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Directorate General Internal Market and Services

Report on the responses to the Public Consultation on the Review of the EU Copyright Rules

***Directorate General Internal Market and Services
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This is an information document prepared by the Directorate General for Internal Market and Services of the European Commission and it reflects the views of the respondents to the public consultation. It does not set out any official position of the European Commission.

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I. INTRODUCTION

The public consultation on the review of the EU copyright rules was held between 5 December 2013 and 5 March 2014. The consultation covered a broad range of issues, identified in the Commission communication on content in the digital single market¹, i.e.: *'territoriality in the Internal Market, harmonisation, limitations and exceptions to copyright in the digital age; fragmentation of the EU copyright market; and how to improve the effectiveness and efficiency of enforcement while underpinning its legitimacy in the wider context of copyright reform'*. The objective of the consultation was to gather input from all stakeholders on the Commission's review of the EU copyright rules.

II. OVERVIEW OF RESPONDENTS

The public consultation generated broad interest with more than 9,500 replies to the consultation document and a total of more than 11,000 messages, including questions and comments, sent to the Commission's dedicated email address. A number of initiatives were also launched by organized stakeholders that nurtured the debate around the public consultation and drew attention to it².

All replies have been published on the public consultation website, in anonymous form where required, at:

http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm.

The consultation document can be found at the same address.

For the purpose of structuring the input and replies, respondents to the consultation were asked to indicate to which general group they belong among the following categories:

1. End users/consumers: responses from this category were mainly received from individual citizens, internet users and consumer associations, as well as (particularly with regard to the questions on research and text and data mining) from researchers and their representatives.
2. Institutional users: responses from this category came from institutions such as public libraries, museum, archives, film heritage institutions, universities and research centres as well as from individual teachers and librarians and organisations representing them.
3. Author/performer or representative of authors/performers: responses were mainly received from authors in different sectors (writers, journalists, composers, etc.) and

¹ COM (2012) 789 final, 18/12/2012.

² These include, for example, initiatives like "Fix copyright!", "Creators for Europe", and "Copywrongs.eu".

their representatives as well as from performers (actors, musicians, etc.) and their representatives

4. Publisher/producer/broadcaster or representative of publisher/producer/broadcaster: responses in this category came from a wide range of stakeholders across the creative industries such as book, newspapers and scientific publishers, music publishers, music producers, film producers, game producers as well as public and private broadcasters.
5. Intermediary/distributor/other service provider or representative of intermediary/distributors/other service providers: responses were received from a wide range of service providers in the entertainment/media sectors, such as internet service providers, internet platforms, film distributors, telecom companies and their representative organisations.
6. Collective management organisations (CMOs): responses came from collective management organisations across different creative sectors and their European and international representatives.
7. Public Authority: only few responses from public authorities (e.g. regions) other than Member States were received. For the purposes of this report they are dealt with together with responses received from Member States.
8. Member State: 11 EU Member States responded to the public consultation: Denmark, Estonia, France, Germany, Ireland, Italy, Latvia, the Netherlands, Poland, Slovakia, and the United Kingdom.
9. Other: a broad range of those who responded identified themselves as being in the 'other' category. They mostly included academics and copyright experts, and associations representing these stakeholder groups but also non-governmental organisations and different civil society coalitions that did not identify themselves under any other category.

The following table shows the self-declared category affiliation of survey respondents as published in the consultation website:

	Registered in the EU transparency register	Non-registered in the EU transparency register.	Anonymous respondents – Registered	Anonymous respondents - Non Registered	Total	%
End users/Consumers	81	4224		1317	5622	58.7
Authors/Performers	97	1612	8	659	2376	24.8
Institutional Users	67	222		16	305	3.2
Publishers/Producers/Broadcasters	105	623	4	97	829	8.6
Service Providers/Intermediaries	34	74	2	3	113	1.2
Collective Management Organisation	51	47	1	10	109	1.1
Member States		11			15	0.2
Public Authorities	2	11			13	0.1
Other	66	121		12	199	2.1

The consultation allowed respondents to identify themselves under more than one category. Many respondents used this possibility. This needs to be kept in mind when considering any classification of respondents into categories. Respondents were also allowed to submit anonymous contributions or to request their contribution to be published anonymously.

This report summarises the position of the different categories of stakeholders for each group of questions, following the structure of the consultation document. We have taken the utmost care to provide an analysis that accurately reflects the submissions of survey respondents within the space limitations of this report. Each section heading refers to the questions relevant to the section. A full list of questions, with their numbering, is provided in the Annex.

III. RIGHTS AND THE FUNCTIONING OF THE SINGLE MARKET

1. Cross-border access to online content (Questions 1 to 7)

Respondents were asked whether they had faced problems when trying to access/seeking to provide online services across borders, and to share their experiences/views as regards multi-territorial licensing and territorial restrictions. Views were also sought on whether further measures (legislative or non-legislative, including market-led solutions) beyond recent

initiatives such as the Collective Rights Management Directive³ and the Licences for Europe dialogue would need to be taken at EU level to increase the cross-border availability of content services in the single market, while ensuring an adequate level of protection for right holders.

End users/consumers

The vast majority of end user/consumer respondents report facing problems when trying to access online services in another EU country. They state that they are regularly confronted with access restrictions depending on the geographic location of their IP address.

Concrete examples were given. Many report seeking to view a video online via YouTube, but being blocked by a national collective management organisation for copyrighted content. Others signal the lack of access to popular video on demand services such as Netflix and the BBC iPlayer, which are currently only available to the residents of some EU Member States. Music services such as iTunes and Spotify are also criticised for either not being accessible in certain countries or only featuring a limited online catalogue compared to the one they offer in other countries. More generally, consumer report being frequently confronted with messages indicating that a given item of content/service is not available in their country. The experience is all the more frustrating, some say, when it happens to people seeking to view or listen to content from their home country when in another EU country.

For some services, consumers/end users report being redirected to a national website when trying to access the same service in a website with a different geographical location. Consumers argue that this negatively impacts their freedom of choice, by being forcefully limited to a national selection of content while different or more extensive content is available to residents of other EU countries.

Respondents highlight that the redirection to national online stores and the consequential separation of markets along national borders often leads to price discrimination and different conditions for identical products and services depending on the Member State. Some note that when, for example, wanting to buy a video game online, the price for this product may be higher on their national web shop version than on web shops in other EU countries.

Some respondents also report that digital rights management systems and technological protection measures used by service providers to enforce territorial restrictions make it difficult or even impossible to access their own national services or products they have bought online when travelling or living abroad.

In general, end users/consumers would like to be able to access all content from any online stores whether directed to the Member State in which they reside or not. At the minimum,

³ Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

many consumers say, there should be transparency as to the possibilities of accessing content cross-border and on territorial restrictions. They consider the blocking of content to be mostly arbitrary and unpredictable.

Some end users/consumers call for a ‘common copyright’ in Europe (sometimes indicating the ‘Wittem’ Project - www.copyrightcode.eu - as an example). These users believe that a single copyright title would do away with territorial restrictions and allow for content to be freely accessed, purchased and transferred across the entire EU market.

Institutional users

Libraries report that it is very difficult to negotiate licences and manage subscriptions for multiple Member States. Universities point to problems that students face in accessing online educational resources when they are not resident in the country of the university (e.g. students of online courses). Some institutional users also note problems with access to cultural content by users from the same language group residing in different EU countries.

Institutional users generally consider that territoriality of copyright creates problems in particular in the area of exceptions, where a higher level of harmonisation is needed.

Some institutional users acknowledge that problems with cross-border provision of copyright protected content stem not only from the fact that copyright is territorial but also from technological, regulatory and taxation differences between EU Member States. Many respondents consider that market-led solutions have not proven to be effective and that harmonisation measures, also in areas going beyond copyright, are necessary to improve cross-border availability of cultural content. Some libraries and universities also point to problems with the identification of rights and rightholders and call for more transparency on these issues and for simplified licensing mechanisms.

The great majority of respondents in this category consider that further measures are needed to increase the cross-border availability of services in the single market.

Authors/performers

Authors and performers generally consider that the deficit of cross-border accessibility of content does not result from the fact that copyright is territorial or from problems in licensing. They highlight that multi-territorial licences are available (at least in the book, image and music sectors) and that service providers’ commercial decisions determine how, when and where services distributing digital content are rolled out. Very often, authors and performers argue, there is no demand for cross-border services and therefore no business case for service providers. Cultural, language and regulatory differences between Member States are cited as among the reasons for territory-based services. For example, according to authors and performers, providers of audio-visual services prefer to roll out services on a territorial basis due to the required contextualisation and versioning. They also highlight that in the audio-visual sector territorial roll-out with exclusive distributors per territory is a tool for rightholders to secure adequate financing at the pre-production stage.

According to some authors, the only licensing-related problems in the music sector are due to the fragmentation of the Anglo-American repertoire between collective management organisations and publishers. They believe that the problems with licensing in the music sector should be alleviated by the newly adopted Collective Rights Management Directive and market-led solutions such as the Global Repertoire Database.

As regards the way forward, the vast majority of authors and performers consider that further measures to increase the cross-border availability of content are needed. However, many respondents consider that these measures should be taken in areas such as consumer protection, payment measures and VAT and not in the area of copyright.

Publishers/producers/broadcasters

Record producers state that they grant EU-wide cross-border licences and in some cases also worldwide licences. They emphasise the wide offer of online music in Europe and the fact that music services are portable across borders. In their view there is no clear evidence that problems with cross-border access exist in the music sector, including any unsatisfied consumer demand for cross-border access. Record producers point to the fact that many digital platforms elect to roll out services on a gradual country by country basis, for commercial reasons, and to adapt their services to consumers' needs and tastes in each country. They state that many non-copyright factors are also involved in the development of services across borders, and require considerable investment, such as negotiating deals with local operators, including internet service providers (ISPs), mobile networks, advertisers, and payment providers. *Music publishers* generally consider that the territoriality of copyright does not cause them problems as they commonly grant multi-territorial licences. However, in some cases service providers prefer to be licensed on a territory-by-territory basis because their services are intended for only one or a few territories. Music publishers generally answer that they do not impose any territorial restrictions on their licensees and that when limitations exist, they are a result of the service providers' choice.

The vast majority of record producers and music publishers do not think that measures are needed at EU level to increase the cross-border availability of content. They point to the fact that the market is delivering with multiple services and millions of songs available to European citizens

A large part of *broadcasters* state that there is often no incentive to provide services in several Member States because of various considerations including viewing habits of consumers, consumer demand, language, ability to provide consumer support in more than one language, cost of marketing, etc. The majority of broadcasters see a need to restrict rights on a territorial basis and to guarantee full exclusivity to distributors who are pre-financing productions to enable them to make return on their investment. They also emphasise the role this form of financing plays in maintaining cultural and linguistic diversity. Some broadcasters say that the market is naturally moving towards addressing demand for cross-border delivery of content where it is economically significant. Many *commercial broadcasters* emphasise that there are

no legal obstacles to the trade in audio-visual productions on a multi-territorial basis. Some broadcasters report having problems in acquiring multi-territorial licences for music.

Broadcasters' views are split on whether further measures are needed at EU level in the area of territoriality: some broadcasters (mostly commercial) do not see any need for legislative change, while others, in particular public service broadcasters, see a need for some legislative changes. In particular, many *public service broadcasters* call for the application of the country of origin approach to online media services (as a minimum to broadcast-related online services). They also call for the system currently applicable to cable retransmission under the Satellite and Cable Directive⁴ to be applied also to simultaneous retransmission of broadcasts via online platforms. Moreover, public service broadcasters emphasise the need of finding effective rights management solutions for on-demand services which are related to linear programmes (e.g. catch-up TV) and which can be offered by the broadcaster itself or by third parties. They suggest that the system of extended collective licensing of the underlying rights to works and other subject matter used in broadcast programmes could be a solution. Finally, public service broadcasters call for the extension of the broadcasters' neighbouring right to protect their signals on whatever platform against unauthorised alteration or other use by third parties. A minority of broadcasters state that there is a general need to improve the licensing schemes in Europe and to encourage one stop licensing

Film producers in general point out that service providers mostly cater to national or specific linguistic audiences and therefore are not interested in multi-territorial licences except for territories in which the same language is spoken. Multi-territorial distribution can be very costly as it involves targeted local advertising campaigns, employing multilingual staff for customer services, the use of different delivery networks, operating in territories with varying internet costs, broadband penetration and VAT rates, etc. Further harmonisation in those fields could reduce costs and incentivise licensing on a broader territorial scope. Some film producers say that territorial restrictions in licences are needed as without them distributors that pre-finance productions would not have the capacity to finance new films. Film producers generally consider that the current EU copyright rules should not be changed.

In the print sector, *book publishers* generally consider that territoriality is not a factor in their business, as authors normally provide a worldwide exclusive licence to the publishers for a certain language. Book publishers state that only in the very nascent eBooks markets some licences are being territorially restricted. Book publishers also generally do not see a need for changes to the EU copyright rules. *Newspaper and magazine publishers* in general take the same view. They believe that when territorial restrictions exist, they are the consequence of commercial choices. This stakeholder group points to projects such as the Press Database and Licensing Network, as examples of how rightholders can manage cross-border and multi-territorial licensing.

⁴ Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

Collective Management Organisations (CMOs)

CMOs state that they are generally willing to grant and do grant multi-territorial licences. However, demand by service providers for multi-territorial licences varies across sectors and it is especially limited in the audio-visual sector. CMOs active in the audio-visual sector consider that a framework to remunerate audio-visual authors should be established, failing which, they say, it is impossible for them to offer multi-territorial licences. Moreover, demand for multi-territorial licences depends largely on the repertoire the CMO holds. In the music sector the more popular repertoires are often licensed on a multi-territorial basis. Multi-territorial licences are also often demanded in the fine arts and artistic photography sector.

CMOs mention that in some cases licences are territorially limited as a result of right holders granting them territorially limited mandates. CMOs in the audio-visual sector state that in some instances, territorial limitations in granting licences are a necessary consequence of the exclusive territorial distribution of audio-visual works. Some CMOs argue that imposing multi-territorial licensing could endanger services that cater for the specificities of local customers. They also find that the demand for multi-territorial access to copyright protected content is not that strong yet and that digital distribution in this area is still a distant second to distribution of physical goods.

In general, the great majority of CMOs do not see any need to intervene on copyright although many see the need for action in other areas, such as taxation. CMOs in the music sector consider that the results of the Collective Rights Management Directive should be awaited before considering taking further steps.

Intermediaries/distributors/other service providers

Service providers distributing digital content point to the lack of information on content (such as who represents particular rights and for which territories) as a major problem for the clearance of rights and licensing in the single market. Fragmentation of repertoire in the music sector, the need to contract with multiple licensors and the inefficiency of CMOs are also quoted as obstacles to launching services. Some service providers (e.g. video on demand – ‘VOD’- platforms) indicate that they are contractually required to prevent cross-border access to their content as a result of territorial licensing. This means that VOD operators can only make the content available in a given country and have to put in place digital rights management measures (geo-blocking of foreign IP addresses) which prevent cross-border access and portability of services.

Service providers also refer to a number of non-copyright related factors that are taken into account when deciding on the potential multi-territorial roll out of services, including the cost of compliance with divergent consumer protection laws; national rating systems; protection of minors obligations; taxation; release windows; private copying regulations; the cost of contextualisation (i.e. market-specific marketing) and versioning (subtitling and dubbing); the cost of providing customer care and responding to customer complaints in several languages; no common technical standards for content delivery; the risk of fraud and non-payments and

the diverse economic realities which make a single price impossible; lack of digital infrastructure/access to high speed broadband; and difficulties in payment processing; divergent advertiser preferences..

Finally, providers of audio-visual services point to insufficient demand for cross-border services. Such demand is limited to areas with common language and to migrant populations.

The vast majority of service providers believe that further measures are needed to increase cross-border availability of content. Service providers call for the simplification of the licensing process in the single market. Some emphasise the need to develop right information initiatives such as the Global Repertoire Database and to enhance the transparency of who owns the repertoire. Other call for one-stop-shop licensing based on the country of origin principle and for imposing obligations to license on CMOs. Numerous service providers raise the issue of cross-border portability of services – they argue that licences should allow them to continue serving customers who have paid for the content when they travel within the EU. Some also call for a harmonised VAT on online services and content.

Member States

Those Member States who responded to the public consultation consider that there is no major problem of lack of cross-border access to content online, whilst recognising that this is an important issue to discuss. Some Member States are open to consider new legislation if needed but the general message is that no urgent action is necessary. The market is dynamic and new solutions are emerging spontaneously. Some Member States mention the Licences for Europe dialogue and stress the importance to foster market-based solutions (for example on content portability) to improve cross-border availability of content and more in general to enhance legal offers. Sectors are not all the same and specificities of each of them need to be taken into account.. The need to preserve cultural diversity and consumer preferences is also highlighted. Member States consider that the market, the implementation of the Collective Rights Management Directive (and more in general the role played by Collective Management Organisations) as well as the case-law of the Court of Justice should help improve the cross-border availability of content.

Other

Academics are divided on the issue of cross-border availability of copyright protected content with some claiming that problems are limited to situations where rights are in different hands and others making more general statements on problems related to multi-territorial licensing.

The latter group believes that problems in licensing are limited to the music sector and points to the Collective Rights Management Directive as the potential solution, and argues that its effects over time must be assessed before any other potential steps are taken. They emphasise that rightholders should be able to license for certain territories only, for instance to avoid territories with a high level of infringements and a low level of enforcement.

2. The rights relevant for digital transmissions: the ‘making available’ and the ‘reproduction’ rights (Questions 8 to 10)

These questions concerned the scope of the rights that apply to digital transmissions: the making available right and the reproduction right. Respondents were asked whether there is a need for more clarity as regards the scope of the making available right in cross-border situations and what type of clarification would be required (for example, using the ‘country of origin’ or the ‘targeting’ approaches). Views were also sought on potential problems raised by instances where the reproduction and the making available rights apply together to a single act of economic exploitation.

End users/consumers

Not many end users/consumers express a view on these questions. Of those that do, a large majority finds the scope of the making available right unclear. Some consumers question the notion of the right of ‘making available’ altogether stating that it extends the scope of copyright in a legally ambiguous manner. Organisations representing consumers generally regard the scope of the making available right as unclear.

As to the possible solutions, views are divided. Certain individual consumers and organisations representing them express a preference for the country of origin approach, claiming that targeting seems more complex and difficult to apply in the online world. Others consider that the country-of-origin approach would require a much higher level of harmonisation of copyright law at EU level than at present and therefore see the targeting approach as more suitable for now.

Most of the end users/consumers who responded to these questions consider that the practice of licensing the reproduction right and the making available right separately is not fit for purpose in the digital environment as it adds complexity and affects the availability of content. This view is also put forward by consumer organisations. Some consumers advocate a single right for online exploitations and some advocate eliminating the making available right and applying the traditional rights of communication to the public and reproduction instead.

Institutional users

Only few institutional users express a view on the scope of the making available right. The vast majority of those consider that the scope of the making available right is not clear. Many institutional users consider that the best solution for the territorial scope of the making available right would be to introduce the country-of-origin principle, which they believe would facilitate their clearing of rights and offer most legal certainty. However, some respondents find that there would still be some uncertainty regarding the criteria to establish the country of origin (e.g. server location, domain address, residence of the uploader).

Institutional users are generally strongly against the introduction of a targeting principle. They consider that such a principle would make it much more difficult to clear rights, in particular

for cultural institutions with a vocation to be European-wide, such as Europeana, which, by definition, target the entire European Union when making cultural heritage available online.

Authors/performers

Authors and performers are divided as to whether the scope of the making available right is sufficiently clear. They are in principle opposed to the country of origin approach as a solution for clarifying the territorial scope of the making available rights and indicate potential problems with forum shopping. They point out that the notion of targeting is vague in many cases (e.g. content in popular languages). The act of making available, according to authors and performers, should take place in the country of upload and in all countries where the content can be accessed. Authors do not view the application of two rights to online exploitation as a concern but rather as a normal consequence of the application of the copyright rules.

Authors and performers generally do not see the need for any change in this area. Many state that legislative intervention, limiting the scope of the making available and/or reproduction rights (e.g. by introducing a unitary right) and thereby hindering the ability of rightholders to license their works, would go against the EU's obligations under international treaties.

Publishers/producers/broadcasters

Record producers and *music publishers* generally take the view that the scope of the making available right is sufficiently clear and state that applying multiple rights to a single act of economic exploitation in the online environment does not create problems. *Film producers* believe that the scope of the making available right is sufficiently clear and argue that as in practice the rights are bundled in the hands of the producers, problems do not arise when applying the two rights in the audio-visual area. *Book and other print publishers* do not consider either that the scope of the making available right lacks clarity, nor do they see the application of two rights as a problem. *Broadcasters'* views are divided on the issue. Some do not see a problem with the scope of the making available right. This is the case of many *commercial broadcasters* which claim that any potential issues regarding the making available right can be dealt with through commercial negotiations. Others state that a clarification of the scope of the making available right is needed to improve legal certainty. In particular, many *public service broadcasters* call for the introduction of a country of origin approach and oppose targeting claiming that it does not provide necessary legal certainty and complicates rights clearance because of the difficulty in establishing criteria which will determine whether a territory has been targeted. On the application of the two rights a large proportion of broadcasters indicate that if the reproduction is only ancillary to the given form of exploitation, it should be assumed that the licence for the main copyright act (i.e. the making available) also covers such ancillary reproductions. Others indicate that in such a situation both rights should be licensed together.

Record producers, music publishers, film producers and most *book and other print publishers* do not see a need for action at EU level. They argue that the current licensing system works

fine and businesses have adapted with ease to licensing two rights for some time. They signal that there are several industry-led initiatives (e.g. multiterritory licensing hubs) that work to lower transaction costs and combine licences for both rights in the same contract.

Collective management organisations (CMOs)

Most CMOs state that no licensing problems arise from the fact that both the reproduction and the making available rights have to be licensed for the digital exploitation. They also generally hold the view that the scope of the making available right is sufficiently clear. Only some CMOs point to the lack of clarity as to the territorial scope of the making available right. CMOs consider that there is no need to intervene on the definition of rights. A majority of CMOs state that the introduction of a country of origin approach for the right of making available would not be appropriate, as it would lead to forum shopping of service providers. CMOs are generally of the opinion that this right should be licensed in every territory in which the work can be accessed.

Intermediaries/distributors/other service providers

Many service providers consider that the application of two rights to a single act of exploitation increases transaction costs, as they have to contract with multiple licensors and make multiple payments. This can lead to an inability to license and, in consequence, to underserved markets.

These respondents argue that distinguishing between rights is not justified where there is a single act of exploitation and call for the introduction of a single right for digital transmission. Each right in isolation is without economic value. They say that reproduction is an irrelevant component of the subsequent on-demand communication to the public and as such should not be treated as a relevant act at all. Others argue that if both rights apply, they should be licensed by the same licensor or only licensors offering both rights should be able to offer multi-territorial services (for this reason CMOs mandates should correspond to categories of actual economic uses of online services).

As to the clarity of the definition of the making available right, this category of respondent is divided, with some claiming that the definition is sufficient and does not need further clarification and some calling for such a clarification.

Member States

Some Member States that responded to the public consultation point to some lack of clarity with regard to the scope of the making available right and the boundaries between the rights of making available and reproduction. One Member State explicitly indicate that the scope of the making available right should be further clarified and another believes that bundling the communication to the public and the reproduction right should be seriously considered. Reference is also made to national case-law on the relationships between making available and reproduction rights. However, Member States generally consider that this area does not require action as a matter of priority.

