

Authors' Rights: a Manual for Journalists



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1. Introduction

The importance of authors' rights for journalists has never been as clear as it is today. Technological and legal developments in recent years have made journalists think again about authors' rights, and led them to articulate more clearly their requirements concerning authors' rights.

The development of new digital media affect the ways journalists make a living and the ways their work is paid for: this is part of the widely-discussed "digital economy". But these new media also raise important questions about editorial independence, freedom of expression, media ethics and quality. It is particularly important for the quality and credibility of newspapers, magazines and broadcast media that journalists are aware of their "non-material" rights or "moral rights" - such as the right to defend the integrity of their work. Journalists need to know how to enforce these, where they are inadequate, and how they can be strengthened in national and international law.

The "digital economy" also means that online publications are available globally. It therefore increases the importance of cross-border rules governing authors' rights for journalists, as for other authors. The European Federation of Journalists (EFJ) is publishing this handbook to clarify these issues and to make them easier for journalists to understand. This handbook attempts to provide answers to many of the questions concerning journalists' authors' rights, whether they work in print, radio, television or photography, and to offer solutions to the problems they face at both international and national level.

2. The fundamentals of authors' rights

Regulation of the copying of creative works goes back centuries. It began with the marking of tools. Then, starting in the 17th century, national laws were framed to provide adequate protection for literary, scientific and artistic creators.

2.1 International treaties

The universal principles of authors' rights are now enshrined in international treaties. These are administered by a United Nations body, the World Intellectual Property Organisation or [WIPO](#).

The European Community has also agreed directives designed to harmonise aspects of authors' rights across the member states.

For European authors the most important international treaties are:

- the [Berne Convention](#) for the Protection of Literary and Artistic Works
- the [Rome Convention](#) for the protection of performers, producers of phonograms and broadcasting companies;
- the [WIPO Copyright Treaty](#) (WCT);
- the [WIPO Performances and Phonograms Treaty](#) (WPPT); and
- the agreement on Trade-Related aspects of Intellectual Property (TRIPS - [[PDF file](#)]) administered by the [World Trade Organization](#).

These international treaties establish the basic principles of internationally-applicable authors' rights - the minimum levels of protection that signatory states must offer. They leave individual countries some flexibility in how they express these in national law, including the option of offering stronger protection. As a result, authors' rights legislation varies quite widely from country to country .

European Union directives, in contrast, require EU member states to implement them in their national law. Each covers a fairly narrow area: a standard European framework for authors' rights will become clearer as the level of detail in the directives increases.

The fundamental direction that authors' rights should take in Europe is still, however, in dispute. The choice is between the copyright system of the English-speaking world, in particular, and the continental approach of protection for the author.

2.1.1 Copyright versus Authors' Rights

A major difference between the copyright and authors' right systems concerns the question of who or what can hold primary rights in the created work. UK copyright law, for example, allows corporations to be recognised as authors. In contrast, continental authors' rights can only be held by real people; authors merely grant rights to use their works, but can never lose their position as the legally-recognised creator. (See [Section 3](#) for more on this.)

The laws of the UK and Ireland also state that where a work is created "in the course of employment", the employer is the original owner of copyright in it and the employee has no economic rights. The Netherlands operates a similar system. This is clearly not possible under authors' rights.

This is one of the greatest challenges for European journalists' associations and for the EFJ. We are working to protect authors in Europe under the continental European principles, so that they lose neither their economic basis nor the independence guaranteed by rules associated with authors' moral rights. The entry of the new Eastern European member states will strengthen the position of journalists since the authors' rights regimes in these countries are based on continental law.

Another challenge is that technical copy-protection mechanisms (such as digital encryption) are increasingly used to prevent reprinting or electronic reproduction. Some have even suggested totally replacing the legal protection afforded by authors' rights with such technical protection.

2.2 National legislation

National laws contain the definitive rules on matters of authors' rights. Individual cases cannot be solved in terms of authors' rights without reading the individual [laws in the member states](#). This short outline of authors' rights is designed to illustrate the relevance of authors' rights for journalists. It cannot replace reading the relevant laws and investigating legal precedents in their application.

[Collective agreements](#) also play an important role in the implementation of journalists' authors' rights. These contain provisions concerning the granting of economic rights to publishing houses or broadcasting companies, while others place emphasis on the need to respect moral rights.

2.3 Requirements for protection

Authors' rights in a work take effect as soon as the work is completed. Neither the Berne Convention nor the European directives allow states' laws to require registration or any other "formality" for the application of authors' rights. Article 6 of the Term of protection directive and Article 3 of the database directive, for example, stipulate that works merely have to be the result of one's own intellectual invention in order to be protected. No other criteria may be applied to determine whether a work is protected.

The widely-used copyright notice - © followed by the name of the party holding the authors' rights and the year in which the work was first published - is, therefore, not a condition for the protection of authors' rights. Some countries outside Europe, which are not party to the Berne Convention, do stipulate formal requirements. If these countries have subscribed to the [Universal Copyright Convention](#) this copyright notice gives some protection. And if legal action in the United States is a possibility, registration with the US Copyright Office is strongly recommended.

In order to enjoy the protection afforded by authors' rights, a work must be "original". Whether the work has any literary or artistic merit is irrelevant. It is sufficient for it to be an original piece of work. However, it must be

expressed in a specific, perceptible form, whether in pictures, words, music or material. Ideas *per se* are not protected: it is their expression that is protected, as soon as it is "fixed" and given specific form.

For example:

A journalist has an idea for a story and takes it to a newspaper. The newspaper sees no advantage in working with the journalist, but likes the idea. It engages someone else to develop the idea. The person who had the idea cannot do anything about this under copyright or authors' rights law.

No permission is needed for the media or anyone else to use news, facts and information from journalists' stories, in the interests of the free flow of information. However, good media ethics do dictate naming the source, in the interests of authenticating the information.

For example:

A journalist who uses factual data taken from another article to write their own stories do not violate authors' rights. However, a journalist who simply takes a significant part of the article word for word is infringing authors' rights. That is plagiarism.

Whenever an actual event is reported, the reproduction of works which can be seen or heard during the event - for example a poster in the background of a news photograph - is permitted, if this can be justified by the need to report the information concerned.

It is not the information contained in the article, but the form of the article itself which is protected. The ways in which facts and data are disseminated or collated are, however, generally protected. This applies both to the work in its unchanged form and to databases that contain only factual data, but required a great deal of systematic work to construct. So it may not always be lawful to reproduce all the data from an article - for example if it consists of factual data such as a laboriously compiled list of dates and places.

2.4 How long do authors' rights last?

In European Union member states, authors' rights in written and photographic works expire 70 years after the death of the author.

