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**3-5 April 2012** [Africa IP Forum: Intellectual property, regional integration, and economic growth in Africa](#), Cape Town, South Africa

**16-20 April 2012** [WIPO TK meeting](#), Geneva, Switzerland

**25 April 2012** [Senior Managers Forum \(SMF\) 2012: Licensing in Education](#), Copenhagen, Denmark

**26 April 2012** [IFRRO Business Models Forum](#), Copenhagen, Denmark

**26 April 2012** [IFRRO European Group meeting](#), Copenhagen, Denmark

**7-11 May 2012** [WIPO Committee on Development and Intellectual Property \(CDIP\)](#), Geneva, Switzerland

**29-30 May 2012** [FIPP Worldwide Media Market place](#), London, UK

**12-14 June 2012** [29th IPA Congress](#), Cape Town, South Africa

**20-26 June 2012** [WIPO Diplomatic Conference on the Protection of Audiovisual Performances](#), Beijing, China

**22-25 October 2012** [IFRRO World Congress 2012](#), Buenos Aires, Argentina

## Links to other News:

[Access Copyright December Newsletter](#)

[IPA Newsletter Issue 89](#)

[EDItEUR January 2012 Newsletter](#)

### **First IFRRO member from the Caucasus Region**

IFRRO is pleased to welcome the first RRO in the Caucasus region to IFRRO membership. At the IFRRO Board meeting in Barcelona in January, the National Reprographic Rights Society of Kazakhstan was accepted as a provisional RRO member. This is a new category of IFRRO membership approved by the IFRRO General Assembly in October 2011 and covers those RROs, which are still developing and need to provide proof of sustainability before they can be approved as full RRO members. Although NRRS has just recently been approved as the Kazakh RRO it has already signed several licensing agreements and started to collect reprographic fees; so it is likely to soon offer proof of sustainability.

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### **Access Copyright signs agreement with two major universities**

Access Copyright, The Canadian Copyright Licensing Agency has signed a licensing agreement with two of Canada's largest universities, the University of Toronto (UofT) and Western University (Western) for their paper and digital copying needs. This agreement has the educational institutions working with publishers and creators to assess the value of the works they are using. This will help restore the mutually supportive partnership between publishers and educators that in the past permitted a win-win for all.

Eighteen months prior to the expiry of the last license in December 2010, Access Copyright offered to negotiate a licence renewal with the Association of Universities and Colleges Canada (AUCC). Unfortunately AUCC did not participate in negotiations in any meaningful way and Access Copyright filed a tariff application with the Copyright Board of Canada, a process that is ongoing today.

Looking for early resolution of this matter and to provide the immediate certainty of cost-effective print and digital copying, UofT, Canada's largest research university, and Western, both members of the (AUCC), stepped away from their association and negotiated their own licence with Access Copyright.

"Discussions with UofT and Western helped bring clarity on what and how published works are being used. Together we agreed that an FTE rate of \$27.50 is a reasonable rate and that we will partner to continuously assess how future royalties can remain appropriate," said Maureen Cavan, Executive Director, Access Copyright, The Canadian Copyright Licensing Agency.

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### **CCC and VG WORT extend bilateral agreement**

VG WORT and CCC have signed an agreement, extending their longstanding existing bilateral agreement, to enable them to offer corporate digital rights to German and US firms and their global subsidiaries. This arrangement between VG WORT and CCC is in direct response to diverse requests from businesses and their associations in Germany and the US, and is designed to meet their digital licensing needs.

The collaborative arrangement involves the reciprocal licensing of the digital repertoires of VG WORT and CCC. VG WORT will offer an annual license to companies and government organisations located in Germany as well as their global subsidiaries for the digital use of copyright-protected materials for internal purposes, beyond the scope of what is currently permitted under exceptions in the German Copyright Law. The agreement also enables CCC to offer licenses to companies and government organisations based in the US, along with their global subsidiaries.

In Germany, VG WORT has retained RightsDirect to bring the license to market as RightsDirect already has substantial experience in marketing and managing such licenses. In addition to the license, copyright education and rights workflow tools will be provided. RightsDirect will remit remuneration relating to VG WORT's repertoire to VG WORT and will similarly pass on remuneration for the CCC repertoire to CCC.

Both VG WORT and CCC hope and believe that similar arrangements will follow with other RROs so that the global business community can, in the foreseeable future, obtain the licenses it needs in the digital environment.

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### **CEDRO signs an agreement for monitoring with Anpro21**

Last January CEDRO, the Spanish RRO, signed an agreement with Anpro21, an agency which monitors the reputation, perception and impact of companies and their products. From now on, authors and publishers will be compensated for the use of their works offered by Anpro21.

