



**A Copyright Update For Europe
Interview with Sandra Chastenet, CFC**

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KENNEALLY: Calling for better choice and access to content within a well-functioning marketplace for copyright, the European Commission has undertaken an ambitious multi-staged effort to modernize copyright law for what it calls the EU's digital single market. In France, where respect for intellectual property rights has roots in the Renaissance, the collective management organization that represents text authors and publishers is seeking a legal balance for content creators and the public interest.

Welcome to Copyright Clearance Center's podcast series, I'm Christopher Kenneally for Beyond the Book.

Wherever lawmakers attempt so-called copyright reform, the work is arduous and time-consuming. In the European Union, stakeholders speak two dozen official languages and hail from 28 nations, making the potential for complications as many as the layers in a Napoleon pastry.

Sandra Chastenet is Director for Rights Holders and International Affairs for CFC, the Centre Français d'exploitation du droit de Copie. She holds law degrees from the UK and France, and is a board member for IFRRO, the International Federation of Reproduction Rights Organizations, where CFC and CCC are long-time members. She joins me now in CFC's office in Paris's Saint-Germain-des-Prés district. Welcome to Beyond the Book, Sandra, bonjour.

CHASTANET: Hello, Christopher, very nice to have you here in Paris.

KENNEALLY: Thank you, indeed, and a pleasure to be in your office because we're going to catch up on this notion of copyright reform for the EU, and particularly the digital single marketplace. But before we do that, I wonder if, for the audience to understand better about CFC, can you describe its role in French publishing, and particularly why you have this focus on copyright legislation?



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CHASTANET: Yes, sure. CFC is the French collective management organization, and it represents book, newspapers, magazines, journals, (inaudible). The mission is to manage reproduction rights, both in the analog and digital area. CFC collects around 52 million euros per year, and half of it comes from the educational sector, and most of it is distributed to rights holders, of course, creators, as well as publishers.

Beyond the management of rights, CFC promotes the interests of rights holders, and to ensure that copyright legislation, both at national and European level provide a secure environment for the creators and the publishers for them to flourish and to give us material.

CFC is very active to promote strong and effective copyright rules. It anticipates new legislation, sometimes it initiates legislation, as well. And CFC has a very close relationship with the Ministry of Culture in France. Even if CFC is a private company owned by rights holders, it is appointed by the Ministry of Culture, and we participate to all the dialogues regarding new legislation in France, and at European level, as well. Actually to come to the Kiron (sp?) directive, CFC has been involved at the very early stage. It actually began in 2013 with a stakeholders dialogue, which was initiated by Commissioner Barnier. The purpose was actually to find a contractual-based solution to the new uses of copyrighted works. The dialogue lasted for nearly two years, then there was different steps. There was consultations, there was impact assessments, and CFC was involved at all stages with European partners, national partners, and then we come to the Kiron directive.

KENNEALLY: It's important to outline for the audience those various steps along the way because there are many more that remain, but there's a lot behind all this. So where we are today in the summer of 2017 is because of those various stages and the consideration that many parties have undertaken. So the directive was proposed by the European Commission in September 2016, is under consideration by the European Parliament. It's something you have probably pored over very carefully. What has been the response so far to the current directive, as it stands, by CFC?

CHASTANET: Just to explain more about the context and the philosophy of the directive, the directive was proposed by Commissioner Oettinger on the 14th of September, 2016, and it was one of the 10 pillars of the new plan of the commission, led by Commissioner Juncker, the president of the European Commission. The goal of this directive is really to modernize copyright in the digital single market, and to harmonize uses across Europe.

It is a very interesting goal. It is an opportunity, actually, for CFC and for rights holders to have a more modern environment, but it also bears some risk. We could actually identify



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those risks very early. We knew the position of certain (inaudible) since 2103, actually, because it began with license for Europe dialogue when we saw that certain (inaudible) and certain users wanted to access all copyright material for free, and to use it for free. So we expected that it would come across the way during this process. CFC actually responded even before the directive was released because we had a lot of discussion with the European Commission, actually the people working there, the (inaudible) who was in charge of this directive.

We identify risk and opportunities, as I said. The opportunities is essentially the new rights that we could have with this directive, and the risk, and these rights were in the new limitations and exceptions that will come with this directive. So we had a strong focus on this aspect of the directive.