Some member states extend a period of protection to photographs that are not defined in those states as "works". In Germany, for example, this protection lasts for 50 years after the photograph was taken or appeared. (In other member states all photographs are protected works.) Articles 1 to 6 of the EU Term of Protection directive ([93/98/EEC](#)) describe the term of protection in detail and deal with more complicated cases like jointly authored works and films.

2.5 The value of authors' rights

Authors have the exclusive right to permit use of their works. That is, in authors' rights law only the author, and in copyright law only the current owner of the copyright, can licence anyone to reproduce and distribute the work as an article or photograph in a magazine, or to broadcasting it or

distribute it through an on-line service. Only the author (or copyright owner) can licence anyone to make a "derivative work" such as a translation or other revision.

These rights allow journalists to receive financial remuneration for permitting a particular use of a work. They are therefore referred to as "the economic rights" or usage rights.

Authors can wholly or partly transfer or license usage rights. It is a good idea for authors to license only limited usage rights, or to license these rights in a specific form or for a certain period. Authors who do this retain more influence over the way their work can be used in future - and so they can do more to prevent unethical uses.

It is extremely important that journalists are able to decide how their works are used - and by whom. The moral rights allow authors to take action against mutilation or manipulation of a work, and to enforce their identification as its author.

2.6 The importance of journalists' moral rights

The moral rights maintain a personal link between each journalist and their work, which is their creation and their brainchild. It is the result of a creative process involving research, the gathering of information, its selection and analysis, and reporting. As noted, the moral rights give each journalist the right to be identified as author of the work; and to oppose any distortion, mutilation or other alteration of this work, or any other attack on it, which could adversely affect his honour or good name (Article 6 *bis* of the Berne Convention).

It is vital that journalists retain control over what happens to their work. Journalists have a responsibility towards society. Guarantees of the quality and authenticity of a publication or a broadcast are preconditions for serious journalism. The public expects every journalist to adhere to these principles. Distorting or twisting facts, or even merely arranging them in a different order, can give a story a different "spin", leading the work to misinform instead of informing. The author's right to be identified means that readers and viewers know who ultimately takes responsibility for it.

Strong moral rights guarantee the authenticity, quality and integrity of work. There is an indivisible link between moral rights and the ethics and independence of journalism. Within the commercial environments of daily newspaper business, magazine production and private broadcasting - as well as in the less-commercial world of public broadcasting - moral rights promote high ethical standards.

These moral rights are in general inextricably linked to the creator, i.e. the author, and cannot be transferred or removed. In the UK and Ireland, however, it is possible for authors to "waive" moral rights - and they do not exist at all for works reporting news and current affairs. The EFJ considers that these are the works for which moral rights are most important and that these laws need to be changed.

Editorial changes that do not distort the meaning, alter the facts or change the journalistic intention or context are permitted, however.

2.7 The importance of journalists' usage rights

The fact that the journalists' consent is needed for the use of their work is what gives them the power to stipulate conditions on that use, such as:

- the payment;
- the type and method of use - for example that the work may be reproduced in a daily newspaper, in a radio broadcast, as an article in an on-line service, as a book, etc.;
- the scope of use - for example that the work may be used only in an initial print run, edition or broadcast;
- the area of distribution or publication - for example local, regional, national or international;
- the duration of use - for example as a one-off in one edition or broadcast, or for a precisely defined period.

These and other associated conditions, such as questions of liability, should be defined in a contract governing the use of the work.

In some countries individual written contracts are required, while in others trades unions or professional associations have negotiated collective agreements that are binding on everyone who signs up to them. The unions can also provide model contracts and specimen terms and conditions of business. In some countries, collective agreements can set out minimum or recommended fees.

2.8 Primary and secondary rights

Most authors' rights groups distinguish between primary and secondary rights. Primary rights relate to the initial publication. Secondary rights relate to subsequent or derived use of the work, such as the making of photocopies or inclusion in a database or on a CD-ROM. The distinction between primary and secondary rights is not clear-cut, so these terms should be used with caution.

2.9 Collecting societies

Although the journalist should retain as much control over the work as possible, in some cases it is virtually impossible to agree remuneration for mass use on an individual basis. For example, no journalist can conclude individual usage contracts with everyone who wants to take a photocopy of their work.

Because of this, the authors and publishers/broadcasting companies have established collecting societies to collect the remuneration due for such uses and distribute it between the rightful claimants. In most countries, the activity of collecting societies is governed by laws which also define the types of use for which collecting societies may collect payment. These societies are monitored by public authorities to ensure that the remuneration is appropriate and that the income is fairly distributed.

3 Differences between freelance and employed journalists

Most European countries base their authors' rights legislation on the continental European authors' rights' concept. In Europe, only the United Kingdom and Ireland have adopted the Anglo-American copyright system, while the Netherlands applies copyright-like rules to works made in the course of employment.

The main economic difference between the two legal traditions is the question of who holds the usage rights at the moment the work was created. Under the Anglo-American system employed journalists' usage rights (economic rights) in their works are transferred entirely and automatically to the employer when the work is created. This is also the case in the Netherlands, but employed journalists there have succeeded in negotiating clauses in collective agreements that give them some control over re-use and payments for that re-use.

Under continental law, employers must purchase the usage rights from authors by means of an individual or collective agreement. The authors retain any usage rights not licensed to the employer by that contract, for example the right to reuse the work in an on-line service. They are usually entitled to receive further remuneration for uses that go beyond those covered in the contract of employment.

Freelance journalists transfer usage rights - that is, license a publisher to use their work - through individual agreements. All usage rights not expressly covered by these contracts are regarded as staying with the author.

The Anglo-American legal system permits this solution for freelance journalists. It also allows, however, contracts that transfer all rights, or "assign" the work to the client - and clients often apply pressure on freelances to do this. In the United States in particular, clients often apply pressure to sign "work made for hire" contracts, under which all rights go to the client as if the freelance was its employee.

Under the continental system the law takes precedence over contract, and many countries' laws apply the principle of *in dubio pro autore* - "in case of doubt rule for the author". In the Anglo-American system, the contract takes precedence.

This difference between the two legal systems is not trivial. The Anglo-American system severely limits freelance journalists' power to negotiate with publishers and other users of their works. For freelance journalists in continental Europe, the licence to use a work does not have to be legally defined, since the law regulates everything not explicitly stated. The English freelance, on the other hand, is advised to draw up a comprehensive contract to avoid losing all rights without being paid for them. Authors' rights are the essential basis for freelance journalists to make a living, so the EFJ feels that it is important to establish equivalent starting conditions in terms of authors' rights for all freelances in Europe.

In most European countries, however, employers are pressuring freelance journalists to sign contracts that transfer all or most of their usage rights, without receiving separate payment for this. This has developed against a background of joint ventures and mergers in the media world, large-scale electronic publishing activities such as distributing freelancers' work on the internet or pay-per-access on-line archives - and, of course, the weak negotiating position of individual freelance journalists.