Other

Academics indicate that the introduction of a country-of-origin approach to the making available right would not be justified for interactive on-demand scenarios (as opposed to satellite broadcasting linear transmission scenario) and they would favour a targeting approach as it maintains the substantial connection between the territorial scope of the right and the actual exploitation. Academics also consider the country-of-origin approach would cause problems because of a currently insufficient level of copyright harmonisation in the EU (the examples of moral rights, copyright contract law and enforcement are given). Moreover, they argue that applying the country- of- origin principle would be to the detriment of small and medium-sized companies as it would enlarge the territorial scope of licensing and consequently increase licensing fees. Some academics state that the country-of-origin approach would not be consistent with the right of making available under international law (Article 8 of the WIPO Copyright Treaty -WCT).

A number of academics oppose both the country-of-origin (for reasons listed above) and the targeting approach, indicating that the targeting could lead to uncertainties in cases where the targeted countries could not be defined unambiguously – the examination of the intention of the provider may help to a certain extent but the possibility of the actual access should not be set completely aside. Others argue that the country-of-origin would be the ultimate solution to facilitating the rights clearance process and pave the way for more efficient licensing in the area of online communications. Such an approach would however require deeper harmonisation of copyright rules preferably by way of a unitary copyright title.

Academics generally indicate that, from a user's perspective, the application of two rights to a single act of economic exploitation creates problems if those two rights are exercised by separate entities (especially if one is a CMO and one a publisher). However, some emphasise, that, in general, the application of two rights to a single economic exploitation does not create problems. All relevant rights are usually in the hands of one entity (except for rights in musical works) and the application of two rights to a single act of exploitation is not a novelty e.g. all broadcasting licences include more than one right. In the unique case of musical works the problems should be solved by the Collective Rights Management Directive and market-led licensing mechanisms. Others argue that it can be disputed whether the provider of a pure streaming service needs to clear the reproduction right or not and that a differentiated approach is required.

Some propose to redefine the rights by replacing the currently technical notion of reproduction by a more normative interpretation that factors in the economic impact of a digital reproduction. If the technical copy has no economic significance, it should not count as reproduction. They suggest that this could be done by integrating the current exception for

transient copying – Article 5(1) of the Infosoc Directive⁵ in the definition of the reproduction right.

3. Linking and browsing (Questions 11 and 12)

These questions concerned linking and browsing and copyright, in particular whether these acts should be subject to the authorisation of the rightholder.

End users/consumers

The vast majority of end users/consumers consider that hyperlinks to a work or other protected subject matter should *not* be subject to authorisation by the rightholder. They emphasise that the ability to freely link from one resource to another is one of the fundamental building blocks of the internet. Users do it every day when they post a Facebook update, put a tweet on Twitter, write a blog post, comment, etc. This is why hyperlinking should not be considered an act of communication to the public. Some users explicitly state that embedded and framing links should be treated in the same way as surface links while others acknowledge that there might be a difference meriting different treatment.

Respondents point to the fact that the Court of Justice of the EU (CJEU) decision in Case C-466/12 *Svensson*⁶ did not specify whether the person who provides the link would have to check whether the website linked to had permission to make the content available to the public. They argue that this would mean too much legal uncertainty for those providing the links.

Almost all end users/consumers consider that browsing should not require rightholders' authorisation as it is akin to reading. Reading, viewing or simply listening to a work has never been subject to copyright and this should not change.

Institutional users

The vast majority of institutional users believe that the provision of a hyperlink to publicly available content that is protected by copyright should not be subject to the authorisation of the right holder. They consider that the *Svensson* case does not provide enough clarity on the matter and suggest that the Commission should clarify that hyperlinks fall outside the scope of copyright, or that a specific exception should be introduced for cases where it is considered that hyperlinks are covered by copyright.

Almost all institutional users consider that browsing should not require rightholders' authorisation, as it amounts to viewing, reading and listening. Making browsing subject to

⁵ Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

⁶ Case C-466/12 (Nils Svensson and Others v Retriever Sverige AB), judgment of 13.2.2014.

such authorisation would create legal uncertainties and undermine a core function of the internet.

Authors/performers

The vast majority of authors and performers believe that the provision of a hyperlink to publicly available content should, at least in some cases, be subject to the authorisation of the right holder. Some authors and performers indicate that authorisation should be required for embedded or framed links within websites, since the owner of the website displaying works may generate advertising revenue by keeping the viewer on its website. This is at the expense of the rightholder whose opportunity to generate advertising revenue from the same viewer is curtailed. Rightholders claim that such practices also encourage and perpetuate downstream copyright infringement as viewers cannot identify the source of the work. In the same way, authors and performers consider that authorisation should be required where a link bypasses content access protection. They also consider that services based on systematic commercial linking - in which the content is chosen primarily by the service provider rather than the service user - should be subject to authorisation.

Many authors and performers also believe that browsing websites *should* be subject – at least in some cases - to the right holder's authorisation. Some of them hold that viewing websites should not require authorisation as long as it does not have its own economic value (while commercial services should require authorisation). They also hold that the exception covering temporary and transient/incidental copies set out in Article 5(1) of the InfoSoc Directive should not apply to temporary reproductions on illegal sites.

Collective management organisations (CMOs)

CMOs argue that the rightholder's authorisation should be required whenever the provision of a hyperlink leads to a work or other subject matter protected by copyright. They consider that linking results in an act of communication to the public that is copyright-relevant. Some CMOs criticise the CJEU's *Svensson* decision and consider that hyperlinks may be directing a 'new public' to protected content since the public using the link may be different from the public which was expected to consult the work directly on the website (in such cases, CMOs argue, the link is 'extending' the public).

Some CMOs distinguish between referencing links (surface links) which have, in their view, no legal relevance and embedded and/or framing links (providing a direct connection to a specific work) which should be subject to authorisation: rightholders normally want the work to be made available under their own conditions. CMOs argue that websites using embedded or framed links often bundle links for commercial purposes (e.g. a website that offers embedded YouTube videos of all the songs that are currently in the top 100). These websites free ride on the content licensed to other services and compete with these services. It is vital, CMOs also argue, that the legislation protects rightholders and licensed service providers by ensuring that their rights can be enforced against those providing hyperlinks to unauthorised content or links which circumvent paywalls or other business protection.

Most CMOs consider that the temporary reproduction of copyright protected content that occurs when users browse web-pages should - at least in some cases- , be subject to right holder's authorisation. They highlight that content is increasingly viewed or listened to from temporary copies made in computer browsers rather than from downloaded copies, and argue that rightholders must be able to license this method of accessing content. CMOs also consider that the exception set out in Article 5(1) of the InfoSoc Directive should not apply to temporary reproductions of content available on illegal sites.

Publishers/producers/broadcasters

The vast majority of *publishers, producers and broadcasters* consider that the use of hyperlinks should be subject to the rightholders' authorisation, at least in specific circumstances.

Many respondents, e.g. *public broadcasters* consider that unauthorised links to content behind access control mechanisms as well as embedding or framing should be considered illegal and sanctioned. Rightholders consider that linking constitutes a new form of access and use of their works and that they must be able to adequately profit from it. *Newspaper and magazine* publishers in particular highlight that when links to newspaper content are posted with snippets, the risk exists that readers would be diverted from reading further on the newspaper website as such. Newspaper publishers also consider that a distinction should be drawn between non-commercial and commercial uses. They consider that they may want to allow members of the public to freely view their websites for non-commercial uses while precluding (or charging a licence fee for) commercial uses.

Many respondents, for example among *commercial broadcasters* believe that the question whether the provision of a hyperlink leading to work triggers the making available right should remain subject to a case-by-case assessment. Similarly, some respondents – for examples among *film producers* - consider that the courts are best placed to decide on cases involving linking, since market behaviours and technology will continue to evolve.

Some respondents consider that hyperlinks leading to licensed content or a licensed service should be considered separately from links to non-authorized content. The former should not be considered a copyright infringement provided that the linking does not circumvent the terms under which the content was licensed. On the contrary, linking to content the making available of which has not been authorised by the rightholder should be considered as an infringement.

Many respondents in this category also consider that browsing should be subject to the rightholders' authorisation. Some indicate that browsing should be lawful under the condition that the work itself was made available with the rightholders' consent. However, they say, it should not be assumed that all 'cache' memory copies are temporary or incidental under the exception set out in Article 5(1) of the InfoSoc Directive. Many believe that the facts of each case ought to be analysed in court. They also suggest that the rightholder should be able to decide whether a work is accessible for indexing by search engines.

Generally, publishers, producers and broadcasters consider that no legislative intervention is needed in this area.

Intermediaries/distributors/other service providers

Most service providers consider that linking should not be subject to the authorisation of a rightholder. They believe that this would undermine freedom of expression. A link only facilitates access (serves as a reference) to a work that is already publicly available. Regardless of the specific form of linking (e.g. surface linking, deep linking, embedding), links do not reproduce the work or make it available. The link provider has no control over the actual availability of the linked content. The majority of them consider that browsing should not be subject to rightholders' authorisation either. They stress that viewing is akin to reading and that reading, viewing or simply listening to a work has never been subject to copyright and that this should not change. They also consider that using the internet would not be possible without temporary copies and that acts of browsing do not have separate economic value. For these respondents, the exception in Article 5(1) of the InfoSoc Directive should also apply to browsing illegal websites since internet users cannot judge whether a website is legal or illegal before visiting it. Some service providers would prefer the application of this exception not to be expanded to include all intermediate copies.

Member States

Member States views as to whether hyperlinking should be subject to rightholders' authorisation differ. Most of Member States that responded consider that hyperlinking does not amount to an act of communication to the public and therefore rightholders' authorisation is generally not needed. At the same time, many Member States point out that linking to illegal content or to websites that offer devices or equipment enabling the unlawful circumvention of technological protection measures should be considered illegal. These Member States generally welcome the recent CJEU *Svensson* decision. Other Member States, however, consider that a hyperlink constitutes an act of communication to the public which should be subject to rightholders' authorisation when it enables direct and immediate access to content.

As regards browsing, Member States generally consider that the exception in Article 5(1) of the InfoSoc Directive for temporary and incidental copies applies to browsing. They expect that the CJEU will further clarify the conditions for the application of this article.

Other

Some academics argue that a hyperlink is a separate act of communication to the public, even if someone else has already made the work available to the public on their website. These academics are critical of the CJEU's *Svensson* judgment. They consider that a hyperlink makes the work available to a new public which would not have access to the work without the link. In their view, the fact that hyperlink aggregators are doing business on the basis of

link lists shows that there is room for separate exploitation for businesses which should be licensed.

Others consider that various circumstances should be taken into account e.g. whether there is a new public, or whether the link is framed or embedded and that a decision should be made on a case by case basis. These criteria should be included in the recital to the InfoSoc Directive (indicating how to assess individual cases). A static rule would risk being quickly outdated. Finally, there are also academics who hold that hyperlinking should not be viewed as communication to the public, but merely as an indication of an internet address or location (although if the provider of the link is knowingly facilitating the exploitation of infringing copies, there should be a possibility to prohibit the link).

Academics are also divided on browsing. Some consider that the exception in Article 5(1) applies to browsing, and others consider that it does not. Many state that Article 5(1) is not sufficiently clear. Others consider that the act of browsing and any intermediate acts of copying that facilitate browsing should be permissible, even where the material being browsed has been made available in an unlawful manner.

4. Download to own digital content (Questions 13 and 14)

These questions invited respondents to share their experiences and views on the online resale of digital content. Opinions were sought on the consequences of providing a legal framework enabling the resale of previously purchased digital content.

End users/consumers

Many end users/consumers report facing restrictions when trying to resell digital files that they had purchased. End users/consumers argue that the current legal situation results in an unequal treatment of physical and digital formats. Typical problems mentioned include not being able to resell eBooks, digital music or video game files because of them being tied to a user account or online library so that cannot be transferred or sold individually.

End users/consumers state that printed books and eBooks should be treated in the same way. Consumers would like to see competition between physical and online formats which they believe could bring down prices. According to some, the secondary market for digital works could be organised in such way that the original creator would be remunerated upon each transaction. Some respondents point to the fact that the difference in the treatment of physical and digital formats is especially unjustified when the digital format is sold at the same price as its physical equivalent, while its interoperability and portability are prevented or limited (i.e. the digital product does not offer sufficient 'extra' functionalities compared to its physical equivalent). Some consumers maintain that the argument that digital files do not deteriorate put forward by rightholders is incorrect, since the value of digital files is reduced with time as new versions and editions become available - with higher resolutions, new features, updates, etc. Consequently, they argue that the secondary market for digital files would have little harmful effect on the primary market.

Institutional users

Institutional users generally consider that it should be possible to resell digital content. The secondary market would improve the preservation of cultural goods and access to information resources. They argue that technological protection measures and licences restrict such access. They note that digital content is often sold at the same price as the physical equivalent and therefore that buyers should have the same rights.

Authors/performers

Generally authors/performers consider that a legal framework which would enable the resale of digital content would have serious negative consequences for the market as it would undermine the investment in the copyright content. These respondents point out that the resale of digital as opposed to physical formats has a fundamentally different impact on the rightholders. They consider that digital content will remain in the original state, while a physical copy will depreciate in value and quality over time. They also argue that it is impossible to ensure that the reseller destroys the original copy or copies. In such situations there is no ‘transfer’ of the copy, but a multiplication. These respondents also emphasise that the traditional concept of ownership which applies to physical goods should not be applied to digital content as the two are not comparable. They argue that users of digital content may access it on a variety of devices, and enjoy functionalities that are not available in the case of physical copies. They also highlight that often digital content is cheaper to purchase than the physical equivalent. Authors and performers also consider that applying the principle of exhaustion to digital content would seriously hamper enforcement and would risk increasing piracy. Only some authors/performers acknowledge potential benefits in digital exhaustion: as a means of advertising, spreading the work, and as a legal alternative to piracy.

Collective management organisations (CMOs)

CMOs put forward similar views and arguments compared to those of authors and performers.

Publishers/producers/broadcasters

These respondents (*print publishers* in particular, supported in their views by the *music and audio-visual industry* and *broadcasters*) are generally against any legislative intervention in this area. The current legal framework as supplemented by case-law of the CJEU is for them sufficient and clear. Digital exhaustion should not be introduced as it would restrict contractual freedom and risk damaging the primary market by allowing dissemination of second hand copies. They believe that current technology does not allow for proper implementation of forward-and-delete schemes and point out that digital files do not deteriorate in time. It is also noted that some content providers already foresee some options for file-sharing in a private or family context.

Intermediaries/distributors/other service providers

Service providers are divided on this issue. Some service providers support the application of the exhaustion principle to digital content, some oppose it for the same reasons as rightholders and CMOs and others call for further analysis of market consequences.

Member States

The Member States that responded to these questions are generally cautious as regards the possible introduction of a principle of digital exhaustion. Some Member States stress that the EU directives and international treaties do not provide for exhaustion of digital copies, and that introducing such a rule would go against the EU's international obligations. A number of Member States also highlight that introducing a principle of digital exhaustion would be problematic, because it would be difficult to determine whether the content comes from a legitimate source, and whether the original copy has been deleted. They also argue that the relevant industries will suffer loss of revenue and ultimately a loss of jobs and innovation. One Member State highlights that the retail price of the original copy may increase as a result of the digital exhaustion, while others point out the possible benefits that such a principle may have for consumers in terms of lower prices and increased availability. One Member State underlines the positive effects brought about by the secondary market for goods and calls for an in-depth analysis of the overall implications of a digital resale market to determine whether it could be equally beneficial.

Other

Academics' views are in principle similar to those of rightholders and CMOs although this group also call for further analysis of market consequences and possible flanking measures.

5. Registration of works and other subject matters (Questions 15 to 18)

These questions invited respondents to share their views on the possible creation of a registration system at EU level. They were also asked to identify the possible advantages and disadvantages of such system and the incentives for registration by rightholders.

End users/consumers

The majority of end users/consumers would support the creation of a registration system at EU level. They argue that registration would allow collecting data about right-ownership and length of copyright protection of registered works. This would facilitate licensing, reduce transaction costs and increase legal certainty. According to end users/consumers, registration would be particularly helpful to identify works that fall in the public domain or that have been made available through open content licences such as Creative Commons licences. Registration would also help reduce the occurrence of orphan works.

Respondents are generally in favour of a non-mandatory registration system managed by an independent body. Some point out that registration would have to be simple and user-friendly, both for rightholders and content users. They warn against the risk of an excessively bureaucratic or costly mechanism. Some see the risk that a registration mechanism would

penalise specific categories of creators (e.g. in the visual arts) and eventually only benefit big corporations.

Institutional users

The big majority of institutional users support the idea of an EU registration system. They believe registration would allow an easier identification of authors and reduce the problem of orphan works. Access to knowledge and creativity would be improved since registration would draw a distinction between content for which creators want to control reuse and works which are not produced for commercial gain and could therefore be freely reused by third parties for cultural and financial benefit.

They argue that an effective and useful registration system needs to record transfers of rights throughout the duration of the copyright protection of the work; it also needs to be transparent and easy to use. All types of rightholders (including individual creators) should be able to register their works, and the register should include information on works that are out of copyright or that are available under open licences, in order to create more legal certainty for users of such works.

Some institutional users consider that for such a system to be effective, it would need to be mandatory, but highlight that this would not be feasible because of the Berne Convention which prohibits making copyright protection subject to formalities⁷.

Authors/performers

A large majority of authors and performers are against the idea of registration. They consider it costly, complicated, unnecessary and burdensome. They also point out that several optional registration systems already exist in the Member States (e.g. the '*Registre Public du Cinema et de l'Audiovisuel*' or the '*Balzac*' database for literary works in France) and consider that the Commission should further support such optional systems at national level. An EU registration mechanism would not be useful. Authors and performers are also concerned about the quality of data that would be collected for the purposes of registration, and in general the costs and risks associated with formalities.

Collective management organisations (CMOs)

CMOs generally consider that an EU registration system would be unnecessary, complex and an administrative burden. They refer to market-led initiatives for the identification of works and rightholders - such as ISBN (International Standard Book Number), ISAN (International Standard Audio-visual Number), the Global Repertoire Database project or EIDR (Entertainment Identifier Registry) - that should be supported instead. Moreover, they point to the existence of voluntary registration systems managed by CMOs. They believe that if some

⁷ Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886 (as amended on September 28, 1979) - Article 5.2.

form of registration is introduced at EU level, it should be complementary to market-led solutions, and voluntary, since international conventions (in particular the Berne Convention) do not require formal registration as a condition for obtaining copyright protection. At most, registration may be useful for orphan works.

Some point out that a registration system would not provide legal certainty about the copyright status of a work, its rightholder(s), the transfer of rights or the duration of protection, because there could be misuses or inaccuracies in the information that is declared. They consider that legal certainty can only be provided by the courts.

Some CMOs point out that registration would be a disadvantage for small or first-time creators. The need to register could be perceived as an administrative burden and act as disincentive to creation.

Publishers/producers/broadcasters

Publishers, producers and broadcasters express views on this subject similar to those of CMOs.

Intermediaries/distributors/other service providers

Most intermediaries/service providers consider that an EU-wide registration system may be generally useful. Increasing the information about works in copyright would be beneficial to licensees, the public, and authors who need practical solutions to enjoy the benefits of their rights. Many respondents stress that any such system should be voluntary in order to ensure compliance with the Berne Convention. In their opinion, registries would facilitate licensing and improve legal certainty. Creative Commons is mentioned as an example of a simple platform, where millions of works are 'signalled' on a voluntary basis, and where free copyright licences provide a uniform way to give the public permission to share and use the creative work.

Respondents stress that it should be possible to build in sufficient incentives within a voluntary registration system for rightholders to make use of it. For instance they suggest introducing a rule making registration a condition for access to certain legal remedies. As in some countries, a certificate of registration could provide evidence that the copyright exists and that the person registered is the owner of the copyright. Some suggest that voluntary systems could be set up on a sector-specific basis.

Member States

Member States that replied to the public consultation generally consider that there should be no mandatory EU system of registration. On the other hand, some Member States is more open to consider a voluntary registration system (which could receive financial and organisational support by the EU). They say that voluntary registration could allow a quick identification of the beneficiary, which would help the licensing process. Some general rules on registers could therefore be included in legislation. However, there should be no

formalities to determine the existence or the exercise of rights – the registration could only be a tool, for example to provide evidence on works ownership.

One Member State refers to rightholders' reluctance to support a registration system and considers that a better option is to support market-based mechanisms to enrich right-ownership information.

6. Use and interoperability of identifiers (Question 19)

This question concerned identifiers and rights ownership information databases and what the EU could do to further promote their adoption, development and interoperability.

End users/consumers

End users, consumers and their representatives generally encourage the EU to support the development of rights ownership information. Databases, registration mechanisms and metadata on right ownership information are seen as a positive development, made feasible by modern technology.

However, many end users/consumers point out that the development of identifiers must take into account the need for consumers' safeguards. Data protection is a concern, as is copyright enforcement, and the risk that identifiers are used to track people's behaviour online. Consumers/end users stress that identifiers and metadata should not become tools to enforce copyright against them.

A number of respondents highlighted that identifiers and metadata should be developed in a neutral manner, so not to be influenced by specific market actors or give them an undue advantage. Others note that people could, in bad faith, register content that is not theirs and then try to litigate against users on this basis. Some end users/consumer consider that community moderated (Wiki-like) platforms could be useful in preventing abuses to right ownership information in identifiers and metadata.

Institutional users

Institutional users highlight that identifiers and rights ownership information databases should be based on open and interoperable standards. They believe that databases and right information systems should be made accessible to all users, preferably free of charge.

Respondents say that the EU has a strong role to play to encourage the development of identifiers and databases, in particular by providing the necessary structure and support. Some institutional users note that identifiers should remain neutral and their creation should have a multi-stakeholder approach, as Europeana does.

Authors/performers

Most authors who responded see a positive aspect in the adoption and use of identifiers and databases, as long as this does not create an excessive bureaucratic burden or become a prerequisite for rights ownership.

Many respondents express an interest in existing market-led initiatives and consider that the EU should have an important role, through support, awareness-raising, and funding. Authors hope that identifiers would feature the same standards across Member States' borders and would therefore be interoperable with each other. The EU should promote such objectives.

Many authors mention existing identifiers, such as the ISBN code in the print sector and the use of digital metadata such as ISCR (International Standard Recording) codes or Digital Object Identifiers and state they are generally satisfied with them. Some authors point out that metadata could have a potential use in remuneration and revenue tracking.

Collective management organisations (CMOs)

Most CMOs that replied to this question believe the EU should promote and support existing identification systems and frameworks, such as the Global Repertoire Database for musical works. Databases and identifiers can play a useful role with licensing and invoicing.

Many respondents also point out that there are already national systems of identifiers, and that some degree of harmonisation, standardisation and interoperability could be desirable here. Input from the EU would fit within this context. Some CMOs suggest financial support and grants to encourage the development of identifiers and databases. More generally, they consider that the role of the EU should be to support of industry initiatives and that no legislation is needed in this area.

Publishers/producers/broadcasters

Publishers, producers and broadcasters generally encourage the EU to support projects relating to the development of databases covering rights, ownership and permissions. Most respondents find that this kind of support would be best ensured through raising awareness and occasional financing of market-led solutions. Examples such as the Linked Content Coalition's initiatives, ISAN in the audio-visual sector and ORCID, in the area of research, are mentioned.

Many respondents in this category consider it a priority to work towards more interoperability between different databases and identifiers though some expressed doubts as to the need for interoperability between existing identifiers. The prevailing view is that action in this area should be pursued on voluntary basis only. They are against the introduction of any binding system of legislation.

Intermediaries/distributors/other service providers

There was little input by intermediaries and service providers on this topic. However, those that reply are favourable to the adoption of identifiers and the use of databases detailing rights

ownership information. Respondents see the EU here as a 'referee', that should make sure industry systems work well and fairly.

Member States

Only few Member States replied to this question. Those that did stated that the EU should encourage the development of open standards for identifiers and other metadata, based on the needs of both licensors and licensees. Legislation itself would be less desirable, and instead preference should be given to licences and industry agreements.

