



European Federation of Journalists

Statement

On the EU Commission Staff Working paper On the review of the EC Legal framework in the field of copyright and related rights

The European Federation of Journalists (EFJ) is a confederation of journalists' trade unions and associations throughout the enlarged European Union and beyond. The EFJ represents more than 200,000 journalists working in all sectors of the media industry and is actively engaged in defending and strengthening the authors' rights of journalists as well as raising awareness worldwide amongst journalists, photographers and media professionals on the need to protect their rights.

The EFJ insists that journalists must enjoy authors' rights protection and benefit entirely from the current *acquis communautaire* in the field of intellectual property rights. Integrity of information, quality and independence of journalism become even more important in the face of media concentration and widespread use of new technologies.

The EFJ acknowledges the contribution of the Internal Market Directorate in the field of copyright and related rights, which so far has resulted in eight directives that have harmonised legislation through a mix of horizontal and vertical measures.

In particular, we appreciate the work of the Directorate in producing a working paper that addresses possible inconsistencies in the *acquis communautaire*, which may hamper the operation of the *acquis* or which have a harmful impact on the fair balance of rights and other interests, including those of users and consumers.

In this respect the EFJ draws the European Commission's attention to the common statement endorsed by the EFJ and other creators' groups in response to the present consultation. This statement highlights issues which should be addressed in greater detail at EU level, including,

- The originality requirement,
- Ownership of authors' rights in employment contract,
- Moral rights and
- Authors' rights contract law

The EFJ hopes that all of our positions regarding these questions will be adopted and, as such will contribute to the achievement of the two objectives of the Commission's

review: to improve the operation and the coherence of the *acquis communautaire* in the field of copyright and to safeguard the good functioning of the Internal Market.

THE ORIGINALITY REQUIREMENT

Certain works are not protected in some European countries, which is to the profound disadvantage of authors and indirectly of publishers and producers. Nevertheless, in most countries newspapers, collective works of non-fiction and television productions are covered by related rights that still protect the economic investments of publishers and producers.

Without authors' rights' protection the authors of such works become almost totally dependant on the goodwill of publishers. This situation disturbs the balance between creators and their publishers or producers, and additionally deprives them of the capacity to claim and enforce their moral rights. The EFJ says that the consequences of this are serious in terms of guaranteeing the reliability and quality of information for consumers. Readers and the public in general are ill served when, as a result of this system, the authenticity and integrity of journalistic works is cast into doubt.

OWNERSHIP

The European Federation of Journalists agrees with the Commission staff working paper when it states that:

“From the point of view of the functioning of the Internal Market, perhaps the most significant uncertainty regarding the ownership of rights in cross-border situations arises from differences in rules on the ownership of works created in the course of employment.”

Nevertheless we also agree with the further statement of the Commission that:

“The need for harmonisation has been absent so far because – despite the different concepts – the actual allocation of ownership in practice very often follows a fairly similar path in all Member States.”

This is due to the fact that even in the Member States that are silent on the issue of ownership of works created *during employment* the courts generally conclude that the employer should be able to use the work for the purposes of the customary business activities.

It also reflects the fact that European publishers and producers do not face difficulties in acquiring rights of (re-)use outside the scope of the customary business activities. In Member States where copyright legislations do not contain rules that interfere with the normal collective bargaining systems, publishers and producers are nevertheless able to acquire extensive rights of reuse without any specific legislative support.

This is achieved through normal collective or individual negotiations. Negotiations enable journalists to ask for a share in the remuneration for (re-)use of their material. They also allow journalists to ask for the inclusion of provisions to safeguard the proper (re-)use of the journalistic material when third parties are handling it.

The difference between the copyright approach - that attributes ownership of all rights to the employer - and the authors' rights doctrine- which presupposes that the rights have to be transferred or licensed by the author- thus has its greatest significance regarding rights which are used outside the customary activities of the employer.

Most EU Member States do not interfere in the negotiations involving transfers of authors' rights in employment contracts. This state of affairs encourages the parties to enter into collective agreements and is directly in line with the ILO principles of core labour standards.

In the staff paper it is rightly pointed out that *harmonisation would not be a straightforward copyright issue but would also bear relevance to labour law and the economic relationship between the parties of an employment contract.*"

This is very true. If the EU were to harmonise legislation based on a presumption of ownership in favour of publishers and producers this would interfere with hundreds of collective agreements and in reality constitute an infringement of the principle of free collective bargaining.

The EFJ would very much support a harmonisation of EU legislation on ownership that would put an end to the type of legislation adopted in the UK and Ireland (which introduce a transfer of rights on works created during employment). If this is not possible it is at least imperative not to tip the balance further in favour of the publishers and producers in a new EU legislation.