Magdalena Vinent, CEO of CEDRO, commented that the signing of this agreement proves that there is a solution for monitoring agencies that wish to provide access to copyright material which allows them to develop their activities based on current copyright legislation.

In the opinion of Óscar Trabazo, Anpro21 CEO, the agreement is a step forward accepting that the material is under copyright and the companies which analyze and sometimes show such work must pay for it.

During the last year CEDRO has signed eight of these kinds of agreements.

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### **KOPINOR's international development work**

All CMOs face the challenge of handling non-distributable funds. The Norwegian RRO, KOPINOR decided at an early stage to earmark funds pertaining to non-Norwegian, non-identifiable sources for international development work. The fund was baptized KOPINOR's development fund in 2003. The KOPINOR Board has established statutes and guidelines for the fund, which is under the auspices of its international committee. When John-Willy Rudolph stepped down as CEO in 2006, he took the position as the funds Director. On his initiative, the Norwegian CMOs jointly formed a development fund called Norcode in order to professionalize the activities and to channel money from the Norwegian aid authorities into more comprehensive development activities, including establishment of CMOs in developing

countries. Now KOPINOR's Deputy Executive Director Hans-Petter Fuglerud is the fund's manager and also Board member of Norcode.

KOPINOR has, directly or through Norcode, given financial and professional support to various RROs under development, among them Kopiken, Kopitan, Zarrso, Zimcopy, Cosoma and URRO in east Africa and Copyghana in the west. Some of these are to-day self sustained while others still need funding. KOPINOR is currently planning a joint training seminar later this spring for RROs in the East African region, focusing on representativity, bilateral agreements, governance and current licensing activities. In addition support is given to Filcols and Vietrro in the Asian region. KOPINOR also supports activities like the Zimbabwe International Book Fair, enhanced legislation and (through the Norwegian Publishers' Association) the important African publishers network, APNET. Several of KOPINOR's member associations are also active in fostering sister organizations in many countries, often co-financed by the fund. IFRRO and some of its international organisation members (such as IPA, FIT, EWC) are able from time to time apply for support for conferences, workshops, training or the like with a copyright related purpose.

As for the activities in Africa in particular, KOPINOR seeks to cooperate with IFRRO in order to maximize the efforts and is currently looking into mutual activities for this year in the countries given priority by the Development Committee for Africa.

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### **FILCOLS and CADRA, first RROs to participate in CCC's newly launched International Advancement Program**

The US RRO Copyright Clearance Center (CCC) has developed a program dedicating resources to the advancement of collective licensing outside the US. CCC informs that the program, entitled the International Advancement Program, has been carefully designed to complement IFRRO's own development work.

CCC has been a committed contributor to the IFRRO Development Fund and IFRRO is pleased that CCC asserts that it will continue to contribute as an active member of the IFRRO community. CCC further states that it intends for its own development work to grow substantially, and further intends for this work to be harmonious with IFRRO's own work which CCC will continue to support.

The new International Advancement Program will provide a wide range of support to RROs in other countries for them to begin and/or advance their operations. CCC's Program will include operational and technical support and training, development of market-facing items such as copyright education tools, and monetary support as appropriate. A goal of the Program is to increase bilateral agreements where appropriate, making it easier for emerging RROs to obtain critical sets of rights needed to establish their businesses.

CCC announces that the first two RROs participating in this program are the Filipinas Copyright Licensing Society, Inc. (FILCOLS) and the Centro de Administración de Derechos Reprográficos, Asociación Civil (CADRA). CCC's President and CEO Tracey Armstrong confirmed in a statement that CCC remains committed to working with IFRRO and its sister

organizations to promote copyright awareness and licensing solutions around the world for the benefit of rightholders and content users.

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### **Private Copy in Spain: Towards another system**

On 30 December 2011, a new regulation on private copying was adopted by the new Spanish government.

The compensation for private copying will no longer be paid by manufacturers or importers. Instead, the Spanish government will pay an amount based on the estimation of the damage caused by the private copying. The money will be deducted from the national budget.

The details of this new system, which came into effect on 1 January 2012, will be approved by a Decree to be adopted in the following months.

