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## IFRRO

### IFRRO celebrates World Congress and Annual General Meeting 2014 in Seoul

From 27 to 30 October, IFRRO members gathered in the city of Seoul (Korea) for the IFRRO World Congress and Annual General Meeting 2014. More than 200 participants, including delegates, observers, invited guests, local attendees and authorities, discussed trends, challenges and best practices relevant to the administration of authors' rights and copyright under the theme *Collective Management – Sharing Knowledge*. The IFRRO World Congress and Annual General Meeting is the Federation's main event and it provides the opportunity for its members to discuss, build their networks and learn from others; to showcase best practices; and to strength the presence of the host organisation and its activities.



Photo: Veraliah Bueno

### IFRRO Business Model Forum and International seminar focus on the educational sector

At the IFRRO Business Model Forum (IBMF) and International seminar on “*Digital: What we depend on – deserve – and demand in our information environment*”, introduced this year by WIPO Director David Uwemedimo, Carlos González-Sancho from OECD's Directorate for Education and Skills showed how more people than ever before benefit from education. This trend is likely to continue, and adults with tertiary degree education will earn 75% more than those with lower education degrees. It is also interesting to notice that, in 2012, over 4.5 million students enrolled in university courses outside their country of citizenship.

Online education is on the increase. However, although education is progressively more being digitised, the textbook maintains its strong position as the central source of instruction. We are also far from a situation where digital is taking over as the central learning resource. For instance, in the EU, less than ¼ of the students make frequent use of digital resources during lessons. Moreover, even if new models, such as Open Educational Resources (OER) and Massive Online Open Courses (MOOC), continue to emerge, they have not yet developed into sustainable business models.

The Korean educational publisher, Sunshik Min of YBM, noted that CRAM education plays an important part in the Korean educational system. (CRAM is a system by which students study intensively over a shorter and concentrated period of time, be it for the preparation of upcoming exams, or as a general study model.) In Korea, textbooks for the school market, are either government produced (22%), approved (15%), or authorised (63%). Private publishing plays a role in the two last categories only.

Korea continues to search for ways to transit to digital in the educational sector. The first approach, converting textbooks into pdf for CD-R, did not go down well, with the students, or the teachers. Current experimenting includes 'Cyber Universities', where online education plays a central part. This poses challenges not only in relation to the organising of the education and the classroom, but also to copyright and copyright administration.

### RROs respond to dynamic user needs

In the panels following the keynote presentations at the IBMF, RROs from various corners of the world documented how they have rapidly met dynamic and changing user needs. For instance, in Korea, the RRO licenses retransmission rights, as described by KORRA Director Dae hee-Lee. RROs have also started content licensing, such as Learningfield (<http://learningfield.com.au/>) in Australia. presented by the Copyright Agency CEO, Murray St. Leger, the Norwegian Bolk (<http://www.kopinor.no/en/rightsholders/publishers-coursepack-delivery/bolk-kopinors-coursepack-delivery-service>), introduced by Kopinor's Executive Director, Yngve Slettholm, and Pasta do Profesor in Brazil, by Daniela Manole of ABDR and Editora Manole Ltda. Virtual Learning Environments and Distance Learning are also included in RRO agreements, as shown by ICLA (Ireland) CEO Samantha Holman, and in the IFRRO document Easy Access to published copyright works (in education and libraries) [http://www.ifrro.org/sites/default/files/ifrro\\_lib\\_edu\\_licensingsolutions.pdf](http://www.ifrro.org/sites/default/files/ifrro_lib_edu_licensingsolutions.pdf). And CCC's (U.S.A) Executive Director, International, Michel Healy spoke to how a RRO responded quickly to the need for licensing of MOOC.

Moreover, RROs have been able to respond to user requests for information on what they can legally do with copyright works, under legislation or licences available to them. CLA's (UK) International Rights Manager Madeleine Pow presented their copyright icon and application 'What can I do with this content' (<http://www.cla.co.uk/>); and Magdalena Vinent the CEO of CEDRO, showed how the RRO contributes to providing seamless access to published works in Spain, and beyond, through Conlicencia (<https://www.conlicencia.com/>). Sandra Chastanet, Rightsholders & International Relations Manager at CFC (France), Marc Hofkens, Managing Director of SEMU (Belgium), and Vincent van den Eijnde, CEO of Pictoright (Netherlands) completed the panel, documenting how uses of copyright protected works are authorised through collective management and RROs in France, of music, and of images, respectively.

In summarising, IFRRO's CEO Olav Stokkmo and the IBMF Chair, Tracey Armstrong of CCC (U.S.A.), noted the unprecedented speed of technological changes, also affecting education, and that RROs have shown a remarkable ability to respond to those changes. The obvious strengths of RROs include their functioning as a 'one-stop shop', and as rights information managers, administering rights to works also in education. This offers a unique opportunity for RROs, authors and publishers to collaborate in offering comprehensive solutions for easy, seamless access to published works. IFRRO would continue to support its membership

through monitoring trends, compiling and sharing data and best practices, facilitate collaboration, and enable strategy discussions and bold vision developments, both at IFRRO and RRO level. In concluding, they echoed the vision of the WIPO DG Francis Gurry: We must make it easier to use copyright works legally than illegally!

