Public Consultation
on the review of the EU copyright rules

Contents

I. Introduction ... 2
A. Context of the consultation ... 2
B. How to submit replies to this questionnaire ... 3
C. Confidentiality ... 4
II. Rights and the functioning of the Single Market ... 7
A. Why is it not possible to access many online content services from anywhere in Europe? ... 7
B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions? ... 10
1. The act of "making available" ... 11
2. Two rights involved in a single act of exploitation ... 12
3. Linking and browsing ... 12
4. Download to own digital content ... 13
C. Registration of works and other subject matter – is it a good idea? ... 14
D. How to improve the use and interoperability of identifiers ... 16
E. Term of protection – is it appropriate? ... 16
III. Limitations and exceptions in the Single Market ... 17
A. Access to content in libraries and archives ... 21
1. Preservation and archiving ... 21
2. Off-premises access to library collections ... 22
3. E – lending ... 23
4. Mass digitisation ... 25
B. Teaching ... 26
C. Research ... 29
D. Disabilities ... 29
E. Text and data mining ... 31
F. User-generated content ... 34
IV. Private copying and reprography ... 36
V. Fair remuneration of authors and performers ... 39
VI. Respect for rights ... 40
VII. A single EU Copyright Title ... 41
VIII. Other issues ... 42

I. Introduction

A. *Context of the consultation*

Over the last two decades, digital technology and the Internet have reshaped the ways in which content is created, distributed, and accessed. New opportunities have materialised for those that create and produce content (e.g. a film, a novel, a song), for new and existing distribution platforms, for institutions such as libraries, for activities such as research and for citizens who now expect to be able to access content – for information, education or entertainment purposes – regardless of geographical borders.

This new environment also presents challenges. One of them is for the market to continue to adapt to new forms of distribution and use. Another one is for the legislator to ensure that the system of rights, limitations to rights and enforcement remains appropriate and is adapted to the new environment. This consultation focuses on the second of these challenges: ensuring that the EU copyright regulatory framework stays fit for purpose in the digital environment to support creation and innovation, tap the full potential of the Single Market, foster growth and investment in our economy and promote cultural diversity.

In its "Communication on Content in the Digital Single Market"[1] the Commission set out two parallel tracks of action: on the one hand, to complete its on-going effort to review and to modernise the EU copyright legislative framework[23] with a view to a decision in 2014 on whether to table legislative reform proposals, and on the other, to facilitate practical industry-led solutions through the stakeholder dialogue "Licences for Europe" on issues on which rapid progress was deemed necessary and possible.

The "Licences for Europe" process has been finalised now[4]. The Commission welcomes the practical solutions stakeholders have put forward in this context and will monitor their progress. Pledges have been made by stakeholders in all four Working Groups (cross border portability of services, user-generated content, audiovisual and film heritage and text and data mining). Taken together, the Commission expects these pledges to be a further step in making the user environment easier in many different situations. The Commission also takes note of the fact that two groups – user-generated content and text and data mining – did not reach consensus among participating stakeholders on either the problems to be addressed or on the results. The discussions and results of "Licences for Europe" will be also taken into account in the context of the review of the legislative framework.

As part of the review process, the Commission is now launching a public consultation on issues identified in the Communication on Content in the Digital Single Market, i.e.: *"territoriality in the Internal Market, harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform"*. As highlighted in the October 2013 European Council

[1] COM (2012)789 final, 18/12/2012.

[2] As announced in the Intellectual Property Strategy ' A single market for Intellectual Property Rights: COM (2011)287 final, 24/05/2011.

[3] *"Based on market studies and impact assessment and legal drafting work"* as announced in the Communication (2012)789.

[4] See the document "Licences for Europe – tem pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

Conclusions[5] *"Providing digital services and content across the single market requires the establishment of a copyright regime for the digital age. The Commission will therefore complete its on-going review of the EU copyright framework in spring 2014. It is important to modernise Europe's copyright regime and facilitate licensing, while ensuring a high level protection of intellectual property rights and taking into account cultural diversity".*

This consultation builds on previous consultations and public hearings, in particular those on the "Green Paper on copyright in the knowledge economy"[6], the "Green Paper on the online distribution of audiovisual works"[7] and "Content Online"[8]. These consultations provided valuable feedback from stakeholders on a number of questions, on issues as diverse as the territoriality of copyright and possible ways to overcome territoriality, exceptions related to the online dissemination of knowledge, and rightholders' remuneration, particularly in the audiovisual sector. Views were expressed by stakeholders representing all stages in the value chain, including right holders, distributors, consumers, and academics. The questions elicited widely diverging views on the best way to proceed. The "Green Paper on Copyright in the Knowledge Economy" was followed up by a Communication. The replies to the "Green Paper on the online distribution of audiovisual works" have fed into subsequent discussions on the Collective Rights Management Directive and into the current review process.

B. How to submit replies to this questionnaire

You are kindly asked to send your replies **by 5 February 2014** as a word or pdf document to the following e-mail address of DG Internal Market and Services: **markt-copyright-consultation@ec.europa.eu**. Please note that replies sent after that date will not be taken into account.

This consultation is addressed to different categories of stakeholders. To the extent possible, the questions indicate the category/ies of respondents most likely to be concerned by them (annotation in brackets, before the actual question). Respondents should nevertheless feel free to reply to any/all of the questions. Also, please note that, apart from the question concerning the identification of the respondent, none of the questions is obligatory. Replies containing answers only to part of the questions will be also accepted.

You are requested to provide your answers directly within this consultation document. For the "Yes/No/No opinion" questions please put the selected answer in **bold** and underline it so it is easy for us to see your selection.

In your answers to the questions, you are invited to refer to the situation in EU Member States. ***You are also invited in particular to indicate, where relevant, what would be the impact of options you put forward in terms of costs, opportunities and revenues.***

The public consultation is available in English. Responses may, however, be sent in any of the 24 official languages of the EU.

[5] EUCO 169/13, 24/25 October 2013.
[6] COM(2008) 466/3, http://ec.europa.eu/internal_market/copyright/copyright-infso/index_en.htm#maincontentSec2.
[7] COM(2011) 427 final, http://ec.europa.eu/internal_market/consultations/2011/audiovisual_en.htm.
[8] http://ec.europa.eu/internal_market/consultations/2009/content_online_en.htm.

C. Confidentiality

The contributions received in this round of consultation as well as a summary report presenting the responses in a statistical and aggregated form will be published on the website of DG MARKT.

Please note that all contributions received will be published together with the identity of the contributor, unless the contributor objects to the publication of their personal data on the grounds that such publication would harm his or her legitimate interests. In this case, the contribution will be published in anonymous form upon the contributor's explicit request. Otherwise the contribution will not be published nor will its content be reflected in the summary report.

Please read our Privacy statement.

PLEASE IDENTIFY YOURSELF:

Name: Centre Français d'exploitation du droit de Copie (CFC)

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its Code of Conduct.

- If you are a Registered organisation, please indicate your Register ID number below. Your contribution will then be considered as representing the views of your organisation.

ID Number : 6312262433

- If your organisation is not registered, you have the opportunity to register now. Responses from organisations not registered will be published separately.

If you would like to submit your reply on an anonymous basis please indicate it below by underlining the following answer:

- Yes, I would like to submit my reply on an anonymous basis

TYPE OF RESPONDENT (Please underline the appropriate):

- € **End user/consumer** (e.g. internet user, reader, subscriber to music or audiovisual service, researcher, student) **OR Representative of end users/consumers**

  → for the purposes of this questionnaire normally referred to in questions as **"end users/consumers"**

- € **Institutional user** (e.g. school, university, research centre, library, archive) **OR Representative of institutional users**

  → for the purposes of this questionnaire normally referred to in questions as **"institutional users"**

- € **Author/Performer OR Representative of authors/performers**

- € **Publisher/Producer/Broadcaster OR Representative of publishers/producers/broadcasters**

  → the two above categories are, for the purposes of this questionnaire, normally referred to in questions as **"right holders"**

- € **Intermediary/Distributor/Other service provider** (e.g. online music or audiovisual service, games platform, social media, search engine, ICT industry) **OR Representative of intermediaries/distributors/other service providers**

  → for the purposes of this questionnaire normally referred to in questions as **"service providers"**

- € **Collective Management Organisation**

- € **Public authority**

- € **Member State**

- € **Other** (Please explain):

………………………………………………………………………………………………

………………………………………………………………………………………………

II. Rights and the functioning of the Single Market

A. Why is it not possible to access many online content services from anywhere in Europe?

[The territorial scope of the rights involved in digital transmissions and the segmentation of the market through licensing agreements]

Holders of copyright and related rights – e.g. writers, singers, musicians - do not enjoy a single protection in the EU. Instead, they are protected on the basis of a bundle of national rights in each Member State. Those rights have been largely harmonised by the existing EU Directives. However, differences remain and the geographical scope of the rights is limited to the territory of the Member State granting them. Copyright is thus territorial in the sense that rights are acquired and enforced on a country-by-country basis under national law[9].

The dissemination of copyright-protected content on the Internet – e.g. by a music streaming service, or by an online e-book seller – therefore requires, in principle, an authorisation for each national territory in which the content is communicated to the public. Rightholders are, of course, in a position to grant a multi-territorial or pan-European licence, such that content services can be provided in several Member States and across borders. A number of steps have been taken at EU level to facilitate multi-territorial licences: the proposal for a Directive on Collective Rights Management[10] should significantly facilitate the delivery of multi-territorial licences in musical works for online services[11]; the structured stakeholder dialogue "Licences for Europe"[12] and market-led developments such as the on-going work in the Linked Content Coalition[13].

