

Public Consultation
on the review of the EU copyright rules

SENT TO:

DG Internal Market and Services – markt-copyright-consultation@ec.europa.eu

PLEASE IDENTIFY YOURSELF:

Name: Kopinor

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If you would like to submit your reply on an anonymous basis please indicate it below by underlining the following answer:

- Yes, I would like to submit my reply on an anonymous basis

TYPE OF RESPONDENT (Please underline the appropriate):

- End user/consumer** (e.g. internet user, reader, subscriber to music or audiovisual service, researcher, student) **OR Representative of end users/consumers**
→ for the purposes of this questionnaire normally referred to in questions as "**end users/consumers**"

- Institutional user** (e.g. school, university, research centre, library, archive) **OR Representative of institutional users**
→ for the purposes of this questionnaire normally referred to in questions as "**institutional users**"

- Author/Performer OR Representative of authors/performers**

- Publisher/Producer/Broadcaster OR Representative of publishers/producers/broadcasters**

→ the two above categories are, for the purposes of this questionnaire, normally referred to in questions as "**right holders**"

- Intermediary/Distributor/Other service provider** (e.g. online music or audiovisual service, games platform, social media, search engine, ICT industry) **OR Representative of intermediaries/distributors/other service providers**
→ for the purposes of this questionnaire normally referred to in questions as "**service providers**"

Collective Management Organisation

Kopinor is the Norwegian Reproduction Rights Organisation, representing rightsholders of published works through 22 member organisations - 5 publishers' associations and 17 authors' associations. Kopinor is empowered by its member organisations, and approved by the Ministry of Cultural Affairs, to negotiate and conclude collective agreements with extended effect (Extended Collective Licensing, ECL) on photocopying, print-outs and digital uses of copyright protected material for educational use, internal use in enterprises and use by public libraries. Kopinor is a member of the International Federation of Reproduction Rights Organisations (IFRRO) and we support in general the IFRRO submission to this consultation.

- Public authority**
- Member State**
- Other** (Please explain):

I. Rights and the functioning of the Single Market

A. Why is it not possible to access many online content services from anywhere in Europe?

1. [In particular if you are an end user/consumer:] Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?

YES - Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software)

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NO

NO OPINION

2. [In particular if you are a service provider:] Have you faced problems when seeking to provide online services across borders in the EU?

YES - Please explain whether such problems, in your experience, are related to copyright or to other issues (e.g. business decisions relating to the cost of providing services across borders, compliance with other laws such as consumer protection)? Please provide examples indicating the Member State, the sector and the type of content concerned (e.g. premium content such as certain films and TV series, audio-visual content in general, music, e-books, magazines, journals and newspapers, games, applications and other software).

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NO

NO OPINION

3. [In particular if you are a right holder or a collective management organisation:] How often are you asked to grant multi-territorial licences? Please indicate, if possible, the number of requests per year and provide examples indicating the Member State, the sector and the type of content concerned.

Kopinor does not have a role in respect of offering licenses for publishing on the open Internet, except in respect of making available works in public library collections etc., but such licensing is so far limited to territorial use (e.g. the agreement between Kopinor and the National Library on the Bookshelf, access limited to Norwegian IP-addresses).

We have not had many requests regarding multi-territorial licenses, but we see that it is a relevant topic for libraries, museums etc. to make national collections available to other than Norwegian IP-addresses (ref. the Bookshelf Agreement), and also for educational institutions in respect of distance learning (VLEs) and for other businesses and organisations in respect of use in intranets across borders.

4. If you have identified problems in the answers to any of the questions above – what would be the best way to tackle them?

We welcome a solution for recognition of national laws and licensing mechanism across borders, such as the extended collective licensing.

5. [In particular if you are a right holder or a collective management organisation:] Are there reasons why, even in cases where you hold all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on a service provider (in order, for instance, to ensure that access to certain content is not possible in certain European countries)?

YES – Please explain by giving examples

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NO

NO OPINION

6. [In particular if you are e.g. a broadcaster or a service provider:] Are there reasons why, even in cases where you have acquired all the necessary rights for all the territories in question, you would still find it necessary or justified to impose territorial restrictions on the service recipient (in order for instance, to redirect the consumer to a different website than the one he is trying to access)?

