Public Consultation on the review of the EU copyright rules

Introduction

The Publishers Association is the representative body for book, journal, audio and electronic publishers in the United Kingdom. The Publishers Association ("The PA") is the leading representative voice and trade organisation for book, journal, audio and electronic publishers in the UK. Our membership includes publishing houses in the academic, educational and general trade sectors. Collectively, their revenues total £5bn. The PA is an active member of the Federation of European Publishers and the UK's Alliance for Intellectual Property. We fully endorse both of their submissions to this consultation process.

The PA welcomes the opportunity to contribute to the European Commission's policy development in this area. We agree that it is important to periodically evaluate the system of rights, limitations to rights and enforcement, to ensure that the EU copyright framework continues to support innovation and growth. However, as our response to the Consultation indicates, we do not believe that there is compelling evidence to suggest the need for the reopening or fundamental reworking of the Copyright Directive. Indeed, the converse is the case. The creative industries in the UK and across the EU are strongly competitive (in the UK the creative sector grew by 15% in the years 2008-12, easily out-stripping the performance of the economy as a whole).

This strong performance was possible precisely because of the copyright framework which establishes exclusive rights upon which creators can develop, market and trade their works. In particular, the digital creative economy increasingly relies upon licensing of works to services or to end-users. The copyright framework continues to show itself to be sufficiently adaptable and flexible to allow a huge range of licensing arrangements to flourish.

Linked to this, the stability afforded by the durability of the copyright framework is key to its success. Businesses are confident in making investment decisions, be it in individual creators and their works, or capital investment in offices and infrastructure, safe in the knowledge that such investment will see a return. Any threats to this stability, in the form of a weakening of intellectual property rules and an undermining of the value of rights, would be likely to have a negative impact upon creators and the businesses who support them.

Ultimately, it is European consumers who benefit most from the current copyright framework and who would stand to lose out if incentives to invest in creation were weakened. In the UK – but this is also true of many other EU member countries - there are now myriad ways in which users can access digital content easily and at highly competitive prices (the www.thecontentmap.com lists the legal services for the major content types). The entertainment consumer has literally never had it so good, and it is all thanks to the copyright framework and the ability of creators and companies to license their works to digital services.

Rights and the functioning of the Single Market

A. Why is it not possible to access many online content services from anywhere in Europe?

1. Have you faced problems when trying to access online services in an EU Member State other than one in which you live?
2. Have you faced problems when seeking to provide online services across borders in the EU?

No. The consultation introduces a negative perception from the outset. The question might equally have been framed without the word "not". Rather than asking respondents to note problems, it may have been equally interesting to request the millions of examples of successful access to online content which take place every day within the EU.

Territoriality of rights tends not to affect the publishing sector where the granting and exploitation of rights works differently to other content industries. When an author grants a licence directly to the publisher for commercial exploitation of their work, this is typically done on a worldwide exclusive basis, or at the very least on a pan-European basis. So, a UK publisher will usually be able to exploit a work cross-border, facilitating the sale of an English language title by a UK publisher to all other EU countries. This pan-European exploitation is designed to take place without limitations both through physical bookstores and through online retailers, and would usually apply to both physical and digital (ebook) versions of the works. Exploitation of rights on a country by country or restricted territorial basis largely occurs in special cases, for example where , a UK publisher can obtain only limited rights from agents or US publishers; or such as where French translation rights have to be split between France and Quebec.

Where pan-European exploitation of works is not possible, the barrier to this does not lie with the copyright framework. Instead, authors or foreign co-publishers may decide that they only want their works to be exploited in certain territories and thus will only grant publishers rights accordingly.

There have also been instances where the difficulty for consumers in one EU nation to access services of another have been due to the technical deficiencies in the retailer platform, often connected with difficulties in performing exchange rate conversion. Again, copyright is not part of the problem.

Therefore, it is our view that no further measures are needed at EU level to increase the cross-border availability of books in the Single Market, in either physical or ebook format.

It will be for representatives from other creative sectors to note the reasons for the need to respect territoriality in their markets, but in anticipation of their arguments we would agree that there are cases where exploitation of rights should be done on a market-by-market basis in order to optimise the balance between the benefit to the creator and there being a consumer-appropriate product.

3. 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 questions above – what would be the best way to tackle them?

No problems identified in the publishing sector.

5. Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you will 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)?

No.

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?)

No opinion.

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, whilst ensuring an adequate level of protection for rights holders?

No further measures are needed at EU level to increase the cross-border availability of services in the publishing sector.

B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

[The definition of the rights involved in digital transmissions, in particular the "making available" right and "communication to the public."]

1. The act of "making available"
Directive 2001/29/EC specifies neither <u>what</u> is covered by the making available right (e.g. the upload, the accessibility by the public, the actual reception by the public) nor <u>where</u> the act of "making available" takes place. This does not raise questions if the act is limited to a single territory. Questions arise however when the transmission covers several territories and rights need to be cleared (does the act of "making available" happen in the country of the upload only? in each of the countries where the content is potentially accessible? in each of the countries where the content is effectively accessed?). The most recent case law of the Court of Justice of the European Union (CJEU) suggests that a relevant criterion is the "targeting" of a certain Member State's public[1]. According to this approach the copyright-relevant

[1] See in particular Case C-173/11 (Football Dataco vs Sportradar) and Case C-5/11 (Donner) for copyright and related rights, and Case C-324/09 (L'Oréal vs eBay) for trademarks. With regard to jurisdiction see also joined Cases C-585/08 and C-144/09 (Pammer and Hotel Alpenhof) and pending CaseC-441/13 (Pez Hejduk); see however, adopting a different approach, Case C-170/12 (Pinckney vs KDG Mediatech).

act (which has to be licensed) occurs at least in those countries which are "targeted" by the online service provider. A service provider "targets" a group of customers residing in a specific country when it directs its activity to that group, e.g. via advertisement, promotions, a language or a currency specifically targeted at that group.

8. Is the scope of the "making available" right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

Yes.

9. 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)?

The territorial scope of the "making available" right has been clarified by various Court decisions (Lagardère, Stichting de Thuiskopie; Donner; Football Dataco) as elaborated in the study on the implementation of the Information Society Directive by de Wolf & Partners and as referred to in the footnotes of the questionnaire. Whilst the decisions do not apply exactly the same criteria, the outcome of the application by the CJEU is clear and provides certainty for all stakeholders: writers, publishers and commercial users.

There is no problem in practice relating to the subsistence of copyright and authorship within the EU. As outlined in our response to Question 2 there is no fragmentation of the ownership in the creative sector we represent. At the second level, the transfer of rights is dealt with by established contractual mechanisms between writers and publishers and between publishers and retail platform providers respectively; such mechanisms are also available at pan European or even global level, if requested by the online retail platform. We outlined the practice in the publishing sector in our response to question 2.

Various Court cases, and in particular Case 173/11 Football Dataco v Sportsradar, have also established the places where an infringement of the making available right takes place and can be pursued (c.f. also Case C 170/12 Peter Pinckney v KDG Mediatech AG) on jurisdiction under the Brussels Regulations); this decision could not be considered in the de Wolf study.

Further activity by the Commission, legislative or non-legislative, could lead to a confusing conflict with decisions of the CJEU. This uncertainty would be exacerbated by the inevitably long time it would take to arrive at a new settled policy position.

We suggest further activities on Enforcement in our response to question 76; in particular we suggest applying injunctive relief under Art 8 (3) Information Society Directive at pan European level.

2. Two rights involved in a single act of exploitation

Each act of transmission in digital networks entails (in the current state of technology and law) several reproductions. This means that there are two rights that apply to digital transmissions: the reproduction right and the making available right. This may complicate the licensing of works for online use notably when the two rights are held by different persons/entities.

10. [In particular if you are a service provider or a rights 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?

No. The consultation question appears to tip the response towards considering licensing not only as complicated, but as excessively complicated. But this is not the case: there are two separate acts and therefore it is appropriate that there by two separate related rights. In the publishing sector it is typical for both rights to be held by the same rightsholder, reducing the potential for any possible problems.

Further, it is beneficial to have these two separate rights, as they allow for the greatest possible flexibility: whilst some users may wish to acquire a licence for and make use of the reproduction right, other users may wish to add the making available right to their licence. Keeping these two rights separate causes no identifiable problems and rather allows the greatest flexibility for users/would be licensees. To marry them together in a single act of exploitation would reduce choice for online business models and ultimately consumers.

