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FEP RESPONSE ON THE GREEN PAPER ON “UNLOCKING THE POTENTIAL OF CULTURAL AND CREATIVE INDUSTRIES”

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The Federation of European Publishers (FEP) is the association representing national book and learned journal publishers' associations from 26 European Union Member States and European Economic Area. Thus FEP is the voice of the great majority of publishers in Europe. Founded in 1967 FEP deals with European legislation and advises publishers' associations on copyright and other legislative issues.

General remark

The Federation of European Publishers (FEP) welcomes the Commission's Green Paper on *Unlocking the potential of cultural and creative industries* which acknowledges the significant contribution of cultural industries to the European Economy and the fundamental importance of taking into account those industries in all European policies.

We are pleased to have the opportunity to contribute to the European Commission's call for comments and look forward to being part of this fruitful debate on the “requirements of a truly stimulating creative environment for the EU's CCI's”.

Published works play a crucial role in our society at every level: educative, human and cultural. There are two aspects to its impact – cultural and commercial – which is protected in both legal and economic terms by copyright. The publishing industry is the key element in a vast chain of activities and professions, and is an important part of the economic, social and cultural development in the European Union and in the whole world.

As the largest cultural sector in Europe, the publishing industry already contributes a great deal to the creation of a single digital market for the written sector. The book industry is the largest cultural industry in Europe. The annual sales revenue of book publishers is approximately € 23.75 billion according to a survey conducted by FEP for the year 2008. European publishers are global leaders in their field and about 510,000 new titles were launched by publishers in 2008, whilst approximately 135,000 people are employed full time in book publishing.

FEP supports in particular the Green Paper's call for the application of article 167 TFEU (ex article 151 EC), which states that cultural aspects should be taken into account when implementing European law. Culture is handled mainly through policies of the European Union other than the cultural and audio-visual policy *stricto sensu*, and that consideration of "cultural specificity" (in terms of copyright, taxation, competition or the trading of services, etc.) cannot result from the application of these policies alone. Culture and the incentive for creativity must be at the centre of all EU policies.

Moreover, the EU must provide a favourable environment to the cultural industries in Europe if it wants to truly unlock its potential. This starts by ensuring that copyright is respected in all policies and at all level. The Commission mentions in this Green Paper that it will be working on three major policy frameworks including a Strategy on Intellectual Property and improvements on main areas. However, this is not taken sufficiently into account in the Green Paper.

Intellectual Property, and copyright in particular, is the vital legal infrastructure which underpins and protects all original acts of creativity in Europe and internationally, and the creative and cultural industries which depend on them. Without such a robust and flexible form of legal protection for authors and their publishers, there would be little or no protection for creativity. Equally importantly, there would be no incentive to authors to continue creating new works, and no incentive for publishers to keep investing the substantial amounts – and the substantial skills - necessary to publish them and make them available in a digital age. Any intellectual property system does, of course, need to be flexible and balanced, keeping in mind the needs not only of rightsholders but consumers too. This is why copyright and other intellectual property rights have limited terms and are rightly subject to exceptions in the interests of users such as libraries and educational institutions, who wish to access content for the legitimate purposes of their readers or students, within reasonable limits, in particular the Berne Convention 3-step test.

With all this in mind, all creative and cultural industries need an intellectual property system which works, and is actively enforced, so that piracy and cybercrime – which remain constant problems in the digital environment - can be dealt with expeditiously with fair but deterrent penalties. This is not only to protect the authors' creativity and the publishers' investment, but equally to encourage public awareness of the need to respect intellectual property rights, as they would their own property, in the continuing public interest.

FEP hence wishes to highlight that recognition of copyright is the basis for creativity and would like to remind the Commission that the current status quo of Intellectual Property Rights should be maintained. FEP took an active part in and contributed to the drafting of the recommendations of the platforms *access to culture* and *potential of culture and creative industries* set up by the European Commission following the European Agenda for Culture. We call for the follow-up of this Green Paper to better address the recommendations of the platforms pertaining to intellectual property rights.

Moreover, the issue of translation is fundamental for the circulation of European works and ideas, in particular those from small linguistic areas, and should therefore be a multilingualism policy priority. Furthermore, forepart from "best-sellers", books cannot be known outside their linguistic areas if they are not first discovered by a publisher of another country likely to purchase the rights to publish the version translated into his/her language. His/her interest can only arise if he/she is able to read the book in its original language and if he/she has the necessary budget for the acquisition of rights and the translation. For publishers in lesser spoken languages, such opportunities to sell rights are actually very rare.

