will be happy to learn about the outcomes of your meeting.

Dulce Maria Cardoso

Writer, Winner of the EU Literary Prize for Portugal 2009

KEYNOTE

We have always depended on strangers. When I say “we” I mean writers. When I say “strangers” I mean our dear and generous readers. Writers depend on their readers in many ways but, right now, I would like to talk about the financial dependence. We have always depended on strangers. But that is not fair. Why not?

The first reason is the survival of the writer. Almost no writers of literary works manage to live off the income they derive from their copyrights.

The second reason is the usefulness of the literary activity. To a large extent, our civilization has been represented in literature and has also been shaped by its literature. All of the world's states formally recognise the usefulness of literature. Ways in which a state may choose to protect an activity it considers useful may include subsidies, if subsidies are deemed necessary. Taking into account the difficult living conditions that most writers of literary works face, a state that does not wish to subsidize literature is effectively negating its usefulness.

The third reason is the future consumer. Whenever we read a non-contemporary author, the latter is no longer able to receive a financial return for “services” provided.

Artists have an overriding aim: to create “products” that aspire to eternity. When writers opt to create a literary work, they find themselves deprived of a part of the “material value of the book” whereby the “material value of the book” is defined as the amount of copyrights generated by the book over time, even after the death of its author.

It would therefore seem fair to consider giving writers a lifetime advance, corresponding or, at least, proportionate to that amount. However, the “material value of a book” can only be calculated for a future that is naturally unknown at present. But the fact that it is

impossible to calculate this should not be an excuse not to compensate writers, in some way, for this income to which they have no access.

The fourth reason is related to those writers and masterpieces we go without. Many great writers could have provided us with a larger work if they hadn't have spent a considerable proportion of their lives supporting themselves through other activities.

We are also deprived of many who could have been great literary writers because they weren't and aren't ready to run the risk of going through serious financial difficulties.

There is, in fact, no correlation between literary talent and willingness to run the risk of going through serious financial difficulties.

One might think that the digital revolution that is taking place in the world of books would change the living conditions of writers. Unfortunately, I don't believe that to be the case. It is true that the "path" between writer and reader will be shortened. However, somebody has to continue to undertake the task of promoting, as books might otherwise be lost in the gigantic digital sea.

In view of the fact that an author does not retain the total sales price of a digital book, that this price is lower than the price of a traditional book and that a significant increase in sales is not to be expected not to mention the fact that a decrease in sales is actually a greater likelihood, since it will become increasingly easy to pirate a book the revolution that is currently taking place is highly unlikely to change the writer's living conditions. What to do, in view of this?

First proposal: That the state should guarantee **that writers of a "recognized literary standard" receive a monthly income** equal to at least the average national income, either by paying them a fixed monthly amount themselves – or by ensuring that such payments are made by somebody else. The list of writers of a "recognized literary standard" should be reviewed once every decade.

The first question arising from this is: how can we establish which writers are of a "recognized literary standard"? There can only be one answer to this: they must be selected. This then leads us to the next question: who will select these writers? Again, there can only be one answer: the selection should be made by those who undertake to

guarantee payment of the previously mentioned income.

The state would be obliged to do it, although it would be desirable for it to share this task with as many other agents as possible. To that end, the state should establish the necessary legal, fiscal, social and other conditions that will give rise to these other agents the writers' patrons.

There will be those who oppose the idea of electing writers. But is this not what professionals face in a large majority of activities? And in terms of the subjectivity that may be involved in the selection of such writers, is that not also present in the selection of artists and projects for other cultural activities such as cinema, opera, theatre, dance all of which the state subsidizes?

Besides, writers are already subjected to several selections. Only the very naive may assume it to be possible for a writer to find and establish his or her readers without having been pre-selected: someone will have selected the publication and distribution of his or her books, someone will have decided to divulge, promote, reward, represent him or her, someone will have decided to translate and publish him or her in other languages as well as to study and include him or her in school curricula.

It is true that any selection always involves the risk of a bad evaluation and, consequently, of an injustice. But that does not and should not stop us from undertaking such selections, particularly when the benefit unquestionably falls on an unprotected group of professionals. The possible occurrence of unjust selections should rather determine that mechanisms be fine-tuned in order to ensure that the process is carried out wisely in as responsible a manner as possible. Others may object to this proposal, claiming it will be costly.

Now, the cost of putting this proposal into practice might easily be controlled and limited. The lower the value a given state is able or willing to invest in its writers, the fewer to be included in the list of writers of a "recognized literary standard". As few as they may be, it is always preferable that this should be a positive number, rather than zero.

Furthermore, a part of this proposal relates to the incentive given to the emergence of writers' patrons. Whenever the right conditions are created for the emergence of these patrons, the onus left on the state should be minimal. Once an efficient network of patrons has been established, it is likely that the writers included in a list elaborated by the state would fall under the protection of the private sector.

Should the state, or the private sector, consider that the literary activity is not sufficiently relevant to warrant an investment without security, they could also establish that the monthly fixed stipend payable to those writers of a "recognized literary standard" corresponds to a loan to be redeemed by the writers as and when they receive the copyrights to their works. This amortisation may extend beyond the lifetime of a writer or it might even be decided that the state and patrons should receive the amounts relating to copyrights after the death of the writer. From a financial perspective then, this proposal should prove profitable to both state and patrons. From a perspective of protecting the living conditions of writers, there can be no doubt that they would profit from a huge and entirely fair improvement.

The proposal I have just introduced focuses only on those writers of a "recognized literary standard". However, one needs to support those who aren't considered writers of a "recognized literary standard" and also those who believing that they are talented, are unable to undertake any literary activities due to the fact that the financial risks are very high.

Second proposal: The time available to those who dedicate themselves to any sustainable activity has never been plentiful and it is forever decreasing. The state should **create and foster the creation of time-flexible jobs** such as seasonable or part-time jobs ideally aimed at writers or at those who intend to write. These jobs should guarantee a basic level of financial security and should, furthermore, leave room for literary activity.

Since these jobs will not be full-time nor require an exclusive level of dedication they should no doubt prove to be less attractive to those who do not wish to develop a creative activity. Nevertheless, you may ask me: does it make sense to give preference to writers or other artists for that matter, if there is no guarantee that they will create anything relevant?

Let me reply by telling you the following story: It is the middle of the night and the telephone rings in a police station. A child has been seen, seeming lost in the woods. The police deploy all means available in order to find the child. There is no precise description of the child and the agents spread out over the woods only have a vague idea of who it is they are looking for. There is no doubt that this idea will vary greatly from agent to agent. Should this child ever be found, it will be found by only one of these agents. However, we all agree that there should be more than one agent looking for this child. Were it not for the lack of resources, we would go as far as saying that we should all be involved in this search. The more means we have available, the greater the chance of us finding this child even if there is no guarantee of us ever finding the child. The child may not even exist. It might be a false alarm.

A literary work is like a child lost in the woods. Writers are like agents, ready to look for this child, ready to run the risk of returning home empty-handed, day after day. The search may take days, months, years even until it bears fruit. It might be that the child will never be found.

Should we therefore abandon the search? No, of course not. We need to ensure the necessary conditions exist so that the agents will remain in the field.

I started by telling you that we have always depended on strangers. I paraphrased Blanche DuBois, a character in the play “A Streetcar Named Desire” by Tennessee Williams. At the end of the play, Blanche DuBois accepts the arm of a respectable gentleman who offers to lift her up. It is then that she confesses: “I have always depended on the kindness of strangers”. The respectable gentleman then escorts her towards the asylum.

We, writers, also need a gentle arm that will guide us, not towards the asylum but towards a life free from misery. Who will offer us this arm?

Anna Dünnebier

Writer and filmmaker, vice-president of EWC

Recommendations

I want to say some words about the draft of our recommendations. EWC in the last years has issued some papers and participated in EU hearings and consultations on subjects like digital libraries, Google, orphan works, access to culture, and we present to you some points of these discussions in this draft. You have the paper on your tables. It shall be the basis for discussion to prepare a final version.

In the reflection paper by Commissioners Reding and McCreevy the question is raised whether we need a **European copyright law** or not. In any case, what is vital for authors is that we keep the French system of *droit d' auteur* or German *Urheberrecht*, which is not only copyright but moral rights as well. This means that certain rights belong to the author and cannot be sold or given away.

We stress the important role of **collecting societies** because there are many rights that individuals cannot care for. We support their role in taking care also of social questions for authors, and caring for cultural issues of course.

For the success of Europeana it is important to make available also books in copyright (out-of-print, orphan). Of course authors' rights must be respected and a way must be found for adequate remuneration. Certainly there must be new reflection on **public lending right** with digital libraries, about remuneration for "digital lending".

We call for **copyright awareness campaigns**, especially among young users, to improve the relationship between authors and users. This could certainly be a subject for the cultural programme! We give two examples in two countries, and hope for a European campaign. It is most important to make people aware of the high value of creation. This is the best way to fight piracy.

Our last point, no creative content without authors, certainly goes without question. During our panels we will touch all these points, and we also hope for input from you.

Discussion

The **discussion** touched the following items: Digital technology **changes the concept of writing and of books**. Literary ideas can be exchanged with the readers before writing a book, as do some writers in their blogs; writing can be interactive, can be collaborative. What will it mean to own a book when it is digital, with no concrete object to be put into the bookshelf? What will that mean for the status of authors, of books?

There must be a **fair balance** between the interests of creators and readers (called users in the digital environment)

Although copyright law may be favourable for authors, there are problems with **contractual law**. In Belgium, a survey showed that in most contracts all the rights of the authors are transferred to the publishers. Even the rights on future ideas are transferred. All digital rights are transferred. But there must a balance between authors and publishers rights. This would be a question for a European directive.

Should there be **European copyright law**, should contracting law be changed or improved?

Certain European countries still have not implemented the directive on **Public Lending Right**, although national governments are obliged to do so. New efforts are needed.

Panel 1: New notions of “intellectual property”, copyright and authors’ rights

Copyright and the Digital

New ways of creating and publishing

Alternatives to piracy

Consumers’ and authors’ needs.

Dr. Lucie Guibault

Institut du droit de l’information (IViR), Université d’Amsterdam

La place de l’auteur dans l’environnement numérique.

J’ai choisi de consacrer les quinze minutes qui me sont allouées à ‘la place de l’auteur dans l’environnement numérique’, compte tenu des mouvements constants qui secouent l’industrie de la création. Ma présentation ne prétend pas régler le sort du monde, mais espère donner un aperçu des questions de l’heure, qui j’en suis sûre seront reprises plus à fond par les autres conférenciers au cours de la journée.

Permettez-moi de commencer le tout en vous relatant le cas d’un modèle d’affaire fascinant dans le monde de l’édition.

Shanda Literature

L’entreprise chinoise Shanda Literature – partie de Shanda Interactive, l’une des plus grandes sociétés de jeux et de divertissement de la Chine, basée à Shanghai – a plus de 800.000 auteurs cherchant la gloire et la fortune et au moins quatre millions de lecteurs qui paient pour lire des romans chapitre par chapitre en ligne en visitant l’un de ses trois sites ou, généralement, en téléchargeant le livre sur leur téléphone portable.

Les sites de Shanda Literature offrent un système de classement et les éditeurs recommandent des choix quotidiens. L'entreprise prétend que la plate-forme attire une moyenne d'environ 400 millions de pages vues par jour et 50 millions de mises à jour de caractères chinois chaque jour. La société a mis quelque 1.500 livres en impression et environ 90 des 100 livres chinois les plus populaires recherchés par les lecteurs chinois sur Google et Baidu proviennent des sites Shanda.

Les revenus sont générés par les micro-transactions, la publicité et les droits d'auteur des auteurs non-professionnels qui sont acquis par Shanda sous licence et conférés à d'autres éditeurs, et exploitants de services mobile, jeux, TV et cinéma, la grande majorité étant des micro-transactions. Les lecteurs peuvent lire la première moitié d'un livre gratuitement et puis, s'ils aiment le livre, verser environ 2-3 centimes par 1000 caractères, pour le reste du livre. Le coût total est d'environ un dixième du prix de poche pour lire un livre en ligne. Les revenus provenant des micro-transactions sont partagés 50/50 avec les auteurs et c'est pourquoi – aux dires d'un dirigeant de la compagnie – les écrivains en Chine peuvent faire fortune.

Une autre conséquence positive liée au succès de Shanda Literature est que la défense des droits d'auteurs en Chine n'est plus seulement une question qui intéresse les entreprises étrangères, mais est devenue une question d'actualité au niveau national. Shanda a dû tenter une poursuite contre le fournisseur d'accès chinois Baidu pour violation de droits d'auteur. Et elle a gagné!

Et ailleurs dans le monde?

Les chiffres de Shanda ne peuvent évidemment être égalés nulle part ailleurs dans le monde, à l'exception peut-être de l'Inde. Mais la marche du numérique se poursuit et l'écrit se dématérialise. On le constate surtout en ce qui a trait aux nouvelles plateformes de distribution, qui incluent l'Internet, les lecteurs numériques du style Kindle et iPad et le téléphone portable. Amazon déclare que pendant la période de Noël 2009 approximativement 40% de son chiffre d'affaire a été réalisé par la vente de livres numériques lisibles sur son lecteur Kindle. L'engouement pour les produits Apple, dont le nouveau iPad, est une claire indication de la tendance du marché. Le téléphone portable

gagne également du terrain comme mode de distribution de l'écrit: pensons aux journaux quotidiens, aux sites de nouvelles etc. que tout un chacun peut consulter à partir de son téléphone, pour peu que celui-ci soit muni d'une connexion internet.

L'écrit se transforme également en ce qu'il fait de plus en plus souvent place aux produits dérivés comme les jeux et les films.

Que l'industrie de la création se porte généralement bien malgré des hauts et des bas dus à la nécessité de s'adapter au changement est une bonne chose! Mais est-ce que l'auteur est en mesure d'en tirer avantage ?

Et l'auteur là-dedans?

En principe, l'auteur peut 'faire fortune', s'il est en mesure de faire valoir ses droits face à l'exploitant. Pour ce faire, l'auteur doit être vigilant et ne pas céder plus de droits que nécessaire, ou s'il le fait, il doit s'assurer de recevoir sa juste part des revenus provenant de l'exploitation de son œuvre. La division 50/50 entre l'auteur et l'éditeur suivant le modèle de Shanda Literature n'est pas chose courante. La plupart des auteurs doivent se considérer chanceux de recevoir 10 à 12% du prix de vente de leur livre, pouvant aller jusqu'à 15-20% dans le cas des best-sellers. Bien souvent, l'auteur reçoit une somme forfaitaire. La question est encore plus complexe dans le cas du calcul des revenus générés par l'exploitation en ligne ou sur téléphone portable. De plus, l'auteur devrait être en mesure, après une période raisonnable, de récupérer ses droits si l'exploitant néglige de s'acquitter de sa tâche et laisse l'œuvre non-exploitée.

Certains contrats d'auteur prévoient de telles conditions. Parfois, les contrats équilibrés voient le jour grâce au support de la loi, qui pose des obligations de forme et de fonds aux contrats, de manière à protéger la partie généralement faible dans ce genre de négociations: l'auteur. Il s'agit le plus souvent de l'obligation de procéder par écrit et d'énumérer spécifiquement les droits concédés. La loi pourra également prévoir des règles d'interprétation, par exemple, qu'en cas d'incertitude le contrat doit être interprété en faveur de l'auteur. Quelques lois interdisent aussi la cessions de droits relativement à des

œuvres futures et relativement à des modes d'exploitation inconnus. Certaines lois contiennent également une disposition dite 'clause best-seller' qui prévoit que les parties peuvent rouvrir le contrat dans le cas où les ventes dépassent disproportionnellement le montant versé à l'auteur à titre de somme forfaitaire ou autre.

