

CEATL's opinion on Julia Reda's draft report on the implementation of Directive 2001/29/EC on copyright

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Representing 10,000 literary translators in 29 European countries, CEATL (Conseil européen des associations de traducteurs littéraires) has been following with interest the Commission's project for a copyright reform in Europe, and notably answered last year's consultation on which Ms Reda's draft report expands.

CEATL first wishes to underline that the importance of literary translation cannot be overestimated in an European Union that prides itself on its multilingualism and cultural diversity; and that any copyright policy should therefore set it as one of its goals to preserve and enhance the conditions of its flourishing, in particular by improving the situation of the literary translator in accordance with **UNESCO's Recommendation on the Legal Protection of Translators and Translations**¹.

In that regard, it is worth reminding all stakeholders that **translators are authors under the Berne Convention and that their works are protected as such by copyright**². **That fact must imperatively be taken into account in any copyright framework or in any limitations and exceptions management system.** To give only one example: a translated work whose original author or rightholders cannot be found is not be considered an orphan work if the translator or the translator's rightholders are alive and can be reached.

Concerning the Reda report itself, we regret its biased analysis of the answers to the consultation on copyright and a general anti-copyright tendency that pervades its proposals - though copyright is not the obstacle to the cross-border availability of works. Copyright is the legal instrument which grants the creator of an original work exclusive and time-limited rights to its use and distribution with the intention of enabling the author to receive due payment. Yet the report considers any attempt by the author and/or the rightholders to oppose free access to their works as an anomaly and an undue infringement of people's right to knowledge and culture, and therefore advocates a broadening of exceptions. Balancing between people's rights to freely participate in the cultural life of the community and the authors' right to the protection of the moral and material interests resulting from their production has always been a challenge, and **the**

¹*Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators*, adopted by UNESCO's General Conference on 22 November 1976 in Nairobi.

²"Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work." Bern Convention, art. 2.

digital era certainly calls for reconsideration. Unfortunately Ms Reda fails to recognize that, writing: “9. Notes that exceptions and limitations should be enjoyed in the digital environment without any unequal treatment compared to those granted in the analogue world.” On the contrary, the copying, lending or resale of e-books raise entirely new issues and are bound to have unprecedented and devastating market-effects, thus undermining the very industries on which a major part of our cultural life is based. Adjustments are needed, but not in the direction proposed by the draft report.

Based on such premises, **Ms Reda’s proposals undermine some of the purposes that she claims to be pursuing and finally they would introduce more legal uncertainty.** The draft report makes much of the necessity to reduce legal uncertainty and lack of transparency in order to enhance the acceptance and legitimacy of the law. Yet, in keeping with the general trend toward a broadening of exceptions, one of its proposals precisely seems to run counter with that goal, introducing an indeterminate “**open norm**” (art. 13). Maybe this notion is inspired by the Anglo-Saxon notion of “fair use”, but this is not acceptable in the framework of European author’s rights. Basing a system of exceptions and limitations on the notion of fair use would foster a copyright regime geared to constant legal battles and supplied with the funds necessary to wage them – exactly the kind of copyright regime that would favour not individual creators or small producers, but multinational corporations and global distributors. What is more, such a system empowers the judge rather than the lawmaker.

Furthermore Ms Reda’s proposals would undermine the possibility of a fair remuneration for authors and rightholders.

Article 3 of the draft report acknowledges “the need for appropriate remuneration for all categories of rightholders” and “calls for improvements to the contractual position of authors and performers in relation to other rightholders and intermediaries”.

This last part may be seen as reference to last year’s report to the Parliament: “Contractual Arrangements Applicable to Creators”³. Noting that the existing contractual protection of authors was insufficient to secure a fair remuneration to authors or address some unfair contractual provisions, the said report formulates worthwhile recommendations aiming at:

- preventing buy-out contracts
- precluding unfair terms
- limiting the length of the transfer
- giving the author better control on the exploitation of his or her work (obligation to exploit, transparent reporting)
- promoting collective bargaining and management, etc...

