

**RESPONSE OF MICROSOFT TO THE  
EUROPEAN COMMISSION'S COMMUNICATION ON  
CREATIVE CONTENT ONLINE IN THE SINGLE MARKET**  
29 February 2008

Microsoft welcomes this opportunity to comment on the European Commission's Communication on Creative Content Online in the Single Market.<sup>1</sup> This sector is expected to quadruple in size between 2005 and 2010, as the Commission points out. EU and national policies on the issues affecting content online not only have an impact on this particular sector, but also on the broader technological progress and competitiveness of Europe as a whole.

Microsoft has more than 70 local offices and subsidiaries in 61 countries, employs more than 13,000 people, and delivers software-related products and services in more than 139 countries Europe, the Middle East and Africa. Much of its business activity is across internal EU borders. Microsoft offers creative content and services both offline and online. Microsoft is also the developer of many of the technologies and devices widely used for the delivery and enjoyment of online content, including Microsoft Windows and Windows Media Player, PlayReady Digital Rights Management, Windows Mobile, the Xbox, the Zune and Microsoft TV products.

### **Executive Summary**

In summary, with respect to the issues raised by the Commission in its Communication:

#### **Digital Rights Management**

- *DRM is a value-neutral technology that is only one part of the larger, more complex issue of "content portability", that is, how consumers will acquire and enjoy copyrighted content in the digital environment.*
- *Efforts in this area should, as the Communication does, focus on the issue of content portability, rather than focus solely on "interoperability" of DRM.*
- *Given the dynamic and emerging nature of this marketplace, governments should ensure that all stakeholders have the choice to provide, evaluate, accept or reject a variety of business models and delivery paradigms, including those that might offer lower prices or improved reliability in lieu of broad content portability.*
- *"Interoperability" between different types of content or services is best developed through industry-led initiatives rather than regulation.*
- *Transparency is the key for the consumers to make an informed choice in this environment. Consumers deserve to know in advance what content, device and usage options they are buying.*
- *Any labeling requirements should be industry-led and easy to understand.*

#### **Multi-Territory Rights Licensing**

- *In general terms, content licensing should remain at the full discretion of the rights owner.*
- *Any restrictions or dividing up of membership or territories among collecting societies unjustifiably impedes EU-wide licensing of online content.*
- *A Parliament and Council Recommendation may be helpful but not dispositive for encouraging multi-territory licensing.*
- *Issues of licensing and preferred business models for the audiovisual sector are best left to that industry itself.*

<sup>1</sup> Microsoft responded to the Commission's initial consultation in October 2006. See [http://ec.europa.eu/avpolicy/docs/other\\_actions/contributions/microsoft\\_col\\_en.pdf](http://ec.europa.eu/avpolicy/docs/other_actions/contributions/microsoft_col_en.pdf).

### **Legal Offers and Piracy**

- *Piracy plagues the content industry, representing a \$39.6bn worldwide problem for the business software industry alone.*
- *Digital piracy damages legitimate online commerce, and causes wider economic and societal damage.*
- *Industry and government-led publicity campaigns can improve public awareness of and respect for copyright.*
- *Cooperative anti-piracy actions can effectively promote awareness and deterrence.*
- *Voluntary, cross-industry cooperation and agreement are needed to tackle online piracy.*
- *Online filtering can be workable and helpful in some areas of online activity, particularly hosted sites like User Generated Content (UGC) video services.*
- *Broader filtering of general internet traffic involves more difficult questions of technical feasibility and economic reasonableness that need to be examined closely with full participation of all relevant stakeholders.*
- *Microsoft requests to participate in the Content Online Platform.*

### **Digital Rights Management**

As Microsoft described in response to the Commission's previous consultation, Digital Rights Management (DRM) systems involve a range of competing technologies that identify and describe digital content protected by intellectual property rights. DRM provides for the management of rights and payments, and helps to prevent unauthorized use. It therefore provides the technological means for enabling a wide variety of new distribution models for online content. DRM is value neutral – used at the discretion of the rights owner and able to accommodate a variety of distribution models in order to address the competing needs of different content creators.

**(1) *Do you agree that fostering the adoption of interoperable DRM systems should support the development of online creative content services in the Internal Market? What are the main obstacles to fully interoperable DRM systems? Which commendable practices do you identify as regards DRM interoperability?***

- ***DRM is a value-neutral technology that is only one part of the larger, more complex issue of "content portability."*** The Communication wisely seeks to address the important questions surrounding "content portability", i.e. whether and how consumers will acquire and enjoy copyrighted content in the digital environment. In considering these issues, it is important not to be overly focused on whether devices, content and DRM systems interoperate. This is only one technical part of the content portability issue, which involves the intersection of many different stakeholders, technologies, laws and other facets of a new, dynamic and emerging marketplace.

Content portability is an issue around which a multi-party dialogue is taking place among consumers, service providers and content owners in the digital entertainment marketplace. The expectations of each of those stakeholders can be roughly summarized as follows: Consumers expect low-cost, convenient, modern access to entertainment content in digital formats that are easy to use; service providers expect fair return on investments in technology, infrastructure and brand marketing that provide value to both consumers and content owners; and content owners expect that their copyright will be respected and they will earn a fair return on their investment in creating and licensing that content. The issue of content portability

should be viewed in light of this dialogue, and analyzed with the goal of meeting the expectations of all of these stakeholders.