Other

Like many other respondent groups, academia considers that the EU could have a positive role in supporting existing market-led initiatives.

7. Terms of protection (Question 20)

This question concerned the terms of copyright protection set out in the EU copyright rules and whether these terms are still appropriate in the digital environment.

End users/consumers

The vast majority of end users/consumers consider that the current terms of copyright protection are inappropriate. They point out that protection should be shortened since long terms are counter-productive for creators, and a burden to innovation. They consider that long terms of protection increase end prices for consumers.

These respondents also argue that rightholders usually derive financial benefits from the exploitation of works only during a limited period of time. Accordingly, shorter terms would guarantee sufficient revenue for rightholders while ensuring wider access to works in the public domain as a matter of general public interest. However, organisations representing consumers acknowledge that changes to the current terms of protection should be done in compliance with existing international conventions which set minimum international standards, such as the Berne Convention.

Institutional users

Institutional users generally believe that the current terms are inappropriate and should be shortened. In their view, the current term of protection contrasts with the commercial life of the large majority of copyright protected works and other subject matter and makes the mission of cultural institutions (e.g. the digitisation of films) difficult. They point out that in many cases, the costs of the digitisation of copyright protected works that are no longer commercially exploited exceeds the potential economic value of these works. As a result neither rightholders nor cultural institutions make out-of-commerce works available online (the former because they lack an incentive to do so, the latter because of difficulties – and related costs - in clearing the rights for works which are still copyright protected). Cultural institutions which have as their mission to provide access to their collections and to support

education and culture are confronted with high costs for rights clearance, due to long terms of protection that do not provide any effective economic benefits to rightholders.

A number of respondents in this category suggest a reduction of the term of protection to 50 years after the death of the author (the minimum requirement established by the Berne Convention). They also put forward the idea that the term of copyright protection should be 20 years which could be extended to 50 years, provided that the copyright holders register their work. They point out that a reduced term of protection would present the advantage, among other things, of reducing the problem of orphan works.

Authors/performers

The vast majority of authors and performers consider that the term of protection currently set out in EU law is appropriate and should not be shortened. However, some respondents in these categories favour a longer term of protection, which, they say, would better reflect longer life expectancy. Performers in the audio-visual sector consider that the term of protection for their rights should be extended to be aligned with those of music performers. Authors often consider that a clear distinction should be made between the duration of the protection and the term for which rights are transferred, so that the transfer can be shorter than the whole term of protection.

Collective management organisations (CMOs)

CMOs have similar views to authors and performers.

Publishers/producers/broadcasters

Many respondents in this category consider that the current term of protection is adequate and in particular that it should not be shortened. Some broadcasters, however, think that the term is too long (*public service broadcasters* are critical of the extension of the term of protection of the rights of phonogram producers) and that rights of performers and producers in the audio-visual sector should not be extended. On the other hand, some *music producers* would prefer a longer term of protection.

Intermediaries/distributors/other service providers

The vast majority of intermediaries and service providers consider that the term of protection is too long. They point out that the current terms do not really benefit authors in the digital environment and create problems, such as increasing the number of orphan works. However, some point out that when discussing terms of protection (including the possibility to shorten them), it is necessary to take return on investments into account and to acknowledge that many authors only find recognition and commercial success after their death. Therefore; they say, it is necessary to assess the appropriateness of terms on the basis of solid economic arguments and the need to keep a balance between the protection of investments in creation and access to content. Some distributors of audio-visual works feel that the current term of

protection is adequate and it should not be shortened, because that would undermine the value of IP rights.

Member States

All but one of the Member States that replied to the public consultation are against a further extension of the term of protection. They stress that a key function of copyright and related rights is to incentivise the creation and distribution of creative content, and that copyright terms should encourage creation without being longer than justified. It is therefore important that any decisions to extend or reduce terms of protection is based on robust economic evidence, and is consistent with international obligations. They call for an analysis of whether the current terms reflect the actual time during which works and other subject matter retain economic value. In addition, they want to verify to what extent a solution for out-of-commerce works is required. One Member State suggests that specific focus could be put on the possible reduction of the term of protection of works of utilitarian nature such as computer programmes and databases.

Other

Many respondents in this category consider that an excessive term of protection may be an obstacle to the creation of new works. They generally oppose any further extension of the terms and instead support shortening terms to the minimum standards in the international conventions, at least for some categories of works and uses. Some argue that a longer term of protection may be justified for some ‘quality’ works with longer economic value, but that long terms are not efficient for the bulk of minor works of a functional or technical nature. Software is mentioned as a category of works for which a term reduction should be particularly considered.

IV. LIMITATIONS AND EXCEPTIONS IN THE SINGLE MARKET

1. The current legal framework for exceptions and limitations (Questions 21 to 23)

The EU copyright directives set out a number of exceptions and limitations, most of which are optional for Member States to implement. The consultation aimed at exploring whether stakeholders have identified any problems arising from the optional nature of these exceptions. Views were also sought regarding any need for a higher level of harmonisation of these exceptions, for making them mandatory or for adding or removing exceptions to or from the existing list in the directives.

End users/consumers

End users/consumers consider that the optional nature of the list of exceptions creates legal uncertainty and an uneven playing field for market participants. They argue that current situation makes copyright law more difficult to understand and apply for users. It is a

common view that exceptions, at least those linked to the exercise of fundamental rights (e.g. quotation and criticism, news reporting, parody) should be mandatory and harmonised. In particular, many respondents request a basic set of mandatory exceptions for scientific research, education, cultural heritage, disabilities, libraries and archives.

Many end users want to preserve or strengthen existing exceptions and limitations. They also argue in favour of providing room for Member States to experiment with new exceptions adjusted to the digital environment. Some respondents perceive copyright laws as barriers to the exercise of fundamental rights and/or the rights of consumers. It is also argued that there is not a sufficient balance between the rights of right holders and exceptions, advocating that exceptions should be transformed into 'user rights'. A number of suggestions are put forward to introduce new exceptions, such as for user-generated content, file sharing between individuals and text and data mining. Respondents sometimes note that exceptions should only cover non-commercial use.

Finally, a number of responses emphasise that contracts should not be allowed to override exceptions and that right holders should be prevented from limiting the use of exceptions by technological protection measures.

Institutional users

Some institutional users argue that the optional nature of the exceptions is indispensable so that they can be adjusted to national cultural and legal traditions. However, almost all of those who responded consider this optional nature to be problematic and that making them mandatory and/or further harmonising them is needed. Respondents consider in particular that the lack of harmonised exceptions is an obstacle to cross-border cooperation between cultural heritage institutions and libraries. Many perceive the closed list of exceptions as lacking flexibility and preventing the possibility to adjust or expand existing exceptions to cover similar uses or to add new exceptions. They believe that the lack of harmonisation and the optional character of the list of exceptions create legal uncertainty throughout the EU, especially in cases where several Member States work together in cross-border projects (e.g. cultural heritage institutions in digitisation projects) or wish to make their collections accessible across Europe.

Institutional users generally support copyright harmonisation which implies making exceptions mandatory and harmonising their scope to a greater extent. Some note that existing discrepancies between national implementation approaches to the exceptions result in different levels of access to knowledge and culture for citizens residing in different Member States. They underline that, in their view, the exceptions in the InfoSoc Directive are drafted in such a manner that they do not interfere with the normal exploitation of works and do not unreasonably prejudice right holders. Institutional users often underline the need for a cross-border effect, in particular for research, teaching, preservation and disabilities, to increase legal certainty. Several replies mention the need for a mandatory and harmonised exception for disabilities.

Most institutional users who replied agree that all existing exceptions and limitations should remain. Some of them underline the need for exceptions for text and data mining and e-lending. Some wish to extend the scope of the preservation exception and others to allow cultural heritage institutions to make out-of-commerce works in their collection available online for non-commercial purposes. Again others argue that the research exception should be extended also into potentially commercial research. Some argue for new exceptions not directly related to their field of activity, such as for user-generated content or the non-commercial sharing of protected works by individuals.

Many respondents argue in favour of an open-ended norm to complement the list of exceptions in the InfoSoc Directive. Finally, some underline that contracts should never override exceptions.

Authors/performers, publishers/producers/broadcasters and collective management organisations (CMOs)

These stakeholder groups generally consider that exceptions have a damaging effect on cultural production. They see no need to change the current list of exceptions which they consider to be very broad, flexible and fit for purpose. It allows Member States to reflect legal and cultural traditions in both civil and common law countries. These stakeholders see no evidence that mandatory exceptions would lead to better results and believe the current framework ensures a balance between property rights and the public interest. Authors and performers however raise concerns regarding the appropriateness of the existing optional system more often than other right holders or CMOs. A number of respondents highlighted the importance of the ‘three-step test’ that serves as a sound safeguard to ensure that copyright exceptions do not unduly harm creators.

Most respondents in these stakeholder groups are against any further harmonisation, which they consider would risk a weakening of copyright protection in Europe at the expense of creators. Still, a number of authors and performers believe the private copying exception should be made mandatory and further harmonised and that fair compensation should be ensured in every Member State. A minority of authors and performers would seek a harmonisation or clarification of other existing exceptions.

Respondents in this group are also generally against including new exceptions in EU copyright law. They consider that the current framework is the result of a sustainable compromise which has to be preserved, to ensure in particular legal certainty and a stable and comprehensive framework for all stakeholders. Some note that new and/or broader exceptions could result in businesses using copyright protected works and performances without remunerating rightholders (‘free-riding’). Moreover, any significant change in the exceptions would require the review of a high number of licensing agreements. In particular publishers, producers and broadcasters underline that any proposal to change the existing balance should be based on economic evidence; currently, they see no proof of market failure or any other reason that would require legislation. They point out that licensing can provide faster and

more flexible solutions than legislation and is developing in a manner that makes further exceptions unnecessary.

Intermediaries/distributors/other service providers

Many respondents from this group argue for more harmonisation and legal certainty in the area of exceptions. They consider the current system too complex, in particular for certain content based cross-border business activities (e.g. cloud services) that cannot fully benefit from the single market. In particular, some acts falling under an exception in one country may prove to be illegal in another; hence there is significant legal uncertainty in this area.

A number of respondents cite problems deriving from divergences in or the lack of implementation of the private copying exception across Member States. Some respondents underline that the impact on the single market, on fundamental rights, on public interest and on other policy objectives should be taken into account when assessing the need for making certain exceptions mandatory and they consider that not all existing exceptions necessarily need further harmonisation. On the other hand, a minority of respondents, notably film distributors, consider that the EU copyright directives provide the necessary framework for exceptions and that flexibility is an asset rather than a disadvantage. In cases where clarification is needed, the three-step test and case-law of the CJEU are useful tools to ascertain whether a fair balance between different interests is achieved and to make sure that exceptions are uniformly interpreted.

Finally, the current list of exceptions is generally considered satisfactory by most in this stakeholder group. Some mention the inclusion of promotional use and user generated content as necessary new exceptions. Some others raise concerns whether a closed list of exceptions can keep up with technological development. A significant number of these stakeholders however argue that so far market solutions have been able to address the new types of use (for example user generated content) that have emerged as a result of technological development.

Member States

Some of the Member States who responded to the consultation consider that exceptions should remain optional as their use and implementation require flexibility to be in line with national cultural and legal traditions. Member States also underline the importance of the 'three-step test' as an adaptable tool to ensure that copyright maintains its role in protecting the rights of creators. Some note that when looking at exceptions, the EU should focus on areas where problems can be identified regarding the cross-border use of copyright protected content.

Other Member States see value in harmonising at least certain exceptions such as the teaching and research exceptions. Member States in this group consider that harmonisation is particularly important to increase legal certainty for cross-border activities, e.g. for cultural heritage, research or educational institutions. Some emphasise that no exception should extend to commercial uses. Finally, some Member States argue in favour of making

mandatory and harmonise the private copying exception, including fair compensation, throughout the EU.

Other

Representatives of academia, civil society or think-tanks generally consider that the optional nature of the exceptions is problematic and that exceptions should be further harmonised. A number of them point out that a further harmonisation of existing exceptions would lead to more legal certainty for cross-border business and non-commercial activities. Some draw attention in particular to exceptions related to the exercise of some fundamental rights, while others argue that the functioning of exceptions in cross-border situations (e.g. e-learning, disabilities) needs to be addressed. Other areas where national approaches currently diverge, such as the private copying exception or the different legal responses to questions arising from advanced search engine services are also mentioned. Some note that the future jurisprudence of the CJEU could significantly contribute to harmonisation.

2. Flexibility of exceptions (Questions 24 and 25)

These question aimed at exploring stakeholders' views on the need for greater flexibility in the EU legislative framework for exceptions and, if such a change is considered necessary, their opinions on the best way to achieve this, for example *via* case-law, periodic revision of the directives, open norms).

End users/consumers

Most consumers who responded consider that more flexibility is needed in order to ensure that copyright exceptions can adjust to technological changes and are forward-looking. Text and data mining is often cited as an example. Some note that more flexibility would permit the preservation of different cultural traditions and practices in Member States but it would also increase legal uncertainty by further reliance on court decisions. Some argue that the lack of flexibility in the list of exceptions puts Europe at a competitive disadvantage compared to other countries where copyright law provides open ended norms such as the 'fair use' defence.

Many consumers suggest adding an open norm to the current list of exceptions to permit uses that could not be foreseen at the time of the adoption of the legislation. Further, some consider that the status of exceptions in EU copyright law has to be strengthened and that the 'three-step test' is often given too strict an interpretation by courts. In their view, EU law should clarify that the 'three-step test' is an obligation on the national legislator when implementing exceptions into national law and not a requirement that needs to be applied by courts in specific cases. Others argue that enforcement of unauthorised use for non-for-profit purposes should be limited.

Institutional users

The vast majority of institutional users favour increasing the flexibility of exceptions in EU copyright law, and most often see the solution in the introduction of a ‘fair use’ type of open norm, in addition to the list of specific limitations. They think that the introduction of an EU-wide open norm would have a positive impact on the functioning of the single market and would increase the global competitiveness of the EU economy, e.g. by facilitating the work of European research or cultural heritage institutions. They argue that specific exceptions cannot, by definition, take into account unknown forms of use. Some claim that the InfoSoc Directive was not drafted in a technologically neutral manner and that this is problematic in times of accelerated technological progress. More reliance on court decisions would be a consequence of the introduction of an open norm. Some respondents underline that a possible open norm should also be subject to the ‘three-step test’ requirement.

Some institutional users generally see a need to establish a new balance in copyright law where innovation, research as well as legal access to digital content is to be encouraged. They often point to the need for mandatory exceptions for research and education purposes. Some require the same solution for mass digitisation.

As regards other possible methods of increasing the flexibility of the legal framework, some respondents note that adjusting legislation is very time-consuming. Others see the European Copyright Title and Code as a possible way forward.

Authors/performers; publishers/producers/broadcasters and collective management organisations (CMOs)

The majority of respondents from these stakeholder groups generally agree that the EU legal framework provides for sufficient flexibility as far as exceptions are concerned. They argue that the optional list of exceptions ensure that Member States can implement them in line with their national traditions and cultural policy. Building in more flexibility, e.g. by opening up the list of exceptions, by introducing ‘fair use’ or a similar open norm would in fact reduce the level of harmonisation, as well as legal certainty in Europe. Changing the scope of existing exceptions would also disrupt the market as it would make the revision of countless contracts necessary. These respondents often point out that the ‘three-step test’ already provides for a sufficient level of flexibility within the scope of the existing exceptions. Where questions on exceptions arise, national courts and the CJEU have so far been able to make the necessary clarifications. *Publishers, producers and broadcasters* also note that neither EU law nor court decisions have prevented the emergence and sustainability of online services such as search engines or social networks.

These stakeholders are particularly against the introduction of an open norm that is similar to the ‘fair use’ principle in the US. They argue that this would not be in line with European legal traditions and that replacing statutory law by judge-made law would inevitably result in less legal certainty. They point out that in the US, nearly two hundred years of case-law supports the application of this principle. This would not be the case in Europe, if such a principle was introduced. Respondents also argue that due to the low level of harmonisation of the EU copyright regime and the different legal traditions of the Member States, national

courts would give divergent interpretation to the concept of ‘fair use’, which could be detrimental to the European creative industries. Moreover, they highlight that if a ‘fair use’ principle was introduced in Europe, rightholders could only enforce their rights via expensive litigation.

A small fraction of authors and collective management organisations argue that making the list of exceptions open-ended could help EU law keep pace with technological change. E.g. a list of mandatory statutory exceptions, combined with an open norm subject to interpretation by courts could lead to a more satisfactory result. Some consider that exceptions developed by courts could then be codified by the legislator.

Finally, these stakeholder groups often points out that flexible licensing solutions can easily meet the demands of users, including the ones generated by technological changes. Some also note that systems such as extended collective licensing already provide for a great degree of flexibility.

Intermediaries/distributors/other service providers

A significant number of service providers argue that the current regime of exceptions is fit for purpose and any increase in flexibility would reduce the level of harmonisation and legal certainty in the EU. Some suggest that Member States should be encouraged to make use of the flexibilities available under the current legal framework e.g. via a Commission’s communication or a recommendation.

Others argue that the current closed list of exceptions creates problems, in particular as the current system cannot keep up with technological development and consequently hinders the emergence of new services and business models. They often doubt whether the periodic revision of EU law is suitable to keep up with such developments. They acknowledge that the existing system also leaves room for interpretation by courts, such as via the ‘three-step test’. As regards the way forward, some argue that new exceptions should be introduced (such as text and data mining) to the existing list while others would prefer complementing the existing list of exceptions by an open norm, or alternatively to extend the list of exceptions to uses that are ‘comparable’ to those in the InfoSoc Directive, subject to the ‘three-step test’.

Member States

Most Member States that responded to the consultation consider that current EU legislation provides sufficient flexibility for the use and implementation of exceptions in Member States. A few Member States underline their opposition to a solution similar to the ‘fair use’ principle while some others consider that some of the existing exceptions are not technology neutral hence an extension to “‘similar uses’” or another type of open norm could be considered.

Other

Representatives of academia, civil society or think-tanks put forward different views. Some argue against opening up the existing list of exceptions as it would lead to legal uncertainty in

the application of the legal framework. They note that Member States enjoy a great degree of flexibility when implementing the list. Others however argue that adding an open norm to the existing list of exceptions would be the best means to ensure that the relevant legislation is future-proof. The application of the norm would however be subject to the ‘three-step test’.

3. Territoriality of exceptions (Questions 26 and 27)

These questions aimed at exploring whether the territoriality of exceptions constitutes a problem in the single market. Views were also sought regarding possible methods to address the question of ‘fair compensation’, in cases where national exceptions were given a cross-border effect.

End users/consumers

The vast majority of end users/consumers believe that the territoriality of limitations and exceptions constitute a problem. They point out that differences in the implementation of exceptions make it more difficult for many European websites to address audience from several Member States (e.g. uploading certain photos may be allowed under an exception only in some Member States). Certain practices that would be permitted in some countries are prohibited in others; cross-border activities hence require knowledge of the laws of several Member States. Other specific examples concern problems regarding the exceptions related to disabilities: accessible format copies of books made under an exception cannot be sent across borders, which leads to a duplication of costs for libraries and other organisations serving the blind even in countries that share the same language. Some respondents mention research, preservation and inter-library loans as further examples of areas where the cross-border effect of exceptions could lead to more efficiency.

Most end users/consumers consider that the fair compensation of rightholders for the use of their work under an exception should be calculated according to the laws of the country in which the content is used; it should be collected by a collective management organisation in that country and paid to the right holders in the country where they reside. Fair compensation should continue to be calculated on the basis of the harm caused to rightholders. Furthermore, many argue that when the harm is only minimal there should be no compensation. Some respondents point out that existing representation agreements between collective management organisations already provide a solution to this matter. Others suggest the establishment of a Central Licensing Authority acting as a central compliance, monitoring and licensing body as the most effective way of handling cross-border aspects related to the payment of fair compensation.

Institutional users

Institutional users consider that the territoriality of exceptions creates problems. It requires knowledge of one's own laws as well as those of other countries, when there is an intention to share content with residents of other Member States. Because of the optional nature of the exceptions, a use that is legal in one country could be illegal elsewhere. Examples given

include research that very often requires cross-border cooperation, inter-library loans and the lack of private copying exception in the UK.

Some institutional users underline the need for coordinated rules on fair compensation at an EU level; others prefer to leave this matter for the Member States. They often emphasise that compensation is only fair if there is evidence of harm to the rightholders and that a balance should be found between different interests. Some note that there should be no compensation for non-commercial research when it produces a public good, e.g. in the form of public knowledge. Many institutional users believe that fair compensation is due in the country where the exception is relied upon and that existing representation agreements between collective management organisations provide a suitable solution for the collection and distribution to right holders. Some others argue that, in order to help the user avoid having to make multiple payments, the management of fair compensation should take place at European level and be funded directly by Member States. Others again propose harmonisation of the rules applicable to fair compensation, including a clear rule as regards the country under whose law it should be determined.

Authors/performers.

A majority of authors and performers do not encounter problems regarding the territoriality of exceptions. They consider that the existing rules allow Member States to respect their legal and cultural specificities. They do not see a need for giving exceptions a cross-border effect. A few others see a need for more harmonisation, in particular to facilitate cross-border activities and to help determine the applicable law. A number of authors and performers argue in favour of the harmonisation of the private copying exception.

As regards the payment of compensation in the case of exceptions that have cross-border effect, authors and performers generally argue that compensation should always be paid (collected) where the end user benefits from the exception (where the compensated exploitation takes place) while the payment should be made to the rights holder in the country of his residence. They also argue that existing reciprocal representation agreements between collective management organisations sufficiently address the question of cross-border payments.

A number of respondents point to the need for collective licensing and joint industry initiatives, which would potentially provide more possibilities and flexibility than exceptions.

Collective management organisations (CMOs)

CMOs consider that the territoriality of exceptions does not constitute a problem for rightholders, businesses or consumers. They point out that the lack of harmonised provisions does not preclude a similar level of protection for creators in different countries and the national provisions can be better adapted to their economic and cultural environment. Also, it does not constitute a problem as long as the international cooperation of CMOs (i.e. reciprocal representation agreements) is recognised. A few collective management organisations (in

particular RROs – reproduction rights organisations) consider the differences in national laws problematic and argue for a higher level of harmonisation.

As regards the cross-border aspects of fair compensation, CMOs propose maintaining the current system, that being CMOs collecting compensation in their territory and distributing it to right holders via reciprocal representation agreements. Compensation should be paid (collected) where the end user benefits from the exception (where the compensated exploitation takes place) while the payment should be made to the rights holder in the country of his residence.

Publishers/producers/broadcasters

As regards the territoriality of exceptions, most *publishers*, *producers* and *broadcasters* generally argue that they do not encounter any problem in this area. They consider that exceptions do not need to be given a cross-border effect. Publishers often refer to the quotation exception as an example that they rely on (i.e. the use of quotes without the authorisation of the author) when selling books across borders. They consider that the territoriality of exceptions corresponds to the territoriality of copyright protection. Exceptions should support domestic policy purposes.

Some stakeholders in this group highlight that in exceptions where a cross-border effect could potentially have relevance (e.g. disabilities, education, private copying), in fact national implementation approaches do not differ much; hence the functioning of the single market is not negatively affected. They also point out that licences can much better recognise the specificities of cross-border uses than legislation. Many of the respondents also underline the important role of the CJEU's case-law in the interpretation of the relevant EU directives. They argue that granting a cross-border effect to national exceptions would in fact multiply the applicable exceptions and result in a chaotic legal situation. Publishers in the print sector argue that Member States would not be willing to compensate right holders from other countries from their national budget and that licences sufficiently address cross-border uses within closed networks (universities, libraries, schools, etc.). A number of respondents consider that fair compensation should be paid in the territory where the compensated exploitation takes place and that existing reciprocal representation agreements between collective management organisations work sufficiently. Some respondents argue that this matter should remain in the competence of Member States.