YES – Please explain by giving examples

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NO

NO OPINION

7. Do you think that further measures (legislative or non-legislative, including market-led solutions) are needed at EU level to increase the cross-border availability of content services in the Single Market, while ensuring an adequate level of protection for right holders?

YES – Please explain

For secondary use, we welcome a solution for recognition of national laws and licensing mechanism across borders, such as the extended collective licensing, asking the European Union to follow up on the Memorandum of Understanding for Out-of-Commerce Works.

NO – Please explain

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NO OPINION

B. Is there a need for more clarity as regards the scope of what needs to be authorised (or not) in digital transmissions?

1. The act of “making available”

8. Is the scope of the “making available” right in cross-border situations – i.e. when content is disseminated across borders – sufficiently clear?

YES

NO – Please explain how this could be clarified and what type of clarification would be required (e.g. as in "targeting" approach explained above, as in "country of origin" approach¹)

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NO OPINION

9. [In particular if you are a right holder:] Could a clarification of the territorial scope of the “making available” right have an effect on the recognition of your rights (e.g. whether you are considered to be an author or not, whether you are considered to have transferred your rights or not), on your remuneration, or on the enforcement of rights (including the availability of injunctive relief²)?

YES – Please explain how such potential effects could be addressed

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NO

NO OPINION

2. Two rights involved in a single act of exploitation

10. [In particular if you a service provider or a right holder:] Does the application of two rights to a single act of economic exploitation in the online environment (e.g. a download) create problems for you?

YES – Please explain what type of measures would be needed in order to address such problems (e.g. facilitation of joint licences when the rights are in different hands, legislation to achieve the "bundling of rights")

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¹ The objective of implementing a “country of origin” approach is to localise the copyright relevant act that must be licenced in a single Member State (the "country of origin", which could be for example the Member State in which the content is uploaded or where the service provider is established), regardless of in how many Member States the work can be accessed or received. Such an approach has already been introduced at EU level with regard to broadcasting by satellite (see Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission).

² Injunctive relief is a temporary or permanent remedy allowing the right holder to stop or prevent an infringement of his/her right.

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- NO
- NO OPINION

3. Linking and browsing

11. Should the provision of a hyperlink leading to a work or other subject matter protected under copyright, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

Ref. IFRRO's submission

NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it does not amount to an act of communication to the public – or to a new public, or because it should be covered by a copyright exception)

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NO OPINION

12. Should the viewing of a web-page where this implies the temporary reproduction of a work or other subject matter protected under copyright on the screen and in the cache memory of the user's computer, either in general or under specific circumstances, be subject to the authorisation of the rightholder?

YES – Please explain whether you consider this to be the case in general, or under specific circumstances, and why

Ref. IFRRO's submission

NO – Please explain whether you consider this to be the case in general, or under specific circumstances, and why (e.g. because it is or should be covered by a copyright exception)

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NO OPINION

4. Download to own digital content

13. [In particular if you are an end user/consumer:] Have you faced restrictions when trying to resell digital files that you have purchased (e.g. mp3 file, e-book)?

YES – Please explain by giving examples

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NO

NO OPINION

14. *[In particular if you are a right holder or a service provider:] What would be the consequences of providing a legal framework enabling the resale of previously purchased digital content? Please specify per market (type of content) concerned.*

[Open question]

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C. Registration of works and other subject matter – is it a good idea?

15. *Would the creation of a registration system at EU level help in the identification and licensing of works and other subject matter?*

YES

NO

NO OPINION

16. *What would be the possible advantages of such a system?*

[Open question]

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17. *What would be the possible disadvantages of such a system?*

[Open question]

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18. *What incentives for registration by rightholders could be envisaged?*

[Open question]

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D. How to improve the use and interoperability of identifiers

19. *What should be the role of the EU in promoting the adoption of identifiers in the content sector, and in promoting the development and interoperability of rights ownership and permissions databases?*

[Open

question].....

E. Term of protection – is it appropriate?

20. Are the current terms of copyright protection still appropriate in the digital environment?

YES – Please explain

Ref. IFRRO's submission

NO – Please explain if they should be longer or shorter

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NO OPINION

II. Limitations and exceptions in the Single Market

21. Are there problems arising from the fact that most limitations and exceptions provided in the EU copyright directives are optional for the Member States?

YES – Please explain by referring to specific cases

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NO – Please explain

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NO OPINION

22. Should some/all of the exceptions be made mandatory and, if so, is there a need for a higher level of harmonisation of such exceptions?

