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"i2010 DIGITAL LIBRARIES"

The Response by SanomaWSOY Corporation to the European Commission Consultation,
30 September 2005

SanomaWSOY Corporation welcomes the opportunity to contribute to the EC Consultation regarding the Communication "i2010: Digital Libraries" (the "Communication") and the related Commission staff working paper. In particular,

We support the basic statement in the Communication that the digitisation of works and making the digitised works available online can be done only if the works are in the public domain or if there is explicit consent from right-holders. We point out that any impairment of European copyright protection could easily lead to a collapse of European cultural industries.

We underline the fact that publishers and libraries have traditionally cooperated in creating European information society by promoting the reading of newspapers, magazines and books and in fighting against illiteracy. There is no basis for a society without competitive and vivid European cultural industries, e.g. publishing industries. Real understanding of the meaning of copyright protection forms a fruitful starting point to this cooperation also regarding the common goals in the future.

The best way to encourage digitisation in order to facilitate online accessibility of copyright protected material in Europe is to allow the development of commercial contracts between publishers and other right holders and libraries, archives and other users. Online accessibility for citizens of the Member States can be achieved solely through payments by libraries, archives and other users to publishers and other right holders. The payments have to compensate the economic loss to publishers and right holders due to diminished earnings because of public online availability of their content.

Public funding regarding digital libraries project may not infringe on a free European media market and compete with private funding based European cultural industries.

The book, newspaper and magazine publishers and their editorial staff have a long tradition in collecting, selecting, analysing and classifying information. This is how they produce high-quality European content out of endless information mass as well as, finally, are able to provide the European citizens with the content. These actions form the core of quality publishing in print and electronic form.

The authors and journalists funded by the publishers gather information from various sources, process and analyse phenomena the information describes and, finally, create content in both print and electronic form (e.g. a book, an article, a document, a program) that includes an angle which differentiates the content from pure information. There is no such thing as free content. The publishers finance the work by the authors and journalists.

Any expansion of European digital library project beyond the public domain material would lead to undermining copyright protection and greatly damage European cultural industries.

We believe that possible changes which led to a weakening of current European copyright protection are neither needed nor appropriate.

It is essential to note that both the European and International copyright legislation establish that it shall be a matter for legislation in the countries to permit the reproduction of copyright protected works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

It is important for the long-term economic interests of the European Information Society, and in line with the Lisbon Strategy that EU level regulation in the field of copyright, that it should not be undermined compared to USA, Europe's main competitor in cultural industries. Adequate copyright protection for both digital and print content is essential for the competitiveness of European cultural industries as well as for the creation of new European cultural heritage.

There is an essential need to develop media literacy and copyright awareness in Europe in order to guarantee the continuing understanding of the basis of European cultural heritage.

There is a real need to develop effective European level media literacy policies in order to ensure wide understanding of the value of creative works and copyright protection among e.g. the young people in the Member States, library and archive staff as well as officials in other institutions.

Awareness of copyright in general and importance of copyright protection is an essential prerequisite for any type of European level digital libraries project.

The "Size of the prize" i.e. added value of digitisation must be considerable in all circumstances.

We underline the fact that digital libraries form such an extensive project that further clarification of the necessity, actual alternatives and funding is necessary. The Communication and the working paper do not give answers to these essential issues.

Before proceeding any further with digital libraries project it is important to clear up the following issues:

- concrete advantages of digitisation in respect of the preservation of cultural heritage;
- concrete alternatives for realization of digitisation and online access/use of digitised material;
- costs of each alternative and funding of these alternatives; and

- effects of these alternatives and their funding to the roles, rights and liabilities of both private and public players in Europe.

We question whether digitisation of material in Europe's libraries and archives, as presented in the Communication, is reasonable in practice, when one takes into account e.g. European citizens real needs to have online access to digitised material compared to the costs of the actions required, the complexity of financing of the said costs and the liabilities regarding the project.

Encourage voluntary schemes, no extension of the scope of the Article 5.2 in the Directive 2001/29/EC

There are national legal deposit legislation as well as other voluntary basis arrangements (e.g. in the Netherlands) already in place in the Member States. Instead of harmonising European legislation regarding national deposit rules the Commission could encourage voluntary basis national deposit schemes that do not form any kind of sales substitution of digitised content.

No extension to the scope of the article 5.2 in the Directive 2001/29/EC would seem necessary. The article gives the Member States a possibility for exceptions or limitations to the reproduction right for specific acts of reproduction made by accessible libraries, educational establishments or museums, or archives, which are not for direct or indirect economic or commercial advantage. The article 5.2 represents a reasonable balance of legitimate interests, also taking into account the full use of the potential of the new technologies, between the right holders/authors and common goods such as libraries.

Employers' copyright to encourage publishers' contribution to digital libraries project

To facilitate effectively the clearing of copyright in the future as well as the publishers' contribution to high-quality content with open online access for European citizens we propose that it would be advisable to analyse the employer's copyright further and, harmonize the European Copyright legislation so that the economic rights (for both known and future rights) of the work are vested in the employer by law.

In addition, the lack of employer's copyright harmonisation will exacerbate further an existing inequality between content producers in the Member States. In certain Member States (e.g. The Netherlands and The United Kingdom) national copyright regulation exists whereby rights are vested in the employer, while in others, publishers are forced to purchase rights from their employees, for example for secondary use online, instead of said rights being vested in them by law. It is often uneconomic for employers to proceed on this basis, which hampers innovation and the development of the creative content industries.