D'autres fois, les contrats favorables sont le résultat de négociations entre représentants du monde de l'édition et des auteurs. C'est notamment le cas aux Pays-Bas, où un accord-cadre a été conclu dans le domaine littéraire. Ce genre de contrats donnent le bon exemple aux autres! Mais comme dans bien des cas dans la vie, le bon exemple est parfois difficile à suivre.

En l'absence d'un coup de pouce de la loi, un résultat favorable aux auteurs est loin d'être sur.

Problèmes persistants

Dans les secteurs autres que le littéraire, les auteurs demeurent trop souvent dans une position de négociation difficile face à l'exploitant. On pense ici particulièrement aux secteurs de l'édition journalistique, scolaire et de la traduction. Les auteurs dans le monde journalistique et scolaire font souvent face à une concentration du marché qui leur laisse bien peu de marge de manœuvre quant au choix de l'éditeur ou encore quant au contenu de leur contrat. Les récents changements apportés en France par le biais de la loi HADOPI au sujet de l'exercice des droits des journalistes illustre bien la situation.

En Allemagne par exemple, la loi a été modifiée en 2002 de manière à accroître la protection accordée aux auteurs. Une disposition a été insérée dans la loi prévoyant qu'un accord relatif aux redevances qui a été négocié collectivement entre les représentants des éditeurs et des auteurs est présumé équitable. Cette disposition visait particulièrement le secteur de la traduction où plusieurs litiges avaient été menés devant les tribunaux sur la question de la rémunération due aux traducteurs. La difficulté vient du fait que dans le cas d'une traduction, il est souvent ardu de dire si le succès d'un écrit tient de la qualité du texte original ou de sa traduction. Quel pourcentage est alors raisonnable? Comme je n'ai pas suivi la question de près ces dernières années, je ne suis pas sûre si les parties ont réussi à en venir à un accord depuis

que les modifications ont été apportées à la loi. De plus, je crois me rappeler que la question a fait l'objet de litiges additionnels. Quelqu'un dans la salle saura sûrement nous faire part des développements les plus récents.

En fait, lorsque la loi sur le droit d'auteur met en place des mesures protectrices en faveur des auteurs, cette protection est parfois inadéquate contre les transferts de droits trop larges ou encore les règles de calcul des redevances sont trop rigides pour s'adapter aux besoins du marché. Je pense ici à la loi française qui exige que les redevances prévues dans les contrats d'auteur soient proportionnelles au prix de vente brute de l'exemplaire. Cette règle est absolument logique dans le monde de l'édition papier, mais comment calculer le prix de vente brute d'un service de distribution d'œuvre par téléphonie mobile ou par internet? Le résultat est que les parties au contrat n'ont souvent d'autre choix en pratique que de contourner la règle statutaire pour arriver à une solution équilibrée qui convienne à tous.

Avenues de solution

Un contrat négocié de bonne foi entre des parties de force égale est la meilleure garantie que tout le monde y trouve son compte. Il s'agirait donc de promouvoir de façon efficace les possibilités offertes par la négociation collective, portant par exemple sur l'étendue des transferts de droits ou le montant des redevances. Pour ce faire, la loi devrait prévoir une exemption des règles de la concurrence, sinon tout accord collectif risque d'être qualifié d'entrave à la concurrence comme étant un acte de fixation des prix ou de tentative formation de cartel. L'Allemagne, ici encore, sert d'exemple, ayant exempté les accords collectifs conclus dans le domaine du droit d'auteur de l'application des règles de la concurrence.

Des changements à la loi permettent parfois de pousser les parties à la table de négociation. Dans les pays qui n'ont pas déjà de telles dispositions dans leur loi sur le droit d'auteur (pensons ici aux Pays-Bas), le législateur national devrait considérer sérieusement d'adapter la loi pour répondre aux changements du marché et de la technologie. Il s'agirait donc de renforcer la position de l'auteur contre les transferts trop larges – surtout en relation aux modes d'exploitation futurs. Dans le cas des modes d'exploitation futurs, la solution n'est pas toujours

d'interdire de tels transferts mais bien de prévoir que si un nouveau mode d'exploitation non-prévu au contrat surgit, l'auteur a droit à une redevance additionnelle. Le même commentaire peut être fait concernant les règles (là où elles existent) relatives au calcul des redevances qui s'adaptent aux impératifs du marché. Ce n'est pas la place du législateur de décider à quel pourcentage les auteurs ont droit, mais si la loi prévoit un mode de calcul, celui-ci doit être réaliste compte tenu du marché et de la technologie.

Licences libres

Dans les secteurs où les modèles économiques peuvent être construits sur une base autre que le paiement de redevances, les licences libres gagnent du terrain. Les licences libres sont particulièrement attrayantes dans le secteur de l'édition scientifique et de l'édition scolaire. De fait, dans un nombre croissant de pays européens, les organismes subventionnaires dans le domaine de la recherche scientifique exigent que les résultats des recherches menées grâce aux fonds publics soient publiés sous licences libres. L'idée fait également son chemin auprès des instances de l'administration publique en charge de l'éducation où, pour réduire les coûts rattachés à l'achat de matériel scolaire, la production de matériels sous licences libres devient un cheval de bataille.

En dehors du secteur de l'édition pure et simple, nombre de textes, images, sons etc. sont maintenant produits par des amateurs et semi-professionnels actifs sur les plate-formes 'sociales', telles que DailyMotion, YouTube etc. Pour la majorité de ces créateurs, l'intérêt principal à créer n'est pas tant de gagner des revenus mais bien de gagner à se faire connaître. La réputation joue un rôle plus important que l'argent ! Dans ce cas, les licences libres proposent une solution toute prête. Parmi les licences libres existantes, les plus populaires sont les licences Creative Commons qui offrent une série de licences standardisées et automatisées permettant à l'auteur de conserver ses droits et de décider lui-même des conditions sous lesquelles il/elle désire partager son œuvre.

Alain Absire

Ecrivain et président de la Société des Gens de Lettres

L' auteur et le numérique

La première question qui nous vient à l'esprit, aujourd'hui, face à l'univers numérique qui paraît en mesure d'absorber toutes les velléités en matière de pratiques culturelles, est de savoir quelle signification peut prendre la notion de « Propriété intellectuelle ». Autrement dit, en quoi la liberté de l'auteur et celle de l'internaute peuvent-elles coïncider, et se renforcer l'une l'autre dans le flux et le partage illimité des données?

Certes, jusqu'à aujourd'hui, en dehors des actions en faveur de la liberté d'expression, nous écrivains, nous sommes rarement retrouvés en première ligne sur les débats touchant le livre et l'édition. Non parce que nous nous en désintéressons, mais parce que nous ne sommes pas des techniciens du livre, et que nos intérêts sont souvent pris en charge par nos éditeurs.

En matière d'usage informatique, nous avons pourtant été des précurseurs. Combien parmi nous ont expérimenté le traitement de texte dès le début des années quatre-vingt, avant de l'adopter comme outil au service de leur imaginaire et de l'expression de leur pensée! L'architecture même de nos œuvres en a été profondément modifiée, tant il nous est apparu facile de tailler et recomposer nos textes au fil d'un processus d'écriture jusque-là rigidifié par la matérialité et la linéarité du support papier. Suivant cette évolution, empruntant les nouveaux chemins de la création et de la publication grâce à « l'écriture numérique » et à l'ouverture aux multiples savoirs de l'humanité, chaque auteur a désormais la possibilité d'ouvrir son œuvre à des champs d'investigation et de documentation illimités. Voire même, d'accepter de rendre son œuvre, une fois « achevée », protéiforme et évolutive, et de l'enrichir grâce à une multitude de nouveaux usages du texte, du son et de l'image, associés à de nouvelles technologies interactives. Il suffit d'assister aux « performances » numériques publiques de nombreux poètes contemporains pour constater que la virtuosité technique est au service de la création,

et de l'intérêt que lui porte un public friand d'hyper médiation.

Depuis l'invention de l'écrit, la connaissance et la mémoire se sont toujours fixées, d'abord pour circuler de main en main, puis pour être diffusées auprès de cercles d'initiés sous forme manuscrite, avant de s'élargir, avec l'invention de l'imprimerie, à des lecteurs inconnus. Les contenus cessant d'être confidentiels et les thèmes abordés devenant universels, la mutation fut de taille pour l'auteur. Aujourd'hui, avec la troisième révolution de l'écrit, alors que le géant américain Amazon commercialise la version mondiale de son lecteur Kindle connecté en permanence au réseau 3G et permettant au lecteur, où qu'il se trouve, de télécharger le livre de son choix en soixante secondes, les supports de la création se dématérialisent et se multiplient. C'est la course pour virtualiser massivement les savoirs de l'humanité: on parle désormais de partage illimité via les réseaux numériques, et tant pis si le flux des données se déverse de manière anarchique, et sans référencement, sur un utilisateur grisé de tenir le monde entier à portée de clic ! Amazon, Google, Apple... Le premier arrivé aura gagné ! Et peu importe avec quelles garanties de qualité, de fiabilité et de pérennité. Cerné, et pressé de toutes parts par les enjeux économiques et les nécessités du temps présent où prime le culte de la vitesse, le livre est contraint de s'adapter. Et nous voici, nous auteurs, dans l'obligation de nous concerter et de prendre la parole, afin de préserver notre liberté de créer des œuvres dignes de ce nom, pour le plus grand plaisir d'un public de lecteurs mieux ciblé, plus vaste, plus averti, plus sélectif et plus exigeant qu'on ne le prétend.

C'est un fait: le numérique envahit nos vies. Alors que l'écran de l'ordinateur à domicile devient le média privilégié de l'accès aux loisirs et à la culture, il est tentant d'oublier que, à l'origine de chaque texte, quel que soit le support sur lequel il est fixé, il y a... l'auteur! C'est ainsi que Google, numérisant sans autorisation préalable des millions d'ouvrages à partir des fonds des bibliothèques américaines, ignore le partage de droits sur l'œuvre et les fruits de son exploitation commerciale qui régit les rapports contractuels auteur/éditeur. En effet, pour des raisons qui tiennent aux spécificités du droit américain (class action), une telle numérisation « globale » s'étend à tous les ouvrages protégés par le droit d'auteur pour peu qu'ils soient présents sur le territoire des Etats-Unis. Autant dire que nous sommes tous concernés.

Rappelons à cette occasion que, suite à l'action intentée par la Société des Gens de Lettres de France et du Syndicat national de l'édition, par un jugement du 18 décembre dernier, le Tribunal de Grande instance de Paris a tranché en faveur de l'application de la loi française et a condamné Google en contrefaçon du droit d'auteur, dans la cadre de son programme *Google recherche de livres*.

Mais au fond, pourquoi se gêner puisque, nous, créateurs de valeur pure, en sommes à supporter les inconvénients du copyright anglo-saxon sans bénéficier pour autant de l'intégralité de nos prérogatives telles que notre propre Code de la Propriété littéraire français les établit? C'est ainsi que, lorsque, nombre des nos confrères étrangers, « protégés » par le système des agents littéraires, cèdent la totalité de leurs droits patrimoniaux et moraux à leurs éditeurs pour une durée brève, et déterminée au cas par cas en vertu de règles établies il y a presque vingt ans pour la seule édition papier, nombre d'entre nous cèdent à l'aveugle et sans discuter l'exploitation de leurs droits numériques à leurs éditeurs pour soixante-dix ans post-mortem.

Le numérique: une chance historique pour les auteurs, et pour leurs lecteurs.

Toute nouvelle technologie s'ouvre sur un monde nouveau qui produit ses propres règles d'élaboration et d'usage, et porte en lui ses qualités et ses propres défauts. Côté pile: alors que la durée moyenne de vie en librairie de nos livres imprimés est de deux mois, la diffusion via les réseaux numériques paraît leur ouvrir l'éternité: en principe, plus d'exploitation commerciale interrompue ni de stocks épuisés! Sauf que la durée de vie des supports numériques, et la compatibilité des supports et des formats avec les logiciels et les terminaux de lecture plus ou moins éphémères, est limitée dans le temps. Côté face: tous ces ouvrages dématérialisés risquent de se retrouver à égalité sur le Web, parmi des millions d'écrits, lâchés en vrac dans l'urgence et ne méritant que rarement l'appellation d'œuvres.

Avec le livre papier, les choses sont simples: nous remettons notre texte à l'éditeur qui, ayant choisi de le publier, effectue avec nous un travail éditorial aussi fiable que nécessaire. Après quoi la chaîne de médiation du livre prend le relais jusqu'au lecteur, en particulier via le

réseau des librairies-conseil de proximité, qui, même par écran interposé, doivent continuer à être nos meilleurs prescripteurs. Avec le passage au virtuel, l'auteur, géniteur de son œuvre, peut certes être tenté de se passer d'éditeur, et de vendre lui-même ses livres en ligne, avec une simple plateforme d'e-commerce. En pratique, ce modèle économique paraît périlleux pour de multiples raisons: coûts de gestion du système plus élevés qu'on ne l'aurait pensé; difficulté pour l'auteur, privé de la dynamique de la multiplicité des modes d'accès, physiques et virtuels, à sortir du périmètre de sa communauté fidèle, impossibilité de rester visible au milieu d'une profusion de propositions; risques de piratage et de détournement des contenus, etc. Sans compter qu'au final, l'auteur assumant seul le fonctionnement de sa propre « chaîne du livre », change de casquette pour devenir tour à tour libraire, responsable du marketing, diffuseur, autant d'activités nécessitant un réel savoir-faire aux antipodes de sa vocation artistique...

À l'origine de ce désir d'autonomie, les conditions de plus en plus drastiques qui nous sont imposées conduisent déjà l'immense majorité d'entre nous à abandonner l'idée de vivre de notre métier d'écrivain. Face à ce phénomène de paupérisation, et à moins qu'ils ne nous assimilent à de simples « fournisseurs de contenus », s'appuyant sur une législation claire, il revient à nos éditeurs de nous assurer de justes conditions de rémunération, aussi souples que le média concerné, et susceptibles d'évoluer en période expérimentale, au moins jusqu'à ce que un modèle économique finisse par s'imposer. Faute de quoi nombre d'entre-nous se tourneront vers les plus offrants, mieux équipés en matière de services informatiques et passés maîtres dans les techniques de Web-marketing assurant une diffusion active de chaque ouvrage en ligne: e-libraires, e-diffuseurs, et opérateurs télécom dont le seul et unique objectif est la rentabilité immédiate. Ce serait un comble que la technologie rende notre métier d'écrivain impraticable et tue notre créativité !

Pour une valeur ajoutée de la chaîne éditoriale.

Pour refonder la chaîne de valeurs du livre, face à un marché saturé de contenus numériques sans valeur attestée, et de « tuyaux » et équipements de diffusion coûteux et pléthoriques, il relève de la

responsabilité des auteurs et des éditeurs d'adopter une stratégie commune équilibrée. En l'occurrence, pour les éditions numériques premières comme pour les contenus issus du livre papier, le premier rôle de l'éditeur est d'assurer un travail éditorial mettant en valeur un texte original porté, grâce à son savoir-faire, jusqu'à son plus haut niveau de pertinence. C'est cette fonction qui distingue aujourd'hui l'éditeur de l'imprimeur. C'est elle qui, demain, fera la différence entre lui et les simples « distributeurs de contenus numériques.

Livre fermé, comme sur le papier, ou livre achevé évolutif..., avec les potentialités du numérique en matière de création et d'enrichissement des contenus, cette fonction éditoriale revalorisée doit s'étendre aux « plus » apportés par les bouquets de liens, de supports audio sur le Web et de prolongements multi-média. Cette valeur ajoutée « purement Web », consultable librement, est la condition nécessaire à l'adoption de la lecture par de nouvelles générations dont les usages culturels sont liés aux pratiques interactives, et à propos desquels une étude récente sur les pratiques culturelles des Français, nous dit que 78 % seulement des 15/24 ans ont lu un livre au cours de l'année écoulée, contre 83% en 97.