Books are the fundamental vehicle of European culture, knowledge and languages, which the European Union (EU) seeks to promote. Books have a strong cross-border dimension considering the fact that each linguistic version can be sold all over Europe. Books are the vectors *par excellence* of cultural diversity within Europe and beyond whilst making a crucial contribution to education and culture in EU and developing countries.

However a large part of the publishing sector is still a nascent market in terms of digital publishing and it is paramount to keep on providing incentives for investment leaving time for the market to develop.

For those reasons, FEP calls for a real European book policy covering programmes adapted to this sector.

QUESTIONS

Putting in place the right enablers

- **New spaces for experimentation, innovation and entrepreneurship in the cultural and creative sector**

FEP welcomes the fact that the Commission in this Green Paper seeks to stimulate experimentation and innovation whilst increasing access to and use of ICT services. Yet, EU citizens are using ICT services because they can access content we help create and disseminate, and not for the simple sake of using these services. Therefore, we would like to remind the Commission that this should always be done bearing in mind that copyright must be preserved in the online environment. New business models should be encouraged with the maximum of experimentation, however under no circumstances should models favouring a diminution of remuneration (e.g. blanket licence models) be encouraged. This would endanger cultural diversity and lead to “best-sellerisation”.

The publishing industry already contributes a great deal to the creation of a single digital market for the text based sector. FEP members are very supportive of digitisation and its potential for the publishing industry and fully welcome the role played by these new technologies. Publishers want their books to be read by the largest possible number of readers without territorial restrictions and to be made accessible through all available channels, including online. Furthermore, they are contributing actively to the promotion of free movement of knowledge and innovation in the single market by providing high quality content and increasingly investing in new business models. Several of our members are currently engaged in digitising their catalogues. Gallimard in France for instance is digitising its entire catalogue and many others are on the same track.

However, we would like to address a number of points that the Commission should keep in mind when working on policies with an impact on the framework conditions for the publishing sector in a digital environment:

- to **support sustainable emerging business models by maintaining a stable legal framework in relevant areas such as data protection, defamation or IPR legislation.**
- to provide the **necessary tools in order to facilitate the enforcement of rights online and fight against online piracy** through legislation, proper implementation of existing legislation and fostering a dialogue between content providers and ISPs or other relevant stakeholders.

- to introduce an **extended collective licensing or mandatory management system for primary online uses is neither feasible nor desirable in the publishing sector**. Rightholders must have the freedom to choose how to manage their digital rights and they must have the possibility to withdraw them whenever they deem appropriate.
- to develop **public awareness campaigns** to encourage respect of copyright and related rights amongst readers, especially young readers, and stakeholders such as search engines or ISPs.
- to encourage **public-private partnerships with content providers** such as publishers.
- to have **reduced VAT rates (or VAT exemption where applicable) for electronic publications**. Disparate VAT rates in Europe between electronic and printed books are one of the hindrances for the development of content online. If discrimination between electronic and paper publications continues, it will inevitably have an influence on the nascent online publishing market and will seriously threaten the EU's stated objective of encouraging Europe to become a centre for e-commerce. VAT rates for online publications should be lowered while ensuring that printed publications are not put in danger of losing reduced rates.
- to promote **interoperability to enable different players in the e-book chain** to exist and of different technological systems and devices to interact.
- to foster the development of **consumer friendly and secure micro-payment systems**.
- To support the development of standards in digital publishing and in rights management by the publishing industry, in order to ensure the independence of SMEs.

Besides this, FEP's members are at **the centre of the construction of digital libraries**. Publishers have contributed to the various discussions on the establishment of European digital libraries. FEP has also been an active contributor to the development of **Europeana**. However we wish to stress a few crucial points that should be taken into account when developing policies pertaining to Europeana and digital libraries:

- The future of Europeana should continue to be based on the respect of IPR, open standards, market neutral solutions and working in collaboration with all stakeholders.
- The EU should keep in mind that regardless of the type of solution found for orphan works, a **due diligent search to be conducted in the country of publication prior to making available the work should be a default pre-condition**.
- In the case of out of commerce works, rightholders agree to support voluntary licensing schemes after prior authorisation of the rightholder for the digitisation and making available of the work by cultural institutions.

There are already considerable ongoing efforts to facilitate the identification of rightholders and works, including orphan works. A consortium of European national libraries publishers and reproduction rights organisations (RROs) including authors are currently participating in the EU project **Arrow (Accessible Registries Rights Information and Orphan Works towards Europeana)**. Arrow will facilitate access to the best rights information available from a predefined set of sources, to determine the rights status of any book, and to redirect libraries to the relevant clearing centres or to individual rightholders contacts. In the long term, Arrow aims to create a rights information infrastructure, based on open standards, to provide interoperability between different information sources. This can be seen as an alternative and more advanced solution to the idea of a single registry of rights information.