YES – Please explain by referring to specific cases

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NO – Please explain

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NO OPINION

23. Should any new limitations and exceptions be added to or removed from the existing catalogue? Please explain by referring to specific cases.

[Open question]

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24. Independently from the questions above, is there a need to provide for a greater degree of flexibility in the EU regulatory framework for limitations and exceptions?

YES – Please explain why

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NO – Please explain why

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NO OPINION

25. If yes, what would be the best approach to provide for flexibility? (e.g. interpretation by national courts and the ECJ, periodic revisions of the directives, interpretations by the Commission, built-in flexibility, e.g. in the form of a fair-use or fair dealing provision / open norm, etc.)? Please explain indicating what would be the relative advantages and disadvantages of such an approach as well as its possible effects on the functioning of the Internal Market.

[Open question]

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26. Does the territoriality of limitations and exceptions, in your experience, constitute a problem?

YES – Please explain why and specify which exceptions you are referring to

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NO – Please explain why and specify which exceptions you are referring to

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NO OPINION

27. In the event that limitations and exceptions established at national level were to have cross-border effect, how should the question of “fair compensation” be addressed, when such compensation is part of the exception? (e.g. who pays whom, where?)

[Open question]

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A. Access to content in libraries and archives

1. Preservation and archiving

28. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to use an exception to preserve and archive specific works or other subject matter in your collection?

(b) [In particular if you are a right holder:] Have you experienced problems with the use by libraries, educational establishments, museum or archives of the preservation exception?

YES – Please explain, by Member State, sector, and the type of use in question.

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X NO

NO OPINION

29. If there are problems, how would they best be solved?

[Open question]

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30. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]

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31. If your view is that a different solution is needed, what would it be?

[Open question]

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2. Off-premises access to library collections

Directive 2001/29/EC provides an exception for the consultation of works and other subject-

32. (a) [In particular if you are an institutional user:] Have you experienced specific problems when trying to negotiate agreements with rights holders that enable you to provide remote access, including across borders, to your collections (or parts thereof) for purposes of research and private study?

(b) [In particular if you are an end user/consumer:] Have you experienced specific problems when trying to consult, including across borders, works and other subject-matter held in the collections of institutions such as universities and national libraries when you are not on the premises of the institutions in question?

(c) [In particular if you are a right holder:] Have you negotiated agreements with institutional users that enable those institutions to provide remote access, including across borders, to the works or other subject-matter in their collections, for purposes of research and private study?

[Open question]

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33. If there are problems, how would they best be solved?

[Open question]

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34. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under which conditions?

[Open question]

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35. If your view is that a different solution is needed, what would it be?

[Open question]

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3. E – lending

36. (a) [In particular if you are a library:] Have you experienced specific problems when trying to negotiate agreements to enable the electronic lending (e-lending), including across borders, of books or other materials held in your collection?

(b) [In particular if you are an end user/consumer:] Have you experienced specific problems when trying to borrow books or other materials electronically (e-lending), including across borders, from institutions such as public libraries?

(c) [In particular if you are a right holder:] Have you negotiated agreements with libraries to enable them to lend books or other materials electronically, including across borders?

YES – Please explain with specific examples

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- NO
 - NO OPINION

37. *If there are problems, how would they best be solved?*

[Open question]

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The following two questions are relevant both to this point (n° 3) and the previous one (n° 2).

38. *[In particular if you are an institutional user:] What differences do you see in the management of physical and online collections, including providing access to your subscribers? What problems have you encountered?*

[Open question]

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39. *[In particular if you are a right holder:] What difference do you see between libraries' traditional activities such as on-premises consultation or public lending and activities such as off-premises (online, at a distance) consultation and e-lending? What problems have you encountered?*

[Open question]

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4. Mass digitisation

40. *[In particular if you are an institutional user, engaging or wanting to engage in mass digitisation projects, a right holder, a collective management organisation:] Would it be necessary in your country to enact legislation to ensure that the results of the 2011 MoU (i.e. the agreements concluded between libraries and collecting societies) have a cross-border effect so that out of commerce works can be accessed across the EU?*

YES – Please explain why and how it could best be achieved

ECL agreements can include out of commerce works. We would welcome solutions for recognition of national laws and licensing mechanism across borders, such as the extended collective licensing, that make possible voluntary licensing solutions for copying and making available of national cultural heritage across borders.

