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## Danske Forlags besvarelse af EU Kommissionens “Public consultation on the role of publishers in the copyright value chain”

(Danske Forlags svar på Multiple Selections er markeret med fed)

### **The role of publishers in the copyright value chain**

**Questions 1. On which grounds do you obtain rights for the purposes of publishing your press or other print content and licensing it? (Multiple selections possible)**

**transfer of rights from authors**

**licensing of rights from authors (exclusive or non-exclusive)**

**self-standing right under national law (e.g. author of a collective work)**

**rights over works created by an employee in the course of employment**

not relevant

other

If other, please specify

Please explain

Publishers generally receive an assignment of, or a licence for, their exclusive rights from authors via a contract, which sees the author receive remuneration in exchange for the right to undertake a permanent and continuous exploitation of the book. License rights from authors are also granted to book publishers, which also may be limited in their scopes, be it for a given type of exploitation, language, territory or for a given period of time. The scope of the licensed rights will depend on terms of the contract (such as for various linguistic versions so that the publishers negotiate on behalf of the authors, translation in other languages). Publishers usually buy from authors or other publishers the exclusivity of a book, in their language including possibly the exclusive right of translation in that language. And this is often performed via the payment of advances to their authors.

*They may also obtain non-exclusive licences for uses of e.g. visual works in their books. In some circumstances and depending on the national law, publishers have a separate right for collective works, databases, etc.*

*In several countries (Greece, Ireland and the United Kingdom), publishers have typographical rights in published editions.*

*In the Netherlands, in Ireland (since 2001) and in the UK, publishers are owners of works created by their employees in the course of their employment.*

*The digital evolution of the market implies that publishers hold some rights because of the media convergence. The most frequent case is when they produce audiobooks, since in this case they act as phonographic producer.*

*In other cases, in particular in the educational field, books are enriched by audio-visual products.*

*These are often licensed by third parties, but are sometimes produced directly by the book publishers, resulting in publishers also holding audiovisual producers' rights.*

*Finally, in certain instances (e.g. in legal publications), publishers produce databases, and thus enjoy the sui generis rights provided by the EU legislation.*

**2. Have you faced problems when licensing online uses of your press or other print content due to the fact that you were licensing or seeking to do so on the basis of rights transferred or licensed to you by authors?**

- yes, often
- hardly ever
- never**
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the uses you were licensing, the type of work and licensee.

*If the contracts negotiated with our authors cover online uses, because of the transfer of the underlying rights we do not encounter specific challenges in terms of licensing the books we publish under the specific licensed conditions.*

**3. Have you faced problems enforcing rights related to press or other print content online due to the fact that you were taking action or seeking to do so on the basis of rights transferred or licensed to you by authors?**

- yes, often
- yes, occasionally**
- hardly ever
- never
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the type of use and the alleged infringement to your rights.

*In general, publishers need to provide copies of their contracts with their authors, translators and illustrators in order to fully enforce their rights in case of copyright infringement of their publication. As the number of works being infringed especially online is very significant (and are constantly being re-posted), the need to provide evidence of such contracts is an increasingly time-consuming and costly exercise. While the situation is different in the various Member States (for example in Germany copyright law offers a legal presumption that the publisher of a book is in a position to enforce rights against third parties (§ 10 III German Copyright code)), many Member States do not have this presumption and therefore the existence of an EU solution which clearly set out that publishers are rightholders, would facilitate enforcement in some countries.*

**4. What would be the impact on publishers of the creation of a new neighbouring right in EU law (in particular on their ability to license and protect their content from infringements and to receive compensation for uses made under an exception)?**

strong positive impact

**modest positive impact**

no impact

modest negative impact

strong negative impact

no opinion

Please explain

*Danish Publishers' members are calling on the Commission to assess the best solutions in order to recognise the role of the publishers in the copyright value chain. Danish Publishers' members unanimously support an urgently required solution to address the challenge raised by several Court decisions (CJEU Ruling HP/Reprobel and Vogel/VG Wort in Germany). However, they are still considering what the best solution might be. Hence the answers to this question and the following questions up to and including 15 must be read in a broad sense i.e. that Danish Publishers and its members support an EU-wide solution.*

*Such a solution must include at a minimum a clarification that book publishers are rightholders according to the 2001 Copyright Directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions.*

*It needs to be recognized in EU and national level are rightholders from the moment they sign a contract with an author and that contract transfer or license the commercial exploitation of the rights to the publisher, in whole or partly. This needs to be recognised in EU and national laws.*