[In particular if you are 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?

Again, the consultation appears determined to identify problems, rather than consider the alternative positive impact of the present framework. In the publishing sector, where (as explained above) all rights are generally granted to the publisher for exploitation, there is little if any distinction between these two rights – publishers hold rights for reproduction and distribution. Both the reproduction and making available rights are exploited simultaneously, by the same rights holder or exclusive licensee, and does not create any problems for publishers as rights holders in the online environment.

3. Linking and browsing

Hyperlinks are references to data that lead a user from one location in the Internet to another. They are indispensable for the functioning of the Internet as a network. Several cases are pending before the CJEU[2] in which the question has been raised whether the provision of a clickable link constitutes an act of communication to the public/making available to the public subject to the authorisation of the rightholder. A user browsing the internet (e.g. viewing a web-page) regularly creates temporary copies of works and other subject-matter protected under copyright on the screen and in the 'cache' memory of his computer. A question has been referred to the CJEU[3] as to whether such copies are always covered by the mandatory exception for temporary acts of reproduction provided for in Article 5(1) of Directive 2001/29/EC.

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 rightsholder?

Yes, but only under specific circumstances and in relation to the copyright status of the work it links to.

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[2] Cases C-466/12 (Svensson), C-348/13 (Bestwater International) and C-279/13 (C More entertainment).

[3] Case C-360/13 (Public Relations Consultants Association Ltd). See also http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0202_PressSummary.pdf.

EU and UK case law would seem to suggest that the provision of a mere hyperlink does not by itself engage with copyright, since such a hyperlink is only a signpost to a location on the internet. However, the UK High Court pronounces itself not to be sure whether the mere provision of a hyperlink amounts to communication to the public. (Paramount Pictures and others v Sky and other [2013] EWHC 3479 (Ch)).

The Court of Justice of the European Union decided in the recent case C 466/ 12 Svensson v Retreiver Sverige that the provision of clickable links to protected works (hyperlinks) must be considered to be making available and, therefore, an act of communication to the public. However, given the specific circumstances of the case at hand the Court decided that there is no new public in the provision of hyperlinks to the works (the concept of a "new public" having been established in various previous decisions on communication to the public). All internet users would have free access to the works of Svensson and his colleagues as communicated originally given that they made their works available without restrictive measures in the first place. The decisive criterion seems to relate to the works linked to. It seems clear from this decision that in instances where the link leads to protected material made available without the authorisation of the right holder, or not previously made available to the public, such hyperlinking should be considered to be in breach of the communication to the public right.

We would further note that the limitations of liability within the e-Commerce Directive do not apply where hyperlinks are being provided to locations on the internet which are hosting infringing works AND where the person providing the hyperlink has actual knowledge of this. In such specific circumstances the provider of the hyperlink would require authorisation in order not to be infringing copyright.

12. Should the viewing of a webpage whether 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 rightsholder?

Generally no. It has never been the intention of the copyright framework to make mere reading a copyright-related act (the UK Supreme Court's judgment in the cited PRCA – v – Meltwater case makes this point strongly). However, as that judgment also makes clear, it is still a requirement of copyright law that the provision of what is read is subject to authorisation.

The scope of Article 5 (1) Information Society Directive and its application to the viewing of webpages is currently subject to a reference to the CJEU. We believe it would be advisable to await the result of this case before deciding upon any changes to the law.

4. Download to own digital content

Digital content is increasingly being bought via digital transmission (e.g. download to own). Questions arise as to the possibility for users to dispose of the files they buy in this manner (e.g. by selling them or by giving them as a gift). The principle of EU exhaustion of the distribution right applies in the case of the distribution of physical copies (e.g. when a tangible article such as a CD or a book, etc. is sold, the right holder cannot prevent the further distribution of that tangible article)[4]. The issue that arises here is whether this principle can also be applied in the case of an act of transmission equivalent in its effect to distribution (i.e. where the buyer acquires the

[4] See also recital 28 of Directive 2001/29/EC.

property of the copy)[5]. This raises difficult questions, notably relating to the practical application of such an approach (how to avoid re-sellers keeping and using a copy of a work after they have "re-sold" it – this is often referred to as the "forward and delete" question) as well as to the economic implications of the creation of a second-hand market of copies of perfect quality that never deteriorate (in contrast to the second-hand market for physical goods).

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)?

The framing of this question is curious as it appears to be inviting respondents to admit to having had problems when they have attempted to break the law. Generally speaking, the reselling of purchased digital files is not permitted under the Copyright Directive. So any responses in the affirmative are admissions of guilt; whereas responses in the negative cover two different options: either the respondent hasn't tried; or they have tried and easily overcome the restrictions.

14. [In particular if you are a right holder or a service provider] What would be the consequence of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market type of content) concerned.

There are several reasons why the conditions and approaches which apply with regard to physical goods should not also obtain in the digital marketplace. The simple assumption that because a certain approach works for physical it should, almost axiomatically, be made to apply to digital is overly simplistic. The attempt to straightforwardly transplant physical terms to the digital market ignores hugely significant key differences between how the markets operate. Ignoring these differences places the strength of the creative economy in jeopardy, in that creators' rewards and incentives would be eroded, along with the incentives and abilities of creative companies to invest in them.

The underlying philosophy of the copyright framework is to give the author exclusive rights in the first-hand market, because this is where the greatest value can be derived and where they are likely to maximise their reward. It also ensures that their moral rights are maintained.

In the physical domain, it follows that it can be tolerated for the author not to also have full exclusive rights in the second-hand market: specifically the exhaustion of the distribution right can be tolerated as the author is deemed to have earned sufficient reward in his first-hand market.

However, this logic is drastically changed in the digital world because here the second-hand market is largely indistinguishable from the first-hand, owing to three vital characteristics of digital goods.

[5] In Case C-128/11 (Oracle vs. UsedSoft) the CJEU ruled that an author cannot oppose the resale of a second-hand licence that allows downloading his computer program from his website and using it for an unlimited period of time. The exclusive right of distribution of a copy of a computer program covered by such a licence is exhausted on its first sale. While it is thus admitted that the distribution right may be subject to exhaustion in case of computer programs offered for download with the right holder's consent, the Court was careful to emphasise that it reached this decision based on the Computer Programs Directive. It was stressed that this exhaustion rule constituted a *lex specialis* in relation to the Information Society Directive (UsedSoft, par. 51, 56).

(1) Digital works in the second-hand market are identical to the original of the work only in the sense that they contain the same work; however, physical works in the second-hand market are identical in the strictest interpretation of the term "identical": i.e. the second-hand work is *one and the same thing* as the first-hand work.

(2) Digital copies can be numerous, to a near-infinite degree, and therefore the second-hand market can be bigger than the first-hand market. In the physical world, this is impossible since the second-hand market can only ever be as big as the first-hand market and is always likely to actually be smaller. Given the trivial ease with which Digital Rights Management tools can be hacked and cracked, it is no comfort to say that a "forward and delete" approach could solve this issue.

(3) From these two points it follows that whereas digital copies are and remain pristine and faithful, physical copies suffer from deterioration. This means that goods in the physical second-hand market are inferior to the first-hand (increasingly so over time) and so goods in each market are less substitutable. For example, a dog-eared copy of *"The Da Vinci Code"* on its fourth outing on the shelves of a charity shop is clearly inferior to the brand new copy in a high street bookshop.

The upshot of these three factors is that the ability of the author/publisher to earn just reward in the first-hand market would be severely curtailed by the untrammelled reselling of digital content. They would face unfair competition from the second-hand market, in which the providers of goods have borne none of the risk of investment in the creation of the product, nor have borne any of the production costs, other than the trivial cost of reproduction. This would generate unfair price competition to the distinct disadvantage of the first-hand market.

Furthermore, the impact on levels of online copyright infringement would be likely to be significant. Monitoring unauthorised distribution is difficult enough in the prevailing conditions; however, it would become untenable to monitor and track infringement in a newly legitimised second-hand market in which there was no discernible difference in the product. Pirate copies would be indistinguishable from the legitimate copies.