### IFRRO-WIPO study on Text and Image copyright levies officially launched

As a part of the Congress 2014, IFRRO and WIPO launched officially the joint Report on copyright levies in the Text and Image sector, authored by Paul Greenwood, with assistance, in particular from Robert Staats, Co-CEO of VG Wort (Germany), Kurt van Damme, Deputy Managing Director of Reprobel (Belgium), and the IFRRO Secretariat (<http://ifrro.org/content/ifrrowipo-study-text-and-image-based-copyright-levies-published>). IFRRO President and VG Wort Co-CEO Rainer Just and WIPO Director David Uwemedimo spoke to the importance of this first global study on Text and Image levies, not least in disseminating information on this important mechanism to remunerate authors and publishers for certain uses of their works, whilst IFRRO CEO Olav Stokkmo presented the main results of the study. A re-launch of the Report, with the same speakers, was performed at an international seminar organised by KORRA, the Korean RRO, and the Korean authorities at the Korean Parliament on 30 October.

### IFRRO World Congress and AGM 2015 in Mexico City

IFRRO and the Mexican RRO, CeMPro, are pleased to welcome IFRRO members, guest, observers and other participants to an exciting IFRRO Congress in Mexico City on 9-12 November 2015.

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### **IFRRO welcomes Stichting Stemra as 143rd Member**

Stichting Stemra (the Stemra foundation) has been accepted as a Music RRO in the Associate RRO category of IFRRO membership. It is a part of Buma and Stemra, the copyright organisations for composers, lyricists and music publishers in the Netherlands, in membership of CISAC. Buma and Stemra are set up as two separate organisations, with Buma administering performance rights, and Stemra reproduction rights. Information on Stemra in English is available from their home page <http://www.bumastemra.nl/en/about-bumastemra/>

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### **COLCCMA and NSRR cease IFRRO Membership**

The Chinese Oral and Literary Copyright Collective Management Association (COLCCMA) and the National Society of Reprographic Rights of Kazakhstan (NSRR) have ceased to be members of IFRRO. COLCCMA was dissolved and NSRR is no longer in a position to meet its obligations under the IFRRO Statutes. IFRRO very much regrets having to cancel the membership of NSRR as it was the first RRO established in the Caucasus region.

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### **IFRRO elects new Board members at successful IWC in Seoul**

IFRRO has just completed a successful World Congress in Seoul, thanks in large part to the hard work and hospitality of the South Korean RRO, KORRA.

During the IFRRO Annual General Meeting on 29 October, IFRRO elected a new Board and re-elected the Presidency.

IFRRO congratulates Rainer Just (VG Wort), IFRRO President, and his two Vice Presidents - H  l  ne Messier (Copibec) and Jim Alexander (Copyright Agency) – on their re-election and all the Board members, new and old who were elected. We also thank the retiring Board members – Kevin Fitzgerald (CLA), Heikki Jokinen (IFJ), Mats Lindberg (BUS) and Michael Mabe (STM) for their contribution.

The IFRRO Presidency and Board now consist of:

### **Presidency**

Rainer Just, President  
VG Wort, Germany

H  l  ne Messier, Vice President  
Copibec, Canada

Jim Alexander, Vice President  
Copyright Agency, Australia

### **Directors**

Tracey Armstrong  
Representing RRO Members  
Copyright Clearance Center Inc, USA

Pirjo Hiidenmaa  
Representing Creator and Publisher Association Members - creators  
European Writers' Council, Brussels

Beno  t Proot  
Representing RRO Members  
Reprobel, Belgium

Yngve Slettholm  
Representing RRO Members  
KOPINOR, Norway

Eefke Smit  
Representing Creator and Publisher Association Members - publishers  
IPRO, Netherlands

### **Substitute Directors**

Ana Maria Cabanellas  
Representing Creator and Publisher Association Members - publishers  
International Publishers' Association, Switzerland

Vincent van den Eijnde  
Representing Creator and Publisher Association Members - creators  
Stichting Pictoright, Netherlands



Samantha Holman  
Representing RRO Members  
ICLA, Ireland

Dora Makwinja  
Representing RRO Members  
Copyright Society of Malawi, Malawi  
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### **IFRRO launches Value of Copyright campaign to improve level of copyright debate**

The International Federation of Reproduction Rights Organisations (IFRRO) has announced the launch of The Value of Copyright, a campaign designed to emphasise the importance of copyright and improve information about the protection of literary and artistic works, primarily in the text and image-based sectors.



*Olav Stokkmo, Edward Nawotka and Robert Levine at the Publishing Perspectives stage  
Photo: Veraliah Bueno*

Inaugurating at the Frankfurt Book Fair, the campaign features a website - [CopyrightLink.org](http://CopyrightLink.org) - as its focal point, which aims to provide a single online access point for international and local information on copyright. The website includes news and events, relevant legislation, useful facts, details on the value of the protection of literary and artistic works, in addition to its usage and importance. It provides information on copyright issues, showcases best practices, hosts a forum for all involved to explain how copyright affects them while giving links to authoritative sources on copyright matters, including legal issues.

Copyright is a vital source of income for those who create and invest in the content on which the digital economy depends. In addition to the contribution of the exploitation of primary rights through sales and licensing, a survey by PwC in the UK showed that some 25% of authors derive more than 60% of their income from secondary uses of their works, and that UK educational publishers depend on secondary income for some 12% of their earnings, which equates to around 19% of their investment in new works. Information such as this,

which effectively highlights the vital role copyright plays in society, is publicly available, and should find its way into the current copyright debate.