*Therefore, any EU solution must confirm publishers' legitimacy as rightholders under copyright so as to benefit from remuneration linked to copyright exceptions according to the existing systems. This would address the HP Reprobel ruling 572/13 which reads "However, publishers are not among the reproduction rightholders listed in Article 2 of Directive 2001/29 (47) and since, first, the fair com-*

compensation which is payable under the reprography exception and the private copying exception is intended, as is apparent from paragraph 36 above, to compensate for the harm suffered by rightholders as a result of the reproduction of their works without their authorisation and, second, publishers are not exclusive reproduction rightholders pursuant to Article 2 of Directive 2001/29, publishers do not suffer any harm for the purposes of those two exceptions(48)". *It is unacceptable that where a publisher holds e.g. the reproduction right at the time a reproduction is made under an exception, he is deemed not to suffer any harm. A clarification in line with other EU legislation is required in order to ensure that rightholder status under copyright may be obtained by way of transfer of rights. Legal certainty reflecting the reality of contractual transfer of rights is urgently required in this area.*

**5. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on authors in the publishing sector such as journalists, writers, photographers, researchers (in particular on authors' contractual relationship with publishers, remuneration and the compensation they may be receiving for uses made under an exception)?** [impossible de cocher plusieurs cases à la fois]

strong positive impact

**modest positive impact**

no impact

modest negative impact

strong negative impact

no opinion

Please explain

*Danish Publishers' members are calling on the Commission to assess the best solutions to recognise the role of the publishers in the copyright value chain. Danish Publishers' members unanimously support a solution to address the challenge raised by several Court decisions (CJEU Ruling HP Reprobel and VG Wort Vogel in Germany). However, they are still considering what the best solution might be. Hence the answer must be read in a broad sense i.e. that Danish Publishers and its members support an EU-wide solution.*

*Such a solution must include at minimum a clarification that book publishers are rightholders according to the 2001 Copyright Directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions.*

*A primary investment of every publisher is copyright acquisition from the authors, which is the main asset of any publishing company. See also question 4*

*It is important to note that the income derived from fair remuneration connected to an exception, similarly to any licence for the same uses, is very relevant for the publishing industry, particularly in educational or research contexts as it is these forms of works most often re-used or copied in these contexts. Furthermore, as this revenue has no marginal costs associated, it contributes directly to the gross margin for that book and therefore can become a factor as to whether something is published or not. Publishers very often decide to publish a book when the expected revenues from sales plus secondary uses cover the costs (at minimum). Whether their capacity to get a share of remuneration for*

*that uses is challenged, they make the same decision only considering sales. The number of sales required grows proportionally to the ratio between the contribution to the gross margin derived from secondary uses and the same contribution coming from sales. The final result is less books published, and less opportunities for authors to get their shares of remuneration and above all, to see their works published, which in these fields of publishing is the first objective for them.*

*As for the particular points of the question mentioned in brackets:*

*(a) We don't see any impact on the contractual freedom of authors. Authors are free to define the scope of their rights transferred or licensed to publishers. They will still be able to get their rights back from publishers and exploit their works or have them exploited by a third party according to the current practices.*

*(b) As rightholders it is in the interests of publishers and authors to ensure best possible reach for the. It is in the direct interest of authors that publishers are able to offer the best form of exploitation of their works. Investments in publishing houses are mainly related to authors. If publishers are not sufficiently protected, this will result in fewer books are being published.*

*There will also be no negative impact on authors concerning their ability to receive remuneration resulting from the exception. Authors would not be impacted, as publishers are only concerned in maintaining the existing systems after they were challenged by the HP vs. Repobel case. Case 572/13 (49)*

*It follows from the foregoing that the answer to the third question is that Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 preclude national legislation, such as that at issue in the main proceedings, which authorises the Member State in question to allocate a part of the fair compensation payable to rightholders to the publishers of works created by authors, those publishers being under no obligation to ensure that the authors benefit, even indirectly, from some of the compensation of which they have been deprived. Authors are benefitting directly and indirectly of the investments permitted by the share of the compensation.*

**6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?**

strong positive impact

modest positive impact

no impact

modest negative impact

strong negative impact

**no opinion**

Please explain

*Danish Publishers represents book publishers and will therefore not comment.*

**7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightholders other than authors in the publishing sector?**

strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*Danish Publishers won't comment since Danish Publishers interprets rights holders as broadcasters or producers in this context. See also question 4.*

**8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightholders other than authors in the publishing sector?**

Strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*Danish Publishers represents book publishers and will therefore not comment.*