Further, it is more difficult to determine whether a digital good has been sold; unlike a physical sale where there is a transfer to another user and the denial of the continuing use of the physical good by the seller, in the digital environment this is not the case – both the seller and purchaser can continue to use the digital product. The implications for widespread copyright infringement – and concurrent difficulties in enforcement – are clear.

Nor is there a significant consumer loss if the sale of digital second-hand books remains prohibited. First, because the on-going sale of second-hand physical books would be in no way affected; secondly, because there is no clear discernible potential value to the consumer of selling second-hand ebooks.

There is a further potential for harm to the consumer. A rational response from authors/publishers to the challenge of lost value in the second-hand market would be to raise prices in the first-hand market in order to cover anticipated losses. This would be a perilous strategy as it would entail losing further market share to lower prices in the second-hand market. It would also impose higher prices on those consumers who wanted first-hand works.

So for these reasons it has to be clearly acknowledged that the digital marketplace is importantly different to the physical one.

C. Registration of works and other subject matter – is it a good idea?

Registration is not often discussed in copyright in the EU as the existing international treaties in the area prohibit formalities as a condition for the protection and exercise of rights. However, this prohibition is not absolute[6]. Moreover a system of registration does not need to be made compulsory or constitute a precondition for the protection and exercise of rights. With a longer term of protection and with the increased opportunities that digital technology provides for the use of content (including older works and works that otherwise would not have been disseminated), the advantages and disadvantages of a system of registration are increasingly being considered[7].

15. Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?

No. The registration and identification of works in the publishing sector already takes place at a voluntary level via the ISBN system, created in 1965. Therefore, The PA does not believe that any additional system of registration needs to be created and applied to the publishing sector. We also reject the notion that registration should be a prerequisite for the protection and exercise of rights, and any compulsory registration system applicable to foreign works would of course fall foul of the Berne Convention.

The identification and licensing of works and other subject matter is better served by improvements in facilitating discoverability; and in the streamlining of licensing. Publishers are working to improve both of these, at national and European level, for example through support of the work of the Linked Content Coalition.

As a general point, we believe that registration would militate against the small or first-time creator. The need to register could be perceived as an administrative burden and thus a disincentive. Registration would create a two-tier structure of works: those non-registered would – presumably – be less well protected than those which were. In all likelihood this would mean that larger, more established rightsholders would enjoy greater protections than those new to the field.

16. What would be the possible advantages of such a system?

The PA cannot see any benefits to a registration system that could not be achieved by improved metadata for discoverability.

17. What would be the possible disadvantages of such a system?

As discussed in response to Q15 above, such a system is overly complex, costly and would place an additional burden on rightsholders for no obvious gain – and when alternative, less onerous improvements can be made. Such a system could also be found to violate Article 5 of the Berne Convention.

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[6] For example, it does not affect "domestic" works – i.e. works originating in the country imposing the formalities as opposed to works originating in another country.

[7] On the basis of Article 3.6 of the Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, a publicly accessible online database is currently being set up by the Office for Harmonisation of the Internal Market (OHIM) for the registration of orphan works.

18. What incentives for registration by rightsholders could be envisaged?

That really is for those proposing what we believe to be a bad idea to set out.

D. How to improve the use and interoperability of identifiers

There are many private databases of works and other subject matter held by producers, collective management organisations, and institutions such as libraries, which are based to a greater or lesser extent on the use of (more or less) interoperable, internationally agreed 'identifiers'. Identifiers can be compared to a reference number embedded in a work, are specific to the sector in which they have been developed[8], and identify, variously, the work itself, the owner or the contributor to a work or other subject matter. There are notable examples of where industry is undertaking actions to improve the interoperability of such identifiers and databases. The Global Repertoire Database[9] should, once operational, provide a single source of information on the ownership and control of musical works worldwide. The Linked Content Coalition[10] was established to develop building blocks for the expression and management of rights and licensing across all content and media types. It includes the development of a Rights Reference Model (RRM) – a comprehensive data model for all types of rights in all types of content. The UK Copyright Hub[11] is seeking to take such identification systems a step further, and to create a linked platform, enabling automated licensing across different sectors.

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?

The PA is a strong supporter of and contributor to the UK Copyright Hub and would welcome exploration, at EU level, of the potential for engagement and activity in improving metadata standards and interoperability.

We also support a framework of open standards to provide commonality and interoperability, and believe this will facilitate the use and reuse of licensed works, in particular the aggregation of data from multiple sources. To this end, through the Federation of European Publishers, The PA is supportive of the work of the Linked Content Coalition (LCC).

We would welcome further exploratory work to determine how both the UK Copyright Hub and the LCC could be expanded cross the EU, or interlink with other existing initiatives. As the Licences for Europe Group 2 toolkit demonstrated, there s much work already in existence across Member States.

E. Term of protection – is it appropriate?

Works and other subject matter are protected under copyright for a limited period of time. After the term of protection has expired, a work falls into the public domain and can be freely used by anyone (in accordance with the applicable national rules on

[8] E.g. the International Standard Recording Code (ISRC) is used to identify recordings, the International Standard Book Number (ISBN) is used to identify books.

[9] You will find more information about this initiative on the following website: http://www.globalrepertoiredatabase.com/.

[10] You will find more information about this initiative (funded in part by the European Commission) on the following website: www.linkedcontentcoalition.org.

[11] You will find more information about this initiative on the following website: http://www.copyrighthub.co.uk/.

moral rights). The Berne Convention[12] requires a minimum term of protection of 50 years after the death of the author. The EU rules extend this term of protection to 70 years after the death of the author (as do many other countries, e.g. the US).

With regard to performers in the music sector and phonogram producers, the term provided for in the EU rules also extend 20 years beyond what is mandated in international agreements, providing for a term of protection of 70 years after the first publication. Performers and producers in the audio-visual sector, however, do not benefit from such an extended term of protection.

20. Are the current terms of copyright protection still appropriate in the digital environment?

Yes. Terms of copyright protection exist in order to allow the creator to receive reward for the enjoyment of his work, and to incentivise investment from creative companies. The terms are balanced with the requirement that such protection should not be perpetual and that in due course works should be in the public domain to be exploited by anyone with no requirement to pay the creator. A key factor in striking this balance is average life expectancy, since it is generally held that an author should at least be rewarded for the use of his work in his own lifetime and at least a part of that of his estate (likely to be close dependents). It would hardly be fair that the family of a person who has dedicated his economic life to creating works should be deprived of income immediately on his death. Copyright terms have gradually increased over the past 100 years in reflection of the increased life expectancy of the population (in the UK in 1911 life expectancy was 51 and 54 years for men and women respectively, compared with 79 and 82 in 2013.[13])

Whether works are being produced, consumed or used in analogue or digital format is irrelevant to the question of for how long their creator should be rewarded.

III. Limitations and exceptions in the Single Market

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?

No. This system of optional limitations and exceptions provides for flexibility within each member country to tailor their Copyright framework accordingly. Even if there were problems, it would have to be demonstrated that these were of a sufficient scale to warrant over-riding the subsidiarity principle in this area.

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?

There is no reason to suggest that some or all copyright exceptions provided for should be mandatory. To make them so would undo the consensus reached during the debate that took place at the time the Copyright Directive was negotiated, which recognised the varying cultural traditions in each State and therefore the need for flexibility across the EU.

[12] Berne Convention for the Protection of Literary and Artistic Works, http://www.wipo.int/treaties/en/ip/berne/.
[13] http://www.ons.gov.uk/ons/rel/lifetables/historic-and-projected-data-from-the-period-and-cohort-life-tables/2012-based/stb-2012-based.html

At a time when the Copyright framework itself is wrongly criticised for being inflexible and unresponsive to change, it would be highly ironic if those arguing for reform entrenched the very inflexibility they are supposedly trying to get rid of, by making all exceptions mandatory. Any attempt to do so would also cause problems of interpretation across Member States, which would by no means be consensual, unless interpretation of local courts was restricted in some way (for example interpretation via the CJEU alone), and at a possible risk to delays in justice and enforcement of rights.

23. Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.

There is no evidence to suggest that any new limitations and exceptions should be added to or removed from the existing catalogue.

It should be remembered that limitations and exceptions are by their very definition applied only in certain special cases where the Three Step Test has been complied with and therefore where there is no properly functioning licensing market. Until it has been demonstrated why where and how any new limitations and exceptions might apply, any proposal to interfere with rightsholders' exclusive rights remains extremely concerning.

