



**SNE's comments on the European Commission's study
on a Community initiative on the cross-border collective management of copyright**

The French Publishers Association (SNE) thanks the European Commission for the opportunity to comment on the study on a Community initiative on the cross-border collective management of copyright. Publishers consider collecting societies as important partners, and indeed have an **interest in having transparent, accountable and efficient collecting societies**.

SNE understands that the study attempts to make proposals to speed up the development of legitimate online music services, and that the option (n°3) favored by the Commission would consist of giving right-holders the possibility to authorize a collecting society of their choice to manage their works across the entire EU. **It therefore seems that although the study aims at tackling issues identified in a specific sector, the recommendations suggested may actually impact collecting societies in other sectors, regardless of their own characteristics.**

SNE would thus like to briefly remind the European Commission of the main principles governing rights management in the publishing sector and encourage it to be extremely cautious when considering new rules for the collecting societies in this sector.

I. Copyright in the publishing sector is generally managed on an individual and contractual basis

- Whereas collecting societies in the music sector manage all the rights of right holders, **publishers and authors can usually choose to bring their rights or not to a collecting society**. Publishers usually keep exclusive rights, acquired and exercised by contract with authors, and manage them on an individual and contractual basis.

In the publishing sector, collective management **only covers specific situations corresponding to secondary uses**, in which it is impracticable or impossible for right holders to act individually: public lending right, private copying and reprography. Publishers may also choose on a voluntary basis to bring their mandates to a collecting society for the audiovisual adaptation of their works and, in the future, for scanning of excerpts of their works by schools.

- **The demand for a European wide copyright license collectively managed for online content services (distribution of books, electronic books and multimedia contents) as identified in this paper does not seem to emerge as such in the publishing sector.** First, publishing markets are usually defined by a specific language, and readers tend to be interested in books in their own language, so that the demand for cross-border licensing is rather limited in Europe. Then, the electronic version of books is often less user-friendly and thus less demanded than for music or

movies, so that their online distribution is currently limited to some niche markets such as STM and disabled people. The vast majority of books distributed online are paper books (distance selling).

Finally and more importantly, **any online content service can obtain a license for the distribution of an e-book or a multimedia content through a contract with the publisher himself** - it is important to underline that collecting societies usually do not have such digital rights - . The legal supply of electronic books is currently growing, in particular in the STM and legal sectors, and big online retailers such as fnac.fr propose e-books to download on PCs or PDAs. Portals of multimedia content in the educational sector are also developing.

- In cases where collective management is practiced, **reciprocity agreements between collecting societies of the publishing sector efficiently ensure that foreign right holders, both authors and publishers, are not being discriminated against**. Again, the proportion of royalties which are thus being distributed to sister societies in compensation for reprography, private copying or public lending of works of foreign right holders is quite marginal due to the language barrier.
 - However in the online environment, publishers may have difficulties related to right management **to distribute multimedia content including various protected materials and works for which authors or neighboring rights are managed on a collective basis**. For instance, a publisher of digital illustrated textbooks and reference materials containing third-party images or video/audio sequences may not be allowed to offer access or distribute these contents across Europe. In these specific cases, since pre-existing audiovisual rights are managed on a collective and national basis, publishers are clearly hindered in their efforts to develop pan-European e-learning services.
- ⇒ **Right holders should always have, in principle, and within the law, the possibility if they so desire to manage certain of their rights individually. French publishers see no obstacle in the online cross-border distribution of books and electronic books, but the lack of copyright enforcement and the need for a further development of DRMs.**
- ⇒ **Concerning the cross-border distribution of illustrated multimedia material, it could be worth considering the possibility of a pan-European licensing scheme for the use of visual, video/ audiovisual and music works, so as to foster the development of European learning content services.**

II. New initiatives should take into account the lack of harmonization of copyright rules and the principle of cultural diversity

- Before taking any initiative, one needs **to take into account the legal framework of the intellectual property rights** managed by collecting societies:
 - **various types of rights governed by specific laws** in the publishing field: reprography, private copying, public lending right...

- **territorial application** of such copyright laws (e.g.: French copyright law applies on the French territory)
- **lack of harmonization of such laws** (remuneration for public lending right benefits publishers in France but not in the UK), **of their exceptions**, more numerous than in the music sector (exception for educational purposes and for libraries in many EU states, but not in France), **and of the remuneration rates for the compensation of such exceptions**. Such lack of harmonization due to different cultural traditions is actually translated in the directive on Copyright and related rights in the information society, via its list of 21 exceptions, among which 20 remain optional to allow states to maintain their current respective practices.

In assessing the efficiency to be brought by new initiatives, one should take into account the **administrative burden** that such regulatory differences may cause to collecting societies dealing with right holders of different countries.

- **Copyright is both an economic and a cultural right and collecting societies not only have management but also social and economic missions**. In France, such missions have a legal nature and collecting societies in the publishing sector are to be officially designated by the government, in the framework of its **cultural policy** for books.

New initiatives should therefore not only take into account their expected gains in terms of economic efficiency but also their impact on **cultural diversity**, as stipulated in article 151.4 of EU Treaty. As in other cultural areas, the necessity to undertake such action at Community level should be more strongly assessed at the light of the respect of the **subsidiarity** principle and of the right for each state to take such cultural book policy of each choice, as expressed in the future UNESCO Convention on Cultural Diversity.

Finally the lack of copyright rules harmonization and the cultural and social nature of the missions of collecting societies tend to **question the relevance of creating more competition** between those societies.

- ⇒ **French publishers recommend that new initiatives should not create unnecessary burden for collecting societies, which could jeopardize their efficiency and Member states' ability to implement the book policy of their choice.**

Given the short period of time given to provide feedback on this study, the SNE reserves its right to provide further comments later following a more thorough examination of it.