Intermediaries/distributors/other service providers

Intermediaries, distributors and service providers have divergent views. Most of them do not consider the territoriality of copyright exceptions as a problem. Some argue that, based on the jurisprudence of the CJEU, limitations and exceptions are gradually being applied in a convergent way across the EU. They note that Member States increasingly make use of the flexibility they have under the directives. Therefore, any amendments to existing rules would require careful analysis. Some however argue that differences in the implementation of exceptions make it difficult to fully assess the applicable legal framework, in particular when

negotiating multi-territorial licences and distributing products or providing services across borders. As regards the payment of ‘fair compensation’, those who responded often suggest that the applicable law should be that of the country where the work is used and protection is sought. Another suggestion is that the concept of ‘fair compensation’ should be harmonised at a European level, and in a manner so that minimal harm does not give rise to a compensation claim.

Member States

Some of the Member States who responded consider that exceptions should not be given cross-border effect since they are important for domestic cultural policy purposes and have generally no cross-border dimension. Other Member States consider that the cross-border effect could facilitate activities such as cooperation in the field of research. A harmonisation of the private copying exception, including the provisions on fair compensation, is also suggested by some Member States.

Other

Academia, civil society and think-tanks have divergent views. Most of them consider that the lack of cross-border effect of exceptions can be problematic. Examples include the use of content under exceptions for websites which can be accessed from several Member States, material used for illustration in cross-border education and cross-border research cooperation. Some point out that search engines could rely on the right of quotation, cloud storage providers on the private copying exception and user generated content platforms on the exceptions for quotation and parody. They argue that the current situation creates legal uncertainty that limits the development of cross-border online services.

As regards fair compensation, some considers that the compensation should be paid in the country where the use takes place to the competent collective management organisation and others would prefer a central collective management organisation for the collection and distribution of payments among the national organisations.

4. Access to content in libraries and archives

The EU copyright rules establish a number of optional exceptions and limitations for the benefit of publicly accessible libraries, educational establishments and museums, as well as archives. Respondents were asked to share their experiences of the use of the exceptions by cultural institutions and to provide their views on how problems, if identified, should be solved.

i. Preservation and archiving (Questions 28 to 31)

These questions concern the exception allowing publicly accessible libraries, educational establishments, museums and archives to undertake specific acts of reproduction which are not for direct or indirect economic advantage (the preservation exception – Article 5(2)(c) of the InfoSoc Directive). Respondents were asked to give feed-back on their experiences with

preservation activities carried out by these institutions and to provide their views on how problems, if identified, should be solved.

End users/consumers

A relatively small number of respondents in this category responded to the questions on the preservation exception. In some cases, end users/consumers are concerned about the divergent implementation of the preservation exceptions across the EU and consider that more harmonisation of the preservation exception is needed in view of technological developments. Some end users/consumers also suggest broadening the scope of this exception, notably to allow public libraries and other beneficiaries to make the works in their collections available online.

Institutional users

The vast majority of institutional users report that they have experienced problems when trying to use an exception to preserve and archive specific works in their collections. Respondents consider that both the scope of this exception and the way Member States have implemented it cause problems. Member States' implementations are excessively divergent and in many cases this exception has been implemented in a too narrow or unclear way. Examples given include Member States' laws that limit the number of copies that can be made or that reduce the range of beneficiary institutions and prohibit or limit format shifting (the conversion of the copy of a work into a new format, something that is considered to be particularly important when a certain format – and devices used to read it - become obsolete or unavailable).

Institutional users stress that the limited level of harmonisation of the current exception and the fact that it does not have cross-border effect have a negative impact on collaborative digitisation projects across countries.

They generally believe that the preservation exception is too narrow. Some point out that the mere preservation of works in their collection is not the sole reason why libraries and other institutions wish to reproduce them. Other objectives include making these works more easily searchable or available across digital networks, including across research platforms and infrastructures. Some respondents highlight problems in relation to recital 40 of the InfoSoc Directive, according to which this exception should not cover uses made in the context of online delivery of content. It is also stressed by some respondents that the exception should allow beneficiaries to go beyond the specific acts of reproduction which are currently allowed and that it should allow mass digitisation.

Institutional users also raise issues with 'born-digital' content and highlight that the preservation exception does not allow them to produce back-up copies of content (for example articles) that they subscribe to.

More broadly, institutional users consider that licences are not a sustainable solution for the digital preservation of content in the long run. Licensors, for example publishers, may cease

to exist and subscriptions may be stopped and, as a consequence, libraries and other institutions may lose access to content, which would prevent them from fulfilling their role as custodians of cultural heritage. Some institutional users also point to problems related to technological protection measures and their protection under the InfoSoc Directive, which they consider unbalanced and having negative effects on preservation activities. They also mention some difficulties with the fact that this exception only covers acts carried out without direct or indirect commercial advantage: they consider this requirement too broad and potentially problematic, for example when institutional users cooperate with commercial entities for preservation or other purposes. Other areas where difficulties are reported include, for example, website harvesting projects, the creation of open access directories and the provision of copies for evaluation purposes in academic settings.

Proposed solutions include the harmonisation and broadening of the existing exception so that it would allow, for example, institutions to make multiple or unlimited reproductions of all types of works in their collection (i.e. mass digitisation), including born-digital content acquired through subscriptions and specific categories of works like old computer software. It is also proposed that the exception's scope should clearly include format shifting. Some respondents in this category also call for the current exception to be made mandatory and for a clarification that contracts cannot override exceptions. They also call for a revision of provisions related to technological protection measures. Finally, some respondents suggest that the introduction of a 'fair use' approach in EU copyright law would help libraries and cultural institutions to fulfil their role.

Authors/performers

Most authors and performers report having not experienced major problems with the existing preservation exception. They believe this exception allows institutions to fulfil their public interest missions, and that uses beyond the scope of this exception should rely on licensing solutions. Some of these respondents acknowledge that digitisation for preservation is an important public policy objective but consider that this objective is often hindered by budgetary, rather than copyright, restrictions. They consider that a lack of funding for public libraries should not be to the detriment of the remuneration of rightholders in the content held by these institutions. Licensing, both individual and collective, is generally considered to be the solution, if and when problems arise.

Collective management organisations (CMOs)

CMOs' views on this subject are generally close to those of publishers, producers and broadcasters, with a general preference for market-based solutions - particularly collective management - where problems are present. Some CMOs report that cultural heritage institutions in certain Member States digitise not only for preservation purposes but also to make digitised content easily accessible (online) to a wider public. Some respondents point out that licences are available to cover both activities (at least in a number of Member States) but report that, in their view, cultural institutions are not always willing to use them and remunerate rightholders for their use of copyright protected content.

Publishers/producers/broadcasters

Publishers, producers and broadcasters mostly argue that they have not experienced major problems, if at any, with the preservation exception. They emphasise the importance of licensing solutions and voluntary cooperation to solve possible issues in this area, instead of legislative changes. They consider in particular that the preservation exception should not be broadened nor made mandatory. Generally speaking, for respondents in this category, legislative changes should only be considered in the presence of a market failure. They consider that stakeholder cooperation and agreements should be pursued in this area. *Audio-visual producers* refer to the principles and procedures for the digitisation of film heritage agreed upon in the context of Licences for Europe. Other concrete examples of market-based solutions are mentioned, for example *STM (Scientifical Technical and Medical) publishers* mention the PORTICO and CLOCKSS projects.

Some respondents point to the fact that some public libraries request to be able to engage in certain preservation activities despite the fact that they do not qualify in their opinion as heritage libraries. In order to prevent unnecessary harm to commercial markets, a distinction should be made between heritage/deposit libraries, which have a clear preservation mission, and other libraries when defining the beneficiaries of libraries exceptions and the conditions attached to them.

Intermediaries/distributors/other service providers

Only a small portion of respondents in this category provided feedback on this matter, and their answers vary, in particular on whether problems with this exception exist. In some cases, service providers highlight the need for more legal certainty for libraries. Other respondents express a preference for cooperation and agreements among interested parties over legislative intervention. Some distributors in the audio-visual sector consider that there are no problems in this area and report examples where they themselves have a role in the preservation of cultural heritage (for example in Austria, in relation to public funding of audio-visual production).

Member States

Some Member States believe that there is no need to expand the scope of the current preservation exception. Others, while not necessarily against legislative changes, highlight the importance of formulating exceptions in this area in a technologically neutral way, or consider that this exception should cover all types of media. Other Member States suggest the possible extension of this exception to other essential uses not yet contemplated, taking into account that, currently, copies made under the existing exception cannot subsequently be made available to the public.

Other respondents

A number of academics consider that the current preservation exception should be revised, since the focus on specific acts of reproduction is too narrow. Feedback from respondents

such as experts, non-governmental organisations and chambers of commerce range from very detailed comments on issues such as format shifting, web harvesting and the archiving of born-digital content to more general considerations on the importance of finding a balance between rightholders' remuneration and opportunities offered by digital networks. A group of respondents from the performing arts industry (e.g. theatre, opera houses, performing arts companies) present views similar to those of institutional users and advocate the broadening of the beneficiaries of the current exception.

ii. Off-premises access to library collections (Questions 32 to 35)

These questions concerned the exception covering the consultation of works and other subject matter via dedicated terminals on the premises of libraries and similar establishments for the purposes of research or private study -Article 5(3)(n) of the InfoSoc Directive. Respondents were asked to give feed-back on their experiences with remote access to works held in these institutions and to provide their views on how problems, if identified, should be solved.

End users/consumers

A relatively small number of respondents in this category provided feedback on this issue. End users/consumers reporting problems with the consultation exception consider that the current exception, which is limited to on-site consultation, is outdated or unjustified, and not in line with today's user expectations. The lack of online availability of out-of-commerce works is also often raised. Other problems reported by end users/consumers concern cultural institutions' difficulties with the licensing process for remote access, the use of digital rights management, or, more generally consumers' lack of remote access to library materials including across borders (examples often relate to academic contexts).

Proposed solutions vary. They include reviewing the scope of the consultation exception, in particular to remove the current condition that limits it to on-site consultation, intervening in the field of technological restrictions such as digital rights management mechanisms, improving licensing mechanisms and simply giving users unrestricted access to digital content held by libraries.

Institutional users

Institutional users generally consider the current consultation exception to be too narrow and not in line with technology and with people's expectations. They are often critical of current licensing mechanisms for remote access. They report unbalanced bargaining positions in their licensing negotiations with rightholders and consider that licence terms are not adapted to libraries' policies (e.g. only certain uses are allowed, remote access is not always possible, including across borders and the range of licensed works is limited, etc.). In some cases, respondents point out that licences are simply not available.

Some institutional users also highlight that negotiating licences is burdensome and resource-intensive. Other respondents signal difficulties with having to deal with many different contracts and their differing conditions. Some also highlight that technological protection

measures prevent cultural institutions from using digital content to meet their needs and missions. Some respondents consider that problems with the consultation exception are just examples of a broader issue related to the difficulties cultural institutions face in making their collections available online.

Most institutional users who propose solutions favour legislative changes. They believe that the current consultation exception should be broadened and further harmonised. Some believe that besides allowing remote access, it should generally apply to non-commercial uses beyond the purpose of research or private study. According to some respondents, the exception should also allow digitisation. However, a number of respondents in favour of broadening the current exception also recognise the need to not unduly prejudice the interests of rightholders. In this vein some suggest the introduction of possible limits/conditions to the exception (such as limiting it to out-of-commerce works). In addition, it is often argued that exceptions for libraries and archives should be made mandatory and should not be overridden by contracts or prevented by technological protection measures. One respondent proposes exploring the creation of an independent body with intervening powers that could help with unbalanced negotiating powers.

Authors/performers

Authors and performers highlight that licences for online remote access of collections of libraries and other institutions are generally available. Some respondents however report gaps in some Member States. Respondents generally consider that online remote access is to be dealt with by way of licensing via collective management organisations. If difficulties exist, these should be addressed through stakeholder dialogues and agreements (they often quote the Memorandum of Understanding on out-of-commerce works as a model). Authors and creators' remuneration should not be neglected in this area.

Collective management organisations (CMOs)

CMOs, in particular from Northern Europe, put forward their experience with extended collective licences and suggest considering a legislative intervention to ensure their cross-border effect. Visual art CMOs express concern about the impact on authors' remuneration in this area. CMOs mostly favour market-based solutions or stakeholder dialogues to ensure remote access to materials held in institutions and in some cases they refer to concrete national examples. Some respondents, however, refer to difficulties with contractual solutions and some others express openness to legislative solutions if the scope of permitted uses is clearly defined and limited.

Publishers/producers/broadcasters

Many representatives of publishers, producers, and broadcasters explain that licensing is already widespread and should be further encouraged as the best way to foster remote access. They consider that licences are generally a more flexible tool than an exception. Many respondents oppose legislative interventions and say that expanding the current exception to

cover remote uses would undermine existing contractual approaches and be potentially detrimental to commercial markets and state that broadening the current consultation exception would risk creating unfair competition between libraries (and similar institutions), and commercial offers. Some respondents, particularly from the *print sector*, also warn against changing the conditions attached to the current consultation exception (i.e. they believe that any consultation has to be done on the premises of the institution and must be for research and private study only) which they consider already quite broad.

Scientific, technical and medical publishers stress that remote access is a standard component of many licences with academic and research libraries, and is often allowed on a cross-border basis. Several *publishers*, in particular from Northern Europe, mention experiences with extended collective licensing in this area. *Record producers* stress that access to music is very widely available in the EU, which makes any legislative intervention unnecessary and of no benefit for end users. *Film producers* mention the 2009 FIAPF-ACE Framework Agreement on Voluntary Deposit of Films in European Preservation Archives, which provides for the possibility of negotiating remote access to works subject to voluntary deposit with European film archives who are members of ACE (the association of European *cinémathèques*) and consider that there is no need for a legislative solution.

Intermediaries/distributors/other service providers

Few respondents in this category have provided views on the consultation exception. Some of them refer to practical experiences with market-based solutions for remote access which are frequently supported as a better solution than exceptions by booksellers' organisations, for example. In some other cases, however, views were similar to those of institutional users.

Member States

Among Member States who responded to the public consultation, some believe that there is no reason to expand the scope of the current exception, while others are open to doing so in order to factor in technological developments and allow remote access with due safeguards for right holders. One Member State recommends considering extended collective licensing and others generally recommend that action in this area should take account of technological developments and be future proof. One Member State points to interpretation problems relating to the condition in the current exception which specifies that it should only apply to works not subject to purchase or licensing terms.

Other

Some respondents in this category (including, for example, research entities, experts and non-governmental organisations) put forward similar observations and suggestions as institutional users, indicating that the current formulation of the preservation exception might not be in tune with user expectations, for example in academic settings. Others point to technical or legal difficulties associated with the introduction of off-premises access via an exception, warning against the risks of interference with markets and in some cases suggesting the use of

extended collective licensing. Specific issues are raised, for example in accessing works online for journalistic purposes or visually impaired persons' access through supporting technology.

iii. E-lending (Questions 36 to 39)

These questions invited respondents to share their experiences with electronic lending of books and other materials by public libraries and to provide their views on how problems in this area, if identified, should be tackled.

End users/consumers

A relatively small number of end users/consumers replied to these questions. Those who did reported problems in borrowing or accessing materials electronically from public libraries, whether nationally or across borders. Specific examples include technological protection measures that prevent the reading of eBooks on certain devices or through some operating systems, difficulties in obtaining access to some academic publications, e-lending service being unavailable altogether in some libraries/Member States and specific eBooks unavailable because they have already been lent to another patron at the same time. More generally, representative of end users/consumers consider that the current rules applicable to e-lending are not clear, that EU citizens should be able to borrow eBooks from libraries in other Member States and that libraries should not be prevented from making eBooks accessible to different users simultaneously.

Proposed solutions include restricting the use of technological protection measures or their legal protection, introducing a new e-lending exception, relying on market-based solutions such as licences and making licence terms more user-friendly.

Institutional users

Institutional users report significant problems in relation to e-lending licensing agreements. Generally speaking, in their view, reliance on licensing models confers excessive and undue influence to publishers over libraries and their policies and more generally affect the public interest mission and independence of libraries. They point to specific issues, including the fact that only a small portion of all published eBooks is available for e-lending, and to conditions on loans that do not fit with their public missions. These include limits to, or the prohibition of, simultaneous loans of the same copy to more than one person, or limits to how many times a given copy can be lent. They also express concerns regarding user data being retained by publishers or e-lending platforms, and on technological protection measures which prevent libraries from deciding how and on what devices patrons can read eBooks. Some institutional users also consider that licence costs are excessively high and that territorial limitations can prevent cross-border e-lending.

Proposed solutions to address these problems vary. Many respondents referred to the principles on the acquisition and access to eBooks elaborated by EBLIDA – the European Bureau of Libraries- which they believe should underpin future policy action in this area,

including at EU level. Some institutional users also call for legislative intervention at EU level to extend the derogation from the exclusive public lending right set out in Article 6 of the Rental and Lending Directive⁸ to also cover also e-lending. Finally, some respondents call for legislative changes that would extend the principle of exhaustion (of the distribution right) to the distribution and lending of digital content.

Authors/performers

Many authors and performers believe that e-lending should be based on licences and insist that it should properly take into account their interests, including their fair remuneration.

Respondents report that authors are often not part of, or involved in, e-lending agreements concluded between publishers and libraries and that e-lending licensing is not necessarily contemplated in the transfer of rights between authors and publishers. According to authors, this situation risks causing an unbalanced situation whereby they are penalised by e-lending agreements. Some problems are also raised by representative of translators, who refer to agreements for e-lending between libraries and collecting societies which, in some countries, result in an unfair deal for them. In some cases, author representatives refer to piracy risks associated to e-lending.

When it comes to solutions, authors often support contractual agreements as the way forward in this area, stressing the importance that e-lending does not undermine the emerging eBook markets. They highlight, however, that such solutions should take author's rights duly into account and ensure their remuneration. Some author representatives refer to the regime of the Rental and Lending Directive as a model that could be followed to ensure their remuneration also in the case of e-lending.

Some representatives of authors report national experiences which see their involvement in discussions aimed at creating a sustainable model for e-lending through licensing. For instance, writers mention their experiences in Denmark (the lending of eBooks through *eReolen.dk*) and in France (working group convened by the government involving authors, publishers, booksellers and libraries to analyse e-lending offers and prepare a professional code of conduct).

Collective management organisations (CMOs)

CMOs report the existence of licensing schemes for electronic lending, and that different solutions are being tested at national level. CMOs generally support licensing over legislative changes in this area. Some CMOs, particularly in the visual arts area, recall that the remuneration from the public lending right, applicable to physical loans, is an important source of income for their members, and call for ensuring the remuneration of authors in the

⁸ Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property.

context of e-lending. CMOs also often stress that the eBook market is nascent and that selling access to copyright works is part of rightholders' digital business models. They argue that library e-lending can, therefore, interfere with the normal exploitation of works and unreasonably prejudice their interests to a greater extent than physical lending.

Publishers/producers/broadcasters

Book publishers report that e-lending licensing solutions are being developed and tested in various Member States. They provide examples of different initiatives from across Europe, mentioning projects in Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Poland, Spain, Sweden and in the UK.

Publishers (as well as *producers* and *broadcasters*) are largely against the introduction of an exception on e-lending. They believe that such an exception would negatively affect the commercial exploitation of their works and undermine the nascent eBooks market as e-lending (which usually allow a patron's access at no or at a symbolic cost) would become a substitute to purchasing books. Book publishers emphasise in this context that libraries' acquisitions represent a very small part of publishers' turnover as compared to commercial distribution. Respondents also point out that an e-lending exception would risk inhibiting the launch of new services and technical innovation.

Book publishers also stress the importance of introducing 'frictions' in e-lending mechanisms, in order to mimic conditions inherent to physical lending and to safeguard the commercial market. 'Frictions' can take the shape, for example, of limits to the concurrent use of the same eBook by multiple users, time limits or limits to the transfer of files on multiple devices. They often quote in this context a national experience with an e-lending scheme (in Denmark) that had to be revisited after some time because of too great an impact on the commercial distribution of books and piracy issues.

Some respondents highlight that the risk of harm to the commercial market is higher for trade books than for scientific publications addressed to a specialised audience. *Phonogram producers* observe that the existing variety of services and music, including free-to-access on demand services, substantially reduce the case for e-lending for music. They consider that licensing schemes are in any case to be preferred to an exception which would directly harm the functioning of the market. This point is also raised by *commercial broadcasters*.

Intermediaries/distributors/other service providers

Limited input was received from this category of respondents on this matter. A number of respondents consider that e-lending agreements are still underdeveloped in some Member States and express the concern that e-lending could unduly interfere with the market and the development of new business models. In some cases, respondents stress that the use of audio-visual material by libraries should be based on authorisations from rightholders.

Member States

Member States that responded to the public consultation generally acknowledge the need to find solutions for citizens not to miss out on the possibilities offered by e-lending, while safeguarding the interests of right holders. Some Member States do not see a need to intervene with changes to the current EU legislation and rightholder remuneration is a frequent concern. One Member State suggests also considering extended collective licensing in this area.

Other

There was no significant input on this topic put forward by other respondents, other than opinions concurring with those of either rightholders or of users.

iv. Mass digitisation (Questions 40 and 41)

The first question on mass digitisation concerned the possible need to enact legislation to give cross-border effect to the 2011 Memorandum of Understanding (MoU) on out-of-commerce works⁹. The second question was more general and related to the possible need to develop new mechanisms to ensure the digitisation and making available of other types of content.

End users/consumers

Only few individual end users replied to the questions related to mass digitisation. End users/consumers and their organisations refer to two main reasons when acknowledging the importance of mass digitisation: firstly, the need to ensure the preservation of works for future generations, in particular for educational and cultural resources; secondly, the legitimate interest of the public in having online access to the collections of cultural heritage institutions across Europe.

Users consider that an exception is necessary to allow cultural heritage institutions to make their collections available online. Some respondents suggest extending the scope of the existing exception for the consultation of works for the purpose of research and private study. Others consider that the mass digitisation could be facilitated by reducing the terms of copyright protection. Another possible solution mentioned in the replies (but not as the favoured solution) is the use of compulsory licences.

End users generally consider that mechanisms facilitating mass digitisation should be adopted for all type of works beyond the print sector, including audio and audio-visual works. Several replies point to the need to make available broadcasters' archives, especially material produced with the contribution of public funds.

⁹ The Memorandum of Understanding on key principles on the digitisation and making available of out-of-commerce works aims to facilitate mass digitisation efforts for books and learned journals on the basis of licence agreements between libraries and similar cultural institutions on the one hand and the collecting societies representing authors and publishers on the other. See: http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm.

Institutional users

Most institutional users consider that the MoU on out-of-commerce works and the Orphan Works Directive¹⁰ are insufficient to address the copyright issues arising from mass digitisation projects. In particular, they consider that the requirement of diligence searches makes the Orphan Works Directive unsuitable for mass digitisation projects. Some academic libraries express concerns about the possibility of finding a balance, without arbitration by public authorities, between licensing conditions imposed by rightholders for digitising collections and the limited financial resources available for mass digitisation.

Many cultural heritage institutions report a large demand from citizens, teachers, students and researchers for the digitisation of 20th century works. Some university libraries also explain that students and researchers increasingly make use of audio and audio-visual materials.

Institutional users generally consider that legislation allowing cross-border use of the digitised works is necessary, but many of them indicate that this objective would be better achieved by an exception allowing for mass digitisation of out-of-commerce works (for example, by the introduction of a new exception or an expanded version of the existing preservation and consultation exceptions in the InfoSoc Directive to cover the reproduction and making available of out-of-commerce works). They suggest that such an exception should cover all types of works. Alternatively, they suggest considering solutions based on the collective management of rights, such as extended collective licensing, which are in place in some Member States. Museums explain that without a mass digitisation exception they are prevented from presenting their digital collections to the public and also from sharing them with other museums for research purposes.