In contrast to licensing solutions, which are being continuously developed and improved by rightsholders to meet user needs, exceptions and limitations can only be a blunt and often ineffective tool.

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?

No. It is unclear what is meant by the provision of a greater degree of flexibility. For reasons stated above, this cannot mean mandatory exceptions and limitations which do not provide for flexibility of any kind. Flexibility must also be balanced against certainty: both for rightsholders and for users. Introducing broad and vague terms such as Fair Use into the legal system would serve no one and would instead lead to business uncertainty, increased costs and litigation.

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?

No. Again, the consultation seems strangely skewed towards eliciting responses critical of the current framework: "does territoriality constitute a problem or deliver benefits" may be a more even-handed way of framing the question.

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?)

The decision taken by the UK government not to offer fair compensation for a private copying exception indicates how it will be extremely difficult for limitations and exceptions to be harmonised. As stated above, it is questionable as to whether such an approach is preferable or possible, given that one of the benefits of the copyright frameworks is its flexibility in allowing Member States to apply the right balance according to their own country's legal, economic and cultural needs.

A. Access to content in libraries and archives

Directive 2001/29/EC enables Member States to reflect in their national law a range of limitations and exceptions for the benefit of publicly accessible libraries, educational establishments and museums, as well as archives. If implemented, these exceptions allow acts of preservation and archiving[14] and enable on-site consultation of the works and other subject matter in the collections of such institutions[15]. The public lending (under an exception or limitation) by these establishments of physical copies of works and other subject matter is governed by the Rental and Lending Directive[16].Questions arise as to whether the current framework continues to achieve the objectives envisaged or whether it needs to be clarified or updated to cover use in digital networks. At the same time, questions arise as to the effect of such a possible expansion on the normal exploitation of works and other subject matter and as to the prejudice this may cause to rightholders. The role of licensing and possible framework agreements between different stakeholders also needs to be considered here.

1. Preservation and archiving

The preservation of the copies of works or other subject-matter held in the collections of cultural establishments (e.g. books, records, or films) – the restoration or replacement of works, the copying of fragile works - may involve the creation of another copy/ies of these works or other subject matter. Most Member States provide for an exception in their national laws allowing for the making of such preservation copies. The scope of the exception differs from Member State to Member State (as regards the type of beneficiary establishments, the types of works/subject-matter covered by the exception, the mode of copying and the number of reproductions that a beneficiary establishment may make). Also, the current legal status of new types of preservation activities (e.g. harvesting and archiving publicly available web content) is often uncertain.

28. [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?

[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?

As a rightsholder representative body: no.

[14] Article 5(2)c of Directive 2001/29.
[15] Article 5(3)n of Directive 2001/29.
[16] Article 5 of Directive 2006/115/EC.

29. If there are problems, how would they best be solved?

Any issues regarding preservation and access are best solved via agreements between rightsholders and public sector organisations. Real-world examples such as the PORTICO and CLOCKSS projects demonstrate how joint publisher-librarian collaboration works to ensure the archiving and preservation of the scholarly record.

In the UK, Legal Deposit Regulations now cover both print and digital works and have come into effect through successful working together of publishers and librarians.

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?

No opinion.

31. If your view is that a different solution is needed, what would it be?

No opinion.

2. Off-premises access to library collections

Directive 2001/29/EC provides an exception for the consultation of works and other subject-matter (consulting an e-book, watching a documentary) via dedicated terminals on the premises of such establishments for the purpose of research and private study. The online consultation of works and other subject-matter remotely (i.e. when the library user is not on the premises of the library) requires authorisation and is generally addressed in agreements between universities/libraries and publishers. Some argue that the law rather than agreements should provide for the possibility to, and the conditions for, granting online access to collections.

32. 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?

[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?

[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?

Contractual agreements exist between universities/libraries and publishers to facilitate off-premises (remote) access to library collections for the purposes of research and private study. Publishers also have a number of aggregators through which they deliver content for research and private study, to institutions, either remotely or on site. These include through aggregators such as OverDrive, Ebsco and others.

33. If there are problems, how would they best be solved?

Through contractual negotiations and agreements or other market-based solutions. Not through exceptions that could compromise the market.

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?

No legislative solution is needed.

35. If your view is that a different solution is needed, what would it be?

N/A

3. E – lending

Traditionally, public libraries have loaned physical copies of works (i.e. books, sometimes also CDs and DVDs) to their users. Recent technological developments have made it technically possible for libraries to provide users with temporary access to digital content, such as e-books, music or films via networks. Under the current legal framework, libraries need to obtain the authorisation of the rights holders to organise such e-lending activities. In various Member States, publishers and libraries are currently experimenting with different business models for the making available of works online, including direct supply of e-books to libraries by publishers or bundling by aggregators.

36. [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?
[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?
[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?

Following the publication of the Sieghart Review in the UK in February 2013, it was recommended to the Government that libraries should be allowed to loan ebooks, including via remote e-lending. However, the Report also recognised that the interests of publishers and booksellers must be protected through "frictions" that limit the supply of ebooks in the same way that physical book loans are controlled. The exact nature of these "frictions" should "evolve with the market". To explore these frictions further, The Publishers Association UK and the Society of Chief Libraries are running a series of e-lending pilots to gather evidence and assess the impact of e-lending in public libraries. Four authorities will take part in the pilots, which will give them access to a wide range of front and back list titles from major publishers.

The PA commends the approach taken by Sieghart, which does not recommend legislative changes to facilitate remote e-lending but instead envisages agreements between publishers and librarians, based on evidence. This is an approach we commend to the Commission: the interests of all parties are served through commercial negotiation and agreements underpinned by licensing.

There are a number of other commercial e-lending models in existence available to UK publishers and marketed on a pan-European basis which, to varying extents, integrate with the public library service. These include, to name a few, Bloomsbury Public Library Online, Overdrive, and the recently launched Amazon Lending. Others, are set to follow. These models also attest to is the willingness of publishers to provide e-lending services to match consumer demand, and to trial a range of models to alight on the most sustainable model suited to individual business needs.

It is clear that publishers are taking steps to experiment with supply models and that there is scope for trialling. The key though is for publishers to retain control of how their works are lent and for them to have the freedom to experiment with the models that are best suited to their own individual businesses. One size will not fit all.

Further, publishers are sharing examples of best practice to help facilitate e-lending in public libraries. The Federation of European Publishers and to the European Writers Council have started a series of seminars to share best practice in this field, and have launched a questionnaire to map areas where e-lending is already taking place.

37. If there are problems, how would they best be solved?

Through discussion, negotiation, licensing and the sharing of best practice.

The following two questions are relevant both to this point (n° 3) and the previous one (n° 2).

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?

Given the ease with which digital files can be unlawfully copied and shared, online management of library collections should only take place through licensing agreements with publishers, which would likely stipulate the necessary security and other conditions upon which the licence can operate.

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?

Whilst the underlying copyright work might be the same, the delivery of physical and e-books certainly is not, and nor are the economic factors surrounding the distribution and acquisition of them. The experience of very many creative sectors to date shows us that racing to replicate the physical market in the digital world is at the very least fraught with danger, and at worst, totally the wrong thing to do. Firstly, there is a strong probability that the widespread introduction of e-lending at this juncture could seriously impact upon sales in what is still a nascent ebook market. In particular for remote (off-premises) lending, where it is as easy for a remote user to buy an ebook as to borrow it at no cost, many more people will opt for the free option. The lack of any clear statistical evidence to the contrary, means it is impossible for publishers to discount the potential harm posed by remote e-lending; harm which would extend beyond their own businesses to the livelihoods of authors and booksellers. No such direct threat to the primary market exists for physical lending, and this

market is already establishment – in contrast to e lending market which is still nascent in the majority of member states.

In addition to publishers' commercial concerns and the other commercial offerings in existence that would be competing with ebook lending in libraries, there is also the added threat that untested or badly constructed e-lending models could lead to greater exposure to online copyright infringement (in contrast to physical lending where the risk of infringement is far less if not zero). All of the current methods of protecting ebooks from online copyright infringement (digital rights management or "DRM") have been hacked. To the initiated – and it takes a mere Google search and 90 second instruction video to become so – any ebook, on whatever platform, with any DRM, can be obtained. Although this serious problem goes well beyond the question of e-lending it is important to recognise it as a backdrop to the decisions publishers and authors are making as to the online future of their works.

