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Open Business model Forum in conjunction with IFRRO World Congress and Annual General Meeting 2011 - Ljubljana, Slovenia

IFRRO is pleased to announce that the IFRRO World Congress (IWC) 2011 will take place on 24-27 October, at the Grand Hotel Union in Ljubljana, Slovenia. The IFRRO Annual General Meeting (AGM) 2011 is organised as part of the IWC on Thursday 27 October 2011. The overall theme of the IFRRO World Congress 2011 is *Access to copyright works- appropriately and legally through collaboration*. This will also be reflected in the IFRRO Business Models Forum (IBMF) and International conference on Wednesday 26th October on *Copyright, Schools and Higher Education*.

The IBMF is open also to non IFRRO members and will take place from 14.00 to 17.30 in the Grand Union Hall of the Grand Hotel. The [programme for the .IBMF](#) is available on the [IWC 2011](#) site.

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IFRRO Profiling survey results show good understanding and appreciation of role

In the spring of 2011 IFRRO engaged the UK based leading profiling agency Midas PR, who collaborated with the independent premier market research agency BML Bowker, to audit a sample of IFRRO members and related stakeholders on our profile. The main purposes were to understand:

- General opinions and impressions of IFRRO; How we are regarded, by both members and relevant external organisations
- General awareness of IFRRO, its activities, values and messages
- Whether IFRRO is seen as an enabler of solutions
- How IFRRO could improve in communicating its messages

The survey was performed via an on-line questionnaire deployed in March – April 2011.

Click here for [more details](#).

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Quick Guide to Collective Management of Reproduction Rights in Text and Image based works published

IFRRO has published the first of a series of "Easy-to-read" papers. It covers the role and organisation of RROs, Copyright law, the definition of rightholders and how RROs license and distribute. It also examines the challenges of the digital environment and gives an overview of IFRRO's role.

Click here for [PDF version of the Quick Guide to CM of Text and Image based works](#)

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Stakeholders sign groundbreaking MoU on Out of Commerce Works



Maria Martin-Prat Head of Unit Services I, Directorate General Internal Market, European Commission; Michel Barnier, European Commissioner for the Internal Market and Services; Magdalena Vinent, IFRRO President and Olav Stokkmo, IFRRO CEO at the signing on the MoU on Out of Commerce Works - described by Stokkmo as "pragmatic and realistic".

Photo: Veraliah Bueno

Representatives of authors, publishers and collective management organisations in the text and image based sector, including IFRRO, and libraries came together in the presence of European Commission DG Internal Market and Services Commissioner Barnier to sign a Memorandum of Understanding (MoU) on the digitisation and making available of Out of Commerce works by publicly accessible cultural institutions. The European Commission, which has facilitated the stakeholder dialogue, and largely contributed to its positive outcome, stated that it regards the MoU as an important tool for giving public access to Europe's cultural heritage.

"As an organisation at the forefront of collective rights management in the print and publishing sector across the world, we welcome this initiative," said IFRRO CEO, Olav Stokkmo. "The MoU has taken a pragmatic and realistic view of how to make available Out of Commerce Works and has not been shy of addressing the real issues. It is ground breaking as representatives of all relevant stakeholder groups have agreed on fundamental principles to enable the making available of an essential part of European cultural heritage, and it puts collective management and the need to recognise the rights of authors (including their moral rights) and publishers at the heart of the system."

Authors were represented by the European Writers' Council (EWC), the European Federation of Journalists (EFJ) and the European Visual Artists (EVA), who also represents visual artists' collective management organisations, and the publishers by the Federation of European Publishers (FEP), the European Publishers' Council (EPC) and the International Association of Scientific, Technical & Medical Publishers (STM). IFRRO - the International Federation of Reproduction Rights Organisations - signed as the leading international body for the collective management organisations in the print and publishing sphere, the

Reproduction Rights Organisations (RROs). On the Library side the signatories were the European Bureau of Library, Information and Documentation Associations (EBLIDA), the Association of European Research Libraries (LIBER) and the Conference of European National Librarians CENL).

For further information see press releases of the [European Commission](#) and of the [signatories representing authors, publishers and the collectives](#) and the IFRRO President [Magdalena Vinent's statement](#) at the signing ceremony.

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British Library publishes study on orphan works

The British Library, as part of the wider EU funded ARROW (Accessible Registries of Rights Information and Orphan Works) project, has today published a study into rights clearance and mass digitisation which examines the issue of orphan works (works for which the rights holder is untraceable).