NO – Please explain

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NO OPINION

41. Would it be necessary to develop mechanisms, beyond those already agreed for other types of content (e.g. for audio- or audio-visual collections, broadcasters' archives)?

YES – Please explain

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NO – Please explain

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NO OPINION

B. Teaching

42. (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject-matter for illustration for teaching, including across borders?

(b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used for illustration for teaching, including across borders?

YES – Please explain

NO

NO OPINION

43. If there are problems, how would they best be solved?

Ref. IFRRO's submission

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44. What mechanisms exist in the market place to facilitate the use of content for illustration for teaching purposes? How successful are they?

Copying for educational and research purposes are successfully covered by Kopinor's licenses e.g. with the HE institutions and other private and public entities (supported by ECL).

45. If your view is that a legislative solution is needed, what would be its main elements? Which activities of the beneficiary institutions should be covered and under what conditions?

[Open question]

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46. If your view is that a different solution is needed, what would it be?

[Open question]

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C. Research

47. (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced specific problems when trying to use works or other subject matter in the context of research projects/activities, including across borders?

(b) [In particular if you are a right holder:] Have you experienced specific problems resulting from the way in which works or other subject-matter are used in the context of research projects/activities, including across borders?

YES – Please explain

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NO

NO OPINION

48. If there are problems, how would they best be solved?

[Open question]

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49. What mechanisms exist in the Member States to facilitate the use of content for research purposes? How successful are they?

Copying for educational and research purposes are successfully covered by Kopinor's licenses e.g. with the HE institutions and other private and public entities (supported by ECL). Further, the Norwegian Copyright Act provides for exceptions and limitations for special purposes by libraries, educational and research institutions etc. (such as copying of works in the collections for conservation and safety purposes and the making available of such copies at the libraries' premises) in addition to copying for private use.

D. Disabilities

50. (a) [In particular if you are a person with a disability or an organisation representing persons with disabilities:] Have you experienced problems with accessibility to content, including across borders, arising from Member States' implementation of this exception?

(b) [In particular if you are an organisation providing services for persons with disabilities:] Have you experienced problems when distributing/communicating works published in special formats across the EU?

(c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the application of limitations or exceptions allowing for the distribution/communication of works published in special formats, including across borders?

YES – Please explain by giving examples

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X NO

NO OPINION

51. If there are problems, what could be done to improve accessibility?

[Open question]

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52. What mechanisms exist in the market place to facilitate accessibility to content? How successful are they?

[Open question]

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E. Text and data mining

53. (a) [In particular if you are an end user/consumer or an institutional user:] Have you experienced obstacles, linked to copyright, when trying to use text or data mining methods, including across borders?

(b) [In particular if you are a service provider:] Have you experienced obstacles, linked to copyright, when providing services based on text or data mining methods, including across borders?

(c) [In particular if you are a right holder:] Have you experienced specific problems resulting from the use of text and data mining in relation to copyright protected content, including across borders?

YES – Please explain

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NO – Please explain

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 NO OPINION

54. If there are problems, how would they best be solved?

[Open question]
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55. If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

[Open question]
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56. If your view is that a different solution is needed, what would it be?

[Open question]
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57. Are there other issues, unrelated to copyright, that constitute barriers to the use of text or data mining methods?

[Open question]
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F. User-generated content

58. (a) [In particular if you are an end user/consumer:] Have you experienced problems when trying to use pre-existing works or other subject matter to disseminate new content on the Internet, including across borders?

(b) [In particular if you are a service provider:] Have you experienced problems when users publish/disseminate new content based on the pre-existing works or other subject-matter through your service, including across borders?

(c) [In particular if you are a right holder:] Have you experienced problems resulting from the way the users are using pre-existing works or other subject-matter to disseminate new content on the Internet, including across borders?

YES – Please explain by giving examples
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- NO
- NO OPINION

59. (a) [In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to ensure that the work you have created (on the basis of pre-existing works) is properly identified for online use? Are proprietary systems sufficient in this context?

(b) [In particular if you are a service provider:] Do you provide possibilities for users that are publishing/disseminating the works they have created (on the basis of pre-existing works) through your service to properly identify these works for online use?

- YES – Please explain

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- NO – Please explain

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- NO OPINION

60. (a) [In particular if you are an end user/consumer or a right holder:] Have you experienced problems when trying to be remunerated for the use of the work you have created (on the basis of pre-existing works)?