KENNEALLY: Those issues will be familiar to US and North American audience. They're the same issues that are of concern to publishers and authors and users in the United States, at least, and certainly the rest of the world. Where people are particularly focused here is on the legal issues, but it's about much more than that, isn't it? It's about innovation, it's about promoting economic growth and development, and also promoting the respect and preservation of culture. Tell us a little bit about those issues, why they're important. This isn't just a matter for lawyers.

CHASTANET: No, of course. The goal is to have a very well-functioning copyright market in the digital era. This is what we are looking for, what rights holders are looking for. But there are different ways to achieve it. In our view, this directive focus on digital uses because it is true that since the last directive, which was released in 2001, uses have evolved. Text and data mining, for example, it wasn't all around in 2001. In education, also, the uses have evolved. We know that nearly 60% of teachers are using digital material, and they are providing material to the pupils and students in a digital way. The way people access information, as well, has changed. Now they access news via platforms or is digital, so they read it on the mobile on everything. So we needed it, and of course, we want to create opportunities for creators, publishers, but also for users, for the industry, for startups. But this needs to have strong, effective copyright rules.

Maybe we can go to one of the subject of education?

KENNEALLY: Sure. So there were specific areas that CFC focused on, and has proposed changes and reconsideration of the language. You've already raised two of those areas. One is teaching uses, and the other is text and data mining. So tell us about the teaching case.



CHASTANET: Yes. This is our main focus because it impacts directly the (inaudible) and the rights holders. The directive propose a mandatory exception for digital uses in education. This is called exception for illustration for teaching. This exception is mandatory.

KENNEALLY: And when you say exception, just for the audience back home, as I would say in the US, this means that works can be used without permission, so there is no reason to ask for permission and there's no opportunity for compensation, so it would be free to use.

CHASTANET: Exactly. It means that the law has a right to use without asking permission. To understand the context, I have to say that a lot of European countries have licensing scheme in place to authorize the use of copyrighted material in education, but in the analog sector, as well in the digital sector. The revenue generated is crucial, both for creators and for publishers.

Just to let you know about context, the market of publishers, schoolbook publishers, for example, in France, they invest 10 million euros each year to create innovative tools and to create digital textbook for students – for pupils and teachers. They need to have a revenue from this investment. The royalties we collect is through license for the use of this material in education is very important for them. So this is one crucial point to understand. The industry of copyright generated a lot of revenues across Europe, so it's important to preserve it.

What is a threat with this directive? If we can access content without permission, without even paying any revenue, the impact on the publishing industry will be tremendous. We, unfortunately, have an example in Canada that you may be aware of. Since 2012 there has been an exception Quebec for education in Canada. Our sister organization, Access Copyright and (inaudible) Quebec (sp?) strive to maintain licensing scheme. It has been difficult because university interpreted this new law as a right to use any copyrighted material for free, and they didn't take the licensing anymore, and the revenue from the licensing decreased and then our sister organizations commissioned a study from PWC and it clearly showed that the impact on creators was very bad in term of revenues on publishers and particularly the small and medium-sized publishers. Some of them just disappeared.

In the end, what is the result is that there is less concerns created, not good quality concern because when you don't get what you deserve to, to create, of course, you put less effort in it. So in the end, I would say that the victim of it wouldn't be the publisher and the creators, even if there is an immediate effect, but in the long term, it is the users. So it is



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not productive to have this kind of legislation, so this is why strong copyright rules in education really matters for users.

KENNEALLY: And the users are the children, if you want to think of it that way. The other area that there's a call for a limitation and an exception is around text and data mining, and you've got a very clear position on that. Tell us that.

CHASTANET: Yes. Text and data mining has grown because of the technology, so it's really easy to access a lot content and to search it automatically. Again, this content is created by creators and made available by publishers, so it has a value. The exception for text and data mining has been claimed by researchers, at first. Publishers actually are not against making it available, and in most cases, it is already in the publishers licensing. That's seen, there is a proposal for an exception. What matters for us is not to prevent access to content. Of course we want to give access to content and to allow text and data mining. But as an exception, it has to be limited. And it has to be limited to certain uses for researchers. Our fear in this text is that certain people are asking to extend this exception to commercial uses, and the impact, if we extend the text and data mining uses, if we extend the exception to commercial uses will be publishers won't sell any more license, so it is very important to have a very limited exception.