There is in fact every need to address the protection of individual authors from undue pressure to assign all their rights.

Journalists and other individual authors are the weakest party to an employment contract. Although legislation in many EU Member States - as described above- allow for free *collective* negotiations on the transfer of authors rights this does not help journalists and photographers who for various reasons are forced to negotiate on their own. The imbalances in the socio-economic relationships between individuals and their industry counterpart are so great that it is not possible to speak of free negotiations between equal partners.

To sum up, we strongly endorse the view that authors' rights and the labour right of free collective negotiations are human rights, and that this must be recognised in practice. The forced legal transfer of authors' rights or presumption rules of the same effect challenges these fundamental rights.

Unless steps are taken to restore a proper balance there is a concern that the current state of legislation may have a chilling effect on the potential for creativity within the sector in general.

MORAL RIGHTS

The right to be named as the author and the right of protection of the journalistic integrity of a work are rights of immense importance, which the European Federation of Journalists believes must be recognised. They help preserve European cultural heritage and they ensure public access to authentic scientific, documentary and artistic works.

Moral rights are also a prerequisite for a decent press and one characterised by editorial independence, high standards, quality and integrity of information. The sound development of democratic society depends on the ability of the press to secure free access to information and freedom of expression. It also depends on the ability of the press to fulfill the role of public watchdog.

Increasingly, editorial material is used and edited for multiple distributions in different media and manipulation of online content is to this extent particularly worrying.

The Commission's staff working paper rightly points to Article 6 *bis* of the Berne convention and Article 5 of the WIPO Treaty on Performances and phonograms which require WIPO contracting parties to introduce moral rights for performers. We endorse and fully support this approach, which we hope will result in unwaivable moral rights for all authors working in journalism including those who work in the UK and Ireland.

In countries where moral rights can be waived by contract waiving them becomes the rule rather than the exception. The economic and other pressure that publishers and producers are able to bring to bear is simply too great for the individual to withstand, something we have referred to earlier on the question of ownership.

It is essential for legislation to protect journalists against such pressure by stating clearly in all legislation, rules and policy statements that moral rights cannot be waived by contract (unless it concerns a very specific and very limited use of the work involved) and that, in accordance with article 5.2 of the Berne Convention the enjoyment and exercise of these rights *shall not be subject to any formality*. This is essential for guaranteeing the authenticity and the quality of the work produced.

The EFJ does not agree with the conclusion of the staff working paper that there would appear to be no apparent need for harmonising protection of moral rights.

On the contrary, we insist that there is a strong need to assess breaches of moral rights in more detail at European Union level and to measure the consequences that these can have on creativity and quality of the cultural industry in general.

PROTECTIVE MEASURES IN CONTRACT LAW

Individual journalists, as we have said, are normally the weaker party in any contractual negotiation. In the present market, where globalised corporations control and own large shares of the media and where the same journalistic content can be used several times on different media or format journalists are largely powerless without the support of legislation guaranteeing them some minimum rights.

Contractual freedom does not maintain a fair balance for individual negotiations and many journalists do not receive any remuneration for further use of their work. Many of them have been pressured into signing away all their rights including future and yet unknown rights.

The EU should take initiatives to set up minimum standards against unfair contracts and line with provisions of the German law, which sets out a number of important principles to guarantee authors minimum protection. These include:

- A right to receive equitable remuneration
- A right of re-negotiation of the contract if the remuneration agreed upon becomes out of proportion with the profits of a “bestseller” development
- A prohibition to transfer future and yet unknown or unspecified rights of use.

The EFJ strongly supports the above approach and we encourage the European Commission to continue the work it has initiated in the field of copyright contract law and to follow up on the *Study on the Conditions Applicable to Contracts Related to Intellectual Property in the European Union* issued in May 2002.

REMARKS ON THE MANAGEMENT OF RIGHTS

The European Federation of Journalists is aware of the current consultations on the possible need for a directive regarding the management of rights in the internal market and will discuss this issue separately with the Commission.

However, we wish to underline that collective societies are necessary and important partners for journalists in regards to the administration of their authors’ rights.

Without the existence of effective, transparent and accountable collective management societies they would not be able to exercise these rights to the benefit of their own economic and ethical interests. Collective management societies play an important cultural role both in this respect and by facilitating easy access to works of culture and information on terms that are equal to all in areas where individual management is not feasible.

Journalists have a clear interest in collective management societies being in high regard by legislators, users and society in general. We welcome the EU Commission’s initiative to achieve greater common ground for collective management societies by harmonising

rules of good governance, rules on internal and external control and rules for dispute settlement mechanisms.

Common rules of good governance and control will no doubt make it easier for legislative and administrative bodies to define and approve the activities of collective management societies in relation to competition law.

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