The study has found that more efficient ways of clearing rights and providing cultural institutions with legal certainty over their activities are needed to ensure that highly valuable research materials don't remain out of reach of the vast majority of citizens.

The findings include that whilst it could take 1,000 years for one person to clear the rights of just 500,000 books manually – equating to 4 hours per book - the use of the ARROW system would reduce this dramatically to less than 5 minutes per title to upload the catalogue records and check the results.

The report can be [available here](#).

The press release can be [read here](#).

For further details on ARROW please visit their website: <http://www.arrow-net.eu/>.

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UK Copyright Modernisation and Orphan Works

UK government recently accepted recommendations for major changes to the current copyright system, while UK Parliament opened an inquiry into the matter.

Changes to the UK copyright law were recommended in a “Digital Opportunity” review headed by Ian Hargreaves, Digital Economy Chair at the Cardiff School of Journalism, Media and Cultural Studies, Cardiff Business School. The report, commissioned by the UK Intellectual Property Office and published on 18 May 2011, is available [here](#).

The [UK government responded](#) to the Hargreaves review in early August 2011, generally accepting all 10 recommendations and laying out new [strategies for international IP](#) and [IP crime](#). The UK government announced that it intends to bring forward an orphan works scheme this fall, subject to satisfactory safeguards for the interests of both owners of “orphan rights” and rightholders who could suffer from unfair competition from an unfair orphan works

scheme. It also refers to diligent search, licensing at market rates and respect for reappearing rightholders.

On 16 August 2011, the House of Commons Business, Innovation and Skills Committee announced an inquiry into the recommendations of the Hargreaves review and the government response. The link for more information is [here](#).

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IFRRO submits comments on proposed Orphan Works Directive

IFRRO (The International Federation of Reproduction Rights Organisations) shares the overall aim of the proposed EU Directive on certain uses of Orphan Works to provide legal certainty for the access to orphan works contained in publicly accessible libraries and other establishments specified in the proposal. IFRRO and its members facilitate ease of access to text and image based works that are protected by copyright, while ensuring that the creators are properly remunerated for the use of their works. Solutions are also offered for libraries.

Orphan works should be administered through collective management and licensing. IFRRO members already have experience from administering uses of such works. Regulation and establishment of conditions for uses of an orphan work should be as decided by authors and publishers of the categories of works concerned. In accordance with the principle of subsidiarity, the Directive should be without prejudice to the right of Member States to implement different solutions at national level.

It is important that the EU Directive does not stray from the orphan works issue and create a blueprint or imply solutions for other issues. The IFRRO comments submitted today are aimed at ensuring that it makes use of existing mechanisms and agreements to enable libraries to use orphan works, while respecting the rights and interests of authors and publishers including their right of remuneration. The [full comments are available here](#).

IFRRO and its members are already leading players in the provision of access to online libraries, through their championing of and participation in the ARROW and ARROW Plus projects. ARROW is a project of a consortium of European national libraries, publishers and collective management organisations, also representing writers – working through their main European associations and a number of national organisations. It is a distributed system for facilitating rights information management in any digitisation programme, scalable to further applications and reduces time and costs involved in obtaining rights information and clearance. The establishment of an Orphan Works Register is one of ARROW's specific aims. ARROW Plus aims at refining the ARROW system, increasing the number of countries in which it is used and broadening the types of works for which it is used to include visual material.

IFRRO offers its established collaborative network of partner organisations and stakeholders to help the Commission in realising the aims of the draft Directive on orphan works and ensuring legal access to text and image works with fair remuneration to the creators.

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WIPO IGC Agrees to Extend and Strengthen Negotiating Mandate, Makes Substantive Progress on TK, TCEs and GRs

WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has agreed to expedite its work towards agreement on the protection of traditional knowledge (TK), genetic resources (GRs) and traditional cultural expressions (TCEs).

Meeting from July 18 to 22 2011, the IGC agreed to recommend that the WIPO General Assembly renew its mandate for the 2012-2013 biennium. This decision is expected to be endorsed by the 2011 session of the WIPO General Assembly, taking place from September 26 to October 5 2011.

The proposed new mandate, recognizing the progress made by the IGC during its work in 2010 and 2011, calls for its text-based negotiations to be expedited "with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs".

For the 2012/2013 biennium, the IGC will follow a clearly defined work program and meet three times before the 2012 WIPO General Assembly. Each session will focus on one of the IGC's three themes. The first IGC session under the new mandate is expected to take place in February 2012 and it will address GRs. The subsequent two are tentatively expected to take place in April 2012 (TK) and July 2012 (TCEs).

