



INTERNATIONAL ASSOCIATION OF SCIENTIFIC, TECHNICAL & MEDICAL PUBLISHERS

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To: Dr. Tilman Lüder, Head, Copyright Unit
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**STM submission to the second call for comments from the
European Commission on
“Fair compensation for acts of private copying”**

The International Association of Scientific, Technical and Medical Publishers (“STM”) includes approximately 100 publishers of journals and reference works, based in 26 countries, including in many Member States of the European Union. EU-based publishers publish 49% of all research articles worldwide (STM’s members may originate approximately 2/3 thereof), they employ 36000 staff directly and another 10-20,000 indirectly, and make an Euro 3 billion contribution to EU’s balance of trade. Apart from publishing in print, STM publishers originate and disseminate online, books, journals databases and individual articles and contributions (“Content”) of a multitude of European and international scientific, medical and technical authors and scholars. This creative Content is available widely in electronic and in print form for access by individuals, whether through academic and corporate libraries or directly, for use in research, education, in industry the professions and business.

STM welcomes the opportunity to make its submission as part of the call for comments on “fair compensation for acts of private copying” and the fact that the Commission is seeking further input of stakeholders in this matter. STM supports the response of the Federation of European Publishers (FEP) and recalls its position communicated in 2006 jointly with other publishers organizations and reproduced below for purposes of the present consultation.

Very truly yours,

Michael Mabe,
Chief Executive Officer

Cc: Federation of European Publishers

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STM Position on

Copyright, Levies, Exceptions and DRM in the Digital Environment

Copyright

The copyright system is a reward system that allows creators and publishers the pursuit of creating and publishing content. Creators and publishers (rightsholders) have to receive an appropriate reward for their efforts, payable by those using (copying and communicating to the public) their content, whether analogue or digital. This mechanism encourages the production of high quality content for the user.

The digital marketplace favours customisation by increasing user's ability to decide when, how and where they wish to access digital works. When relevant for publishers' needs, digital rights management (DRM) encourages tailor-made solutions to be put in place through voluntary licensing and offers numerous benefits to customers as well as the development of a wider and safer market.

DRM also plays an important role in educating the user about copyright in general and in particular on the convenience of digital delivery and the long-term ill-effects of unrestricted copying and redistribution.

Copyright Exceptions

- A key objective for rightsholders' is to safeguard to a maximum the scope of exclusive rights of copyright. This does not mean restricting access but rather being able to offer tailor-made offers to our customers.
- Publishers oppose overly broad exceptions even where "fair compensation" is promised. It is especially the case in the digital world where the customer is able to choose the way he/she chooses to read our works.

Levies

If a sufficiently narrow exception for private copying provides for analogue or digital reproduction and is assorted with compensation for rightsholders of certain cultural sectors, rightsholders of the publishing sectors should also be allowed to benefit¹. When, in such cases, the user is exceptionally allowed to

¹ In some countries such as the UK there is no exception for private copy.

copy without the rightsholder's explicit permission, levies offer them at least an indemnity. Levies do so by imposing a pre-payment on purchase of copying equipment or media, traditionally for analogue content, usually collected and distributed by collecting societies.

Typically levies are calculated as a flat fee. Therefore, the distribution of levies to rightsholders is only remotely related to actual usage (economic value) of individual content ("rough justice")

In the analogue/reprographic area, publishers have difficulties to control reproduction by users from paper to paper. Even in this environment publishers in general prefer usage-related collective licensing (voluntary or statutory). In the digital world, all market-driven options of rewarding rightsholders for their efforts should be explored first, before extending exceptions assorted with levies; but DRM will not act as compensation for exceptions as it aims at managing exclusive rights.

This is why the development of DRM may not necessarily exempt users from paying levies, as they remain unrelated. Practically speaking, it should be determined on a case by case basis if it may be appropriate to lower a particular levy in case of a reduction of usage patterns or a shift towards DRM-enabled solutions.

Where such a shift can be observed, it may indeed be justified for copying from digital to digital or from digital to paper. However, it is not so obvious when copying from paper to digital is taken into account, as long as this usage remains outside the sphere of DRM.

At EU level, as the situation is not uniform from one country to another and from one content sector to another, the Commission should first deeply examine these disparities before taking any political decision or initiative that could damage the publishing industry.

DRM

- Rightsholders must retain the freedom to decide if, when and how, DRM be implemented. DRM will afford customers a greater choice in content selection, flexibility, speed, ease of access and price precision.
- However DRMs, which correspond to the exploitation of exclusive rights, cannot deal with all practices permitted by exceptions, in particular for reproduction from paper to digital.
- DRM must be interoperable across borders and platforms.

Conclusion

From the individual rightholder's point of view **the fairest remuneration, is that which is paid directly to the individual rightholder by the user.** DRMs will allow such direct remuneration for the reproduction of digital works, whether such use is licensed on an individual basis or through voluntary collective licensing.

- Publishers should be able **to choose freely between individual and collective management in the digital area which can also be complementary and not exclusive to each other.**
- Levies may be progressively reduced, but this will depend on the outcome and the scope of the management via DRMs. Moreover, it will be up to the right-holders to pay for DRM related services and therefore to determine whether their use ends up being more profitable for them than remuneration through levies.
- In its impact assessment, the Commission should consider the different national situations and content sectors concerned before taking any political decision which may not consider these differences
- Publishers advise the Commission to ensure that the publishing sector is consulted in depth by its services on the content of this impact assessment

In 2006 agreed by the following Publishers' Associations:

FEP - Federation European Publishers

STM - International Association of Scientific, Technical and Medical Publishers

EADP - European Association of Directory and Database Publishers

FAEP - European Federation of Magazine Publishers