

# International Federation of Journalists submission to the WIPO Standing Committee on Copyright & Related Rights, Geneva, December 2009



## ***On limitations and exceptions***

The International Federation of Journalists represents over 600,000 journalists in more than 120 countries – among them both writers and photographers.

Because journalists are authors, we are also among the heaviest users of information. We are of course in favour of unhindered access to information.

We also insist that it is essential to society – to democracy, to human rights, to the functioning of markets and of education in the widest sense – that there be journalists who can make a decent living as independent professionals, not dependent on patronage.

So that unhindered access will, in general, be "free" as in the phrase "free speech", not as in "free beer". This is why we believe that the three step test as included in article 9.2 of the Berne Convention and Article 13 of the TRIPS Agreement provides a safety net for all exceptions and limitations.

That unhindered access must of course include people with disabilities. But we have to ask: what is, really, the problem? For example: how many representatives here have the Dialogue between the philosophers Plato<sup>1</sup> and Gorgias, in their mother tongue and in accessible form? This exploration of the relationship between reason and rhetoric would seem a useful text for gatherings such as this.

Author's rights are not the barrier to its accessibility: the barriers are funding and will. Are these not also the larger barriers to the accessibility of almost all works in which authors' rights subsist? The answer must be to build more transparent licensing schemes, ensuring fair access and fair recompense, and as you have heard negotiations are under way toward doing this.

Such negotiations will take account of the fact that people with disabilities can also be creators, with rights.

Journalists are also strongly in favour of public libraries. As a working journalist, I announce that if a library wishes to copy my work to archive it securely, I am willing to contribute to the cost.

But if a library makes all its holdings available to internet users worldwide, it changes the very nature of publishing. If a public library finances this operation with a commercial partner, it changes the very nature of the library.

The answer to this question, too, has to be licensing. If the solution proposed for genuinely public libraries is extended collective licensing, diluting the author's exclusive right to authorise use, then the International Federation of Journalists insists that strict safeguards must be in place. Our preliminary list of these is available to Delegates.

The IFJ thanks you for the opportunity to address the Standing Committee.

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<sup>1</sup> Plato "ghostwriting" a dialogue between his teacher Socrates and the Sophist Gorgias.

## Notes supplementing the International Federation of Journalists intervention

The International Federation of Journalists insists that the following actions must underpin the implementation of any extended collective licensing scheme, being essential in order to preserve the integrity of the historical record:

- improved means for authors to enforce their moral right to be identified, and to object to the use of their work that is prejudicial to their honour and reputation;
- improved tools for locating such abuse, such as voluntary databases linking works to authors, and including databases searchable by image and musical content; and
- that these "moral rights" be made universal and unwaivable for all authors worldwide.

The ambition should be to support the principle of a public realm of information; therefore, any extended collective licensing should apply to truly public libraries. These should not be confused with commercial operations, which remain free to negotiate licenses with creators.

We propose the following measures to ensure the correct attribution and tracing of works:

- that works may be made available by public libraries and by associations of people with disabilities only when accompanied by full metadata embodying the author's right to be identified and permitting library users to contact the author or their agent to negotiate a licence for re-use – this is especially important since all copies made available online would be useful to those wishing to make commercial exploitation of those copies online;
- that this metadata must enable an audit trail facilitating tracing of illegitimate re-use of library copies – and thereby establishing provenance to the benefit of librarianship;
- that each work delivered by libraries must appear with a prominently visible declaration of its authorship, where known, of the permitted uses (private study *etc*) and of the procedure for contacting authors (and other rightsholders) to seek permission for other uses;
- that at the same time a fully enforceable prohibition on the removal of that metadata be provided in every signatory nation's law;
- that at the same time governments fund database tools, searchable by image and sound content as well as by text, to ease tracking further unauthorised uses of library copies – not just to pursue infringers for payment but to protect the moral rights of authors and performers and standards for ethical journalism;
- that any such arrangements not include unpublished works in libraries' holdings;
- that visual and audio works be made available online only at reduced resolution or fidelity, unless specific authorisation is obtained, as a discouragement to illegitimate profit-making use of works obtained from libraries;
- that equitable remuneration be made to authors (and performers) to ensure the continued existence of a body of professional creators of content feeding the world's digital economies; and
- that independent review bodies, including creators' representatives, must set the levels of that equitable remuneration.

Geneva, 15 December 2009