The IGC is requested to submit to the 2012 General Assembly the text(s) of an international legal instrument(s), and the General Assembly "will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference". The full decision will shortly be available under "IGC 19 Decisions" [here](#).

[Source: WIPO](#)

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TIGAR website is now on line

The Trusted Intermediary Global Accessible Resources (TIGAR) website is now on line via the following URL: <http://www.tigarnetwork.org>.

The TIGAR project is a pilot under the World Intellectual Property Organization (WIPO) Stakeholder Platform on enhanced access to copyright works for persons with print disabilities. It seeks, among other things, to facilitate cross-border transfer of copyright works in accessible formats among various national institutions serving the blind and other persons with print disabilities. The project is the result of close collaboration between WIPO and organisations representing persons with print disabilities, authors, publishers and RROs. IFRRO takes part in the Platform and is also represented on the TIGAR Steering Committee.

More information on the WIPO Stakeholder Platform including organisations involved on <http://www.visionip.org>.

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EC Proposal for a Council Decision on signing / conclusion of ACTA

The European Commission (EC) has recently, on 24 June 2011, tabled two documents for a Council Decision, proposing the signature and conclusion of ACTA:

Proposal for a Council Decision on the signing, on behalf of the European Union of the Anti-Counterfeiting Trade Agreement between the European Union and its Member States, Australia, Canada, Japan, the Republic of Korea, the United Mexican States, the Kingdom of Morocco, New Zealand, the Republic of Singapore, the Swiss Confederation and the United States of America, COM(2011) 379 final, 2011/0166 (NLE); and

Proposal for a Council Decision on the conclusion of the Anti-Counterfeiting Trade Agreement, COM(2011) 380 final, 2011/0167 (NLE).

As to the further procedure, the ACTA agreement has to be approved by the Council, by each Member State and by the European Parliament (Article 2 subsection 2 and Articles 216 et seq. TFEU).

The EC is recommending against any further review of ACTA before it is passed by the European Parliament. The proposal for a Council Decision on the conclusion of ACTA opens with an Explanatory Memorandum, noting that “the Commission has opted not to propose that the European Union exercise its potential competence in the area of criminal enforcement pursuant to Article 83(2) TFEU. The Commission considers this appropriate because it has never been the intention, as regards the negotiation of ACTA to modify the EU acquis or to harmonise EU legislation as regards criminal enforcement of intellectual property rights. For this reason, the Commission proposes that ACTA be signed and concluded both by the EU and by all the Member States” (cf. COM(2011) 379 final, 2011/0166 (NLE), page 3; COM(2011) 380 final, 2011/0167 (NLE), page 2).

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ECJ ruled on Belgian PLR case

Remuneration for PLR needs to take into account number of a copyright owner's works made available as well as number of establishments lending a particular work.

The Court of Justice of the European Union gave judgment on 30 June 2011 in Case C-271/10 *Vereniging van Educatieve en Wetenschappelijke Auteurs (VEWA) v Belgische Staat*, a reference for a preliminary ruling from the Belgian Raad van State (Belgian Council of State).

VEWA, a Belgian copyright management society, brought an action in the Belgian courts to annul the Royal Decree transposing Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property (now replaced by 2006/115/EC). According to VEWA, by fixing a flat rate of remuneration of 1 EUR per adult per year and 0.50 EUR per child per year, Article 4 of the Royal Decree infringed the provisions of Directive 92/100/EEC which require that ‘equitable remuneration’ be paid in respect of a loan or rental.

Consequently, the Belgian court asked the Court of Justice whether Directive 92/100/EEC precludes a national system under which the remuneration payable to authors in the event of public lending is calculated exclusively in accordance with the number of borrowers

registered with public establishments, in particular libraries, on the basis of a flat-rate sum fixed per borrower per year.

The Court of Justice ruled as follows:

1) The remuneration must enable authors to receive an adequate income; its amount cannot be purely symbolic. Even though it is in the discretion of the Member States to determine the most relevant criteria when calculating the amount of the remuneration within their own territory, the amount of the remuneration payable should take account of the extent to which those works are made available, as that remuneration constitutes consideration for the harm caused to authors by reason of the use of their works without their authorisation.

Thus, a public lending establishment should take account of the number of protected works made available. Large public lending establishments should pay a greater level of remuneration than smaller establishments. Also, account should be taken of the number of persons having access to the protected works, i.e. the borrowers registered with an establishment.

