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Brussels, 13 November 2015

**STAKEHOLDER CONSULTATION ON THE REVIEW OF THE EU  
DIRECTIVE 93/93/EEC ON THE COORDINATION OF CERTAIN RULES  
CONCERNING COPYRIGHT AND RIGHTS RELATED TO COPYRIGHT  
APPLICABLE TO SATELLITE BROADCASTING AND CABLE  
RETRANSMISSION**

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO<sup>1</sup>). Members of IFRRO include national Reproduction Rights Organisations (RROs), and national and international associations of creators and publishers. RROs administer reproduction and other relevant rights for certain secondary uses of already published text- and image-based works on behalf of publishers and authors, including visual artists. Several RROs also administer rights in relation to cable retransmission.

Our submission is limited to the general parts of the consultation, which might affect IFRRO members. It is based on the assumption that the consultation is limited to broadcasting and does not touch on incidental inclusion.

**THE MANAGEMENT OF CABLE RETRANSMISSION RIGHTS, IN PARTICULAR, QUESTION 14**

In general, the administration of the management of cable retransmission rights works well; we therefore do not see the need for any additional EU action.

**“COUNTRY OF ORIGIN” PRINCIPLE, QUESTIONS 16, 17 AND 19**

We advise not to extend the “country of origin” principle to the collective management of rights of authors and neighbouring rightholders. Current mechanisms facilitate appropriate legal uses, whilst safeguarding remuneration to rightholders; legislation is of no hindrance to the development of multi-territorial solutions. In relation to the text and image sector, commercial users can generally ask for permission to use a work directly

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<sup>1</sup> Interest Representative Register ID number: 91217342449-83.

from the publisher or author, and obtain authorisation on a contractual, and up to worldwide, basis. Equally, Reproduction Rights Organisations (RROs) are used to administering rights for secondary uses across borders on the basis of different legislation and models of RRO operation. Rights for foreign authors and publishers are generally administered through the network of bilateral agreements between RROs.

For the music sector, the recently adopted Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market provides valuable guidance on multi-territorial licensing of online rights in its Title III.

The “country of origin principle” is not new. It is aimed at facilitating the provision of cross-border services within the EU, making it sufficient for the providers of the relevant services to comply with local laws. The practical use of the principle risks, however, to result in a ‘race to the bottom’, and thus a drop in standards in EU Member States, as, for instance, national courts may not, in general, apply a stricter local law if the law in the country of domicile of the provider is more liberal. Thus, the concept may lead to a “discrimination” of local service providers.

Under EU law, the fundamental freedoms of movement of goods and services have been given effect by the European Court of Justice, striking down discriminatory provisions and other restrictions in national laws on the movement of goods and services, introducing the idea of mutual acceptance. On the other hand, this has caused a shift in focus, away from the harmonisation of Member States’ laws.

#### **THE EXTENSION OF THE SYSTEM OF MANAGEMENT OF CABLE RETRANSMISSION RIGHTS, QUESTION 28**

Assessment of any extension of the mandatory collective management regime must be considered on the basis of the international legal framework that the EU and its Member States are party to, and in particular the Berne Convention, as well as the TRIPs Agreement and the WIPO Copyright Treaty, which incorporate the substantive provisions of the Berne Convention by reference. The Berne Convention, in Article 11*bis*(2) and Article 13(1), clarifies that it is a matter for legislation in the countries of the Berne Union to determine the conditions under which certain exclusive rights may be exercised. These provisions are regarded as the legal basis for the application of non-voluntary licences, since they define the minimum requirements to be respected when such conditions are applied; they must not, under any circumstances, be prejudicial to the right to obtain an equitable remuneration.

Mandatory collective management can be understood as being permissible also in cases where the restriction of an exclusive right to a mere right to remuneration is allowed on the basis of the international treaties (as is the case in respect of Article 9(2) of the Berne Convention, concerning the right of reproduction).

#### **THE IMPACT OF INTRODUCING AN ECL SYSTEM INSTEAD OF THE MANDATORY COLLECTIVE LICENSING REGIME, QUESTION 29**

In respect of assessing the possibility of replacing the mandatory collective licensing system by an Extended Collective Licence (ECL), it is important to consider the differences between the two mechanisms. Mandatory collective licensing grants exclusive mandates to the Collective Management Organisation (CMO). The extension effect is on the *mandate*, to cover all relevant rightholders and their works, rather than on the agreement, and the mandatory management element precludes rightholders from entering into an agreement with the users themselves directly. The ECL, by law, grants non-exclusive mandates (which does not preclude the rightholders themselves from granting exclusive mandates), usually enabling rightholders to opt out of the collective licensing scheme, and to grant licences directly themselves. It is the scope of the *licensing agreement*, rather than the mandate, which is being extended by the law. These differences also reflect the impact of replacing compulsory collective management by an ECL, and suggest that whether to opt for mandatory collective management or an ECL should be left to the discretion of the Member States.

#### **ANY OTHER MEASURES WHICH COULD FACILITATE CONTRACTUAL SOLUTIONS, QUESTION 32**

In respect of other measures, which could facilitate contractual solutions, we would welcome initiatives to engage parties concerned in cooperation activities to address copyright infringement and enforcement issues. The Commission could facilitate such initiatives through financial contributions to awareness-raising campaigns. The use of systems to inform about authorised use (e.g. through search engines using the ACAP, or the framework developed by the Linked Content Coalition (LCC), as demonstrated also by the EC sponsored Rights Data Integration Project (RDI), in which IFRRO is actively participating) would also be appreciated, and should be encouraged. Such actions help in enforcing contractual terms and preventing the networks from being used to infringe intellectual property. In addition, the Commission should encourage the investment in new business models.

We thank the European Commission for the opportunity to comment on the review of the EU Directive 93/93/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, and appreciate your consideration of our views. If required, we will be pleased to provide further information or answer any questions about this submission.

Respectfully submitted,



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