Institutional users generally consider that mechanisms facilitating mass digitisation and online access to collections should not be limited to certain types of content. Certain respondents suggest to set up further Memoranda of Understanding for sound recordings and audio-visual works. Languages research centres indicate that EU-wide access to broadcasters' archives would be very helpful to enhance contemporary language research.

Authors/performers

Quite a large number of authors and their organisations consider that the mechanisms in place at national level are sufficient and that no legislative intervention is needed. A few respondents argue that it would be unrealistic to carry out mass digitisation for cross-border uses considering the marginal demand for access to works available only in national languages.

¹⁰ Directive 2012/28/EU on certain permitted uses of orphan works.

On the other hand, other authors and authors' organisations suggest that a mutual recognition system would be necessary to give a cross-border effect to the licences issued at national level under collective rights management systems. Several respondents highlight in their replies that the signatories of the MoU called on the Commission to consider legislation to ensure legal certainty in the cross-border context. Others argue that legislation enabling mass digitisation applicable throughout the EU would be preferable, with an unwaivable remuneration for right holders.

Certain authors express a clear opposition to solutions based on mandatory collective management with opt-out mechanisms. They consider that the consent of each author needs to be obtained for mass digitisation projects and that the remuneration has to be individually negotiated.

Several organisations representing visual artists, particularly photographers raise the question of the use of images embedded within other works, which in their view, is not considered properly in the 2011 MoU.

Different views are put forward on the development of further mechanisms for other types of works. Audio-visual authors in particular support further discussions on the digitisation of works in the archives of public broadcasters. A few respondents consider that the mechanisms in place in their countries (e.g. extended collective licensing) already provide a satisfactory solution for broadcasters' archives. Film directors indicate that they are committed to the statement agreed for mass digitisation of cinematographic works in the context of Licences for Europe. Performing arts organisations favour an MoU for the digitisation and making available of out-of-commerce works in the performing arts sector (e.g. sound or video recordings of theatre productions and concerts). They indicate that a stakeholder dialogue including organisations, collecting societies and publishers could be helpful to prepare such an MoU. Other authors insist on the need to foresee an unwaivable remuneration for rightholders, whatever solution is chosen.

Collective management organisations (CMOs)

CMOs put forward mixed views on the need to enact legislation to give a cross-border effect to the MoU on out-of-commerce works. Several CMOs refer to the national frameworks in place, in particular the extending collective licensing system in Denmark, the law on out-of-commerce books in France establishing a system of collective management and the recent law based on legal presumption of representation of rights in Germany.

While certain CMOs indicate clearly that they would welcome solutions for the recognition of national laws and licensing mechanisms across borders, others simply highlight that the MoU calls on the Commission to propose solutions for cross-border availability.

Concerning the possibility of extending this type of solution to other sectors, the views of CMOs are also quite heterogeneous. Certain CMOs in the audio-visual sector express their willingness to implement the principles agreed in the context of Licences for Europe and to

continue the dialogue on broadcasters' archives. CMOs representing visual artists express a preference for legislative solutions allowing mass digitisation with a fair remuneration. Other CMOs prefer to deal with digitisation questions through voluntary agreements between the interested parties.

Several CMOs underline that the main obstacle to mass digitisation projects is the lack of public funding, in particular in the audio-visual sector where digitisation costs are very high.

Publishers/producers/broadcasters

Many *publishers* in the print sector consider that there is no need for further legislation at EU level if the MoU on out-of-commerce works is effectively implemented in all Member States. Instead, voluntary agreements should be promoted to ensure access to digitised works (e.g. bilateral agreements between collective management organisations). Publishers explain that the main obstacle to large scale digitisation projects is very often the lack of public funding. In general, this category of respondents does consider there is an urgent need to develop mechanisms similar to the MoU in sectors other than the print sector

Representatives of the *newspaper publishers* consider that providing mechanisms to facilitate the mass digitisation of newspaper content would threaten publishers' business models and their ability to respond to digital challenges. They note that the solutions set out in the 2011 MoU were specific to the book sectors and cannot be automatically extended to publishing of newspapers.

Public service broadcasters explain that rights clearance on an individual basis for making available the content of their archives is practically impossible. The main difficulties are related to the large amount of audio and audio-visual material and the large number of contracts and rightholders. Therefore they favour the introduction of an EU framework which would encourage the adoption of legislative solutions based on collective licensing (for example on the extended collective licences model) in Member States to facilitate the digitisation of their archives. *Commercial broadcasters* express a different view and do not report any problems with the clearing of archives for new uses. They consider that there is no need for collective management to ensure the digitisation of audio-visual collections or broadcasters' archives. Certain broadcasters mention that the decision of whether or not to exploit archives is based on consumer demand rather than on rights clearance challenges. The exploitation of archives has been facilitated by the multiplication of TV channels and online platforms and constitutes an asset for broadcasters.

A large number of *film producers* consider that the approach used for the print sector (i.e. voluntary collective management backed by extended collective management or presumptions of representation) is not appropriate for audio-visual works, where individual rights licensing should be preferred. They are however in favour of a stakeholder dialogue to facilitate licensing solutions for the digitisation and making available of public broadcasters' archives. The use of extended collective licensing or presumption of representation in this context should be consistent with the three-step test and offer sufficient guarantees to rightholders.

Music publishers explain that mass digitisation is not an issue for music and that rightholders can licence their work directly. They say that digitisation is common in the music industry and the chances of music being both in analogue form and out-of-commerce are remote.

Intermediaries/distributors/other service providers

This category of respondents did not express specific opinions on the questions related to mass digitisation.

Member States

Only a few Member States replied to the questions related to mass digitisation, explaining the systems in place at national level to allow mass digitisation of protected content (for example, extended collective management). In general, Member States favour contractual mechanisms and discussions between CMOs and cultural heritage institutions to address the challenges of mass digitisation. One Member State suggests establishing a provision at EU level to facilitate the digitisation of audio-visual works for archiving purposes, with the exploitation of the digitised works remaining subject to an agreement with rightholders.

Other

Certain academics suggest that mass digitisation should be allowed under the preservation exception, which should include digitisation and format shifting but not acts of making available (which would remain covered by Orphan Works Directive and the MoU on out-of-commerce works). Other respondents support the introduction of a specific exception to enable libraries and archives to undertake mass digitisation of their collections.

5. Teaching (Questions 42 to 46)

These questions related to the teaching exception (Article 5(3)(a) of the InfoSoc Directive). Respondents were asked to share their experiences with the use of protected works for teaching purposes, including under existing market mechanisms, and to provide their views on how problems, if identified, should be solved.

End users/consumers

Organisations representing end users underline the restrictive implementation of the exception in Member States and the resulting legal uncertainty for teachers and students. In particular, some users report problems faced by teachers/trainers involved in the development of open educational resources (OERs), notably content such as images or parts of textbooks being removed from educational platforms at the publishers' request. Other users consider that copyright rules are too complex and negotiations with rightholders too costly, making innovative learning methods impossible to use.

As to the possible solutions, users call for a broad exception for non-commercial use of protected works in educational contexts: they believe that the exception should not be limited to educational establishments, teachers and students but should cover all educational activities

(including non-formal education) and should not give rise to compensation. According to respondents, the exception should be technologically neutral, to cover face-to-face teaching and online education. They also point out that works produced by students should benefit from the same protection as other authors. Several civil society organisations support a broad educational exception that is mandatory for all Member States while others suggest a fair use mechanism, allowing teachers to use illustrative resources and to share their works. In addition, certain respondents propose an exception for non-commercial sharing and consider that educational resources funded by public money should be disseminated under free licences.

Institutional users

A large number of institutional users highlight the restrictive implementation of the teaching exception in the Member States and report practical problems in particular for distance learning and cross-border uses. Several respondents illustrate the difficulties faced by universities having campuses abroad and virtual learning environments. They consider that the current situation creates difficulties for the development of online educational resources involving a cross-border audience. Film heritage institutions explain that the possibilities to use audio-visual material for teaching purposes are very limited.

Several respondents in this category mention the existence of licensing schemes in place at national level and the possibility to conclude licensing agreements with publishers. However a large number of institutional users consider that licensing solutions are expensive and create an administrative burden for schools and universities. Some libraries consider that licences are costly and conditions imposed by collecting societies do not guarantee the use of all works for educational purposes. Various respondents argue that licences should not be introduced to cover uses allowed under the exception. A certain number of respondents also mention open licences and massive online open courses (MOOCs) which provide valuable resources for teaching purposes.

Concerning the possible solutions, institutional users nearly unanimously call for a broad mandatory teaching exception. They consider that the exception should cover all types of works (such as text, film, multimedia and born-digital resources) and should not include any limits on the amount of the work that can be used. It should cover uses in the classroom and in virtual teaching environments, as long as it is not for commercial purposes. It should not be limited to any type of institution but rather defined by the teaching purpose. Less frequently mentioned conditions include the use of content for teaching compilations and the right of transformation.

A number of institutional users are of the view that the exception should not be overridden by contracts. Certain respondents consider that the exception should not give rise to compensation, while others believe that a reasonable compensation could be considered to satisfy the three-step test.

In the short term, certain institutional users consider that the Commission should clarify the scope of the teaching exception to encourage Member States to use the flexibility offered by the InfoSoc Directive. A small number of replies also insist on the need to increase awareness among teachers and students on the scope of their rights, through information campaigns or workshops.

Authors/performers

For a large number of authors' representatives, the use of works for illustration for teaching does not raise specific problems. However, certain authors point to the lack of compensation (in particular in Belgium, where compensation is foreseen for the uses under the exception but no agreement has been reached on the amount to be received by rightholders) or to extensive uses of their works by educational establishments. Journalists refer to possible problems when their rights are assigned to their employers (in this case they do not receive any remuneration for the use of their works under the teaching exception).

Several authors' organisations explain in their replies the system in place in their respective Member State: in particular the licensing system existing in the UK, the national agreements between the Ministry of Education and collective management organisations in France and the extended collective licensing system in Denmark.

The majority of organisations representing authors, performers and film directors express a strong preference for licensing mechanisms and agreements between collective management organisations and educational establishments. Some respondents favour a compulsory collective management system while others highlight the benefits of the extended collective licensing model. Representatives of journalists suggest raising awareness in schools of what is allowed under the exception.

Collective management organisations (CMOs)

Several collective management organisations in the category of reproduction rights organisations (RROs) underline that the notion of illustration for teaching in the teaching exception generates uncertainties which have resulted in litigation in some cases, with certain educational establishments refusing to take up a licence on the basis of the exception. Certain respondents in this category refer to the negative effects of the recent reform in Canada, where a new fair dealing provision covering education has been introduced, leading to extensive interpretations of the authorised uses by educational establishments and to legal proceedings. Other collecting societies consider that the existing framework for exceptions is appropriate and that cross-border access is not a pressing issue for schools.

RROs refer to the individual licensing solutions offered by publishers which are frequently combined with collective schemes. A number of respondents explain the functioning of the collective agreements set out at a national level. For example, certain RROs indicate that the system of sector-specific agreements developed in France is appropriate but some stress the lack of budget to ensure a sufficient remuneration of right holders. The extended collective

licences used in the large majority of schools in Denmark, Sweden and Finland were mentioned in several replies. Another RRO illustrates the functioning of the platform 'Conlicencia', in Spain, allows the use of works in the digital environment. Other respondents explain that the UK law foresees an educational exception which is subject to a licence.

RROs ask for a clarification of the exception at EU and national level. They defend a narrow understanding of the notion of illustration for teaching which should not comprise the reproduction, making available and distribution of educational resources (for compilations, course packs, textbooks, e-reserves, etc.). They state that the exception should allow the use of small parts of works (or non-relevant excerpts), that copies should remain in the hand of teachers and that rightholders should be named and receive remuneration. In addition, they consider that the best solution would be to encourage licensing agreements which offer comprehensive, tailor-made solutions.

Collecting societies representing authors consider that there is no need to make the exception mandatory, to extend it or to introduce new exceptions. They are of the view that it would be impossible to define the exception more precisely, given the difference in national education systems.

Visual artists' collecting societies consider that a legislative solution can be envisaged if the scope of uses is not too wide and if authors receive a fair remuneration. In addition, moral rights of the authors should be preserved and opt-out solutions need to be foreseen.

Publishers/producers/broadcasters

The majority of *publishers* and *producers* do not mention particular problems with the use of works for illustration in the context of teaching activities. They consider that the wording of the exception in the InfoSoc Directive is sufficiently broad to cover different types of uses, including in the digital environment. In addition, licensing solutions are in place to complement the exception where necessary. Several publishers' associations indicate that, so far, cross-border needs have not been reported in primary and secondary education, mainly because of the national nature of curricula.

However, certain book publishers point to problems in the interpretation of the current exception, notably its application in the digital environment. They consider that schools and universities make extensive use of the exception, going beyond what is allowed by national laws. Problems are reported in particular in Germany and Spain. Several German publishers explain that large parts of books were made available on the intranet of certain universities, creating direct competition with the primary market. Surveys by the German collecting society VG Wort have shown that over 400 million copies of textbooks fragments are made each year in schools in Germany. Spanish publishers refer to legal disputes with universities on the scope of the activities allowed under the exception. Certain publishers express concerns on the fact that, in several Member States, national laws do not exclude from the scope of the exception works whose primary market is teaching.

Many publishers refer to the innovative solutions proposed to respond to the needs of educational establishments in the digital environment (e.g. digital formats of works, use of interactive white boards, distance learning). Initiatives mentioned include the ‘Wizwiz’ in France, ‘Knooppunt’ and ‘Digiportail’ in Belgium; ‘Digitale Schulbücher’ in Germany; ‘Scuolabook’ in Italy. Several digital platforms or portals are available in Member States where teachers can find resources to be used in the classroom or in a digital learning environment. Publishers also propose providing customised eBooks to universities. Respondents from the software industry explain that the new digital textbook licensing model provides numerous benefits to students and teachers, including in terms of costs (digital textbooks are generally cheaper than print textbooks and are available for rental by students). The toolkit developed in the context of Licences for Europe for micro-licences (allowing the legal use of protected texts or images, including for education) is also mentioned. A few respondents in this category refer to open sources licensing models, indicating that they may offer flexible solutions in this area. Several publishers highlight in their replies the initiatives developed at national level to increase information and transparency on licensing schemes for educational establishments (e.g. the ‘*onderwijsauteursrecht.nl*’ website in the Netherlands; including a practical ‘guide’ that answers questions from users; and the ‘*schools*’ website of the UK Copyright Licensing Agency in the UK).

A large number of publishers consider that there is no need to modify the teaching exception in the EU legal framework. In their view, the absence of specific problems and the fact that they do not perceive there to be any market failure means that a legislative solution is not justified, and that if one is introduced it could limit new business models and consumer choice. Instead, they consider that individual and collective licensing solutions should be encouraged. They believe that licences offer more flexibility than a legislative solution and reduce possible uncertainties around the scope of the activities allowed under the exception. Moreover, licensing agreements can be easily adapted to rapidly-changing technologies.

Some publishers suggest maintaining a limited teaching exception (covering only small parts of works, for the benefits of teachers and students only, with the indication of the author's name, a fair remuneration for right holders and the exclusion of textbooks and resources produced specifically for the education market). A further suggestion is to confer a supervisory role to CMOs in order for them to check whether educational establishments respect the terms of licences.

Educational publishers and representatives of the software industry warn that a further harmonisation of the teaching exception could undermine the role of licences and the investment in the production of quality educational material, including educational software. (The educational publishing market represents about 20% of the publishing industry at EU level).

Intermediaries/distributors/other service providers

Only a few distributors and service providers expressed their views on the questions related to the teaching exception. They generally consider that there is no need for new legislation,

given the recent developments in the market offering sufficient flexibility (for example, innovative tools developed by publishers, pay-per-use licences, open educational resources and open licensing models). Their main concern is that legislative solutions risk hampering the development of market-based solutions. One respondent notes that the market of open educational resources is still very young and believes that it would be premature for the Commission to regulate it.

Film distributors agree that educational establishments can use clips of works for the purposes of illustration but are of the view that schools should pay a licence when they use an entire film (in the classroom or in distance learning). They consider that an extension of the exception would not be compliant with the three-step test (remote access to a film by distance learners would conflict with the normal exploitation of a work).

Member States

Certain Member States underline in their replies the differences in the transposition of the teaching exception and in particular the different interpretations given to the term illustration for teaching. Several Member States acknowledge the cross-border relevance of the exception in the case of distance learning and argue that copyright rules should not hinder cross-border provision of courses in the EU.

Clarifying the maximum scope of the teaching exception, in particular in relation to online uses, was suggested by several Member States among those that replied to the consultation, with some stressing the importance of ensuring a technology-neutral definition of the teaching exception. Several Member States favour a greater harmonisation, which would require making the teaching exception mandatory across the EU. For other Member States, there is no need to further harmonise or extend the scope of the existing exception.

Other

Groups of academics replying to these questions generally consider that there is a lack of harmonisation of the uses allowed under the teaching exception and that voluntary licensing is not sufficient to achieve the right balance between public and private interests.

They suggest further guidance on the implementation of Article 5(3)(a) of the InfoSoc Directive as well as the introduction of a mandatory and uniform exception. According to other academics, the current system works quite well even if some modifications could be considered (for example, allowing the use of entire works rather than fragments).

6. Research (Questions 47 to 49)

These questions concerned the research exception set out in Article 5(3)(a) of the InfoSoc Directive and were intended to gather respondents' experiences of the use of copyright protected works in the context of research projects/activities, including across borders, and their views on how problems, if identified, should be solved.

End users/consumers

End users/consumers, in particular researchers, are generally unsatisfied with the current situation. Even though a research exception exists in some Member States, respondents still report problems in accessing scientific publications or scholarly articles. Students and researchers highlight that access to the greatest possible range of academic publications is key for the completeness and accuracy of their research. They indicate not being able to access online certain material they would need for their academic work. Some respondents consider that the more reputable and high-quality scientific journals are usually those making access to their content more difficult, through 'paywall' restrictions. The cost of subscriptions is seen as disproportionate and excessive for individual researchers.

Researchers consider that this situation is particularly difficult to accept in the case of publicly-funded research. They believe that publications which present the results of publicly funded research should always be made available without restriction.

Most respondents consider that open access publishing is a suitable solution to increase access to research content. They mention in this context some examples of open access archives and networks. At the same time, many respondents argue that there are barriers that prevent open access from working in an optimal way and consider that open access should be better supported. It is also mentioned that open access journals are sometimes considered to be not very prestigious or have low citation index scores, making it less attractive to publish in such a journal. A problem often raised by researchers is that scientific publishers often require that they (as authors of scientific publications) agree upon unduly restrictive contract conditions, for example that their work cannot be put in open access databases.

Institutional users

Many institutional users report problems in the practical implementation of the research exception at national level. Many find that this exception has been implemented too narrowly by some Member States, which, they argue, has resulted in a limited use of the exception by its intended beneficiaries. It is reported that only few Member States (e.g. Estonia) have applied the exception in a technology-neutral manner.

More generally, some institutional users highlight that considerable online content that is relevant for scientific research is only available for payment and is burdened with digital rights management tools. They stress that remote access to university libraries collections should be further facilitated in the area of research as it is a much more practical option than onsite consultation. Some respondents note that licences for scientific articles often limit the amount of users that can access the material at the same time. This is problematic, they say, given that research projects often involve several researchers, sometimes from different universities or institutes including across borders which need to have access at the same time. A number of institutional users, in particular from Northern Europe, report their experiences with extended collective licences. Some point out that such mechanisms have not been very useful so far in the area of research as they are cumbersome to negotiate and limited in scope.

As a solution, these respondents consider that a mandatory and technology-neutral research exception should be adopted at EU level. More generally, they express strong support for open access publishing.

Authors/performers

The vast majority of authors - other than researchers as authors of scientific publications - consider that there are generally no problems with access to content for research purposes and with current research exception. These respondents argue that the combination of licences and exceptions offer users considerable flexibility to access content for research purposes. Respondents argue that licences are a good addition to whatever use would not be covered by a national exception. However, some note that it can be difficult for them to track uses and receive adequate remuneration.

Collective management organisations (CMOs)

The majority of CMOs consider that the current research exception does not pose specific problems. They favour licensing agreements and other market-based commercial solutions as the preferred way to distribute scientific publications. However, one CMO in the visual arts sector considers that clarification of the term 'non-commercial' - currently employed as a condition for the application of the research exception under the Infosoc Directive— would be welcomed.

Publishers/producers/broadcasters

Respondents in this category consider that the current exception works well. Any possible shortcomings with access to research publications can be easily dealt with through licensing agreements. They consider that licences are the preferred option in the field of research as they ensure quality and security and protect against possible abuses (i.e. uses for purposes other than research). Licences terms are broad enough to allow for the exchange of information necessary to carry out research, including across borders.

Some respondents state that scientific publishers already offer 90% of their products through licensing to educational institutions, which allows researchers, students and teachers to have access to that content. Representative of *STM publishers* report alternative access models that are being developed, such as 'pay-per-view' or rental for online viewing, which they consider particularly useful for researchers not affiliated to an institution or requiring only occasional access. Specific market-led initiatives are also mentioned, such as one in France where textbook publishers have been making works available in digital format via certain online portals (for example '*Canal Numérique des Savoirs*' and '*WizWiz*'). Other licensing projects mentioned include the '*RightsLink*' platform and '*Conlicencia*' in Spain.

Intermediaries/distributors/other service provider

This category of respondents did not express specific opinions beyond those put forward by other stakeholders groups on the questions related to research. Some of them generally supported the views of users, while others raised points similar to those of rightholders.

Member States

Some Member States would welcome further harmonising the research exception at EU level, in particular to take account of online uses (one of them emphasises that if there are changes the exception should keep only covering non-commercial uses, as it is currently the case). One Member States considers that this exception should be made mandatory. Other Member States would, on the contrary, prefer that the exception remains as it is. They stress the importance to maintain flexibility for national implementation approaches and licensing mechanisms as well as the need to comply with limits imposed by international law (in particular with the ‘three step test’). One Member State refers to its national policy, which requires publicly funded research to be made available through open access mechanisms.

7. Disabilities (Questions 50 to 52)

Respondents were asked to share their experiences with the use of the disabilities exception in Article 5(3)(b) of the InfoSoc Directive, to give their views as to the existing market mechanisms that facilitate the accessibility of content and to provide their opinion on how problems, if identified, should be solved.

End users/consumers and institutional users

Several users and institutional users highlight problems with respect to the implementation of the disabilities exception, referring in particular to dyslexia being excluded from its scope by several EU Member States. They also point out that there is no legally certain possibility to export and import accessible format copies (for example, Braille, large print and audio books with special navigation tools) made under a national copyright exception. Some respondents underline that the existing licence-based solutions in the market are not sufficient to ensure equal access to content for persons with disabilities. Moreover, some respondents in this stakeholder group expressed concerns that paragraph 4 of Article 6(4) of the InfoSoc Directive on technological protection measures could be interpreted in a way that could create an obstacle for beneficiaries of the exception. Some respondents report that such measures effectively block access for disabled persons to some books.

A number of users and institutional users who responded consider that the World Intellectual Property (WIPO) Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print-disabled will satisfactorily address these concerns both by making the exception mandatory and by ensuring cross-border access, and urge the EU to rapidly ratify the Treaty. Some respondents, however, note that similar mechanisms should be adopted for the benefit of persons with other disabilities (e.g. hearing impairment) and with respect to accessible formats of audio-visual works (e.g. mechanisms such as closed captions).

Many users also recognise that the overall availability of books in accessible formats can ultimately only be achieved by generalising accessibility features in mainstream publishing; they emphasise the value of the ePub3 format. However they consider that it will take significant amount of time to achieve this. Some note the need for public (technical and financial) support for the existing international cooperation projects such as ETIN (European Trusted Intermediaries Network) and TIGAR (Trusted Intermediary Global Accessible Resources) that have the objective of improving the cross-border availability of books in accessible formats under licences.