Commenting on the launch, Olav Stokkmo, Chief Executive of IFRRO, stated: “We felt there was a need for a resource to allow people to more easily find accurate information on copyright and to help them better understand why it is so important. This is why we decided to launch this campaign and website; to dramatically improve the overall level of the copyright debate and enhance access to relevant and reliable information and resources.”

He continued: “Only through a clear understanding of the facts about copyright and its importance to society at large, can informed decisions be made on how copyright can be set at the heart of a vibrant, growing digital economy, which is responsive to the needs of both creators and users and beneficial to society as a whole.”

IFRRO and special guest Robert Levine, author of *Free Ride*, launched the campaign and website in a panel discussion entitled *Fight for Copyright - how the publishing and creative industries can show their support*, moderated by Edward Nawotka, editor of *Publishing Perspectives*

Robert Levine gave the authors perspective on the impact of illegal uses of copyrighted material. He pointed out that although information may “want to be free”, such information actually belongs to someone else. Levine explained how protection of intellectual property encourages development and that copyright is not a barrier for free speech. Authors are not against free speech.

Olav Stokkmo, for his part addressed the increasing importance of copyright. He explained that nowadays seamless access is already in place, and that Collective Management Organisations (CMOs) work tirelessly on enforcement and easy access.

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### **IFRRO submission to public consultation by UN HCHR on the impact of IPR on the enjoyment of right to science and culture**

Following the UN HCHR Special Rapporteur’s invitation for public comments (see: [here](#)), IFRRO has made a submission to the consultation regarding the impact of intellectual property regimes on the enjoyment of the right to science and culture.

IFRRO’s comments can be summarised as follows:

1. It is important to ensure appropriate legal user access to cultural and scientific knowledge, including through educational / research institutions and libraries. It is equally vital that this is done in a way that safeguards the interests of the author, publisher and other copyright holders. The copyright system, whilst enabling justified legal access for users to copyright works in the easiest possible way, must also ensure that it promotes creativity and innovation.
2. Organisations representing libraries, archives, authors, publishers and RROs have a proven track record in developing solutions for libraries and archives to access cultural heritage, based on joint stakeholder dialogues. Together with its strategic partners, IFRRO works to raise awareness regarding the importance of the cultural sector and cultural diversity, and to promote enhanced access to copyright-protected works through developing and strengthening the necessary infrastructure for CMOs.



3. The use of copyright material for research purposes is commonly comprised in the licences offered by publishers. Certain uses of copyright works in conjunction with research are also authorised through schemes administered by Reproduction Rights Organisations (RROs).
4. Solutions to access scientific information for the purpose of research can readily be offered under the current copyright system. Authors and publishers are providing access both via Open Access and for Text and Data Mining (TDM). Licensing solutions exist for commercial and non-commercial uses, offered by copyright holders directly, and via collective rights management.
5. IFRRO supports appropriate Intellectual Property Rights as a means to creating functional incentives for investment in products and services based on those rights, thereby leading to a richer body of cultural, creative, scientific and academic works. Also, IFRRO is committed to assisting communities in developing frameworks furthering cultural and academic progress and stimulating incentives for investing in cultural and creative industries and practical implementation, inter alia through RROs.
6. In order to help authors and publishers to fully enjoy their right to benefit from the protection of moral and material interests, IFRRO urges to focus on the implementation of legislation and current stakeholder-driven solutions. The UN HCHR is encouraged to offer support to individual and collective rights management schemes. Such schemes, offered by rightholders and RROs, provide the broadest and most adequate legal access to intellectual property to the educational and research communities, as well as libraries. Agreements with authors, publishers and RROs offer flexible, comprehensive and tailor-made solutions to access scientific and literary works to meet the needs of educational institutions and other user communities; it represents the safest, simplest, fastest, most innovative, most convenient and most cost efficient way to seamless access to high quality teaching material from multiple authors and publishers. IFRRO therefore embraces the emphasis placed on the protection of intellectual property rights, as outlined also in Article 15 of the International Covenant on Economic, Social and Cultural Rights.

IFRRO's complete submission is available here ([attached](#)).

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## RRO News

### **Chairman of Repronig calls for an adequate protection of IP rights**

Professor Olu Obafemi, Chairman of IFRRO's Nigerian RRO member Repronig, published an opinion piece in the newspaper The Daily Sun in which he gives details about the link between growth, employment and a strong protection of Intellectual Property rights.

In his passionate plea for a better protection of these rights and a fair remuneration for rightholders, Pr. Obafemi reminds readers that Intellectual Property "*is an instrument for economic advancement, which could be utilized to transform developing countries to industrialized economies*". He also reflects on the last meeting of the IFRRO African Development Committee in June 2014 in Lilongwe, Malawi, during which Repronig, along

with other African RROs representatives, reiterated its commitment to work and ensure that creators be “adequately rewarded” and their works “adequately protected”.

Professor Obafemi’s opinion can be read [here](#).

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### **Canadian students face higher Course Pack costs after University of Toronto ends Access Copyright License**

According to an article in the student magazine Varsity, the brave new world which was to be ushered in by the changes in Canadian copyright legislation in 2012 has turned sour for students at the University of Toronto.

The University ended its licensing agreement with Access Copyright in December 2013, preferring to rely on the fair dealing provisions of the Copyright Act but its new Fair Dealing Guidelines (FDG) mean that some student are now having to pay nearly twice as much for their Course Packs than they did when there was a license from Access Copyright. The main reason is that the FDG covers only 10% of a work while the old license included 20%.