Further, the lack of EU level harmonisation reduces the competitiveness and productivity of the European content producers compared to their competitors from e.g. the USA. This will hinder a development of the European Information Society, as well as the effective and multiple use of copyright protected content.

ANSWERS TO THE ONLINE CONSULTATION

A. Digitisation and online accessibility

- 1) *What additional measures could be taken at national and European level to encourage digitisation and online accessibility of material in all European languages?*

Adequate financing is a crucial prerequisite for libraries and archives to be able to arrange digitisation of material and acquire sufficient publishers' and other right holders' licences for digitisation and online accessibility.

Libraries and archives and other users of copyright protected material need plenty of understanding of copyright protection and its importance for European cultural heritage. There is a great need for development of copyright awareness within public institutions as well citizens in Europe.

- 2) *What measures could be taken to promote private investments and new business models such as public-private partnerships for digitising and making historical collections accessible?*

Please see the answer to the question 1.

Public institutions such as libraries and archives cannot form public-private partnerships that are based on exploitation of copyright protected material without licensing by publishers or other right holders and without adequate remuneration for them.

Publicly funded services should not be allowed to distort competition with private content production.

- 3) *What measures of a legislative, technical, organisational or other nature, could facilitate the digitisation and subsequent accessibility of copyrighted material, while respecting the legitimate interests of authors?*

No weakening of the current EU copyright protection is needed or appropriate. European cultural industries would easily collapse if copyright protection is eroded any further taking into account the effects of present illegal actions.

The employer's copyright would effectively facilitate the publishers' contribution to high-quality content with open online access for European citizens. Therefore it would be advisable to analyse ownership of copyright and harmonize the European copyright legislation so that the economic rights (for both known and future rights) of the work are vested in the employer by law.

- 4) *Is the issue of orphan material economically important and relevant in practice? If yes, what technical, organisational and legal mechanisms could be used to facilitate wider use of this material?*

One must bear in mind that any extraordinary, subsidized promotion of certain materials, e.g. orphan material, would not be in line with European competition law.

Any collective licensing scheme for works which can be identified and right holder is known, is, especially in a digital environment, against a three step

test of the article 5 (5) in the Directive 2001/29/EC. Therefore a general collective licensing scheme is not a way to forward regarding orphan works, since it would be against European as well as international copyright legislation.

The test for what could be considered "orphan" would have to be very complicated. Therefore the system would not be cost-effective.

Collective licensing societies, as middlemen, dilute the core revenue streams of publishers, add to the cost of consumers and weaken creation of new European cultural heritage.

- 5) *How could public domain material and other material available for general use (voluntary sharing) be made more transparent and widely known in order to facilitate its online availability for subsequent use?*

The public finds high-quality content both online and offline through word of mouth. High-quality content speaks for itself and is generally known among the readers and other users. Quality requirement applies to both public domain material and other material available for general use, too.

B. Preservation of digital content

- 6) *What priority measures – in particular of an organisational and legal nature – should be taken at national and European level to optimise the preservation of digital content with the limited resources available?*

Voluntary basis national deposit schemes that do not form any kind of sales substitution of digitised content could be encouraged. No extension to the scope of the article 5.2 in the Directive 2001/29/EC would seem necessary.

- 7) *Is there a risk that national legal deposit schemes lead to a multiplication of requirements on internationally active companies? Would European legislation help avoiding this?*

No. Given the fact that most content is localised due to e.g. language, cultural differences and other national measures harmonisation would not help. The country of origin rule should suffice in legal deposit issues, too.

- 8) *How could research contribute to progress on the preservation front? Which axes of work should be addressed in priority by the forthcoming Specific Research Programmes as part of the 7th Framework Programme?*

Research could contribute by investigating whether national legal deposit schemes are the most cost-effective system, or would it be better to proceed on voluntary basis.

Helsinki, 20 January, 2006



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BACKGROUND: SANOMAWSOY GROUP

The SanomaWSOY Group is comprised of five divisions: Sanoma Magazines (magazine publishing both in print and digital form), Sanoma (publishing newspapers in print and digital form as well as printing newspapers), WSOY (educational publishing and book publishing both in print and digital form as well as printing), SWelcom (electronic media incl. television and cable television operations), and Rautakirja (kiosk operations, press distribution, bookstores, movie theatre operations). SanomaWSOY Corporation is the parent company of SanomaWSOY Group.

SanomaWSOY's companies have a long history dating back to the nineteenth century.

Today SanomaWSOY is the fifth largest magazine publisher and the sixth largest educational publisher in Europe and it is strongly placed in the Netherlands, Belgium, the Czech Republic and Hungary in addition to Finland. Through operations in 20 European countries, about 50 million readers and about 200 million customers in kiosks, bookstores and movies theatres use its products yearly. The expansion strategy led to important acquisitions in the Netherlands and Belgium through the educational publisher Malmberg Investments in 2004, and in Russia through the acquisition of the leading Russian magazine publisher in 2005.

According to IFRS, SanomaWSOY's net sales totalled € 2.5 billion in 2004, when it recorded an operating profit of € 294.0 million and employed some 16,000 people.

For more information, please see www.sanomawsoy.fi