

## Authors first

### ver.di\* position paper on the current copyright debate

#### 1. Capital and labour: the antagonism extends to creative industry

Authors and professional artists are the prime movers of cultural works and values in our society. In order to earn a living, they need their works to be exploited, and are therefore dependent on economically viable distribution channels. At present, these systems, whether digital or analog, are for the most part still being operated by those who have traditionally exploited creative works, for example publishing houses or broadcasters. The antagonism between capital and labour accordingly still applies in the cultural and media industries. However, the interests of users and authors coincide to a greater extent than in other fields: the reason is that authors' income and the profits that user industries make by capitalising on creative achievements will probably continue for the foreseeable future to be generated primarily by means of the existing systems. As far as these are concerned, it is in the individual interest of users on the one hand and media professionals and creative artists on the other, and in the shared interest of both sides, that works should be protected by copyright. From the authors' perspective this common ground exists only in so far as, and for as long as, it is ensured that their works will be exploited on fair terms.

The ver.di position is:

- The defence of copyright, an intangible asset in which creative work finds expression, is at the centre of the shared interest of media professionals, creative artists, and (fair) users.
- User industries cannot survive unless they distribute high-quality content/works and deal fairly with authors and consumers.
- Authors who produce high-quality content/works must receive a fair reward.
- The legislature is called upon to establish legal bases, on the analogy of the Employee Secondment Act, whereby agreed minimum royalties under the Copyright Contract Act could be enforced by public authorities or official agencies. Unlike the present legal basis, which is weak because it is predicated on individual rights, mandatory oversight of this kind, brought to bear on the royalties actually paid, would make for effective implementation.
- ver.di rejects exploitation systems that merely 'sell off' existing digital works dirt-cheap, without regard to the interests of authors. We maintain that media professionals and creative artists have to be treated fairly.

#### 2. Those who infringe copyright or knowingly permit infringements must answer for their conduct

When copyright is infringed, media professionals and creative artists incur a considerable economic loss. Depending on the reasons behind them, the extent of the infringements ranges from isolated incidents caused largely by ignorance to massive fraud for commercial ends. If a person uses copyright analog or digital works without permission or, in-

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deed, with intent to break the law, he or she must be called to account. This applies first and foremost to providers of illegal streaming or download platforms, file-sharing services, or similar techniques.

The ver.di position is:

- Every form of (deliberate) unauthorised use must be socially outlawed.
- Providers of illegal offerings must be liable to criminal prosecution or to be sued.
- Content and service providers who offer copyright works must be made to take responsibility for their actions. This should not apply to providers who are purely network operators. If providers offer copyright works at no cost – even though these should be subject to a charge – an authorised watchdog could, as a possible first step, draw their attention to the fact that they might be breaking the law. Should the unlawful behaviour continue or be repeated, legal remedies could be employed.
- The advertising industry and (electronic) payment systems must be prohibited from supporting illegal offerings by placing advertisements or handling payment procedures.
- The current glut of ‘cease-and-desist’ civil proceedings for copyright infringements is not the way to raise awareness of the need to treat copyright works with care. Consumers who infringe copyright should instead be made to pay a charge in proportion to the administrative outlay incurred.

### **3. Only fair users deserve to enjoy neighbouring rights**

ver.di is banking on the protection of online journalistic content and believes that paid content models should be safeguarded on the Web. The summer 2012 draft legislation on neighbouring rights along the lines called for by publishers is, in ver.di’s view unacceptable as it stands.

The ver.di position is:

- Neighbouring rights for publishing companies are acceptable if, and only if, publishers implement the journalists’ pay rates negotiated with trade unions and it is ensured that the actual authors receive a proper share – at least 50 percent – of the proceeds from neighbouring rights.
- In legal terms the above entitlement should be so couched as to be mandatory and transferable only to a collecting society.

### **4. Working towards fair financing models**

ver.di respects artists and writers who opt for free licence models (open source or Creative Commons). However, it does not believe that working for nothing or for charity, which only rarely affords a means of gaining a livelihood, can serve as a guiding principle for trade union action regarding collective bargaining, remuneration, and the Internet. ver.di’s central concern is to protect and stabilise paid forms of work for a living wage. In addition to their moral rights, the key issue is that authors should be free to determine how, where, for how long, and to what extent their works may be used: that is why they must be guaranteed a fair reward for the use of their works.

The ver.di position is:

- Self-determination as regards the use of works is a sine qua non of copyright. Royalties based on use are therefore preferable to all sweeping royalty models such as

culture 'tokens' or flat-rate payments, since these take no account of copyright and serve largely to negate ownership.

- The limits imposed under the American copyright system by the 'fair use' rules, which allow protected material to be used free of charge, are not sufficiently clear cut. The aim should be to provide educational establishments and charitable and social institutions with financial resources enabling them to pay fair royalties to authors.
- Scientific writers must not be obliged to publish their works free of charge under open access conditions. It should, however, be ensured that the entitlements accorded to them are not so comprehensive as to deprive them of that option. The existing limits need to be reviewed.

## 5. Certainty for consumers

Copying a work for private purposes (a 'private copy') is allowed by law unless the right-holder has taken technical steps aimed explicitly at preventing it. Under the current rules on private copies, consumers have to be informed by providers about the possibilities afforded to them when they obtain a physical copy of a work. In the case of end user licences for copies of works provided by non-physical means (downloading, for instance), that information is, for the most part, not properly spelt out. This is an aspect of end user licences that is still largely unregulated. Royalties for private copies are handled by collecting societies.

The ver.di position is:

- Comprehensible legal rules must be laid down for private consumers in order to establish the basis for fair dealings between private consumers and the authors of the works that they use.
- Payment models (applicable to, say, blank media, equipment, or IT services) must be such as to guarantee fair rewards.

## 6. No pitting of the old against the new

It is normally the case in Europe that works enter the public domain, and hence may be used free of charge, 70 years after the author's death. Up to that point authors and their heirs enjoy moral rights and can thus determine how, where, for how long, and to what extent a work may be used. To shorten the term of protection without any compensating arrangement, for instance along Creative Commons lines, would curtail those rights and pose the danger that works in the public domain might be used in competition with present-day works subject to charges.

The ver.di position is:

- The existing protected periods are reasonable and must remain in place. Shorter periods could not be accepted unless they were combined with a Creative Commons right (paying public domain). It would in general be desirable to regulate the treatment of works in the public domain.