



**Response to the European Commission Working Document
*Management of copyright and related rights and the
 Commission Staff Working Document Study on a Community
 initiative on the cross-border collective management of
 copyright* of 7 July 2005**

EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organisation of national library, archive and information sectors associations and institutions in Europe. EBLIDA represents the interests of its members to the European Institutions with a focus on intellectual property rights, information society, professional education and culture matters.

EBLIDA promotes unhindered access to culture and knowledge in the digital environment, as proclaimed by the Lisbon Council 2000, and the role of cultural heritage institutions in achieving this goal.

EBLIDA welcomes this communication from the European Commission and agrees that the licensing of copyright content across EU borders should be improved.

EBLIDA wishes to draw the attention of the European Commission to two facts which cause concern to libraries:

First, though we know of reciprocal agreements between territorial collecting societies, libraries often pay licence fees without any knowledge of how much their fees contribute to the income of collecting societies in other Member States, nor the purposes to which that money is put. In the light of the statutory apparatus supporting the existence of collecting societies, we believe that higher standards of transparency are called for.

Second, the Special Feature [Copyright at the crossroads](#), to which you make reference in your message, rightly calls attention to the 'plethora of collecting societies'. To a consumer keen to comply with copyright law, the multiplicity of collecting societies is bewildering and unhelpful. Though collecting societies purport to offer a 'one-stop shop' for copyright clearance, [Copyright at the crossroads](#) points out that the UK, for example, offers around twenty one-stop shops, all licensing a different *repertoire* of rights. We do not know of any EU country having a 'one-stop shop'. It is an inappropriate term when there are so many of them.

We have considered the Commission's proposal to give right-holders the choice of authorising one single collecting society to license and monitor all the different uses made of their works across the entire EU. This would have some advantage in its incentive to collecting societies to be efficient. However we do not see that the proposal would make for greater transparency in the fee structure for consumers (for example, for libraries). Nor would it necessarily reduce the number of collecting societies facing the consumer, since right-holders would be free to conclude contractual agreements directly with a society of their choice. Thus a UK library seeking copyright clearance might well be faced not only with the existing twenty collecting societies but also, in respect of certain right-holders, other collecting societies based anywhere in the EU. For the consumers such a situation could even be worse.

We are disappointed that in the rationale for the proposal given in the Frequently Asked Questions, no mention is made of consumers. If public policy (enshrined in the concept of copyright) is to be achieved by a system of commercial contracts, the legitimate copyright consumer who also wishes to be a contracting party must be remembered too. We believe that the Commission's proposed 'light touch' 'framework directive' may be the best approach in practice, but only if its provisions include some aimed at reducing the administrative costs of consumers.

We recall the Lisbon European Council's goal for the European Union to become the most

competitive and dynamic knowledge-based economy in the world within ten years. We applaud the efforts of the Copyright and Knowledge-based Economy Unit to improve the efficiency of collecting societies, and we believe that policy development towards improved protection and management of copyright should be matched by policies encouraging ease of copyright clearance. (It even seems to us that 'public indifference or even hostility' (Special Feature, column 4) towards copyright is closely linked to the difficulties faced by honest consumers seeking clearance for small uses of works.) Until consumers see improvements in the legitimate avenues to the use of copyright material, much of it will remain under-exploited. Sub-optimal use of creative work, when technology offers exciting new possibilities for it, is not in the interests of the information society.

Since the development of the Information Society depends not only on adequate protection of copyright works, but also on the encouragement of their legitimate use, we believe that the problems to be addressed are sufficient to justify policy interventions which go further than your proposals in order to embrace consumer use licensed by collecting societies. We take issue, in particular, with the conclusion on p.37 of the [Study on a Community initiative on the cross-border collective management of copyright](#) that 'rules of good governance would now be achieved [through option 3] by the CRMs themselves without regulatory intervention'. This conclusion is based on an assessment of the bi-partite relationship between rights holders and collecting societies, disregarding the societies' contractual relations with consumers and their crucial role in the dissemination and use (or non-dissemination and non-use) of creative works. Such a view is in our opinion too narrow. Accordingly we suggest the following, giving in each case a rationale:

- 1 The common minimum rules for collecting societies should contain an obligation on them to operate a joint web-site to guide consumers to the appropriate society to clear a particular repertoire of rights. *(This would reduce the difficulties for consumers seeking legitimate clearance of rights and faced by the multiplicity of collecting societies.)*
- 2 The minimum rules should provide that no contract between a consumer and a collecting society may set aside a statutory exception to copyright that applies in the consumer's Member State. *(Currently this is a matter of uncertainty and if contracts are to cover more than one territory, clarity becomes more important. Given the monopoly position of copyright holders it is important to consumers that they do not seek to abolish, by private contract, copyright exceptions established by the legislator for reasons of public policy.)*
- 3 A transparent mechanism should be established for the external supervision of collecting societies in order to ensure their adherence to the common minimum rules. *(The Information Society is a sufficiently important public goal, and the collecting societies' role in it sufficiently important, to justify this level of intervention; not least because societies ignoring the rules would have an unfair advantage over those that keep to them.).* We believe that transparency is very important, not only for the external supervision, but also because collecting societies operate under different regimes in Europe, and have different missions and goals. For instance, in the Netherlands, some percentage of the remuneration received goes into a fund for cultural activities.
- 4 The introduction of EU-wide licensing, available irrespective of the residence or nationality of either the rights-manager or the right-holder, would require EU-wide provision to be made, for the sake of fairness, for a low-cost dispute resolution process, easily accessible to the consumer. *(Without such provision, many customers would be unable to contest tariffs for copyright clearance, especially if the collecting society operates in another Member State. This would inhibit legitimate use of copyright works.)*