"Licences for Europe" addressed in particular the specific issue of cross-border portability, i.e. the ability of consumers having subscribed to online services in their Member State to keep accessing them when travelling temporarily to other Member States. As a result, representatives of the audio-visual sector issued a joint statement affirming their commitment to continue working towards the further development of cross-border portability[14].

Despite progress, there are continued problems with the cross-border provision of, and access to, services. These problems are most obvious to consumers wanting to access services that are made available in Member States other than the one in which they live. Not all online services are available in all Member States and consumers face problems when trying to access such services across borders. In some instances, even if the "same" service is available in all Member States, consumers cannot access the service across borders (they can

---

[9] This principle has been confirmed by the Court of justice on several occasions.

[10] Proposal for a Directive of the European Parliament and of the Council of 11 July 2012 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, COM(2012) 372 final.

[11] Collective Management Organisations play a significant role in the management of online rights for musical works in contrast to the situation where online rights are licensed directly by right holders such as film or record producers or by newspaper or book publishers.

[12] You can find more information on the following website: http://ec.europa.eu/licences-for-europe-dialogue/.

[13] You can find more information on the following website: http://www.linkedcontentcoalition.org/.

[14] See the document "Licences for Europe – tem pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

Centre Français d'exploitation du droit de Copie

only access their "national" service, and if they try to access the "same" service in another Member State they are redirected to the one designated for their country of residence).

This situation may in part stem from the territoriality of rights and difficulties associated with the clearing of rights in different territories. Contractual clauses in licensing agreements between right holders and distributors and/or between distributors and end users may also be at the origin of some of the problems (denial of access, redirection).

The main issue at stake here is, therefore, whether further measures (legislative or non-legislative, including market-led solutions) need to be taken at EU level in the medium term[15] to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders.

1. *[In particular if you are an end user/consumer:]* ***Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?***

NO

L'accès aux contenus numériques de la presse et du livre ne connaît pas de barrières particulières. Pour la presse, les éditeurs proposent des services en ligne qui sont accessibles gratuitement ou contre paiement par tout citoyen européen. Les livres numériques sont également accessibles selon différentes modalités (plateformes de diffusion diverses, librairies en ligne) qui ne comportent pas d'obstacle à l'accès transfrontière.

2. *[In particular if you are a service provider:]* ***Have you faced problems when seeking to provide online services across borders in the EU?***

NO OPINION

3. *[In particular if you are a right holder or a collective management organisation:]* ***How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.***

[Open question]

On rappellera tout d'abord que les industries de l'écrit – livre et presse – demeurent dans les premiers rangs des industries culturelles, si ce n'est au premier rang, tant par leurs chiffres d'affaires que par le nombre d'emplois et d'entreprises.

Dans ces deux secteurs, les modalités de gestion des droits se distinguent de façon radicale de celles pratiquées dans d'autres secteurs, par exemple celui de la musique.

En effet, l'exploitation de chaque œuvre fait l'objet d'un contrat d'édition ou d'un contrat de travail (presse) et ces contrats ne comportent que très rarement des restrictions territoriales

[15] For possible long term measures such as the establishment of a European Copyright Code (establishing a single title) see section VII of this consultation document.

(de rares auteurs souhaitent garder la maîtrise de l'exploitation directe de leurs œuvres dans certains pays plutôt que de la céder à l'éditeur). Les éditeurs exploitent donc directement l'ensemble des droits cédés par les auteurs. Ce mécanisme permet un accès aux œuvres à l'échelle européenne grâce aux services en ligne, aux exportations et aux contrats de traduction.

Les sociétés de gestion collective, à l'exemple du CFC, n'interviennent que pour la gestion des droits relatifs à certaines exploitations secondaires que les éditeurs ne peuvent pas gérer directement (reprographie, copies numériques des entreprises et administrations, copies numériques pédagogiques, droit de prêt, copie privée).

Il faut aussi souligner que la question de la langue impose au volume d'échanges transfrontaliers des limites fortes en ce qui concerne l'écrit.

La gestion des droits secondaires (pour ceux qui concernent le CFC) est actuellement effectuée sur une base nationale complétée d'accords d'échanges de répertoires (et de redevances) avec d'autres sociétés de gestion collective notamment européennes, ce qui a toujours été suffisant en matière de reprographie. Le même schéma a été mis en œuvre pour les usages numériques professionnels et pédagogiques. Des solutions ont été développées dans le cadre de l'IFRRO (International Federation of Reproduction Rights Organisations) pour permettre d'offrir des licences multi-territoriales.

Il reste que pour les droits gérés par le CFC (reprographie, copies numériques des entreprises et administrations, copies numériques pédagogiques), la demande d'œuvres hors de leur pays d'origine est très faible. Le CFC n'a ainsi pas fait l'objet de demandes de licences multi-territoriales.

4. If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?

[Open question]

Le CFC n'a rencontré aucun problème particulier.

5. *[In particular if you are a right holder or a collective management organisation:]* ***Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?***

__YES – Please explain by giving examples

Le titulaire de droit dispose de la liberté de limiter ou non le mandat de gestion qu'il confie aux sociétés de gestion collective (ce droit est garanti par la proposition de directive relative à la gestion collective). Une société de gestion collective comme le CFC ne peut donc s'y

Centre Français d'exploitation du droit de Copie

opposer et doit également accueillir les ayants droit étrangers qui souhaiteraient lui confier directement la gestion de leurs droits plutôt que de passer par la société de gestion collective de leur pays. Le CFC a plusieurs mandants étrangers directs.

6. *[In particular if you are e.g. a broadcaster or a service provider:]* ***Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipient (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?***

YES – Please explain by giving examples

………………………………………………………………………………………………

………………………………………………………………………………………………

NO

NO OPINION

7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

YES – Please explain

Certaines mesures semblent s'imposer, mais elles ne relèvent pas nécessairement du droit d'auteur.

Il en est ainsi des mesures qui pourraient être prises pour encourager l'interopérabilité afin de favoriser la concurrence et la diversité des offres. Il est ici de l'intérêt des ayants droit et des consommateurs que l'accès aux œuvres ne soit pas restreint par les pratiques commerciales de certains opérateurs techniques ou de distribution.

Il nous semble également qu'une harmonisation fiscale en matière de TVA sur les produits culturels serait favorable aux échanges transfrontaliers.

B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

[The definition of the rights involved in digital transmissions]

The EU framework for the protection of copyright and related rights in the digital environment is largely established by Directive 2001/29/EC[16] on the harmonisation of certain aspects of copyright and related rights in the information society. Other EU directives in this

[16] 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.

field that are relevant in the online environment are those relating to the protection of software[17] and databases[18].

Directive 2001/29/EC harmonises the rights of authors and neighbouring rightholders[19] which are essential for the transmission of digital copies of works (e.g. an e-book) and other protected subject matter (e.g. a record in a MP3 format) over the internet or similar digital networks.

The most relevant rights for digital transmissions are the reproduction right, i.e. the right to authorise or prohibit the making of copies[20], (notably relevant at the start of the transmission – e.g. the uploading of a digital copy of a work to a server in view of making it available – and at the users' end – e.g. when a user downloads a digital copy of a work) and the communication to the public/making available right, i.e. the rights to authorise or prohibit the dissemination of the works in digital networks[21]. These rights are intrinsically linked in digital transmissions and both need to be cleared.

1. The act of "making available"

Directive 2001/29/EC specifies neither what is covered by the making available right (e.g. the upload, the accessibility by the public, the actual reception by the public) nor where the act of "making available" takes place. This does not raise questions if the act is limited to a single territory. Questions arise however when the transmission covers several territories and rights need to be cleared (does the act of "making available" happen in the country of the upload only? in each of the countries where the content is potentially accessible? in each of the countries where the content is effectively accessed?). The most recent case law of the Court of Justice of the European Union (CJEU) suggests that a relevant criterion is the "targeting" of a certain Member State's public[22]. According to this approach the copyright-relevant act (which has to be licensed) occurs at least in those countries which are "targeted" by the online service provider. A service provider "targets" a group of customers residing in a specific country when it directs its activity to that group, e.g. via advertisement, promotions, a language or a currency specifically targeted at that group.

8. Is the scope of the "making available" right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

YES

[17] Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs.

[18] Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

[19] Film and record producers, performers and broadcasters are holders of so-called "neighbouring rights" in, respectively, their films, records, performances and broadcast. Authors' content protected by copyright is referred to as a "work" or "works", while content protected by neighbouring rights is referred to as "other subject matter".

[20] The right to "authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part" (see Art. 2 of Directive 2001/29/EC) although temporary acts of reproduction of a transient or incidental nature are, under certain conditions, excluded (see art. 5(1) of Directive 2001/29/EC).

[21] The right to authorise or prohibit any communication to the public by wire or wireless means and to authorise or prohibit the making available to the public "on demand" (see Art. 3 of Directive 2001/29/EC).

[22] See in particular Case C-173/11 (Football Dataco vs Sportradar) and Case C-5/11 (Donner) for copyright and related rights, and Case C-324/09 (L'Oréal vs eBay) for trademarks. With regard to jurisdiction see also joined Cases C-585/08 and C-144/09 (Pammer and Hotel Alpenhof) and pending CaseC-441/13 (Pez Hejduk); see however, adopting a different approach, Case C-170/12 (Pinckney vs KDG Mediatech).

Centre Français d'exploitation du droit de Copie

9. *[In particular if you are a right holder:]* ***Could a clarification of the territorial scope of the "making available" right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief[23])?***

NO

2. Two rights involved in a single act of exploitation

Each act of transmission in digital networks entails (in the current state of technology and law) several reproductions. This means that there are two rights that apply to digital transmissions: the reproduction right and the making available right. This may complicate the licensing of works for online use notably when the two rights are held by different persons/entities.