[Read more from Iris Robin in Varsity](#)

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### **CLA signs unilateral agreement with China's CWWCS**

The Copyright Licensing Agency Ltd (CLA) has signed a licensing agreement with the China Written Works Copyright Society (CWWCS). This comes as CLA joined a government visit to China, during which the UK Intellectual Property Office co-hosted a symposium with the Chinese authorities.

The move will see Chinese repertoire included in CLA licences; Chinese publishers and authors will receive monies collected through CLA licences as part of the distributions cycle.

The agreement was signed by Kevin Fitzgerald of CLA and Hongbo Zhang of CWWCS on 2 September at an event hosted by Baroness Neville-Rolfe, UK Minister for Intellectual Property, and Vice Minister Yan Xiaohong of the National Copyright Administration of China (NCAC).

Yan Xiaohong said in a recent press release:

“It will encourage more Chinese writers and publishers to produce more high quality copyright works appealing to foreigners, and guarantee their economic benefits. Also, it will serve as a trailblazer for more agreements of its kind to be signed with copyright collective management agencies in other countries and regions of the world. Eventually, this kind of cooperation will boost Chinese cultural exports.”

The full [CLA press release is available here](#).

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## **EU Affairs**

### **Copyright one of the 10 priorities of the European Commission**

In a letter sent on 12 November to the President of the European Parliament Martin Schulz and to the Prime Minister of Italy and President of the Council of the European Union Matteo

Renzi, the European Commission's President Jean-Claude Juncker and First Vice-President Frans Timmermans have defined the ten priorities for the Commission's 2015 working programme. The second priority identified is a "Connected Single Market" within which two initiatives are foreseen: an "ambitious reform of the telecoms market" and a "proposal on copyright reform".

The letter echoes earlier announcements made by Jean-Claude Juncker himself and his digital Commissioners Andrus Ansip and Günther Oettinger on their wish to prepare a reform of copyright at EU level, the exact timeline and the content of the reform being unknown today.

In his letter, Jean-Claude Juncker also stresses the need to strengthen the mechanisms of cooperation between the European Commission, the European Parliament and the Council to ensure that future legislative proposals will be fast-tracked.

The letter, disclosed by EurActiv, is available [here](#).

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### **EPC Report: Protection of Intellectual Property key to new industrial policy for Europe**

A new EPC Report [A New Industrial Policy for Europe](#), authored by Claire Dhéret and Martina Morosi, with a contribution also from the IFRRO CEO in the Toolkit for implementing the Vision chapter, was presented at a conference in Brussels on 12 November, with nearly 300 attendees. The publication, which includes a contribution of Olav Stokkmo, IFRRO's CEO, addresses the immediate challenges that EU industry has to face and aims at offering guiding principles of a new strategic vision for European regional policy and also a toolkit for the implementation of this vision.

The two overall guiding principles advocated in the Report for a future European industrial policy are a more collaborative approach – across sectors, countries, etc., and the optimising of the EU strength. Although the need for IP protection is highlighted as a key element in the regulatory framework for a future industrial policy for Europe, and was emphasised also in the presentation of the Report, focus was, naturally, on other elements proposed to stimulate the development of the European industrial sector.

In his conference opening speech, Antonio Tajani, the European Commission Vice-President responsible for Industry and Entrepreneurship, pointed out its timeliness. There is a new European Commission, and Commission President Juncker has announced that the strengthening of the European industry is a focus point. Tajani also suggested that a more flexible approach to competition issues may be appropriate.

Much emphasis was put on Research and Development (R&D). It was noted that, whilst industrial countries outside Europe, such as the US, Japan and Korea, allocate less than ¼ of their public spending in research towards fundamental research, focusing more on applied research and innovation, the opposite is true for Europe, where 80% of the public spending is in fundamental research. It was alleged that most of the remaining 20% was directed towards societal and not applied studies and research. Equally important, a plea was made for results of European funded research to be first exploited in Europe, and also in this respect follow other industrialised countries.

In order to develop a globally competitive IP policy that can be compared to the ones in place in countries like Australia, China, Japan and the United Kingdom (countries with clear IP strategy plans), the paper suggests that the following actions need to be taken:

1. Provide for the establishment, administration and management of IPR at EU level
2. Ensure that industry can have easy access to IPR in universities and research institutes
3. Ensure that IPR are enforce within and outside EU
4. Provide supportive programmes to businesses to better develop their IP strategies and to take advantage of its IPR
5. Include IPR in EU trade agreements
6. Protect the EU's technological knowledge by making sure that projects developed by EU and national public funding include a clear IP plan for both the ownership and first exploitation of IP.

Studies presented at the conference documented that the comparative advantage of the print and publishing sector has been on a steady and stable increase since 1995. Olav Stokkmo, the IFRRO CEO, commented that this shows that the copyright framework in Europe functions, and that one should be careful to make changes to it. This is also consistent with the [OHIM study](#) published last year on the contribution of IP to the European economy and the joint comments of the OHIM and European Patent Office Directors on the EU copyright rules: "[\*European countries have played a major part in shaping a modern and balanced system of IP rights which not only guarantees innovators their due reward but also stimulates a competitive market.\*](#)"

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### **European Parliament approves the Juncker Commission**

The European Parliament voted today in favour of the new Juncker Commission by 423 votes to 209 (and 67 abstentions). The majority was made up of the European People's Party (EPP), the Socialists & Democrats (S&D) and the Alliance of Liberals and Democrats for Europe (ALDE) groups. Members from the European Conservatives & Reformists group (ECR) abstained, while those from the Greens, European United Left (GUE) and Europe of Freedom and Direct Democracy (EFDD) groups rejected the new Commission.