Il incombe ensuite au couple auteur/éditeur de garantir la fiabilité des contenus achevés. Or, la numérisation entraîne de nouveaux risques: voisinage de publicités, découpage, indexation, étiquetage, reconnaissance approximative des caractères et lecture dégradée. Pour le livre numérique, cette notion de fiabilité initiale, et de conformité à la volonté de l'auteur, relève du droit fondamental du lecteur acceptant de s'acquitter d'un « prix d'achat » fixé par les titulaires des droits. L'œuvre diffusée en ligne étant fragilisée par des modes d'accès et d'usage démultipliés, il revient aussi à l'éditeur de mettre en place les protections techniques capables d'en empêcher le piratage et le détournement. Et il revient à l'auteur (qui reste détenteur du droit moral en droit français) de veiller à la sauvegarde de l'identité propre de son œuvre.

Vivre, dès demain avec, et grâce à nos œuvres...

Enfin, puisque tout modèle économique viable se doit d'être équilibré, il est légitime que la diffusion de chaque œuvre génère une juste

rémunération en faveur de son ou de ses auteurs. En la matière, pas question pour nous d'en être réduits économiquement à une simple « variable d'ajustement » liée aux variations du marché, une pratique qui, à force de dilution dans la jungle du profit, reviendrait à entériner la disparition pure et simple de l'auteur. De ce point de vue, notre Code de la Propriété Intellectuelle impose un rapport de proportionnalité entre le bénéfice tiré des ventes et le montant des droits d'auteur. Avec un livre dématérialisé, et selon le mode de commercialisation envisagé (paiement à l'acte de téléchargement, abonnement, prêt payant, simple consultation d'extraits, etc.), sans compter l'accès à des bouquets de nouveaux services liés au droit d'usage de « contenus-produits », d'autres modes de rémunération associant l'auteur au chiffre d'affaires (tel que le mix *forfait + rémunération proportionnelle* déjà pratiqué par l'édition scientifique et médicale), restent à envisager.

Ainsi, sur la base d'une législation européenne protectrice des droits des auteurs, et de l'offre légale qui devrait se dessiner, on imagine fort bien deux types de livres numériques cohabiter. D'une part les ouvrages aussitôt lus aussitôt oubliés, proposées par des distributeurs numériques de masse, à des prix « cassés », voire gratuitement, et privilégiant l'efficacité et l'immédiateté liées à la lecture fragmentée sur écran. Et d'autre part, les œuvres de qualité proposées, via les chaînes de valeurs traditionnelles du livre, à un prix plus ou moins proche de l'édition papier, et enrichies de liens internes et externes: hypertexte, avec images fixes, son, vidéo..., consultables librement, et nécessitant ce temps de lecture et de réflexion à la base de tout enrichissement personnel.

Alors: prix unique de nos livres numériques, comme pour nos livres papier, ou prix « cassé », laissé à l'appréciation du plus offrant face à un marché en ligne où la demande des lecteur/usagers se substitue à l'offre des auteurs/éditeurs? Quel modèle légal l'emportera? Le danger est que de nouveaux acteurs hégémoniques, tel qu'*Amazon*, ou *Google* avec sa nouvelle plateforme de librairie en ligne: *Google Editions* disposant de bases de données qualifiées permettant de cibler directement les internautes en fonction de leurs centres d'intérêts, n'inondent le marché et ne soient en mesure de nous imposer leurs propres prix de vente public... En guise de « Prix unique », nous assisterions alors, comme aux Etats-Unis, au triomphe de

« L'unique prix du livre », à destination de publics rendus captifs à force d'avoir été pré-calibrés.

Voilà comment nous en revenons à notre point de départ: au final, c'est bien nos droits d'auteur dans l'univers digital qu'il s'agit d'affirmer et de pérenniser. En gardant présent à l'esprit que, en dégageant le créateur des contraintes matérielles qui pèsent sur lui, ces droits lui permettent de créer son œuvre librement, indépendamment des pouvoirs politiques ou administratifs et des forces de l'argent toujours prompts à instrumentaliser les artistes et à récupérer les œuvres de l'esprit à leur profit. Défendre le droit d'auteur à l'ère du numérique, et protéger l'intégrité des contenus, c'est bel et bien rompre la tension entre propriété intellectuelle et intérêts des internautes, tout en assurant au lecteur l'accès à des contenus riches, exempts de toute pression et vecteurs fiables d'identités culturelles.

Hanna Harvima

Policy officer – UNI MEI Brussels

Promoting and protecting creativity in the digital economy

Before going into the topic itself, I would like to say a few words on who we are and what we do. UNI MEI is a global organisation and it is a part of UNI Global Union, which is based in Switzerland. UNI MEI represents 140 unions and guilds globally in 70 countries in the fields of media, entertainment and arts. In the European region we have an autonomous sub-group EURO-MEI.

Most of our membership consists of technicians and other employees in theatre, broadcasting, cinema production and exhibition, and other audio-visual workers. As a result, we represent at the same time creative talent and technicians, and their organisations. We promote the interests of our affiliates in different inter-governmental bodies, we coordinate solidarity within the sector, we actively manage information on for instance collective agreements and legal practices in the sector, but also serve as a contact point for our affiliates for the exchange of information.

We also have some common membership such as The Writers' Guild of Great Britain and ver.di of Germany.

In the framework of this conference I would like to bring forth our policies on the creative and economic rights of creators. There are certain key challenges from our perspective: First of all, better recognition of creators' rights and fair remuneration is needed – through individual contracts and collective agreements. Secondly, better recognition of the concept of intellectual property rights is called for. The very principle of IPR has been attacked recently, and there is enormous pressure from content users and other parties for free content and free licensing. Culture is not free, and it needs to be recognized that a lot of work and effort, and also financial investment, go into the creative process. We need to make sure that these aspects

are well taken care of in the digital economy.

Our affiliates believe that the digital economy and distribution bring opportunities, as they enable new forms of communication and interaction between artists and the audience. However, it is a constant struggle for our affiliates with producers and editors to get fair remuneration. It is clear that old remuneration patterns need to be modernized and they need to be made to adapt to the digital world. We support framework initiatives that would aid workers in the negotiations for fair remuneration. We believe in a European framework and that there should be a European Copyright Contract Law. In our view, that would balance the relationship of the different parties in the negotiation.

When it comes to piracy, we are very worried about the effect that piracy has on the remuneration of our affiliates, and also on the investment capacity of the employers. Online theft deprives creators and other right holders from their fair share of the benefits generated by the digital economy. In the long term, as these creative industries suffer larger and larger loss of revenues, they in turn are forced to reduce their investment in the production of creative content, and with that we lose work opportunities for creators and other workers now and in the future. In our view, piracy is not a question of access to culture, as culture should be accessible, but a question of jobs. Piracy is causing a loss of jobs, and even whole industries could be at stake.

At the moment potential Internet policies are being debated in many countries and international bodies, and these policies will exist for many years. We believe it is critical to affect the current debates and legislative initiatives, and now is the time to do that. National, regional and international authorities need to adopt Internet policies that will protect creative content against Internet theft more effectively. Also we feel that proper consultation of all stakeholders is absolutely crucial when drafting those policies, so that they will reflect the concerns of the various players.

In order to be effective the Internet policies need to make it possible

- to find illegal content;
- to identify websites and Internet addresses that are engaged

- in the business of uploading and downloading copyrighted content;
- to provide meaningful sanctions and
- to use effective network management to achieve these goals.

In addition to policies and legislation, we believe it is important to better inform and educate consumers on the effects of up and downloading illegal content. We need to make sure that the public doesn't see this only as a question of access to culture and other content, but as a question of jobs and livelihood.

Oliver Money-Kyrle

International Federation of Journalists

New notions of “intellectual property”, copyright and authors’ rights

This meeting comes at a time when all creators, and particularly, the people the IFJ represent are facing unprecedented challenges and attacks on their rights.

Meetings like this are vital. They give us an opportunity to share experiences but more importantly, they give us the chance to develop common strategies that we can use to defend the interests of all creators in the current difficult climate.

The importance of protecting the economic and moral rights of journalists and press photographers has never been more important for us and we are well aware that the next years are critical in this battle.

In recent years, we have witnessed a complete change in the way news is produced. The digital environment has offered journalists new platforms to publish on and a range of new sources of information. The Internet is overtaking news-papers and prime time broadcasting as the lead source of news for the public.

These developments are bringing about a shift in journalistic practice, demanding journalists acquire new technical and professional skills necessary to manage news and information in the new landscape while maintaining the **ethical values** that underpin the profession.

Studies show that journalists rely increasingly on sources found on Twitter, Facebook and blogs. News events – fires, air crashes and natural disasters (for example the Asian tsunami of 2006) – all benefit from telephone-carrying citizens whose snap-shot pictures are routinely used by media to help illustrate their reports.

Twitter feeds are helping supply the news wires, while Bloggers, too, provide new possibilities for directly accessing witness accounts and personal reactions. The earthquake in Haiti and the train crash that

occurred in Belgium a few months ago were stories told through the lens of social networkers, who took pictures and sent messages from the scene within minutes of the events.

This sort of contribution enriches the capacity of media and journalists to tell their stories, but it does not replace them.

Considerable caution has to be applied over the **credibility of online sources**. Misleading information or rumours on Twitter, where it can be difficult to trace the author or authenticity of information, can rapidly spread leading to wide confusion. Combined with the intense pressure on the 24 hour newsroom to be first to break news can lead to errors in reporting.

Blogs run by citizens have certainly improved the capacity to report on more issues. But information provided by bloggers, unbound by the restrictions of professional reporting standards, is unreliable, needs verification and is no substitute for journalism.

Plagiarism and reproduction of journalistic content have become rampant on the net. Search engines, bloggers and even some media reproduce content without permission, without identifying the author and without remunerating them.

This damages a journalists ability to earn a decent income, can damage the reputation of an author when it is misused without consent, and ultimately damages the reliability of information provided to the public. Digital manipulation of pictures has become routine and in the process there are regular infringements of photographers' moral rights.

The digital environment now allows for the same journalistic content to be used on different platforms, in print, online, or in other publications of the same media group. Sometimes the same story is sold on to other media group without journalists consent or compensation.

Press photographers complain that they can no longer make a living because they are paid once for a picture that is reused three times in the same media group, while in the past they would have received additional payment for each use.

There have been numerous attempts by media owners to introduce

work-for-hire like rules in employment contracts, which hand over all moral and economic rights to the publisher enabling them to reuse the same content in all platforms without further remuneration for the journalist.

There have also been serious attempts to water down journalists' Authors' Rights legislation in favour of the employers. Last year, the Finnish government tried to pass a law that would have introduced a copyright-like regime whereby journalists' authors' rights would have been transferred automatically in employment contracts to the publisher. We supported our unions in Finland and elsewhere in Europe in their protests against this move.

The issue of rights management is also crucial to us. We see increasingly, producers, publishers and distributors – including internet search enterprises – seeking to manage payments to journalists directly, bypassing the traditional European mechanism of collecting societies. Many of the collective rights management systems in place offer journalists a chance to maintain the economic interests and moral rights in the reuse of their journalistic works. We believe that they remain the best option for journalists to manage their rights.

IFJ/EFJ affiliates have vigorously protested against the abuse of journalists' moral and economic rights through protests and petitions across Europe. We have witnessed a real solidarity from our members who see the defence of Authors' Rights as one of the central struggles in the battle to save our profession.

Authors' Rights are integral to the journalists' professional status

Without Authors' Rights journalists would be forced to waive their moral rights that protect the integrity of their work that may otherwise be distorted by publishers interested in maximising the financial value of the news product. Without Authors' Rights journalists waive their ethical responsibility for the content of the news reports.

Without Authors' Rights, journalists lose their professional status and are reduced to meagre content providers with no professional conscience.

The current crisis facing the media is partly the result of new techno-

logy, the transfer of advertising money to the Internet and free news sources. But it is also the result of two decades of assaults on the journalistic profession by the media corporations that have destroyed the reputation of the mainstream media product and public confidence in the integrity and independence of its news.

The struggle to protect the Authors' rights tradition in Europe is central to the survival of journalism in Europe.

The coming years provide us with an opportunity to improve and review the information landscape and for strengthening pluralism, but this will not be done by loosening the attachment to traditional European standards of diversity and decent conditions for media professionalism. Essential to this is the highest level of protection for the works of authors, journalists and other creators.

Our partnership with the European Writers Council and others in the Creators' Rights Alliance is an important and integral part of this work. We have to work more effectively together, when we do we can become an unstoppable force which would convince the institutions of the European Union and some of the member states that they need to get back on track when it comes to protecting European values and culture

Discussion

The **discussion** touched the following items: Transfer of copyright from employees to employers. This is often requested in journalism but deprives journalists of their moral rights. Transfer of copyright by university or school teachers and lecturers to their schools – in some countries like the Netherlands this belongs by law to the employer, not in France or Germany, where the author is still the rightholder.

Digital theft – possible sanctions against piracy; education for better understanding of the damages of digital theft.

European policy as regards to the digital problems up to now has lagged behind the initiatives of the transnational companies like Google, Amazon etc. How can European politicians take the initiative, do the **first steps** and set the agenda?

The bargaining power between the powerful companies and the authors is unbalanced in a very unfair way. **Collective bargaining** must be possible for authors and their organizations. Contracting law should allow this, not put authors under the threat of forming a “cartel”.

In some countries collective bargaining is allowed by law. Still there are unequal power relations. That transfers collective bargaining into “collective begging”.

Chinese Shanda literature give their authors a **50:50 share** – how do they manage? In Europe publishers pay at most 20 %. In many contracts the web is included without extra payment.

The newspaper industry is in a serious crisis, losing jobs, turning employments into freelance jobs, weakening the journalists’ bargaining position. The main issue is: Protecting **professional standards** and professional values.

What can authors’ organizations achieve? Examples from France: **Legal proceedings against Google** because they do not comply with the French law. Collective bargaining is implemented in the publishing industry

Example from Norway: **The Reversion of rights**. The standard contract has a new provision, stating that when the publisher in the last 12 months has sold 150 copies or less (printed, audio or e-books), the writer has the right to claim reversion of rights.

Panel 2: Access to the digital book: Challenges and opportunities for authors

Digital libraries

New business models

An enhanced role for collecting societies

Rainer Just

Joint-CEO, VG WORT, Germany

According to a recent report for the European Commission entitled “Building a Digital Economy”, in 2008 the European Union’s creative industries contributed 6.9%, or approximately EUR 860 billion to total European GDP, and represented 6.5% of the total workforce, or approximately 14 million workers. As the report acknowledges, it is copyright which underpins the creative industries and it is creators who are their most important workers.

Yet in reports like this, or in the numerous papers on the digital environment published by the Commission, of which a recent example is the proposals of the EU Commissioner Androulla Vassiliou, there is very little mention of the role which **collecting societies** can play. When they are mentioned, collecting societies are all too often treated with suspicion as anti-competitive, inefficient and possibly even corrupt organisations. I would like to redress the balance in this intervention and try to show that collecting societies have a central role to play for the **survival of copyright**, and can enable European consumers to reap the full benefits offered by digital technology.

