

Brussels 28th March 2013

European Federation of journalists

Response to

Consultation on civil enforcement of intellectual property rights: public consultation on the efficiency of proceedings and accessibility measures

The European Federation of Journalists (EFJ)¹ is the largest European organisation of journalists, representing about 300,000 journalists in over thirty countries.

The EFJ is convinced that societies and democracies depend upon professional media working to the highest ethical and professional standards. These in turn require individual journalists to maintain high standards of reliability, accuracy and integrity of news reporting - and they can only do this if their creativity and independence is strongly protected.

Journalists and press photographers' works can easily be copied and the web 2.0 facilitates even more the use of their work by easing the reproduction and making available of journalistic contents on different web pages and different platforms, allowing their indexation via news aggregators' systems, modifying and adapting them by third parties without any authorisation nor additional payment for this extra uses.

The EFJ shares the opinion that quality of information requires a strong protection of journalists' authors' rights. In this respect, the EFJ encourages the European Commission's initiatives for better protection of intellectual property rights and welcomes the European Commission's consultation on civil enforcement of intellectual property rights which focuses on "the efficiency of proceedings and accessibility of measures".

The EFJ is taking this opportunity to point at a number of critical challenges journalists have to face when it comes to using their work without their permission.

We hope that this consultation will also link to complementary work streams to sustain the work of creators and their intellectual property rights and contribute to improve the legal framework for intellectual property rights and their enforcement in order to sustain jobs in the creative sector in

¹ <http://europe.ifj.org/en>

Europe.

Authorship and economic rights are essentials for sustaining journalistic works

As authors of their work, journalists own exclusive moral rights and economic rights.

This is supported by the UN Declaration of Human Rights which states in its Article 27 that : *Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

The Berne Convention adds in its article 6 bis that *Independently of the author's economic rights and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification or other derogatory action in relation to the said work which would be prejudicial to his honour or reputation.*

The enforcement of these rights is essential for journalists to make a living, be identified as the authors and maintain the integrity of their works. The rights of integrity and identification represent journalists taking individual responsibility for their work, as well as being able to build a reputation and income

Need for small claim court proceedings

The mechanism open to journalists to pursue non-paying media clients or intellectual property rights infringers vary between member states. Additionally, an increasing number of freelancers supply work to media companies in other member states which make it even more difficult to initiate proceedings.

Although court decisions have on numerous occasions acknowledged the right for journalists to give permission and be paid for the use of their work courts' fees are costly for an individual creator to see his/her rights being enforced. Cross border disputes are even more difficult to sustain, from an authors' economic point of view.

In this respect we welcome the release in October 2012 of small claim procedures in the UK that allow creators' access to justice when their rights have been denied at more limited costs and for claims not exceeding 5000 pounds.

We believe that the European Commission could play an important role in developing a European mechanism to ensure that individual creators can claim their rights with minimum costs within the EU and take into account the cross border dispute issue that many journalists have to face.

Need to strengthen metadata protection

The rights to be identified as author is key and moral rights should be enforced so that each journalist and photojournalist can be credited wherever his/her work appears and see the integrity of their works protected.

There is no known technology for preventing abuse of photographs and articles once they are posted online. However, various technologies can help identify improper uses so that photographers – and their unions – can take actions. These technologies include metadata and watermarking.

The EFJ would welcome an initiative from the European commission to ensure that metadata is legally protected in every European country, as EU directive 2001/29 says it should be.

Licence for first use is not complete assignment of rights

A large portion of news articles, photographs, broadcasts are used by media organisations without due authorization from their authors nor payment for the use. This occurs more specifically in situations where journalists are not covered by a collective agreement and affects mostly journalists working freelance.

The latter are forced to sign standard buy out contracts² where they assign all their exclusive rights, for a usually unlimited period of time and with no geographic boundary to media owners. As journalists make a living by licensing the uses of their works, this phenomenon entails a clear loss in revenue.

Freedom of contract is seen both in the EU and its Member States as a general principle governing contractual obligations. While safeguards have been introduced in some specific sectors in order not to hinder the good functioning of the internal market and protect the weaker party to a contract, EU initiatives in this respect failed to address the contractual precariousness of authors.

The survival of independent journalism is essential to the functioning of democracy; and that survival depends on a level playing field for negotiation of contracts; and the leveling of the playing field requires legislation. The EFJ would welcome a study to evaluate the current economic loss that is affecting those creators forced to sign buy out contracts.

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² <http://www.ifj.org/en/articles/samples-of-unfair-terms-and-conditions-in-authors-rights-contracts>