2) In this case, the Belgian royal decree takes into account the number of borrowers registered with public lending establishments, but not the number of works made available to the public. Moreover, given that the Royal Decree provides that in case a person is registered with a number of establishments, the remuneration is payable only once regarding that person, that system may have the result that many establishments are, de facto, almost exempted from the obligation to pay any remuneration in accordance with Directive 92/100. In a nutshell, the Court of Justice held that the Belgian law does not comply with Article 5(1) of Directive 92/100/EEC, as it does not take into account (i) the number of a copyright owner's works made available by a lending establishment, and (ii) the number of establishments lending a particular work.

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CAL pleased with first year for Australian visual artists' resale royalty scheme

The Australian artists' resale royalty scheme generated AUD\$325,000 in royalties for more than 1600 resales covered by the scheme, benefitting more than 300 artists. Many artists have received multiple royalties.

Approximately 75% of the royalties to date have been for paintings by Indigenous artists. In some cases, the artists live in remote areas and can be difficult to reach, but CAL reaches them through a variety of means, including through Indigenous art centres, agents, community facilities and through other bodies with links to remote communities. CAL has also travelled to remote areas, visiting art centres, and attending gatherings of artists, regional art festivals and meetings of art centres' umbrella organisations.

CAL states that a large part of the scheme's success is due to the participation of the art dealers, galleries and auction houses and their provision of sales information. This in turn has been facilitated by a communications campaign and the appointment of specialist staff members to assist artists and art market professionals in the day-to-day operation of the scheme. CAL has been providing particular support to art market professionals to help them meet their obligations under the scheme relating to the reporting of resales and payment of

royalties and to help incorporate these obligations into their business practices. Artists receive similar support and guidance on the scheme from CAL's Visual Artists Manager, while the company's Indigenous Communications Coordinator has been instrumental in the level of participation in the scheme by Indigenous artists in remote communities.

The Australian artists' resale royalty scheme started on 10 June 2010. Under the scheme, a 5% royalty is payable on the sale price of artworks that resell for AUD\$1,000 or more. The royalty is a flat rate: there is no sliding scale and no upper threshold. The scheme applies to the works of living artists, and of artists who have died in the last 70 years.

Because of requirements in Australia's Constitution, there is no royalty payable on the first resale after 9 June 2010, if that is the first transfer of ownership after the scheme commenced.

Copyright Agency Limited (CAL) was appointed by the Australian government in May 2010 to manage the scheme. Because CAL administers statutory as well as voluntary licences, it had relationships with visual artists and their representatives through its distribution of copyright fees paid under those statutory licences for artistic works.

CAL has launched a resale royalty website (www.resaleroyalty.org.au), and conducted an extensive stakeholder engagement program that included seminars for art market professionals and artists, visits to remote Indigenous communities to explain the new scheme to Indigenous artists, and the formation of two advisory panels (one for artists and one for art market professionals). The resale royalty website has information about the scheme. It also has facility for artists to register their contact details with CAL online, and for art market professionals to report their resales online.

The legislation enables the government to extend the scheme to foreign artists once reciprocal entitlements for Australian artists are established. CAL has approached all the collecting societies managing resale royalty schemes in other countries, with a view to establishing these arrangements.

For more information on Australia's resale royalty scheme managed by CAL, contact Libby Baulch at lbaulch@copyright.com.au
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SADEL, announces agreement signed with Coplan S.A., the first Chilean company to pay copyright for copying texts

The announcement, by the Chilean society of literary rights (SADEL), in conjunction with the society of Chilean writers (SECH), the Association of publishers of Chile and the Chilean book Chamber, of the first license granted to a company for photocopying books marks a real milestone for the protection of copyright of Chilean authors and Publishers.

At the ceremony, held at the Centro Recoleta Patrimonial, Sadel's President, Fernando Sáez, signed an agreement with Coplan S.A, a company that provides photocopying services at various universities in the country. The license, which includes 16 machines installed in the Universidad del Desarrollo, runs for 3 years for an annual fee of \$8.860.000,

which will allow the reproduction and legal scanning of texts for students. According to Saez, the signature of this agreement is very important for SADEL, "because it is the first time that we have an agreement with a major company like Coplan, dedicated to photocopying, which is precisely what we are trying to regulate through copyright". He also noted that "there are ongoing contacts with many universities and companies, and we hope that this will create a precedent that will mean that those other discussions will have similar happy endings."

SADEL has been fully operational for more than a year and its work has focused on the photocopying and the digitization of copyright books. According to Chilean law, universities and copy shops need the authorization of a license for this type of reproduction so authors and publishers can be compensated for the use of their works.