Collecting societies operate in different ways and cover different types of works. My own society, VG WORT in Germany for example is concerned with secondary exploitations of literary works. But all collecting societies have the unique potential to perform certain key tasks:

- They can cope with mass use of copyright works. It is practically impossible for individual rightsholders, with the possible exception of big publishers, to do so
- They can ensure that equitable remuneration is paid for all uses of copy-right works. In my view free uses are not only unfair to rightsholders, but threaten to undermine the whole concept of copy-right
- They can moreover ensure a fair division of remuneration between different types of rightsholder
- They can provide a one-stop-shop for rights clearance, as justifiably demanded by consumers
- They can, as non-profit entities, often subject to state supervision, be trusted with confidential information by rightsholders and consumers alike

I could mention other, extremely important, functions of collecting societies, for example their contribution to the social welfare of authors and to the furtherance of national and European culture, but I believe the list I have given is sufficient; in all these cases it is difficult to imagine how these vital tasks could be accomplished otherwise than by collecting societies

One area where the unique advantages of collecting societies can be utilised is in relation to **library digitisation projects** on both a national and pan-European level.

Library collections involve books from thousands of publishers, and hundreds of thousands of authors. The identity and/or present whereabouts of these publishers or authors may be unknown, so that the works are orphan. A system is needed for ascertaining which books are genuinely orphan, through a diligent search, and to ensure that such works also can be digitized and made available. Because, by definition, there are no rightsholders in the case of **orphan works**, collecting societies can play an indispensable role. That role needs to be recognised in EU and national law, so that they can license orphan works legally and safely.

However, even if the rightsholders in a work are known, it is not

practicable for a library to clear rights for mass digitisation and use individually. This is for two reasons: first, the sheer number of rights-holders involved; but, secondly, the fact that under many national laws it is uncertain whether the rights in a given work are with the author or the publisher. This is partly a question of reversion but also because digitisation and making available may have been **unknown uses** when the book in question was published and the author-publisher contract signed. In Germany until 2007 the law provided that purported transfers of rights in unknown forms of use are invalid, so that by and large digital rights in works published pre 1985 were with the authors rather than the publishers. In 2007 this rule was modified. § 31a of the Copyright Law now provides that contracts for the transfer of unknown forms of exploitation are valid but that the author has the right to cancel them. This still means that in the case of the vast majority of older works it will be uncertain whether the digital rights are with the authors or the publishers. This problem is solved by the intervention of a collecting society representing both authors and publishers. The intervention of a collecting society ensures, moreover, that the remuneration for digitisation and making available will be fairly shared between authors and publishers.

In order to enable it to **license digitization and making available** VG WORT was recently granted two important new rights by its members:

1. The right to license digital use of orphan works for which a fruitless diligent search has been conducted
2. The right to license digital use of out of print works provided the individual rightsholders agree

In both areas we are engaged in active discussions with libraries, rightsholder organisations and government agencies to develop comprehensive licensing schemes. Other societies in other European countries are similarly engaged. There is, then, every prospect that, thanks in no small measure to collecting societies, in the near future consumers will be able to access online the vast storehouse of knowledge and culture represented by library collections, with a minimum of formalities.

Carola Streul

Secretary General of EVA (European Visual Artists)

The dissemination of books through the internet is a great opportunity for authors to get their works promoted and to reach a larger public. EVA appreciates in particular the European project EUROPEANA because it is a non-commercial project, at least in the first place, and aims to maintain Europe's cultural diversity. That does not only include the spoken and written idioms but also different traditions in expression by visual arts techniques.

While non-commercial access to works for the citizens is an honorable goal which is clearly supported by EVA, a consequent respect of author's moral and economic rights is an indispensable condition. Even more since cultural heritage institutions in all countries suffer cuts in their budgets and are obliged to find their own financial resources. With a view to future direction of commercial use by the non-commercial institutions participating in EUROPEANA, and that includes libraries, archives and museums, it is important that right from the beginning of the set-up phase the rights of authors are respected.

The authors need to be rewarded for the value they add to European economies. Content is needed to give the digital technologies a sense for their existence and the recognition of authors' rights is not only a fair and just cause but also an important means to stimulate further creativity. Otherwise, a most damaging precedent would be set that could serve all commercial players, acting either as competitors in offering comparable services, such as the GOOGLE book search tool or as party in private-public-partnerships.

Another reason why we appreciate the EUROPEANA project is because it respects the need of prior authorization for using protected works while GOOGLE turned this fundamental principle into its opposite.

When mass uses are set up in the GOOGLE manner the authors and rights holders are left with the task to track infringements and to sue them. Although collecting societies always have to go through legal procedures to create case law serving large numbers of members, we have to deal here with gigantic dimensions that show that even the

often as monopolies blamed collecting societies have a difficult stand and individual authors would be completely lost.

Last Thursday visual authors associations in the US have notified a class action against GOOGLE because the visual works by the exception of a limited number of s called “inserts” are not included in the pending settlement. – But they are certainly in the books that were scanned and digitized. Following Dan Clancy, Director of GOOGLE, during the Commission’s Hearing on the GOOGLE book search in September 2009, the then 10 Million scanned books included all images. In case of display of the books, images would be made blank – a policy that EVA does not appreciate.

Although the amount of European art works in US art books is estimated by our American partner society very high (about 90%), we hesitate to introduce such legal action in a foreign continent because of the high risk of costs. Due to Article 412 of the US Copyright Act we are unlikely to have a right for statutory damages and reimbursement of legal costs. However, we will reconsider our position under these new circumstances.

Digitisation of books and embedded visual works

The use of the internet as source of information and tool of communication gains more and more importance, its potential to boost the economy and the potential to create new jobs is recognized by governments and the European community. However, we would like to see that also the job of an artist is appropriately rewarded for his contribution because the Internet is only a valid tool when there is precious content to transmit.

I would like to mention at this point that artists are not in all countries covered by social insurance and many live at old age in poverty.

An unwaivable equitable remuneration right when rights have to be transferred could help to redress the balance between authors and users.

The transformation of preexisting works from the analogue into the digital format is because of dimension of the project and its

complexity is a challenge in many aspects.

That might explain to some extent that the issue of embedded visual works in books is taken up only recently in particular by the Commission that repeatedly emphasized that digitized books without images would not be desirable. Supposedly the subject is regarded by many as too complicated who fear that solutions will become out of reach.

The subject is on national levels discussed and images are taken into account where national solutions are developed. Besides, I am confident that I can give you some reassuring information that the visual sector in Europe is well advancing in developing cross border solutions that will enable that digitized books will include images when up loaded and made available to the public.

The EVA societies provide already of an international network and databases of authors (in the visual field collective management societies always work author oriented because work databases are not feasible). The EVA societies have also an international network of multi territory and multi-repertory licensing. Our members work on extending their service for other authors' categories than fine arts in order to cover all professional groups of images in books and to adapt to services required when authors are unknown or need to be traced.

Embedded visual works in digitized books

Visual works in books include all kinds of illustrations, and in particular works of fine art and photography. As concerns the size of the problem where authors are not traceable or unknown an important difference between the two categories can be discovered.

Fine arts

The amount of works of fine art published in books where the author is untraceable has to be estimated as very little. In general a work of art is embodied in a book for a particular purpose and mainly in close connection to the text. Art books feature particular artists or artist movements. The artist and his work are often the main subject of the

publication. The same occurs with exhibition catalogues where reproductions of exposed works are in many countries excluded from the reproduction right during or in close timely connection to the exhibition. Also in books which are produced like art works, in limited editions and for instance with lithographs, the author will be certainly known.

In order to trace the known authors of fine arts published in books the collecting societies are in a privileged position. Authors whose works have reached a level of sufficient popularity that they are published in books are regularly either members of collecting societies or represented by estates and foundations which are known. But a number of known artists are opposed to making their work available through the internet and desire to opt out.

Photography

The problem with photography is likely to be greater because in the past book publishers did not correctly or completely credit the authors and with photography it is unlikely that there other means to identify the author, like it is the case with fine arts. Image archives undertake efforts to develop systems to fill the gap; however these initiatives are expensive and cannot provide miracles.

Independence of inserted visual works

Images in books where the publisher and author of the text cannot be traced could however be still protected and the illustrations' authors might be well traceable. In that case an entire book could not be deemed an orphan. Digitization and making available of the not orphan parts of a book would require licensing that collecting societies are best suited to offer. While GOOGLE favors so far a solution that keeps pages with images blank, we cannot agree on the necessity to limit books in digital libraries to written contents.

Not to include illustrations in books might cause infringements of moral rights because images are regularly used in particular contexts and are chosen and placed not at random. To offer books without images in EUROPEANA would be a low quality offer to European citizens.

The opposite case could also arise: a protected book which is not orphan contains images whose author cannot be traced or is even unknown. In order to enable the inclusion of the entire book in the digital library a mechanism should be in place that allows diligent search for such authors and a licensing tool for the up loading step. Any proposal by the Commission should therefore allow for the inclusion of these scenarios.

Access – rights clearance by EVA and OLA

The EVA societies have created back in 2002 OnLineArt (OLA), an international one stop shop for licenses of internet uses for fine art works. With a view on the creation of the digital libraries OLA also provides for special tariffs tailored for non-commercial archive uses.

What is developed at present by OLA is an extension of the service to other categories of visual works and the inclusion of orphan works. We are negotiating with different possible partners on European level. Our German member has included the concerned rights of non-commercial image archives in its repertoire. Negotiations are on-going in other countries for instance in the Netherlands.

We are further inquiring with the consortium of ARROW whether and how to include our means and services in an ARROW plus program in order to include the visual repertoires in the search tool of ARROW.

We believe that collective management organizations are a competent partner and should be playing an important role when it comes to offer necessary services of due diligent search and licensing of up loading for making available of books being fully orphan or containing orphans. The future project of the Commission on a tool harmonizing governance of collecting societies should be seen in this context also as an opportunity to gain support for extension of their activities on digital uses.

Culture Flatrate versus licensing

A culture flat rate would not be an appropriate solution to our understanding. It would be unlikely that a flat rate could ensure sufficient income to appropriately cover the use of all work categories on the Internet. Differentiation between uses and work categories would be hindered and opt-out impossible.

Mette Møller

Secretary-General and Attorney-at-Law in the Norwegian Authors' Union

I will describe the Norwegian digital library project called (in English) "The Bookshelf". I believe this is the most ambitious digital library project in Northern Europe at the time being

THE NORWEGIAN BOOKSHELF PROJECT - FACTS

Before the Bookshelf was opened late May 2009, the National Library had conducted a small scale pilot which was restricted to a theme: The Northern Territories. The pilot included only 300 scanned books (200 non-fiction and 100 fiction books), approximately 350 articles in addition to film and audio recordings, photographs, maps etc. The books that were still in copyright were all individually cleared for the project by the organizations in question. Even if the pilot was small, the authors insisted on money on the table, and we agreed on a lump sum not meant to set the level for the future.

The next project, the Bookshelf, could not have been done without the pilot. The idea this time, with the Bookshelf, was to establish a streaming service - a read only service, no downloading or print outs. The National Library wanted to learn and gain know-how and suggested to offer all genres of books published in Norway during three decades: 1790-99, 1890-99 and 1990-99. All books from the 1990 decade are still protected, and that is also the case for some of the books from the 1890ies. It should be free for the user to read books from the Bookshelf, copyright protected or not.

There are 450,000 books published in Norway, ever. Now, thanks to the Bookshelf, 35,570 books are now available for free streaming. 27,870 out of these digital volumes are still under copyright protection. The 7,700 books that are out of copyright are available for free downloading in pdf format. In the end of 2010 the total number of copyright protected books in the digital bookshelf will be 50,000.

The National Library has three production lines for scanning text; the

quickest is fully automated and scans 100 books a day, the slowest is a real person equipped with gloves and dust brush and scans one book a day. In all, 200–300 books are scanned on a daily basis. And after being scanned, there are 50 computers dealing with the remaining procedures necessary to finally include the book in the Bookshelf. The users: 46,861 unique users i.e. Norwegian IP-addresses. A visitor reads in average 64 book pages per session. 70 % of the books have been opened and assumingly been read from. Per March there were 15,431 downloads, 72 downloads per day in 2010.

The Norwegian Bookshelf from the rest of the world: The Bookshelf is an important component in library search; other library systems have the possibility to link to the Bookshelf books for reading, and actually everyone can post links to the books in the Bookshelf. There are 1,563 links to the whole digital library “NBdigital” from Wikipedia. During the first half of March, 988 referred searches came from libraries, 386 from Wikipedia and 39 from Europeana.

LEGAL AND CONTRACTUAL CONDITIONS

According to a provision in the Copyright Act of 12th May 1961 No 2, Art 16 a and a Regulation of 21 December 2001 No 1563, archives, libraries and museums have the legal basis to make copies of works in their collections and make them available to the public if they enter into an agreement that meets the requirement to be an extended collective license. An ECL agreement has to be entered into with an organization representative for the rights holders in question and which has been approved by the Ministry of Cultural Affairs. The effect of the ECL is that the agreement also covers rights holders that are not members of the organization that is part in the agreement. And another effect is that this kind of agreement solves the question of orphan works.

The National Library wanted to negotiate with one body representing all the rights holders in question, and the Norwegian RRO (reproduction right organization) Kopinor was well suited and appointed for this purpose as well as to collect the money.

The term of agreement is quite short, it runs through 2011. An author is free to exempt his or hers work from the Bookshelf. There have been 80 withdrawals. Kopinor shall indemnify the National Library

for any claims arising from rights holders. The agreement is published in English and posted on: www.nb.no.

It remains to see how the Kopinor members in question agree on how to split the remuneration. The remuneration for the Bookshelf use is based on copyright and thus also the publishers are among the right holders who are entitled to remuneration. This is one clear difference from our PLR which is unquestionable a cultural political means to support Norwegian artists and creators and where the publishers have no claim for PLR revenue.

REMUNERATION

A few minutes ago I said “free streaming”. By that I meant free to the public. So who pays “for the free lunch” at the Norwegian Bookshelf? The agreed price for a scanned page from a protected work is NOK 0,56 (€ 0,07) per year. Taking into account 50,000 books scanned and an average of 185 pages per book, the rights holders can claim NOK 5,180,000 or € 647,500 for one year. The money is paid by the National Library.

NEXT STEP

The rationale for the authors to consent to the Bookshelf is that they are paid a reasonable remuneration. We are now negotiating ebook contracts with the publishers who no longer see books from the 1990ies as dead. If the publishers want to make money on the back list – fine with the authors who want to be paid along known royalty schemes – but how will a commercial offer compete with a free offer? Will out of print soon become an irrelevant term? Is there a future for the Bookshelf after 2011 at all? What is this market worth? And what becomes of the book stores if all the book shoppers prefer a free service? Well; the book will survive, the reader will thrive, but is the full time writer soon to be an endangered species in the creative community?

Lidia Geringer de Oedenberg

Member of the European Parliament, European Socialists and Democrats (S&D), Committee on legal affairs

First of all, I would like to congratulate the European Writers Council for their initiative to organise this interesting conference just a few days before 23 April, which is World book and copyright day. I am very pleased to have been included among the guests. I am speaking here as a member of the European Parliament, working in the Legal Affairs Committee, who is faced with the challenges of the new digital era, but also as a former artist, who used to present works to the public and a director of a philharmonic orchestra, who used to negotiate contracts with authors' representatives.

The book industry like many other industries in the XXI century is about to "turn the page": from a paper to digital one. I find this phenomenon **of comparable importance to the invention of printing by Gutenberg**. The phenomenon of digitalisation came out all of a sudden, and Europe was a little bit taken aback by the massive scale of digitalisation undertaken first by a private American company. Now, the shock is slowly passing and we are thinking about what actions should be taken at EU level. It is therefore a good moment to reflect on how we perceive this new "digital" reality which is being born. Is this an opportunity or a threat for authors? Will authors lose control over their works in the digital world – or will this world open new possibilities for them?