Since we are talking both exception, which would remind that it is still important to have in mind that whenever there is an exception, there is a three-step test from the Berne Convention to respect, of course, and the proposal and the direction where we are going with those two exceptions – illustration for teaching and the text and data mining exception – doesn't really comply in some ways to this three-step test. While it is important for us in those exception, first to make sure that whenever there is a licensing scheme in place, it prevail over the exception because first, it existing a lot of member states and it is a very flexible solution that is in the interest of both creators, because they can authorize and get the revenue from the use of their work, and it is also easy for users because in most countries there is a one-stop shop to give those authorization, and there is somebody to listen to their needs, and those needs are reflected in the license.

In all cases, in all exceptions, what we are asking is first to override of the license. We want it to be compulsory, of course, what is new in this directive is the exceptions which are proposed mandatory, which was not the case in the 2001 directive, for example. There was just one exception which was mandatory. So it is important to have alternative solution, not to impose an exception on all member states.



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Q: When you speak of licensing, one of the areas that you're concerned is an innovative type of licensing that we are seeing being proposed across Europe, which is the so-called neighboring right, the publishers right. You can tell us about that because not only – in addition, I should say, to your role at CFC, you are the president, now, of the Press Database and Licensing Network Association, which brings together news publishers from across the world, particularly here in Europe. So what is the neighboring right, and why would that be important, given the digital scenario today?

A: Well, this is another important issue raised by the directive. Actually, it has been initiated to by press publishers, Newspaper Publisher Association in Europe, and the European Publishers Council, as well. The point was for press publisher to have more programs to be able to control and to monetize their content. Of course, it doesn't undermine the author's right. The journalist still have their rights, and they still give those rights through the contract they have with the publisher.

But this new right is very useful to have a more balanced environment with new way to use and distribute contents, for example, social media platforms are using press content and giving access to press content. In some countries it becomes the main channel to access news. So it is very important for publishers to have a legal tool to be able to claim a share of those revenue. It is again very important to have a sustainable price in every country, to mention free press, as well. It is very important, and we also see it everywhere, with fake news, for example, and everything, we say that to have legitimate, very serious press in each country is very important. We really need to preserve that.

This new right, which is supported by the France (sp?) also, is important. And it is a right that we have in those area, for example, the producer already have this kind of secondary right, this kind of neighboring rights. So it is important for press provision to have it as well.

KENNEALLY: And the final area that again is critical in the European context because of recent decisions in the European Court of Justice and elsewhere that have disenfranchised publishers from the kinds of compensation that copyright holders have enjoyed for the last 35 years.

Briefly for the listeners, really what this means is that publishers are shut out of the revenue stream that has come to them through copyright licensing. So you are calling – CFC is calling for a restoration of that. Tell us about that.



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CHASTANET: Exactly. Actually the Article 12 of the directive is a fix, and it's a result from, as you said, two cases from the European Court of Justice. One case, which was Hewlett Packard vs. Reprobel in Belgium, and the other one, which one in Germany, the Vogel case.

In both situation, the publishers were denied the right to compensation from the users within an exception. It actually comes from the 2001 directive. This directive lists some exception with a compensation to be implemented when there is a use of those work. But it also lists the rights holders who are able to claim the compensation, and the publisher were not, in this space. The others were, but not the publisher. So the European Court of Justice decided that it is not written, so the publisher honored rights holders who can have a right to the compensation.

It was important, in this directive, to restore the right of the publisher and to recognize them as rights holders being able to claim compensation for the use of their work within an exception. So this is what Article 12 is doing, and hopefully this article is supported by a lot of countries. It is very important, again, to have sustainable publishing industry across Europe.

KENNEALLY: If I can do a little free-lance lawyering here, because this is a very interesting contrast with the common law system that prevails in the US. Civil law really requires, as you say, exactitude. It enumerates all the people or individuals or organizations that can benefit or not benefit, or can be charged or not charged. Common law is wider and more open, and it allows for a judge's interpretation so that the right to vote can expand from men only to include women, and so forth, without having to change the law itself. In the civil law context, in the European context, you actually have to change the law to make that explicit, so that's why there's this concern. Do I have that right?