3.1 Employed journalists, freelances and moral rights

Under the continental system, all authors have moral rights, and they cannot generally be altered, transferred or waived by any contract.

In the UK and Ireland, no employed journalist has any moral rights, and no freelance has moral rights in work for publication in a newspaper or magazine or that reports current affairs. Even when journalists do have moral rights, for example when they write a book, these can be waived by a contract. In the United States, moral rights exist *only* in certain works of visual art.

The EFJ feels that the Anglo-American copyright concept takes no account of the challenges of the information society, which considerably increases the importance of authenticity and of high ethical standards. Moral rights are too weak under this system. Neither can it adequately protect the economic basis for independent authors, because of the way it makes freelances depend on contractual agreements resulting from unequal negotiations. These agreements are generally insufficiently enforceable, and so do not provide an adequate financial basis for making a living. The Anglo-American copyright concept must therefore not be allowed to gain acceptance in Europe.

3.2 Recommended terms and rates

In some European countries, unions and professional associations have drawn up recommendations and surveys of fees and terms and conditions. This process of drawing up recommendations, in particular, always leads to conflict with national competition or anti-monopoly authorities. Publishers claim that they are an attempt to form a "cartel" against their interests. Some countries do allow recommendations to be published, however:

Germany:

Small business associations are entitled to issue recommendations under certain conditions. These can be found at:

- the photomarketing small business association www.bvpa.org
- freelance journalists small business association (associated with the [DJV](http://www.djv.de)): see www.djv.de/schwerpunkte/freie/honorare.htm
- journalism small business association (associated with [ver.di](http://www.ver.di)): see www.mediafon.net/tarife.php3

Sweden:

See www.frilansriks.org/frilansrekommendationen_2003.htm

In many countries unions and other journalists' associations provide fees surveys. These are not recommendations, but simply provide an objective overview of the market, and thus avoid problems with the competition

authorities.

Such surveys are available on-line for:

- [Germany \(DJV\)](#);
- [Germany \(ver.di\)](#); and
- [The United Kingdom](#)

European competition law hangs over such advice like a sword of Damocles, whether it is classified as a recommendation or a survey. The European Commission's competition law department regards such recommendations as "problematic".

3.3 General conditions for freelance journalists

An EFJ investigation into the social status of freelance journalists, carried out in 2003 by Roberto Pedersini and Gerd Nies with EU backing, gives cause for concern over the social situation of many freelance journalists in Europe. It showed that freelance journalists in almost every member state earn much less than average for employed journalists. They often suffer precarious working conditions. This confirmed earlier investigations at the national level, particularly surveys carried out in Germany in 2003 by four Federal State associations within the DJV, a survey by IG Medien (now ver.di) in 2001 and another survey by the DJV at the national level in 1998.

Social security arrangements differ greatly in the various countries of Europe. In principle, self-employed people in many EU member states enjoy the protection of their national insurance systems.

Denmark, Sweden, Finland, Norway and Iceland

offer almost full national insurance cover for self-employed people. In these countries there are systems that offer insured self-employed people sickness, care, pension and unemployment insurance, essentially on the basis of taxed income as a self-employed person and/or, if this exceeds a basic amount, with voluntary membership of an unemployment insurance scheme (Finland/Sweden).

In France,

freelance media people are generally classified as „pigistes" (freelance journalists) who pay national insurance, and also have a claim to paid holiday and collectively agreed fees. On the other hand, local press correspondents are generally regarded as freelances, but are still required to pay into a special insurance scheme ([CREA, Caisse de Retraite de l'Enseignement, des Arts appliqués, du Sport et du Tourisme](#)).

Germany

makes membership of the [Künstlersozialkasse](#) (artists' social security fund) compulsory for freelance journalists. This provides them with access to statutory sickness, nursing and pension insurance, but not to unemployment insurance. At the same time, they receive an allowance of 50% towards their contributions. If they work closely with a single employer, they may also be required to pay national insurance directly as an employee. This frequently occurs with public radio companies which often classify their freelances as non-self-employed - which means that they must pay contributions. Even in this case, the question

of whether such people are entitled to unemployment benefit or other payments when they register as unemployed is a matter for dispute.

Belgium and the Netherlands

offer only automatic insurance against special sickness costs.

In all these countries sick pay is limited to an assessed maximum amount and/or a percentage (generally between 50% and 100%) of the previous income. In Iceland, sick pay is just €8.63 per day, in Ireland it is €118.80 per week and in the United Kingdom between €84 and €111 per week.

Social security arrangements for freelances, by country

Data:

M = [Mutual Information System on Social Protection](#) (PDFs);

S = [Summaries of Legislation](#)

Key:

A = automatic or universal

C = compulsory (requires registration/contribution)

V = voluntary

Country	Data	Sickness insurance	Sick pay	Pension insurance	Unemployment insurance
Austria	M S	C	-	C	-
Belgium	M S	C	-	C	-
Denmark	M S	C	A	C	V
Germany	M S	C	C	C	-
Finland	M S	A	A	C	A/V
France	M S	C	C	C	-
Greece	M S	C	C	-	-
Iceland	M S	A	A	C	C
Ireland	M S	A	-	C	-
Italy	M S	A	-	C	-
Liechtenstein	M -	C	-	-	-
Luxembourg	M S	C	-	C	C
Netherlands	M S	(A)	A	C	-
Norway	M S	A	A	C	C
Portugal	M S	A	-	C	-
Spain	M S	A	-	C	-
Sweden	M S	A	A	C	A/V
United Kingdom	M S	A	-	C	-

We will add data on other European countries as it becomes available

The above shows that social security standards for freelance journalists are lower than for permanent employees, except in the Scandinavian countries. Even full insurance systems are linked to income, which logically leads to lower payments for below-average incomes. The DJV, for example, assumes that the average freelance journalist in Germany will receive a pension of around €300 a month from the artists' social insurance fund - and the trend is downwards, partly due to the cuts in statutory pension.

[Missoc](#), the mutual social security information system for the member states of the European Union, contains an extensive comparative survey of the social insurance cover of self-employed people and employees within the European Union. (See more accessible but 1998 data [here](#).)

4. European Union Authors' Rights legislation

4.1 European Union Directives

The creation of the internal market of the European Economic Community - now the European Union - clearly highlighted the need to harmonise national authors' rights legislation. The idea of harmonisation is to create a uniform legal framework across the EU, so that differences do not impede the free movement of services.

However, harmonisation remains incomplete because the EU has focussed exclusively on market conditions, because those are the matters on which it has clear "competence" to legislate, in the jargon of the EU treaties. It has so far not been able thoroughly to harmonise authors' rights in the member states. For example, there have been no EU regulations concerning authors' moral rights or law governing authors' contracts. The EU has accepted the argument that harmonising these has no relevance to the working of the internal market, despite its "supplementary competence" for cultural matters associated with the internal market.