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### **PEER Economics Research: Final Report now available**

The PEER Economics Research Team headed by Professor Paola Dubini, ASK Research Center, Bocconi University, Milan, Italy has completed the economics research commissioned by PEER. It is supported by the EC eContentplus programme, and is coordinated and led by the International Association of Science, Technical and Medical Publishers (STM)

PEER (Publishing and the Ecology of European Research) is investigating the effects of the large-scale, systematic depositing of authors' final peer-reviewed manuscripts (so called Green Open Access or stage-two research output) on reader access, author visibility, and journals, as well as on the broader ecology of European research.

[The full press report is available here](#)

[The report is available here](#)

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### **Priorities of the Danish EU Presidency**

Among Denmark's priorities for its EU presidency (January-June 2012) are advancing intellectual property rights, research and innovation.

According to the document of its priorities (available [here](#)), Denmark plans to focus on education, research and innovation programmes, while highlighting, inter alia, IPR enforcement, standards, e-commerce, creativity and accessible online content as priorities.

Furthermore, "the Presidency will follow up on the Commission's proposal for an orphan works directive". Other priorities include boosting a "digital single market" with more cross-border trade.

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### **European Commission adopts report on the implementation and effect of the Resale Right Directive**

The European Commission has adopted a report on the implementation and effect of the Resale Right Directive (Directive 2001/84/EC).

Inter alia, the Commission proposes to establish a stakeholder dialogue, tasked with making recommendations for the improvement of the system of resale right collection and distribution in the EU; and to undertake a further reporting exercise with a view to delivering its results in 2014.

The report is available [here](#).

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### **European Commission published action plan and consultation on e-commerce**

Based on the Green Paper consultation “Towards an integrated European market for card, internet and mobile payments”, the European Commission seeks the views of stakeholders as to which obstacles hinder further market integration and how these could be resolved. The deadline for submitting contributions to the consultation is 11 April 2012. On the basis of the consultation feedback, the Commission will announce the next steps to be taken before the summer of 2012 ([see here for more information](#)).

In the [accompanying Communication](#), the Commission sets out an action plan to overcome what they claim to be the problems and to make e-commerce in Europe work for the benefit of all Europeans.

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### **Contributions to EU report on the implementation of the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions**

The UNESCO Convention on the protection and promotion of the diversity of cultural expressions was adopted in 2005. Parties to the Convention have the legal obligation to report on their implementation of it. In the context of the preparation of this EU periodic report, the EU asks for contributions also from European civil society organisations through a questionnaire made available on-line. Contributions may be made by civil society organisations of European (transnational) dimension and will be annexed to the EU report. The deadline for submission of contributions is 10 February 2012.

More information is available [here](#).

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### **Golan v. Holder: U.S. Supreme Court affirms that copyright can be extended to foreign works once in public domain**

On 18 January 2012, the U.S. Supreme Court upheld U.S. Congress’s right to extend copyright protection to millions of books, films and musical compositions by foreign artists that once were free for public use, affirming the decision of the 10th Circuit and upholding the restoration legislation. The decision can be found [here](#).

U.S. Congress granted the copyright restoration in 1994, in order to comply with U.S. obligations under TRIPS. But concerns arose that when it removed works from the public domain, Congress violated the free speech rights of users of the works. Lawrence Golan, a University professor, challenged the law on behalf of conductors, academics and film historians. Golan was supported by librarians and corporations such as Google.



In the recent 6 to 2 decision, Justice Ruth Bader Ginsburg said U.S. Congress was acting “comfortably” within its powers when it extended copyright protection to foreign artists under treaty obligations that gave U.S. artists the same rights. The U.S. Supreme Court rejected the challenge from orchestra conductors, educators, performers and others that Congress’ action violated the Constitution’s copyright clause and the First Amendment’s guarantee of free expression.

Further information on the [Golan v. Holder](#) case, which is considered to be one of the most important intellectual property law issues to be addressed in 2012, can be found [here](#). An electronic copy of the amicus curiae brief, which was filed (inter alia) by IFRRO, CCC, IPA and STM in August 2011 with the U.S. Court, is available [here](#).

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### **Google files motion to dismiss Authors Guild and ASMP suit**

On 22 December 2011, Google filed a motion to dismiss the Authors Guild as an associational plaintiff from the Google Books case, as well as the American Society of Media Photographers (ASMP) from its related suit against Google (see: <http://thepublicindex.org/docs/motions/993-memorandum-in-support.pdf>). In its supporting brief, Google argues that the associations lack standing to bring suit, and that only the individual plaintiffs in the two lawsuits could go forward with litigation. The Authors Guild and visual artists have until 6 February 2012 to file their responses, to which Google would then need to respond by 17 February 2012 (cf. the new [scheduling order](#)).