In line with recommendations made by the European Parliament's Committees following the confirmation hearings that took place over the last weeks, small changes to the portfolios were announced:

- The Slovenian Commissioner, Ms Violeta Bulc, will be responsible for the Transport portfolio;
- Mr Maroš Šefčovič (Slovakia), who had originally been given responsibility for the Transport portfolio, will become Vice-President in charge of Energy Union;
- Mr Frans Timmermans (Netherlands), First Vice-President, will have an additional responsibility for sustainable development;

- Mr Dimitris Avramopoulos (Greece), Commissioner in charge of Migration and Home Affairs, will also be responsible for Citizenship.

The Juncker Commission will take office on 1 November 2014. More information on the new structure of the Commission can be found [here](#).

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### **TERA Consultant Report - EU Creative industries account for nearly 7% of GDP**

A new study on the economic contribution of the creative industries to EU GDP and employment between 2008 and 2011 shows that the value added by the total creative industries (core creative industries plus non-core creative industries) in the European Union is approximately €860 billion, representing a 6.8% share of GDP. The core industries alone generates €558 billion in value.

Add to this the contribution to jobs – 8.3 million – and it is clear that the creative industries are a key driver of the EU economy.

[Click here for full report](#)

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## **Copyright and Creativity**

### **Copyright and Creativity – Evidence from Italian Operas**

A new study from researchers at Stanford University has produced evidence of a copyright fuelled boom of new operas in Italy after the introduction of French copyright laws following Napoleon's invasions of Northern Italy in the late 18th Century.

Economists, Michela Giorcelli and Petra Moser collected detailed data on 2,598 operas that premiered across eight states within Italy between 1770 and 1900 and found a significant increase in the number of new operas premiered per state and year. The study also shows that the number of high-quality operas increased – measured both by their contemporary popularity and by the longevity of operas.

States that did not benefit from new copyright laws did not experience the same boom. Study of the number of operas produced per state and year for states with and without copyright laws shows that states with copyrights produced 2.68 additional operas per year, which compared with a mean of 2.21 new operas per state and years, implies a 121 percent increase. Historically popular operas (as measured by the Annals of Opera) grew by 47 percent, and durable operas grew by 80 percent.

See Giorcelli, Michela and Moser, Petra, Copyright and Creativity – Evidence from Italian Operas (November 2, 2014). Available at

SRN: <http://ssrn.com/abstract=2505776> or <http://dx.doi.org/10.2139/ssrn.2505776>

For further commentary see also Danielle Kurtzleben in VOX: [Napoleon's conquest of Italy led to a copyright-fueled opera boom](#).

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## Legislation

### Slovakian Out-of-Commerce legislation in force

The Slovakian Out-of-Commerce legislation, based on the Extended Collective Licence (ECL) scheme, has come into force on 29 October 2014.

More information can be found on the website of the Slovak national library (<http://www.snk.sk/?zoznam-obchodne-nedostupnych-diel>, only in Slovak), together with the first part of the list of works ([http://www.snk.sk/swift\\_data/source/SNK\\_2014/ISBN\\_Obchodne\\_nedostupne\\_diela.xls](http://www.snk.sk/swift_data/source/SNK_2014/ISBN_Obchodne_nedostupne_diela.xls)), which are considered to be out-of-commerce, in case there are no objections within three months from the inclusion into the list.

The IFRRO member LITA is currently negotiating with the Slovak national library and LIC, responsible for the digitisation project, in order to provide a system for the making available of out-of-commerce works. The service is expected to be launched towards the end of 2015.

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### Spain approves amendments to the Copyright Act

On 15 October, the Spanish Senate (High Chamber) approved an amendment of the Copyright Act, which, in the view of CEDRO, the Spanish RRO will result in the weakening of collective management of authors' rights and copyright in Spain. The main aspects of the amendments concern private copying, the use of textual works for educational purposes, orphan works, control of RRO and other CMOs, and copyright enforcement, with a main focus on the fight against digital piracy. The text will have to be ratified by the Congress and then published in the Official State Gazette.

The changes reduce the scope of the limit of private copying, and creates a one stop shop for book, music and film users. On the other hand there are certain improvements regarding copyright enforcement in the digital environment. The text approved by the Senate also includes a legal licence for certain secondary uses of books and periodicals in universities. The amendment voted by the Senate now was presented by the Government as a provisional and urgent reform. That is why the text announces that work on a complete amendment of the law should start next year, in 2015. CEDRO is currently examining the consequences to its activities of the amended Law.

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## Enforcement

### Copibec launches \$4 million class action lawsuit for copyright infringement

Copibec, the Quebec RRO, has filed a motion in Quebec Superior Court for authorization to launch a class action on behalf of thousands of authors and publishers from Quebec, the rest of Canada and other countries around the world because their copyright protected works have been copied without permission by Université Laval.



On an annual basis, the Quebec City-based university copies more than 11 million pages from 7,000 different works published in Quebec, the rest of Canada or abroad and includes them in coursepacks sold to students or distributes them online via its secure internal computer network.