(b) [In particular if you are a service provider:] Do you provide remuneration schemes for users publishing/disseminating the works they have created (on the basis of pre-existing works) through your service?

- YES – Please explain

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- NO – Please explain

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- NO OPINION

61. If there are problems, how would they best be solved?

[Open question]

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62. If your view is that a legislative solution is needed, what would be its main elements? Which activities should be covered and under what conditions?

[Open question]

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63. If your view is that a different solution is needed, what would it be?

[Open question]

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III. Private copying and reprography

64. In your view, is there a need to clarify at the EU level the scope and application of the private copying and reprography exceptions³ in the digital environment?

YES – Please explain

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NO – Please explain

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NO OPINION

65. Should digital copies made by end users for private purposes in the context of a service that has been licensed by rightholders, and where the harm to the rightholder is minimal, be subject to private copying levies?⁴

YES – Please explain

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NO – Please explain

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NO OPINION

³ Art. 5.2(a) and 5.2(b) of Directive 2001/29/EC.

⁴ This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies

66. How would changes in levies with respect to the application to online services (e.g. services based on cloud computing allowing, for instance, users to have copies on different devices) impact the development and functioning of new business models on the one hand and rightholders' revenue on the other?

[Open question]

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67. Would you see an added value in making levies visible on the invoices for products subject to levies?⁵

YES – Please explain

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NO – Please explain

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NO OPINION

68. Have you experienced a situation where a cross-border transaction resulted in undue levy payments, or duplicate payments of the same levy, or other obstacles to the free movement of goods or services?

YES – Please specify the type of transaction and indicate the percentage of the undue payments. Please also indicate how a priori exemption and/or ex post reimbursement schemes could help to remedy the situation.

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NO – Please explain

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NO OPINION

69. What percentage of products subject to a levy is sold to persons other than natural persons for purposes clearly unrelated to private copying? Do any of those transactions result in undue payments? Please explain in detail the example you provide (type of products, type of transaction, stakeholders, etc.).

[Open question]

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⁵ This issue was also addressed in the recommendations of Mr Antonio Vitorino resulting from the mediation on private copying and reprography levies.

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70. Where such undue payments arise, what percentage of trade do they affect? To what extent could a priori exemptions and/or ex post reimbursement schemes existing in some Member States help to remedy the situation?

[Open question]

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71. If you have identified specific problems with the current functioning of the levy system, how would these problems best be solved?

[Open question]

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IV. Fair remuneration of authors and performers

72. [In particular if you are an author/performer:] What is the best mechanism (or combination of mechanisms) to ensure that you receive an adequate remuneration for the exploitation of your works and performances?

[Open question]

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73. Is there a need to act at the EU level (for instance to prohibit certain clauses in contracts)?

YES – Please explain

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NO – Please explain why

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NO OPINION

74. If you consider that the current rules are not effective, what would you suggest to address the shortcomings you identify?

[Open question]

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V. Respect for rights

75. *Should the civil enforcement system in the EU be rendered more efficient for infringements of copyright committed with a commercial purpose?*

YES – Please explain

Ref. IFRRO's submission

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NO – Please explain

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NO OPINION

76. *In particular, is the current legal framework clear enough to allow for sufficient involvement of intermediaries (such as Internet service providers, advertising brokers, payment service providers, domain name registrars, etc.) in inhibiting online copyright infringements with a commercial purpose? If not, what measures would be useful to foster the cooperation of intermediaries?*

[Open question]

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77. *Does the current civil enforcement framework ensure that the right balance is achieved between the right to have one's copyright respected and other rights such as the protection of private life and protection of personal data?*

YES – Please explain

Ref. IFRRO's submission

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NO – Please explain

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NO OPINION

VI. A single EU Copyright Title

78. Should the EU pursue the establishment of a single EU Copyright Title, as a means of establishing a consistent framework for rights and exceptions to copyright across the EU, as well as a single framework for enforcement?

YES

NO

NO OPINION

79. Should this be the next step in the development of copyright in the EU? Does the current level of difference among the Member State legislation mean that this is a longer term project?

[Open question]

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VII. Other issues

80. Are there any other important matters related to the EU legal framework for copyright? Please explain and indicate how such matters should be addressed.

[Open question]

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