



EUROPEAN
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To the attention of ***Ms Karyn A. Temple Claggett***

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Submission to the US Mass Digitisation Pilot Program

About EVA

EVA was set up in 1997 and represents the **interests of authors of fine art, painters, sculptors, video artists, illustrators, photographers, designers, architects, other visual authors and their European collective management organisations**. Our US partners are ARS and VAGA. ARS is managing the European repertoire in the US and is a founding member of OnLineArt, our members' International licensing body since 2002. The EVA societies are managing the ARS and VAGA repertoires in Europe. Our members are non-profit organisations and manage as **trustees** the rights of **close to 100.000 artists**. Our members manage so-called **primary use rights** such as the rights for reproduction and distribution of images in books, newspapers, calendars, postcards and any other print-media, for advertisement campaigns and merchandising products. Licences are issued based on **published tariffs** which are equally applied to all the licensees.

The assignments also cover the rights for **secondary uses such as reprography, private copying, cable retransmission and public lending managed for all visual authors**, not limited to fine arts but also for illustrators, graphic designers, photographers, photojournalists and all other authors of visual works which are primarily working under direct contractual agreements with an industrial producer, picture agency or publisher using the work for a primary use. It is an important additional income for all visual authors.

For fine arts also **broadcasting rights and the making available right** are managed. **Multi-territory licences** for website uses are issued by our members' International management tool **OnLineArt (www.onlineart.info)**.

EVA CMOs regularly conclude frame contracts with users which need the entire repertoire for their daily work such as **museums, archives, libraries and public broadcasters**. The terms of such contracts **facilitate the daily management by lowering the administrative burden**.



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Our members also manage the Artists' resale right which is harmonised within the EU by Directive 2001/84/EC. Regular communications with representative bodies of art market professionals in the member countries and agreements are facilitating the administration. We are also supporting the **world-wide recognition of the resale right** in a campaign which has the support of 38 international visual artists. (www.resale-right.org) Most recently, a **study by Professor Samuel Rickertson** on the need and feasibility was published at WIPO (30 June 2015).

EVA is an accredited observer of WIPO and a member of IFRRO. We are referring to the IFRRO submission and add aspects specific for the visual work sector:

The suggested ECL scheme for non-commercial educational or research uses maybe a useful tool, to improve access to works while safeguarding the rights of authors. However, it is important that the usages is clearly defined and limited to the extent needed, that authors may opt out at any time and that existing well-functioning models such as frame contracts with educational and cultural institutions are not removed. **We are opposed to all schemes that allow a small number of big industrial users such as online platforms to access and exploit visual repertoires without limits, against the rights of authors and on their expenses.**

Visual works come into play in different ways for any mass digitisation project of publicly accessible libraries and other cultural institutions because the works may appear either as stand-alone images or as embedded works where their legal status is however independent from the print media:

1. FINE ARTS

It is recognised that fine art works are regularly neither orphan, nor out of commerce. Stand-alone images of works of art in archives and collections should be subject to licensing by our members through OnLineArt. Our members have tailored terms and conditions for large scale users and are experienced in this field of activity.

Also fine art works in books, exhibition catalogues, news-papers and other print media are regularly identifiable and the rights of digitisation and making available of these print media would in general require a further license. CMOs always limit the licenses granted to the clearly defined primary use. Therefore in default of clear contractual agreements stating the opposite – and in case of exceptions applicable for primary use, the rights are with the authors and are managed by their CMO.

To also cover non-members the CMOs for the visual works are best placed to provide a management model which ensures the using institutions with legal certainty and the authors with guaranteed remuneration and protection of their moral rights.

2. ILLUSTRATION AND PHOTOGRAPHY

For illustrations and photography in books, magazines, journals and other print media the identification is more difficult than for the fine arts sector.¹ However, collective management is offering solutions which have already led to good results within the European Union.² They depend on the different traditions for collective management in the member countries. The ECL is a Scandinavian tradition and has its benefit in including all parties represented by national umbrella organisations. Our members in the Scandinavian countries, Denmark, Sweden, Finland, Norway and Iceland are part of the ECL schemes.

In France a collective management scheme for out-of-commerce books of the 20th century was introduced by legislation. A share of the remuneration is dedicated for image works in books and our French member ADAGP is taking part in the scheme.

Our German member VG Bild-Kunst has settled an agreement jointly with the text CMO VG Wort on one side and the national library on the other side. Supporting legislation was introduced in Germany. For the time being the agreement covers print media dating before 1966 and shall be subject to extension.

3. PRINCIPLES FOR COLLECTIVE MANAGEMENT

EVA took part in the stake holder dialogue on out-of-commerce works and signed the Memorandum of Understanding. The principles settled within the memorandum are highly valuable for any digitisation project of publicly accessible collections. It is recommending collective management solutions while leaving it open which model would be applied. The following principles are developed in good practise and would be indispensable for a successful pilot project:

- Legislation should introduce a **legal presumption that members and non-members are represented by CMOs**
- It must be guaranteed that the authors are receiving **remuneration**; CMOs should pay directly to authors; **CMOs already experienced and familiar in the field and accepted as partners nationally and internationally by the authors concerned are best positioned**
- The **authors may opt-out** at any time in particular in order to protect their moral rights
- The CMO taking part in a collective scheme must represent a **substantial number of visual authors** of the relevant work categories
- In case of CMO's with a mixed repertoire the **visual authors must be proportionately represented in the key decision taking bodies**
- The obligation to track, locate and pay to non-members should be limited to undertake **reasonable efforts**

¹ We jointly worked with CEPIC as our partner within ARROW – <http://www.arrow-net.eu/resources/arrow-plus-public-reports-deliverables.html>

² Recommendation 2.8, ARROW feasibility study, see fn 1



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EVA is grateful for being given the opportunity to contribute to this consultation. We are at your disposal for any further queries.

Brussels, October 9th, 2015

Carola Streul
Secretary General