Statement on the EC consultation on "the role of publishers in the copyright value chain"

Brussels, 15 June, 2016

Representing 10,000 literary translators in 28 countries, the European Council of Literary Translators Associations has answered the European Commission's consultation on the role of publishers in the copyright value chain and wishes to make to following statements:

1) as regards the **impact on publishers of the creation of a new neighbouring right** in EU law

It is argued that neighbouring rights would help publishers fight against counterfeiting, but this does not stand. As secondary rightsholders, publishers already have a legal stance to make their exclusive rights respected. The difficulties are legal (limited responsibility of the platforms and internet intermediaries; ruling of the European Court of Justice about embedded hyperlinks; possible extension of exceptions, for data mining for example) or practical (costs of the procedures), but not linked to an absence of rights for the publishers.

The very object of potential publishers' neighbouring rights remains problematic (see below), which makes them a very unadvisable tool. If however neighbouring rights were granted to publishers, their scope should at any rate be linked to the scope of the rights granted by the author in the publishing contract (types of exploitation, duration of the rights), so that the publishers' neighbouring rights don't to infringe on the author's rights (in accordance with the Rome Convention). The publisher's capacity to licence would therefore remain unchanged.

Contracts already grant publishers all rights necessary to exploit the works and defend them against infringement.

It is understood that the question of granting neighbouring rights to publishers of the book industry was principally raised as a result of rulings in the Reprobel and Vogel cases, which seem to threaten the capacity of publishers to receive part of the compensation for uses under an exception.

The principle, implemented in the existing systems, that both authors and publishers can be remunerated or claim for fair compensation for the use of their works, also when the use takes place under exceptions established in the EU Copyright Directive (articles 5.2, reprography and 5.2b, private copy), must be reasserted, irrespective of any distinct exclusive publishers' right, to maintain the current well-established mechanisms for administration of certain secondary uses of already published works by RROs. EU legislation should ensure that both authors and publishers are entitled to remuneration

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/compensation, in view of the CJEU decision in the HP Belgium-Reprobel case and that of the German Supreme Court in the so-called 'Vogel case'.

This must, however, be done in a way that won't impact negatively on the rights that authors currently have, including their right of remuneration and their patrimonial and moral rights. In that regard, granting publishers neighbouring rights not only seems unnecessary and questionable in principle, but dangerous for authors, for their capacity to recover their rights and for their relationships with publishers (see below).

Other avenues to solve the difficulties created by the Reprobel ruling (clarifying the 2001 directive regarding the notion of rightsholder and the right of publishers to receive compensation for uses made under an exception, for instance) **would therefore be very preferable.**

2) as regards the **impact on authors in the publishing sector**

CEATL reckons that granting neighbouring rights to publishers in the sector would have a very negative impact on authors.

Introducing neighbouring rights would open a whole new field of legal uncertainty for authors, which would in itself be a great loss and a weakening of their position:

- what would those neighbouring rights protect exactly? The analogy with music or audiovisual works, where there is a material object to protect (recording, footage) does not stand. If those neighbouring rights should protect the editorial work of the publisher (editing, typesetting), it would be extremely dangerous because writers, at the end of the exploitation, might not be able to get their rights back on the work as it was published.

- when the author gets his rights back/at the extinction of the publishing contract, what becomes of the neighbouring rights? Do they persist? How can they be reconciled with the new neighbouring rights a new publisher might get? Such cases when conflicting rights lead to the impossibility to exploit the work are known in the film industry.

From the author's point of view, neighbouring rights for publishers only means more complexity and a lessening of his control on his works. Granting publishers neighbouring rights would be counterproductive at a time when both the Parliament and Commission have repeatedly expressed their desire to put the author at the heart of the system, to protect his right to remuneration and to foster a better balance in his contractual relationship with publishers.

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