- **Better matching the skills needs of CCIs**

FEP calls for support of the publishing sector through setting up **pan-European training courses, an Erasmus-like programme for publishers**, and by developing specific qualifications for the

European publishing sector. In fact, better professional training for publishers and other occupations involving books, especially for those from countries with a restricted linguistic distribution, would enable professionals to acquire a better understanding of the complexities of the business and spread best practices in their respective countries.

To have **pan-European courses** that complement the existing training activities at national and local level is a crucial need for the sector for the creation of real European professional environment, and will help stimulate co-operation between publishers in the different member states, including in the fields of co-edition and exchange of translation rights.

This would improve the mobility of the book professionals in Europe, which however can be further promoted by a specific **Erasmus-like programme**. It is essential to stimulate mobility in the book sector as it will promote linguistic ability and increase the mobility of works. A programme tailored to the mobility of young professionals when they enter the sector would have long term effects.

Considering the increasing importance of digital formats, it is essential to support publishers' e-skills. It is hence necessary to provide training and support to publishers to enable them to better understand how to get the most from digitisation. Such an initiative could notably be undertaken through the set up of dedicated action plans within the **eContentPlus programme and the future Lifelong Learning Programme**.

- **Access to funding**

For publishers, the main issues relating to access to funding concern digitisation and translations (*please see below under 'mobility'*). As said above, digitisation has become an essential aspect of the book sector. However, so far the programmes of the Information Society only permit the financing of subsidiary activities of publishing. There is a clear lack of support for digitisation, in particular for the digitisation of backlists of publishers' backlists and the development of digital content. As a matter of fact, **eContentPlus only finances the enrichment of already existing content**, while publishing and migrations towards new media and the preservation of digital files have often turned out to be **more expensive** than one may think.

Moreover, **R&D on technologies for educational digital contents** (as being the object of subsidies through the eContent Plus, CIP (Cataloguing in Publishing) or even Lifelong Learning programmes) **is not highly developed among publishers** because the procedures are too cumbersome and costly for small and medium sized companies, and also because the operational effects are uncertain.

In practice, the EU could work towards **facilitating the financing of the development of digital and digitised content**, as well as helping with the dissemination of information about the **necessary open standards and training for publishers** to implement them. This could be done, for example, by duplicating opportunities for subsidies to develop educational digitised content of the Lifelong Learning programme to all publishers of digital content. Such an initiative could be inspired by the support granted by the French National Book Centre for the digitisation of books to be indexed and made available via the French Branch of the European Digital Library.

In terms of Digital libraries and Europeana, FEP suggests that a balanced approach should be reached by putting in place **a mixed system involving public contributions and private-public partnerships (PPP)**. Europeana and European libraries would benefit considerably from an increased plurality of private entities engaging in efforts of public domain works and PPP with rightholders for in-copyright content. Successful projects at national level such as Gallica in France, Enclave in Spain and Libreka in Germany could be either furthered at EU level or inspire other

projects. Links through Europeana to sites of publishers and other rightsholders to enable users to buy in-copyright content are the ideal way to achieve a private sector involvement.

Moreover, it is important to underline that there is a need to share information on specific challenges relating to the digital transition and educational publishing. Indeed, some educational publishers are faced with unfair competition because of state aids. For instance, Norway has submitted an anti-competition complaint against their government for subsidising a digital educational portal and pressuring schools to use this as their content source. These resources have allowed the National Digital Learning Area (NDLA) to establish an organisation for producing, developing, approving and distributing digital learning resources for upper secondary education and training. The publishing houses have been developing digital teaching aids for several years but could be foreclosed from a functioning market because of such state aid practices.

FEP and the International Publishers Association (IPA) are closely following this issue, notably through the IPA Educational Publishers Forum. Against this background, the EU should seek to encourage Member States to put an end to such situations of unfair competition based on subsidies of state publishers and to dedicate adequate budgets for the acquisition of digital content by public bodies, in particular educational and scientific works in collaboration with publishers.

As for the access to private funding, we appreciated the analysis of the Green Paper pointing out some crucial challenges that publishers are currently tackling. In particular, small and medium sized publishers (which are the vast majority of the sector) “face serious problems in obtaining adequate valuation of their immaterial, e.g. copyright assets”, as pointed out by the Green Paper. It is useful to add that in the publishing sector, SMEs suffer also because of the length of the production cycle, so that investments in new production lines, such as new series, in particular when they involve translations, return back very slowly, and this increases the financial pressure. Finally, the evolution of supply chains, with a significant trend toward concentration in few bookshop chains in some part of the EU, resulted for SMEs in longer terms of payment, which in certain markets can be more than 180 days from the sales.

