



## SUBMISSION

To: European Commission DG GROW  
From: International Federation of Reproduction Rights Organisations (IFRRO)  
Re: **Roadmap: Intellectual Property Action Plan**  
Date: 14 August 2020

IFRRO<sup>1</sup> is the international network for national reproduction rights organisations (RROs) - the collective management organisations in the publishing sector - and national and international associations of creators and publishers across the world, with 155 members in more than 85 countries. RROs act on behalf of authors and publishers whenever the individual exercise of their rights is impracticable by giving access to copyright-protected works and enabling the reproduction and certain digital uses of these works.

IFRRO's mission is to develop and support an efficient and effective network of collective management organisations around the world, including RROs, to ensure the copyrights of authors, visual artists and publishers are respected when their works are reproduced and used.

IFRRO welcomes the Commission's recognition of the essential role of IPR, including copyright, and its benefit to the EU economy in its IP Action Plan Roadmap. We agree that balanced IP policies can help in putting the EU on track towards economic recovery from the crisis following the Covid-19 outbreak. This will be crucial as measures taken to combat the virus have resulted in cutting off many sources of revenue for authors, visual artists and publishers (see further details about the impact in our [report](#) on our member survey - May 2020).

There is an expectation that the pandemic will lead to permanent changes in remote working and education. Whatever the "new normal" turns out to be, it is vital that copyright and IPR enforcement rules are robust, fit for our evolving digital environment and properly implemented and enforced and that authors and publishers are not put further at risk.

We welcome the opportunity to provide feedback on the Commission's Roadmap and would like to make the following (non-exhaustive) comments on the five points put forward by the Commission to achieve its objective *"to ensure that the EU has in place well-calibrated and modern IP policies that contribute to the resilience and competitiveness of the EU's economy and facilitate the digital and green transition, benefitting the EU society as a whole"*:

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<sup>1</sup> International Federation of Reproduction Rights Organisations ([www.ifrro.org](http://www.ifrro.org)); Identification number in the EU Transparency Register: 860729437196-92

## **1. “Upgrade the system for IP protection”**

We welcome that the Roadmap highlights the importance of the prompt implementation of the Copyright in the Digital Single Market Directive ([2019/790](#)). It is also crucial however that national implementation of the Directive is balanced and interpreted in line with the spirit of the text, which aims amongst other things to ensure a fairer environment for authors and publishers for uses of their works. We are particularly concerned that the way exceptions are implemented could potentially have a detrimental effect. It is vital that the “three-step test” is fully respected.

The issue of AI and IP protection is an important one that merits an in-depth analysis and stakeholder consultation by the Commission, including with authors and publishers, before any proposals are put forward. It is, for example, important that creators’ rights are not put at risk when their works are created using AI.

## **2. “Promote a better uptake and deployment of IP”**

The proposal to provide support to mitigate the impact of the Covid-19 crisis is welcome. The Roadmap refers to helping “all SMEs, researchers, innovators etc. have access to information and advice on IP”. It is important that authors and publishers (most of which are SMEs or smaller) have access to such advice, including on copyright, so they are more aware of their rights and how to protect and enforce them.

## **3. “Promote better licensing and sharing of IP-protected assets”**

We welcome that the Roadmap promotes “better licensing” including e.g., promoting the “efficient use of high quality rights-management metadata in the copyright market”. We believe that “better licensing” is ultimately about making it even easier for users to copy / use works and at the same time ensuring that authors and publishers of those works are rewarded. This is vital if EU citizens want to continue to enjoy quality, innovative and culturally diverse content and also for the EU’s competitiveness and economy.

Collective management of rights has evolved with technology – and continues to do so – meaning that it is easier than ever for RROs to quickly respond and adapt to users’ needs. The response of RROs during the Covid-19 crisis – for example, enabling remote learning, supporting home working, developing entirely new licences, such as for online book readings - demonstrate the importance of the collective licensing sector in providing innovative licensing solutions, flexibly balancing the interests of rightsholders and users.

## **4. “Fight IP theft”**

It is positive that the Roadmap addresses the current unacceptable high level of piracy and counterfeiting, which is a major concern to those who create and publish works.

In recent months, with economies closing down and people staying at home, the publishing sector has seen an increase in online piracy, with millions of copies of books, along with newspapers and

magazines, being traded or made available across the world illegally, including in the EU. For more details, see [here](#).

Suggestions such as strengthening the responsibilities of online platforms through the Digital Services Act and monitoring the application of the IPR Enforcement Directive (2004/48/EC) “to ensure it is effective and balanced” are a step in the right direction. The recent CJEU ruling Constantin Film v YouTube (C-264/19), which interpreted IPRED Article 8(2)a, would seem to make it difficult for rightholders to challenge infringers by limiting information about the infringer to their physical address, not their email address, telephone number and IP address used to upload those files. It is essential to ensure that authors and publishers have effective tools to enable them to properly enforce their rights. Otherwise, the fight against piracy will be much more difficult.

Robust enforcement of copyright rules is also essential when it comes to ensuring legal income streams via the collective management of rights. So, while we welcome EU copyright legislation that makes exceptions subject to fair compensation, this is meaningless if EU Member States do not ultimately apply these rules and the Commission does not subsequently take action against them.

For example, while the exceptions relating to the reproduction of works under Articles 5.2a and 5.2b of the “InfoSoc” Directive (2001/29/EC) are allowed only on the condition that “rightholders receive compensation”, not all Member States that apply those exceptions provide a mechanism for compensation. This is detrimental to both rightholders (national and foreign), who are deprived of significant amounts of revenue, as well as the economy.

Furthermore, despite a Directive on rental and lending right being in place since 1992, and reconstituted in 2006 (2006/115/EC), requiring EU Member States provide authors with an exclusive right to lend out their works or at least provide them with remuneration for the lending out of their works, some Member States have failed to do so or have implemented the Directive in a way that is derisory (e.g., the payments are so small that implementation is not effective).

We hope that the new IP Action Plan will see the Commission being more pro-active in taking action against Member States that blatantly fail to implement IP legislation, sending a clear message that these rules are important and that there will be consequences for non-compliance.

## **5. Promote a global fair play**

We support the idea of promoting global fair play and harnessing the EU’s capacity to act as a global standard-setter in key areas such as IP.

Stepping up technical co-operation and engagement in dialogues with the developing world, as suggested, is also important in contributing to high global standards and compliance with international treaties. It also helps ensure that authors and publishers around the world, including from EU Member States, have adequate legal protection and are able to enforce their rights. This builds confidence and inclusivity into the global IP system, ensuring that it is not perceived as benefitting only developed countries.

It is equally important that there is respect for IP in all third countries, both developing and developed, that the EU is trading with and where EU companies are also operating. It must be clear to all these countries that non-application of IPR provisions in trade agreements is unacceptable. For example, a change to the law in Canada resulted in revenues from collective licensing in education dropping by 80% between 2012 and 2017.

We believe that in its role as a global standard-setter, the EU should continue playing its important role at WIPO, supporting a balanced approach to copyright. We also are of the view that the EU must voice concerns with its counterparts when authors and publishers or businesses are deprived of legitimate revenues due to detrimental initiatives. More recently, the creation of a “National Emergency Library” by the Internet Archive, made 1.4 million digitised books freely available for download, around the world. Many of these books were written by European authors, impacting not only their markets in third countries but also in the EU.

We thank the Commission for this opportunity to provide feedback on its IP Action Plan Roadmap and look forward to continuing our engagement with the Commission in this important field. Should the Commission have any questions, please do not hesitate to get in touch with the IFRRO Secretariat.

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