Seven EU [directives dealing with aspects of authors' rights](#) have been issued so far:

- [Directive 91/250/EEC](#) concerning **legal protection for computer programs** (of 14.05.1991). This protected computer programs by copyright, like works of literature or art. (It applied, however, a US-style "work made for hire" rule, so that employers are the first owners of their programmers' work.)
- [Directive 92/100/EEC](#) concerning **the law on rentals, loans and related industrial property rights** (of 19.11.1992). This allows authors to authorise or prohibit the rental or lending of originals and copies of works. They cannot waive the right to a equitable remuneration for rental. It makes it possible for member states to exempt certain categories of lender, for example Braille libraries.
- [Directive 93/83/EEC](#) on the concerning **copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission** (of 27.09.1993). This states that the rights of the parties holding the authors' rights and holders of related rights to permit or forbid the transmission of a broadcast via cable or satellite can only be exercised by organisations managing collective interests. The rights exercised by a broadcasting organisation are an exception to this. Satellite broadcasts are governed by the authors' rights law of the "country of origin".
- [Directive 93/98/EEC](#) concerning **harmonisation of the term of protection for authors' rights and related industrial property rights** (of 29.10.1993). This harmonises the term of authors' rights protection to last 70 years after the author's death, and 70 years after first publication for anonymous works and those published under pseudonyms.
- [Directive 96/9/EC](#) on **the legal protection of databases** (of

11.03.1996). This gives databases protection similar to authors' rights. It covers databases that are themselves an "intellectual creation" - that is, whose structuring is the result of personal creative work. It gives such databases "*sui generis*" protection - that is, protection arising from their very nature - whether or not they qualify as "works" for authors' rights purposes. Relevant examples of databases include daily newspaper and magazine archives and stock-market data. Rights in the database as a whole do not affect any authors' rights that apply to its contents.

- [Directive 2001/84/EC](#) concerning **the author's resale right in the original of a work of art** (of 27.09.2001). This specifies that authors of works of art, including artistic photographs, get a share in the selling price every time the original is resold - known as *droite de suite*. Member states must implement it by 1 January 2006.
- [Directive 2001/29/EC](#) **harmonising certain aspects of authors' rights and related rights in the information society** (of 22.05.2001). ("**Infosoc directive**") This is a "horizontal" directive, which means it covers a broad range of issues. It harmonises some detailed definitions for authors' rights, such as the "exceptions" allowing copying in the public interest. It provides the member states with a standard definition of the essential rights of resale and restrictions on copying. It allows the EU to sign up to the WIPO WCT and WPPT treaties.
- [Directive 2004/48/EC](#) **on the enforcement of intellectual property rights** (of 29 April 2004). This "Enforcement-Directive" focuses on means of legal redress to enforce the material right of intellectual property rights for authors and other rights holders, and sets out sanctions in case of infringement.

The history of EU harmonisation of authors' rights tells us that the European Union approach is based on:

- the need to ensure a high level of protection for authors' rights;
- granting exclusive rights to authors (and other "rights-holders");
- only natural persons may be classified as authors; and
- strengthening rights-holders' protection.
- The regulations for equitable remuneration, where necessary.

4.2 Further European developments

This position is not definitively based on the acceptance of continental European authors' rights. But it can be seen from the programme drawn up to date that the EU accepts the principles of continental authors' rights, or at least principles that approach those.

However one should have no illusions: the EU is a community based on the objective of the functioning of the internal market. The basis of its actions is the promotion of free competition, and not the creation of the same legal system for all Member States in every area of law. The EU is not a federal state like the United States of America. This means that harmonisation of authors' rights has so far happened only in those areas where differences between regulations in the member states may lead to a restriction of the free movement of goods, trades and services. The creation of uniform authors' rights through an EU directive is conceivable but unlikely. Such a

regulation would require unanimity in the EU Council of Ministers, which is improbable given the differences between their existing authors' rights regimes and pressure on Ministers to maintain their "traditions".

Achieving a high level of protection for authors throughout Europe will demand further effort. At present, however, we observe pressure in the opposite direction.

There is a perception that authors' rights protection hinders the sharing of information through the internet. The music industry is making much noise about its intention to prosecute internet users - including children - for supposed authors' rights violations. These developments create a climate which is not favourable to authors. Additionally the value of authors' creative work and its cultural importance is not embedded in the consciousness of the population.

Much work remains to be done by the EFJ: for example effort to install EU-wide regulations governing contracts. Careful action to achieve this narrower goal may be more successful than calling for EU-wide authors' rights.

The Commission of the EU is preparing a Communication on rights management. This concerns the activities of collecting societies, but also individual rights management. It is likely that the EU Commission will suggest that no new regulations are required. The Communication will provide an opportunity for the EFJ to argue the necessity of regulating contractual law in Europe.

5. Authors' rights in the information society

5.1 Infosoc directive

The regulatory framework for the development of the information society was completed with respect to authors' rights by the "[Infosoc directive](#)" - properly the "directive to harmonise certain aspects of authors' rights and related rights in the information society" - of 22 May 2001.

Since the publishing houses and broadcasting companies started to use journalistic works in digital formats on CD-ROM or in on-line services, journalists have noticed that their works were being re-used in electronic format, but they were not being paid for that use. This phenomenon particularly affected freelance journalists, who rely on receiving payment for every use of their works and have to consider very carefully to whom they should grant usage rights and under what conditions.

Technical developments, particularly those that make up the internet, have diversified and multiplied the ways in which works protected by authors' rights can be used and re-used. This development is not yet complete. It already makes a previously undreamt-of wealth of information available to anyone who has at least a computer and a telephone line, at very little cost. Journalists should be able to enjoy the benefits of the information society in two ways:

- as professional providers of news who have the expertise needed to sort, digest and prepare this wealth of information; and
- as authors, who gain further outlets for (re-)publication and thus sources of income on top of the previous forms of dissemination.

However, fulfilling this promise requires that information published digitally be valued as highly as information in the daily newspapers or on the radio, for example. Authors need a high level of protection so that they can grant rights in their works for reasonable remuneration, and thus continue to be creative.

The aim of the EU directive of 22 May 2001 is to protect authors in this respect. It provides effective regulation to protect authors' rights as one of the most important instruments for guaranteeing the necessary resources for cultural activity in Europe and ensuring authors' independence in the information society.

The directive also aims to extend the existing legal framework to protect authors' rights within the EU in such a way that the statutory regulations of individual states do not create legal uncertainty in the information society, and do not inhibit or affect the movement towards the information society in Europe.