10. *[In particular if you a service provider or a right holder:]* ***Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?***

NO

3. Linking and browsing

Hyperlinks are references to data that lead a user from one location in the Internet to another. They are indispensable for the functioning of the Internet as a network. Several cases are pending before the CJEU[24] in which the question has been raised whether the provision of a clickable link constitutes an act of communication to the public/making available to the public subject to the authorisation of the rightholder.

A user browsing the internet (e.g. viewing a web-page) regularly creates temporary copies of works and other subject-matter protected under copyright on the screen and in the 'cache' memory of his computer. A question has been referred to the CJEU[25] as to whether such copies are always covered by the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

11. Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

Il existe de nombreux prestataires de services spécialisés (ex. Meltwater) dont l'activité commerciale réside dans la fourniture à leurs clients de liens hypertextes relatifs à des œuvres protégées, que la fourniture de ces liens implique ou non la reproduction de tout ou

[23] Injunctive relief is a temporary or permanent remedy allowing the right holder to stop or prevent an infringement of his/her right.

[24] Cases C-466/12 (Svensson), C-348/13 (Bestwater International) and C-279/13 (C More entertainment).

[25] Case C-360/13 (Public Relations Consultants Association Ltd). See also http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0202_PressSummary.pdf.

partie d'œuvres protégées. Pour ces entreprises, c'est la fourniture des liens vers ces œuvres qui génère la valeur du service fourni à leurs clients. Si ces prestations de services ne sont pas soumises à autorisation des titulaires de droits ou de leurs sociétés de gestion collective, elles risquent de priver les titulaires de droits d'une part importante de leurs revenus en se substituant à d'autres canaux d'accès aux œuvres. Cette situation est particulièrement préoccupante pour les entreprises de presse qui risquent de perdre leurs revenus de droits et de voir chuter leurs recettes publicitaires.

Le CFC travaille actuellement, en particulier avec les éditeurs de presse en ligne, à l'élaboration de licences à destination de ce type d'acteurs.

12. Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

__YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

En particulier dans le cas de la presse, ces actes sont régulés par les conditions générales d'utilisation des services de presse en ligne. Les utilisateurs sont donc informés des possibilités d'utilisations qui sont les leurs.

4. Download to own digital content

Digital content is increasingly being bought via digital transmission (e.g. download to own). Questions arise as to the possibility for users to dispose of the files they buy in this manner (e.g. by selling them or by giving them as a gift). The principle of EU exhaustion of the distribution right applies in the case of the distribution of physical copies (e.g. when a tangible article such as a CD or a book, etc. is sold, the right holder cannot prevent the further distribution of that tangible article)[26]. The issue that arises here is whether this principle can also be applied in the case of an act of transmission equivalent in its effect to distribution (i.e. where the buyer acquires the property of the copy)[27]. This raises difficult questions, notably relating to the practical application of such an approach (how to avoid re-sellers keeping and using a copy of a work after they have "re-sold" it – this is often referred to as the "forward and delete" question) as well as to the economic implications of the creation of a second-hand market of copies of perfect quality that never deteriorate (in contrast to the second-hand market for physical goods).

[26] See also recital 28 of Directive 2001/29/EC.
[27] In Case C-128/11 (Oracle vs. UsedSoft) the CJEU ruled that an author cannot oppose the resale of a second-hand licence that allows downloading his computer program from his website and using it for an unlimited period of time. The exclusive right of distribution of a copy of a computer program covered by such a licence is exhausted on its first sale. While it is thus admitted that the distribution right may be subject to exhaustion in case of computer programs offered for download with the right holder's consent, the Court was careful to emphasise that it reached this decision based on the Computer Programs Directive. It was stressed that this exhaustion rule constituted a *lex specialis* in relation to the Information Society Directive (UsedSoft, par. 51, 56).

Centre Français d'exploitation du droit de Copie

13. *[In particular if you are an end user/consumer:]* ***Have you faced restrictions when trying to resell digital files that you have purchased (e.g. mp3 file, e-book)?***

YES – Please explain by giving examples

……………………………………………………………………………………………

……………………………………………………………………………………………

NO

NO OPINION

14. *[In particular if you are a right holder or a service provider:]* ***What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.***

[Open question]

Il convient tout d'abord de rappeler que l'épuisement du droit ne porte aujourd'hui que sur le droit de distribution et non sur le droit de reproduction ou de représentation.

Il convient également de souligner que l'on ne peut comparer livres papier et livres numériques en matière de revente, tout comme l'on ne peut comparer la revente d'un CD et celle d'un fichier mp3. Livre papier et CD sont des objets physiques qui se détériorent au fil du temps alors que les fichiers numériques, quel que soit leur format, conservent leur qualité d'origine au fil du temps. Il n'existe donc aucune justification à dégrader le prix du livre numérique.

L'organisation d'un marché de l'occasion qui est parfois envisagé relève du non sens. Compte tenu de ce qui vient d'être souligner il ne saurait exister deux marchés parallèles pour un seul et unique produit, sauf à ce que l'on recherche à effondrer le marché du livre numérique, ce qui n'apparaît pas dans les objectifs de la Commission, bien au contraire.

On peut encore ajouter que l'organisation d'un marché de l'occasion du livre numérique par les ayants droits, supposant un système de dégradation des fichiers, est matériellement inenvisageable car cela supposerait également que l'ayant droit garde en permanence le contrôle du fichier, ce qui est une chimère.

On relèvera également que l'organisation d'un tel marché entrerait nécessairement en conflit avec l'exception de copie privée.

Enfin, il convient d'indiquer que pour la presse, qui ne semble pas concernée à ce jour, on rencontrerait les problèmes précédemment évoqués, aggravés par la perte complète des ressources publicitaires.

C. Registration of works and other subject matter – is it a good idea?

Registration is not often discussed in copyright in the EU as the existing international treaties in the area prohibit formalities as a condition for the protection and exercise of rights.

Centre Français d'exploitation du droit de Copie

However, this prohibition is not absolute[28]. Moreover a system of registration does not need to be made compulsory or constitute a precondition for the protection and exercise of rights. With a longer term of protection and with the increased opportunities that digital technology provides for the use of content (including older works and works that otherwise would not have been disseminated), the advantages and disadvantages of a system of registration are increasingly being considered[29].

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

NO

16. What would be the possible advantages of such a system?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

17. What would be the possible disadvantages of such a system?

[Open question]

Une telle obligation serait contraire au principe de la protection des œuvres du seul fait de leur création, affirmé par la Convention de Berne. Un mécanisme d'enregistrement à l'échelon européen ne peut donc être envisagé que sur la base du volontariat et seulement avec l'objectif de faciliter l'identification des œuvres et de leurs ayants droit.

Il serait en revanche souhaitable de promouvoir les outils d'identification des œuvres existants et d'encourager le développement de solutions permettant de connecter les différentes bases de données existantes, ce qui ne relève pas de l'action législative.

18. What incentives for registration by rightholders could be envisaged?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

[28] For example, it does not affect "domestic" works – i.e. works originating in the country imposing the formalities as opposed to works originating in another country.
[29] On the basis of Article 3.6 of the Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, a publicly accessible online database is currently being set up by the Office for Harmonisation of the Internal Market (OHIM) for the registration of orphan works.

D. How to improve the use and interoperability of identifiers

There are many private databases of works and other subject matter held by producers, collective management organisations, and institutions such as libraries, which are based to a greater or lesser extent on the use of (more or less) interoperable, internationally agreed 'identifiers'. Identifiers can be compared to a reference number embedded in a work, are specific to the sector in which they have been developed[30], and identify, variously, the work itself, the owner or the contributor to a work or other subject matter. There are notable examples of where industry is undertaking actions to improve the interoperability of such identifiers and databases. The Global Repertoire Database[31] should, once operational, provide a single source of information on the ownership and control of musical works worldwide. The Linked Content Coalition[32] was established to develop building blocks for the expression and management of rights and licensing across all content and media types. It includes the development of a Rights Reference Model (RRM) – a comprehensive data model for all types of rights in all types of content. The UK Copyright Hub[33] is seeking to take such identification systems a step further, and to create a linked platform, enabling automated licensing across different sectors.

19. What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?

[Open question]

L'interconnexion des différentes bases de données existantes apparaît comme un objectif majeur.

Des projets comme ARROW et ARROW Plus, qui ont été soutenus par la Commission européenne, ont démontré la capacité des différents acteurs impliqués (bibliothèques, gestionnaires des bases d'identifiants, sociétés de gestion collective notamment) de conduire des opérations fédératives. Cela étant, ces projets ont engendré des coûts qui n'ont pas tous été couverts par le soutien financier européen et ont été supportés sans contrepartie, notamment par les sociétés de gestion collective. Celles-ci jouent un rôle important dans l'alimentation des interfaces, mais elles sont aussi des utilisateurs potentiels de ces systèmes connectés, notamment pour faciliter leurs opérations de répartition. Il est indispensable que leur soit reconnu un droit d'usage libre des services qu'elles ont contribué à développer et qu'elles contribuent à alimenter.

E. Term of protection – is it appropriate?

Works and other subject matter are protected under copyright for a limited period of time. After the term of protection has expired, a work falls into the public domain and can be freely

[30] E.g. the International Standard Recording Code (ISRC) is used to identify recordings, the International Standard Book Number (ISBN) is used to identify books.
[31] You will find more information about this initiative on the following website: http://www.globalrepertoiredatabase.com/.
[32] You will find more information about this initiative (funded in part by the European Commission) on the following website: www.linkedcontentcoalition.org.
[33] You will find more information about this initiative on the following website: http://www.copyrighthub.co.uk/.

used by anyone (in accordance with the applicable national rules on moral rights). The Berne Convention[34] requires a minimum term of protection of 50 years after the death of the author. The EU rules extend this term of protection to 70 years after the death of the author (as do many other countries, e.g. the US).