It is also unclear when and how library infrastructure will be updated to facilitate e-lending in a secure manner. Without strict and effective security controls, ebook lending could exacerbate the growing problem of online copyright infringement, in particular if ebook lending is allowed to take place remotely. Similarly, remote lending relies on strict checks on geographical membership by the aggregator/supplier of the ebook lending service, and would be a prerequisite for libraries before offering ebook loans.

Another key difference – and one that impacts heavily on authors – is the status of Public Lending Right (PLR) for e-lending. Currently this applies only to physical books. Whilst the provision for PLR to be extended to ebooks and audiobooks was introduced under Section 43 of the Digital Economy Act 2010 in the UK, the Government has said it does not intend to implement this extension, due to financial constraints. If libraries were to begin lending ebooks without a PLR extension; authors will not receive any royalty payment for ebook loans. And if ebook borrowing were to significantly substitute for physical borrowing (as would be highly likely) then this would clearly impact upon authors' income. It is also unclear whether libraries are legally allowed to lend ebooks without the extension of the PLR scheme, or whether the PLR scheme would or could operate if ebooks were lent remotely i.e. the loans did not take place via supervised downloading of ebooks on library premises.

It should be noted that one of the key benefits of the commercial models already in existence is that publisher and author remunerations come through clearly articulated and guaranteed licence agreements.

4. Mass digitisation

The term "mass digitisation" is normally used to refer to efforts by institutions such as libraries and archives to digitise (e.g. scan) the entire content or part of their collections with an objective to preserve these collections and, normally, to make them available to the public. Examples are efforts by libraries to digitise novels form the early part of the 20th century or whole collections of pictures of historical value. This matter has been partly addressed at the EU level by the 2011 Memorandum of Understanding (MoU) on key principles on the digitisation and making available of out of commerce works (i.e. works which are no longer found in the normal channels of commerce), which is aiming 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[17]. Provided the required funding is ensured (digitisation

[17] You will find more information about his MoU on the following website: http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm .

projects are extremely expensive), the result of this MoU should be that books that are currently to be found only in the archives of, for instance, libraries will be digitised and made available online to everyone. The MoU is based on voluntary licences (granted by Collective Management Organisations on the basis of the mandates they receive from authors and publishers). Some Member States may need to enact legislation to ensure the largest possible effect of such licences (e.g. by establishing in legislation a presumption of representation of a collecting society or the recognition of an "extended effect" to the licences granted)[18].

40. 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?

We do not believe that any further legislation is needed to ensure that the 2011 MOU has cross-border effect.

41. Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio or AV collections etc).

No opinion.

5. Teaching

Directive 2001/29/EC[19] enables Member States to implement in their national legislation limitations and exceptions for the purpose of illustration for non-commercial teaching. Such exceptions would typically allow a teacher to use parts of or full works to illustrate his course, e.g. by distributing copies of fragments of a book or of newspaper articles in the classroom or by showing protected content on a smart board without having to obtain authorisation from the right holders. The open formulation of this (optional) provision allows for rather different implementation at Member States level. The implementation of the exception differs from Member State to Member State, with several Member States providing instead a framework for the licensing of content for certain educational uses. Some argue that the law should provide for better possibilities for distance learning and study at home.

42. [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?

[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?

No. Licensing agreements – the majority of which in the education space are available on a collective basis – facilitate the use of works for the purpose of illustration for non commercial teaching. This includes, for example, facilitating the use of works on interactive whiteboards

[18] France and Germany have already adopted legislation to back the effects of the MoU. The French act (LOI n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du xxe siècle) foresees collective management, unless the author or publisher in question opposes such management. The German act (Gesetz zur Nutzung verwaister und vergriffener Werke und einer weiteren Änderung des Urheberrechtsgesetzes vom 1. Oktober 2013) contains a legal presumption of representation by a collecting society in relation to works whose rightholders are not members of the collecting society.

[19] Article 5(3)a of Directive 2001/29.

and in virtual learning environments. Commercial offerings also exist for the licensing of whole or parts of education textbooks, and for teachers to use content in innovative ways, tailoring it to the needs of individual students, and there are a number of new and newly-established players in this market such as RM Books, CourseSmart and Courseload, GooglePlay for Education, and Apple.

The education market is extremely vulnerable to the substitution of sales through copying. For user-clarity, legal certainty and to prevent harm to rights holders, licensing agreements are always the best option.

43. If there are problems, how would they best be solved?

No opinion.

44. What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?

In the UK section 32 of the CDPA allows for the use of content for illustration for teaching purposes. Collective licensing makes this process as easy as possible for schools and for teachers, via the UK CLA.

Current proposals in the UK in relation to collective licensing, relating to sections 35 and 36 of the UK Copyright Act, would allow for the communication of passages to students using interactive displays and electronically to distance learners via secure intranets. The PA supports this proposal, which also demonstrates how the current Copyright framework is flexible to allow for adaptations.

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?

It is not clear that there is any need to introduce a legislative solution. No problem being fixed.

46. If your view is that a different solution is needed, what would it be?

N/A

6. Research

Directive 2001/29/EC[20] enables Member States to choose whether to implement in their national laws a limitation for the purpose of non-commercial scientific research. The open formulation of this (optional) provision allows for rather different implementations at Member States level.

47. [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?

[20] Article 5(3)a of Directive 2001/29.

[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?

No.

48. If there are problems, how would they best be solved?

No problems.

49. What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?

Content can be used for research purposes via the UK's version of the research and private study exception. Publishers also facilitate the use of content for research purposes under agreed licence terms, tailored to the needs of institutions and students.

B. Disabilities

Directive 2001/29/EC[21] provides for an exception/limitation for the benefit of people with a disability. The open formulation of this (optional) provision allows for rather different implementations at Member States level. At EU and international level projects have been launched to increase the accessibility of works and other subject-matter for persons with disabilities (notably by increasing the number of works published in special formats and facilitating their distribution across the European Union)[22].

The Marrakesh Treaty[23] has been adopted to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled. The Treaty creates a mandatory exception to copyright that allows organisations for the blind to produce, distribute and make available accessible format copies to visually impaired persons without the authorisation of the rightholders. The EU and its Member States have started work to sign and ratify the Treaty. This may require the adoption of certain provisions at EU level (e.g. to ensure the possibility to exchange accessible format copies across borders).

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?

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[21] Article 5 (3)b of Directive 2001/29.

[22] The European Trusted Intermediaries Network (ETIN) resulting from a Memorandum of Understanding between representatives of the right-holder community (publishers, authors, collecting societies) and interested parties such as associations for blind and dyslexic persons (http://ec.europa.eu/internal_market/copyright/initiatives/access/index_en.htm) and the Trusted Intermediary Global Accessible Resources (TIGAR) project in WIPO (http://www.visionip.org/portal/en/).

[23] Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, Marrakesh, June 17 to 28 2013.

(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?

No.

51. If there are problems, what could be done to improve accessibility?
As indicated below, publishers are at the forefront of efforts to continue to improve accessibility, in conjunction with stakeholders. The successes in the UK and globally indicate that collaboration and licensing already take place within the existing copyright framework and are increasingly tailor-made to the needs of visually impaired (and dyslexic) people. We would also note that it is this collaboration, based on shared practical experience, rather than the blunt inflexible tool of exceptions that has worked to improve access.

