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Publishers
Council

COMMUNICATION FROM THE COMMISSION

**i2010: DIGITAL LIBRARIES (including Questions for online
consultation 30.09.2005)**

**Response from the European Publishers Council (EPC)
20th January 2006**

INTRODUCTION AND GENERAL COMMENTS

The European Publishers Council (EPC) is a high level group of leading European media corporations whose interests span newspapers, magazines, books, journals, online database and internet publishing as well as in many cases significant interests in private television and radio. A list of our members is attached.

EPC welcomes this opportunity to provide its views on the Commission's Communication dated 30.09.05 on "**i2010: Digital Libraries**", and the associated online consultation.

EPC members share the vision of widespread and easy access to cultural and other information. That is the raison d'être of the publishing and other media industries. They are already involved in a number of initiatives, both individually and in partnership with other bodies including libraries, which touch on all three strands of the Communication – online access, digitisation and preservation.

As a result:

- ⇒ New business models are constantly being created and publishers are increasingly digitising their content and make it available online. For example, Macmillan recently announced its 'BookStore' project which will be a searchable repository of digital book content, with e-commerce technology for purchasing titles.
- ⇒ The range of licences available from RROs, including scanning licences, continues to grow. For example, in the UK the Copyright Licensing Agency has developed a licence with the Association of the British Pharmaceutical Industry

EPC

Chairman: Francisco Pinto Balsemão
f.balsemao@epceurope.org

Executive Director: Angela C. Mills Wade
angela.mills@epceurope.org

(ABPI) which permits scanning and e-mail delivery, in addition to photocopying, of articles from books, magazines, journals and periodicals.

⇒ Member States' legal deposit schemes are being extended to cover digitisation of materials and the making available of digitised materials within deposit libraries.

However, EPC members do not share the comments made in the Communication, expressly or by implication, that intellectual property rights (IPRs) are a barrier to the realisation of this vision. Copyright and related rights are not legislative barriers. On the contrary, they are enablers which make it possible for rights creators – the source of Europe's cultural heritage – to make works available through the initiatives described above.

Those initiatives are all taking place within the balanced framework of rights and exceptions contained in Directive 2001/29/EC which is also consistent with Member States' obligations under the TRIPS Agreement and the WIPO Copyright Treaty.

That balance is found in the rights set out in Articles 2, 3 and 4 and the exceptions contained in Article 5. As far as libraries are concerned, that balance is reflected in the exceptions contained in Article 5 2(c) Article 5 3 (n) and in the provisions of Article 5.5.

Directive 2001/29/EC, and the exceptions it contains, was the result of several years of intense but productive negotiations between all stakeholders. Those negotiations were shaped by the growth of the Internet and the Web and the needs and interests of all stakeholders in the digital environment. The Directive recognises the central importance to rights holders of online distribution and communication of content in digital form and that the exceptions in the Directive cannot unreasonably prejudice the legitimate interests of rights holders. This is expressly stated in Article 5 (5) and is, of course, consistent with international treaty obligations.

Increasingly, the distribution, communication and making available of content in digital form are primary means of exploitation for rights holders. That is why:

- ⇒ The core rights in Articles 2 and 3 of the Directive 2001/29/EC cover the copying of works in all forms and their communication to the public, including making available by wire or wireless means i.e. by 'push' and 'pull'; and
- ⇒ The exception in Article 5 3 (n) does not apply to works which are subject to licensing terms. That reflects the fact that, in short, EPC members and other rights owners are digital libraries, serving the needs of their users in the business, consumer and private spheres.

The Communication correctly identifies a number of other challenges – financial, organisational and technical – which may obstruct the realisation of the **i2010: Digital Libraries** vision. EPC considers that it is overcoming these challenges – and not the so-called 'legal obstacles' - that is the key to realising this vision. One of those key challenges is developing and implementing standards such as MPEG 21, which enable the movement of digital content from one technical platform to another

in machine readable form by providing, amongst other things, a standardised grammar and vocabulary to identify and describe intellectual property and the rights pertaining to it.