With regard to performers in the music sector and phonogram producers, the term provided for in the EU rules also extend 20 years beyond what is mandated in international agreements, providing for a term of protection of 70 years after the first publication. Performers and producers in the audio-visual sector, however, do not benefit from such an extended term of protection.

20. Are the current terms of copyright protection still appropriate in the digital environment?

YES – Please explain

Il n'y a pas de raison de différencier l'univers analogique de l'univers numérique.

III. Limitations and exceptions in the Single Market

Limitations and exceptions to copyright and related rights enable the use of works and other protected subject-matter, without obtaining authorisation from the rightholders, for certain purposes and to a certain extent (for instance the use for illustration purposes of an extract from a novel by a teacher in a literature class). At EU level they are established in a number of copyright directives, most notably Directive 2001/29/EC[35].

Exceptions and limitations in the national and EU copyright laws have to respect international law[36]. In accordance with international obligations, the EU acquis requires that limitations and exceptions can only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interest of the rightholders.

Whereas the catalogue of limitations and exceptions included in EU law is exhaustive (no other exceptions can be applied to the rights harmonised at EU level)[37], these limitations and exceptions are often optional[38], in the sense that Member States are free to reflect in national legislation as many or as few of them as they wish. Moreover, the formulation of certain of the limitations and exceptions is general enough to give significant flexibility to the Member States as to how, and to what extent, to implement them (if they decide to do so). Finally, it is worth noting that not all of the limitations and exceptions included in the EU legal framework

---

[34] Berne Convention for the Protection of Literary and Artistic Works, http://www.wipo.int/treaties/en/ip/berne/.

[35] Plus Directive 96/9/EC on the legal protection of databases; Directive 2009/24/EC on the legal protection of computer programs, and Directive 92/100/EC on rental right and lending right.

[36] Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works (1971); Article 13 of the TRIPS Agreement (Trade Related Intellectual Property Rights) 1994; Article 16(2) of the WIPO Performers and Phonograms Treaty (1996); Article 9(2) of the WIPO Copyright Treaty (1996).

[37] Other than the grandfathering of the exceptions of minor importance for analogue uses existing in Member States at the time of adoption of Directive 2001/29/EC (see, Art. 5(3)(o)).

[38] With the exception of certain limitations: (i) in the Computer Programs Directive, (ii) in the Database Directive, (iii) Article 5(1) in the Directive 2001/29/EC and (iv) the Orphan Works Directive.

for copyright are of equivalent significance in policy terms and in terms of their potential effect on the functioning of the Single Market.

In addition, in the same manner that the definition of the rights is territorial (i.e. has an effect only within the territory of the Member State), the definition of the limitations and exceptions to the rights is territorial too (so an act that is covered by an exception in a Member State "A" may still require the authorisation of the rightholder once we move to the Member State "B")[39].

The cross-border effect of limitations and exceptions also raises the question of fair compensation of rightholders. In some instances, Member States are obliged to compensate rightholders for the harm inflicted on them by a limitation or exception to their rights. In other instances Member States are not obliged, but may decide, to provide for such compensation. If a limitation or exception triggering a mechanism of fair compensation were to be given cross-border effect (e.g. the books are used for illustration in an online course given by an university in a Member State "A" and the students are in a Member State "B") then there would also be a need to clarify which national law should determine the level of that compensation and who should pay it.

Finally, the question of flexibility and adaptability is being raised: what is the best mechanism to ensure that the EU and Member States' regulatory frameworks adapt when necessary (either to clarify that certain uses are covered by an exception or to confirm that for certain uses the authorisation of rightholders is required)? The main question here is whether a greater degree of flexibility can be introduced in the EU and Member States regulatory framework while ensuring the required legal certainty, including for the functioning of the Single Market, and respecting the EU's international obligations.

21. Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

NO – Please explain

L'Union européenne n'est pas fondée sur un principe d'uniformisation, mais au contraire sur le principe du respect de la diversité des cultures et des mécanismes démocratiques des États membres. C'est la richesse de l'Union que de préserver les traditions culturelles juridiques des États membres tout en offrant un cadre général permettant l'articulation de celles-ci dans le respect des principes de subsidiarité et de proportionnalité.

En l'état, rien ne permet de penser que l'introduction d'un plus grand nombre d'exceptions obligatoires dans le droit d'auteur européen aurait des conséquences positives. S'agissant des industries du livre et de la presse on rappellera (Cf. réponse à la question 3) que la question de la langue est majeure.

On citera en exemple le cas de la reprographie qui figure parmi les exceptions facultatives. Ce mécanisme existe dans certains États membres (Allemagne, Belgique, par exemple) mais pas dans d'autres. La France a adopté voici près de 20 ans un mécanisme original de gestion

[39] Only the exception established in the recent Orphan Works Directive (a mandatory exception to copyright and related rights in the case where the rightholders are not known or cannot be located) has been given a cross-border effect, which means that, for instance, once a literary work – for instance a novel – is considered an orphan work in a Member State, that same novel shall be considered an orphan work in all Member States and can be used and accessed in all Member States.

Centre Français
d'exploitation
du droit de Copie

collective obligatoire. Dans les pays scandinaves, la gestion de cette exploitation fait l'objet du mécanisme des licences collectives étendues et d'autres pays (Royaume Uni, par exemple) n'ont pas prévu de mécanisme spécifique et ce droit fait l'objet d'une gestion collective volontaire. Cette grande diversité n'a jamais soulevé de difficultés y compris pour les échanges transfrontières.

De façon générale, la mise en œuvre des exceptions dans les législations nationales est encadrée par la condition du respect du test en trois étapes prévu par la Convention de Berne et repris par la Directive 2001/29/EC du 22 mai 2001 qui, tout en s'imposant à l'ensemble des États, permet aux différents législateurs de se conformer à leur propre cadre juridique.

22. Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?

NO – Please explain

Dans le prolongement de nos développements concernant la question 21, il nous semble plutôt nécessaire de promouvoir les mécanismes adaptés de gestion des droits et, en particulier, de faciliter l'exercice de la gestion collective dans le respect de la diversité des modèles existants au sein de l'Union (gestion collective volontaire, gestion collective obligatoire, licences collectives étendues).

Nous souhaitons également rappeler que les exceptions au droit d'auteur ne se justifient qu'en cas d'impossibilité d'exercer le droit d'auteur ou en cas de carence d'un marché à répondre aux besoins de la société.

23. Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.

[Open question]

La question de l'évolution du droit d'auteur ne nous semble pas devoir être abordée sous le seul angle des exceptions, qu'il s'agisse d'en supprimer, d'en modifier ou d'en ajouter, comme certains aiment à le faire croire. En particulier, il serait trompeur de le laisser croire alors que sont fréquemment en cause les politiques culturelles des États qui, sous la contrainte budgétaire, se désengagent de ce secteur d'investissement.

Il nous semble au contraire nécessaire de favoriser les solutions élaborées par les parties prenantes (programme ARROW qui n'est pas complètement mis en œuvre, MoU sur les œuvres indisponibles, etc.). Les initiatives comme le programme Licences for Europe doivent être multipliées et suivies. On soulignera à cet égard que les résultats des différents groupes de travail ont montré la volonté des ayants droit de trouver des solutions évolutives et d'avenir, parfois contre la volonté des utilisateurs, à l'exemple du groupe de travail 4 où une partie importante de ceux-ci a préféré la politique de la chaise vide et une discussion parallèle avec la Commission au dialogue avec toutes les parties prenantes.

Centre Français d'exploitation du droit de Copie

On ajoutera également que certaines exceptions existantes pour le secteur de la presse et du livre (parodie, pastiche, caricature ou encore courte citation) peuvent être utilisées pour résoudre de nouvelles problématiques (œuvres transformatives).

24. Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

NO – Please explain why

Le caractère facultatif des exceptions et limitations offre un degré suffisant de flexibilité sous le contrôle des juridictions nationales et de la Cour de Justice de l'Union Européenne.

En particulier, la tentation de l'introduction de la notion américaine de « fair use » nous paraît une voie particulièrement dangereuse parce qu'en totale opposition avec la plupart des systèmes juridiques européens (hors cas du Royaume-Uni). Elle aurait pour conséquence de provoquer un déséquilibre total du droit d'auteur en Europe, favoriserait l'apparition de contentieux paralysants et conduirait à une contraction inévitable des investissements dans le secteur des industries culturelles, entraînant la destruction de nombreuses entreprises et de très nombreux emplois.

25. If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

26. Does the territoriality of limitations and exceptions, in your experience, constitute a problem?

NO – Please explain why and specify which exceptions you are referring to

Au regard des droits gérés par le CFC, le caractère territorial des exceptions et limitations ne soulève pas de problème particulier. Cela est tout d'abord dû au fait que les usages gérés sont très principalement le fait d'usagers nationaux utilisant des œuvres majoritairement françaises dans le cadre de l'exception pédagogique. Par ailleurs, le CFC a complété son répertoire français en recevant des mandats d'ayants droit du monde entier à travers différents accords avec d'autres sociétés de gestion collective étrangères.

27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of "fair compensation" be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?)

[Open question]

S'agissant de l'exception pédagogique, la compensation versée par le ministère de l'Éducation nationale en France couvre également l'utilisation d'œuvres étrangères pour lesquelles le CFC dispose d'un mandat. Les sommes revenant aux ayants droit de ces œuvres sont versées aux sociétés de gestion collective qui les représentent. L'hypothèse d'exceptions aux effets transfrontaliers n'est pas avérée jusqu'à présent.

A. Access to content in libraries and archives

Directive 2001/29/EC enables Member States to reflect in their national law a range of limitations and exceptions for the benefit of publicly accessible libraries, educational establishments and museums, as well as archives. If implemented, these exceptions allow acts of preservation and archiving[40] and enable on-site consultation of the works and other subject matter in the collections of such institutions[41]. The public lending (under an exception or limitation) by these establishments of physical copies of works and other subject matter is governed by the Rental and Lending Directive[42].