For all these reasons, a guarantee system at European level, specific to the cultural industries, would help in reducing this problem, which often is the main inhibitor for innovation of SMEs, which do not have the necessary financial resources for funding their investment programmes.

National opportunities of this type are minimal in most of the member states, so a complementary role of the European Commission would be very much appreciated, in particular when investment programmes are addressed to key areas such as innovation in editorial programmes – in particular when including translations – or in commercial strategy, digitisation, investments in new production process and content management systems (essential to become “fully digital”), and internationalisation.

Local and regional development as a launchpad for global success

- **Mobility and circulation of cultural and creative works**

Much more than radio or television, books are clearly recognised, especially textbooks, as a fundamental tool for access to reading and language, these being the foundations for personal fulfilment, economic development and social ties.

Published works are excellent vehicles to take European culture to other countries and therefore enhance cultural diversity. Unlike other cultural sectors, the book sector benefits from the particularity of not multi-territory licensing, as European publishers acquire at least pan-European licences. This

market is already exploited by publishers with large linguistic areas who export substantial amounts of their production.

Within the European Union, a number of Member States considers that the goal of making books available to the largest possible public through the widest possible means of distribution is best achieved when legislative and fiscal authorities recognise the special nature of books by granting them privileged status in both printed and digital form.

However, there is a natural language barrier which prevents publishers from small linguistic areas easily exporting their books within Europe. For these, but not only for them, translation is essential. In order to increase the mobility and circulation of books within and beyond Europe, FEP strongly advocates increased support for translation, as well as more general instruments to support the promotion and the dissemination of books.

Main actions to facilitate the circulation of works and professionals at EU level:

1. Instruments supporting translation

A book is often attached to its language and its unique cross-border dimension within the EU is linked to common languages between Members States. Translations are the exclusive way to enable citizens to read literature from other European language areas.

One of Europe's core priorities is to promote multilingualism.

Translation is fundamental for the circulation of European works and ideas, in particular those of small linguistic areas. Best-sellers left aside, publishers interested in publishing a title from a different language area need to be able to read a manuscript in the original language or be offered a few chapters already translated into their language and then obtain the necessary budget for acquisition of rights and the translation of the full work. This also means that publishers from less spoken languages rarely have opportunities to sell rights. Besides, there are very few translators in less spoken languages and it is often useful for them to create networks allowing them to share their expertise.

Supporting the translation of European books means promoting their visibility beyond their natural language barriers, which European citizens will never be able entirely to totally overcome, and therefore creating a bridge between less spoken languages and their related cultures.

At present, the Culture programme provides for translations of literary fiction from a European language to another European language to be financed through a sum of €10.2 million for the period 2007-2013, which looks very weak in relation to the European scale of the EU objective to promote multilingualism.

Therefore, FEP calls for an **increase of funding for translation thereby permitting an emphasis on lesser spoken languages and on translation from and into non European languages**, and of **different genres of publications**, including non-fiction. Indeed, supporting the translation of works from non-European languages to European languages would allow European citizens to access works from around the world, while lightening the translation costs for publishers keen on contributing to the discovery of high-quality foreign works in a high-quality translation. Supporting the translation of works in European languages to non European languages seems essential in order to facilitate the circulation and promotion of works from small linguistic areas towards areas with a strong business potential.

Moreover, the EU grants for translation could be completed by the **introduction of support for sample translation or summaries**, for example, on the model of what the French National Book Centre proposes in its experimental programme for abstracts and excerpts of scientific publications, or of Cultures France for a selection of excerpts from novels written by young French authors within the framework of its review *French Fiction*, intended for book professionals abroad.

FEP calls for support for **translating written works, support for training – including life long learning – publishers in foreign languages** as well as the **creation of networks of translators**.

2. Instruments promoting and disseminating European books at intra-community and international level

For the time being, no EU specific programme is dedicated to the promotion and dissemination of books at European level. In this field, only some national governments play an important role and propose a number of initiatives to promote their own literature abroad. At EU level, it is vital to pursue and enhance such activities of promotion and dissemination of books to promote European culture both within and outside our continent and therefore promote our cultural diversity all over the world.

This could be achieved by providing **support for common stands** of European publishing houses at international book fairs. Such common participation would definitely contribute to creating new unique opportunities for publishers of small linguistic areas to showcase their books, sell the rights for their translation and thus allow their wider dissemination. Their promotion at international book fairs, for example, will certainly improve the mobility and exchange between book professionals.