This directive was, however, unable to consign the Anglo-American copyright model to the past in Europe. European and international information re-sellers, particularly the European publishers' associations, lobbied hard for the Anglo-American system to be adopted in the directive. They were unable

to achieve this. The EU bodies reached the conclusion that one-sided protection for producers only would be incompatible with the Community's legal framework and the protection of authors' rights. Community law regards the need to achieve and develop creative activity as justification for the high level of protection afforded by authors' rights. The result was a compromise, permitting the Anglo-American system to continue in the UK and Ireland.

The directive establishes legal security of usage rights. In addition to the existing exclusive rights to authorise duplication, dissemination and public reproduction of works, the directive adds to European law the "right to make publicly accessible" arising from the WIPO treaties. It is not totally clear in any of the member states, however, that journalistic authors have an exclusive right to permit use of their works in on-line services, etc.

The directive requires the exceptions to the exclusive usage rights - basically, rules allowing copying in the public interest - that the member states define to be assessed against the background of the digital media. The member states are to take account of the level of technological development and the economic significance of exceptions, particularly with respect to private digital copies. Effective technical protection measures should not be obstructed by exceptions or restrictions. Equally, technical protection measures should not mean that exceptions and restrictions that are in the public interest can be ignored: for example, if a state's laws allow copying without permission for non-profit research or for use by blind people, any encrypted digital publishing technology must allow a "way in" for such uses.

These basic principles are important for journalists. On the one hand they set conditions for use of works in electronic press reviews and so on. On the other, they ensure that quotations for the purposes of criticism or reviews, or the use of information from works to report current events are permitted and possible, even if works are protected by technical measures.

The way the directive deals with authors' compensation for such use of their works in the public interest is less satisfactory. It merely provides for "fair compensation", which is not the same as a claim for "equitable remuneration". Authors will continue to be treated differently in each member state, depending on whether the country concerned already provides for equitable remuneration for the use of works under the exceptions, given the discretion the directive gives individual countries. It is to be hoped that, in the long term, the prevailing law will be that of those countries that already allow authors to claim remuneration via collecting societies in situations where their exclusive right is limited by higher interests.

The directive has not yet been (fully) converted into national law in all the member states. The current debate centres on questions associated with the introduction of digital rights management systems.

5.2 Digital Rights Management systems

Some people regard authors' rights as a tiresome relic that simply acts as an obstacle to the electronic use of works - which has often been free, whether legally or illegally. This was an element in the European debate over the

Infosoc directive, for example. The obvious way that works protected by authors' rights are used illegally on the internet indicates deficiencies in that protection. This applies, for example, to the mass illegal copying of music files and to the electronic use of journalistic works (text and images), both of which are often done in complete ignorance of their illegality.

Others - particularly some publishers - have proposed that the answer lies not in the law, but in technology that physically prevent works being copied unless a fee is paid - "Digital Rights Management" or DRM systems. Legal protection of authors continues to be very important, and even technically mature DRM systems will require a legal basis - which must come from the field of authors' rights.

5.2.1 Technical protection and authors' rights: different means of protection

Authors' rights are objective rights. They are effective against anyone who does not hold them. A comparable effect can be achieved by DRM systems, for example through usage contracts. Users are legally able to have their say about general business conditions, but in fact they have neither choice nor influence over such contracts.

DRM systems can also protect information that is not protected by authors' rights. They can be used by people who make illegal use of works protected by authors' rights. This can lead to authors being excluded from the protection of their own works, or even being regarded as an illegal user of their own work within the system.

Finally, effective technical protection measures prevent the possibility of illegal use. They do not simply apply after the event, as do authors' rights. Using authors' rights alone, such thorough-going protection could only be achieved by constantly monitoring every citizen. Technical protection by DRM systems thus differs fundamentally from the legal protection of authors' rights.

5.2.2 Costs of DRM systems

DRM systems aim to provide publishers with maximum control over content and the conditions under which it is used. They can thus minimise the costs incurred in bringing a product to market and keeping it there. The regulation of copying through authors' rights also reduces costs, however, especially when coupled with collective management of some rights. These provisions prevent the market failure which would otherwise be caused by prohibitively high transaction costs - because contracts are concluded between collecting societies and device manufacturers (where there are levies) or between collecting societies and database operators, rather than between authors and end users. The costs of this are kept within reasonable limits by statutory regulations.

If DRM systems compete on cost with authors' rights, the latter could become (at least partly) superfluous. The cost of the range of different contracts that would be needed must, however, be remembered. It certainly has not been proven that DRM systems provide a way to cut publishing costs; and it should be remembered that only theoretical models have so far

been considered. It is also doubtful whether it can be desirable to replace statutory regulation in this field entirely with private agreements usually "offered" by large corporations to citizens with no real negotiating power. Rules on when copying is and is not allowed also continue to perform important functions in the public interest.

5.2.3 DRM systems and the purpose of regulating copying

To consider the authors' rights rules regulating copying from a purely economic viewpoint is to overlook the fact that such regulations can be justified in the interests of third parties who have no economic interest. Examples include the need for unrestricted reporting in the media, quotations, use for training purposes and use for personal or non-profit research.

These are matters of public interest and of public policy, expressly legislated by governments and justifiable on the basis of fundamental human rights. DRM systems cannot identify the purposes for which copying is regulated. They simply prevent copying. They thus hinder or entirely prevent such uses in the public interest.

While theoretical DRM systems may promise simplicity and low costs, real systems must, under the EU's Infococ directive, allow such exceptions to the author's (or rights-holder's) right to prevent copying.

DRM systems also do away with the limit on copying restrictions to 70 years *post mortem auctoris*. This risks replacing limited authors' rights with "perpetual copyright". This is not desirable from either an economic or a legal viewpoint, since it would restrict the cultural creation of new works by making the conditions under which new works are created more difficult. It would also not be in the interests of the freedom of information to be derived from article 10 of the European Convention on Human Rights.

5.2.4 Protection of rights by collecting societies

The current system of central rights management by collecting societies, on the basis of usage and in accordance with the authors' rights rules, is a sensible arrangement that is needed to ensure that authors receive a fair share of the income from the use of their works, beyond the contractually-agreed primary use. The available collection methods and technical options previously have often resulted in remuneration being "aggregated" for both income and royalties. Collecting societies now have more effective methods of protecting rights, that effectively enforce author's rights and remuneration claims. It is thus highly unlikely that claims for remuneration will be lost.

Collecting societies need only aggregate royalties if individual authors' claims cannot be identified or measured, and they have been refining their collecting methods over a long period. They are now developing and testing digital systems that will allow them to measure and allocate income with maximum accuracy.

Individual licensing systems still present considerable problems, however. They are not yet technically mature and can still be defeated. Some legal questions associated with regulation of copying have not yet been solved,

and such systems impose a disproportionate administrative burden on authors of many small works - which journalists typically are. These may have, for example, to close a contract with each end user. There is a risk that such an administrative burden may make DRM systems unworkable for these authors. They could therefore lose the remuneration due to them under authors' rights rules, or see it greatly reduced.