Questions arise as to whether the current framework continues to achieve the objectives envisaged or whether it needs to be clarified or updated to cover use in digital networks. At the same time, questions arise as to the effect of such a possible expansion on the normal exploitation of works and other subject matter and as to the prejudice this may cause to rightholders. The role of licensing and possible framework agreements between different stakeholders also needs to be considered here.

1. Preservation and archiving

The preservation of the copies of works or other subject-matter held in the collections of cultural establishments (e.g. books, records, or films) – the restoration or replacement of works, the copying of fragile works - may involve the creation of another copy/ies of these works or other subject matter. Most Member States provide for an exception in their national laws allowing for the making of such preservation copies. The scope of the exception differs from Member State to Member State (as regards the type of beneficiary establishments, the types of works/subject-matter covered by the exception, the mode of copying and the number of reproductions that a beneficiary establishment may make). Also, the current legal status of new types of preservation activities (e.g. harvesting and archiving publicly available web content) is often uncertain.

28. (a)** [In particular if you are an institutional user:] **Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

[40] Article 5(2)c of Directive 2001/29.
[41] Article 5(3)n of Directive 2001/29.
[42] Article 5 of Directive 2006/115/EC.

(b) [In particular if you are a right holder:] ***Have you experienced problems with the use by libraries, educational establishments, museum or archives of the preservation exception?***

NO

29. If there are problems, how would they best be solved?
[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

30. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

31. If your view is that a different solution is needed, what would it be?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

2. Off-premises access to library collections

Directive 2001/29/EC provides an exception for the consultation of works and other subject-matter (consulting an e-book, watching a documentary) via dedicated terminals on the premises of such establishments for the purpose of research and private study. The online consultation of works and other subject-matter remotely (i.e. when the library user is not on the premises of the library) requires authorisation and is generally addressed in agreements between universities/libraries and publishers. Some argue that the law rather than agreements should provide for the possibility to, and the conditions for, granting online access to collections.

32. *(a) [In particular if you are an institutional user:]* ***Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?***

(b) [In particular if you are an end user/consumer:] ***Have you experienced specific problems when trying to consult, including across borders, works and other subject-matter held in the collections of institutions such as universities and national libraries when you are not on the premises of the institutions in question?***

(c) [In particular if you are a right holder:] ***Have you negotiated agreements with institutional users that enable those institutions to provide remote access, including across***

borders, to the works or other subject-matter in their collections, for purposes of research and private study?

[Open question]

Il existe aujourd'hui de nombreuses licences développées directement par les éditeurs, leurs diffuseurs, voire la gestion collective. En France, certaines de ces licences sont négociées par le Consortium de bibliothèques universitaires Couperin ou directement par les universités et instituts de recherche concernés. Ces licences ont des champs d'autorisation variables, mais elles permettent toutes des consultations à distance via divers systèmes d'authentification.

On ajoutera que le CFC a accordé depuis les années 90 des licences au Centre National de la Recherche Scientifique (CNRS) pour son service de fourniture de document à distance.

33. If there are problems, how would they best be solved?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

34. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

35. If your view is that a different solution is needed, what would it be?

[Open question]

Certains représentants des bibliothèques souhaitent l'extension de « l'exception bibliothèques » afin de permettre à celles-ci la numérisation et la mise en ligne gratuite d'œuvres protégées. Une telle situation n'est pas compatible avec le respect du test en trois étapes et porterait gravement atteinte à l'exploitation normale des œuvres en rendant impossible leur exploitation commerciale, à moins de prévoir des niveaux de rémunération des ayants droit qui seraient manifestement incompatibles avec les budgets des bibliothèques.

3. E – lending

Traditionally, public libraries have loaned physical copies of works (i.e. books, sometimes also CDs and DVDs) to their users. Recent technological developments have made it technically possible for libraries to provide users with temporary access to digital content, such as e-books, music or films via networks. Under the current legal framework, libraries need to obtain the authorisation of the rights holders to organise such e-lending activities. In

various Member States, publishers and libraries are currently experimenting with different business models for the making available of works online, including direct supply of e-books to libraries by publishers or bundling by aggregators.

36. *(a) [In particular if you are a library:]* ***Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?***

(b) *[In particular if you are an end user/consumer:]* ***Have you experienced specific problems when trying to borrow books or other materials electronically (e-lending), including across borders, from institutions such as public libraries?***

(c) *[In particular if you are a right holder:]* ***Have you negotiated agreements with libraries to enable them to lend books or other materials electronically, including across borders?***

YES – Please explain with specific examples

………………………………………………………………………………………………

………………………………………………………………………………………………

NO

NO OPINION

37. If there are problems, how would they best be solved?
[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

The following two questions are relevant both to this point (n° 3) and the previous one (n° 2).

38. *[In particular if you are an institutional user:]* ***What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?***

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

39. *[In particular if you are a right holder:]* ***What difference do you see between libraries' traditional activities such as on-premises consultation or public lending and activities such as off-premises (online, at a distance) consultation and e-lending? What problems have you encountered?***

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

4. Mass digitisation

The term "mass digitisation" is normally used to refer to efforts by institutions such as libraries and archives to digitise (e.g. scan) the entire content or part of their collections with an objective to preserve these collections and, normally, to make them available to the public. Examples are efforts by libraries to digitise novels form the early part of the 20th century or whole collections of pictures of historical value. This matter has been partly addressed at the EU level by the 2011 Memorandum of Understanding (MoU) on key principles on the digitisation and making available of out of commerce works (i.e. works which are no longer found in the normal channels of commerce), which is aiming to facilitate mass digitisation efforts (for books and learned journals) on the basis of licence agreements between libraries and similar cultural institutions on the one hand and the collecting societies representing authors and publishers on the other[43]. Provided the required funding is ensured (digitisation projects are extremely expensive), the result of this MoU should be that books that are currently to be found only in the archives of, for instance, libraries will be digitised and made available online to everyone. The MoU is based on voluntary licences (granted by Collective Management Organisations on the basis of the mandates they receive from authors and publishers). Some Member States may need to enact legislation to ensure the largest possible effect of such licences (e.g. by establishing in legislation a presumption of representation of a collecting society or the recognition of an "extended effect" to the licences granted)[44].

40. *[In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:]* ***Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?***

__YES – Please explain why and how it could best be achieved

En France, la loi du 1er mars 2012 a instauré un mécanisme de gestion collective pour les livres indisponibles du XXème siècle qui est entrée en vigueur le 21 mars 2013. Ce dispositif permet aux ayants droit de sortir du mécanisme de gestion collective et leur permet soit de procéder directement à l'exploitation des livres en question et, dans le seul cas des auteurs, de s'opposer à toute exploitation.

Ce dispositif demeure toutefois unique, à l'exception du dispositif adopté en Allemagne en 2013. Les difficultés rencontrées pour la mise en œuvre du dispositif en France ont montré, tout comme l'absence d'autre programme de ce type à travers l'Europe, que le principal obstacle est le manque de budgets publics à consacrer à ce type de projets et non des difficultés liées au droit d'auteur.

---

[43] You will find more information about his MoU on the following website: http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm .

[44] France and Germany have already adopted legislation to back the effects of the MoU. The French act (LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du xxe siècle) foresees collective management, unless the author or publisher in question opposes such management. The German act (Gesetz zur Nutzung verwaister und vergriffener Werke und einer weiteren Änderung des Urheberrechtsgesetzes vom 1. Oktober 2013) contains a legal presumption of representation by a collecting society in relation to works whose rightholders are not members of the collecting society.

Centre Français d'exploitation du droit de Copie

41. Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?

__NO OPINION__

B. Teaching

Directive 2001/29/EC[45] enables Member States to implement in their national legislation limitations and exceptions for the purpose of illustration for non-commercial teaching. Such exceptions would typically allow a teacher to use parts of or full works to illustrate his course, e.g. by distributing copies of fragments of a book or of newspaper articles in the classroom or by showing protected content on a smart board without having to obtain authorisation from the right holders. The open formulation of this (optional) provision allows for rather different implementation at Member States level. The implementation of the exception differs from Member State to Member State, with several Member States providing instead a framework for the licensing of content for certain educational uses. Some argue that the law should provide for better possibilities for distance learning and study at home.

42.** (a) [In particular if you are an end user/consumer or an institutional user:] **Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?

*(b) [In particular if you are a right holder:] **Have you experienced specific problems resulting from the way in which works or other subject-matter are used for illustration for teaching, including across borders?***

La formulation de la question nous oblige à répondre de deux façons.

__YES__ – Please explain

La notion même « d'illustration de l'enseignement » est cause d'incertitude et d'insécurité juridique. Cette notion a en effet été introduite dans la Directive2001/29/EC du 22 mai 2001 alors que dans de nombreux États membres les sociétés de gestion collective, à l'instar du CFC, avaient mis en place des mécanismes contractuels pour autoriser les reproductions d'œuvres protégées de la presse et du livre, en particulier sous forme de reprographie, nécessaires aux secteurs de l'enseignement et de la recherche.

Si les accords sur la reprographie n'ont pas été remis en cause, il n'en demeure pas moins que la notion d'illustration a tendance à être interprétée de façon très extensive par le monde éducatif, en particulier en France par le ministère de l'Éducation nationale. Celui-ci tend ainsi à considérer que « l'utilisation à des fins d'illustration » peut couvrir la production de ressources pour le secteur éducatif.

[45] Article 5(3)a of Directive 2001/29.

Or, il est illusoire et dangereux de penser que le ministère de l'Éducation nationale, les établissements ou certains enseignants motivés peuvent produire, à eux seuls, l'ensemble des supports et ressources pédagogiques.

