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**Violations of the Berne Convention rights of US and other non-EU authors
from Articles 7-9 on "out of commerce" works
and Article 9a on "Extended Collective Licensing"
of the proposed EU directive on copyright in the digital single market**

These provisions would sweep rights to many US works – including rights already being actively exploited by US writers – into **de facto compulsory licensing** for only nominal remuneration (or no remuneration at all, under a “fallback exception” if no license is available), and give EU entities effective control over their global online digital distribution, interfering with the normal exploitation of these works and violating the rights of US authors pursuant to the Berne Convention.

They provisions include a **sham exception for non-EU works**, any amount of which could be included as long as it is bundled with EU works into a majority-EU corpus.

They also include a **sham opt-out** designed to be so burdensome that no individual will be able to opt out, since opt-out could require separate opt-out in each EU member state and itemization of each work (increasing difficult with increasingly granular publication of smaller content elements).

In addition, under these provisions – as we have already seen in the national laws in the UK, France, Germany, and Nordic countries on which they are modeled – works that have been included in printed books would be **deemed "out of commerce" solely on the basis of local equivalents of "Book In Print"**, without regard for other (often non-ISBN) editions or formats or any of the myriad new forms of exploitation of rights to digital use of works previously published in print.

There is no market failure or need for compulsory licensing of works in out-of-print books. **Rights to digital re-use of “out of print” works are a significant and growing source of income for US writers.** US authors need local distributors or licensing agents to make physical copies of their works available overseas. But the Internet allows US authors to distribute digital copies of their work to readers worldwide, directly or through US-based platforms and services. Online payment platforms enable US authors to receive payments easily from readers overseas for subscriptions or downloads. Online advertising can generate revenues for authors from readers worldwide, without those readers needing to engage in any transaction with the author or to identify or find the author.

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