**9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?**

strong positive impact  
**modest positive impact**  
no impact  
modest negative impact  
strong negative impact  
no opinion

Please explain

*Danish Publishers' members are calling on the Commission to assess the best solutions to recognise the role of the publishers in the copyright value chain. Danish Publishers' members unanimously support a solution to address the challenge raised by several Court decisions (CJEU Ruling HP Reprobel and VG Wort Vogel in Germany). However, they are still considering the solution itself. Hence the answer must be read in a broad sense i.e. that Danish Publishers and its members support an EU solution.*

*Such a solution must include at minimum a clarification that book publishers are rightholders according to the 2001 Copyright directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions. In these conditions, Danish Publishers considers that there will be a modest positive impact on researchers and educational institutions.*

*Clarifying the role of publisher in the copyright value chain will encourage investments into more creative works, which would be positive for the core mission of researchers individually and for educational or research institutions.*

**10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?**

Strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*DANISH PUBLISHERS represents book publishers and will therefore not comment.*

**11. Would the creation of new neighbouring right covering publishers in all sectors have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press or other print content)?**

strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*Danish Publishers' members are calling on the Commission to assess the best solutions to recognise the role of the publishers in the copyright value chain. Danish Publishers' members unanimously support a solution to address the challenge raised by several Court decisions (CJEU Ruling HP Reprobel and VG Wort Vogel in Germany). However, they are still considering what the best solution might be. Hence the answer must be read in a broad sense i.e. that Danish Publishers and its members support an EU solution.*

*Such a solution must include at minimum a clarification that book publishers are rightholders according to the 2001 Copyright Directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions.*

*As rightholders on the basis of the rights assigned by our authors, we don't experience problems in licensing published content to online service providers – be they retailers, content aggregators, or platforms of different genres.*

**12. Would the creation of such a neighbouring right limited to press publishers have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press content)?**

strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*DANISH PUBLISHERS represents book publishers and will therefore not comment.*

**13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?**

strong positive impact  
**modest positive impact**  
no impact  
modest negative impact  
strong negative impact  
no opinion

Please explain.

*Danish Publishers' members are calling on the Commission to assess the best solutions to recognise the role of the publishers in the copyright value chain. Danish Publishers' members unanimously support a solution to address the challenge raised by several Court decisions (CJEU Ruling HP Reprobel and VG Wort Vogel in Germany). However, they are still considering the solution itself. Hence the answer must be read in a broad sense i.e. that Danish Publishers and its members support an EU solution.*

*Such a solution must include at minimum a clarification that book publishers are rightholders according to the 2001 Copyright directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions.*

*Book publishers are rights holders and any EU solution to recognise this status will have no impact but to provide the opportunity for publishers to produce more books, in particular in the small-print-run area, and thus mean that EU citizens will have more books to choose from, which is a primary objective for the Union.*

*With regard to a small print run (or, in the case of an e-book only edition, publications with small reading audience) these could be books written in minor languages. Therefore, the positive effect on linguistic diversity is something to take into consideration as a priority.*

**14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users /EU citizens?**

strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain

*Danish Publishers represents book publishers and will therefore not comment.*

**15. In those cases where publishers have been granted rights over or compensation for specific types of online uses of their content (often referred to as "ancillary rights") under Member States' law, has there been any impact on you/your activity, and if so, what?**

strong positive impact  
modest positive impact  
no impact  
modest negative impact  
strong negative impact  
**no opinion**

Please explain, indicating in particular the Member State.

*Danish Publishers represents book publishers and will therefore not comment*

**16. Is there any other issue that should be considered as regards the role of publishers in the copy-right value chain and the need for and/or the impact of the possible creation of a neighbouring right for publishers in EU copyright law?**

**Yes**

No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence

*Publishers are rights holders under copyright as explained in previous questions.*

*Danish Publishers represents publishers of books in several genres such as trade books (books designed for the general public and available through an ordinary book dealer) but also learning materials and academic books and journals. For this questionnaire, Danish Publishers refers to the answers of the International Association of Scientific, Technical and Medical Publishers as far as academic books and journals are concerned.*

*An EU solution which recognises the role of the publishers in the copyright value chain, will contribute to more certainty in investments for future innovation.*

*Hence it is urgent to obtain at a minimum a clarification that book publishers are rightholders according to the 2001 Copyright Directive and that, accordingly, they are entitled to benefit from a share of the remuneration in cases of exceptions. Such a clarification of the Copyright Directive is crucial for the well-functioning of the existing system.*