52. What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

The UK – and EU – has adequate legislation that sits alongside a robust licensing framework to allow for the distribution of works to the visually impaired. In the UK publishers enjoy a strong working relationship with the Royal National Institute for the Blind and publishers support the following initiatives to make their works accessible to the widest possible audience:

i. Publishers mandate the **Copyright Licensing Agency** (via the Publishers Licensing Society) to provide licences, at no fee in most cases, that enable the production of accessible copies of copyright works for Reading Impaired People, but which also include important controls on authorised uses. The CLA Print Disability Licence launched in May 2010 with the support of the publishing industry and the PA, allows copyright works to be converted into accessible formats, reproduced and distributed to reading impaired people, but under secure conditions and only for their personal use. The licence also facilitates the use of such works by people with dyslexia.

ii. The PA has produced its own guidance: ***The Publisher Guidelines for Meeting Permissions Requests on Behalf of Reading Impaired People***.[24] These Guidelines, which include a model licence, have been developed to help publishers respond more effectively to requests for access to digital files on behalf of people with reading impairments.

iii. The PA collaborates with **JISC TechDis**, an advisory service focusing on technology and inclusion, to promote accessibility causes. The two main outcomes from this collaboration so far have been a website, *Publisher Lookup UK,* and a guidance document, the *Guide to Obtaining Textbooks in Alternative Formats.* Both are designed to support educational institutions with the provision of accessible versions of textbooks for the reading impaired.

iv. The PA and other representative bodies released a joint recommendation to publishers in October 2010 encouraging the use of accessibility functions on e-

24 www.publishersassociation.org.uk/index.php?option=com_content&view=category&layout=blog&id=472&Itemid=1516

reading devices. The recommendation goes some way to enabling people with reading impairments to access the same text via e-readers as those without disabilities. Research is also ongoing into the extent to which **text to speech** and other accessibility formats are now being applied to bestselling titles.

v. A quarterly ***Publisher Accessibility Newsletter***[25] produced in partnership with PLS aggregates recent news and developments within the publishing industry on accessibility issues, updating on the progress of legislation, pilot projects, new initiatives and individual publisher activity.

vi. Delivered by RNIB and Dyslexia Action, Load2Learn is a free online resource which improves the school experience for learners who can't read standard print by providing an extensive online collection of educational materials. Members can access over 2,300 titles including textbooks and 2,400 images downloadable as accessible documents. Load2Learn also offers its members a book request service for titles not yet available on the site.

The success of existing licensing and collaboration is clear from RNIB commissioned research into the availability of accessible versions of the most popular books in the UK. This research revealed that in 2012, 84 per cent of the top 1,000 titles were available in Braille, audio and large print formats thanks to accessible eBooks, which are opening up the world of reading for blind and partially sighted readers.

Publishers are also participating in global initiatives to increase access. The TIGAR project enables Trusted Intermediaries (TIs) to request accessible versions of books from participating TIs in other countries. For each request the project's 'permissions clearance co-ordinator' seeks permission clearance from rightsholders, and on receipt of this, electronic files are exchanged through secure and transparent processes. These files are then made available to print disabled members of the 'receiving' TIs through their existing services.

This enables each TI to make a massive increase in the choice of books available to its members without major production costs and reduces unnecessary duplication of effort. has now developed and implemented a new ICT solution to facilitate the search, discovery and exchange of electronic files for accessible books held in existing collections of participating trusted intermediaries (TIs). Data for over 200,000 titles from TIs in Canada, USA, Sweden, Denmark, Norway, Australia, Switzerland, and Brazil is already included in this global, online catalogue and New Zealand, South Africa and France will be added shortly. New TIs in Iceland, Portugal and Switzerland have also recently signed up and more are expected over coming months.

Plans are also being prepared to further develop and extend the technology solutions. These will include enabling print disabled people to find and buy accessible versions of books from commercial suppliers, and trials of the use of publisher EPUB 3 files by TIs to add enhanced accessibility features or produce different formats.

C. Text and data mining

Text and data mining/content mining/data analytics[26] are different terms used to describe increasingly important techniques used in particular by researchers for the exploration of vast amounts of existing texts and data (e.g., journals, web sites, databases etc.). Through the use of software or other automated processes, an

[25] http://www.pls.org.uk/services/accessibility1/Pages/accessibilitynewsletter.aspx?PageView=Shared

[26] For the purpose of the present document, the term "text and data mining" will be used.

analysis is made of relevant texts and data in order to obtain new insights, patterns and trends.

The texts and data used for mining are either freely accessible on the internet or accessible through subscriptions to e.g. journals and periodicals that give access to the databases of publishers. A copy is made of the relevant texts and data (e.g. on browser cache memories or in computers RAM memories or onto the hard disk of a computer), prior to the actual analysis. Normally, it is considered that to mine protected works or other subject matter, it is necessary to obtain authorisation from the right holders for the making of such copies unless such authorisation can be implied (e.g. content accessible to general public without restrictions on the internet, open access).

Some argue that the copies required for text and data mining are covered by the exception for temporary copies in Article 5.1 of Directive 2001/29/EC. Others consider that text and data mining activities should not even be seen as covered by copyright. None of this is clear, in particular since text and data mining does not consist only of a single method, but can be undertaken in several different ways. Important questions also remain as to whether the main problems arising in relation to this issue go beyond copyright (i.e. beyond the necessity or not to obtain the authorisation to use content) and relate rather to the need to obtain "access" to content (i.e. being able to use e.g. commercial databases).

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results. At the same time, practical solutions to facilitate text and data mining of subscription-based scientific content were presented by publishers as an outcome of "Licences for Europe"[27]. In the context of these discussions, other stakeholders argued that no additional licences should be required to mine material to which access has been provided through a subscription agreement and considered that a specific exception for text and data mining should be introduced, possibly on the basis of a distinction between commercial and non-commercial.

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?

No, but problems can arise given the specific nature of text and data mining. That is why text mining should be facilitated by clear and easy to use licensing terms, which publishers have repeatedly committed to, most recently in WG4 of L4E (see below).

Text mining typically involves the accessing and copying of content on an industrial scale. What is being accessed and reproduced on a mass scale is not simply access to raw text

[27] See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

and data but access to their normal manifestation in copyright works (particularly STM journals). Publishers either own these copyrights (or the exclusive right to publish), and as such have a legitimate right to manage any reproduction of the works concerned.

Further, given the scale of copying that needs to take place to facilitate text mining, publishers need to be sure that those text mining works are doing so for genuine research, as opposed to for nefarious or competing commercial reasons. And this risk is very real: there is already a substantial market for pirated science papers in parts of the world where copyright enforcement is weak or non-existent, notably in China. If potentially hundreds of thousands of people were able to copy and store millions of journal articles, the dangers of unauthorised redistribution worldwide are obvious.

As was made clear during the Licences for Europe Working Group 4 dialogue, publishers are committed to developing licensing solutions designed to facilitate text and data mining, to ensure the access, reproduction and mining of works can be made as easy as possible for researchers, whilst ensuring publishers' copyright is not compromised.

54. If there are problems, how would they best be solved?
Concerns about copyright infringement and other technical barriers to mining (see below) are best explored through collaboration and discussion with publishers, and through the provision of licensing terms to give both sides confidence in the process.

An exception to facilitate text and data mining simply will not work; there are technical barriers to mining which publishers are at the forefront of solving – and want to work with researchers to facilitate. An exception would also remove the right for publishers to control how their work is used, copied and distributed, with potentially devastating commercial implications and a boon to copyright infringement in the academic publishing market.

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?
As the Licences for Europe process clearly demonstrated, no legislative solution is needed. Instead, The PA and its colleagues in the Federation of European Publishers and the International Association of Scientific, Technical and Medical Publishers (STM) remain firmly committed to the process of identifying practical licensing solutions. Publishers will continue to work closely with the research community to enable and develop text mining services, especially where these have the potential to drive discoveries in medical and scientific disciplines, and work continues on a number of industry-led solution.

56. If your view is that a different solution is needed, what would it be?
Further work is needed to streamline the licensing process (making it easier, more visible and more automated) and in working to resolve some of the technical barriers to mining. Publishers are committed to doing this and are already pursuing a number of initiatives along these lines. An overview of these initiatives can be found here.

57. Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?
There are no barriers to the use of text and data mining, but publishers recognise that the existing systems can be improved. Publishers are already working to resolve these.

i. Licensing standardisation

Many publishers' standard subscription agreements with universities already provide for a certain amount of re-use of subscribed content, including text and data mining for scientific research purposes. However, given the competitive nature of the market in academic publishing and the fact that different companies have developed policies and practices separately to one another, different licence terms and conditions often apply, depending on the publisher and content in question. These differences in approach have created some concerns for those seeking to mine publishers' content, who require a more simplified licence framework.

For this reason and to enable publishers, both large and small, to simply and clearly adopt licence terms to facilitate mining of subscribed content, STM has developed three sample licence clauses. These clauses, governing usage terms and methods of access, are designed to be inserted or added to subscription agreements between publishers and universities and/or research institutions. This provides publishers with flexible means to grant permissions whilst providing researchers with the security that they are legally entitled to text mine copyright works.