Some respondents underline the obligations of the EU and its Member States under the UN Convention on the Rights of Persons with Disabilities.

Publishers/producers/broadcasters; authors/performers and collective management organisations (CMOs)

Most publishers, producers, collective management organisations and those authors who responded generally consider that there are no problems arising from the implementation of the disabilities exception in the EU. They underline that licensing mechanisms provide a flexible solution to ensure the availability of content in accessible formats and should be favoured over exceptions. They consider that the existing market mechanisms, in particular the increasingly wide-spread use of the ePub3 format, domestic cooperation between publishers and blind organisations and existing international cooperation (for example ETIN and TIGAR – see above) are effectively addressing the problem of access to works by persons with disabilities. *Film producers* point out that a number of tools are available to make content on DVD and Blue-ray more accessible to disabled persons (by the inclusion of audio description for visually impaired persons and closed caption for the hearing impaired, for example).

Publishers often underline the need for an international network of trusted intermediaries in order to ensure the secure exchange of accessible formats across borders. Good cooperation between authors, publishers and blind organisations is reported from a number of Member States. Some respondents indicate that the TIGAR project already contains data for over 200,000 titles from a number of countries around the world and the list of countries is rapidly increasing. Some note that the ETIN project would need public (financial) support.

Respondents from these stakeholder groups often highlight that full accessibility will not be ensured by broadening the existing disabilities exception but by including accessibility features in mainstream publications. Some *film producers* encourage formalised discussions on facilitating access to audio-visual material for persons with disabilities. A few broadcasters

underline the existing obligations under Article 7 of the Audio-visual Media Services Directive¹¹.

Intermediaries/distributors/other service providers

Those from this stakeholder group who responded underline the importance of equal access to creative content for persons with a disability. While some pointed to the high production costs of special formats as the cause of limited accessibility; others described some projects taken up by distributors and service providers in some Member States to improve access to works for persons with disabilities.

Member States

The Member States that responded stress the importance of the disabilities exception and most often consider that the ratification of the Marrakesh Treaty would provide a solution to possible problems related to cross-border access.

8. Text and data mining (Questions 53 to 57)

Respondents were invited to share their experiences of using or providing services based on text and data mining. They were also asked to provide their views on how problems, if identified, should be solved.

End users, consumers and institutional users

Most respondents that provided views on this issue under the category of "end users" were individual researchers. In most cases, these respondents had similar views as research institutions, universities and similar undertakings which provided their views as part of the "institutional user" category. In addition some consumers provided answers to this topic in the consultation.

Researchers and institutional users are generally dissatisfied with the current situation. They highlight that text and data mining is a fundamental tool for research and consider that, at present, Europe is missing out on the benefits that text and data mining can bring to competitiveness and innovation and to citizens. They put forward two main categories of obstacles to text and data mining: legal uncertainty on whether and how copyright may apply to text and data mining and problems with existing licensing mechanisms, which they generally consider inadequate.

These respondents stress that it is not clear whether and to what extent text and data mining fall under current EU legislation on copyright and the database right and, if so, whether any of the existing exceptions may apply. They consider that mining should not be copyright

¹¹ Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services.

relevant as it does not involve the expression of an idea that copyright law intends to protect, but just analyses the underlying facts. Some point out that the reproduction of copyright protected works for non-commercial research based on text and data mining could already be covered by existing exceptions and limitations to copyright and the database right in the laws of the Member States. However, they argue that in many Member States it is not clear whether the current exceptions, in particular the research exception (when implemented), could apply to text and data mining.

According to these respondents, licences are not an appropriate solution to solve the uncertainty concerning text and data mining and rather constitute a barrier and a source of transaction costs. They report that using the breadth of works needed for successful mining require working through a wide variety of contractual negotiations and agreements. This situation, these respondents say, often limits the data that can be used for mining purposes to that available on the basis of licences that explicitly allow mining (such as some in the Creative Commons family of licences).

Researchers and research institutions consider that licence terms currently proposed by scientific publishers are unreasonable, particularly because they argue that they require researchers to disclose information about their projects, limit the number of articles that can be mined and – they say - unduly interfere with how researchers can make available the output of mining.

Some of these respondents consider that text and data mining is easier in non-EU countries that have ‘fair use’ provisions in their legal systems. According to them, this gives North American universities a competitive advantage over universities and companies based in the EU.

Several respondents also refer to issues related to technical access to content for mining purposes. They are concerned about the use of technological protection measures that block access to content, thus preventing text and data mining or rendering it more difficult. It is also suggested that the concerns of publishers on reduced performance and security issues linked to their infrastructure when crawled by mining robots are not shared by open access publishers.

Researchers and institutional users consider that text and data mining should not be subject to licences. They believe that a legislative change is needed to introduce a specific mandatory exception for text and data mining in EU copyright law. They consider that the exception should cover both commercial and non-commercial scientific research, as confining it to non-commercial uses would create legal uncertainty and impede the full development of the potential of text and data mining. According to them, technological protection measures and contracts should not be permitted to override the exception. These respondents also consider that researchers should be entitled to share the results of mining with fellow researchers as long as such results are not substitutable for the original works which have been mined.

Finally, a number of consumers' replies raise concerns in relation to privacy and data protection. They believe that access and analysis of all data available on the Internet represents a tangible impediment to the constitutional rights of European citizens.

Authors/performers and collective management organisations (CMOs)

Authors, such as journalists and writers (individual researchers expressed their views mainly under the category of 'end users') and their representatives, as well as CMOs, generally consider that there is no major problem in the field of text and data mining. They state that licensing solutions are being developed and are the preferred way forward. They consider that more work could be done through dialogue between interested parties and between rightholders and governments to improve licensing practices. They also point to the fact that text and data mining is a new activity and that a lot of uncertainty still exists as to what exactly is meant by text and data mining. In their view, it would, therefore, be premature to deal with text and data mining in legislation.

Authors and CMOs believe that if an exception is nevertheless considered (which they generally oppose) it should be limited to non-commercial uses. They consider that a broad and general text and data mining exception, covering both non-commercial and commercial uses, would be contrary to EU's international obligations. Respondents in this category are concerned that an exception could favour commercial operators, in particular news aggregators or commercial news monitoring services. They highlight that it is essential that the output of text and data mining does not become a substitutable product for the original works that are subject to mining.

Some respondents also point to the role that collective management could play in this area and a few suggest that if an exception is introduced, it should be linked to the payment of fair compensation to rightholders. The introduction of a remuneration right is also suggested as an alternative by some.

Publishers/producers/broadcasters

Publishers, in particular *Science, technology and medical (STM) publishers* indicate that they already meet requests and offer solutions allowing the possibility of mining texts and data. However, such requests are still rather limited in number, even if this is expected to grow. Licences are often granted under standard terms and at no cost to researchers who want to mine subscription-based content for the purposes of non-commercial scientific research.

STM publishers, as well as *book and newspaper publishers*, report that practical and innovative solutions based on licensing mechanisms are being developed to ensure the effective use of mining technologies in Europe. Some of these solutions are already successfully implemented by publishers and researchers. Others are being launched or soon will be. They refer to initiatives presented in the Licences for Europe dialogue, in particular a sample licence clause and the mining hub 'Prospect', developed in the context of the '*Cross-Ref*' initiative and the 'Text and data mining Declaration' signed by a number of STM

publishers. They report that these initiatives make it possible to access cross-publisher content in one standardised format via a click-through licence for non-commercial uses. Other initiatives such as the digital clearing house 'PLS Clear' in the UK and a pilot project from the CCC (Copyright Clearance Centre) are mentioned. STM publishers also report that they have developed licences for commercial uses of text and data mining in the pharmaceutical sector in collaboration with the 'Pharma Documentation Ring' (PDR).

With regards to the way forward, publishers generally oppose the introduction of a text and data mining exception. They consider that there is no evidence of market failure for text and data mining that would justify the introduction of an exception, and that text and data mining is best dealt with through market-based licensing. They indicate that an exception would affect the licensing offers that publishers are currently developing.

Moreover, according to these respondents, an exception would not solve issues other than copyright which are raised by text and data mining, such as the protection of data privacy, the risks of unfair competition and technical aspects which require the intervention and investments by publishers (e.g. to set up a specific technical environment, such as dedicated platforms from which researchers may download the content before mining it). Publishers are also concerned that an exception would increase the risk of damage to databases and infrastructure hosting their content when they are crawled by mining robots (as with an exception, they say, it will be more difficult for them to control access to these databases, in particular through contractual terms). More generally, some respondents also signal that an exception could give rise to abuses and facilitate piracy.

Intermediaries/distributors/other service provider

Many service providers - software companies in particular - refer to the dynamic market for text and data mining services, and to the new innovative solutions that are being developed in this area. In particular, new technologies for speech recognition, subtitling and software analytics, for example, rely on large amounts of data as input, including but not limited to materials found on the Internet. These technologies underpin the development of applications used in life sciences, humanities and health care and many other markets and applications.

Software producers and telecom providers are, in general, concerned with the legal uncertainty that surrounds text and data mining. Some consider that text and data mining does not, and should not, involve copyright or database rights. Generally, these service providers consider that text and data mining should not be subject to licensing (although some say they are already acquiring licences to engage in text and data mining). Technological protection measures are considered to be obstacles to mining as they prevent the downloading of large amounts of content and the application of text and data mining techniques.

On the other hand, other service providers that provide technical solutions for licensing (such as clearing centres), state that the rightholders with whom they work frequently report adverse implications from unauthorised mining of their websites and business models, particularly as Text and data mining-related crawling of websites poses security risks and can adversely

affect website performance. Such respondents also highlight the risk of text and data mining facilitating the unauthorised creation of derivative works, and that it is not always possible to distinguish between a legitimate researcher and an entity who wishes to scan or copy content for piratical purposes.

With regard to the possible way forward, opinions diverge. Many service providers, in particular from the software and telecom industry, would favour the introduction of a new exception to copyright and to the database right to make it clear that text and data mining is not subject to authorisation from the rightholder. Alternatively, they believe that it should be clarified that text and data mining is not covered by the reproduction right and hence, is not copyright relevant. Some consider that text and data mining should be exempted from authorisation by encompassing it an open ended 'fair use' general clause. At the same time some service providers specifically say that they consider that the exception should only kick in when the user has lawful access to content to be mined.

Another group of service providers argue that text and data mining licensing should be encouraged: for them, an exception would not solve several of the issues raised by text and data mining (e.g. data protection, unfair competition and technical needs).

Member States

Many of the Member States that responded to the public consultation recognise the benefit that text and data mining can offer to scientific research and highlight the need to deal with it appropriately and on the basis of sound evidence. Some Member States believe that the possibility to introduce a specific text and data mining exception in EU law should be considered. In particular, one Member State highlights the need to make sure that European researchers are not at a competitive disadvantage internationally. Some argue that, even within an exception-based approach, it would be important to maintain sufficient incentives for value-added services to be developed based on licences. One Member State points out that any exception should not give users free access to content they would otherwise not have access to. Some Member States stress the need to make sure that the technical security of content repositories and databases is preserved.

Other Member States, on the other hand, would oppose legislative changes. These Member States stress that text and data mining is a new issue and that introducing legislation would therefore be premature, all the more since licences are being developed. More generally, reference is made to the need to comply with international obligations, in particular with the 'three-step test'. Some Member States also point to the need to further clarify whether existing exceptions, such as the one for research in Article 5(3)(a) of the InfoSoc Directive, already cover text and data mining.

9. User-generated content (Questions 58 to 63)

Respondents were asked to give feed-back on their experience with the dissemination on the Internet of content created on the basis of pre-existing works or other subject matter as well as

with its identification and remuneration. They were asked to provide their views on how problems, if identified, should be solved.

End users/consumers

A significant number of respondents in this category state that they experienced problems when seeking to disseminate user generated content (UGC) online. Many end users/consumers argue that there is a general problem with the lack of clarity in the existing legal framework for the average person. This makes it complex for individual users to assess what they do from a legal point of view, since they do not know which uses would be legal and which would not. Others say that it is difficult for users to know when their uploads may be covered by licences between internet platforms and rightholders, and the exact terms of these licences, of which final users are not part.

Some users report that content they had uploaded was taken down by internet platforms because it was considered to include works not covered by licences in certain Member States, if at all. Some respondents generally refer to the risk of being exposed to legal action. Some individual users also believe that platforms identification systems block and/or take down content without a clear rationale.

End user/consumer organisations consider that the current legal framework is inadequate in terms of catering for practices that have become widespread, and that licensing schemes and current enforcement practices are not an appropriate way to deal with UGC.

When it comes to possible solutions, respondents in this category often favour a legislative intervention. This could be done, in their opinion, by making relevant existing exceptions (parody, quotation and incidental use and private copying are mentioned) mandatory across all Member States or by introducing a new exception to cover transformative uses. (They refer in this context to the recent UGC exception in Canada). Some respondents point out that an exception should comply with the ‘three-step test’. Some also suggest that a solution could be to introduce a fair use principle in EU copyright law. Fair use would allow flexibility and be future-proof. Some respondents recall that rightholders of pre-existing works should be remunerated when UGC is disseminated. Finally, some respondents in this category put forward the more general point that the concept of UGC should not be confined to content made based on pre-existing works, but also extended to new creations ‘from scratch’.

Less feed-back is given on the identification and remuneration of new, user-generated works. Some users claim that UGC should be remunerated and monetised without providing further details. Some refer to the importance of developing metadata and identifiers. A few respondents state that right holders should retain control of the exploitation of their work. Others say that an exception would be problematic, particularly with regard to moral rights, and thus support licensing solutions rather than legislation.

Institutional users

There was a limited number of replies to questions in this area from this category of respondents. Institutional users mainly highlight difficulties related to the complexity of the legal framework, in particular with regards to cross-border dissemination of UGC online. A few institutional users would welcome the possibility for end-users to share content made available by cultural institutions for non-commercial purposes. Some responses are in line with those of some end user groups, in describing the current framework, based on licensing, as unsatisfactory and out of tune with the actual behaviour of users. A number of respondents call for legislative change, including the introduction of a UGC-specific exception and fair use provisions.

Authors/performers

Authors and performers, and organisations representing them, generally believe that UGC is flourishing in the EU and there is no evidence that legislative intervention in this area would be needed. However authors, journalists and photographers in particular, report frequent unauthorised use of their works. They signal that metadata is removed from their works ('scraping') when these are further distributed online. Authors and performers strongly insist that UGC poses problems for the respect of their moral rights and their adequate remuneration. Those authors who publish under Creative Commons licences are often disappointed, when attribution is not respected in the event of re-use. As they already publish without remuneration, they are especially dissatisfied if variations of their works are used for commercial purposes. Authors and performers generally consider that industry-led solutions such as licensing schemes between right holders' representatives (including collective management organisations) and social media platforms should be encouraged. Some of them mention extended collective licensing as well as micro-licensing for small users as other possible solutions.

A general concern put forward by some respondents is that the remuneration of rightholders for pre-existing works should be given at least as much attention as the remuneration of UGC. Some also believe that more consideration should be given to the role and responsibility of internet platforms that are distributing UGC.

Collective management organisations (CMOs)

CMOs mostly favour the use of licences and market-based tools in this area, and object to the idea of legislative interventions, particularly the introduction of new exceptions. In their view, the remuneration of the rightholders of pre-existing works is a fundamental point that should inform policy on UGC. Some CMOs emphasise the crucial role of Internet intermediaries and of the liability provisions of the E-Commerce Directive¹², and call for legislative changes in

¹² Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market.

that area. Some CMOs raise specific problems in relation to the transfer of rights from performers to producers, which prevents their control over the use of performances in UGC.

Publishers/producers/broadcasters

A large number of representatives of publishers, producers and broadcasters consider that no major problem has been identified in this area that would warrant legislative intervention. This applies in particular to the introduction of a new UGC specific exception, which many believe to be extremely detrimental to the creative sector and, for some, would mainly benefit online platforms. Many in this group of stakeholders point to flourishing UGC practices as a demonstration that the current copyright rules cater for the development of such UGC-based services and the wide take-up of these by users.

The *press publishing industry* highlights how UGC has become an integral part of its business, with journalism shifting towards a two-way dialogue with users. In the music sector, *record producers* report the existence of licensing agreements with UGC platforms which allow consumers in Europe to create and upload UGC without having to be concerned neither with possible infringements nor with the burden of obtaining licences. They report that online platforms represent an increasingly important source of digital revenues for the music industry, including because of UGC. They also refer to embedding techniques which allow the dissemination and enjoyment of UGC outside licensed platforms, for example on blogs. *Public service broadcasters* indicate that the whole value chain should be taken into account when considering this issue – in particular these broadcasters indicate that there are commercial websites that benefit from hosting UGC whether or not there is revenue-sharing with the UGC creator. Both *public service and commercial broadcasters* point to licensing solutions being developed to address UGC. Many commercial broadcasters state that the introduction of the ‘fair use’ defence in the EU law would not be effective due to differences in the legal system between the US and the EU.

A large number of respondents in this category believe that the way to proceed on UGC should be the further development of metadata, rights-identifiers and micro-licences, as opposed to legislative changes. Investment should continue in the development of identifiers and metadata with projects such as the ‘Linked Content Coalition’. Still, some respondents point to some difficulties in detecting the re-use of pre-existing protected works in UGC, which results in difficulties in claiming the related remuneration. Rightholders organisations, notably in the *visual art sector* report more generally problems with the unauthorised use of their content online (and the related lack of effective enforcement) in relation to UGC.

The general view that rightholders of pre-existing works should be given at least as much attention as the remuneration of the creators of UGC is also put forward by respondents in this category.

Intermediaries/distributors/other service providers

Online service providers and distributors highlight that UGC is a great innovation-driver and an economic, social and cultural opportunity, particularly as a means for expression. Some Internet platforms generally recognise that systems that have been put in place for the recognition of protected content in UGC are useful, as they allow for more right holders' control on the use of their protected work. They do however, point to their inherent limits on distinguishing between uses falling under an applicable exception and uses that are potentially infringing, which can lead to the take-down of legitimate content or to undue remuneration. They refer to the use of exceptions and limitations, which can play a useful role in this area. Solutions like the introduction of limitations for certain types of re-use, or full new exceptions and the clarification of existing exceptions, like those on parody or criticism, are suggested. Other respondents in this category, however, put forward views similar to those of rightholders and producers.

Member States

Among Member States who replied some favour contractual solutions over legislative ones in the area of UGC. Other Member States emphasise particular aspects, for example the importance of ensuring that UGC preserves right holder remuneration or that exceptions are formulated in a technology neutral manner, the need to ensure transparency for users regarding existing licences covering UGC, insisting on education for users and creators, the role of micro-licensing as well, and the way UGC relates to the current relevant exceptions.

Other

Some academics argue that the EU legal framework provides the necessary flexibility for UGC to thrive. They believe that such use should be facilitated through licensing and advise against the introduction of specific exceptions, for which, according to some respondents, there is no substantial evidence. Some refer to 'UCG Principles' established by a range of right holders in the US as an example of an industry-led solution, some consider that mandatory collective management could be a possible way forward, while others discuss issues related to the identification of rights and metadata (e.g. the Linked Content Coalition). Some also raise issues related to the enforcement of rights and to moral rights.

Other respondents, however, in particular non-governmental organisations and users/civil society coalitions rather consider that the current legislative framework is outdated and a source of potential barriers to creativity and expression by citizens. They advocate the introduction of a 'fair use' approach alongside a list of mandatory exceptions as a solution to foster the development of UGC. They are sometimes critical of the current licensing agreements in place. These respondents also stress that in some cases UGC may be relevant under the EU Charter's fundamental freedom of expression, which in their opinion calls for a legislative intervention at EU level as opposed to leaving private parties to decide on this matter.

V. PRIVATE COPYING AND REPROGRAPHY (QUESTIONS 64 TO 71)

A first set of questions sought respondents' views on the possible need to clarify, at EU level, the scope and application of the private copying and reprography exceptions in the digital environment, including in relation to cloud-based online services. Other questions concerned the functioning of levy schemes across the EU and sought respondents' views on the visibility of levies on invoices for products subject to them and with regards to possible undue payments.

End users/consumers

Most respondents that provided views on this issue under the category of "end users" were individual consumers and their representative organisations. The vast majority of them consider that the scope and application of the private copying and reprography exceptions should be clarified at EU level. However, opinions are divided on how this should be done. Some consumers claim that the current private copying and reprography schemes need to be completely overhauled as they are at odds with modern technologies and consumption patterns, and, in that context, most of these stakeholders are against the possibility of applying levies to a use that has already been licensed. Respondents argue that copies made in the digital environment in the majority of cases cause no or minimal economic harm to rightholders. In their view, the current regime leads to undue payments (i.e. when fair compensation is paid unduly on top of contractually agreed remuneration). They also call for alternative systems of compensation to be considered.

Others suggest that the private copying exception should be extended to cover the downloading of copyright protected material (irrespective of its source) and/or applied to non-commercial file exchanges (i.e. peer-to-peer sharing). A number of respondents are satisfied with the status quo, and consider that levies are complementary to licences. They also consider that Member States should have great flexibility in the implementation of the private copying and reprography exceptions.

Most respondents in this category consider that levies should be made visible on the invoices for products that are subject to them. They believe that this would enhance transparency and consumers' awareness.

Respondents insist that levy mechanisms are highly disparate and non-transparent, and that they distort the single market. They claim that national schemes do not distinguish sufficiently between transactions involving professional and non-professional operators, which results in undue payments. In their opinion, a common definition of harm should be introduced to ensure consistency, uniformity and transparency in the determination of levies. Consumers also consider that the imposition of levies should be as closely related as possible to the actual use of products for making private copies. Moreover, they advocate the introduction of appropriate *ex ante* exemption and *ex post* reimbursement schemes.

Institutional users

Institutional users put forward a wide range of different opinions on private copying and reprography. While some of them favour the current situation, others call for an overhaul of the system. Some consider that copyright rules are too complicated (in particular for students and researchers), which in their view calls for the introduction of more flexibility in relation to current private copying and reprography exceptions. Clarification is needed to distinguish private and non-commercial uses more clearly from other uses. Other respondents consider that the scope of the private copying exception should be broadened to ensure that end-users copies involved in the dissemination of digital content by libraries are also covered (to allow library users to download certain files from the library, for example).

Author, performers and collective management organisations (CMOs)

Authors, performers and CMOs highlight that levies constitute for them an important source of revenue. However, respondents have different opinions on whether the current system need to be changed, and, if so, how.

Many respondents argue that some issues have been clarified by recent judgments of the CJEU which have improved legal certainty. In their view, with the existing case-law as well as pending cases, there are no outstanding issues that would require intervention. They argue that the CJEU has laid down grounds for the smooth cross-border operation of national levy schemes and has provided valuable guidance for the application of these exceptions in the digital environment.

CMOs, authors and performers argue that the current private copying and reprography exceptions are perfectly adapted to the on-line world since all the principles applicable to offline forms of exploitation can be easily transposed to digital uses. They see levy schemes as ‘virtuous systems’, complementary to licensing. In their view it is not possible to licence copies made by end-users due to practical and legal difficulties. They are convinced that the current system strikes the right balance by allowing consumers to enjoy content as they please, while ensuring appropriate remuneration to rightholders. They are clearly in favour of applying levies in the context of on-line services and argue that any modification to the existing regime would make consumers and rightholders worse off. They also consider that the application of levies does not affect prices of levied products. Rightholders believe that there is no demonstrable negative impact of private copying and reprography exceptions on new on-line business models and they consider it necessary to assess whether some of those services should not be subject to levies.