According to writer Paul Azocar, "this is a "very important agreement, because it brings into law something that in practice is happening all the time. This a matter of honesty, of justice and is a precedent which will soon be a huge and widely accepted phenomenon. I would call on the universities to be open, which is the lesson of the 21st century and they should accept their responsibilities", he said with regard the photocopying of books by educational institutions.

SADEL President added that "this license has national relevance as it marks a change in culture and social practice and incorporates the concept that in our country the photocopying of books can be legal and can reward authors and publishers fairly, for a cost which is small in comparison to the total cost of the photocopying and its benefits". The news was welcomed from Brussels by Olav Stokkmo, CEO of IFFRO, who said that "the signature of this license with Coplan is good news for the users of intellectual property as well as the owners of copyright in Chile and around the world. In addition it confirms the position of Chile as a country which protects and encourages of the use of intellectual and cultural expressions", he said.

The event was attended by various publishers and national authors, along with the directors of SADEL, Arturo Infante of Catalonia editions, Carlos Ossa at Santillana del Pacífico, Pablo Dittborn of Random House Mondadori, Alejandro Kandora Tajamar editors, Eduardo Castillo, President Chilean book Chamber and Publisher new end and author Paul Azocar.

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CAL Releases Results From Digital Publishing Trends Survey

Copyright Agency Limited (CAL) recently conducted a survey to find out more about their members' views of, and experiences with digital publishing in Australia. Over 2,000 CAL members responded, making this survey the largest of its kind in the Australian publishing environment. The survey was sent to all CAL members, ranging from international publishers to self-published authors, asking about their digital experiences and thoughts on the future.

Some of the key findings were as follows:

- Both authors and publishers think the benefits of digital publishing far outweigh any of the downsides
- Around half of all authors and publishers create digital products
- The majority of publishers are still developing their digital strategies

- Only 15% of publishers have a competitively differentiating digital strategy
- To date, 26% of publishers have no digital strategy at all
- Digital publishing currently contributes less than 5% to the income of most authors and publishers – however, around 10% of authors and 14% of publishers currently make more than half their income from digital publishing
- Lower costs and improved access to markets are the greatest benefits for authors and publishers alike
- Technical expertise, market dominance of multinationals and piracy are the three concerns shared by authors and publishers
- Low-level technical skills are the most significant barrier to market entry
- Authors and publishers share some common views in relation to e-book royalties
- 2/3 of CAL members believe that digital sales will eventually overtake print for the Australian publishing industry as a whole
- Of all the 2,090 CAL members surveyed, almost 19% own an iPad and over 12% own a Kindle

A copy of the detailed analysis and full survey results can be found [here](#)

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Authors and authors' groups from Australia, Quebec, the U.K. and the U.S. sue HathiTrust and five U.S. universities for copyright infringement

The Authors Guild, the Australian Society of Authors, the Union Des Écrivaines et des Écrivains Québécois (UNEQ), and eight individual authors have filed a copyright infringement lawsuit in U.S. federal court (Southern District of New York) against HathiTrust, the University of Michigan, the University of California, the University of Wisconsin, Indiana University and Cornell University.

The universities obtained from Google scans of an estimated 7 million copyright-protected books, the rights to which are held by authors in several countries, and pooled the files in a repository called HathiTrust. In June 2011, the University of Michigan announced plans to permit unlimited downloads by its students and faculty members of copyright-protected works it deems “orphans” according to rules established by HathiTrust, claiming their conduct is permissible under the “fair use” doctrine set forth in Section 107 of the U.S. Copyright Act.

Other U.S. universities joined in August 2011. The first set of “HathiTrust Orphan Candidates” is scheduled to be released to an estimated 250,000 students and faculty members on 13 October 2011.

A copy of the complaint is [available here](#) and a joint press release of the plaintiffs can be [found here](#)

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UK Court of Appeal ruling in NLA v Meltwater case

The UK Court of Appeal judgment, handed down on 27 July, results in a clear win for the NLA and a comprehensive rejection of the appeal by the PRC/Meltwater on every ground.

The Court has given a clear declaration that "most, if not all" businesses subscribing to a media monitoring service will require an NLA licence.

All the other findings of the High Court have also been upheld, including:

- End-users require a copyright licence because they make copies of content on their computers when they open a monitoring report or click on a link for full article text
- Headlines are capable of being independent literary works - and so copying just the headline can infringe copyright
- Text extracts (headline + opening sentence + 'hit' sentence) can be substantial enough to benefit from copyright protection
- Therefore an end-user client who receives a paid-for monitoring report or search result (incorporating a headline, text extract and/or link) is very likely to infringe copyright unless they have a licence from the NLA or directly from a publisher

Although it is possible that there may be a further appeal, the NLA says that it is working on the assumption that the Copyright Tribunal will be held in September; for a ruling on the commercial terms of both its web aggregator and end user licences. Once those terms are agreed, NLA will begin to invoice end user web licence holders at the agreed rates.