For this reason, the EFJ rejects the incorporation of DRM systems into European law as a default means of regulating copying. The promotion of digital systems to collect amounts due to individual authors and to calculate the remuneration due through collecting societies would, however, be in the interests of the authors (and of publishers and producers) since such systems would make the work of the collecting societies more effective and would make the pay-outs to authors more fair.

6 Guidelines for concluding contracts

The International Federation of Journalists (IFJ) recommends that, wherever possible, national journalists' associations should conclude collective agreements that cover authors' rights. Unfortunately it is not possible to make collective agreements that cover every author of journalistic works. Freelance journalists, in particular, may find that collective agreements afford them only limited protection. Some guidelines that should at least be considered when concluding individual contracts are therefore given here.

- a. The IFJ strongly recommends that contracts should specify that the journalist's approval is required before their works are duplicated and reproduced publicly. Such contracts therefore need to specify that usage rights cannot be transferred wholesale. They ensure that journalists do not find their work re-used in a place or a manner that is contrary to their honour or reputation (in the words of the Berne Convention) - for example re-used in advertising brochures. Unfortunately this principle is still not known or accepted in many countries, particularly those that make employed journalists' work the property of the employer or allow freelancers to assign their work entirely to the client.
- b. Contracts should never be only verbal. The laws of some EU states state that contracts must be written; but in most states verbal contracts are permitted. Here pressure of time often leads to purely verbal contracts, with the risk of making unclear arrangements and forgetting necessary provisions. When there is a dispute, journalists' claims made on the basis of verbal contracts often fail due to the lack of evidence. If time pressures make it absolutely impossible to conclude a written contract immediately, the most important conditions - type of use, scope of the rights granted, delivery date, agreed fees, payment date, moral rights - should at least be confirmed briefly in a fax or e-mail.
- c. Contracts should always specify the delivery date, fees for the usage rights granted and the payment date.
- d. Every contract should contain a provision covering the author's moral rights (for example referring to article 6 *bis* of the Berne Convention). Contracts under the laws of countries where moral rights do not apply to the work can specify that the client will respect the spirit of 6 *bis*.
- e. When a contract gives permission for "syndication" - re-selling of usage rights to third parties - it should qualify this, for example with a list of parties to whom the rights may not be re-sold. It should state that the author must be informed of any such publications, stipulating the form of notice and the payment due.

It is extremely difficult to retain such control over work that appears on-line. The journalist loses sight of the way in which the work is re-published, reproduced or edited. Technological rights management systems may offer solutions to these problems in the future. Experiments with such systems, digital watermarks and encryption techniques have not been very successful so far.

Agreements on the use of journalistic works can be made either through collective agreements - where these are possible - or individual contracts

with individual journalists. The advantage of collective agreements is that they cannot be changed without consultation by employers that take advantage of the individual journalist's inferior negotiating position. Collective agreements also have the advantage that they apply to any relevant work or employment relationship, even if otherwise agreed in the individual contract.

6.1 Collective agreements

The 19th World Congress of the International Federation of Journalists ([IFJ](#)) held in Maastricht back in 1988 laid the foundations of a [model collective agreement](#) covering employed journalists' authors' rights. There have been many technological advances since then. New forms of publication such as CD-ROM, on-line services and web radio have presented journalists with new challenges over their authors' rights.

The basic ideas behind the model collective agreement are still very relevant, however. They are based on the knowledge that journalists, since they are responsible for the use of their works and need to make a living, should retain their rights as far as possible within the working relationship. This is the only way that they can exercise some level of control over the way their works are used.

An [IFJ memorandum](#) concerning journalists' usage rights states that:

- Employed journalists grant the publishing house, in return for the wages they receive, the right to publish their articles in the medium for which the journalist works, for example one edition of a daily newspaper.
litt
- The right to re-publish in other media, such as radio, magazines, on-line services, or other types of use may be granted, if the publishing house or other seller undertakes to account to the journalist or their union for any use or re-use of the granted rights and to pay further remuneration for such use.
- The model collective agreement contains the following requirements concerning the journalist's moral rights:
 - agreements relating to the identification of the creator of the journalistic work;
 - the right to prevent the work from being published in another newspaper, magazine or book or broadcast on radio, television or via a data service;
 - the right to review or withdraw the work under certain circumstances; and
 - that the employer is responsible for ensuring compliance with the agreement.

In 1996, the IFJ also set out some fundamental and modified recommendations for the model collective agreement that took account of the recent technical developments by suggesting rates for authors' rights.

In addition to the IFJ's model collective agreement, the IFJ authors' rights website contains [links to various national collective agreements associated with authors' rights](#). For example:

Denmark

This collective agreement applies to various Danish newspapers. It was concluded by the Dansk Journalist Forbundet.

Germany

The [collective agreement \(magazines\)](#) applies to most of the magazines in Germany. It was concluded between the Deutscher Journalisten-Verband (DJV) and ver.di on one side and the Verband Deutscher Zeitschriftenverleger (VDZ) on the other. The collective agreement (daily newspapers) was agreed between the DJV and ver.di on one side and the Bundesverband Deutscher Zeitungsverleger (BDZV) on the other.

Finland

The collective agreement applies to daily newspapers and magazines, and was agreed with the Suomen Journalistiliitto.

France

Various collective agreements with individual daily newspapers concluded by the syndicat français des journalistes.

Sweden

The collective agreement was concluded between the daily newspaper publishers and the Svenska Journalist Förbundet.

Further national collective agreements are currently under development:

Austria

The Austrian collective agreement allows the right of use and related rights to be transferred in full to the publishing house, and expressly allows for blanket syndication arrangements or other forms of editorial cooperation. It is also possible to transfer these rights to third parties for use in Austria or abroad. Journalists who leave a publisher can use their works without the publisher's permission one year after publication. Journalists are entitled to remuneration whenever the publisher transfers usage rights to third parties or uses the work in its other titles to which the journalist is not contracted.

Belgium

The collective agreements for daily and weekly papers include provisions on authors' rights: permission for re-use is necessary and payment must be made. This does not apply to use by subsidiaries and associated companies. The aim in Belgium is to regulate rights collectively via the authors' rights organisation [SAJ/JAM](#).

France

The national collective agreement specifies that the use of journalistic work in any publications other than those of the publishing house require prior agreement with the authors concerned, and financial remuneration must also be agreed. Otherwise the collective agreement refers to the [Loi sur la propriété littéraire et artistique](#). French journalists' organisations have concluded various in-house collective agreements, which primarily cover the use of works in the new media.

Netherlands

The Dutch collective agreement ensures that if work created by journalists in fulfilment of their contracts of employment is to be used outside the newspaper or magazine for which the journalist works, the approval of both the publisher and the journalist is required. The publisher may use works for purposes other than for the newspaper concerned, but must obtain the author's approval. The author may only

refuse if he is not paid appropriately for such use or the publication goes against his professional ethics.

