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Public consultation by the UN HCHR Special Rapporteur on the impact of intellectual property regimes on the enjoyment of right to science and culture

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO). The members of IFRRO are national Reproduction Rights Organisations (RROs) and national and international associations of authors and publishers worldwide, a total of 143 member organisations in 78 countries as at 1 September 2014. The RROs are the Collective Management Organisations (CMO) in the text and image sector. This sector includes the publication of books, journals, magazine newspapers, musical works in print and the like.

1. Ensuring appropriate access to copyright works must consider the needs and requirements of the copyright holder

It is important to ensure appropriate legal user access to cultural and scientific knowledge, including through educational / research institutions and libraries. It is equally vital that this is done in a way that safeguards the interests of the author, publisher and other copyright holders. The copyright system, whilst enabling justified legal access for users to copyright works in the easiest possible way, must also ensure that it promotes creativity and innovation.

IFRRO submits that the current copyright system provides an adequate basis for balancing between the needs of users to access and use the work, and the requirements of the copyright holder. The system is based on granting exclusive rights to the copyright holder to authorise the reproduction, making available and distribution of the work, combined with the possibility to introduce exceptions and limitations to those rights in national legislation, based on internationally accepted norms.

Authors' rights and copyright are a fundamental human right, affirmed in Article 27 of the UN Universal Declaration of Human Rights. Taking this as one of its starting points, the copyright system must stimulate the creation of new works, and new innovative models to disseminate

those works, including through ensuring that the creators and those who invest in making them available are recognised, rewarded and remunerated for their efforts.

We acknowledge that there might be a need to examine more closely whether the copyright system has been appropriately implemented in all countries. Our recommended approach to achieve this comprises involving stakeholders in the process through stakeholder dialogues. In the further submission, we provide examples on successful ones.

2. The impact of intellectual property regimes on the right of people to enjoy and access cultural heritage

Organisations representing libraries, archives, authors, publishers and RROs have a proven track record in developing solutions for libraries and archives to access cultural heritage, based on joint stakeholder dialogues. Examples¹ are principles for rights clearance and registries of orphan works and out-of-commerce works; model licensing agreements for the making available of out-of-commerce works in closed and open networks; the Memorandum of Understanding on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works by libraries, facilitated by the European Commission; and the development and deployment of ARROW to facilitate and reduce costs in rights information management. Together with its strategic partners, IFRRO works to raise awareness regarding the importance of the cultural sector and cultural diversity, and to promote enhanced access to copyright-protected works through developing and strengthening the necessary infrastructure for CMOs.

RROs exist on all continents, in developed as well as in developing countries, to facilitate legal uses of copyright works in compliance with international, regional and national intellectual property regimes. Collective schemes administered by RROs include the scanning of books, journals, magazines, etc., copying from electronic carriers, and Internet downloads for a variety of uses, thereby enabling consumers to enjoy and access cultural heritage in a variety of ways.

The balance of protection of authors' rights and copyright with other fundamental rights, such as freedom of expression and privacy, needs to be found on the basis of the principle of proportionality, as outlined by, for example, the European Court of Human Rights (ECHR) and the EU Court of Justice (CJEU)².

¹ See: <http://www.ifrro.org/content/i2010-digital-libraries>

² See, for instance: ECHR (5th section), 19 February 2013, case of *Neij and Sunde Kolmisoppi v Sweden*, Appl. nr. 40397/12); ECtHR (5th section), 10 January 2013, case of *Ashby Donald and others v. France*, Appl. nr. 36769/08; CJEU, 29 January 2008, case of *Productores de Música de España (Promusicae) v Telefónica de España SAU* (C-275/06); CJEU, 19 February 2009, case of *LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2 Telecommunication GmbH* (C-557/07)).

3. Access by everyone without discrimination to the benefits of science and its applications, including scientific knowledge, technology, and opportunities to contribute to the scientific enterprise

The use of copyright material for research purposes, to the benefit of science, and its applications, is commonly comprised in the licences offered by publishers. Certain uses of copyright works in conjunction with research are also authorised through schemes administered by RROs³.

4. The freedom for scientific research, including access of researchers to scientific information and advances; and collaborative works

Solutions to access scientific information for the purpose of research can readily be offered under the current copyright system. Authors and publishers are providing access both via Open Access and for Text and Data Mining (TDM). Licensing solutions exist for commercial and non-commercial uses, offered by copyright holders directly, and via collective rights management. Scientific and research communities already make extensive use of individual licensing schemes enabled by publishers, combined with collective schemes by RROs, also for online use of works for teaching or research purposes⁴. Technology is further being developed to facilitate click-through licensing solutions for users, such as through the stakeholder initiative Linked Content Coalition (LCC)⁵.

We would also like to draw the Special Rapporteur's attention to the toolkit for licensing⁶, developed within the framework of the European Commission's Licences for Europe initiative, by IFRRO and its international and European author and publisher association members EFJ,

³ For example, CEDRO, the Spanish RRO, offers an online platform – Conlicencia.com - to their various licensing solutions that enables seamless access to and secondary uses of more than 20 million books, journals, magazines, newspapers and sheet music published in more than 30 countries that CEDRO holds in its repertoire (www.conlicencia.es). Through RightsLink, the US RRO, Copyright Clearance Center (CCC), offers point-of-content licenses for digital uses and photocopying of text-based materials by users in for-profit and not-for-profit business organisations, libraries, academic institutions of all types, government agencies, medical centres, research institutes, document suppliers, and producers of academic course-packs, as well as individuals (<http://www.copyright.com/content/cc3/en/toolbar/productsAndSolutions/rightslink.html>).