It needs to be underlined that the problem is very complex. On one hand we talk about digitalising European cultural heritage, through Europeana, national cultural institutions or private companies. On the other hand, we face the challenge of a new "virtual" market for books which is developing on the Internet, facilitated by new devices like IPad, Sony Reader etc... This market is already developed in the US and Japan. We can expect the same trends in terms of consumer interest in the EU. This is also where we need to have **legal certainty** and effective measures in order to avoid problems like those faced by the music industry. One of the main problems today is, in my opinion, that

this **on-line market is still fragmented** by national borders, in contradiction to the idea of the free flow of goods and services, which is at the heart of European integration.

So, is this “digital reality” an opportunity or a threat for authors?

I truly believe that it's an opportunity not only for them, but for the whole society.

Let's look at the statistics concerning literacy rates in Europe. According to OECD, which is running a Program for international assessment of reading literacy among people under 15, the results are quite depressing. The number of pupils under 15, who don't have even basic reading skills is growing (it's defined as understanding, using and reflecting written texts in order to achieve one's goals). For the EU the share of pupils having such problems has grown from 19.8% in 2000 to 22.6% in 2006. The figures are even more alarming for specific countries.¹

On the other hand *Eurobarometer survey on cultural values within Europe* reveals that 42% of those, who use the Internet for leisure, do it with the aim of obtaining information on cultural events and products.² It means, that the Internet is an important facilitator of cultural life. The more – it has to offer to its users, the better.

Therefore, ensuring a wide accessibility to books in a digital format can, in my opinion, give **a new dimension to reading**. This is especially attractive for young people: for them Internet is “trendy”, reading ebooks using pretty gadgets can be perceived as more interesting than reading “material books”. Digital books can be interactive; they may have functions which facilitate understanding the text.

New possibilities for authors, especially those, whose books are no longer available in print, could arise. The problem of limited capacity of bookshops, which can only store books for an average period of 3 months currently, will also be overcome. This should result in greater customer interest, which will translate into higher revenues for authors.

Of course, the ideal picture which I have just drawn, will not come true by itself. We have to make sure, that a proper “level-playing field” for both consumer and authors is created. **So, what could be done, in**

¹ source Eurostat, Low reading literacy performance of pupils, 14.10.2008

² source Eurobarometer survey on cultural values within Europe, Directorate-General for education and culture, September 2007

order to facilitate the transition from “paper” to “digital” world.

Firstly, since we are talking about “creative” industries, our solutions also have to be creative. Experience of the music industry shows – how the absence of an appropriate response – in good time, negatively influenced the market. I don't have a precise proposal now, but I believe that while envisaging possible solutions we should be as open-minded and forward thinking as possible.

Secondly, our policies have to be coherent. Let me give you one example: The European Recovery Plan envisages 1 billion euro for the development of broadband infrastructures in Europe, with a special focus on rural areas. The philosophy behind this, is that investment in broadband has a positive impact on economic development, innovation and territorial cohesion. The Commission expects 1 million jobs – to be created only thanks to this investment. Of course, this increased access to internet will have a consequence in a greater demand for online “cultural” services: music, literature, newspapers, etc.... Therefore, we have to consider, what to do – in order to allow this future demand to be **satisfied by a high quality legal offer.**

Now, let us look at some concrete steps which should be taken in order to meet the challenges of digitalisation of copyright-protected goods.

Let's start with the pan European digital library **Europeana**. The main difficulties this project is facing are: making sure that all categories of books from all Member States will be available on-line. In practical terms this means, that we have to find ways to digitalise not only public domain books (the only category available now), but also orphan works and out-of print books. If this is to happen, two aspects are to be addressed: overcoming legal obstacles to digitalisation and ensuring proper financing.

As far as legal obstacles are concerned, today libraries need to secure licences from a great number of rights holders, when they want to scan books. This complicates and extends the process of digitalisation in time. As we know, the Commission is currently examining possible solutions, like amending the current directives by introducing a legally binding exception to copyright for digitalisation by libraries and facilitating multi-territorial licensing.

The second challenge is to ensure proper financing of the project. Since Europeana is a pan-European library, I strongly support the idea of providing funds especially at the European level. Let me also point out that such proposal corresponds very well to the wish expressed by many of us, that the EU should give privilege to **funding innovation and knowledge related activities**. I think we will have to address this issue while negotiating the next Multiannual Financial Framework for the period 2014–2020. Providing EU funds for Europeana should be coupled with stronger pressure on Member States to digitalise their heritage. The strategy of “sticks and carrots” should help to reduce the great disparities in digitalisation between various Member States.

What should be done for facilitating the transition from paper to the online world? For several years scholars, assembled in the so-called “Wittem Group” have been arguing in favour of the creation of a **single European copyright law**. Today, thanks to the new legal basis for intellectual property in art. 118 of the Lisbon Treaty, this option could become a reality. The single European copyright law will be, in my opinion, beneficial to creating an “internal” market for online goods & services.

I don't see any reason why the principle of the free flow of goods & services should not be extended to the online environment. Why are we able to buy and sell “material” books in the whole EU, but we cannot do the same thing with e-books?

While well adapted to the XIX-century reality, the principle of territoriality, does not reflect the reality of the XXI century. The great tool of communication, which is the Internet, doesn't recognise national borders. And we should not create them artificially.

In my opinion, a single copyright framework would be beneficial for all the “creative” sectors concerned. For books specifically: on the one hand it would solve many obstacles to digitalisation, on the other hand, it would facilitate the commercial exploitation of goods all over the EU. All those, who want to offer copyright protected goods, would be able to do so without the need to clear the rights in 27 Member States. This would also enable the EU economy to make up “the gap” in online services compared with the United States.

In conclusion, let me draw a picture of an ideal situation for copyright

protected work in the digital era. In such an ideal situation we could have a single source, like a very extended Europeana, from which it would be possible to download public domain works for free and **in-copyright works in exchange for a periodical payment**. Authors could be remunerated on this basis, according to popularity of their works, measured by the number of downloads. Maybe the amount of payment could be comparable to what we currently pay for TV, which is around 10–15 euros a month? In such an ideal situation we wouldn't have to worry about IPR infringements, because copyright-protected works would be simply more affordable. Having this ideal picture in mind, let's now creatively think what solutions for copyright protected works we could find.

Tilman Lueder

Head of Unit, Copyright, DG Internal Market and Services,
European Commission

Some of the issues I will say were already said at the Spanish Presidency conference in Madrid, so I try to come up with something new. But if we have any more conferences, it might be difficult to come up every time with a new policy for every new venue.

The era of writing papers about digital libraries and analyzing the issue has come to an end. We have to finally do something and I think this is very likely to happen this year. I think we have too many issues how the digital market is going to develop. There is the **publishers' business model**, and there are **library initiatives**. The publishers' business model is obviously based on subscription data bases. It is also based on posting older editions online. The main threshold is whether a book is commercially available, on one hand, or not commercially available, on the other had. This is terminology taken right out of the Google book settlement.

I think it is very relevant to see where the borderline in the future may be drawn between the publishers' business models and the library initiatives. Under that notion – and we can discuss whether this is a right notion – the publishers will put online in subscription databases everything which is commercially available. The libraries will put online everything which is not commercially available. Therefore it becomes very important to have some idea what “commercially available” means. It obviously means that a book is still in print. That means, that there are still new editions of a book, that a book is sold as new in bookshops. This is a very clear cut case of being “commercial available”. Those books are not in the library initiatives, those books are in the publishers' business models.

A second category of books is the **out-of-print books**. There, the issue is: Are those books still commercially available? They are not available in the offline world as such. The question arises: Are they commercially available if there is no new edition but they are still in commerce as second-hand? Is that still commercially available or not?

I honestly do not know, I am asking the question. It is a bit of a borderline question, but there you go. And the most tricky question of all is: Is a book still commercially available if it is no longer in the conventional channels of commerce, but if a publisher has digitized the book and has put it into an online database? If you search the internet you may find that book in a publishers' database, and against a subscription you can have access to this book, whatever the subscription model implies. That is an interesting borderline case: The book is no longer in print, no longer sold in second-hand bookshops, but the publisher has digitized it and put it in an online catalogue. That is what we call "digital republishing". Is that book now commercially available?

This is a very important question. If that book is available, there is an argument that it is no longer in the libraries' database or in the libraries' catalogue. It is an important question, we have no clear answers to this, but it is essential to differentiate between the two models.

The library model comprises: Orphan works, those are clearly in the library camp; out-of-print books, here we have the issue to the extent that they are not commercial available; photography, archive material, private diaries, unpublished works, unpublished manuscripts, donations; all of this is the classical stuff of the digital library. A lot of issues are involved with the unpublished manuscripts, but it is clear that they are not in the publishers' model. They are donated to libraries; it depends on the contracts, on the terms of donation whether this is also destined for wider publication or just for the purpose of safekeeping or local storage or access for local investigations.

Collective management, as we have heard, plays an essential role in this second part. Where the libraries are running the business, there must be a system, certainly for out-of-print books, that the digital rights are collectively managed. It is impossible, if these rights revert to the authors individually, to manage them individually. Of course, an author is free to have a contract for the digital rights with a publisher, and the publisher may then digitize this book and put it on his website. Then it falls into the publishers' business model. But if there is no such contract, then it falls to the collecting societies to administer the digital exploitation of these rights.

Orphan works is our key priority, because in many ways it is a test

case for collective management, a test case also for cross-border online use. So I conclude with just a few words on orphan works, not to overlap too much with what has been said in other conferences on this topic. The orphan works issue for us is twofold. There has to be a system of identification of orphan status, and there has to be a system of recognition amongst all European member states of this orphan status, and there has to be a system of redress in case the parent of the orphan re-emerges. Those are the key elements. First: Orphan status. It would be costly and wasteful to duplicate diligent searches for orphan works in several countries. We have therefore determined that a diligent search has to be carried out in the country of first publication. There the databases are available, collecting societies' databases, publishers' databases, to see whether the orphan can either be identified, or, which seems to be the more common case, the author is identified, but can no longer be located. The best place to look in this latter scenario would be the collecting societies' databases. Then there must be a system of identification of these orphans. There will be a public register where all identified orphans are displayed. The user, in most cases the libraries, will keep aside a certain amount of money in order to indemnify authors who have a credible claim to ownership over these works.

And there is **mutual recognition**, that in the other member states you could also access these orphan works, for instance those works identified as orphans and put online according to the French rules on orphan works by the French National Library. The diligent search conducted in France has to be recognized as valid throughout the EU territory. The other member states will recognize the search, and will also have to recognize that the French National Library has legally displayed these works online after having conducted the search to display these works all over Europe. And for the re-emerging authors there would be some funds set aside. Those are the principal conditions of a system based on mutual recognition.

The **Norwegian bookshelf project** is very interesting. The **extended collective licensing** however does not require an upfront diligent search. You first display the book, and then you keep money in reserve in case someone manifests their ownership rights. In that respect the extended collective management schemes are a lot like the Google Books Settlement, actually. The extended collective licensing

has a lot of parallel elements with the Google Books Settlement. Their structures are parallel: If you do not opt out of the scheme, you are in. The Google Books Rights' Registry will make a "commercially reasonable" effort to locate you – but afterwards, after the book is upload and available online. An extended collective license works a bit on this principle as well. The extended license can be adapted in the mutual recognition scenario if there were a diligent search prior to the library's upload. But without this upfront diligent search, the uploads lawfully conducted under the auspices of an extended collective license could not be recognized in the other Member States.

The second thing with the Norwegian project is of course **the rates**. The rates are 7 cent per page per year. If you have an orphan that comprises 185 pages (the figure is chosen as our research shows that this is the average length of an orphan work), then you come to a price of 13 Euros per book per year. If you have a thousand books, that would mean you have to pay 13.000 Euros per year, and if you have a million books – you can calculate yourself, it becomes rather expensive to display orphan works online. And this rate only includes viewing of the text, searching inside the book and sequential browsing through individual pages. The rate does not include downloads or printing of the orphan work. It all depends on the rate, of course. The Norwegian system says that an orphan work has the same rate as any other book. The question however is, if any library outside of Norway (which is well funded for obvious reasons) has the funds to pay an annual fee of 13 euros per orphan work to include these works in its online library. An orphan work might get one or two hits per year by a researcher, some orphan works might get more, some might get no hits because they are truly forgotten, and even if you digitize them they will not get any hits.

The second problem therefore with a licensing scheme is: it has to be featured in a way that it is still attractive for the library to upload the orphan. The library has already upfront costs digitizing the orphan. The licensing costs come on top. There must be some equilibrium in this system. Therefore our mutual recognition system would say: If you do a diligent search, you can upload it, and you keep a reserve fund for the re-emerging author. We don't want to encourage member states to go into the depths of the licensing scenario. We possibly could also live

with a zero rate license for some time, as a test, as long as there is the redress for re-appearing authors.

If the licensing problem leads to a significant delay in the legality of the upload, the whole legislative project is going to be a failure. We want to **compete with Google**. We want to have a system whereby a lot of libraries can upload and make available our cultural heritage. Google has opted for the opt-out, and we contest that, because it is against the principle of prior authorization. In that respect, we have criticized Google. On the other hand, when the system of prior authorization does not work in a time frame that would still allow us to compete with Google, then obviously we must review it, and we must find a system of copyright authorization which is quick enough for “Europeana” to compete with Google.

Discussion

The discussion touched the following items:

What will happen to a **book** when it is no longer a physical object? Will it drown in the digital sea, or will it be revived after having been forgotten?

How can **copyright law** be adapted to the new technical conditions? It is the right moment for discussion – The European Parliament has working groups on intellectual property rights within the political groups and on the level of the legal committee

Is a **cultural flatrate** of 10–15 Euro, as proposed by Lidia Geringer the solution? That could endanger legal offers. It could by no means give the same value to authors as the book market does today. And who should pay? Every citizen? Or should there be a sort of levy on hardware? It could work maybe in form of a subscription.

Do **collecting societies** in Europe differ from each other or do they work in a similar way? Some differences in their work were discussed.

Possibility of a **legal license**, to avoid licenses case by case, especially in books for education

Norwegian bookshelf: Remuneration for authors is paid by the state. That may be difficult for other states. Translations: there are translated books in the bookshelf published in Norway. Problem: their authors have not been paid.

Panel 3: Activities and perspectives at the policy level

The creators' indispensable role and contribution to the development of Europe's educational systems and the knowledge-based economy

Creative industries and creators' rights

European policies to ensure the survival of creators and creativity

Prof. Dr. Matthias Leistner

LL.M. (Cambridge), University of Bonn, Germany

One of the main coming tasks of academics in the copyright field is to put the individual creators who create all relevant works of authorship – now often called “content” in the digital era – into the centre of European copyright law.

The task assigned to me by the organizers is to give an overview and assessment of the recent activities and perspectives at the policy level both on European level and on national level.

European Policies on Copyright Law – Overview:

- Directive 2001/29/EC (“InfoSoc-Directive”)
- Green Paper “Copyright in the Knowledge Economy” (COM(2008) 466 final)
- Communication on “Copyright in the Knowledge Economy” (COM(2009) 532 final)
- Communication on “Creative Content Online in the Single Market” (COM(2007) 836 final)

- Public Consultations:

- Reflection Document of DG INFSO and DG MARKT “Creative Content in a European Digital Single Market: Challenges for the Future” (October 2009)
- Public Hearing on “Orphan Works” (October 2009)
- Information Hearing on the Google Book Settlement Agreement (September 2009)

A legal framework for collective rights’ management organizations should and will be relevant for the recent policy activities. Collective rights management can be a reasonable instrument for guaranteeing individual creators a fair compensation in the digital environment; clearly collective rights management issues also affect the completion of the single market. Quite obviously, considerable distortions of competition in the single market are caused by different systems of collective rights management in the member states and namely by different levy systems. This is a very complicated area but it should be faced in a forum like ours today.