C'est pourquoi, il importe de rappeler que l'intention d'une exception pédagogique au droit d'auteur est de faciliter l'acte d'enseignement, c'est-à-dire la relation entre le professeur et les élèves/étudiants directement concernés par l'enseignement que celui-ci délivre.

Il est essentiel que le cadre juridique européen préserve la diversité et le dynamise d'un marché de la production éditoriale dédiée au secteur éducatif dont la qualité est reconnue en France comme à l'étranger.

NO

Les éditeurs scolaires et universitaires proposent des licences pour l'acquisition de leurs contenus numériques qui permettent, le plus souvent une consultation à distance, y compris depuis l'étranger. Cela étant, c'est avant tout l'enseignement supérieur et la recherche qui sont concernés, car les usages transfrontaliers concernant l'enseignement du premier et du second degré sont par construction réduits en raison de la spécificité des programmes scolaires propres à chaque État membre de l'Union européenne.

Par ailleurs, dans le cadre des accords conclus entre le CFC et le ministère de l'Éducation nationale, les enseignants, élèves, étudiants et chercheurs peuvent utiliser des extraits d'œuvres relevant de l'exception pédagogique sans autorisation des ayants droit. Soulignons que ces accords couvrent également l'utilisation des « œuvres conçues à des fins pédagogiques »* (OCFP) qui sont exclues du champ de l'exception pédagogique (comme en Allemagne), afin de ne pas porter préjudice aux ayants droit donc le secteur éducatif constitue le marché premier.

Ces accords visent des usages numériques sur un réseau sécurisé, lequel peut être accessible à distance, y compris de l'étranger. Ce type de besoin n'a toutefois pas été signalé jusqu'à présent.

* Ces œuvres sont exclues de l'exception pédagogique pour permettre le respect du test en trois étapes puisque leur marché quasi unique est celui des établissements d'enseignement et de recherche. L'inclusion de ces œuvres dans le champ de l'exception aurait entraîné une atteinte à l'exploitation normale de l'œuvre, ce qu'exclut ledit test.

43. If there are problems, how would they best be solved?

[Open question]

La clarification de la notion « d'illustration de l'enseignement », en précisant qu'elle ne couvre pas la production de ressources pédagogiques doit avoir lieu au niveau européen.

Centre Français d'exploitation du droit de Copie

44. What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?

[Open question]

Comme nous l'avons indiqué dans nos réponses aux questions 32 et 42, les éditeurs, en particulier dans le secteur scientifique, proposent de très nombreuses licences pour l'accès aux revues et aux livres. Ces offres sont complétées par les accords conclus avec les sociétés de gestion collective qui couvrent à la fois le champ de l'exception pédagogique et des usages hors du champ de celle-ci.

En France, ces accords existent depuis 2006 et ont été régulièrement renouvelés, même si les ayants droit doivent déplorer la faiblesse des rémunérations accordées du fait du manque de moyens budgétaires. Ces accords couvrent des œuvres françaises ainsi que des œuvres étrangères (ces dernières correspondent à environ 15 % des usages) qui représentent des dizaines de milliers de revues et un nombre considérable de livres.

Les ayants droit ont en outre proposé que ces usages fassent l'objet d'un dispositif de gestion collective obligatoire dans le prolongement du mécanisme mis en place depuis près de 20 ans pour la reprographie. Cette solution n'a pas été acceptée jusqu'à présent par le gouvernement français qui craint des conséquences budgétaires importantes, alors que cette solution aurait surtout pour conséquence de simplifier singulièrement la situation des enseignants*.

* Sans gestion collective obligatoire, les enseignants doivent s'assurer que les œuvres qu'ils souhaitent utiliser font partie du répertoire des accords.

45. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

46. If your view is that a different solution is needed, what would it be?

[Open question]

L'Union européenne doit promouvoir le développement d'un véritable marché du numérique pédagogique et inciter les États membres à mettre en œuvre les moyens, notamment budgétaires, indispensables à ce développement. La quasi-totalité des faibles moyens budgétaires alloués actuellement ne peut pas continuer de bénéficier aux seuls fournisseurs de matériels et d'outils technologiques au détriment des créateurs et producteurs des contenus.

Centre Français d'exploitation du droit de Copie

C. Research

Directive 2001/29/EC[46] enables Member States to choose whether to implement in their national laws a limitation for the purpose of non-commercial scientific research. The open formulation of this (optional) provision allows for rather different implementations at Member States level.

47. (a)** [In particular if you are an end user/consumer or an institutional user:]* ***Have you experienced specific problems when trying to use works or other subject matter in the context of research projects/activities, including across borders?

(b)** [In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the way in which works or other subject-matter are used in the context of research projects/activities, including across borders?

NO

Voir notre réponse à la question 42 qui s'applique également au secteur de la recherche.

48. If there are problems, how would they best be solved?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

49. What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?

[Open question]

Les licences directes proposées par les éditeurs ou leurs diffuseurs (ex. Cairn.info) et les licences proposées dans le cadre de la gestion collective permettent de couvrir l'ensemble des besoins.

Le problème majeur ne se situe pas sur le terrain du droit d'auteur, mais sur le terrain des budgets en particulier concernant les bibliothèques universitaires qui n'ont parfois plus les moyens de maintenir le niveau de leurs abonnements*.

*http://www2.biusante.parisdescartes.fr/wordpress/index.php/contraintes-budgetaires-desabonnements-2014/

D. Disabilities

Directive 2001/29/EC[47] provides for an exception/limitation for the benefit of people with a disability. The open formulation of this (optional) provision allows for rather different implementations at Member States level. At EU and international level projects have been launched to increase the accessibility of works and other subject-matter for persons with

[46] Article 5(3)a of Directive 2001/29.
[47] Article 5 (3)b of Directive 2001/29.

disabilities (notably by increasing the number of works published in special formats and facilitating their distribution across the European Union) [48].

The Marrakesh Treaty[49] has been adopted to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. The Treaty creates a mandatory exception to copyright that allows organisations for the blind to produce, distribute and make available accessible format copies to visually impaired persons without the authorisation of the rightholders. The EU and its Member States have started work to sign and ratify the Treaty. This may require the adoption of certain provisions at EU level (e.g. to ensure the possibility to exchange accessible format copies across borders).

50. ***(a)*** *[In particular if you are a person with a disability or an organisation representing persons with disabilities:]* ***Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?***

(b) *[In particular if you are an organisation providing services for persons with disabilities:]* ***Have you experienced problems when distributing/communicating works published in special formats across the EU?***

(c) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?***

__NO

Concernant le livre, les éditeurs sont déjà fortement investis dans la mise en œuvre de l'exception « handicap », qui bénéficie aux personnes affectées d'un handicap à travers 70 associations agréées, dont 26 de niveau 2* via leur participation à Platon (Plateforme sécurisée de Transfert des Ouvrages Numériques), la plateforme d'accès mise en œuvre par la Bibliothèque nationale de France (BnF).

Afin de faciliter la transcription par des organismes d'adaptation, donc la mise à disposition rapide des documents à leurs bénéficiaires handicapés, le Syndicat National de l'Édition recommande aux éditeurs de transmettre les fichiers en format structuré (XML, ePub, etc.).

En outre, les éditeurs ont mis en place des solutions concrètes permettant un accès transfrontalier à leurs œuvres déjà adaptées grâce à des intermédiaires de confiance : le projet-pilote TIGAR (Trusted Intermediary Global Accessible Resources), auquel participent de nombreux groupes d'édition français, permet déjà la circulation d'œuvres adaptées entre 20 pays. Ils soutiennent également le projet européen ETIN (European Trusted Intermediary Network) qui promeut la création de guichets nationaux uniques pour accorder des permissions quant à l'exportation de ces œuvres adaptées, mais pâtit d'un manque de financements européens.

---

[48] The European Trusted Intermediaries Network (ETIN) resulting from a Memorandum of Understanding between representatives of the right-holder community (publishers, authors, collecting societies) and interested parties such as associations for blind and dyslexic persons (http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm) and the Trusted Intermediary Global Accessible Resources (TIGAR) project in WIPO (http://www.visionip.org/portal/en/).

[49] Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, Marrakesh, June 17 to 28 2013.

A la suite de l'adoption du Traité de Marrakech par l'Organisation Mondiale de la Propriété Intellectuelle (OMPI), il est essentiel d'insister sur son caractère spécifique et de réitérer l'engagement des éditeurs à fournir des œuvres accessibles disponibles dans le commerce et à travailler à des solutions basées sur la coopération (poursuite du projet TIGAR et réflexion sur la gestion collective obligatoire de la circulation transfrontière des œuvres adaptées).

Concernant la presse, depuis septembre 2013, le CFC met à la disposition de la BnF les ressources de sa propre plateforme de distribution de contenus de presse**.

* Habilitées à demander les fichiers sources des éditeurs via Platon (Plateforme sécurisée de Transfert des Ouvrages Numériques), la plateforme d'accès mise en œuvre par la Bibliothèque nationale de France.

**http://www.cfcopies.com/medias/actualites/actuhandicap

51. If there are problems, what could be done to improve accessibility?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

52. What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

[Open question]

Les différentes initiatives mentionnées dans notre réponse à la question 50 doivent être développées et concrétisées en étant complétées par des licences proposées par les sociétés de gestion collective (à l'étude au CFC) pour les échanges transfrontières.

E. Text and data mining

Text and data mining/content mining/data analytics[50] are different terms used to describe increasingly important techniques used in particular by researchers for the exploration of vast amounts of existing texts and data (e.g., journals, web sites, databases etc.). Through the use of software or other automated processes, an analysis is made of relevant texts and data in order to obtain new insights, patterns and trends.