With regards to the functioning of levy systems in the single market, many CMOs, as well as authors and performers - do not see levies as a source of problems. They argue that most Member States have appropriate ex ante exemption and ex post reimbursement schemes in place, and that these schemes function well, limiting instances of undue payments. In their view the principles established by the jurisprudence of the CJEU are sufficient for levy schemes to operate smoothly. They argue that the rule introduced by the Court (according to which compensation has to be paid in the Member State where the harm occurred) as well as the requirements set out by case-law regarding national ex ante exemption and ex post

reimbursement schemes would solve many problems. Some respondents consider that the liability for payment should remain with manufactures and distributors (as is currently the case) and should not be shifted to retailers. They argue that a change in that respect would increase administrative burdens and weaken compliance with the obligation to compensate rightholders.

Some respondents call for more harmonisation, notably with regards to what products are subject to levies and what the level of tariffs should be. In the view of these respondents, more harmonisation would solve current difficulties with the application of levies across borders. Others consider that a central body should be established at EU level to facilitate the exchange of information on cross-border transactions and/or collect and publish information on applicable national tariffs.

Stakeholders from the print and image sectors underline the specificity of the reprography exception compared to the private copying exception. They highlight that the reprography exception does not distinguish between private and professional uses and that as a result professional users do not need to be exempted from or reimbursed for the payment of levies (as is the case with private copying).

Finally, the large majority of authors, performers and CMOs consider that levies should be made visible on invoices. This solution would increase consumer awareness and transparency of levy systems. Some add that invoices should also explain the purpose of the levies. However, those respondents who are more generally against harmonisation consider that the introduction of a transparency obligation alone is not sufficient to warrant legislative intervention.

Publishers/producers/broadcasters

Generally stakeholders in this group believe that the current EU rules on private copying and reprography are sufficiently clear and that no intervention is warranted. They all share a preference for licensing agreements but differ in their assessments of the extent to which levy systems are complementary to licences. Many *audio-visual producers* and some *publishers in the print sector* do not consider levies to be a practical and cost-efficient manner of remuneration in the digital environment. They argue that new technologies allow users to enjoy content in various forms and allow rightholders to be remunerated precisely for the content consumed. By contrast, *record producers* consider that levies complement licensing and that they are therefore applicable in all scenarios where direct licensing is practically impossible. *Broadcasters*, recognise the benefits of time-shifting (for example the recording of radio or television broadcast by users for the purpose of playing them back at a more convenient time), and warn against broadening the scope of the private copying exception. If the exception was broadened, they say, business models (such as remote personal video recorders) based on the exception could be built in direct competition with licensed services. *Public service broadcasters* indicate that the private copying exception should be clarified to exclude commercial copying on behalf of individuals (e.g. where an internet operator offers a service against payment which allows subscribers to record a television broadcast). Many

commercial broadcasters emphasise that their priority is to offer content through licensing. Some *producers*, in particular *in the music sector* consider that the private copying exception does not have any demonstrable impact on new on-line business models. Others (in particular in the audio-visual sector) consider that the exception affects negotiations and the development of new services. They also warn against the extension of private copying exception to some services based on cloud technology that could become a substitute for licensed services. In a similar vein, many stakeholders in this category oppose extending the exception to cover copies made on the basis of illegal sources. Some of these stakeholders are wary about making levies visible on invoices, as in their opinion, this could create confusion among consumers (notably being seen as a compensation for piracy) and encourage them to carry out illegal activities. Others generally support the idea of making levies visible on invoices as in their view this would not only raise consumer awareness but also facilitate reimbursement of unduly paid levies.

Finally, respondents in this group generally consider that the current levy schemes function well. In their view they do not give rise to any major obstacles in the single market. Existing *ex ante* exemptions and *ex post* reimbursement schemes further help to mitigate potential tensions with the objectives of the single market as they reduce the number of undue payments. They often point to the case-law of the CJEU as a source of clarity and legal certainty. Publishers highlight that although they often suffer harm because of private copying and reprography they are not often entitled to benefit from private copying and reprography levies.

Intermediaries/distributors/other service providers

Stakeholders in this category are generally against the current situation. They perceive national levy systems as highly disparate and that they are leading to the fragmentation of the single market. This in turn, increases their operating costs or even prevents them from offering goods and services across the borders. In their view, levy systems are out-dated, out of context in the digital environment and at odds with the principles of the single market. They argue that the system was designed for the analogue world and that it is by no means justifiable to extend its application to the on-line environment. Most of these stakeholders see the necessity of updating the private copying and reprography exceptions in the short term and advocate phasing out levies in the long term. Some (and the distributors of products subject to levies in particular) call for the replacement of levies with alternative methods of financing fair compensation (for example payments from state budgets or a special tax on households).

With regard to the functioning of the private copying and reprography exceptions in the on-line environment intermediaries, distributors and service providers generally observe that modern technology has changed the patterns of consumption and the number of copies made by end-users has considerably decreased. Moreover, in their view in the on-line world those copies that are made by end-users are either already paid for in the licence fee or cause no or limited economic harm to rightholders (for example time-shifting and format shifting). Some

service providers consider that situations where harm to rightholders is minimal (and hence no compensation is due) should be defined at EU level. Many argue that the possibility to claim levies on top of licence fees leads to instances of what they refer to as ‘double dipping’. In their view when a levy is claimed for all type of copies, rightholders often are remunerated twice, i.e. by virtue of a contractually agreed licence-fee and on the basis of exception-based compensation. In their view, a lack of clarity in this field leads to legal uncertainty and negatively affects various business models, particularly on-line business models. In a similar vein, they warn against any attempts to extend levies to on-line services, which they consider would impede their development and have a chilling effect on investment. They also oppose the idea of claiming levies for copies made from illegal sources.

Respondents also highlight that the manner in which levies are calculated lacks transparency and leads to arbitrary and disparate outcomes. Those liable for payments who are involved in negotiations of tariffs with those benefiting from the levies argue that in most Member States such negotiations are long and inefficient. Many of these respondents call for more harmonisation at EU level, in particular with regards to the criteria used for the calculation. Some also call for simplification of the system. Some are of the opinion that a common definition of harm based on the actual economic damage to rightholders could increase predictability and facilitate the currently complex methods of calculation. Moreover, some argue that levies should only be used to compensate rightholders for the harm they suffer because of private copying and reprography and not to subsidise cultural activities in Member States.

Generally, respondents in this category (and the distributors liable for the payment of levies in particular) submit that most Member States have no appropriate ex ante exemption and ex post reimbursement schemes for reducing the number of undue payments by exempting certain transactions upfront and/or allowing reimbursements. In their view, even in Member States where such schemes have been introduced they do not function in practice, making it difficult to obtain an exemption or to be reimbursed. For this reason, they are in favour of imposing an obligation on Member States to introduce schemes that fulfil a number of criteria. Some of them contend that the only means to reduce instances of double payments both for cross-border transactions and transactions involving professional users, would be to shift the payment liability towards the retailer. In their view such a step would not increase administrative burden and costs because the number of retailers in many Member States is limited. By contrast, retailers pledge strongly against any attempts to shift the liability for payment of levies onto them. In their view, such a step would create substantial administrative burden.

Others favour the publication of tariffs at EU level in order to increase transparency, reduce the cost of compliance and facilitate reimbursement. Moreover, although stakeholders in this group generally agree on the ‘country-of-destination’ principle which was introduced by the case-law of the CJEU (the rule according to which compensation has to be paid in the Member State where the harm arose), some consider that the only solution to reducing undue payments in cross-border situations is to introduce a ‘country of origin’ principle whereby a

levy is paid only once when a product is first introduced on the EU market. Some of these stakeholders are ready to accept the ‘country-of-destination’ principle provided that it is accompanied by a provision guaranteeing that no payment arises in the Member State where the product is first introduced on the market.

Finally, most stakeholders in this group agree to make levies visible on invoices, as a means to increase transparency, consumer awareness and to facilitate reimbursement. Some respondents warn against the possible costs of compliance, calling for the optional nature of such a measure.

Member States

Many of the respondent Member States are in favour of some further harmonisation in the field of private copying and reprography. However their views on the scale and the rationale of possible intervention diverge greatly. While those countries which traditionally have well-established levy schemes in place emphasise the importance of such schemes for consumers and rightholders and suggest a harmonisation that would lead to the generalisation of levies, Member States with no levies in place stress that the introduction of levies should remain optional for Member States and warn against any attempts to make levies compulsory. Most Member States agree that levies create some barriers to the functioning of the single market and call for more harmonisation of the criteria and procedures relating to the way in which levies are set. However, a number of them also emphasises the wide margin of manoeuvre that they currently enjoy and consider that this should be maintained.

With regard to the impact of the current situation on new on-line business models views are split. While some Member States favour licensing agreements in the digital environment, others observe that levies have a complementary role to play. One Member State observes that certain services based on cloud computing technology could replace classical (i.e. analogue) methods of making private copies.

Several Member States are in favour of making levies visible on invoices, although some of them would prefer such a measure to be optional.

Other

Academics are divided as regards the necessity and the potential scope of changes to the private copying and reprography exceptions. Some of these respondents call for increased harmonisation and the extension of levies to service providers. Others consider that current EU rules are sufficiently clear and well-adapted to the challenges of the digital environment or consider that the role of levies will naturally decrease due to technological developments. Some academics call for the replacement of the private copying exception with a more flexible regime, while others argue that the manner in which compensation is paid should be changed (i.e. alternative models should be considered).

VI. FAIR REMUNERATION OF AUTHORS AND PERFORMERS (QUESTIONS 72 TO 74)

With regard to the remuneration of authors and performers, the public consultation attempted to explore views on the best mechanism to ensure that creators receive adequate remuneration for the exploitation of their works and performances. Views were sought on the possible need to intervene at EU level and, if the existing rules are considered ineffective, on the suggested ways to address the shortcomings.

End users/consumers

Some users point out that many contracts for the exploitation of works were concluded before the emergence of digital content distribution, hence they do not explicitly provide for royalties for online exploitation. According to some, the way in which new online streaming services are licensed may circumvent the payment of digital royalties to artists and hence contravene the aim of ensuring appropriate remuneration for creators and right holders in the digital world.

The vast majority of end users/consumers consider that there is a need for EU intervention in this area in order to ensure adequate remuneration for authors/performers. Suggestions include the introduction of a ‘use it or lose it’ clause in legislation that would allow authors/performers to regain their rights if they are not exploited by the publisher/producer; or of a ‘best-seller’ clause that would give authors/performers the right to renegotiate their contract and increase their participation in the proceeds from exploitation under certain circumstances. Other suggestions include the obligation to conclude separate contracts for digital use, with terms being adjusted to this type of exploitation, and the prohibition of ‘buy-out’ contracts (one-off payment in exchange for the transfer of rights).

Institutional users

Institutional users generally consider that there is a need for the EU to act in this area. The provisions of the German Copyright Act, which aim at ensuring adequate remuneration for creators, are often cited as a possible model for EU intervention.

Some institutional users stress the importance of prohibiting certain contractual clauses, as well as confidentiality clauses in contracts as this widespread practice leads to the loss of information and bargaining power for authors/performers who enter into agreements with publishers/producers and service providers. Some respondents in this category argue in favour of an unwaivable right of remuneration for the benefit of authors and performers; others note that acting at an EU level would have added value at least in improving transparency. Some respondents, however, consider that this would be unnecessary and costly. Finally, certain respondents, due to the different economic and social conditions of the Member States, suggest leaving this matter to national legislation.

Authors/performers

Most authors and performers who responded report problems with contractual terms applied in different sectors of the creative industries. They do not question the need for the transfer of their rights to the publisher or the producer (i.e. the transferee) for the exploitation of their

work or performance but they do argue that their weaker bargaining position in the market often leads to unfair contractual terms in their initial contracts. Authors and performers from the music and audio-visual sectors in particular, as well as from some segments of the print sector (e.g. journalists and translators) often mention that contractual terms are imposed on them.

The contractual terms that they consider problematic relate to a number of different issues. Firstly, respondents often mention that any contract that involves the transfer of rights in exchange for a one-off payment (a 'buy-out' contract), by definition, prevents their adequate or fair remuneration as the payment does not relate to the use, and even less to the success, of their work or performance. It is very often raised that the contracts imply a global transfer of rights, going beyond what is necessary for the exploitation of the work or performance by the transferee and/or they contain clauses that imply a transfer of rights of future works or for yet-unknown forms of exploitation. They criticise the duration of the contract as it often coincides with the term of the copyright protection without the possibility of the author or performer being able to renegotiate or terminate the contract. Such contracts are often accompanied by non-disclosure agreements. Another matter that is frequently raised is the poor quality or lack of accounts and reporting by publishers and producers with regards to the use of the rights transferred by the author or the performer.

Authors and performers see a need for EU intervention in this area. With regard to contractual clauses, many argue that legislation should prohibit the global or general transfer of rights to the publisher or producer and the transfer of rights for yet-unknown forms of exploitation as well as the transfer or licensing of rights for future works. In specific circumstances, and especially where the transferee does not exploit the work, the author should have a reversion right (i.e. a possibility to regain his/her rights). Others suggest granting a right to renegotiate or terminate the contract in certain cases, setting a time-limit on the term of the contract, imposing so-called 'best-seller' clauses (a right to request the renegotiation of the contract under certain circumstances) and banning non-disclosure agreements by law. It is occasionally mentioned that these measures would not suit all authors and performers in all sectors equally, and that appropriate solutions have to be explored sector by sector. Many respondents also emphasise the need for imposing transparency with regards to accounts and regular reporting by the publisher or producer to the author or performer.

Moreover, authors and performers, in particular in the music and audio-visual sectors, often underline that online exploitation, especially in a cross-border context, makes it particularly difficult to ensure that there is a relationship between the use and success of the work or performance and the remuneration provided to the creator. In particular, the remuneration of an author or performer not only depends on the fair or unfair terms of the initial contract with the publisher or performer but also on the content of the multiplicity of contracts entered into by the transferee with broadcasters, online service providers, etc. for the exploitation of the work or performance. According to many authors and performers, in particular in the audio-visual sector, only the creation of an unwaivable remuneration right for the benefit of authors and performers, in particular if it is managed by collective management organisations, would

be suitable to ensure adequate and fair remuneration in the case of online exploitation. Other authors and performers, in particular in countries with a strong tradition of collective bargaining, however express concerns that the introduction of an unwaivable remuneration right would reduce the value of the author's or performer's exclusive right and weaken their bargaining position, which traditionally relies on these exclusive rights.

A high number of respondents in this stakeholder group highlight the importance of collective bargaining in ensuring fair and adequate remuneration to authors and performers. Industrial agreements and model contracts can both improve their situation and counterbalance the weaker bargaining position of individuals. In this respect, the US system and German law are often cited as best practices. Competition law is often highlighted as a barrier to successful collective negotiations in the Member States and some authors and performers argue in favour of derogation to the competition rules to improve the situation in this respect. Some also encourage the Commission to foster a dialogue between stakeholders, at EU level, towards more flexible contracts.

Finally, some respondents (journalists and photographers, in particular) express concerns about the waiver or transfer of their moral rights and argue in favour of a legal ban on such contractual provisions.

Publishers/producers/broadcasters

Most publishers/producers/broadcasters are of the opinion that authors and performers are appropriately remunerated thanks to existing law and practice in all sectors of the creative industries. They consider that this area should be regulated by the market and the most important issue is ensuring that there is contractual freedom, freedom of negotiation and the right for an author to choose his/her representative. *Music publishers* advance the argument that the existing competition between them in the market is an important means to ensure the fair remuneration of authors. *Book publishers* underline that publishing contracts are almost always based on individual negotiations with authors. They also note that German rules on 'adequate remuneration' resulted in a drop in the translation market in the country. *Audio-visual and phonogram producers* often argue the decline of revenue in the industry is the result of piracy and not of the contractual relationship between producers and creators. They, as well as some broadcasters, underline that investment in creative content entails high financial risk and that more complex contractual arrangements would result in higher costs and consequently a decline in the competitiveness of the European creative industry. A number of respondents in this category underline the importance of the collective bargaining agreements that exist in a number of Member States. However, *newspaper publishers* in particular argue that these arrangements should only be addressed at national level due to their close connection to labour law.

Most of these stakeholders do not think that there is any reason for the EU to intervene in this area (or argue that the EU lacks competence to intervene), because they consider that contract law is a national competence, and because there are differences between sectors which are best addressed at as low a level as possible. Newspaper publishers in particular point to the

risks of a ‘one-size-fits-all’ approach. Stakeholders in this category also argue that there is no evidence underpinning the need for action at EU level. They strongly object to the introduction of an unwaivable right to remuneration managed by collective management organisations as they feel that this would lead to an increasing fragmentation of rights and would prevent the centralisation of rights in the hands of the producer, therefore making licensing slower and more difficult. They also believe this would increase administrative costs for creators and hamper the accessibility of content to consumers.

It is often proposed that Europe-wide or global technological development towards a database on rights ownership as well as towards managing rights in a machine-readable way (tracking usages, etc.) should be encouraged. However, even when the idea of a common EU platform as a centralised location for licensing and the collection of remuneration is supported, the respondents argue that it should only function as the ‘umbrella’ gathering information and acting on behalf of the national organisations without interfering in contractual matters. Finally, some stakeholders in this category suggest that an obligation imposed on online platforms to co-finance audio-visual productions, as is the case for traditional broadcasters, would further improve the situation for creators.

Collective management organisations (CMOs)

CMOs usually underline the importance of collective rights management in assisting individual authors and performers so they can effectively enforce their rights. In their view, collective management not only facilitates rights clearance and increases legal certainty but is also the best solution to ensure the fair and adequate remuneration of creators as it rebalances unequal bargaining positions in the market. Some note that the exclusivity of mandates is necessary so that CMOs can play this role. They also refer to the recently adopted Collective Rights Management Directive as a guarantee of the transparency and accountability of these organisations.

Like authors and performers, a number of CMOs report what they consider to be unfair contractual practices and a majority see a need for intervention at EU level along the same lines as the former group of stakeholders.

Finally, CMOs, particularly in the audio-visual sector and, to some extent, in the music sector, strongly argue in favour of an unwaivable remuneration right in relation to the making available right, that should be based on the revenues generated from online distribution and which is collected by collective management organisations from the final distributor (e.g. from online platforms). They cite the remuneration right granted for performers by Article 8(2) of the Rental and Lending Directive, for example, for the broadcasting and communication to the public of phonograms.

Intermediaries/distributors/other service providers

Intermediaries, distributors and service providers who responded underline the importance of adequate or fair remuneration for authors and performers. They generally argue in favour of

maintaining contractual freedom while some note that there is a need to ensure fairer contractual terms between the author or performer and the publisher or producer by legislative intervention. These respondents generally can see no reason to act at EU level.

Some respondents in this category consider that the remuneration of creators is a matter for the initial contract with the producer or the publisher; hence they do not see the introduction of an unwaivable remuneration right as a suitable solution. Some raise concerns about the effect that such a right may have on the provision of multi-territorial or pan-European services, if such remuneration is due and collected in each and every Member State. Some other consider that a collectively managed remuneration right would increase the role and management fees of collective management organisations but would benefit authors and performers to a lesser extent. They also note that the introduction of such a remuneration right would reduce the value of the exclusive rights and consequently the payments distributors were willing to make to the producer or publisher.

Others note that an increasing number of creators use alternative methods of getting their works and performances to the public (e.g. by directly placing it online). These authors and performers may have very different sources of revenue to those using traditional channels and should be taken into account in any policy intervention.

Finally, intermediaries, distributors and service providers often emphasise that levies should not be considered as a solution for ensuring the remuneration of authors and performers. This issue should be addressed separately.

Member States

Member States which responded highlight the importance of appropriate and fair remuneration for authors and performers but consider that it is for Member States to decide whether or not to intervene in this matter by legislative means. One Member State underlines the need for a thorough impact assessment before any policy intervention is proposed.

Other

Other respondents provided divergent replies but most of them see a need for action at EU level in order to ensure an adequate remuneration for authors and performers. Suggestions include the harmonisation of certain contractual terms (the prohibition of 'buy-out' contracts, specifying that the transfer of rights can be for a limited time, etc.), an unwaivable remuneration right for some forms of exploitation and the encouragement of collective bargaining. Some note that while an overarching harmonisation of copyright contract law does not seem realistic, targeted provisions to address certain question (e.g. written form of contracts) seem feasible and could add value. Any provisions however should seek a balanced split of economic risk between the creator and the exploiter. Other respondents, on the contrary, are against any intervention and favour the freedom of contract and negotiation.

VII. RESPECT FOR RIGHTS: (QUESTIONS 75 TO 77)

The public consultation aimed to collect the views of stakeholders on possible improvements that could be introduced in order to achieve efficient and balanced enforcement of the IPR system. Stakeholders were asked whether the civil enforcement system should be rendered more efficient for any infringement of copyright committed with a commercial purpose. Stakeholders were also asked about the extent to which intermediaries could be further involved and about the current balance between the protection of copyright and the protection of other fundamental rights.

End users/consumers

End users/consumers are generally not in favour of strengthening enforcement, including as regards infringements committed with a commercial purpose. They claim that this notion could create additional problems because it would be difficult to implement. More generally, they suggest that other fundamental rights should prevail or that no enforcement should be encouraged as long as rightholders do not provide an adequate legal offer. Some consumers require guarantees against erroneous accusations (such as compensation in case of erroneous take downs or to establish an ombudsman for users). A number of end users consider that certain internet service providers who earn money through the use of images on the services that they provide should pay fees to the authors of these images.

Consumers generally do not favour further involvement of intermediaries, neither through a modification of the liability regime provided for in the E-Commerce Directive nor through the use of injunctions that would require internet service providers (ISPs) to monitor content and prevent future infringement. They are not in favour of any active involvement of ISPs in the detection and enforcement of IPR that would require the application of filtering technologies.

Many responses from consumers state that the current civil enforcement framework fails to ensure the right balance between the right to have one's copyright respected and other fundamental rights. According to these respondents, the current civil enforcement framework is biased towards the interests of rightholders and there is a need for more balanced copyright rules that can be understood (and followed) easily by all stakeholders. They believe that as long as this is not the case, a renewed focus on enforcement measures will only further undermine the social acceptance of the system as a whole. These stakeholders are of the opinion that the principles regarding the balance between the protection of copyright and other fundamental rights set by the CJEU are not respected in all Member States (the protection of privacy and problems in one particular Member State relating to the large-scale divulgation by ISPs of identities of their clients on the basis of their IP address are specifically mentioned).

Institutional users

It emerges from the few responses from institutional users that the best way to fight commercial piracy is to legalise the not-for-profit sharing of works between individuals. The

development of large platforms of direct downloading or streaming (often for profit) would be the result of the repression of sharing between individuals through P2P or BitTorrent.

Institutional users fear that any legislative change that is intended to regulate others, could adversely impact on them (e.g. libraries), and that any measures should be thoroughly considered. A number of respondents express the view that involvement of intermediaries through self-regulation could be tantamount to ‘private censorship’ on the internet.

Concerning the balance between copyright and fundamental rights, it is argued that the European Court of Justice has already ruled on the subject and that the balance between the protection of copyright and the protection of privacy and personal data should not be altered.

Authors/performers

Many respondents support the efficient enforcement of copyright as regards infringements committed with a commercial purpose, although some responses indicate that there are piracy services which operate on a non-commercial basis (i.e. they do not generate revenue from advertising or fees) but cause similar damage to content owners. Some respondents are strongly against any differentiation between infringement committed with a commercial purpose and infringement committed without a commercial purpose, with the possible exception of sanctions that could be stronger with respect to infringement committed with a commercial purpose. Generally, many respondents stress that the current enforcement system is failing to provide the protection necessary in the modern digital environment. The system is described as slow and old fashioned (it was mentioned that a small claim system at European level could be useful), which allows certain websites to gain excessive amounts of money within hours by putting certain content online without the authorisation of the right holder. Some authors are against any improvement of enforcement for commercial-scale infringements, as they consider that this would be inefficient.