Green Paper “Copyright in the Knowledge Economy” (2008)

- Purpose:

- Re-evaluating the role of copyright in the “knowledge economy”
- Fostering a debate on how knowledge for research, science and education can best be disseminated in the online environment

The word *economy* in the context of the green paper is quite a revealing characterization. The role of the author should not be reduced to a content deliverer in the digital era. The question comes to mind: What about moral rights in that instrument? As a matter of fact we are faced with a deep divide between the copyright systems and *droit d’auteur* in that area which will be politically very hard to bridge. Of course this might be a good political reason not to tackle that particular issue at this time. However, the issue of morals rights is of a limited but

considerable relevance for the single market. I turn your attention to examples such as the right of paternity on internet websites. Certainly, the issue deserves more attention from the European institutions.

One key issue regarding economic aspects of copyright is that the Green Paper did not make a conceptual and consistent distinction between authors and publishers. Instead both groups were merged into a single category of rightholders. At least partly, this has improved in the Commission's Communication of 2009.

Communication "Copyright in the Knowledge Economy" (2009)

Libraries and archives:

- Digital copies for preservation purposes and electronic dissemination to users
 - Current legal status:
 - No general exception for mass-scale digitisation (only specific acts of reproduction for non-commercial purposes, Art. 5 (2) InfoSoc), prior authorisation needed
 - Optional exception (Art. 5 (3) InfoSoc) for "on-the-spot-consultation" within libraries
 - Libraries: High transactional burdens
 - Publishers and collecting societies: No need to broaden current exceptions, existing system of licensing schemes and contractual agreements sufficient
 - ./... and individual authors?

What should be the position of individual authors? Here the distinction between authors and rightholders is of crucial importance. A possible solution for all relevant stake-holders would be an efficient collective licensing system. If broadening and flexibilising the exceptions would be discussed in that context, then it should be borne in mind that this must not necessarily be a disadvantage for the individual authors. Broadening an exception might even benefit the

individual author under certain circumstances, at least if this is only done while being balanced by a claim to fair remuneration which is directly distributed to the authors. So, broadening the exceptions on the condition of fair compensation is not in principle of disadvantage to the individual authors concerned.

• “Orphan works”

- Copyright protected works whose right holders cannot be identified or located
- Current legal status:
 - Prior permission from the right holders needed, but impossible to receive
 - Non-binding instruments:
 - Commission Recommendation 2006/585/EC
 - Memorandum of Understanding on Orphan Works (2008) and related diligent search guidelines
- Libraries/universities/archives:
 - Lack of legal certainty
 - Legislative action at the European level needed
- Rightholders/collecting societies:
 - Orphan works as a rights-clearance issue
 - No blanket exception
 - ./... and individual authors?

Libraries, universities and archives are complaining about the lack of legal certainty. This again emphasizes the role of collecting societies and collective rights' management organizations. An example from Germany shows that the problem can indeed be tackled in a rather effective way. I draw your attention to the respective agreement between VG Wort, Börsenverein des Deutschen Buchhandels (publishers and booksellers), the German National Library and the German

Research Foundation DFG on the orphan work issue. The project is based on an upfront diligent search, and a subsequent remuneration payment by the users (libraries etc) which are in exchange indemnified from (civil) liability. The money would be paid to VG Wort which holds it as a trustee, trying to identify the individual authors. Ultimately, if a certain period of time has passed and the individual authors could not be identified, this money would be put into the general distribution to authors.

• Teaching and research:

- Differentiation between scientific works and literary/artistic works
- Published results of publicly-funded research should be available to the scientific community and to the public
- Libraries/universities:
 - Current system of licensing agreements with publishers is too complex and fragmented
 - Central organisation to grant a wide range of online rights needed
 - Mandatory teaching and research exceptions necessary
- Publishers
 - Licensing solutions provide flexibility
 - Existing agreements are comprehensive
 - Limitation to non-commercial and educational purposes has to be guaranteed with regard to home-use and distance learning
 - ./... and individual authors?

The crucial issue here is that the individual right has to continue to exist. The individual right of the author as such must not be undermined by over-broadening the exceptions. The individual freedom of the author is the very key factor in choosing between the two systems,

open access journals on the one hand and published and peer-reviewed journals on the other hand.

Communication on “Creative Content Online in the Single Market” (2007)

• Objectives:

- Development of innovative business models and deployment of cross-border delivery of diverse online creative content services
- Preparation for the adoption of a Recommendation on Creative Content Online

• Specific issues:

- Availability of creative content
- Multi-territory licensing for creative content
- Interoperability and transparency of DRM-systems
- Legal offers and piracy
 - Liability issues

I think that the interoperability and transparency of any electronic book system will be of crucial importance for establishing that system. Ideally, any standard for e-books should be open and accessible for the players in the field. We should certainly prevent a war of standards happening. If necessary and reasonable, competition law should be applied effectively in order to guarantee that standards are accessible for anyone who wants to offer a service in that field.

Reflection Paper “Creative Content in a European Digital Single Market” (2009)

- Objective: Creation of a modern, pro-competitive, consumer-friendly legal framework for a genuine Single Market for Creative Content Online
 - Appropriate remuneration (./ “fair compensation”)

- Culturally diverse European market
- Attractive legal offers for consumers
- Transparent pricing and terms of use
- Level playing field for new business models and innovative solutions for distribution of creative content
 - Protection of personal data
- Main challenges:
 - Consumer access:
 - Limited attractiveness of the legal offer for online content in Europe caused by
 - complex business models,
 - diverging statutory rules,
 - diverging contractual relations in the 27 Member States.
 - Audiovisual media services not available in every territory while reception is technically possible
 - Protection of personal data
 - Commercial users' access:
 - Multitude of rights and rightholders to be administered causes complexity in the licensing of digital content
 - Often rightholders (not creators!) use territorially restricted licences
 - Territoriality of copyright
 - Fragmented structure of the market hinders the development of broader, more innovative and more attractive legal offers, especially in the audiovisual sector
 - Protection of rightholders:
 - Contractual freedom and free choice of most efficient exploitation methods

- E.g. free choice between collecting societies and individual rights management

The document emphasizes that contractual freedom and free choice of the most efficient exploitation method should be a key aspect, basically comprising free choice between different collecting societies but also free choice between the system of collectively administering the rights and individual rights management systems. I think that in the light of the highly successful story of collective licensing on the continent, to guarantee a level playing field for such competition of models, collective licensing needs a reliable legal framework, ideally on the European level. Such legal framework for collective rights management should comprise rules on governance, transparency, rules on remuneration and levies. That can hardly be distinguished from the background problem of the exceptions in the copyright law. Therefore indeed in a long term perspective we might need a European copyright code. Of course, for the moment being this is merely an academics' dream. In a short term perspective it should be thought about how to deal with collecting societies on the European level. A respective initiative of the Commission in the field is urgently expected. Meanwhile, instruments should also be considered in the framework of competition law, namely thinking about a block exemption regulation, differentiatedly treating the system of reciprocity agreements of the collecting societies.

Main Policy Perspectives with regard to Writers

•Online distribution of literary works:

- Creation of a streamlined pan-European and/or multi-territory licensing process
 - Coherent licensing framework at European level
 - Streamlining rights management across the Single Market
 - Alternative forms of remuneration, e.g. flatrate-models
 - Legal framework for (collective) licensing needed!
 - Ultimately: Single European Copyright Law?

• Digitisation of books:

- Simple and cost efficient rights clearance systems covering digitisation and online dissemination
- Extended collective licensing system?
- Statutory exception for digitisation projects?
- Solution to the orphan works problem:
 - Liability rules
 - Common standards on the level of due diligence in searching for the owners?
 - Common standards for potential copyright infringement when orphan works are used?
 - Collective Licensing Solution?
 - Legally binding stand-alone instrument, statutory exception or guidelines on cross-border mutual recognition

The main interest of the individual author is that there should exist a coherent licensing framework, also at the European level, which allows for a competition of the models. That would presuppose the continued existence of a substantiated individual right of the author, and what is more important, an effective protection of the interests of authors as regards their fair remuneration. Different models exist in individual contract law in the member states, and most of these models tend to work not so effectively. Lucie Guibault has given the example of the Belgian very developed individual copyright contract law which in practice has not benefited the authors so much. In Germany we have sections of the German copyright act which should really be a model for protecting individual authors, and these provisions have hardly worked effectively in practice either.

The birth error of these provisions is that the collecting societies were not put into the place for collectively administering the fair remuneration claim, because they were not seen as an interest representative of the authors as there are also publishers in them organized. However,

any such legal framework on the European level should guarantee fair compensation, and if individual copyright contract law does not tend to fulfill that task, then again we also have to take into account the system of collective rights management organizations.

Also one of the birth defects in the WIPO copyright treaties was that online rights were established without being complemented by a system for collective rights management. We have models in European law for that. I draw your attention to article 4 rental and lending directive which combines the exclusive right of the individual right-holder with a claim to equitable remuneration which is optionally administered by a collective rights management organization. That at least from the viewpoint of the authors would be an ideal mechanism in European copyright law to safeguard the interest in fair compensation.

• Collecting Societies:

- Governance and transparency of collective rights management organisations
- Competition between collecting societies
- Collaboration with ISPs
 - New business models based on access subscription, e.g. flatrate-models
- Collective licensing for User-Created Content?
- Collective licensing solution for orphan works?

All these thoughts culminate in the crucial role of collecting societies for the safeguarding of authors' rights. I am convinced that we need a European instrument in the field, covering transparency, governance aspects, ideally also covering aspects of admission, thereby installing a level playing field for competition between collecting societies in the single market, at the same time taking into account the issues of cultural diversity and the protection of smaller languages. That only is a middle-term perspective. A first step might be a more differentiated treatment of the reciprocity agreements of the collecting societies in competition law. A comprehensive legal framework regulating collective rights management in the single market should follow as a consistent second step.

Maureen Duffy

Novelist, former president of EWC

The brief for this panel seems to suggest that we speakers should take on the needs and roles of all European creators but I hope you will forgive me if, after half a century in the profession of writing, I speak from a position which is rather biased towards the medium, its needs and creative contribution, which I know best – although creators in all the disciplines have more in common in these two areas than is sometimes realized.

However I should like to begin with a more general statement, an observation that does apply to European creators a whole. In a recent debate in the UK Parliament on the Digital Economy Bill which has just received the Royal Assent, and therefore becomes law just in time before the General Election, the minister responsible for the cultural sector stated that 2 million people were employed in the **creative industries** in the UK. Further these industries contribute an acknowledged 6.2% to the UK economy and that as I understand it without the inclusion of cultural tourism. After all no one goes to the UK for our weather. Many go to see where famous writers lived: the Japanese are drawn to the home of the children's writer, Beatrix Potter, others to the places where Jane Austen or Shakespeare lived, some to the promenade where the French Lieutenant's woman walked, or the landscapes painted by David Hockney, to come right up to date, tens of thousands to the theatres or concert halls.

Multiply all this by the number of EU states and you see at once the importance of these industries to the whole EU economy, even though at the last meeting of the culture ministers they had only identified 5 million jobs and 2.5% of the total European economy, figures which seem far too low unless the UK is some kind of cultural giant among member states which seems highly unlikely. Whatever the true facts none of this is achieved without individual creators working alone or in collaboration with other creative talents.

These are the economic aspects of the creators', our, contribution. But there is of course another equally, if not more, important consideration to be taken into account though it often seems almost

impossible to get our politicians to accept it though of course I exempt those here with us today. It is especially hard in the UK, a society described by the 19th century poet Matthew Arnold as 'Philistine' and by Voltaire as a 'nation of shopkeepers'.

In every society known to history there have been creators: dancers, musicians, artists, storytellers, poets. Even in concentration camps people wrote and made music. I think of the Greek women interned under the colonels who wrote poems on stone in their own blood so **essential to human life is creation and culture**. As soon as we have food and a roof over our heads, and even before, we thirst for something to feed mind and spirit. Without what are now called the creative industries and their creators we have nothing to hand on to our children but the merely practical, no history, no identity, just a barren, bare existence.

The computer, the internet have nothing to say without content, until now mainly music, film, and visual images but increasingly being joined by the works of poets, novelists, biographers, scholars, and critics with the advent of ebooks, digital libraries and a myriad other technological uses of the word and text we can only imagine. Europe without its creativity and culture is impossible to conceive. **We Europeans are our culture** even if every generation has to shape it anew for themselves. Without it the knowledge economy would have to exist on a thin diet of instruction manuals, management studies and tables of metadata. Science itself requires imagination, the power of visualizing the as yet unknown, before it can verify by experiment.

So great however is the human hunger for cultural and creative works that we are in danger of killing the geese that lay our golden eggs. Our new ease of access has made thieves and pirates of thousands of us out of that very hunger and, I believe, out of our ignorance of how the creation of the very things we desire is to be sustained. We writers in particular need our audience, a public. Where music may be heard and pictures seen spontaneously, words must be read, meaning has to be unpicked from symbols on a cuneiform tablet, a papyrus scroll, a page or now markings on a screen. The creative industries exist to provide a bridge between creator and consumer, and this is especially so in the case of the written word.

To some extent this may be changing in concert with all the other

technological changes. The internet service provider may be the intermediary rather than a traditional publisher. Perhaps there will come a time when we can simply broadcast our creations directly from our brains to the world without a go-between, but at the moment the entrepreneur is still necessary. We sell our work to someone to market for us. Even if we publish on our own website we are dependant on a service provided by a third party. We may buy that service with our subscriptions, by providing the energy source and equipment or our work may be bought in the traditional manner. What governs this exchange is **copyright, the creator's currency** which gives us something to sell, or at least a means to sell our work and is controlled to some extent by international and national legislation, but a system that is now so difficult to enforce that we have to continually look for new ways to ensure that it doesn't collapse under the sheer demand for access, the weight of technology that now makes it so easy to cheat on what was once the underlying contract between creator and consumer, that in return for their creations consumers would provide creators with the means to go on producing works.

The rights of authors

This concept was first enshrined in Europe as the Statute of Anne 1709. Yet even before this legal codification the rights of authors in their own works were acknowledged in the Ireland of the 6th century and in the copyshops of mediaeval Europe before the invention of printing. In 1946 the principle was embodied in the Universal Convention on Human Rights. And yet at the present time there is in some quarters a questioning of those rights.

The first comes from the entrepreneurs themselves in the demand for waivers or the ceding of copyright in return for a lump sum payment so that the creator's work becomes the property of the purchaser and is no longer attached to its creator by that umbilical cord that we all feel, whatever our sex, for something we have created. In the UK the position is particularly unsatisfactory in that the writer can be forced by an oppressive contract and the fear of not being published again to cede the copyright and abandon even the moral rights by waiver.

The creator's right is also now under fire from a section of the academic community demanding freedom of and free access to works

under the guise of educational, research or public interest exceptions. This claim to the right to know and use anything in the so-called public domain, a misunderstanding of that term, is usually made from the security of a salaried position, the protection of employment law and a pension scheme, none of which are available as of right to most of the self-employed creators throughout Europe with some honorable exceptions in the Scandinavian countries and in those states where some provision is made by the collecting societies. Research conducted for the ALCS in the UK and compared with the situation of writers in Germany found that writers earned only $\frac{3}{4}$ of the average wage, which is itself on the low side for one of the major economies of Europe, in many cases not enough to buy into a private pension scheme. As a result ill or older writers are applying in increasing numbers for charitable help from the Royal Literary Fund.

And finally copyright, creator's right, is under attack from public ignorance of the law, the perception of copyright theft as a 'victimless crime', a lack of understanding of how a creative work comes into being, and the inability of individual authors unless they are the equivalent of a best-seller, like J K Rowling, to enforce their rights through lengthy and expensive legal process.

So what European activities and perspectives are needed at the policy level to ensure the survival of our creators and their creativity?

