



Fédération des Editeurs Européens  
Federation of European Publishers

## **FEP response to European Commission study on the cross-border collective management of copyright**

The Federation of European Publishers (FEP) is the association representing national book and learned journal publishers' associations from 22 European Union Member States and Iceland and Norway. Thus FEP is the voice of the great majority of publishers in Europe. Founded in 1967, FEP deals with European legislation and advises publishers' associations on copyright and other legislative issues.

### **General aspects**

We welcome the European Commission Staff Working document "Study on a community initiative on the cross-border collective management of copyright" since it makes a very useful contribution to the ongoing debate concerning the challenges that the information society represents to commercial players. Moreover, FEP also embraced the Commission's previous Communication on the management of copyright and related rights which recognised the fundamental role of market-driven solutions. For FEP members, the following principles set out by the above mentioned Communication are extremely important: good governance, non-discrimination, transparency and accountability of the collecting society in its relation to rights holders.

Although the study is examining the market for management of rights in musical works, it does, especially page 22, deals with print and publishing. We would like to clarify some of the statement contained on this paragraph. Indeed, as you will see below, publishers don't consider that collective management of photocopying implies commercial use as it is restricted to limited parts of books, journals and periodicals which can then no further be sold nor be copied for a profit. In a limited number of cases, publishers do indeed give a license to collective management to manage some commercial uses but this is not a widespread situation. Furthermore, it is mentioned that RROs manage our rights to communicate the work to the public and to make the work available. Actually, publishers, whenever having a digital offer, retain and manage themselves their rights of communication to the public, including the making available right.

### **Specific issues**

FEP understands that the study examines only the market for collective management of online music services and therefore its recommendations are limited to the music industry. We recommend that the European Commission should not extend any of the findings to other sectors such as the print media sector without having properly taken into account the specificities of each sector. Therefore, we would like to point out some specific aspects which must be considered when dealing with the management of rights in the publishing sector:

- **Commercial/ Non-commercial uses in the publishing industry**

According to FEP, non-commercial uses means exceptional usages that do not conflict with the normal (ie commercial) exploitation of works by organisations, companies or individuals irrelevant of whether they are or are not commercial entities themselves, for a non-commercial purpose (i.e. not for further sales or for any other direct or indirect financial benefit –if you have a better definition please provide it to us).

Commercial use, on the contrary, means use by organisations, companies or individuals, irrelevant of whether they are or are not commercial entities themselves, for commercial purposes. Whether the commercial use is for education, business or entertainment is not relevant.

Since the EU study refers only to licensing for commercial use, it is clear that the scenario for the European publishing market is of a very different kind and we hope that no conclusions will be drawn from it for the publishing industry.

- **Role of Collecting Societies in the publishing industry**

The mandate given by exclusive rights holders (publishers and authors) to collecting societies is the right to licence secondary reproduction (currently by photocopying or digital copying) parts of their publications either under statutory exceptions or voluntarily and therefore Reproduction Rights Organisations (RROs) do play an important role . In response to the need to license photocopying as a means for access to the world's scientific and cultural printed works, authors and publishers have established Reproduction Rights Organisations (RROs) to act as their intermediaries in issuing licences to support an efficient and effective market for the benefit of both users and rights holders..

- **Management of rights in the publishing industry**

In the analogue world, RROs receive their mandate to administer reproduction rights either through statutory exceptions to national laws or on a voluntary basis from exclusive rights holders. In a majority of cases, publishers and authors grant a RRO the mandate to licence this right only for non-commercial uses. In the publishing world the licence is generally attached to a specific language.

In the digital world, the general rule is that, rights holders can and must make their own decisions whether to manage reproduction rights on an individual or a collective basis. Should they decide to manage reproduction rights collectively, this can be via a RRO or via another market player. Unless this is established by statutory exceptions to national legislation (and therefore would not be concerned with commercial exploitation) , rights holders must have the freedom to choose any appropriate collective entity, or to manage their rights themselves.

Therefore, individual management is the natural starting point whenever it is possible to do so. In the light of the deployment of Digital Rights Management (DRM) systems, rights holders must have the possibility to manage their rights individually if they want to.

Having said that, we would like to point out that so far it is rarely the case that an RRO has the mandate to licence a commercial market player to exploit commercially the rights holder's rights. And when mandated to do so, this is done via a voluntarily licence agreed by the rights holders. RROs do not manage the "primary rights" of publishers or authors, but the "secondary rights" mandated to them by rights holders or through statutory exceptions.

It is essential to understand such a distinction since the Commission Study seems to assume that collective management of copyright is the only system under which a rights holder licences a body to exploit its rights commercially. For the above reasons, this cannot be generalised to the publishing industry. We urge the Commission to take this into account if it were to analyse the publishing industry.

- **Mandate of rights in the publishing industry**

In Europe most RROs obtain their mandate or authority to issue reprographic licences by contracts concluded with the primary rights holders or by statutory exception to national legislation. Let us repeat that in case of statutory exception, this does not concern commercial uses.

In the publishing industry the RRO mandates have usually been limited to reprographic reproduction and rights holders have the freedom to withdraw the mandate if they wish to. Even if RROs obtain their mandate by legislation (exceptions), rights holders do not transfer their exclusive rights but simply the right to remuneration. We believe that this aspect is a good example, once again, of the difference between the music and publishing sectors.

- **Digital Rights in the publishing industry**

RROs were established by rights holders to license photocopying and their mandates have accordingly usually been limited to reprographic reproduction. To be able to licence digital rights for commercial uses, RROs would need fresh mandates from rights holders and so far few RROs have obtained such mandates.

As we already mentioned, individual management of rights is the natural starting point for rights holders to manage their rights whenever feasible or possible, and it is crucial for the industry that it remains that way. On the one hand, some rights holders, especially large publishing houses, have been actively experimenting and investing in new digital publishing models themselves and may therefore be unwilling to mandate RROs to issue EU-wide licences for commercial use. We believe any intervention in the market would be counterproductive for the development of these new business models and would slow down the evolution of the information society. On the other hand, other rights holders may decide that RROs might play an important role in the sense that a rights holder may benefit from their services because their digital rights will be better managed collectively. In either case, the key issue is that rights holders have the freedom to choose who manages their digital rights.

### **Concluding remarks**

We want to underline that the impact that this Commission proposal for the online music industry would have if applied to the publishing industry would be totally different. There are important legal and technical differences which cannot be overlooked.

Since the whole of the collective management system has not been addressed in this Study (we understand it was not the aim), we stress what we said in our submission to the EC Communication on the management of copyright and related rights in the internal market; which is that we support the fundamental role of market-driven solutions and the aim to introduce guides to good governance in collective management organisations.

The main issue for FEP is that publishers should have the freedom to decide case by case whether to manage their reproduction rights individually or to mandate a collecting society to do so on their behalf.

Finally, we appreciate the opportunity to comment on the Commission Study and hope for further cooperation.

Brussels, 27<sup>th</sup> July 2005