



Extended Collective Licensing:

Why Libraries Care, and Why You Should Too

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Good afternoon, I'm Stephen Wyber, manager for policy and advocacy at the International Federation of Library Associations and Institutions. We're a membership organisation, with over 1300 members in 140 countries around the world.

I'm going to talk a little about extended collective licensing, why we care, why now, and why we hope some of you may also.

This is based on a couple of research projects we've carried out, and I need to acknowledge all those who have helped make these happen. In particular, I wanted to thank Karolina Andersdotter, who launched it, and Paul Keller at Europeana, who has been doing a great advocacy job in Brussels around these issues.

And because it's the weekend, there'll be couple of outdated and slightly inaccurate memes as a form of entertainment. My responsibility.

A key reason to talk about this now, of course, is the Directive on copyright in the digital single market. This has brought ECL firmly back onto the agenda, as a solution to the problem of out of commerce works.

Because in the no-mans-land between the Recitals and Article 11, there's a chunk of the Directive that brings in a potentially highly dramatic step for libraries, archives, museums and other cultural heritage institutions.

Articles 7-9 offer a mandate to collective management societies, under certain conditions, to offer licences for non-commercial uses of works, even when the original rightholders are not members.

As far as the sales talk goes, this is a move that will provide a solution to the problem of out of commerce works.

The Commission makes the case for action in its impact assessment, highlighting the high share of copyrighted works in many European cultural heritage institutions, the restrictions on making this available – especially through aggregators.

The reasons for these volumes will be familiar – the 20th Century Black Hole created by the fact that so many works are subject to copyright, but not commercially available. These aren't new figures for anyone, but the reminder is powerful: music in general has a commercial life expectancy of 2-5 years, films 3.3 to 6 years, and literary works 1.4 to 5 years.

Of course commercial life isn't the only thing to take into account, but it's clear that copyright terms have little to do with pure cost-benefit analysis.

The proposal made by the Commission is Extended Collective Licensing, or at least Collective Licensing with an extended effect. In the impact assessment, it highlights a number of examples, mainly from northern Europe (plus Poland), which to some extent give libraries



and other cultural heritage institutions the possibility to digitise works and make them available online.

This is an attractive idea.

Collective licensing, when it works well, is a great way to simplify the lives of creators, cultural heritage institutions, and users. There are great examples out there. The costs of rights clearance for libraries can hit dozens of euros – and hours of work – per book or other material.

When there's more than one rightholder involved – which is pretty standard, given how many different forms of copyright there are, it gets worse. It's great to have a one-stop-shop.

Extended collective licensing goes further by allowing collecting societies to offer licences – and collect revenues – on behalf of non-members.

And again, when it works, it can be very powerful in terms of simplifying the lives of cultural heritage institutions. Norway continues to be a great example, where the Bokhylla programme means that all books published before 2000 are available online. The presumption of representation in Germany means that all books published until the late 1960s are available.

Of course, these come at a cost, and when a government is willing to properly fund culture and heritage, things are always going to be easier. Yet it is proof that this concept can work.

But just because it can work, this doesn't mean that it does, or will, work everywhere. However, this is far from always the case.

While collecting societies themselves are increasingly keen to promote extended collective licensing, a report by IFLA looked at the situation in countries where ECL has been implemented or discussed.

The findings – at least for libraries and archives – were that the success of ECL – or equivalent schemes, depended very much on a number of conditions being in place.

Among these, there a culture of collective management, and closely related to this, a sense of trust in the organisations managing rights. Strong governance and transparency are at the heart of this, for example around the way in which undistributed money is spent.

The \$15M saved up by the Australian Copyright Society in order to carry out political lobbying, or the disastrous property investments of the South African Music Rights Organisation, while potentially within the rules, do not inspire confidence.

A further condition is representativeness. A collecting society with limited membership is unlikely to have legitimacy in collecting money on behalf of everyone else. Especially as, thanks to the indiscriminate nature of copyright, we are all rightholders.



It's important that a large share of creators, in a relevant sector, are engaged, and not just the most successful few, otherwise ECL will primarily serve to shift money away from smaller (and non-commercial) producers into the hands of larger commercial ones.

Linked to this, our report also suggests that care needs to be taken not only to respect the rights of those who have put their works out under open licences. Without care, there's always a risk that ECL or unwaivable remuneration makes this meaningless.

And, being selfish, they also need to work for libraries and cultural heritage institutions. While our institutions may not be such a big deal for collecting societies, the actions of collecting societies are a big deal for cultural heritage.

So licences offered should be meaningful, and cover liability for library uses. They need to be reasonably priced, and subject to a balanced negotiation. For libraries, there is also a real issue about CMOs holding rights, but not wanting to open discussions, either because they don't have the mandates, or out of their own decision-making.

