

Creative Content Online

**European Commission
DG INFSO and DG Market**

CEPIC, Coordination of European Picture Agencies Press Stock Heritage, was founded in 1993 to have a unified representation in light of new legislation emerging from Brussels. Registered as an EEIG (Economic European Interest Group) in Paris in 1999 and achieving observer status at WIPO (World Intellectual Property Organisation) in 1997, CEPIC now represents over a thousand picture agencies and photo libraries – moving and still images in 19 countries across Europe, both within and outside the European Union.

Our membership comprises some of the most distinguished national museums in Europe, the leading owner-managed agencies, the big players such as Getty and Corbis, major new agencies. CEPIC is a member of IPTC, an organisation that has been working with digital standard of images since early 1990 and is part of their photo metadata group.

We thank you, the European Commission, for this opportunity to express our views on the management of content online and adaptation of European legislation in this regard.

The consultation paper focuses on three areas:

- Music
- Publishing
- Audio-visual

The two last sectors include imagery.

As such, CEPIC's membership is directly concerned by the issues raised by the consultation paper.

In general we welcome the propositions made. Our answer will make a few general remarks on the issues raised and come back to the most burning issue at the moment for our industry, which is the one of orphaned works.

New technologies and online distribution of imagery

We have always stressed the fact that the image industry is expert in digitized material.

New technologies transformed the still imagery market as early as the mid-1990s, when the format/support of imagery shifted from analogue to digital. The first libraries went online very rapidly, investing in website technology and setting up their own DRM systems. Watermarking and, later, visual recognition technology were developed in order to protect images online and detect material which infringed copyright. The latest technological evolution affecting this business is the merging of still image with moving technology, with part of our membership now marketing both side by side.



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Technology profoundly influenced the way images are produced, stored and marketed but also licensed. New business models emerged, both using opportunities offered by new technologies – be it through a website or the production of a photography CD – and adapting remuneration models. Portals were born and different pricing models were tested. Individual “rights management”, still largely used today, has been the traditional way to license pictures. Royalty free (RF) CDs appeared in the second half of the 1990s and microstock payment websites approximately five years ago, alongside subscriptions, flat fees and even “feels-like-free services”, i.e. pictures as a way to attract customers to a website and promote its content.



None of these business models are exclusive, so the same company may sell RF CDs and offer rights managed photography in an analogue or digital format.

Proposals of the Commission

In general we welcome the related initiatives from the Commission, although the legislation would need to be examined in detail.

- Multi-territorial licensing and harmonization of copyright
We welcome the idea of creating a single “European copyright title” taking precedence, if needed, over national titles.
- Measures focusing on the governance and transparency of collective rights management organisations
CEPIC has always insisted on this point. We believe that in the digital era, collecting societies will gain in importance. In fact, we call for such support with regard to orphaned works. This, however, means that rules governing collecting societies should be revised, in particular with regards to membership, membership applications, transparency of decisionmaking and usage and distribution of the fees collected on behalf of rights-holders.
- Collaboration with ISPs
We agree that “ISPs and other companies providing access technologies” may provide more options to rights’ holders. What we further believe is that this also holds true for search engines. There is little justice in having content produced online with no revenue going to the rights’ holders. As content increasingly shifts from analogue to digital distribution, the issue of revenue-sharing on the internet will grow in importance.

Main concern

The main concern for the image industry is pending legislation on orphaned works. This issue is mentioned in the present consultation paper with regard to the publishing industry.

Images have been largely ignored by projects dealing with the management of orphaned works: both the private Google Book Settlement initiative, which expressly excludes photography, illustrations and maps, and the EU funded project ARROW. Image rights management is a complex issue involving many layers of rights including privacy rights and, indeed, publishers do not own these rights.

Yet, in light of the present debate around mass digitization and the pending

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orphaned works legislation in the United States, massively opposed by the visual industry at large, the issue of orphaned works has come to occupy pole position.

Picture agencies have always held orphaned works in their files – up to 30% of their archives according to our surveys. Cases were always handled on a case by case basis and, although orphaned works have also been linked to loss of revenue, it has never been considered an issue requiring any change of copyright legislation by our membership.

The internet turns new picture material into orphans either because deficient technology strips the metadata information embedded in the work or because of poor crediting.

On the one hand, we are afraid that any badly crafted legislation might ease the access to and use of works which are, in fact, not orphaned. On the other hand, we believe that usage of images on the internet will increase and that the issue of works becoming orphaned should be addressed as a priority. It is not only necessary to track lost authors in archive files but also to track non-credited images on the internet and prevent the creation of future orphaned works.

In general:

- We strongly oppose any blanket solution, such as a general additional and mandatory exception to copyright
- We favour a solution involving the professional management of picture libraries and collecting societies under conditions to be negotiated with all stakeholders and precisely drafted
- We favour any recognised body issuing European licenses for orphaned works
- We also call for the legal recognition of metadata as an instrument of proving ownership in line with the WIPO 1996 Copyright Treaty

We envisage a solution similar to ARROW but tailored to the special needs of the image, using existing technology developed and available resources within the industry.

Berlin, 05.01.2010
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