Until May 2014, Université Laval, like all other Quebec universities, held a comprehensive licence issued by Copibec allowing it to make those copies legally. However, the university's board of directors decided not to renew its licence and on May 21, 2014 put into effect a policy concerning the use of third-party works for teaching, learning, research and private study purposes ("Politique et directives relatives à l'utilisation de l'oeuvre d'autrui aux fins des activités d'enseignement, d'apprentissage, de recherche et d'étude privée à l'Université Laval").

See full [Press Release](#)  
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### **Major anti piracy raid performed by the German Police**

In a recent [anti-piracy operation](#) against the popular file-sharing site Boerse.bz, the German police have raided 121 homes. Boerse.bz allegedly offers over 100,000 files that include movies, TV shows, music, software and e-books without the necessary permission of the corresponding rights holders.

The Cologne Public Prosecutor announced that the raid was performed by a task force of more than 400 police officers and that the homes that were affected by the operation, belong to people believed to be active uploaders of the site. Police said that at the moment more evidence is being gathered and that no arrests have been made so far.

A preliminary conclusion estimates that Boerse is a "highly structured operation with a clear division of labour". After the raid, Boerse remains on line after switching to a new provider.

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## **Court Cases**

### **Academic publishers win appeal in U.S. "George State University" case**

On 17 October 2014, U.S. academic publishers won an important legal debate about digital access to copyrighted works under the U.S. "fair use" doctrine.

In a unanimous decision, a three-judge panel of the U.S. Court of Appeals for the 11th Circuit reversed the lower court's opinion in Cambridge v. Patton (often referred to as the "Georgia State University" or "GSU" case) and remanded the case back for further proceedings consistent with the appeal court's opinion.

The case concerns an initiative created by Georgia State University (GSU) since 2014, which let faculty members scan book and journal excerpts and host them in the university's e-reserves. Three publishers, Cambridge University Press, Oxford University Press and Sage Publications, claimed that GSU's actions constituted copyright infringements under the U.S. "fair use" doctrine.

The appeals court found that the four “fair use” factors under 17 U.S.C. § 107 should not have been given equal weight, but rather used in a “holistic analysis”, while also dismissing the “blanket 10-percent-or-one-chapter benchmark”. Instead, each excerpt should have been considered on its own: “If copyright’s utilitarian goal is to be met, we must be careful not to place overbroad restrictions on the use of copyrighted works, because to do so would prevent would-be authors from effectively building on the ideas of others. Some unpaid use of copyrighted materials must be allowed in order to prevent copyright from functioning as a straightjacket that stifles the very creative activity it seeks to foster. If we allow too much unpaid copying, however, we risk extinguishing the economic incentive to create that copyright is intended to provide.” (cf. page 4 of the opinion)

Accordingly, the appeals court concluded that the lower court “erred in giving each of the four factors equal weight, and in treating the four factors as a simple mathematical formula.” (cf. page 57 of the opinion) “The District Court should have analyzed each instance of alleged copying individually, considering the quantity and the quality of the material taken—including whether the material taken constituted the heart of the work—and whether that taking was excessive in light of the educational purpose of the use and the threat of market substitution.” (cf. pages 91-92 of the opinion) In addition, the ruling reconfirmed the role of collective management: “There exists a well-established system for the licensing of excerpts of copyrighted works. Copyright Clearance Center (“CCC”) (...) licenses excerpts from copyrighted works for a fee, acting on behalf of publishers who choose to make their works available through CCC.” (cf. page 9 of the opinion)

All in all, the lower court used a “legally flawed methodology in balancing the four fair use factors”. (cf. page 112 of the opinion). Because: “How much unpaid use should be allowed is the bailiwick of the fair use doctrine. To further the purpose of copyright, we must provide for some fair use taking of copyrighted material. This may be viewed as a transaction cost, incidental to the business of authorship. But if we set this transaction cost too high by allowing too much taking, we run the risk of eliminating the economic incentive for the creation of original works that is at the core of copyright and—by driving creators out of the market—killing the proverbial goose that laid the golden egg. Thus, the proper scope of the fair use doctrine in a given case boils down to an evidentiary question. As a conceptual matter, in making fair use determinations, we must conjure up a hypothetical, perfect market for the work in question, consisting of the whole universe of those who might buy it, in which everyone involved has perfect knowledge of the value of the work to its author and to potential buyers, and excluding for the moment any potential fair uses of the work. Then, keeping in mind the purposes animating copyright law—the fostering of learning and the creation of new works—we must determine how much of that value the implied licensee-fair users can capture before the value of the remaining market is so diminished that it no longer makes economic sense for the author—or a subsequent holder of the copyright—to propagate the work in the first place.” (cf. page 51 of the opinion)

Judge Roger Vinson highlighted in his concurring opinion that “(...) proper fair use analysis should focus primarily on the use of the work, not on the user. So, in analyzing fair use in a given case, the court should step back a little, just as you would at an art museum, and view the work and its use in its entirety. Viewed in this way, and after applying traditional common law principles to the use at issue here, this is a rather simple case. Checking the four statutory factors to ensure that they have been considered merely affirms the conclusion that what GSU is doing is not fair use.” (cf. page 115) And: “The digital format is merely another

way of displaying the same paginated materials as in a paper format and for the same underlying use. Electronic reproduction is faster, cheaper, and almost unlimited in its scope and duration, but there is no discernable difference in its use, purpose, and effect.” (cf. page 120) “In short, establishing market harm does not require a showing of lost profits, nor is it dependent on the availability of a digital license.” (cf. page 127)

The complete opinion is available here.