Some respondents call for more emphasis on creating fast and effective means to stop infringements, rather than only providing for often insufficient compensation for damages ex-post. Some authors consider that the current system should concentrate on internet service providers (ISPs), not on the individuals infringing copyright. The need to set clear liability rules for intermediaries or to remove anonymity on the internet is mentioned by many contributions, in particular from music composers. Another significant number of contributions consider that some internet intermediaries (including social media and search engines) should pay fees to the authors of images that are used on the services they provide and which allow them to earn large revenues. Many respondents call for a review of the existing rules and for the creation of a coherent system of pursuing rights and for the introduction of cross-border legal actions, at least within the EU (although it was stressed that the sites established in off-shore jurisdictions are causing the main problems). They request in particular the uniform implementation of existing provisions of EU law on enforcement (i.e. injunctions). It should be noted that several authors consider that respect for rights is not created by enforcement but by establishing rules that are perceived as fair and balanced.

Numerous responses consider that, given the jurisprudence of the European Court of Justice on fundamental rights, there are sufficient safeguards in place to ensure fair and balanced decisions. Others, while acknowledging that it is important that fundamental rights are protected, also believe it is important that creators receive reasonable compensation for their work. Some authors are of the opinion that the right for anonymity on the internet is too broad.

Collective management organisations (CMOs)

Some CMOs suggest that the implementation of the IPRED¹³ is still incomplete in some Member States and that it is therefore not possible to determine whether a focus on ‘commercial purpose’ would be helpful. However, a vast majority of respondents consider that the civil enforcement system in the EU should be rendered more effective for any infringement of copyright committed with a commercial purpose. A number of concerns are, however, put forward. Firstly, the term ‘commercial purpose’ lacks a definition and it might be difficult to develop one which would be clear and useful, especially as the ‘commercial’ aspect would only be a side issue while the infringement was nevertheless serious. Secondly, they believe that a focus on ‘commercial purpose’ alone would not help right holders considering that enforcement is hindered in many other ways, e.g. because of the liability regime of intermediaries which is contained in the E-Commerce Directive. Thirdly, some respondents insist that all infringements should be punished, the only difference being that sanctions would be larger for infringements with a commercial purpose. With regards to the involvement of intermediaries, many respondents stress the need for ISPs to be more actively involved in addressing copyright infringement. They consider that the problem for the time being is that ISPs have no liability under the safe harbour regime of the E-Commerce Directive, and that they can afford to not provide information about the original infringer (its client) either. Moreover, some seek improvements to ‘notice-and-action’ procedures to make them more effective and efficient, particularly for the prevention of further infringements.

As for the balance between the protection of copyright and the protection of other fundamental rights, respondents feel that the current framework is strongly biased in favour of the protection of personal data, and that there should be no right to remain anonymous when committing an offence. Other respondents are of the view that the current framework and the case-law of the CJEU are sufficient to allow national courts to find the right balance between the different fundamental rights.

Publishers/ producers/ broadcasters

Some respondents in this group consider that the current system is satisfactory, while a number of them agree with stronger enforcement action against infringement with commercial

¹³ Directive 2004/48/EC on the enforcement of intellectual property rights.

purpose, and some even request criminal remedies that should be dealt with ex officio by enforcement authorities.

Representatives of film producers support strict enforcement against commercial scale infringement but note that less onerous provisions must be in place to address smaller scale infringement on a proportionate basis. Some publishers (in particular, a number of book publishers) consider that enforcement should be targeted at illegal websites, not at individuals.

On the other hand, concerns were raised by publishers/producers/broadcasters regarding the suggested increase in focus on infringements with a commercial purpose. Some respondents are afraid that this may result in copyright being enforced only when it is infringed for commercial purposes. They consider that differentiating between profit and not-for-profit infringement would also violate the principles of the 'three-step test'. It may also be difficult to draw this distinction in practice. They argue that websites may seem 'non-commercial', but might still generate considerable profit (e.g. via advertising). Broadcasters in particular consider that the question is whether infringement causes a commercial damage rather than whether it is committed on a commercial scale.

Representatives of *record producers* in particular request a more efficient civil enforcement system for copyright infringement regardless of whether infringement is committed with a commercial purpose. Their focus is on the improvement of the accessibility and efficiency of injunctions. They consider that the IPRED should be amended to improve the cross-border enforceability of injunctions, and that Member States should be encouraged to introduce fast and expedited procedures for obtaining injunctions, in particular in preliminary proceedings. These respondents also consider that existing measures on injunctions against intermediaries should be properly implemented in all Member States. They believe that injunctions should also target all subsequent IP/DNS addresses of infringing websites, cover all titles or products owned by the rightholder who requests them, including for future infringement. Some contributions (for example from films and record producers) ask for the possibility to consolidate actions in one jurisdiction in case of infringement taking place in several Member States at the same time. Generally respondents (in particular *magazine, newspaper and image publishers or broadcasters*) consider that IP enforcement should be improved in particular by introducing less time-consuming and costly procedures (in particular injunctive relief), better compensation for damages (the need to introduce statutory damages was mentioned) and better tools to prevent third parties from making unlawful gains from copyright infringements. They consider in particular that aggregators of information and search engines should always ask the consent of publishers to reproduce their articles. A number of contributions also request a modification of provisions in IPRED concerning the presumption of ownership so that this presumption is extended to holders of exclusive licences or to the assignees of copyright owners.

With regard to the involvement of ISP's and other intermediaries, many publishers consider that they are not sufficiently involved in preventing online copyright infringement. Some explain that servicing illegal content is financially attractive for many intermediaries, and

these intermediaries are therefore reluctant to take measures against illegal sites. Considering the crucial middleman role they play, publishers consider that ISPs, search engines, social networks and cloud services should have liability for the new dangers they have created and that hosting service providers should be responsible for what happens under the umbrella of anonymity. The E-Commerce Directive is regarded as crucial in this context. Some contributions claim that today there are many technologies for regulating the Internet and that the safe harbour as it stands is no longer justified. There is also a call, in particular from the film and record producers, for clearer obligations for ISPs and other intermediaries to cooperate, in particular to keep accurate and up-to-date public databases of service providers. This includes calls for subjecting intermediaries to ‘know-your-consumer’ rules as a useful first step. Other measures are proposed, such as de-indexing links in search results when the site in question has been the subject of numerous notice and take down actions, sending educational messages to infringers and issuing warnings about possible consequences such as access-blocking. It is suggested by book publishers in particular that ‘notice and take-down’, ‘automated take-down without notice’, and ‘notice and stay-down’ actions be simplified and made more efficient, since notice and take-down procedures are regarded as currently lacking effectiveness. This group of respondents note that other intermediaries such as advertisers and payment service providers should also be involved.

While publishers are still open to developing cooperation with intermediaries to address these issues, there are quite a few who ask for legislation forcing intermediaries to cooperate as they believe that voluntary, industry-driven initiatives were not successful. At the same time, some respondents (in particular the newspaper publishers representatives) claim that the courts should balance the different rights and freedoms concerned, including the freedom of expression. They believe that ISPs’ roles should not go as far as controlling the press content (which they would see as censorship) since this would pose a threat to digital press freedom.

Regarding the balance between copyright and fundamental rights, many respondents stress that the right to property is a fundamental right, as is the protection of privacy and of personal data and that the latter should not prevent right holders from enforcing their IPRs. A right to remain anonymous when committing an offence could not be accepted by this group.

In the view of many respondents, the case-law of the CJEU has given all the necessary guidance for national courts to apply the proportionality test, taking into account the rights of all concerned. Others respondents (in particular newspaper publishers or some record producers) believe that, despite the CJEU's clarification, there remain some divergences among Member States and uncertainties about whether other parts of the EU rules present obstacles to the effective application of Article 8 of the IPRED. They refer in particular to data protection rules. Some respondents are of the opinion that the right of information is limited as it does not include ‘bank account information’ and even if it is included, ‘banking confidentiality’ is stronger than the ‘right of information’. With regards to possible solutions, it is proposed that an ISP should adapt its contractual practices in order to facilitate the transmission of data to right holders. Other respondents suggest the use of an administrative body in order to avoid the direct release of personal data between ISPs and rightholders and

ensure better safeguarding of such data. According to some respondents, judges should be permitted to order a bank to provide rightholders with names (and addresses etc.) of perpetrators in order to overcome the alleged problem that personal data protection prevents civil proceedings. Another proposal by respondents is to make sure that the collecting and processing of IP addresses for the purposes of collecting evidence of infringement is not contrary to EU law.

Intermediaries/distributors/other service providers

The diversity of opinions reflects the diversity of interests of stakeholders in this category. Most representatives of intermediaries (mainly IPSs) consider that there is no need for more efficient enforcement for copyright infringement committed with a commercial purpose because the current legislative framework (the IPRED combined with the E-commerce Directive) already provides rightholders with very effective instruments for protecting their rights. They believe that the remaining problems related to online infringements would be better solved by stakeholder dialogues and voluntary measures to ‘follow the money’, including with the facilitation of court orders being served in another Member State. Increasing the availability and consumption of legal content is also seen as key to ensuring the protection of rightholders. In any case, they consider that any revision of the regulatory framework should be made in the context of the IPRED or separately in the Infosoc Directive.

Intermediaries also consider that the current legal framework provides for a sufficient involvement for intermediaries through injunctions and is well balanced thanks to the liability regime of intermediaries foreseen by the E-commerce Directive. Some concerns were expressed about injunctions (in particular the blocking of websites) given their cost and the legal uncertainty that they bring. Clear guidance from the European Commission on the circumstances in which an injunction may be issued and the possible scope of such an injunction is requested by some, so that their scope and technical standards for implementation are common within Member States and across the EU.

Internet intermediaries generally acknowledge that the current framework provides the right balance between copyright and other fundamental rights. Some contributions contest the need for requesting that intermediaries store personal data for the sole purpose of fighting copyright infringements.

Contributions representing the views of distributors (in particular film distributors) are along the lines of those provided by rightholders. They consider that the civil enforcement system should be rendered more efficient, request more involvement from internet intermediaries and consider that adjustments are needed to allow a balance between different fundamental rights (for example a clarification of the interaction between the protection of personal data and the right to information).

Member States

Member States which responded to the questions on enforcement are divided on the need for revision of the legislative framework. Some are generally not in favour of revision even if they consider that some improvement is needed for specific topics (for example the involvement of intermediaries or the interaction between the protection of IPR and other fundamental rights). Other Member States call for a clarification of the legislation, sometimes not only of the IPRED but also of the E-Commerce Directive, regarding the role of intermediaries on the internet. They generally agree that more emphasis could be put on fighting infringement committed on a commercial scale. There is also a call for the development of self-regulation tools.

Other

On the question of involvement of intermediaries, some academics proposed that the IPRED should be revised to include ‘know your customer’ rules (requirements imposed on service providers to carry out an identity check before doing business with a person or entity) as found in the Anti-Money Laundering Directive. Most of the contributions reflected the different positions already taken by the previous categories of respondents. Moreover, a number of sports events organisers took the view that unauthorised live streaming of sports content constitutes a particular challenge that should be addressed, not only through stronger enforcement but also through the granting of specific rights.

VIII. A SINGLE EU COPYRIGHT TITLE (QUESTIONS 78 AND 79)

Respondents were asked whether the EU should pursue the establishment of a single EU copyright title and whether, in their opinion, this should be the next step in the development of the EU copyright system or whether it should be part of a long term project.

End users/consumers

The vast majority of end users/consumers consider that the EU should pursue the idea of a single EU copyright title. Many of them point out that a single title would enable the establishment of a genuine digital Single Market for online content. They believe that a single copyright title would enhance legal certainty and transparency for right owners and consumers, reduce transaction and licensing costs related to the clearance of rights, and prevent rightholders’ territory-by-territory licensing as a tool to seek extra revenues. A number of respondents refer to the ‘Wittem’ Project on a copyright code which they believe should be taken into consideration for further work on a single EU title.

At the same time, many end users/consumers and their representative acknowledge that a single EU title is unlikely to be achieved in the short term, given the differences between Member States. These respondents consider that a more immediate objective should be to focus on the current set of copyright exceptions and limitations and on the recognition of a clear set of rights for users.

Institutional users

The vast majority of institutional users are also generally in favour of the idea of a single EU copyright title. In their opinion, the unitary title would improve transparency and reduce transaction costs. However, they acknowledge that a single EU title is likely to be a long term project rather than something to be achieved in the near future. A minority of respondents in this group opposes the idea of the single EU title, which in their view would be against the national character of copyright laws (which they believe should be preserved).

Authors/performers

While a significant number of authors/performers consider that the EU should pursue the establishment of an EU single title, others are against. Those who are against argue that a single EU title would further complicate the current situation and would not provide any added value in terms of authors and performers' remuneration. These respondents stress that a full harmonisation of EU copyright law would not be desirable because it would be at odds with the specific cultural policies, economic situation and legal traditions of each EU Member State. A single EU title would also pose problems, they say, with regard to the Berne Convention.

Some respondents point out that further copyright harmonisation would be welcomed but that this should be achieved in the context of what they refer to as a code of 'EU authors' rights' rather than an 'EU single title'. The objective should be to make sure that authors are put back at the centre of EU's copyright policy and law.

Collective management organisations (CMOs)

CMOs are generally against working further towards an EU title in the short/medium term. By and large, they put forward similar arguments to those of publishers, producers and broadcasters.

Publishers/producers/broadcasters

The vast majority of respondents in this category do not support the idea of a single EU copyright title. Some argue that this project may take decades and is very unlikely to produce the intended results. They are afraid that a unitary title would only lead to a harmonisation of exceptions and would thus reduce right holders' level of protection. Many respondents consider that before any work on a single title is undertaken several preliminary questions on the necessity and merits of such title need to be answered. One key issue that remains unclear is whether a single title would coexist with national titles or replace them. Different legal traditions, in particular between civil and common law EU countries would need to be taken into account, which would add to the complexity of the task.

More generally, many respondents consider that a single EU title would put European cultural diversity and values at risk, in particular since Member States would lose margin of manoeuvre to apply their own cultural value through national copyright laws. *Film producers*

and distributors propose instead that the Commission should prioritise the enforcement of existing rules, encourage the development of market-led solutions and facilitate productive dialogue and promotion of voluntary, industry-led solutions. *Public service broadcasters* believe that other options would be preferable and more proportionate, such as the extension of the country-of-origin principle in the Cable and Satellite Directive to simultaneous online retransmissions. They indicate however that for enforcement purposes it would have to be clarified how a decision in a given Member State on infringement could take into account damages (from the same infringement) occurring in other Member States. *Commercial broadcasters* express doubts as to whether the single EU title would bring the desired effect. They also express concern as to the possibility for licensing per territory under a single EU copyright title - they stress that this model of licensing underpins the viability of audio-visual productions.

Intermediaries/distributors/other service providers

The vast majority of these respondents do not see the need for a single copyright title and consider the further harmonisation or codification of the current EU copyright directives to be of more relevance.

Member States

Member States that responded to the public consultation generally believe that the idea of a single EU title is premature and should not be pursued in the short/medium term. There are many complex issues which would need to be resolved before a single copyright title could be a realistic prospect. Territoriality responds to cultural diversity and business models for distribution of content. Member States also insist on the need to preserve their prerogatives to carry out their own cultural policy and refer to Article 167 of the Treaty on the Functioning of the EU (TFEU). Some Member State point out that the same objectives can be pursued through a higher level of harmonisation which allows flexibility and the preservation of specificities of Member States' legal systems.

Others

Academics generally consider that the EU should pursue the objective of a single EU copyright title in the medium term, and that current approach of harmonisation by specific directives with many optional provisions (notably on exceptions/limitations) is not sufficient. They believe that differences between national copyright laws result in problems for cross-border services and that these problems could be cleared most efficiently by a unified EU copyright system. They consider that article 118 TFEU provides a sufficient legislative competence for the Union to act. Academics who are in favour of a EU title also consider that, in the shorter term, the EU should focus on the revision of the InfoSoc Directive but that this should be done in a way that does not endanger the unitary title as a longer term objective.

IX. OTHER ISSUES RAISED IN THE RESPONSES (QUESTION 80)

Respondents were asked to specify whether they wanted to raise any other matter not specifically dealt with under the other questions.

End users/consumers

Among issues not specifically covered by the consultation documents, end users/consumers refer to the need to increase legal certainty with regards to sharing copyright protected content through ‘peer-to-peer’ (P2P) networks. Many end users/consumers also consider that legal protection of technological protection measures should be abolished. They consider that technological protection measures are a nuisance for consumers and that they make access to content and its reuse difficult or impossible.

Institutional users

Some institutional users also consider that the current rules on technological protection measures are problematic, in particular because they make it more difficult for users to benefit from exceptions. Institutional users also point to the relationships between contracts and exceptions as another problematic area for consideration. Some institutional users refer to the problem of ‘orphan works’ and consider that the current Orphan Works Directive does not go far enough and that a broader and more general mass digitisation exception should be introduced (or, as an alternative that a ‘fair use’ type of clause should be introduced in order to facilitate mass digitisation). Many respondents in this category refer more generally to the need to give more consideration to research needs and objectives when devising future copyright reforms and call for a further encouragement of open access publishing.

Authors/performers

Authors and performers generally insist that creators should be put back at the centre of EU copyright policy and rules and stress that copyright should not be seen as an obstacle to the single market but rather as a positive tool for creation and cultural diversity, growth and jobs. They refer to other areas such as lack of technical interoperability and taxation as causes for the current fragmentation of the digital single market.

Collective management organisations (CMOs)

Authors collecting societies call for an unwaivable right to remuneration for authors and performers which in their view would ensure a fair distribution of revenues accruing from the exploitation of the successful creations. Some also consider that a specialised panel of judges, responsible for copyright matters, could be created at the CJEU.

Publishers/producers/broadcasters

Some respondents in this category suggest the introduction of a system of tax credits to assist with the discovery, development and production costs for new artists. Some respondents also refer to taxation. A particular suggestion from the *music industry* is to introduce reduced VAT rates for music, in line with other cultural sectors. Some *audio-visual producers* call for

contributions to the financing of production and development of audio-visual works from the online platforms. *Public service broadcasters* call for extending the rules on cable retransmission set out in the Satellite and Cable Directive to online retransmissions. Many respondents stress the need for internet service providers to become more involved in fighting piracy online and consider that their liability should be increased. Some call for strengthening education about IPR

Intermediaries/distributors/other service providers

Issues raised by service providers include: the strengthening of copyright enforcement, fighting abuses of dominant positions in the media sector, increasing support for European audio-visual productions.

Other

By and large the answers in this category are in line with those of the end users/consumers. Some respondents underline the importance of moral rights and consider they should be harmonised at EU level.

X. ANNEX : LIST OF QUESTIONS IN THE PUBLIC CONSULTATION

1. [In particular if you are an end user/consumer:] Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?
2. [In particular if you are a service provider:] Have you faced problems when seeking to provide online services across borders in the EU?
3. [In particular if you are a right holder or a collective management organisation:] How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.
4. If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?
5. [In particular if you are a right holder or a collective management organisation:] Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?
6. [In particular if you are e.g. a broadcaster or a service provider:] Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipient (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?
7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?
8. Is the scope of the ““making available”” right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?
9. [In particular if you are a right holder:] Could a clarification of the territorial scope of the ““making available”” right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief)?
10. [In particular if you a service provider or a right holder:] Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?

- 11.** Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?
- 12.** Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?
- 13.** [In particular if you are an end user/consumer:] Have you faced restrictions when trying to resell digital files that you have purchased (e.g. mp3 file, e-book)?
- 14.** [In particular if you are a right holder or a service provider:] What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.
- 15.** Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?
- 16.** What would be the possible advantages of such a system?
- 17.** What would be the possible disadvantages of such a system?
- 18.** What incentives for registration by rightholders could be envisaged?
- 19.** What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?
- 20.** Are the current terms of copyright protection still appropriate in the digital environment?
- 21.** Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?
- 22.** Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?
- 23.** Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.
- 24.** Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?
- 25.** If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative

advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

26. Does the territoriality of limitations and exceptions, in your experience, constitute a problem?
27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of ““fair compensation”” be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?)
28. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

(b) [In particular if you are a right holder:] Have you experienced problems with the use by libraries, educational establishments, museum or archives of the preservation exception?
29. If there are problems, how would they best be solved?
30. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?
31. If your view is that a different solution is needed, what would it be?
32. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?

(b) [In particular if you are an end user/consumer:] Have you experienced specific problems when trying to consult, including across borders, works and other subject-matter held in the collections of institutions such as universities and national libraries when you are not on the premises of the institutions in question?

(c) [In particular if you are a right holder:] Have you negotiated agreements with institutional users that enable those institutions to provide remote access, including across borders, to the works or other subject-matter in their collections, for purposes of research and private study?
33. If there are problems, how would they best be solved?
34. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?
35. If your view is that a different solution is needed, what would it be?

- 36.** (a) [In particular if you are a library:] Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?
- (b) [In particular if you are an end user/consumer:] Have you experienced specific problems when trying to borrow books or other materials electronically (e-lending), including across borders, from institutions such as public libraries?
- (c) [In particular if you are a right holder:] Have you negotiated agreements with libraries to enable them to lend books or other materials electronically, including across borders?
- 37.** If there are problems, how would they best be solved?
- 38.** [In particular if you are an institutional user:] What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?
- 39.** [In particular if you are a right holder:] What difference do you see between libraries' traditional activities such as on-premises consultation or public lending and activities such as off-premises (online, at a distance) consultation and e-lending? What problems have you encountered?
- 40.** [In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:] Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?
- 41.** Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?
- 42.** (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?
- (b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used for illustration for teaching, including across borders?
- 43.** If there are problems, how would they best be solved?
- 44.** What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?
- 45.** If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

- 46.** If your view is that a different solution is needed, what would it be?
- 47.** (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject matter in the context of research projects/activities, including across borders?
- (b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used in the context of research projects/activities, including across borders?
- 48.** If there are problems, how would they best be solved?
- 49.** What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?
- 50.** (a) [In particular if you are a person with a disability or an organisation representing persons with disabilities:] Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?
- (b) [In particular if you are an organisation providing services for persons with disabilities:] Have you experienced problems when distributing/communicating works published in special formats across the EU?
- (c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?
- 51.** If there are problems, what could be done to improve accessibility?
- 52.** What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?
- 53.** (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?
- (b) [In particular if you are a service provider:] Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?
- (c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?
- 54.** If there are problems, how would they best be solved?

- 55.** If your view is that a legislative solution is needed, what would be its main elements?
Which activities should be covered and under what conditions?
- 56.** If your view is that a different solution is needed, what would it be?
- 57.** Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?
- 58.** (a) [In particular if you are an end user/consumer:] Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?
- (b) [In particular if you are a service provider:] Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?
- (c) [In particular if you are a right holder:] Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?
- 59.** (a) [In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to ensure that the work you have created (on the basis of pre-existing works) is properly identified for online use? Are proprietary systems sufficient in this context?
- (b) [In particular if you are a service provider:] Do you provide possibilities for users that are publishing/disseminating the works they have created (on the basis of pre-existing works) through your service to properly identify these works for online use?
- 60.** (a) [In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to be remunerated for the use of the work you have created (on the basis of pre-existing works)?
- (b) [In particular if you are a service provider:] Do you provide remuneration schemes for users publishing/disseminating the works they have created (on the basis of pre-existing works) through your service?
- 61.** If there are problems, how would they best be solved?
- 62.** If your view is that a legislative solution is needed, what would be its main elements?
Which activities should be covered and under what conditions?
- 63.** If your view is that a different solution is needed, what would it be?
- 64.** In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions in the digital environment?

65. Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies?
66. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?
67. Would you see an added value in making levies visible on the invoices for products subject to levies?
68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?
69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).
70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?
71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?
72. [In particular if you are an author/performer:] What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?
73. Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?
74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?
75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?
76. In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?

77. Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?
78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?
79. Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that this is a longer term project?
80. Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.