³ **Contractual Arrangements Applicable to Creators**. See in particular p.100-105.

All of those recommendations are most interesting avenues to explore and **CEATL rejoices to see the bargaining situation and remuneration of authors high on the European agenda.**

Yet this article 3 appears as an ineffective declaration of intent when, in the meantime, many articles of the report undermine the very possibility for rightholders to be remunerated. **Better contractual bargaining will lead to better remuneration if and only if there is still revenue to be shared and not everybody can access the works for free under “exceptions” that would become the norm.**

To take only **two of the broadenings of an exception proposed by Ms Reda which will weaken even more the weak bargaining position of authors and translators:**

- article 19: Would the call for a broad exception for research and education purpose, “including **non-formal education**” apply to any self-training individual or student? After all, this is a perfect way to give everybody free access to our works and to erode any protection.

- article 20: The report calls for “the adoption of **a mandatory exception allowing libraries to lend books to the public in digital formats, irrespective of the place of access**”, while the next article “calls on the EU legislator to preclude Member States from introducing statutory licenses for the compensation of rightholders for the harm caused by acts made permissible by an exception”. What would become of the remuneration of authors and translators if libraries were able to take any e-book, lend it anywhere and as they want (especially as – art.23 – the effective exercise of exceptions should not be hindered by technological measures) and this exception could not even be compensated?

As representatives of particularly “exposed” authors who are generally subjected to poor contractual terms due to the asymmetrical power relations between publishers and literary translators, CEATL cannot of course ignore the promises of fair remuneration and improved bargaining positions voiced in the Reda report. These promises are an inherent feature of the whole reform agenda and have been a recurrent theme in the various statements from Commission and Parliament. Indeed, CEATL would like to see such improvements included in a future European copyright title whatever form it might take. If implemented in a viable and effective way, the right to fair remuneration and fair contractual terms would be a much needed boost to the struggling cultural sector of literary translation. However, there are both weak and strong versions of such protective measures. **In Amendment 22a to the report, Ms Reda seems to suggest a coupling of fair remuneration to extensive limitations and exceptions to copyright by way of direct and untransferable public compensation fees for authors whose works are exploited through free, public use. This is what CEATL would consider a “weak” version of the promise to improve authors’ bargaining position and secure fair remuneration.** Firstly,

because it would ultimately divest authors of copyright and make remuneration a question of dwindling state budgets rather than fair terms on the actual market. Secondly, because it would be of little use to authors to be guaranteed a fee, if publishers are at the same time effectively dissuaded from making the works in question available to the public because of limitations in digital copyright.

CEATL must insist on a strong implementation of fair remuneration in any given European copyright title. A reformed and harmonised copyright law must empower the growing share of weak authors like literary translators, journalists and non-fiction writers by way of actual improvements in the bargaining position vs. publishers and producers. This must be done in a way that is consistent with contractual freedom, but effectively prohibits complete exclusion of original creators such as authors and translators from the commercial value chain. Tying hazy notions of fair remuneration to massive limitations in copyright is not the way to go.

Far from following the proposals of the report, CEATL hopes that the European Parliament, the European Commission and the EU member states will continue to acknowledge the value of copyright, especially but not exclusively in the digital environment, as a key driver of any modern knowledge-based economy and a key instrument that protects the creation of authors and translators by preserving the value-chain, their livelihoods and the investment made by publishers.

Indeed, an adequate legal framework should provide for the enforcement of copyright law in the digital environment and the **fight against piracy**, which is detrimental to authors and publishers alike. It would therefore be sound to link any reopening of Directive 2001/29/EC with a reopening of Directive 2000/31/EC on e-commerce in order to put an end to the exemption of liability of Internet intermediaries.

Finally, we request European policy makers to **provide a healthy market environment** where the European cultural industry, and the book sector in particular, doesn't have to fight on unequal terms with global players which seek to trap the consumer within proprietary formats or profit from the lack of fiscal harmonization in Europe.

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