⁴ IFRRO member solutions include the central clearing for permissions for TDM licenses by the Publishers Licensing Society (PLS) in the UK (<https://ec.europa.eu/licences-for-europe-dialogue/.../TDM-PLS.ppt>), primarily for non-commercial uses; the TDM licensing offered by the US RRO Copyright Clearance Center (CCC)

(<http://www.copyright.com/content/dam/cc3/marketing/documents/pdfs/CCCTextandDataMiningPilot-UserGuide.pdf>); and the International Association of Scientific, Technical and Medical publishers (STM)'s TDM sample licence (<http://www.stm-assoc.org/text-and-data-mining-stm-statement-sample-licence/>).

⁵ <https://ec.europa.eu/licences-for-europe-dialogue/sites/licences-for-europe-dialogue/files/6-Users-online-press.pdf>; The Linked Content Coalition (LCC): see: <http://www.linkedcontentcoalition.org>

⁶ <http://www.ifrro.org/content/eu-%E2%80%98licences-europe%E2%80%99-toolkit-licensing-including-micro-licensing-text-and-image-works>

EVA, EWC, FEP, and STM⁷, and the European Publishers Council (EPC), sustained also by EMMA and ENPA⁸.

5. Artistic freedoms and the right of people to access, contribute to and enjoy the arts; and the rights of indigenous peoples and local communities

IFRRO supports appropriate Intellectual Property Rights as a means to creating functional incentives for investment in products and services based on those rights, thereby leading to a richer body of cultural, creative, scientific and academic works. We work to optimise frameworks that allow those activities to be maintained, protected and developed. This will enable people to access, contribute to and enjoy the arts worldwide.

Also, IFRRO notes that the UN Declaration on the Rights of Indigenous Peoples of 13 September 2007 calls upon civil societies to ensure that the Declaration's vision becomes a reality by working to integrate indigenous rights into their policies and programmes⁹. In this vein, IFRRO is committed to assisting communities in developing frameworks furthering cultural and academic progress and stimulating incentives for investing in cultural and creative industries and practical implementation, *inter alia* through RROs. There are already RROs that have been appointed to administer Traditional Cultural Expressions (TCE) on the basis of national legislation.

6. Challenges regarding the implementation of the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author

In order to help authors and publishers to fully enjoy their right to benefit from the protection of moral and material interests, IFRRO urges to focus on the implementation of legislation and current stakeholder-driven solutions¹⁰. In respect of collective management schemes to support authors and publishers, RROs are used to administering rights for secondary uses across borders on the basis of different legislation and models of RRO operation. Rights of foreign

⁷ European Federation of Journalists, European Visual Artist, European Writers Council, Federation of European Publishers, International Association of Scientific, Technical and Medical Publishers.

⁸ European Magazine Media Association; European Newspaper Publishers Association

⁹ IFRRO statement on Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE): <http://www.ifrro.org/show.aspx?pageid=activities/agms/agm2008&culture=en>

¹⁰ Current solutions include individual and collective licensing mechanisms; systems to facilitate rights information management, such as ARROW (www.arrow-net.eu); the EC-facilitated stakeholder Memorandum of Understanding (MoU) on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works (http://ec.europa.eu/internal_market/copyright/out-of-commerce/index_en.htm); the WIPO-led stakeholder initiative Accessible Books Consortium (<http://www.accessiblebooksconsortium.org/>) and the EU Stakeholders Dialogue Memorandum of Understanding (MoU) on access to works by people with print disabilities (http://ec.europa.eu/internal_market/copyright/docs/copyright-info/2010/20100914_mou_en.pdf).

authors and publishers are generally administered through the network of bilateral agreements between RROs.

Against this background, the UN HCHR is encouraged to offer support to individual and collective rights management schemes. Such schemes, offered by rightholders and RROs, provide the broadest and most adequate legal access to intellectual property to the educational and research communities, as well as libraries. Agreements with authors, publishers and RROs offer flexible, comprehensive and tailor-made solutions to access scientific and literary works to meet the needs of educational institutions and other user communities; it represents the safest, simplest, fastest, most innovative, most convenient and most cost efficient way to seamless access to high quality teaching material from multiple authors and publishers.

Creators of intellectual property and viable copyright industries are prerequisites for cultural independence and diversity. Flourishing local cultural industries and a healthy educational system with broad access to local resources contributes significantly to a nation's well-being, economic growth and employment, at any stage of development.

There can be no flourishing local cultural industry without effective protection of copyright. IFRRO therefore embraces the emphasis placed on the protection of intellectual property rights, as outlined also in Article 15 of the International Covenant on Economic, Social and Cultural Rights.

We thank the Special Rapporteur in the field of cultural rights for the opportunity to comment on the consultation regarding the impact of intellectual property regimes on the enjoyment of the right to science and culture, and appreciate your consideration of our views. If required, we will be pleased to provide further information or answer any questions about this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Olav Stokkmo'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Olav Stokkmo
Chief Executive