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EWC OPINION

about the “Draft Report on the implementation of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society” (2014/2256(INI)).
Committee on Legal Affairs.

Rapporteur: Julia Reda MEP

Introduction

With the exception of proposal 3 which EWC **fully supports**, numerous objections and amendments are deemed important in the present draft. However, the present EWC position will focus only on the most crucial proposals that have the potential of affecting most directly the future livelihood of professional writers and literary translators in Europe.

Text Reda Draft

Exclusive rights

3. Acknowledges the necessity for authors and performers to be provided legal protection for their creative and artistic work; recognises the role of producers and publishers in bringing works to the market, and the need for appropriate remuneration for all categories of rightholders; calls for improvements to the contractual position of authors and performers in relation to other rightholders and intermediaries;

Explanatory comments

EWC welcomes the above proposal which distinguishes between the roles of authors and performers and that of producers and publishers.

Producers/publishers hold a different relation to the works which they offer commercially to the end user.

In order to have a sustainable cultural and creative environment in Europe it remains indispensable to continue providing a legal protection to authors and performers as stipulated in the Directive 2001/29/EC (the InfoSoc Directive), the provisions of the Berne Convention for the Protection of Literary and Artistic Works, as well as each Member State's legal copyright framework.

The Reda Draft calls for improvements to the contractual position of authors and performers in relation to other rightholders and intermediaries;

EWC WELCOMES THE CALL FOR IMPROVEMENT of the contractual position of authors and performers in relation to publishers/producers and intermediaries, and recalls that the Directive 2001/29/EC (InfoSoc Directive) did not include a provision to ensure **balanced contractual terms**.

It is essential not only to improve the authors' and performers' negotiating roles to obtain fairer contracts but also to implement legislation to enforce fairer and more transparent contracts and unwaivable remuneration; it is equally necessary to identify Unfair Terms which need to be declared void if they cause prejudice to the authors. Unfair contractual agreements inhibit the possibility that authors and performers obtain a fair share of the economic benefits of the publishers' and producers' ROI.

Authors rarely oppose access to a work if the *droit moral/moral rights* and right to remuneration are respected. If authors stand stronger in controlling their rights to different uses, they are more likely to have an influence on promoting the availability and access to their works. Better contractual conditions will also contribute to safeguard the readers/viewers' (end users') options to enjoy a wider choice of works through a Pan-European cross-border access and cultural exchange.

EWC CALLS FOR ADOPTION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE EUROPEAN PARLIAMENT STUDY on **“Contractual Arrangements Applicable to Creators: Law and Practice of Selected Member States”** focused on the provisions of copyright contracts for writers, composers, film directors, and visual artists.

EWC NOTES that it addressed the concerns of the **EP Legal Affairs Committee (JURI)**, revealing crucial evidence and conclusions on the situation in eight countries (Belgium, France, Germany, Hungary, Poland, Spain, Sweden and the United Kingdom). Additional data from other EU countries confirm that both the authors' equal position in the negotiating process and the due fair remuneration are not sufficiently ensured by law in the EU copyright legal framework.

EWC OBSERVES that it has been acknowledged by EU legislators that to the present copyright contracts or contract law in this context have been ignored in the EU copyright agenda.

EWC CALLS ATTENTION TO THE FORTHCOMING STUDY ON THE PRINT-SECTOR BY THE EUROPEAN COMMISSION ON the contractual agreements in additional Member States and the position of authors and performers in the negotiations, and the remuneration practices.¹

EWC STRESSES that the need for improvement of the contractual position of authors and performers is in accordance with the **United Nations Report** of the Special Rapporteur in the field of cultural rights **“The right to freedom of artistic expression and creativity”**, presented by the Human Rights Council, United Nations General Assembly,² and referring to Universal and regional human rights relevant UNESCO instruments on Recommendations concerning the status of the artist including:

¹ See the update by Judit Fischer, Copyright Unit, “The Value of Writers' Works”, Proceedings of the European Writers' Council 2014 Authors' Rights Conference, Brussels, 3 November 2014, The European Parliament, edited by Myriam Diocaretz, The European Writer, ISSN: 1560-4217, 2015, pp.37-39.

² Farida Shaheed, **Special Rapporteur**, Twenty-third session, agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, United Nations General Assembly A/HRC/23/34 14 March 2013

—The 1980 United Nations Educational, Scientific and Cultural Organizational (UNESCO) Recommendation Concerning the Status of the Artist.

—Article 2 of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and article 7.

EWC OBSERVES that the above UN Report was presented at the European Parliament (November 2013), and still needs the EU consideration.

EWC QUOTES FROM THE REPORT AND UNDERLINES:

p. 17 (c) The protection of the moral and material interests of artists and authors

*Article 79: **One way of silencing artists is to impede their livelihood options as professionals in a career devoted to artistic creations.***

*According to article 27 of the UDHR and 15 of ICESCR, all individuals have the right to benefit from the protection of the moral and material interests **resulting from any scientific, literary or artistic production of which s/he is the author.***

*Article 80. While the Special Rapporteur understands the concern that piracy and file sharing may threaten the potential of artists to earn their living, **she also stresses the need to acknowledge the percentage of royalties that go to publishing houses/copyright holders rather than to the artists themselves. Concern has been expressed about coercive contracts that authors and artists identify as a primary obstacle to fair remuneration. Under such contracts, which are frequent, creators sign away all their rights to their creation in order to gain a commission for creating a work. Consequently, they lose control over their creation, which can be used in contradiction to their own vision.***

To conclude the arguments in support of proposal 3, EWC REFERS MEMBERS OF THE EUROPEAN PARLIAMENT TO THE EWC POSITION PAPER **“The point of view of authors”**, presented at the meeting of Thursday 12 February 2015 from 9:00 to 11:00, European Parliament, Strasbourg (Louise Weiss S4.5).