The texts and data used for mining are either freely accessible on the internet or accessible through subscriptions to e.g. journals and periodicals that give access to the databases of publishers. A copy is made of the relevant texts and data (e.g. on browser cache memories or in computers RAM memories or onto the hard disk of a computer), prior to the actual analysis. Normally, it is considered that to mine protected works or other subject matter, it is necessary to obtain authorisation from the right holders for the making of such copies unless such authorisation can be implied (e.g. content accessible to general public without restrictions on the internet, open access).

[50] For the purpose of the present document, the term "text and data mining" will be used.

Some argue that the copies required for text and data mining are covered by the exception for temporary copies in Article 5.1 of Directive 2001/29/EC. Others consider that text and data mining activities should not even be seen as covered by copyright. None of this is clear, in particular since text and data mining does not consist only of a single method, but can be undertaken in several different ways. Important questions also remain as to whether the main problems arising in relation to this issue go beyond copyright (i.e. beyond the necessity or not to obtain the authorisation to use content) and relate rather to the need to obtain "access" to content (i.e. being able to use e.g. commercial databases).

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results. At the same time, practical solutions to facilitate text and data mining of subscription-based scientific content were presented by publishers as an outcome of "Licences for Europe"[51]. In the context of these discussions, other stakeholders argued that no additional licences should be required to mine material to which access has been provided through a subscription agreement and considered that a specific exception for text and data mining should be introduced, possibly on the basis of a distinction between commercial and non-commercial.

53. ***(a)*** *[In particular if you are an end user/consumer or an institutional user:]* ***Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?***

(b) *[In particular if you are a service provider:]* ***Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?***

(c) *[In particular if you are a right holder:]* ***Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?***

NO – Please explain

On soulignera tout d'abord que le « text and data mining » (TDM) a fait et fait l'objet de nombreux travaux (Groupe de travail dédié dans le cadre de « Licences for Europe », mission dédiée du Conseil Supérieur de la Propriété Littéraire et Artistique [CSPLA] en France, travaux préparatoires à la réforme du copyright au Royaume-Uni, travaux de l'association internationale des éditeurs Scientifiques, Techniques et Médicaux* [STM] notamment). À ces différentes occasions, les ayants droits de l'écrit ont fait part de leur souhait de voir le TDM se développer et de leur intention de proposer des solutions là où le droit d'auteur est en jeu.

On soulignera également la variété des activités et des acteurs de TDM : ils peut s'agir d'éditeurs qui enrichissent leur contenus, de chercheurs qui souhaitent identifier des informations ou encore de prestataires de services qui développent des services ou des produits basés sur cette activité. En outre, certaines activités de TDM supposent la

[51] See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

reproduction et/ou le stockage des œuvres tandis que certaines autres techniques ne recourent pas à ces actions.

Ces éléments et le fait que certaines activités de TDM peuvent passer rapidement de la sphère de la recherche à la sphère commerciale, voire concerner les deux simultanément, incitent à rechercher des solutions souples et non figées qui permettent d'apporter des réponses adaptées aux différents types de TDM.

Des solutions contractuelles, individuelles ou collectives, doivent donc être favorisées et la tentation de l'exception rejetée. Il serait en effet inéquitable que les acteurs commerciaux de ce secteur (en France quelques dizaines d'entreprises) génèrent leur propre valeur par l'utilisation des contenus de tiers, sans autorisation ni rémunération de ceux-ci.

Le CFC travaille actuellement, en particulier avec les éditeurs de presse en ligne, à l'élaboration de licences à destination de ce type d'acteurs.

* http://www.stm-assoc.org/text-and-data-mining-stm-statement-sample-licence/

54. If there are problems, how would they best be solved?

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

55. If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

56. If your view is that a different solution is needed, what would it be?

[Open question]

Voir notre réponse à la question 53.

57. Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?

[Open question]

Les activités de TDM peuvent soulever des problèmes d'ordre technique pour l'accès aux données qui ne relèvent pas du droit d'auteur ainsi que des questions relatives à la protection des données personnelles qui ne sauraient être traités par le biais d'une exception au droit exclusif de l'auteur, alors que des dispositifs contractuels sont adaptés pour les résoudre cas par cas.

F. User-generated content

Technological and service developments mean that citizens can copy, use and distribute content at little to no financial cost. As a consequence, new types of online activities are developing rapidly, including the making of so-called “user-generated content”. While users can create totally original content, they can also take one or several pre-existing works, change something in the work(s), and upload the result on the Internet e.g. to platforms and blogs[52]. User-generated content (UGC) can thus cover the modification of pre-existing works even if the newly-generated/"uploaded" work does not necessarily require a creative effort and results from merely adding, subtracting or associating some pre-existing content with other pre-existing content. This kind of activity is not “new” as such. However, the development of social networking and social media sites that enable users to share content widely has vastly changed the scale of such activities and increased the potential economic impact for those holding rights in the pre-existing works. Re-use is no longer the preserve of a technically and artistically adept elite. With the possibilities offered by the new technologies, re-use is open to all, at no cost. This in turn raises questions with regard to fundamental rights such the freedom of expression and the right to property.

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results or even the definition of UGC. Nevertheless, a wide range of views were presented as to the best way to respond to this phenomenon. One view was to say that a new exception is needed to cover UGC, in particular non-commercial activities by individuals such as combining existing musical works with videos, sequences of photos, etc. Another view was that no legislative change is needed: UGC is flourishing, and licensing schemes are increasingly available (licence schemes concluded between rightholders and platforms as well as micro-licences concluded between rightholders and the users generating the content. In any event, practical solutions to ease user-generated content and facilitate micro-licensing for small users were pledged by rightholders across different sectors as a result of the “Licences for Europe” discussions[53].

58. (a) *[In particular if you are an end user/consumer:]* ***Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?***

(b) *[In particular if you are a service provider:]* ***Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?***

(c) *[In particular if you are a right holder:]* ***Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?***

NO

[52] A typical example could be the “kitchen” or “wedding” video (adding one's own video to a pre-existing sound recording), or adding one's own text to a pre-existing photograph. Other examples are “mash-ups” (blending two sound recordings), and reproducing parts of journalistic work (report, review etc.) in a blog.

[53] See the document “Licences for Europe – ten pledges to bring more content online”: http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

Centre Français
d'exploitation
du droit de Copie

59. (a) *[In particular if you are an end user/consumer or a right holder:]* ***Have you experienced problems when trying to ensure that the work you have created (on the basis of pre-existing works) is properly identified for online use? Are proprietary systems sufficient in this context?***

(b) *[In particular if you are a service provider:]* ***Do you provide possibilities for users that are publishing/disseminating the works they have created (on the basis of pre-existing works) through your service to properly identify these works for online use?***

NO OPINION

60. (a) *[In particular if you are an end user/consumer or a right holder):]* ***Have you experienced problems when trying to be remunerated for the use of the work you have created (on the basis of pre-existing works)?***

(b) *[In particular if you are a service provider:]* ***Do you provide remuneration schemes for users publishing/disseminating the works they have created (on the basis of pre-existing works) through your service?***

NO OPINION

61. If there are problems, how would they best be solved?

[Open question]

…………………………………………………………………………………………

…………………………………………………………………………………………

62. If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

[Open question]

…………………………………………………………………………………………

…………………………………………………………………………………………

63. If your view is that a different solution is needed, what would it be?

[Open question]

Les travaux du Groupe de travail dédié dans le cadre de “Licences for Europe” ont bien mis en évidence certaines des difficultés existant pour traiter les questions que soulèvent les œuvres transformatives.

On doit toutefois constater que ces usages ne sont pas dépourvus de cadre juridique. En effet, il existe dans les législations européennes, notamment en France, des dispositions relatives aux œuvres dérivées et des exceptions qui peuvent trouver matière à s'appliquer en dispensant certains usages de l'autorisation préalable de l'auteur d'une œuvre préexistante (exception de courte citation, exception pour parodie, pastiche ou caricature).

On soulignera également que des solutions de gestion (information sur les usages autorisés ou les démarches à accomplir pour obtenir l'autorisation souhaitée, identification des œuvres et des ayants droit, solutions d'autorisation automatisées) sont en cours de développement ou d'étude par les ayants droit et les sociétés de gestion collective.

Une autre question s'avère complexe à traiter : celle de la frontière entre les usages individuels non-marchands et les autres qui peut s'avérer complexe à tracer (exemple des blogs individuels financés par la publicité ou qui se professionnalisent).

Il s'avèrerait donc très complexe de légiférer sans prendre le risque d'adopter un cadre par trop rigide ou inadapté à l'évolution des offres technologiques et des usages qui est permanente.

IV. Private copying and reprography

Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use and photocopying[54]. Levies are charges imposed at national level on goods typically used for such purposes (blank media, recording equipment, photocopying machines, mobile listening devices such as mp3/mp4 players, computers, etc.) with a view to compensating rightholders for the harm they suffer when copies are made without their authorisation by certain categories of persons (i.e. natural persons making copies for their private use) or through use of certain technique (i.e. reprography). In that context, levies are important for rightholders.

With the constant developments in digital technology, the question arises as to whether the copying of files by consumers/end-users who have purchased content online - e.g. when a person has bought an MP3 file and goes on to store multiple copies of that file (in her computer, her tablet and her mobile phone) - also triggers, or should trigger, the application of private copying levies. It is argued that, in some cases, these levies may indeed be claimed by rightholders whether or not the licence fee paid by the service provider already covers copies made by the end user. This approach could potentially lead to instances of double payments whereby levies could be claimed on top of service providers' licence fees[55][56].

There is also an on-going discussion as to the application or not of levies to certain types of cloud-based services such as personal lockers or personal video recorders.

[54] Article 5. 2)(a) and (b) of Directive 2001/29.
[55] Communication "Unleashing the Potential of Cloud Computing in Europe", COM(2012) 529 final.
[56] These issues were addressed in the recommendations of Mr António Vitorino resulting from the mediation on private copying and reprography levies. You can consult these recommendations on the following website: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf.