First there must be good, and enforceable, **copyright law** based on a full implementation in all the member states of the principles and spirit of the Berne Convention. This need not mean the Holy Grail, so difficult to achieve, of a completely homogenized European Copyright Law as seeking for perfection we may miss the good or at least the attainable, though this concept was explored at a recent ALIE conference in London. I believe the principles and the spirit can be implemented and preserved with a degree of national and cultural variation. I should say here that I am a supporter of the movement for "Diversite Culturelle" and believe strongly in preserving the individuality of our diverse cultures and in particular of our languages and literatures. However I do believe that the European Commission

and Court have a vital role to play in devising appropriate directives and ensuring compliance with them, a practice which we have seen to very good effect in the field of Public Lending Right though it is still not complete.

The basic principles would include **no waiver of moral rights**, employee copyright, performers' rights, artists, droit de suite and other resale rights including on the same principle, second hand books and other physical manifestations of a copyright work, inalienable copyright and a parallel copyright in the complete work for the producer or publisher of a multiple work beyond a certain number of contributors.

Good copyright law should enshrine the principle of **payment for use**: that no use should be made of a work without payment unless the author of her own free will, not under pressure, voluntarily waives that right in writing. Contracts should not be legal that demand assignments or waivers.

The same principle of payment for use would extend to secondary rights, and where these cannot be exercised by the individual creator **schemes of collective management** must be devised answerable to governments, the law and European institutions. I welcome the moves being made for the overseeing and regulation of our collecting societies, and for their transparency and efficient management. Such organizations under the control of their members like traditional co-operatives, are increasingly necessary with the proliferation of technologies over which the individual can have no or little control. As a writer I want to write and receive a fair return – not spend my time attempting to track down infringements across the world. The UK has attempted to deal with some of these problems in its Digital Economy Bill but the difficult problems posed by orphan works have been shelved for the time being. It is to be hoped that the European Commission will continue its work in this area.

I believe that one of the fairest and most cost efficient ways of dealing with infringing private copying is through a **levy system** as already pertains in some 15 member states though sadly not in the UK. A rational, non punitive licensing of the physical means of copying which even the manufacturers must admit is capable of being used for infringement, would provide increased income for the creative

community. If such fees were set realistically they would not, as is so often alleged damage sales. I cannot believe that, for example, ½ % on a 400 Euro machine would deter anyone from buying it, yet the aggregated sums from all these micropayments would boost either the earnings of creators or cultural and social funding without calling on straitened national economies. The term “levies”, which has such unfortunate associations in some quarters especially in the UK should be replaced with something nearer the facts such as licence or fee which the public is used to in the form of broadcasting, driving and other licences required by law.

Finally, but not exhaustively, we need a programme of **education** for all sections of society, including creators themselves who are often unaware of their rights and the exceptions to them. This would include not just the legal position but some understanding of how works are produced so that is no longer possible for people to have such a neo-Romantic view of how we work and what our needs are to sustain the level of creation demanded by our society in which there is no individual who is not touched by or consume our creative works.

Education should be part of the curriculum at least where civics are on the agenda. Teachers will probably themselves need to learn what is and isn't legally possible, and the best people to explain to all levels of education are the creators themselves, especially those who already work for and with children. I would therefore urge all governments, even in these straightened times, to make funding available for creator visits to schools and colleges through their cultural and educational budgets.

Young adults will be the hardest to reach except through the medium of their own creations, bands with their own websites for example. Here the law and enforcement may have to be invoked for infringement but I would hope that we would have devised non oppressive and effective licensing schemes, recognized by governments and backed by the law, to make such measures largely unnecessary.

The UK Digital Economy Bill which some of you may have been following provides for warnings to be sent by ISPs to frequent **illegal downloaders** culminating in the suspension of the service if there is no positive response. These are the teeth of the legislation and it is vital

that they are given widespread dissemination so that the serious consequences of infringement are understood. Although the private sector has a role to play in this it should not be left simply to the creators, entrepreneurs and ISPs to provide this information. Government too must play its part and make it clear that this is not just a whim of the industries but a legal requirement.

We need a **pan-European review of the conditions for the creator** in all media in the 21st century, and of what should be put in place to ensure the continuance of Europe's vital creativity, both for our economic and our social and cultural well being. It is no longer good enough to think, as many still do, that we will go on creating regardless of poverty and indifference from our community. Self employment reforms, pension schemes, ways of recognizing our collective contribution to society must be devised for a rapidly changing world. A competitive market place as the only form of regulation will no longer do. The romantic idea of the artist starving in a garret while producing great works of art should be as dead as the slavery which it is a form of. We need access to technology, food, a roof over our heads, education for our children, healthcare, laws and conditions which ensure an adequate return for our work for those millions of us, not just millionaire status for a fashionable few.

That is the reality in the 21st century and I call upon Europe and its institutions to abandon the outdated concept that the muse, or a vocation, a desire to create will alone sustain the cultural needs of a multi-billion society or its thousands of creators.

If you want us and our works you must support us.

Xavier Troussard

Head of Unit, Culture Policy and Intercultural Dialogue,
DG Education and Culture, European Commission

The cultural perspective

I think all the discussion has clearly illustrated the transversal nature of the cultural objective we want to attain. On one side we have to secure the recognition of the unique value of the creation, we have to ensure the promotion of diversity of this creation and the sustainability of the creative process. On the other side I think we have to claim the added value that the creative sector is bringing in Europe to our smart inclusive and sustainable growth. We have to do this in a balanced way to make sure that we can reap all the benefits of developing the Union, of developing the internal market and seizing also the opportunities of the digital shift. When we look at the situation created by the digital shift, I think we have to underline the opportunities but also to show that the creator who is the most indispensable actor in the chain might be also the most vulnerable in the chain.

I had recently a surrealistic conversation in the corridors of a conference with an innovation policy maker. I was trying to preach for cultural diversity and trying to introduce the concept we were working on for the Green Paper on unlocking the potential of creative industries. And he was telling me: "But there is nothing to unlock! There is nothing to support! We have plenty of people playing guitar in a garage, we have lots of people writing whatever in the internet. Furthermore, the value is not any more in the content but what people do with the content. They value much more the exchange of music playlists or exchange of comments on the last book they have read than the piece of music or the book itself."

Green Paper on cultural and creative industries

We are pretty much conscious that in trying to devise policies for cultural and creative industries, there is a very delicate balance to be struck, securing the sustainability of the creative process as well as the

quality level of the creative process. This is one of the reasons for which we have embarked into preparing a Green Paper on cultural and creative industries. This is an important economic sector, this is also a sector which has some characteristics that may make it fragile, and perhaps even more fragile in the digital context. Most of the diversity which comes from the creative industry in Europe comes from small and medium enterprises (SMEs). SMEs have as only assets the intangible assets of the creative rights they manage. This leads to a number of weaknesses that we have to address if we want to secure the continuity of this creative process. The Green paper intends to launch a consultation process on ways and means to secure the proper environment for these sectors, keeping in mind our cultural objectives.

One aspect is related to the environment for SMEs. Do they have the right mix of skills coming out of the schools for the digital era? Do they have access to finance to develop their businesses? And here, there is one particular point: We have all been speaking about new business models, developing new tools for distributing, selling and giving access to culture. At the same time, the development of these new tools and approaches is not considered as research and development. The concept of research and development is good for technology, but is not good for content or for new approaches to the market. Here is a kind of gap and we have to think how to bridge it to bring real innovation capacity into this sector.

Those SMEs have a strong local footing. In the Green Paper we will also reflect on how the cultural element can be better integrated into sustainable regional development strategies. As you know, at EU level, the structural funds constitute a strong and powerful instrument budgetarywise, so it is important to recognize the potential of these industries for regional development and to reflect on how it can be fostered.

Moreover, we consider, that beyond their economic value, the cultural and creative industries can bring a new ecology that benefits innovation in the whole society- innovation in other economic sectors, but also social innovation to tackle the many challenges we face. Here I think that partnerships between the cultural sector and the education sector, for example, can be a key in this respect.

One question that should be important for authors is the question of the future and the new patterns of reading in the digital era. I think this is a topic on which cooperation between writers, the publishing sector and the education world can be promising.

The circulation of culture beyond borders

There is another dimension which is related to the internal market: the relationship and dialogue between cultures in Europe. If we praise cultural diversity in Europe, we should be better equipped to ensure the circulation of culture beyond borders. And here, in the field of writing and publishing, of course, comes the issue of translation: How can we foster translation, how can we make it easier. This is not only important within the EU, it is also important in the context of the external relations of the EU. With many of our major partners, when we come to discuss cultural cooperation, one of the first items which comes to the floor is the issue of translation. How can we ensure a better flow of translated works between Europe and China, Europe and Latin America? I think this is something where we could have ambitions and where there could be a real added value of cooperating at European level. We have of course the European Literary Prize which tries to bring visibility to new authors. We have to go a step further and ease the circulation of those works and we will necessitate translation for that.

A truly dynamic and diverse cultural sector in Europe

I will not respond in detail to all the points that have been raised before, concerning copyright, concerning competition. I think competition will be a key element both to regulate the chain from the creator up to the consumer and to make sure that nobody can lock this chain. The competition authorities can also acknowledge that the fundamental interests of the consumer is not only price, but is diversity and quality.

There has been reference made to interoperability and therefore to standardizations. We think that there are many of these framework conditions that will have to be ensured. There are many different policy fields to tackle those different points. On our side, we will

publish this Green Paper on the 27th April, and it will open up a consultation phase up to the end of July. The objective is to feed our reflection for the next financial perspectives; not only to see how those needs I referred to can be better tackled in a revised culture program, but also how some other policies and other financial instruments at European level can be directed towards serving the objectives of a truly dynamic and diverse cultural sector in Europe. This is our ambition and I hope you will contribute to our reflection.

Discussion

The **discussion** touched the following items:

Open access models – very often it is the author who pays. This becomes a problem, if it is done with public research money. In some models there is abuse of pricing.

Extended collective licensing as used in the Nordic countries: Is it useful, are there problems concerning authors' rights?

Possibilities to fight **piracy** on a political level

Can authors be their own enemies when they do not know their rights?

The idea to create a European system of **depository of authors' contracts**. It could follow the French system, where film contracts are archived in one depository and are validated. This makes for transparency, and could be a way to raise awareness and make contracts better.

Is it the ambition of the European Commission to create a **common market for authors' rights**? How is it possible to share the diversity of content, but not to weaken the diversity itself? How far should rights and exceptions be harmonized? Are there different opinions in the different directorates?

Conclusion

*Conclusions and recommendations
to the European Union institutions*

Nicole Pfister–Fetz

Autorinnen und Autoren der Schweiz – AdS, Switzerland

We have talked about a lot of ideas which are basically mentioned in the recommendations. There are two points we should add. First the collective bargaining that was mentioned in panel 1. Competition law should allow collective agreements for creators. Second, the point Mette Møller mentioned: The reversion of rights. This is important – how can it be made possible for authors? And we should not forget examples like the one of *Shanda Literature* from China. It is important to see that there are different models of using literary texts in the digital world, and that the digital world is without borderlines. There are other continents with other models of copyright, not only the European system. We should be aware of such other systems that can become also a part of our digital world.

Trond Andreassen

General Secretary, The Norwegian Non-fiction Writers and Translators Association, former EWC president, Norway

In 2005 we had the first important paper presented by the European Commission with the title *i 2010 – digital libraries*. That was a clear reaction to what happened in the USA, because in December 2004 Google presented their plans for digitizing the libraries in the United States. It was a good reaction of French president Jacques Chirac to

summon the other important state leaders in Europe. He urged to do something in Europe to prevent a situation that French readers can read digitized Victor Hugo in English, but not in French. This is a cultural approach very important to remember: that we have to secure in Europe the diversity, that writers must be presented in the digital environment in the national languages.

I think the panel I chaired today was a fruitful one in the sense that a lot of projects have been presented, for example the *Norwegian Bookshelf*, also models how to secure authors' rights and the dissemination of their works. When we can do this and also secure a fair remuneration, as Helga Trüpel pointed out this morning, I think we have taken some steps ahead. Now we can go on discussing the recommendations put forward by a group within the EWC. This will be a position and statement that can be a basis for further steps.

Pirjo Hiidenmaa

I will conclude with four items. The first one is a philosophical question: What is an author? As said by Maureen Duffy, an author should not be a starving mystified romantic creative person who writes without eating and having pensions. We should have stronger authors, who are professional, who are empowered to negotiate their contracts, who know to do their work as any professional. But we should not be a faceless part of the content production machinery, but creative and active authors.

Second: There is not one single business model, we should not try to put all types of writing and publishing in one model. There are different fields, and different rules in those fields. We need different practices, different contracts and business models by function and genres. In scientific writing and publishing we have the *open access* models. We can support it, because we fund with public money, taxpayers' money research and science and it is fair to give the results to the public. But as Professor Leistner said, there have been for more than 20 years ideas of open access, but nobody has found the model. Then we have educational platforms, intra-websites for schools and

authors publishing texts in this context, publishers selling licenses. This is a different business model from that in the open market where everybody can buy. So there is no one business model and no one contract for all texts.

Third: There are competing legal frameworks for publishing and for contracts. We have so many good academics here analyzing the situation: Should we have Pan-European law or national laws? Should we apply extended collective licensing? We are happy with that in Nordic countries; but Tilman Lueder was against it and called it the second or third best solution. We need to know more and debate more on this.

Forth point, what Xavier Troussard said about translation: When we talk about authors, we also mean translators, because they are literary authors as well. We need translators. In Finland, about 40 % of the new titles in bookshops are translations. That does not tell that our own literature is poor, but it tells that we are eager to understand how others think and what is life outside of Finland. Unfortunately, we translate mainly anglosaxon literature and not so much minor languages. In the United Kingdom, the figure is 5 %, in the USA less than 1 %. To understand different cultures, to keep languages alive we need authors and translators.

Helga Trüpel

Concluding remarks

I would like to start in repeating where we started this morning. Some notions and concepts are not put into question.

The first thing I would like to repeat and what we should maintain, is the concept of: "Digital rights´ fair trade." There was no harsh argument against this. It was made clear that we are committed to put producers of creative content in a better position. That we have to find the right instruments. There have been some proposals how to do it, for example changing contract law. We have to be careful how we do it,

but I think in this conference it was very clear that we have to put individual authors, individual artists in a better position so that they have more bargaining power. That is part of our whole concept of European societies: we have to estimate the work of the producers of creative content very highly.

Then it is clear that we need new business models. There will be different options, different legal offers by subscription, by micro-payment, maybe by marketbased flatrates, and they will develop in the coming years. Obviously it is clear that the music industry failed to be quick enough and that therefore a lot of young people were driven into the arms of the pirates and filesharing platforms. In order to avoid this, the content industry has to come up with new fair and good legal offers. I hope we can encourage them to do this.

Secondly: We need a philosophical debate on what is our concept of freedom of culture. In this room, we have a concept of freedom of culture based on individual authors, on the value of individuals who produce new ideas, new works. On the other hand, in our European societies, especially among the internet community, there is a very different option. It is not any more this estimation of individuals, it is much more a collective thing: We are all together, we are remixing, putting things together, and that is our new understanding of free culture and free flow of culture. That is really a different option. At least here it was clear that we want to maintain and protect individual authors. I think this debate is not finished, it is part of our common debates, and we have to be part of this.

For me it was important to hear today that we need professional standards. We are not against user-generated content or all the new possibilities, what bloggers and others can do. But in order to maintain quality content for example in newspapers or a certain professional standard for literature, it is crucial to maintain a concept of professional standards. I am not going to say that we need new authorities or bureaucratic bodies who will decide on the state level: What is good literature, what is bad literature. It is about professional standards. Even if there are subsidies or other sorts of financing, it has to be more or less market-based. We need a mixture of market-based concepts, in order to encourage individuals to create new ideas and on the other hand, political concepts for cultural politics. It is always the question:

What is the responsibility of public budgets to subsidize and maintain certain offers, but it must be a mixture of market and other possibilities.

