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Mr Vincent Van Quickenborne
Ministre pour l'Economie et
la Simplification Administrative
Rue Bréderode 9
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Brussels, 26 November 2008.

RE: PROPOSED CHANGES TO THE BELGIAN COPYRIGHT LAW

Dear Minister Vincent Van Quickenborne,

We have been informed of proposed amendments to the Belgian Copyright Act (*Loi du 30 juin 1994 relative au droit d'auteur et aux droits voisins*), in particular changes to Article 22, § 1, 4° *bis*, and wish to express our concerns regarding some of them.

The International Federation of Reproduction Rights Organisations (IFRRO) is an international, non-governmental organisation representing 114 member organisations worldwide. Its membership includes national Reproduction Rights Organisations (RROs) on all continents, including in nearly all EU Member States, and national and international authors and publishers associations, such as the European Writers Council (EWC), European Visual Artists (EVA), European Federation of Journalists (EFJ), Federation of European Publishers (FEP), European Newspaper Publishers Association (ENPA) and the European Magazine Publishers Association (FAEP) on a European level.

Belgian members of IFRRO include the RRO Reprobel and the specialised Music RRO Société des Editeurs de Musique (SEMU). A RRO acts on behalf of both authors and publishers whenever the individual exercise of their rights is impracticable. These organisations began their activities originally in response to the need to licence wide-scale photocopy access to the world's scientific and cultural printed works, especially in education.

The proposed changes to the Belgian Copyright Act, as presented to us, seem to allow for the reproduction of complete musical works for the purposes of illustration for teaching and scientific research ("*la reproduction intégrale de partitions d'une oeuvre musicale individuelle, à des fins d'illustration de l'enseignement ou de recherche scientifique*"), without defining clearly what is meant by "illustration for teaching and scientific research". The wording may be interpreted to allow for the making of teaching material, for instance in education, and we would ask that the proposal clarifies its intention in that respect.

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Article 5.3a of the **Directive 2001/29/EC** enables a Member State to introduce an exception for illustration for teaching. We note that the proposal in Title X, Chapter 1 (*Economie*), Section 3 (*L'utilisation des partitions dans l'enseignement*), § 1 (*Modification de la loi du 30 juin 1994 relative au droit d'auteur et aux droits voisins*) acknowledges the Belgian government's obligations under European Union legislation and international treaties, which Belgium is party to. This includes an obligation to assess any exception or limitation against the so-called „three step test" as set out in **Article 5.5** as well as in **Article 9.2** of the **Berne Convention**, **Article 13** of the Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**), and **Article 10** of the 1996 WIPO Copyright Treaty (**WCT**). In the wording of Article 5.5 of the Directive 2001/29/EC, this means that: *"The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder."* (emphasise added).

The three criteria of the three-step test are **cumulative**; they must all be met in order to justify a limitation or an exception. IFRRO sees the exception in Article 5.3.a as a **narrow** limitation to the exclusive rights, aimed at enabling exactly what it reads: to illustrate, which is far from being the same as producing teaching material. To our understanding, copying for "illustration for teaching" does normally not include teaching material. Teaching material in whatever format, including multiple copying for classroom use, cannot and is not destined to be made under this exception, as it would definitely undermine the normal exploitation of these works.

The normal exploitation of a work, including of sheet music and other musical works, is the purchase of it. Any access or use of the work under a limitation risks entering into conflict with the normal exploitation, and must therefore be assessed carefully. This also holds true when a limitation is examined against **the legitimate interests of the rightholders**. In Belgium there is empirical evidence on the effect on the music publishing industry of access to, and then use, of work on the basis of appropriate licensing schemes. In the 1990ies there was hardly any music publishing industry in Belgium. The introduction of the legal licence through amendments to the Copyright Act in 1994 completed by the licensing by SEMU outside the scope of the legal licence, has resulted in the Belgian music publishing industry flourishing again. Also, the foreign rightholders have benefited from this. And so have the users, which have been provided with access to a broad range of copyright works legally.

The proposed amendments affect not only Belgian, but also foreign authors and publishers. We would therefore appreciate clarifications of the reproduction intended to be authorised under the proposed amendments, especially in relation to copying under an "illustration for teaching", and would, if appropriate and required, be pleased to expand on our views in a meeting at your earliest convenience. Also, if required, we would be pleased to offer translations into Flemish and French.

Respectfully submitted,

Olav Stokkmo
Chief Executive

Anita Huss
General Counsel