Olav Stokkmo, IFRRO CEO, welcomed the ruling, which is important to creators and publishers of intellectual property and for the protection of copyright. He added that it underlines the need to offer legal access to copyright works to consumers and the importance of collective management in this respect as a part of dynamic and forward looking solutions in a fast changing world which benefits creators, publishers, consumers and society at large. NLA licences enable easy legal access and are an example of such solutions.

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German Constitutional Court decision in cases on levies and on printers and PCs

On 21 July 2011, the Bundesgerichtshof (German Constitutional Court) published a decision in the printer and PC cases which VG Wort, the German RRO, had launched under the pre 2008 Copyright law. In proceedings between VG WORT and the manufacturers, dealers and importers of printers and PCs, the Civil Senate of the Bundesgerichtshof (BGH), which has jurisdiction over copyright, decided to refer certain questions concerning the obligation under copyright law to pay remuneration to the European Court for preliminary decision.

In Germany, creators and publishers are remunerated for certain uses of copyright works through levies on relevant devices. In December 2007 and October 2008 the BGH rejected claims by VG Wort regarding an obligation to pay remuneration for the reproduction of copyright protected material enabled by printers and PCs. However the constitutional appeal of VG WORT was successful. The Constitutional Court set aside several decisions of the BGH and referred them back to the BGH for further consideration.

It stayed the proceedings and referred certain questions concerning the interpretation of the 2001 Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in

the Information Society to the Court of Justice of the European Union (the Directive). The main questions are as follows:

1. Does reproduction by “any kind of photomechanical technique or by some other process having similar effects” in the sense of article 5.2a of the Directive include copying with a printer or PC?
2. If the answer to 1 is in the affirmative could the requirements of the Directive for fair compensation for exceptions and limitations to the right of reproduction according to Article 5.2 and 3 of the Directive, taking into account the basic right of equal treatment under Art 20 of the European Charter, be fulfilled, if the manufacturers, importers of, and dealers in, another device or devices in a chain of devices capable of being used to make copies, rather than their manufacturers, importers or dealers of printers or PCs, are obliged to pay the equitable remuneration?
3. Does the mere possibility of applying technical measures according to Art 6 of the Directive remove the requirement of fair compensation in the sense of Art 5.2.b of the Directive?
4. Does the requirement (Art. 5.2 a and b of the Directive) and possibility (compare recital 36 of the Directive) of fair compensation cease to apply if the rightsholder has expressly or implicitly consented to the copying of his work?

As the press release of the BGH of 21 July 2011 acknowledges, under the law which came into force on 1 January 2008 there is an obligation to pay remuneration on all types of device used to copy text works for own use. (§ 54.1 UrhG). The current proceedings relate to the claims to remuneration of authors and publishers for printers and PCs in the period before January 2008. A decision of the European Court is not expected for at least two years.

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Greek Court of Appeal rejected case as follow-up to Padawan v. SGAE

A Greek court provided an interesting interpretation of the Padawan v. SGAE case: on 9 December 2010, the Greek Court of Appeal decided the case I.B.M. Greece SA v. “Organisation of Collective Management of Speech” et al., by making reference to the Court of Justice of the European Union’s Padawan v. SGAE decision of 21 October 2010 (Case C-467/08).

Inter alia, the Greek court decided that the request of the appellant for a reference to the ECJ for a preliminary ruling, in view of the ECJ's decision in Padawan v. SGAE, should be rejected because the case at hand concerned private copying audio or audiovisual material rather than reproduction on paper or similar medium, regardless of whether it is intended for private use, as in the present case before the Greek court.

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EFJ Launches Handbook to Help Journalists Protect Authors’ Rights

The European Federation of Journalists (EFJ) has just launched a handbook titled “The Right Thing” to help journalists protect their authors’ rights.

“Journalists, whether they are employed or freelance, face increasing difficulties in securing their authors’ rights,” said EFJ President, Arne König, “The handbook rightly addresses these challenges and provides a set of guidelines and best practices to help our colleagues face the new challenge.”

According to Mike Holderness, author of the handbook and Chair of the EFJ authors’ rights expert group, the biggest challenge faced by journalists is the unreasonable demand coming from publishers and broadcasters.