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### **Spanish Supreme Court refers case on private copying levies to CJEU**

On 18 September 2014, following an administrative appeal against the Royal Decree 1657/2012, filed by the Spanish CMOs VEGAP, EGEDA and DAMA concerning the legitimacy of the Spanish system of private copying levies, the Spanish Supreme Court has referred the following two questions to the European Court of Justice:

1. Is a private copying compensation system, that – taking as a basis the estimation of the actual damage – is financed through the State budget, thus not guaranteeing that the costs of this compensation are only supported by the users of the private copies, compliant with Article 5(2)(b) of Directive 2001/29/EC?
2. If the answer is in the affirmative, is it compliant with Article 5(2)(b) of Directive 2001/29/EC that the total amount set aside by the government for this compensation, which is calculated on the basis of an estimation of the actual damage, is conditioned on the budget restrictions for each financial year?

The Royal-Decree 20/2011 (in force as of 1 January 2012) established that the compensation for private copying would no longer be on the basis of a levy on reproduction devices, but rather obtained from the State budget (fixed at EUR 5 million per year for 2012 and 2013). Objective criteria for the calculation of the respective amount were set by Royal Decree 1657/2012 (in force as of 8 December 2012); its calculation and payment are being implemented every year. The procedure to determine the amount for 2013 in favour of authors, publishers, producers and performers is still in progress.

At the same time, the Spanish Copyright Act is currently being amended, with the High Chamber expected to pass the text in October. The amendment law as passed by the Low Chamber includes a severe reduction of the scope of the exception for private copying. If the High Chamber confirms the new definition of the private copying exception, the remuneration to be paid in the future is expected to be considerably lower, and the outcome of the case referred to the CJEU might, in the end, turn out to be of less importance for the calculation of the private copying remuneration in Spain.

The Spanish Supreme Court’s referral to the CJEU is [here](#) (in Spanish).

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### **CJEU Advocate General suggests adoption of new 'causal event' jurisdiction criterion for online copyright infringement cases**

On 11 September 2014, Advocate General (AG) Cruz Villalón released his [Opinion](#) in Case C-441/13, Pez Hejduk v EnergieAgentur.NRW GmbH, a reference for a preliminary ruling from Austria, seeking clarification as regards matters of private international law in online copyright infringement cases.

After reviewing all the possible jurisdiction criteria developed by the CJEU, ranging from the criterion of the 'centre of interests' to that of the 'intention to target', the AG decided that these could not be followed, and that a new 'causal event' jurisdiction criterion should be adopted, because in the event of "delocalised" damages over the internet, "the best option is to exclude the possibility to sue before the courts of the Member State where the damage occurred and reserve instead the competence to the judges of the Member State in which the causal event occurred".

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### **CJEU Advocate General concludes that there can only be "analogue" exhaustion**

Advocate General (AG) Cruz Villalón issued his [Opinion](#) (dated 11 September 2014) in Case C-419/13, Art & Allposters International BV v Stichting Pictoright, a reference for a preliminary ruling from the Dutch Supreme Court, clarifying the question whether a person who owns the copyright in a painting, who has previously consented to its marketing as a poster, can later object to the commercialisation of the same image transferred on canvas.

Inter alia, the AG reflected on the question whether EU law might allow digital exhaustion for subject-matter other than software, but concluded that there could be no exhaustion in the case at hand, because the alteration by Art & Allposters was particularly relevant: Given the relevance of the alteration in which the works had been commercialised, Pictoright had kept the right to control the distribution of the works' reproductions.

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### **CJEU : If there is fair compensation, Member States may permit users to print out on paper or store on a USB stick the books digitised by a library**

On 11 September 2014, the Court of Justice of the European Union (CJEU) has given judgment in Case [C-117/13](#), Technische Universität Darmstadt v Eugen Ulmer KG, a reference from the German Bundesgerichtshof (Federal Court of Justice).

In the case at hand, the university library digitised a book published by Eugen Ulmer, made it available on its electronic reading posts, but refused the offer of the publishing house to purchase and use as electronic books the textbooks Eugen Ulmer publishes. (IFRRO reported about the Advocate General's Opinion [here](#).)

The Court now held that scanning copyright-protected works forming part of libraries' and archives' collections may be undertaken by the libraries and archives in question, even if publishers offer electronic access or digital copies of such works on reasonable terms and conditions instead. Only where libraries and archives are bound by existing agreements to the contrary, will these actual agreements override reliance on the exception contained in Article 5(3)(n) of EU Directive 2001/29. Also, the EU Directive 2001/29/EC does not prevent EU Member States from granting libraries the right to digitise books from their collections, for the purpose of research or private study, to make these works available to individuals on dedicated terminals.

However, the right of communication, which may be held by publicly accessible libraries, cannot permit individuals to print out the works on paper or store them on a USB stick from dedicated terminals, as these are acts of reproduction, aiming to create a new copy of the digital copy made available to individuals. EU Member States may, nonetheless, provide for an exception or limitation to the exclusive right of reproduction, in order to permit the users of

a library to print the works on paper or store them on a USB stick from dedicated terminals, provided that fair compensation is paid to the rightholders.