Norway

In Norway, the collective agreement gives the publisher an exclusive right to use the works that the journalist has produced for the publisher in the course of employment. This usage right extends to other media owned by the publisher, such as electronic newspapers, radio or television. The only exclusion is collective works of artistic or literary merit. It is possible to transfer usage rights to third parties, in which case the author should be paid a fee of NOK 1500 for use on the internet. The author can request payment if the work is used in the context of cooperation between publishers.

Switzerland

Under the Swiss umbrella contract of employment, journalists grant the publisher usage rights in works created in the course of employment. This applies only to the media product by which the journalist is employed, however. Any further use of the work requires written agreement and appropriate payment.

Some national collective agreements and author's rights law can be found on the websites of IFJ member organisations:

IFJ member organisations in Europe

Denmark:	Dansk Journalist Forbundet
Germany:	Deutscher Journalisten-Verband ver.di/DJU
Estonia:	Eesti Ajakirjanike Liit
Finland:	Suomen Journalistiliitto
France:	Syndicat National des Journalistes
Greece:	Panhellenic Federation of Journalists' Unions
Ireland:	National Union of Journalists of UK and Ireland
Italy:	Federazione Nazionale Stampa Italiana
Lithuania:	Lietuvos Zurnalistu Sajunga
Luxembourg:	Association luxembourgeoise des journalistes: email
Netherlands:	Nederlandse Vereniging van Journalisten
Norway:	Norsk Journalistlag
Poland:	Association of Journalists of the Republic of Poland - SDRP: email
Portugal:	Sindicato dos Jornalistas
Switzerland:	«impresum» comedia
Sweden:	Svenska Journalist Förbundet
Spain:	Federación de Asociaciones de la Prensa Española: email
United Kingdom:	National Union of Journalists of UK and Ireland (Freelance website)

6.2. Individual agreements with collective protection

While employment conditions and questions of authors' rights for permanently employed journalists in many countries are defined in collective agreements, it is very important for freelance journalists to be able to conclude individual contracts, particularly with respect to their authors' rights. Freelances do not generally fall under the scope of collective agreements, and in some countries this is even prohibited by law.

The IFJ has also issued a [Model contract for freelance journalists](#), which generally only allows one-off use of journalistic works by a publishing house. As a model contract, it is intended to be re-worded by freelances. For example, they can retain the exclusive use of the article, even in other publications of the same company, or specify terms for use by third parties, such as publication in databases.

The majority of EFJ member organisations can provide model contracts for freelance journalists. A brief survey of the internet links of the IFJ [member](#)

[organisations](#) will provide an initial overview.

Collective agreements for freelance journalists can be called up from the [EFJ site](#) or those of the national journalists' unions. A few organisations have also made these texts available online, for example:

- [Denmark](#)
- [DJV, Ver.di](#)
- [Finland](#)
- [France \(SNJ\)](#)
- [Sweden](#)
- Switzerland: [comedia](#) and Impressum.

We recommend that you call up the texts for the various fields of journalistic activity from the national organisations, and contact the organisation before using them.

Freelance journalists need more than model contracts. They need to be aware of the law on authors' rights in their country - and increasingly in other countries where they license their work - in order to improve their negotiating position with publishers and broadcasting companies. Lack of space prevents further details being provided here. The [EU study on the conditions applicable to contracts related to intellectual property in the European Union](#) shows that the situation is anything but harmonious. There is clearly a need to bring contract law arrangements in Europe into line. This is illustrated by the following examples:

- In July 2002 [Germany](#) adopted a new authors' rights law that prescribes reasonable fees for authors for the first time. According to the law, remuneration is reasonable if, at the time the contract was concluded, it corresponds to what is normally and honestly paid in the normal course of business, according to the type and scope of the granted usage rights, particularly the duration and time, and taking full account of all the circumstances. The law provides for the reasonableness of fees and other contract terms to be tested in court. It also expressly permits authors' and publishers' associations to draw up agreements on remuneration arrangements and reasonable fees and contractual conditions.
- In [Poland](#) the author has a legal claim to equitable remuneration, but journalists' associations are not permitted to make remuneration arrangements.
- The position in [Hungary](#) and [Slovenia](#) is similar, and a written contract should always be required.
- Such remuneration arrangements are not provided for in the [Netherlands](#) or in the [United Kingdom](#) or [Ireland](#). These examples show that authors do not enjoy the same high standard of protection across Europe.

Some argue that collective agreements can take the place of authors' rights in those countries in which authors' rights are not so strong. But the authors' associations do not always have the same negotiating power as the publishers or their associations. The legal foundation afforded by a uniform European standard of authors' rights that protects authors' interests cannot be replaced by collective agreements.

In the end, legal precedent set by cases fought through to higher courts will

play a very important role in defining journalists' and authors' contractual positions. The EFJ [database of court decisions](#) contains clear examples defining the proper scope of usage rights and remuneration for them, how authors' moral rights can be protected, and which types of use are recognised by various national laws. The national member organisations can also provide details of relevant judgments or provide information upon request.

7 Collecting societies

It is not always possible for authors to enforce their rights themselves. A single journalist can neither control who reproduces articles or photographs in (for example) all press reviews, nor monitor who photocopies these works. No individual is able to watch over who records their transmitted works on video or DVD or which broadcasters re-transmit them. Even large companies cannot always keep track of people who use works protected by authors' rights without asking permission. Internet search engines return long lists of examples showing how authors' works are used without them gaining any benefit from such use.

Collecting societies have been set up in many countries to ensure that authors receive the benefits due from such uses. These collecting societies enter into contractual agreements with authors, including journalists, to enforce the rights that the authors are unable to monitor themselves. These include photocopying, digital reproduction using scanners or CD burners, and the broadcasting of protected works by cable networks. In some countries, for example Germany, money is collected through levies on CD-ROMs, DVDs, audio and video cassettes. Here collecting societies conclude contracts with manufacturers, importers and operators of devices intended to duplicate works protected by authors' rights. They negotiate adequate remuneration and are responsible for passing on the remuneration received to the authors or to organisations of authors and sometimes to publishers as well. The amount of remuneration collected by these companies is considerable. Tens of millions of Euros have been collected for journalists, who should therefore conclude contracts with their national collecting society in order to benefit from their pay-outs.

In most countries, collecting societies gather remuneration for the lending of works and analog and electronic press reviews.

A number of European countries have a single collecting society which, in some cases, also represents publishers. Others have several national societies, each active in a different field. For example, some countries have a collecting society purely serving journalists working in the written word and others for photographers, camera operators, etc.