“We face publishers and broadcasters that want to make the maximum use of our works for the minimum fee- and now want to re-use that work for many new ways for no additional fee,” Holderness said.

Today, increasing numbers of journalists are working to produce reporting that will only ever be seen online. The migration of offline to online publishing has made their authors’ rights more vulnerable to infringement.

“The fact that work published online is so easily copied, altered and distorted makes the rights to be identified and to object to changes that damage the integrity of the work – and hence of the journalists who created it – more important than ever,” said Holderness.

Organised in seven chapters, the handbook offers,

- Essentials tips for journalists on authors’ rights and copyright
- Latest developments on EU and International authors’ rights law
- Guidelines for concluding contracts
- Models for collective agreements
- Functioning of collecting societies
- Suggestions for dealing with infringement
- Future trends and challenges for authors’ rights

You can download the handbook in both [English](#) and [French](#).

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STM, PA and British Library agree framework licence agreement for document delivery to non-commercial research publishers outside the UK

On September 8, 2011, the British Library and the International Association of Scientific, Technical & Medical Publishers (STM) have agreed a framework licence agreement to be entered into directly between individual publishers and the British Library. It governs the supply of copies of articles from the British Library’s Document Supply Service to non-commercial end users via not-for-profit libraries outside the UK. The UK Publishers Association joins with STM in recommending the framework licence agreement to its members.

Barry Smith, Head of Commercial Services at the British Library said “We are delighted to have agreed a framework licence with STM. This means we can improve the speed of service delivery we offer to our overseas non-commercial users and augment our current Document Supply Service.”

Any articles to be supplied under this new service are solely for an end-user’s own private study or non-commercial research purposes. The terms of the licence are distinct from the Library’s successful service for the supply of articles for commercial purposes, and shall require end-users and not-for-profit libraries to ensure that the differentiation between commercial and non-commercial use is actively monitored and differentiated. The framework licence agreement will start from 1st January 2012.

“We are pleased to have worked so successfully with the British Library to reach this agreement,” said Michael Mabe, CEO of the International Association of Scientific, Technical & Medical Publishers (STM). “The British Library framework licence will give publishers, including our members, contractual control over the international cross-border delivery of copies from their material via an established and respected document supply service. It will also allow the British Library to improve the service, and delivery times, available to its authorised users.”

Along with STM, the UK Publishers Association is also recommending that its member publishers participate in the framework settlement. “The framework licence agreed with the British Library offers a balanced model for well-regulated licensed document delivery across international borders for non-commercial use,” said Graham Taylor, Director, The Publishers Association.

The British Library’s Overseas Library Privilege Service will be phased out from the start of 2012.

The British Library will contact all existing licensors of STM content it currently has a direct digital agreement with and who are yet to sign the framework licence agreement. The British Library will also contact all non-UK, non-commercial libraries currently registered to discuss eligibility for the new service and how to proceed.

The joint press release can be found [here](#).

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New decree of Polish Ministry of Culture and about new tariffs of levies regarding to reprography

Polish copyright law stipulates that levies on equipment may not exceed 3% of the selling price. A detailed list of devices and tariffs is prepared by the Minister of Culture and National Heritage.

A new decree with the list of devices to be levied and revised tariffs entered into force on 1 July 2011. The new tariffs are:

A list of copiers, scanners and other similar reprographic devices and blank carriers related to them with the level of respective levies.

No.	Type of a device or a carrier	Levies level in %, calculated from a selling price of a device or a carrier
1	Copier, among others ink, laser, analog and thermal dye sublimation copiers	3,00
2	Flat-bed scanner	3,00
3	Other type of a scanner, among others manual and sheet-feed scanners	2,00
4	Thermal fax	1,00
5	Fax for standard paper with a sheet-feed scanner	1,50
6	Fax for standard paper with a flat-bed scanner	2,00
7	Ink-jet printer and laser printer	1,50
8	Paper in A3 and A4 format	1,25
9	Multifunctional device with scanner and copier embedded, with no other functions	3,00
10	Multifunctional device with scanner or copier embedded, with other functions	2,80
11	Multifunctional device with scanner or copier embedded, with other functions blocked – available on demand	2,90
12	Copier, printer or multifunctional device – able to copy also on paper formats bigger than A3 (large-format devices)	1,00 but no more than 100 PLN

The tariffs are higher than the previous ones established by the ministerial decree of 2003 and devices covered by the levy have also increased. Remuneration to authors and publishers for reprographic reproduction of works covered by the levy scheme in Poland is therefore expected to increase from its current level of € 1.1 million per year. The new list of devices does not include digital cameras as requested by the Polish RROs and indicates, for some devices and for blank paper, rates lower than they had asked for. Polska Książka's and Kopipol's position was however taken into consideration by adding a separate category for devices copying in formats A4, A3 and bigger.