Publishers have been encouraged to consider inserting these sample clauses allowing text and data mining for non-commercial purposes as part of subscription agreements.

Some of the larger publishers have indicated that they are pro-actively inserting TDM clauses into their new subscription agreements, while many consider inserting them also at the time of renewal of existing subscription agreements (many subscription agreements are renewed every three years, while some are renewed annually and others every five years).

Some publishers have a TDM clause ready to be deployed as and when approached by researchers or library representatives for inclusion, but will only deal with TDM on request to gain further experience; to allow for the adaption of their electronic platforms; and to render the published materials more easily minable first.

Irrespective of the way in which TDM is taken care of legally through subscription and content access agreements, many publishers will participate in Crossref's Prospect programme (see below). As part of that programme researchers at subscribing institutions will be able to get ready access to content for TDM non-commercial purposes by way of a so-called click-through licence and by using Crossref's API standard.

ii. Technology Standardisation

Technological specifications differ across publishers' platforms, and this poses problems for miners seeking to access content from different publishers as seamlessly as possible.

Different systems allow or can cope with different load rates and download rates. They also have differing abilities to convert text to machine-readable form. These differences in publisher site capabilities are a direct reflection of the differing technologies which exist to carry out mining: there are a plethora of different robots, spiders and crawlers and automated downloading programs, algorithms and devices. They each have different characteristics in terms of their searching, scraping, extracting, linking and indexing.

Such differences in specification would not be swept away or in any way mitigated by a copyright exception. Researchers would continue to face the difficulty of needing to apply different techniques to different platforms.

Some publishers have therefore developed their own specific Application Programming Interfaces (APIs) to ensure that their platforms can engage with text and data mining technology. For mining to be possible, and so as not to disrupt the integrity of the whole

platform and degrade its performance, it is critical that miners adhere to the technical approach specified by the publisher.

However, not all publishers have the resources to develop their own APIs and so are dependent upon developing a common standard, one example of which is CrossRef.

CrossRef Prospect is already in development, leveraging existing CrossRef and publisher infrastructure to establish an automated, centralized, yet distributed, and efficient mechanism to allow researchers and publishers to agree to the terms of a standard text mining licence and to enable a standard cross-publisher mechanism for identifying and retrieving the full text of journal articles for text mining for non-commercial research purposes, from one single portal.

Researchers are able to select the publishers of interest from one single portal (Prospect) and, having accepted the relevant terms and conditions, the researcher receives a unique token (API key) for immediate use. This unique token identifies the researcher and their request(s) and acts as an identifier through which publishers can validate requests and make the content available to researchers for text mining.

This process is facilitated with a “click through” licence approach, which helps to strip the complexity out of the text mining process.

This process also allows mining to take place away from publishers’ own platforms, protecting platform stability and integrity whilst mining is occurring. The researcher’s API key also provides publishers with the certainty that their content is being provided to a bona fide researcher, in line with underlying subscription entitlements.

Crossref is rolling out its Prospect service by first quarter 2014. Beta-version access should thus be available this year, facilitating the mining of a significant proportion of STM content and increasing experience of how mining can be streamlined for subscribed content and open access content alike.

iii. Small Scale Usage

Often a researcher may not know which publisher owns the content they wish to mine or how to go about contacting them to secure permission. Given the number, variety and location of publishers of research material, it can be quite a challenging undertaking for researchers. Publishers are working to resolve this issue, particularly for the ‘long tail’ of rights holders whose content may be less discoverable or well known.

(Advocates of a copyright exception point primarily to this problem as one which an exception would solve since not having to ask permission takes away the problem of obtaining it. However, as with the problems of different technological specifications, a blanket exception would go no way to solving the stated problem.

The Publishers Licensing Society (PLS), a collective management organisation representing publishers, holds an extensive database of publishers’ rights that can potentially be adapted and enhanced as an entry point or Clearing House for researchers to contact appropriate publishers using a common interface. PLS has started work to enable such a service, called *PLS Clear.*

PLS Clear is a digital clearing house which leads researchers through a "permission request form". This gathers basic information about the project and the content to be mined that publishers require in order to assess permission requests. It has been developed with the assistance of a group of leading publishers and researchers. PLS Clear then forwards the form automatically to the appropriate licensing manager for consideration. (PLS maintains

an extensive database of publisher information for consideration). The same form can be used to make requests of multiple publishers at the same time. It is currently being piloted and is expected to be available shortly.

The service will be open to all researchers, whether or not linked to a subscribing institution, and whether their research is for commercial or non-commercial purposes.

PLS is planning to develop a simple licence that can be used in cases where the researcher is not linked to an institution which already has a TDM clause in its subscription agreement.

PLS is also working on behalf of the publishing industry to reduce complexity in the licensing system, facilitating easier identification of rights owners and the licensing of content, through The Copyright Hub.

Both the Copyright Hub and the PLS Clearing House may in time develop the functionality to facilitate 'click through' licensing transactions, making it easier for researchers not just to identify rights holders, but to secure the relevant permission to mine it too.

iv. Other Initiatives

The Copyright Clearance Centre (CCC) has been piloting a new Text and Data Mining service with users and publishers in the US, UK and EU since May 2013. The service makes it easy for commercial researchers to gain quick access to full-text content in a centralized manner with a common interface. CCC has been testing the service throughout 2013 and, if successful, plans to commercialize the offering in 2014.

Features of this TDM service include the provision of a single source of XML full text content so that researchers can: download full-text from one place obtained directly from multiple publishers; search across subscribed and unsubscribed content from publishers to obtain the broadest possible set of results; keep track of content spending and integrating with library subscription holdings; obtain a common set of terms and conditions across publishers; and use customer-specific analysis and indexing techniques, which is a necessary functionality given the fact that most users have different requirements and different domain knowledge with respect to TDM.

F. User-generated content

Technological and service developments mean that citizens can copy, use and distribute content at little to no financial cost. As a consequence, new types of online activities are developing rapidly, including the making of so-called "user-generated content". While users can create totally original content, they can also take one or several pre-existing works, change something in the work(s), and upload the result on the Internet e.g. to platforms and blogs[28]. User-generated content (UGC) can thus cover the modification of pre-existing works even if the newly-generated/"uploaded" work does not necessarily require a creative effort and results from merely adding, subtracting or associating some pre-existing content with other pre-existing content. This kind of activity is not "new" as such. However, the development of social networking and social media sites that enable users to share content widely has vastly changed the scale of such activities and increased the potential economic impact for those holding rights in the pre-existing works. Re-use is no longer the preserve of

[28] A typical example could be the "kitchen" or "wedding" video (adding one's own video to a pre-existing sound recording), or adding one's own text to a pre-existing photograph. Other examples are "mash-ups" (blending two sound recordings), and reproducing parts of journalistic work (report, review etc.) in a blog.

a technically and artistically adept elite. With the possibilities offered by the new technologies, re-use is open to all, at no cost. This in turn raises questions with regard to fundamental rights such the freedom of expression and the right to property.

A specific Working Group was set up on this issue in the framework of the "Licences for Europe" stakeholder dialogue. No consensus was reached among participating stakeholders on either the problems to be addressed or the results or even the definition of UGC. Nevertheless, a wide range of views were presented as to the best way to respond to this phenomenon. One view was to say that a new exception is needed to cover UGC, in particular non-commercial activities by individuals such as combining existing musical works with videos, sequences of photos, etc. Another view was that no legislative change is needed: UGC is flourishing, and licensing schemes are increasingly available (licence schemes concluded between rightholders and platforms as well as micro-licences concluded between rightholders and the users generating the content. In any event, practical solutions to ease user-generated content and facilitate micro-licensing for small users were pledged by rightholders across different sectors as a result of the "Licences for Europe" discussions[29].

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?

No.

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?

More work can be done to ensure that works are properly identified for online use. In recognition of this, The PA through The FEP, is extremely supportive of the metadata work being explored by the Linked Content Coalition.

(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?

No opinion.

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)?

[29] See the document "Licences for Europe – ten pledges to bring more content online": http://ec.europa.eu/internal_market/copyright/docs/licences-for-europe/131113_ten-pledges_en.pdf .

(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?

No opinion.

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?
The proper identification of works, particularly in the online space, is not an issue that requires a legislative solution. Instead more work needs to be done to improve the underlying metadata associated with content.