The official Curia press release is [here](#), while the full text can be accessed [here](#)  
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### **CJEU rules that if a parody conveys a discriminatory message, a person holding rights in the parodied work may demand that that work should not be associated with that message**

On 3 September 2014, the Court of Justice of the European Union (CJEU) issued its [decision](#) in Case C-201/13, Johan Deckmyn and Vrijheidsfonds VZW v. Helena Vandersteen and Others, a reference for a preliminary ruling from Belgium, concerning the notion of parody under Article 5(3)(k) of the Information Society Directive 2001/29/EC.

As regards the characteristics of a parody (which must be defined in accordance with its usual meaning in everyday language), only two are essential: "to evoke an existing work while being noticeably different from it"; and "to constitute an expression of humour or mockery." A parody does not need to display an original character of its own, other than that of noticeable differences with respect to the original work parodied.

The CJEU further decided that there is a need to "strike a fair balance" between copyright protection and freedom of expression, and that the rightholder has "in principle, a legitimate interest in ensuring that the work protected by copyright is not associated" with a parody that conveys a discriminatory message. It is now for the Belgian court to determine whether the application of the exception for parody does strike a fair balance between the interests of the persons concerned.

The official press release is available [here](#). IFRRO reported about the Advocate General's Opinion [here](#).  
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### **CJEU clarifies that EU has external competence to negotiate international agreements on broadcasting rights**

The EU Court of Justice (CJEU) issued its [decision](#) in Case C-114/12, Commission v. Council, on 4 September 2014, concerning the EU's external competence to negotiate copyright-related treaties regarding an action for annulment. The case arose as a result of the dispute between the European Commission and the Council about the competence to negotiate a Convention of the Council of Europe on the neighbouring rights of broadcasting organisations.

According to Article 3(2) TFEU it is the exclusive competence of the EU for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

The CJEU underlined that, according to consistent case law, the scope of common EU rules may be affected or altered by international commitments also where those commitments fall within an area which is already largely covered by such rules. EU Member States may not enter into such commitments outside the framework of the EU institutions. The adoption of a Convention relating to the protection of neighbouring rights of broadcasting organisations

would relate to an area which has been harmonised at EU level, as is clear from the EU Directives [93/83](#), [2001/29](#), [2004/48](#), [2006/115](#) and [2006/116](#). Against this background, the CJEU concluded that the negotiations for a Convention of the Council of Europe on the protection of neighbouring rights of broadcasting organisations fall within the exclusive competence of the EU, and that the contested decision was adopted in breach of Article 3(2) TFEU.

The CJEU's complete decision is available [here](#), while Advocate General Sharpston's related Opinion is [here](#).

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### **Dutch court refers preliminary questions on the lending of e-books to EU Court of Justice**

As reported in a press release ([in Dutch](#)), the Court of Appeal of The Hague (The Netherlands) decided on 3 September 2014 to refer preliminary questions on the lending of e-books to the EU Court of Justice (CJEU). The case concerns The Dutch Association of Public Libraries v. Stichting Leenrecht.

The Dutch Court asks, inter alia, for clarification on the scope of the decision in Case C-128/11, [UsedSoft v. Oracle](#), delivered by the CJEU in July 2012, in which the CJEU established that, under certain circumstances, exhaustion of the distribution right within Article 4(2) of the Software Directive 2009/24/EC may take place for computer programs downloaded from the copyright holder's website.

In the recent [decision](#) of the Court of Appeal of Hamm (Germany), the German court upheld the earlier ruling of the Regional Court of Bielefeld (see: [IFRRO website](#)), and held that the right of distribution is not subject to exhaustion when it comes to digital subject-matter other than software, because the EU Software Directive is to be considered as *lex specialis* in relation to the provisions of the EU Information Society Directive. The *lex specialis* nature of the Software Directive has also been re-affirmed by the CJEU in its decision in Case C 355/12, [Nintendo](#).

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### **U.S. settlement ends four years of litigation over the inclusion of visual works in Google Books**

As informed in a press release by the American Society of Media Photographers, ASMP (see: [ASMP website](#)), a group of photographers, visual artists and affiliated associations have recently reached a U.S. settlement with Google. The agreement resolves a copyright infringement lawsuit filed against Google in 2010 ([ASMP et al. v. Google](#)), bringing to an end more than four years of litigation. The settlement, which does not need to be approved by the court, includes funding for the [PLUS Coalition](#), a non-profit organisation dedicated to helping rightholders communicate clearly and efficiently about rights in their works. Further terms of the agreement are confidential.

The plaintiffs in the case are U.S. rightholder associations and individual visual artists, including the IFRRO members ASMP ([American Association of Media Photographers](#)), APA ([American Photographic Artists](#)) and GAG ([Graphic Artists Guild](#)).

The parties highlight that this agreement does not affect Google's current litigation with the Authors Guild or otherwise address the underlying questions in that suit (see: IFRRO's



amicus curiae brief in this regard, available on the [IFRRO website](#).  
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## WIPO

### **WIPO CDIP: Study on collective management in the audiovisual sector**

A recent study on collective management in the audiovisual sector was prepared for the WIPO Committee on Development and Intellectual Property (CDIP): “Study on Collective Negotiation of Rights and Collective Management of Rights in the Audiovisual Sector”, undertaken in the context of the Project on Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries.

The study, which was prepared by Ms. Tarja Koskinen-Olsson, International Adviser, Olsson & Koskinen Consulting Oy, Helsinki, Finland, is available on the [WIPO website](#).  
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