The collecting societies have an international umbrella organisation - the International Federation of Reproduction Rights Organisations ([IFRRO](#)) - which attempts to enforce authors' rights internationally.

There are also countries in which no collecting societies yet exist, or in which there are only collecting societies for certain groups of authors, excluding journalists. This is particularly the case in the future EU member states, such as Poland, Slovenia, the Czech Republic, Slovakia, etc. In these countries, the EFJ will have to attempt to find working solutions for journalists in cooperation with IFRRO and the national member organisations. If this work proves impossible, the failure may have negative repercussions on the European countries that have previously had successful collecting systems.

In the European Union the work of collecting societies is being monitored

critically with respect to the competition rules of the internal market. The [Infosoc directive](#) states, for example, that collecting societies should further rationalise their activities and achieve greater transparency. The EFJ feels that this feature of the directive (recital 17) must not lead to supposedly positive "competition" that merely gives preference to societies offering the lowest price for enforcing rights, to the detriment of the authors. This would be disastrous for authors, depriving them of the protection they require.

Other challenges for the future development of collecting societies will be considering the use of DRM systems, examination of the question of whether and to what extent DRM systems can replace the enforcement of rights (see [5.2](#) above), and developing digital systems to collect and distribute payments.

The development of digital licence management and information systems will make it much easier to clarify the individual rights for multimedia productions. Anyone who wants to combine photographs, text, film excerpts and music in a production will find it much easier to settle the legal questions if they use a central rights management agency. Collecting societies offer this type of package as a "one-stop shop". Such clearing house projects can be found in [Germany](#), Finland, [France](#), Ireland, Italy, the Netherlands, Norway, Portugal, Switzerland, Spain, Switzerland and the [USA](#). A European cross-border system is currently under development as part of the "Very Extensive Rights Data Information" ([VERDI](#)) concept.

Such systems can also improve collecting societies' work in terms of rights management and fair distribution. The collecting societies have played a very important role in the development of systems for the identification of works, their creators and the rights and remunerations associated with enforcement contracts, for example. They have developed the "Common Information System" ([CIS](#)) under the umbrella of CISAC. The CIS is designed to network the databases of the various national collecting societies. It specifies information on rights holders and rights users, for example, and for the unique identification of works. It is not yet complete, and there is much valuable information that has yet to be obtained from the national collecting societies.

8 Infringement - what steps to take?

If a journalist's work is used without permission, or for a purpose other than that agreed, this infringes their authors' rights. The journalist does not have to accept this. They can take various action against the infringer, depending on what country's law applies:

- Damages can be claimed. These may consist of loss of income, damage to the journalist's good name (reputation), or simply a loss suffered because the journalist's name was not mentioned. The compensation could be a reasonable license payment, surrender of any profits made due to the infringement or reimbursement of any losses incurred.
- Elimination of the infringement may be requested, for example withdrawal of an item that damaged the author's reputation;
- A ban on publication, or destruction of the publication, may be required;
- Some national legislation allows the entire print-run of the publication (or other medium) to be seized;
- In some countries, criminal charges can be brought, which may result in a judgement against the party that infringed the author's rights and confiscation of any copies already produced.

Journalists who have transferred usage rights to the publisher or broadcasting company can only take action against infringements of their moral rights - in countries where they have these. In addition, the publisher or broadcasting company which owns the rights must still be trading. In some countries collecting societies, trade unions or professional organisations take action against infringement of authors' rights on behalf of the author.

The [EFJ database of court cases](#) includes details of decisions on infringement of authors' rights in breach of employment contract. EFJ member associations can also provide relevant information, and names of lawyers who specialise in authors' rights.

The right to contractual and non-contractual enforcement of authors' rights has not yet been harmonised in the European Union. The lack of a European authors' rights law is discussed above.

The EU has at the time of writing just passed [Directive 2004/48/EC, on the enforcement of intellectual property rights](#). It is doubtful whether this directive is another step towards the protection of authors or not. The text includes rights to obtain information on infringing use of works, and standard terms for claims for compensation and for the removal or seizure of infringing works. It also allows professional associations to take action to defend their members' authors' rights. The new directive also includes rules on the production of evidence and legal remedies but it does not contain provisions on damages such as those existing in the first draft.

9 International cooperation

The European Union has just undertaken the largest expansion of its history: in May 2004, another ten states became members. These new member states are required to implement the "*aquis communautaire*", the body of settled EU law - including the directives dealing with authors' rights. Authors' rights and related rights have immense significance in the information society. The number of freelance journalists is growing, both in the existing member states in the new entrants. Given this, it is more important than ever that journalists' unions and professional associations to work together and cooperate more closely.

The EFJ has placed authors' rights at the heart of its extensive activities, and has set up the Authors Rights Expert Group ([AREG](#)) to bring together expert knowledge from many European countries. AREG is involved with all topics related to authors' rights. Encouraged by AREG, the EFJ has set up the post of Authors' Rights Campaign Officer. This IFJ employee's job description involves coordinating AREG's work, continuously updating its [website](#) with current documents from both Brussels and the EFJ member organisations, and acting as a contact on all matters associated with intellectual property rights. The work of AREG and the Campaign Officer are incorporated into the activities of the IFJ, which campaigns around the world to reinforce the journalists' authors' rights.

10 The future

By publishing this handbook, the IFJ and EFJ aim to draw attention to important developments taking place in European and international authors' rights that concern the enforcement of journalists' interests.

The handbook is regularly supplemented and updated to incorporate new developments. Your contribution to this process is crucial. You can forward new information to:

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11 List of abbreviations:

AREG	Authors' Rights Experts' Group (of the EFJ)
CD-I	Compact Disc-Interactive
CD-ROM	Compact Disc Read-Only Memory
CIS	Common Information System
CISAC	Confédération Internationale des Sociétés d'Auteurs et Compositeurs
DJV	Deutscher Journalisten-Verband (German Journalists' Association)
DRM	Digital Rights Management - specifically, systems controlling access to a work
EC	European Community
EEC	European Economic Community (predecessor of the EC)
EFJ	European Federation of Journalists
EU	European Union (The EC, plus cooperation in foreign and justice matters)
GATT	General Agreement on Tariffs and Trade
IFJ	International Federation of Journalists
IFRRO	International Federation of Reprographic Rights Organisations
NVJ	Nederlandse Vereniging van Journalisten (Dutch Journalists' Association)
SAJ/JAM	Société de droit d'Auteur des Journalistes/Journalisten Auteursrechten Maatschappij (Belgian Journalists' Association)
SNJ	Syndicat National des Journalistes (French Journalists' Trade Union)
TRIPS	(agreement on) Trade-Related aspects of Intellectual Property Rights
UK	United Kingdom (of Great Britain and Northern Ireland)
WIPO	World Intellectual Property Organization
WCT	WIPO Copyright Treaty
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organisation
WWW	World-Wide Web

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