Now I come to the question, especially with my Polish colleague from the social-democrats: What about the copyright? Is it outdated or not? Our conclusion today is: No, not on a general level is it outdated, and it should not be outdated. We have to implement the thinking of copyright into the digital world. But we have to admit, as we all know: We have a lot of problems with the management of copyright, and there are a lot of obstacles, and we have to overcome them in order to maintain copyright. Otherwise, if there is only bad management and it does not work, then the acceptance of copyright will diminish even further. That means – and it was for me very interesting once again – we need one-stop-shops, and collective licensing, we need collective agreements with collecting societies.

This is for me another very important result of this conference, because this was put into question as well: Whether we do need collecting societies or whether they are outdated as well. I think that even more in the digital era we need them because they have to measure data traffic in the internet. They have to do it with the neutrality of data protection software. That we do have to measure data traffic in order to remunerate the creators is obvious for me.

Everything that has been said was on the notion of fair competition in the digital environment. Therefore I would like to repeat one of the precise remarks by Prof. Leistner: It is appropriate remuneration what we need. We want to maintain a really diverse cultural European market. We do not want to put it into danger. That means we need attractive legal offers for consumers, we need reciprocity agreements of collecting societies, and we want to have contractual freedom and free choice of most efficient exploitation methods.

This puts together some of the items we discussed. As we said this morning: This would not be the true solution of all the problems. It is clear we are still in a process. For me it was helpful to hear that even the commission and the commissioners are still in a process of looking around, of searching models and good solutions. I think, hopefully we want to achieve these good solutions. One sentence of Mr. Lueder is

part of the whole picture: If you want to have a system of good collective licensing and if you want to have the chance to compete with Google and other new internet companies, on one hand we must do diligent search, we have to be very cautious, but on the other hand, in order to compete and not to fall back, we have to be quick. That is a certain balance we have to strike: we have to hurry up in order to have a chance for competition with them, but we have to be very prudent in order to secure certain rules which we consider to be very important. I think our conference today was a good contribution to this process.

Now it is important that you, with your recommendations and all the things you discuss in the following weeks, address the commission and the deputies, my colleagues, myself. We need your expertise. And then, I hope, in the next year we will make some progress.

The 5th Creators' Conference European Parliament, 15 April 2010, Brussels "Authors' Rights in the Digital Worlds"

Recommendations

European Copyright

We support the key notions of the Reding/McCreedy "reflection document": "Copyright is the basis for creativity" and the objective of "creating a favourable environment in the digital world for creators and rightholders, by ensuring appropriate remuneration for their creative works." We do not think that a "European Copyright Law" is needed. Nevertheless, if it is introduced, it should be based on the "**droit d'auteur**" or "**Urheberrecht**", which includes the moral rights of the author. We would not accept the Anglo-American concept of "Copyright".

Contracting Right

There should be an appropriate balance between authors' and publishers' rights as equal contracting partners. Collective bargaining should be exempt from the competition law.

Collecting societies

The system of national collecting societies is most important for author's rights. Collecting societies are a safeguard for author's remuneration and to facilitate the licensing of rights. Many of them also perform social tasks for authors. Many are supervised by state authorities to ensure transparency. This system should be supported and – if necessary – improved. Multi-territory licensing in the digital world should be managed by reciprocal agreements between the national collecting societies to secure cultural diversity in Europe.

Europeana

To avoid a “black hole with regard to the 20th and 21st century” (Trüpel report) it is necessary to find ways for the digitisation and making available of copyright protected books (and pictures and other content) while respecting authors’ rights and remuneration. This is true, in particular, for orphan and out-of-print works. Collecting societies can play an important role in this regard. As far as orphan works are concerned, a legislative solution seems to be necessary. It has to be emphasised that the case for a right of remuneration for the digital use of orphan works is undeniable.

The Need for Public Lending Right (PLR) and Fair Remuneration in Digital Contexts in Libraries

Public Lending Right (PLR) is the right for rights holders to receive remuneration for the use of their works in libraries. In September 2008 the European Commission’s report for the European Writers’ Council PLR annual conference stated that for the time being it would suspend its monitoring of the Member States’ implementation of PLR. The implementation of the “PLR Directive” is still lagging behind or has not been introduced in several Member States. We therefore call on the EC to review its decision. Furthermore, considering the progress made to-date by the i2010 digital libraries initiative and the new models being introduced for the digitisation and making available of digitised works, we strongly believe that the making available of works in new digital contexts in libraries should also be fairly remunerated

Google

The settlement has not been accepted by the American court so far. In the new version of the Agreement, many European books are still included. We request that the European authorities protect the rights of European authors in the digital age.

Piracy. Protecting Intellectual Property

We agree with the Gallo report on the necessity to combat online piracy and to protect Intellectual Property rights on the Internet. Authors alone cannot fight piracy. The information society must strongly defend the copyright of creative content. We call for increased responsibility of internet service providers to remove illegal content. Violators of authors' rights should be obliged to pay damages.

Readers'/Users' and Authors' Rights

We call for copyright awareness campaigns, especially among young users, to foster the notion of creation and an awareness that creators need to be able to make a living from their works. Young readers need to learn that Freedom of Information means unhindered access to information, but not without charge, when dealing with copyright protected content. Moreover, it is important to offer accessible legal platforms.

Copyright and Education

The Culture Programme can expand in order to support educational and awareness campaigns to value individual and collective originality and creativity, and to promote the respect of copyright in schools. Good practices in Spain (Cedro's "Es de libro") and in the United Kingdom (ALCS's copyright education programme) show that children from the ages of 6–12, as well as teenagers and adults can be positively educated. There is a stronger need for innovative education in the digital age.

New Ways of Literacy

There are and will be new ways to write, sell, use libraries, and read. Educational texts are changing. For instance, language education would be easier on e-books: you can read, listen and write on the same copy. We call for campaigns to promote reading in the digital worlds.

EU Policy to Enhance Diversity through Access to Digital Cultural Resources

Digitisation may help to make small languages and communities more visible. Moreover, more needs to be done through cultural policy in order to provide equal access to knowledge in different styles of languages, and accessible formats for different readers (reader-friendly messages, access for the visually impaired and the reading impaired.) This can be effectively carried out by cultural policy rather than by the markets. The EU should support translation from all European languages into all European languages.

The “Cultural Flat-rate”

We reject the idea of an “online subscription fee” or “cultural flat-rate”. It would deprive authors and creators of the right to determine the use of their works. It would obstruct new digital business models. Users would have the right to use all content, even illegal offers.

No Creative Content without Authors

The future of creativity depends on the status of authors. They need fair income, and secure rights in the digital world. We call on European authorities to protect the future of creativity and creative content by protecting the rights of authors.

Attendance List

Total: 112 - Countries represented: 26

European Parliament:

Country	EP	Name
Poland	MEP	Lidia de Oedenberg
France	MEP	Malika Benarab-Attou
Germany	MEP	Helga Trüpel
Belgium	MEP Assistant	Stella Tutunzi
Belgium	Stagiaire	Jonas Dylla
Czech Republic	MEP	Zuzana Roithová Represented by Jiri Jirsa
Spain	Stagiaire	Antonio Sanchez
Germany	Stagiaire	Inez Schniedemeir
Sweden	MEP Assistant	E. Wirfith
France	MEP Assistant	Louis Ferry
Italy	MEP Assistant	Antonio Bisignano
Italy	MEP Stagiaire	Gloria Deplano
Greece	MEP Stagiare	Mana Tziuti
Poland	MEP Assistant	K. Gangol
Belgium	Green/EFA Group	Nelly Baltide
France	Green/EFA Group	Autoria Luciani
Belgium	Science and Tech Options Assessment	Dr. Jarka Chloupkova

European Commission:

Country	DG-Section	Name
Belgium	DG INFSO	Nancy Pascall
Belgium	Copyright Unit DG Internal Market and Services	Elaine Miller
Belgium	DG Education and Culture	Sheamus Cassidy
Belgium	CULT Committee Office of Administrator	Mrs. Kaminsky
Belgium	Director Directorate Culture and Communication DG EAC	Vladimir Šucha
Belgium	DG Internal Market Head of Unit/Copyright	Tilman Lueder
Belgium	DG EAC Head of Unit: Culture Policy and Intercultural Dialogue	Xavier Troussard

Country	Organisation	Name
Germany	VG Wort Board EWC founding member	Hans Peter Bleuel

Speakers:

Country	Organisation	Name
UK	Writer	Maureen Duffy
Netherlands	University of Amsterdam	Lucie Guibault
Belgium	EVA	Carola Streul

Speakers:

Country	Organisation	Name
Portugal	Writer	Dulce Cardoso
Germany	VG WORT	Rainer Just
Belgium	UNI-MEI	Hanna Harvima
Norway	DNF	Mette Møller
France	SGDL	Alain Absire
Germany	University of Bonn	Matthias Leistner
Belgium	IFJ	Oliver Money-Kyrle

EWC Board:

Country	Organisation	Name
Italy	EWC Board	Tiziana Colusso
Germany	EWC Board	Anna Dünnebier
Spain	EWC Board	Guillem-Jordi Graells
UK	EWC Board	Katharine Way
Finland	EWC Board	Pirjo Hiidenmaa
France	EWC Board	Sylvestre Clancier
Netherlands	EWC Secretary-General	Myriam Diocaretz

1st Delegates:

Country	Organisation	Name
Malta	Maltese Language Academy (MLA)	Carmel Azzopardi
France	Union Des Ecrivains UDE	Brigitte Gyr

1st Delegates:

Country	Organisation	Name
Italy	Sindacato Nazionale Scrittori SNS	Rocco Cesareo
France	Conseil Européen Des Associations De Traducteurs Littéraires CEATL	Martin De Haan
Denmark	Dansk Forfatterforening	Frank Egholm
Spain	Euskal Idazleen Elkarte	Igor Estankona
Hungary	Hungarian Writers' Association	Márton Falusi
Hungary	Szépírók Társasága (Belletrist Association)	András Tibor Gerevich
Germany	Verband Deutschsprachiger Übersetzer Literarischer und Wissenschaftlicher Werke E.V. (VDÜ)	Holger Fock
UK	Authors' Licensing & Collecting Society Ltd ALCS	Barbara Hayes
Netherlands	Vereniging Van Schrijvers En Vertalers (VSENV)	Wim Jurg
UK	The Society Of Authors	Mark le Fanu
Norway	The Norwegian Non-Fiction Writers And Translators Association (NFF)	Jørgen Lorentzen
Finland	The Finnish Association Of Non-Fiction Writers	Jukka-Pekka Pietiäinen

1st Delegates:

Country	Organisation	Name
Germany	Verband Deutscher Schriftsteller (VS)	Gerlinde Schermer-Rauwolf
Finland	Society Of Swedish Authors In Finland (FSF)	Mikaela Strömberg
UK	Writers' Guild Of Great Britain (WGGB)	Robert Paul Taylor
Spain	Asociación Colegial De Escritores De Cataluña. ACEC.	Luis Maria Todo Vila
Latvia	Latvian Writers' Union (LWU)	Mudite Treimane
Iceland	The Writers' Union Of Iceland RSI	Ragnheidur Tryggvadottir
Finland	The Union of Finnish Writers	Suvi Oinonen
Spain	Associació D'escriptors En Llengua Catalana (AELC)	Jaume Pérez Montaner
Cyprus	Union of Cyprus Writers UCW	Georgios Moleskis
Switzerland	AdS Autorinnen und Autoren der Schweiz	Nicole Pfister-Fetz
Estonia	Estonian Writers' Union EWU	Karl Martin Sinijär
Lithuania	Lithuanian Writers' Union	Liutauras Degesys

2st Delegates:

Country	Organisation	Name
Finland	Society of Swedish Authors in Finland (FSF)	Merete Jensen
UK	Authors' Licensing & Collecting Society Ltd ALCS	Owen Atkinson
Netherlands	Vereniging van Schrijvers en Vertalers (VSenV)	Janne Rijkers
Spain	Associació D'escriptors En Llengua Catalana (Aelc)	Laura Borràs Castanyer
France	Societe Des Gens De Lettres De France	Sandra Travers de Faultrier
Norway	The Norwegian Ass of Non-fiction Writers and Translators	Trond Andreassen
Sweden	Swedish Writers' Union, SFF	René Vasquéz Díaz
Croatia	Društvo hrvatskih književnika (DHK)	Ružica Cindori
France	Societe Des Gens De Lettres De France	Valérie Barthez
Estonia	Estonian Writers' Union EWU	Märt Väljataga
Sweden	Swedish Writers' Union, SFF	John Erik Forslund
Sweden	Swedish Writers' Union, SFF	Thorbjörn Öström

EWC Administration:

Country	Organisation	Name
Belgium	EWC Assistant	Edward Keegan

External Guests:

Country	Organisation	Name
Belgium	SAJ	Axel Beelen
Belgium	VEWA	Roger Blanpain
Belgium	Association of European Performers' Organisations	Guenaëlle Collet
Czech Republic	Czech Ministry of Culture	Adéla Faladová
Belgium	Reprobel	Alexander Wybo
Belgium	FEP	Anne Bergman
Belgium	FEP	Olga Martín Sancho
Belgium	FEP	Celine D'Aubroso
Belgium	IFRRO	Olav Stokkmo
Germany	Deutsche Journalisten Union	Lutz Franke
UK	UK Music 2009 Ltd	Florian Koempel
Belgium	Culture Action Europe	Ewa Majczak
Malta	Arts Executive Letteratura	Dr. Simone Inguanez
Belgium	ABCO	Tim McPhie
Belgium	Assucopie scrl	Marie-Michèle Montee
Belgium	Burson*Marsteller ICOMP Secretariat	Daniele Senzanonna

External Guests:

Country	Organisation	Name
Belgium	Time Warner	Vincent Jamois
Netherlands	Student Tilburg University	Jaap Joris Vens
Netherlands	Student Tilburg University	Martha van den Hoven
Netherlands	Student Tilburg University	Janeke Deodata Thumbran
Belgium	Consultant Burson*Marsteller	Robrecht Vandormael
Finland	European Newspaper Publishers Association	Jaakko Saurama
Belgium	Director PA Cambre Associates	M Sille
Belgium	Silvestio Law Firm	Nicole Schulz
Belgium	IMPALA	Didier Gosset
France	SACD	Audrey Boisseau
Germany	WDR/NDR	Christophe Prossl
Belgium/Iceland	Copyright	Ran Tryggvadottir
Belgium	UER	Kristov Danail
Belgium	Cullen International	Michele Ledger
Austria	EUXXL Film	Mercedes Echeder

Foreword	3
Agenda	4
Opening	6
Helga Trüpel	6
Pirjo Hiidenmaa	8
Vladimir Šucha	10
Dulce Maria Cardoso	13
Anna Dünnebier	18
Discussion	19
Panel 1: New notions of intellectual property, copyright and authors' rights	20
Dr. Lucie Guibault	20
Alain Absire	26
Hanna Harvima	33
Oliver Money-Kyrle	36
Discussion	40
Panel 2: Access to the digital book: Challenges and opportunities for authors	41
Rainer Just	41
Carola Streul	44
Mette Møller	49
Lidia Geringer de Oedenberg	52
Tilman Lueder	57
Discussion	62
Panel 3: Activities and perspectives at the policy level	63
Prof. Dr. Matthias Leistner	63
Maureen Duffy	73
Xavier Troussard	80
Discussion	84
Conclusion	85
Recommendations	91
Attendance List	95

The European Writer

ISSN 1560-4217



EWC activities are funded with support from the European Commission.
This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.*