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NLA's eClips Web beats Google News

Content normally unavailable behind paywalls can be included in eClips Web, a new service from the Newspaper Licensing Agency, offering around 11% more content than Google News. Three leading media monitoring companies – Gorkana, Precise and Moreover – have

already signed up to receive the service; between them they serve over 3,500 businesses in the United Kingdom. Connecting users directly to newspaper website production databases, eClips Web renders bots or scrapers unnecessary. Comparative tests show that eClips Web contains typically 20% more data than web scraping services can supply, and delivers it on average two hours faster.

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Google Book Settlement Status Conference on 15 September 2011

The Google Book case appears to be still headed to litigation. At a status conference on 15 September 2011, Judge Denny Chin, U.S. Court of Appeals for the Second Circuit, adopted a proposed pre-trial schedule that, if followed, would have the case ready for trial by 31 July 2012.

Attorneys said that settlement talks were progressing. According to an AAP statement issued after the status conference (available here: <http://www.publishers.org/press/45/>), “the five publisher plaintiffs and Google have made good progress toward a settlement that would resolve the pending litigation regarding the Google Library Project. We are working to resolve the differences that remain between the parties and reach terms that are mutually agreeable.”

Authors Guild attorney Michael Boni expressed less optimism about the prospects for settlement. Apparently, publishers had made more progress, raising the likelihood that the authors and publishers cases could be split, as reported by New York Law School Professor James Grimmelmann’s students, http://laboratorium.net/archive/2011/09/15/status_conference_summary_in_...

For now, however, according to Professor Grimmelmann’s blog, Chin adopted the proposed trial schedule. Discovery would aim to be completed by 30 March 2012, motions for summary judgment would be due by 31 May 2012, opposition briefs due by 9 July 2012, and replies by 31 July 2012.

There was no mention of the copyright suit filed on 12 September 2011 by the Authors Guild, the Australian Society of Authors, the Union Des Écrivaines et des Écrivains Québécois, and eight individual authors against HathiTrust and five U.S. universities (see here for [full text of the complaint](#)).

Another parallel case, a suit filed by ASMP, Graphic Artists Guild and other photographers and visual artists ([full text of the complaint](#)) did come up. Photographers and visual artists told the court that they were contemplating prosecuting the case differently after the latest extension runs out in October ([see here for more information](#))

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French publisher La Martinière settles with Google

On 25 August 2011, Google settled a legal dispute with French publisher La Martinière and agreed on terms allowing it to scan out-of-commerce works that are still copyright-protected. The deal will permit La Martinière to sell books on Google's E-books platform.

This agreement resolves a dispute that La Martinière initiated in 2006. Google was ordered by a Paris court in 2009 to pay the French publisher's Editions du Seuil unit EUR 300,000 and stop scanning French works for its digital library project. Since that ruling, Google has reached agreements with other groups in France such as SACEM, which arranged to compensate artists whose works appear on Google's YouTube site, and the Hachette Livre unit of Lagardère SCA.

The settlement does not affect Google's appeal of the 2009 ruling that pertained to the Syndicat National de l'Edition (SNE), which had joined La Martinière's case, or to a lawsuit brought in May 2011 by three publishing houses, Albin Michel, Flammarion and Gallimard, that claimed Google scanned almost 10,000 copyright-protected works without permission.

Like the Hachette deal, the agreement with La Martinière is different from the proposed U.S. Google Book Settlement (that had been rejected in March 2011): it lets the publisher choose which works can be scanned or sold.

More information can be found [in French from Le Monde](#) and [in English from the New York Times](#).

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Biennial Europeana survey

The two-yearly independent survey of Europeana users has just been published.

Over 5,000 users completed the survey, a much higher response rate than the equivalent in 2009. Respondents are as old as they were in 2009 - 60% are over 45. However, 15% of them are teachers and lecturers, who Europeana relies on to recommend Europeana to their students. As in 2009, by far the most popular new function and feature that could be added to Europeana is the ability for the user to download content. In particular, the downloading of images, text, videos and sounds is requested. Over 90% of respondents agree that this would be "useful" or "very useful".

Respondents remain loyal: 43% had visited between 5 and 20 times. They say they find the content of Europeana more useful than on similar sites and far more trustworthy

The full report is on the [project site](#).

Attached is a [short presentation](#) showing the top line results.

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