We also recommend that both rightholders – and libraries – should be able to opt out, and negotiate individual licences.

Yet of course all this is dependent on a CMO existing that can actually offer licences. And, this is the subject of the other bit of research I want to talk about.

Because the model set out by the Commission doesn't work where there isn't a collecting society in place to deliver.

Fortunately, this is also a much easier thing to verify. And this is what we sought to do – trying to build up a map of the extent to which CMOs exist across sectors in the EU, and whether they are offering, right now, the sorts of licences libraries need.

Not extended collective licences, but licences for works by their members.

Because the key assumption behind the Commission's proposal is that these CMOs exist. That there are enough organisations, in enough sectors across Europe, to make it possible to give greater access.

So we started by working with Kennisland to pull together a list of CMOs across Europe, and then surveyed our members in order to understand what sort of rights they offered.

As before, we weren't looking to find out about how representative or transparent CMOs are – simply where, and in what sectors, they exist.

This would offer us at least an idea of where one of the crucial conditions for the Commission's solution to work exists.

We looked at all EU Member States, as well as Norway, Iceland, Serbia, Australia and North America, and across eleven categories of works – books, newspapers, journals, magazines, photographs, artistic works, sound recordings, performance, composition, film and broadcast.



And we looked at whether licences existed at all, whether they were tailored to library and cultural heritage institutions, whether they allowed for on-the-premises access, for mass-uploads to the Internet, and for educational uses.

These are preliminary results, and we are still missing some crucial countries, not least France and Germany. We welcome any volunteers from these countries, as well as Portugal, Lithuania, Belgium and Hungary in order to help us complete the data. I'll of course make this available afterwards for anyone who wants to look through and make comments.

So to start with where CMOs exist, the news is perhaps relatively good, at least in the case of books, newspapers, journals, magazines, and sound recordings, the situation is relatively good. Crucially, of course, in over a third of countries for which we have figures, it simply isn't possible to get a collective licence for photographs, artistic works, performances, composition, film or broadcast.

This represents a real limitation on the possibility to give access to works in any form, paid or otherwise. In effect, the risk is that it is only the largest rightholders who licence, while the works of others are used without payment, or at all. Not a great move for cultural diversity in Europe.

As mentioned, we also wanted to look at whether licences that work for libraries and cultural heritage institutions. Critically, these are not your standard users. They are non-commercial, in general. The uses they encourage too.

Insofar as they are publicly funded, there's also a fundamental issue about how public money is being spent.

And here, we already see that there's more of an issue. Even for books – where 23 of 26 countries had CMOs offering licences in general, only 13 – half – have CMOs which offer licences tailored to CMOs.

In the context of the reform underway in the EU, this is already a concern. How can we expect CMOs to offer libraries licences for works by non-members when they are not even doing so for their members?

The situation is even more dramatic when it comes to whether licences are available for uploading works to the Internet. In the end, this is the goal of the reform – it's pretty central.

But right now, the situation isn't remotely close to delivering this. Less than one in five countries has a CMO offering licences for mass-uploading of work in all of the categories of works we're looking at. In the case of sound recordings, performances, compositions, film and broadcast, we're at less than 10%. These are some of the most evocative, most powerful materials we have. And they are likely to remain locked up.

Finally, we looked at education. A slightly more positive picture here, but still worrying. Because it's only in the case of books that at least half of countries have collecting societies offering licences for educational uses.



This is of course relevant not only for Articles 7-9 of the Directive, but also Article 4, where there's a chance that the existence of collective licensing will be a key factor in deciding whether the exception applies or not.

I've already therefore hinted about the main conclusion from this work, at least on the basis of the information we have – that we are far from a situation where CMOs exist in all countries and sectors, and that even where they do, they aren't offering the sorts of licences that libraries would be looking for.

As a solution, it's not a great start.

This is why we've been underlining that the Commission's original proposal is not enough, indeed that it only makes sense with a fall-back exception. One that kicks in when licences aren't available. As they clearly aren't as set out above.

Clearly, where it's possible, licences that offer genuine added value compared to exceptions and limitations are fair enough. But for those other situations, an exception will complement collective licensing with extended effect.

Such a step will help achieve the goals of the European reforms by promoting access to a more diverse range of cultural heritage. It will support the rediscovery of works that would otherwise be locked away, and of course give the possibility for rightholders to object to the inclusion of their works. Indeed, this could also incentivise the creation of collective management societies.

This is what the Parliament has given us, fortunately. But of course we need to keep up the pressure, both on the rapporteur to drive this forwards, and on Member States to accept it. Indeed, it's one of the bright spots in what the Parliament has done – hopefully refreshing in its way.

So, this is an ongoing project, but we're keen to get the arguments out there ahead of trilogues, given that it is clear that extended collective licensing for out of commerce works doesn't represent a solution, unless accompanied by an exception.