In a nutshell, Google claims that, in both the Authors Guild and ASMP cases, the participation of individual association members will be required to prove copyright ownership and to litigate the fair use issue. Google is also of the opinion that, in the ASMP case, the participation of individual association members will be required to litigate the terms of their contracts with publishers of books in which their photographs appear. From Google’s point of view, the claims of the associations should be dismissed without leave to amend because they lack standing as a matter of law, since they do not themselves own copyrights.

The interesting legal issues – such as fair use, library rights, licenses, improper plaintiff class — are not on the table yet.

It is expected that U.S. Judge Chin will have overlapping motions, as Google is scheduled to file its response by 8 February 2012 to the motion for class certification filed by the Authors Guild on 12 December 2011 (available [here](#)). This brief puts forth a straightforward statement from the perspective of the Authors Guild, inter alia: “Google’s scanning project has a commercial purpose.” And: “Google undertook the Google Library Project to gain a competitive advantage over other participants in the search engine market.” The filing could ultimately lead to a ruling as to whether the scanning of books by Google amounts to copyright infringement.

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### **Austro Mechana v Amazon - Reference for preliminary ruling before CJEU**

The case C-521/11 *Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft m.b.H., Vienna v (i) Amazon.com International Sales Inc., (ii) Amazon EU S.á.r.l., (iii) Amazon.de GmbH, Munich, (iv) Amazon.com GmbH (in liquidation) and (v) Amazon Logistik GmbH* has been forwarded to the Court of Justice of the European Union for a preliminary ruling.

The referring court is the Oberster Gerichtshof (Supreme Court, Austria) and it asks whether a legislative scheme can be regarded as establishing 'fair compensation' for the purposes of Article 5(2)(b) of Directive 2001/29, where:

- the persons entitled under Article 2 of Directive 2001/29/EC have a right to equitable remuneration, exercisable only through a collecting society, against persons who, acting on a commercial basis and for remuneration, are first to place on the domestic market recording media capable of reproducing the works of the rightholders,
- this right applies irrespective of whether the media are marketed to intermediaries, to natural or legal persons for use other than for private purposes or to natural persons for use for private purposes, and
- the person who uses the media for reproduction with the authorisation of the rightholder or who prior to its sale to the final consumer re-exports the media has an enforceable right against the collecting society to obtain reimbursement of the remuneration?

For a fuller breakdown of the questions posed by the court [see here](#).

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### **CWWCS sues Apple for unauthorised distribution of copyrighted material**

As reported by the Chinese financial newspaper Caixin, the IFRRO member, China Written Works Copyright Society (CWWCS) has filed a formal suit against Apple, claiming that the company's iBooks electronic book store is distributing the works of a consortium of Chinese writers without their permission. The suit seeks 11.91 million yuan (about US\$1.9 million) in compensation for infringement of 37 works (see: <http://english.caixin.com/2012-01-06/100346586.html>).

Apple, who is allegedly offering the content for sale via distributors on its iBooks service, keeps 30 percent of all e-book sales through iBooks, while forwarding 70 percent of the revenue to the e-books' publisher. Apple's terms of service and publishers' agreements prohibit unauthorised distribution of copyrighted material.

Previously, the CWWCS has launched infringement proceedings against Google and China's Baidu search engine. In March 2011, Baidu claimed to have removed almost three million pirated items from its service. The CWWCS also received a formal apology from Google in January 2010 for including about 18,000 unauthorised works from 579 Chinese authors in its Google Books database (source: <http://www.digitaltrends.com/international/chinese-authors-sue-apples-ibooks-for-piracy/>).

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### **New Anti-Piracy Measures in Spain**

On 30 December 2011, the new Spanish government published a Decree to fight against digital piracy, in order to make the procedure to block access to non-authorized works offered on the Internet easier and faster.

A new body within the Ministry of Culture will be in charge of managing and coordinating the process, which is independent from any other civil or criminal procedure. An individual rightholder or a collective management organisation can address this body and request that the website provider is asked to remove unauthorised content.

The Decree, which will come into force on 1 March 2012, provides for the possible help of the Spanish courts both for the identification of those responsible for the website and in order to enforce the decision of this new administrative body, if required.

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### **UK government launched consultation on proposals to change the UK's copyright system**

On 14 December 2011, the UK government launched a consultation, which follows up the recommendations in the [Hargreaves Review of Intellectual Property and Growth](#).

This consultation is about proposals to change the UK's copyright system, and is aimed at individuals and organisations which may be impacted by the proposed changes to UK copyright laws.

The consultation will run for 14 weeks, and will conclude on 21 March 2012.

More information is available [here](#).

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