“3. Exchange of views on publishing and copyright issues in the digital environment (part I), Committee on Legal Affairs, Working Group on Intellectual Property Rights and Copyright Reform.”

Text Reda Draft

Exceptions and limitations

9. Notes that exceptions and limitations should be enjoyed in the digital environment without any unequal treatment compared to those granted in the analogue world;

- **This proposal should be deleted.**
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Explanatory comments

EWC OBSERVES while that the human notion of “enjoyment” has no boundaries, the digital and analogue modes of production and distribution follow market conditions that differ substantially from one another. There should be a clear division between digital and printed exploitation just as the distribution and consumption modes determine clearly differentiated forms of access.

Online and digital or online uses should be distinguished and licensed separately from analogue/print uses. Printed books are physical products and e-books are services; they correspond to two different modes of production and making available. For authors the distinction is crucial in terms of the differing royalty percentages (sales) and the percentages stipulated for licensing, within the primary and secondary rights spectrum.

The digital and the analogue should not be equalised without a thorough impact assessment and an in-depth study for a good understanding of what each dimension (analogue or digital) involves.

Text Reda Draft

Exceptions and limitations

19. Calls for a broad exception for research and education purposes, which should not only cover educational establishments, but any kind of educational and research activities, including non-formal education;

- **This proposal should be deleted.**
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Explanatory comments

The meaning of the key terms used need to be clarified: e.g. “non-formal education”, educational “activities”, research “activities”, and educational “establishments”.

Most importantly, the EWC calls for consideration of the fundamental role of the professional writers who create the educational material.

The Reda report does not offer an assessment, evidence or a conclusion about the negative effects of the Directive on the modalities practised by the different Member States so far: granting access to educational material and providing the due remuneration for creating works or investing in them have been essential to offer a broad choice of materials to the educational readers.

The different models of licensing have worked, being cost-effective for schools, generating income for the sustainability of the creation of new works for the educational sector.

An all encompassing exception for research and education without a rational and realistic approach will be disruptive and affect in the first place the income of educational authors who are dedicated professionals; it will force other educators to spend part of their freelance time in other jobs instead of the creation of specialised works; furthermore, an exception of this kind will disturb the educational marketplace and reduce the number of works on offer. The quality of the curricular material will decrease if produced by non-experts rendering the differences between old and new and relevant or irrelevant material fuzzy. The negative consequences will be put out of articulation the works that enlighten and instruct European citizens in the life-long learning, primary, secondary and tertiary levels, besides the innovative learner-based models in the digital age.

Text Reda Draft

Exceptions and limitations

20. Calls for the adoption of a mandatory exception allowing libraries to lend books to the public in digital formats, irrespective of the place of access;

- **This proposal should be deleted.**

Explanatory comments

EWC believes in seamless access to authors' works.

A clarification is needed about the relationship between exceptions and remuneration. In the majority of the Member States, exceptions lead to no remuneration, or to very little (symbolic) compensation. Therefore, we require a further assessment and clarification of what is meant by exceptions in this recital. If it is meant as **no remuneration and no licensing**, there is a contradiction with proposal three.

EWC calls for the inclusion of the mention of **remuneration** should this recital remain. Very few MS i.e. Germany and the United Kingdom, attach statutory payments to authors and other rightsholders connected to exceptions. "Exceptions" in the majority of the MS imply **no** remuneration for authors and other rightsholders.

Digitised books and digital born e-books are part of the innovative offers in the market. Depriving authors of remuneration in the digital age will be simply destructive, will thwart and maim a nascent opportunity in **the value chain from author to reader**, and the entire book industry. The end result will be that readers will be deprived of new works.

POSSIBLE AMENDMENT

Therefore the EWC CALLS FOR the inclusion in this recital of a reference to remuneration for authors (and publishers) through licensing, and a recognition of the importance of the access to authors' works in both analogue and digital forms, including eBooks and streaming book services.

Since 2013 EWC, with the Federation of European Publishers, has been gathering current projects, pilots and best practices on e-lending models or remote lending of e-

books adopted by different national libraries in the EU. Several models exist at present for the remote lending of e-books.

An overriding exception without remuneration to allow libraries to lend e-books (including contemporary or recently published ones) would destroy the current market conditions in which there are different stakeholders. Most regrettably it would deprive the authors of these e-books of the due and expected remuneration which is part of their basic income.

Text Reda Draft

Exceptions and limitations

21. Calls on the EU legislator to preclude Member States from introducing statutory licenses for the compensation of rightholders for the harm caused by acts made permissible by an exception;

- **This proposal should be deleted.**
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Explanatory comment

This proposal is prejudicial and harmful to authors, and would also destroy the principles for Public Lending Right provision in the EU.

Brussels, 20 February, 2015.