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NORDIC POSITION REGARDING THE COMMISSION PROPOSAL FOR A NEW COPYRIGHT DIRECTIVE

In September 2016, The European Commission published a new “Copyright Package” containing several new proposals for new EU copyright legislation in the Digital Single Market. Of specific interest for rightholders in the field of literary works is the proposal for a new copyright directive, and especially the proposed article 4 on illustration for teaching.

While welcoming new initiatives we are worried about the proposed article 4 given the fact that it introduces a new mandatory exception for digital use in the context of illustration for teaching. The Nordic RROs would like to underline the importance of the well-functioning licensing solutions which are already in place in the educational sector. There is a long tradition in the Nordic countries for the clearing of rights collectively using the *extended collective licensing system* (ECL) as a tool. A new mandatory exception giving educational establishments free use of literary works would be detrimental to all rightholders.

Therefore, the Nordic RROs strongly encourage negotiated solutions by making it mandatory that the exception in Article 4 shall not apply if a licensing solution is available. This so-called *license override* should apply in all circumstances where collective licenses are made available to educational institutions. Such licenses should always prevail, and the exception should not apply in those cases.

At the same time, we are recalling the common position paper by the governments in the Nordic countries from November 2016, which stressed the importance of the ECL and its positive effects.

In order to avoid legal uncertainty about the continued application of the ECL system and other collective licensing systems we urge the Nordic Governments to actively promote a specific provision in this regard within the framework of the proposed directive. Preferably this should be a general article in the directive, which could be drafted in the following way:

“The Directive is without prejudice to existing and future arrangements in the Member States concerning the management of rights such as extended collective licences, legal presumptions or similar arrangements or a combination of them.”