I. Private copying and reprography

Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use and photocopying[30]. Levies are charges imposed at national level on goods typically used for such purposes (blank media, recording equipment, photocopying machines, mobile listening devices such as mp3/mp4 players, computers, etc.) with a view to compensating rightholders for the harm they suffer when copies are made without their authorisation by certain categories of persons (i.e. natural persons making copies for their private use) or through use of certain technique (i.e. reprography). In that context, levies are important for rightholders.

With the constant developments in digital technology, the question arises as to whether the copying of files by consumers/end-users who have purchased content online - e.g. when a person has bought an MP3 file and goes on to store multiple copies of that file (in her computer, her tablet and her mobile phone) - also triggers, or should trigger, the application of private copying levies. It is argued that, in some cases, these levies may indeed be claimed by rightholders whether or not the licence fee paid by the service provider already covers copies made by the end user. This approach could potentially lead to instances of double payments whereby levies could be claimed on top of service providers' licence fees[3132].

There is also an on-going discussion as to the application or not of levies to certain types of cloud-based services such as personal lockers or personal video recorders.

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?

No. The UK does not currently operate a system of levies for private copying or reprography and has no plans to do so.

[30] Article 5. 2)(a) and (b) of Directive 2001/29.
[31] Communication "Unleashing the Potential of Cloud Computing in Europe", COM(2012) 529 final.
[32] These issues were addressed in the recommendations of Mr António Vitorino resulting from the mediation on private copying and reprography levies. You can consult these recommendations on the following website: http://ec.europa.eu/internal_market/copyright/docs/levy_reform/130131_levies-vitorino-recommendations_en.pdf.

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?

No opinion.

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?

No opinion.

67. Would you see an added value in making levies visible on the invoices for products subject to levies?

No opinion.

Diverging national systems levy different products and apply different tariffs. This results in obstacles to the free circulation of goods and services in the Single Market. At the same time, many Member States continue to allow the indiscriminate application of private copying levies to all transactions irrespective of the person to whom the product subject to a levy is sold (e.g. private person or business). In that context, not all Member States have ex ante exemption and/or ex post reimbursement schemes which could remedy these situations and reduce the number of undue payments.

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?
No.

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.).

No opinion.

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?

No opinion.

71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?

No opinion.

V. Fair remuneration of authors and performers

The EU copyright acquis recognises for authors and performers a number of exclusive rights and, in the case of performers whose performances are fixed in phonograms, remuneration rights. There are few provisions in the EU copyright law governing the *transfer* of rights from authors or performers to producers[33] or determining who the owner of the rights is when the work or other subject matter is created in the context of an employment contract[34]. This is an area that has been traditionally left for Member States to regulate and there are significant differences in regulatory approaches. Substantial differences also exist between different sectors of the creative industries.

Concerns continue to be raised that authors and performers are not adequately remunerated, in particular but not solely, as regards online exploitation. Many consider that the economic benefit of new forms of exploitation is not being fairly shared along the whole value chain. Another commonly raised issue concerns contractual practices, negotiation mechanisms, presumptions of transfer of rights, buy-out clauses and the lack of possibility to terminate contracts. Some stakeholders are of the opinion that rules at national level do not suffice to improve their situation and that action at EU level is necessary.

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)?

No. In the UK there is already existing legislation to deal with unfair contract terms, for example the Unfair Contract Terms Act, and also UK and EU competition law to protect against monopolistic behaviour or abuse of a dominant position in the market. Contract law is of course subject to competition law, but otherwise is quite rightly a matter for individual member states, in line with the principle of subsidiarity, and particularly important for countries such as the UK with a separate common law legal system, based on very different traditions from civil law. English law is of course widely adopted and used worldwide as a proven basis for commercial contracts of all kinds.

Contracts in publishing are based on individual negotiation, and are not overseen by collective management organisations (who only manage secondary rights). Publishers have a direct financial role in the exploitation of works, and work with and for authors to this end. Contracts are negotiation *with* authors, and are a matter for individual authors and publishers, for competition reasons.

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

No shortcomings identified or presented to the publishing industry.

[33] See e.g. Directive 92/100/EEC, Art.2(4)-(7).
[34] See e.g. Art. 2.3. of Directive 2009/24/EC, Art. 4 of Directive 96/9/EC.

VI. Respect for rights

Directive 2004/48/EE[35] provides for a harmonised framework for the civil enforcement of intellectual property rights, including copyright and related rights. The Commission has consulted broadly on this text[36]. Concerns have been raised as to whether some of its provisions are still fit to ensure a proper respect for copyright in the digital age. On the one hand, the current measures seem to be insufficient to deal with the new challenges brought by the dissemination of digital content on the internet; on the other hand, there are concerns about the current balance between enforcement of copyright and the protection of fundamental rights, in particular the right for a private life and data protection. While it cannot be contested that enforcement measures should always be available in case of infringement of copyright, measures could be proposed to strengthen respect for copyright when the infringed content is used for a commercial purpose[37]. One means to do this could be to clarify the role of intermediaries in the IP infrastructure[38]. At the same time, there could be clarification of the safeguards for respect of private life and data protection for private users.

75. Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?

Yes.

We believe it would worthwhile for the Commission to look at the cross order application of Art 8 (3) InfoSoc Directive and Art 11 (1) Enforcement Directive. These provisions are the basis on S 97A actions in the UK and are working very well, but the situation for rights enforcement is patchy across Member States.

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?

No. Whilst The PA shares the view of the Commission that there is no need for the E-Commerce Directive to be reopened, we nevertheless believe that improvements can be made within the existing Directive framework, and which would have a significant impact on reducing copyright infringement.

i. Notice and Take Down

Overall the E-Commerce Directive provides a strong and workable framework for notice and Take down. However, a lack of clarity can currently prevent expeditious action by giving those who wish to avoid taking action upon notification an excuse for doing so. The EU has

[35] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[36] You will find more information on the following website: http://ec.europa.eu/internal_market/iprenforcement/directive/index_en.htm

[37] For example when the infringing content is offered on a website which gets advertising revenues that depend on the volume of traffic.

[38] This clarification should not affect the liability regime of intermediary service providers established by Directive 2000/31/EC on electronic commerce, which will remain unchanged.

an important role to play in setting and issuing best practice guidelines and non binding minimum standards to ensure the Directive can be used effectively and with confidence by all players.

This could include specification on the following:

- Providing guidance on a definition of 'expeditious removal'
- Urging all sites to proactively remove infringing content if it has already been reported to them once
- Defining a best practice that sites ban repeat infringers

Intermediaries, in particular search engines, need to do more to inhibit online copyright infringement, for example by de-ranking links in search results when the site in question has been the subject of numerous notice and take down actions.

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?

No. Often respect for copyright is undermined whilst ISPs and other online intermediaries hide behind a smokescreen and continue to profit from the works of others.

II. A single EU Copyright Title

The idea of establishing a unified EU Copyright Title has been present in the copyright debate for quite some time now, although views as to the merits and the feasibility of such an objective are divided. A unified EU Copyright Title would totally harmonise the area of copyright law in the EU and replace national laws. There would then be a single EU title instead of a bundle of national rights. Some see this as the only manner in which a truly Single Market for content protected by copyright can be ensured, while others believe that the same objective can better be achieved by establishing a higher level of harmonisation while allowing for a certain degree of flexibility and specificity in Member States' legal systems.

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?

No.

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? *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?*

If a single EU Copyright Title was to be pursued, this would be a longer term project and one that would require detailed work and careful consideration. For reasons given above it is not clear that a consistent framework for exceptions is possible or even desirable. Introducing an EU title that rightsholders could opt in to may also be of questionable value: why is this necessary and how would it sit alongside national titles? What would be the key differences, to what end, and how would this additional complexity be managed? What of the key differences in civil and common law traditions in each Member State? These and many other

questions need careful consideration, research and analysis before any further work is undertaken.

Instead the Commission's time and effort is better spent on supporting the further development and streamlining of licensing as a means of increasing access to works; on strengthening enforcement across member states, particularly in the online space; and on supporting initiatives to improve discoverability.

III. Other issues

The above questionnaire aims to provide a comprehensive consultation on the most important matters relating to the current EU legal framework for copyright. Should any important matters have been omitted, we would appreciate if you could bring them to our attention, so they can be properly addressed in the future.

Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.