This could also be achieved by **supporting authors to participating in cultural events in Europe and beyond**. FEP would like to put forward the idea of having a **European publishing office** in Europe but also in other countries (China, USA, etc.) in the same way the French have a International French publishing Office (Bureau international d'édition Française – BIEF). The BIEF New York office, The French Publishers' Agency, provides the services of a rights agency for English-speaking countries and it promotes French publishing.

In order to facilitate exchanges between authors and increase their mobility, the EU should work towards supporting the **development of cross-residence schemes for artists, creators, authors and translators** to facilitate exchanges within Europe and with third countries. This would initiate production, creation and talent development. The 'Akademie des Deutschen Buchhandels' in Germany is a non-profit organisation which offers training courses, seminars and organises special events linked to the book sector (www.buchakademie.de). They also welcome foreign writers. Basic courses and exchange programmes are offered by Mediacampus Frankfurt. Residence programmes are also offered by Literarisches Colloquium Berlin.

- **Cultural exchange and international trade**

Books are a fundamental instrument of **literacy, cultural diversity and development in developing countries**. In these countries, textbooks play a particularly important role as they often are often the only books on the fields of education and culture in the home. Although European aid for education and culture encompasses huge budgets (€ 12,1 billion in 2006), book-related projects are hardly ever funded from these sources.

In developing countries and emerging economies, the book chain includes a whole group of players, local or from European countries, who frequently work in partnership, especially through **co-editions**. And yet, even in the context of co-editions with local partners, European publishers, from language areas other than English and Spanish, have experienced in the last few years a decline in their exports to developing countries and encounter growing difficulties in understanding and benefiting from public aid systems.

There are a number of areas where the EU should offer bring its support in order to foster cooperation and exchange with third countries:

- Third countries usually lack local structures (a structured network of distributors and bookshops). The EU should then support the **development of local publishing activities, co-editions and rights transfers between local and European publishers**.
- In view of lack of training of local publishers and booksellers, the EU should **support and facilitate training initiatives for publishers and booksellers in third countries**, in accordance with their needs.
- Within the framework of policies on public reading, increase **financing for the acquisition of basic collections for libraries** in developing countries.
- Facing the challenges of digitisation in the medium/long term, such action should also **cover training of publishers in the production of digital content, financing of the acquisition of digital content by schools** and libraries, and **training of teachers and librarians in their use**.
- In general, third countries must be encouraged to adopt a favourable environment for books.

Towards a creative economy: the spillovers of CCIs

Education is a *sine qua non* condition for eradicating poverty as it is the competence of a people that leads to economic, social and democratic progress.

The spill-over effect of the book sector to society at large is undeniable, this is why measures should be taken to accelerate these and allow a larger part of the society to benefit from books.

Culture in general is an integral part of the development of peoples and societies, and it is not restricted to dance and music. In this context, books, which are very easy to deliver, have a crucial role to play to facilitate access for all, especially children, to information and culture.

Within the framework of the policy on education for all, FEP calls for increased support to acquire school, university and reference books by schools. It is useful at this point to emphasise the importance of the availability of textbooks, which are frequently the only books that enter the poorest homes. In this way, they give the population access to books in general, and in turn, to varied and accurate content and also improve the quality of education at all levels.

In addition, **action aimed at encouraging reading among young people and underprivileged groups** should be furthered. The Commission (DG INFSO) has set up a Media Literacy Task Force for the purpose of coordinating action in the field of training for young people, but unfortunately books have been allotted a very small role to play. It would be useful for DG EAC to set up a similar task force and to support the efforts made by the Börsenverein's subsidiary, the Frankfurt Book Fair, at its annual literacy campaign to review the best practices and establish links between the numerous national, regional, local and other initiatives. Among such best practices is *the World Book Day* programme in the United Kingdom which gets a (almost) free book into the hands of every child of reading age up to the age of 18.



Publishing is an interesting case study within the creative industries, as it is one of the only CCIs which has significant spill over into other economic areas. A book may spawn a film, theatre production, film soundtrack, merchandise, an increase in tourism to areas featured in the book, or perhaps a television series. All of these offshoots from the primary creative work will bring benefits to the EU economy, help to create jobs and help to further the reach of EU culture across the world. Supporting publishing and helping it to flourish will bring additional outputs from a variety of other industries as a knock-on effect.

A European cultural policy and the setting up of a favourable legislative and regulatory framework are necessary to support the development of the cultural industries, as a source of employment and growth.