CHASTANET: Yes, exactly. This is, as you say, the European law is the written law, the civil law is – and if it's not explicit in the law, you will have to change the law. Of course, criminal law is very different. It is created by judges and it evolved in a more flexible way, maybe. This is the reason why it is important to have regularly a new directive or new legislation to adapt and to change. In this case, it was an opportunity to have this directive to include this fix in the European legislation.

KENNEALLY: It's a fascinating lesson in legal systems for the audience, and a thorough review of the issues surrounding this copyright directive. So Sandra Chastanet at CFC in Paris, tell us, finally, what lies ahead? What's the timeline and what should we watch for?



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CHASTANET: The current situation is that the directive, the proposal by the European Commission is under review by the European Parliaments. Four commissions review the text. The main one is Jury (sp?) committee, which was laid by (inaudible), who is a reporter for the Jury committee in the European Parliament, and the committee for culture, for industry, for civil liberties, and for the internal market also reviewed this text. Each committee proposed amendments on the text proposed by the European Commission.

The fear for us is that a lot of amendments actually went in the wrong way. A lot of amendments made the exception, for example, the registration for teaching of the text and data mining exception wider than what they were in in the initial proposal. So it is even more challenging for us because our job is to explain member of the parliament what is at stake for the rights holders and what some of those opinion, the main one, people may know because she initiated the report on copyright is Juliet Rader (sp?) from the Green Party. She's very against copyright, and she claims that the text and data mining should be larger and should be for commercial use, for example. She claim that the exception for illustration for teaching couldn't be override by licensing. In some cases, a lot of members of Parliament even deny the right to have a compensation.

In the proposal of the commission, the compensation is optional among the three exception. We asked to have a mandatory compensation because it is fair that there is a remuneration for the use of copyrighted work. In parliament, some of the member of the parliament are asking not to have any compensation. They just delete the possibility to have a compensation, or they're subjected to extraordinary condition. So it is a crucial phase for us, and we are very actively being member of the parliament at CFC level, of course, at info (sp?) level, also. We will see what comes out of this discussion in the parliament.

The final report from the Jury Committee is due to be voted in October, normally on the 10th of October, and hopefully we won't have so bad amendments. But nothing is decided yet. There is still a lot of discussion.

And then after the parliament, of course, the member states will come in the dialogue, and it is a consult (sp?) level. We will have again a lot of discussion and we are already preparing them, lobbying our government, as well. It will all end with (inaudible) again, the commission, the parliament, and the council will have to agree on the final text. We can envisage to have a final directive maybe for 2018. It really depends on each stage because some stage are postponed regularly, so we will see when we will have it.



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KENNEALLY: It's exhausting work, I'm sure, and even though it sounds like a long timeline, I don't there's much opportunity for you to rest at all during any of this.

CHASTANET: Yes, we are very involved and very active, so we are working a lot. We have a momentum, we cannot miss it, because we don't know when the next directive will be. The last one was 2001, as I said, so this one is very crucial, and the stake are really important for the economic and they are important for users. Really it is important to make people understand that copyright is not a barrier at all. It actually enable creators to create and publishers to make content available. Without that, you won't have any concern. So it's really a crucial moment for us to make this understand by people.

KENNEALLY: Well, we've been speaking today in the Paris offices of the Centre – I have to take it again because I'm trying to find it, where is it here? I want to get the name right, there we go.

We've been speaking today in the Paris Offices of le Centre Français d'exploitation du droit de Copie with Sandra Chastanet, Director for Rights Holders and International Affairs. Merci bien, Sandra.

CHASTANET: Merci beaucoup.

KENNEALLY: Beyond the Book is produced by Copyright Clearance Center, a global leader in content management, discovery, and document delivery solutions through its relationships with those who use and create content, CCC and its subsidiaries, RightsDirect and Ixxus drive market-based solutions that accelerate knowledge, power publishing, and advance copyright. Beyond the Book co-producer and recording engineer is Jeremy Brieske of Burst Marketing. I'm Christopher Kenneally. Join us again soon on Beyond the Book.

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