Accordingly, the solutions to achieving the vision of **i2010: Digital Libraries** must meet the following criteria:-

- ⇒ They must take full account of the range of voluntary, market-driven measures and initiatives which are currently taking place. Indeed, a core objective of **i2010 Digital Libraries** project should be to encourage such measures and initiatives.
- ⇒ They must be consistent with the existing legal IPR legal framework. If, as part of the **i2010 Digital Libraries** project, measures were introduced which undermined or conflicted with the ability of rights holders to legitimately exploit their works, the project would be self-defeating. It would stifle the availability of works, both those which are produced in digital form as well as 'borne digital works, as part of any digital library.
- ⇒ The digitisation of works, and making them available online, can only occur if they are in the public domain or with the consent of rights holders, granted primarily by individual licences or secondarily via collecting societies.
- ⇒ Any EU funded initiatives in the field of the **i2010 Digital Libraries** project should not undermine nor compete with privately funded projects in the same fields.
- ⇒ Any Community action taken as part of the **i2010 Digital Libraries** project must be consistent with the principle of subsidiarity contained in Article 5 of the Treaty and based on reliable impact assessments.
- ⇒ They must recognise that in the cultural field, there are significant regional and national variations within and between Member States which mean that any horizontal measure which cuts across these differences should be avoided.

EPC REPLIES TO ONLINE QUESTIONNAIRE

Digitisation and online accessibility

1) *What additional measures could be taken at national and European level to encourage digitisation and online accessibility of material in all European languages?*

Creating a portal which enables participants to obtain details of the existence and scope of projects as referred to in section 7.2 of the Communication to help stimulate collaboration between rights owners, users and other intermediaries and to avoid duplication of effort and wastage of resources.

2) *What measures could be taken to promote private investments and new business models such as public-private partnerships for digitising and making historical collections accessible?*

3) *What measures of a legislative, technical, organisational or other nature, could facilitate the digitisation and subsequent accessibility of copyrighted material, while respecting the legitimate interests of authors?*

As we have already made clear, Directive 2001/29/EC has created the necessary legal framework within which the **i2010 Digital Libraries** project can operate. It does not need to be changed for this purpose.

Education has a key role to play here. The following steps would be helpful at a European level:

Promoting an awareness and understanding of how copyright and related rights apply in the online environment is important here. Examples can be taken from both the commercial and 'open access communities. As regards the former, we have already referred to the Macmillan 'Bookstore' project. As regards the latter, 'Creative Commons' licences are examples of how copyright can go 'hand in hand' with technology, by providing the user with the necessary code which describes the rights attached to licensed content.

The important point to note here is that both examples are built on the copyright framework.

EPC also supports steps taken to promote awareness of the voluntary measures already underway in the field of standards development. This is key to identifying and then accessing content once in digital form.

4) *Is the issue of orphan material economically important and relevant in practice? If yes, what technical, organisational and legal mechanisms could be used to facilitate wider use of this material?*

The issue of 'orphan works' is an important problem for which a pragmatic and proportionate response is required. We are aware that a number of collecting societies are developing appropriate responses and we consider that they are potential providers of a solution to this problem.

In the longer term, it is worth noting that the increasing use of standards-based technical solutions to identify works (e.g. linked to a 'Digital Object Identifier') will, in due course, confine this problem to works in analogue-only form.

5) *How could public domain material and other material available for general use (voluntary sharing) be made more transparent and widely known in order to facilitate its online availability for subsequent use?*

EPC has no further comments to make at this stage in reply to this question.

6) *What priority measures – in particular of an organisational and legal nature— should be taken at national and European level to optimise the preservation of digital content with the limited resources available?*

7) *Is there a risk that national legal deposit schemes lead to a multiplication of requirements on internationally active companies? Would European legislation help avoiding this?*

8) *How could research contribute to progress on the preservation front? Which axes of work should be addressed in priority by the forthcoming Specific Research Programmes as part of the 7th Framework Programme?*

The preservation of digital content is a task for voluntary measures within the private sector and for national legal deposit legislation.

In the private field, contracts relating to the online licensing or supply of digital content will often address this issue.

As regards legal deposit, we support the work being done to find voluntary solutions. In this regard, we endorse the work of the joint committee established by the Federation of European Publishers (FEP) and the Conference of European Librarians (CENL) to develop guidelines for a system of voluntary “legal” deposit for offline and online works.

As regards the ‘multi-jurisdiction’ risk of national legal deposit schemes, EPC favours voluntary solutions rather than European legislation. We consider that voluntary solutions are a more flexible way of accommodating the national characteristics of each country’s cultural heritage.

EPC looks forward to continuing to playing an active and constructive part in the Commission’s ongoing initiatives concerning the **i2010 Digital Libraries** project.

European Publishers Council

20th January 2006

List of Members Attached

MEMBERS OF THE EUROPEAN PUBLISHERS COUNCIL

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Members:

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Ms Sly Bailey, Chief Executive, Trinity Mirror plc, UK
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