64. *In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions*[57] *in the digital environment*?

__NO__ – Please explain

En France, le droit de reprographie ne relève pas d'une exception au droit d'auteur. Il fait néanmoins l'objet, depuis près de 20 ans, d'un mode de gestion spécifique, la gestion collective obligatoire qui organise l'exercice du droit exclusif et qui est mis en œuvre par le CFC. Ce régime de gestion ne concerne que les usages collectifs et aucune rémunération n'existe au titre de la copie privée par reprographie. Une telle rémunération n'a jamais été demandée par les ayants droit en raison du caractère extrêmement marginal de ce type de copies.

La copie privée numérique fait l'objet d'une exception dans la législation française qui donne lieu à la perception d'une redevance sur les supports d'enregistrement, dispositif qui satisfait les ayants droit. Ce mécanisme est mis en œuvre par la société de gestion collective Copie France, elle-même mandatée par l'ensemble des sociétés de gestion collective de tous les secteurs concernés. Le CFC participe à cette gestion en percevant auprès de Copie France la part de la rémunération au titre de la copie privée qui revient aux éditeurs de presse et procède à sa répartition entre eux.

65. *Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies?*[58]

__YES__ – Please explain

__NO__ – Please explain

L'arrêt de la Cour de Justice de l'union Européenne rendu dans l'affaire VG WORT (C-457/11 to C-460/11) conduit à apporter ces deux réponses en ce qu'il admet la coexistence d'une compensation et d'une rémunération prévue par une licence.

66. *How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?*

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

67. *Would you see an added value in making levies visible on the invoices for products subject to levies?*[59]

[57] Art. 5.2(a) and 5.2(b) of Directive 2001/29/EC.

[58] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies

YES – Please explain

Un tel dispositif a été adopté en France par la loi du 20 décembre 2011 relative à la copie privée et qui impose de porter à la connaissance de l'acquéreur le montant de la rémunération sur les lieux de vente du support. Le Décret n° 2013-1141 du 10 décembre 2013 relatif à l'information des acquéreurs de supports d'enregistrement soumis à la rémunération pour copie privée organise l'information du consommateur qui sera mise en vigueur à partir du 1er avril 2014.

Il serait effectivement utile que, dans les pays qui ont adopté ce système de rémunération pour copie privée, le consommateur soit informé dans des conditions semblables.

Diverging national systems levy different products and apply different tariffs. This results in obstacles to the free circulation of goods and services in the Single Market. At the same time, many Member States continue to allow the indiscriminate application of private copying levies to all transactions irrespective of the person to whom the product subject to a levy is sold (e.g. private person or business). In that context, not all Member States have ex ante exemption and/or ex post reimbursement schemes which could remedy these situations and reduce the number of undue payments[60].

68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?

NO – Please explain

Le dispositif français en matière de copie privée comporte un système de remboursement de la rémunération lorsque le support est exporté hors du territoire. Le mécanisme est en fait double.

En effet, la rémunération pour copie privée n'est pas perçue pour les supports importés en France puis réexportés directement par l'importateur sans qu'ils aient été mis en circulation sur le territoire français, en application à l'article L.311-4 du code de la propriété intellectuelle (CPI) qui déclenche le versement de la rémunération par l'importateur ou le fabricant lors de la mise en circulation en France des supports assujettis, puisque le fait générateur de la rémunération – la mise en circulation sur le territoire français – fait alors défaut.

Par ailleurs, le remboursement de la rémunération est effectué pour les supports importés puis mis en circulation sur le territoire français et ensuite exportés hors du territoire. Copie France, la société de gestion qui perçoit la rémunération rembourse alors celle-ci sur présentation des justificatifs attestant de l'exportation effective des supports.

---

[59] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.
[60] This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

Ce mécanisme pourrait être aisément généralisé.

69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?

[Open question]

……………………………………………………………………………………………

……………………………………………………………………………………………

V. Fair remuneration of authors and performers

The EU copyright acquis recognises for authors and performers a number of exclusive rights and, in the case of performers whose performances are fixed in phonograms, remuneration rights. There are few provisions in the EU copyright law governing the *transfer* of rights from authors or performers to producers[61] or determining who the owner of the rights is when the work or other subject matter is created in the context of an employment contract[62]. This is an area that has been traditionally left for Member States to regulate and there are significant differences in regulatory approaches. Substantial differences also exist between different sectors of the creative industries.

Concerns continue to be raised that authors and performers are not adequately remunerated, in particular but not solely, as regards online exploitation. Many consider that the economic benefit of new forms of exploitation is not being fairly shared along the whole value chain. Another commonly raised issue concerns contractual practices, negotiation mechanisms, presumptions of transfer of rights, buy-out clauses and the lack of possibility to terminate

[61] See e.g. Directive 92/100/EEC, Art.2(4)-(7).
[62] See e.g. Art. 2.3. of Directive 2009/24/EC, Art. 4 of Directive 96/9/EC.

contracts. Some stakeholders are of the opinion that rules at national level do not suffice to improve their situation and that action at EU level is necessary.

72. [In particular if you are an author/performer:] What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

73. Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?

YES – Please explain

………………………………………………………………………………………………

………………………………………………………………………………………………

NO – Please explain why

………………………………………………………………………………………………

………………………………………………………………………………………………

NO OPINION

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

[Open question]

………………………………………………………………………………………………

………………………………………………………………………………………………

VI. Respect for rights

Directive 2004/48/EE[63] provides for a harmonised framework for the civil enforcement of intellectual property rights, including copyright and related rights. The Commission has consulted broadly on this text[64]. Concerns have been raised as to whether some of its provisions are still fit to ensure a proper respect for copyright in the digital age. On the one hand, the current measures seem to be insufficient to deal with the new challenges brought by the dissemination of digital content on the internet; on the other hand, there are concerns about the current balance between enforcement of copyright and the protection of fundamental rights, in particular the right for a private life and data protection. While it cannot be contested that enforcement measures should always be available in case of infringement of copyright, measures could be proposed to strengthen respect for copyright

[63] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[64] You will find more information on the following website: http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm

Centre Français d'exploitation du droit de Copie

when the infringed content is used for a commercial purpose[65]. One means to do this could be to clarify the role of intermediaries in the IP infrastructure[66]. At the same time, there could be clarification of the safeguards for respect of private life and data protection for private users.

75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

NO OPINION

76. In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

[Open question]

………………………………………………………………………………………………….

………………………………………………………………………………………………….

77. Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?

NO OPINION

VII. A single EU Copyright Title

The idea of establishing a unified EU Copyright Title has been present in the copyright debate for quite some time now, although views as to the merits and the feasibility of such an objective are divided. A unified EU Copyright Title would totally harmonise the area of copyright law in the EU and replace national laws. There would then be a single EU title instead of a bundle of national rights. Some see this as the only manner in which a truly Single Market for content protected by copyright can be ensured, while others believe that the same objective can better be achieved by establishing a higher level of harmonisation while allowing for a certain degree of flexibility and specificity in Member States' legal systems.

78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

NO

[65] For example when the infringing content is offered on a website which gets advertising revenues that depend on the volume of traffic.

[66] This clarification should not affect the liability regime of intermediary service providers established by Directive 2000/31/EC on electronic commerce, which will remain unchanged.

79. Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that this is a longer term project?

[Open question]

L'harmonisation complète du droit d'auteur en Europe, ou plutôt son uniformisation ne nous paraît pas un objectif souhaitable. Il existe, en particulier pour la presse et le livre, de grandes spécificités culturelles et juridiques dans le domaine, en raison notamment de l'existence de bassins linguistiques.

De plus, ce chantier devrait relever le défi de trancher entre mécanismes de pays de « common law » et pays de « civil law », portant inévitablement un coup violent au principe du respect de la diversité. Le chantier serait par ailleurs si vaste que les parties prenantes seraient amenées à se désintéresser des enjeux concrets.

Il nous semble donc préférable de bâtir une stratégie communautaire globale en matière de droit d'auteur afin de favoriser l'émergence de nouveaux modèles économiques, de soutenir l'approche contractuelle qui permet de rester au plus près des évolutions des nouvelles formes de mise à disposition de la presse et du livre, des usages et de la diversité culturelle.

VIII. Other issues

The above questionnaire aims to provide a comprehensive consultation on the most important matters relating to the current EU legal framework for copyright. Should any important matters have been omitted, we would appreciate if you could bring them to our attention, so they can be properly addressed in the future.

80. Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.

[Open question]

Sur le plan juridique, nous serions favorables à la création d'une section (composée de magistrats spécialisés) dédiée à la propriété intellectuelle au sein de la Cour de Justice de l'Union Européenne.

Plus généralement, nous souhaitons que l'Union européenne s'engage sur l'harmonisation au taux réduit de la TVA sur les biens culturels et en particulier pour les publications en ligne, qu'elle renforce la responsabilité des fournisseurs d'accès à Internet et des hébergeurs, qu'elle promeuve l'interopérabilité et favorise l'adoption de normes standards en la matière et qu'elle incite les États à s'engager, notamment en termes budgétaires, dans le développement des outils pédagogiques numériques.

Nous souhaitons également rappeler que le droit d'auteur n'est pas conçu par les auteurs et les éditeurs (livre et presse) comme une barrière empêchant l'accès aux œuvres. Bien au

contraire, les ayants droit espèrent la plus large diffusion possible des œuvres : le droit d'auteur est la mécanique qui permet d'y parvenir de manière efficace et équilibrée.

Le droit d'auteur connaît de nouveaux acteurs depuis la seconde moitié du XXème siècle : les utilisateurs finaux et les différents prestataires techniques qui fournissent les outils de diffusion et d'accès aux œuvres. Ceux-ci ne doivent pas être négligés, mais cela ne peut être au détriment des créateurs et producteurs.