It is Microsoft's view that governments should work to preserve as much choice as possible for all stakeholders in how they seek to participate in that market dialogue, including on the issue of content portability. For example, consumers should be free to demand (and often are demanding) that service providers and content owners provide content in formats that are highly portable and easy-to-use. As the Communication notes, in the music download marketplace, this demand is being met more and more through the sale and distribution of DRM-free digital music files. This is a positive development, because it is being done voluntarily with the consent of the music copyright owners in collaboration with the music services, to the benefit of consumers.

In the same way, in other online content markets, service providers and content owners should also have the freedom to come to the marketplace with a view on content portability. This includes services offering content that meets consumer expectations and social preferences in different ways. The offerings may meet content portability demands in a certain way, may offer portability for a premium, or may emphasize simplicity and ease-of-use over portability of content. Whether or not consumers accept these offerings is for them to decide in the marketplace—the important role for governments is to allow that marketplace to facilitate that exchange between consumers, service providers and content owners on these issues.

- ***“Interoperability” between different types of content or services is best developed through industry-led initiatives rather than regulation.*** The reality of multimedia services in Europe is an increasingly diverse multi-platform environment, where different types of content over time will be viewable or playable on different devices. Industry is working together in fora like the Digital Interoperability Forum (DIF)<sup>2</sup> to develop market-driven solutions to interoperability that allow the industry to build on existing investments and infrastructure, maintain compatibility, and implement competing technical and commercial offerings in order to address these variations. This industry-led approach is the only practical way to proceed. That said, some appreciation must be maintained for the inherent differences between different services and device offerings for different types of content. A sports program is unlikely ever to play on an eBook reader!

Note that the mandated “DRM interoperability” of the sort found in the French implementation of the 2001 EU Copyright Directive is precisely *not* the right approach to dealing with complex market questions of content portability. Robust competition between DRM-enabled services, along with light regulatory regimes that encourage cross-industry cooperation between makers of DRM systems, are the most effective ways governments can encourage greater interoperability. Any interoperability efforts must respect the inherent right of creators of music, films and other content providers as well as DRM developers to determine how and to whom to distribute their works. Unwarranted regulation can, in particular, violate the intellectual-property rights of DRM inventors and creators under EU and international law, and remove incentives to create and improve DRM.

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<sup>2</sup> <http://www.difgroup.com/>.

(2) ***Do you agree that consumer information with regard to interoperability and personal data protection features of DRM systems should be improved? What could be, in your opinion, the most appropriate means and procedures to improve consumers' information in respect of DRM systems? Which commendable practices would you identify as regards labelling of digital products and services?***

- ***Transparency is the key for consumers to make an informed choice in this environment. Consumers deserve to know in advance what content, device and usage options they are buying.*** As noted above, Microsoft believes all stakeholders should have freedom of choice in the online content marketplace. For consumers, this requires that they are free to reject services and products that do not meet their needs, including where they are dissatisfied with the content portability provided. In order for consumers to make informed choices about such products and services, it is important, as the Communication emphasizes, for service providers and content owners to provide clear, understandable information about what a consumer can and cannot do with the content they receive. [For example, where a device can only acquire content from one service and with the software application provided in the box, the retail packaging should clearly indicate that to the consumer.] We look forward to participating in future discussions around improving consumer information about whether and how products and services provide content portability so that they can make an informed choice about such offerings.
- ***Any labeling requirements should be industry-led and easy to understand.*** Industry-led labeling requirements are the norm for a wide range of products and services in various industries, such as the PEGI (Pan-European Game Information) labeling requirements for video games.<sup>3</sup> Such generic requirements may not be necessary for online content-delivery services—market offers are quite diverse, and consumers seem to find out what they are buying in different ways. But if more standard labeling is implemented, it most certainly needs to be market-led.

When it comes to “commendable practices”, the PEGI implementation of “clear and comprehensible” symbols is a very good example. The record industry body IFPI also developed an early “copy control” logo by which record labels could indicate to consumers that CDs were not freely copyable.<sup>4</sup> Sheer simplicity of this sort is the key to ensuring that consumers understand any product or service labeling.

(3) ***Do you agree that reducing the complexity and enhancing the legibility of end-user licence agreements (EULAs) would support the development of online creative content services in the Internal Market? Which recommendable practices do you identify as regards EULAs? Do you identify any particular issue related to EULAs that needs to be addressed?***

- ***EULAs are widely used, detailed legal agreements that vary by company, product and country. They do not require particular changes for online services.*** Unlike product labels, which can be simple and intuitive, EULAs provide the details of the legal relationship between any user—corporate or individual—and the service or product provider. They have been widely used with business and consumer

<sup>3</sup> See <http://www.pegi.info/en/index/id/176/>. Microsoft and most other video game producers are part of the sponsoring group ISFE and support PEGI.

<sup>4</sup> See Press release, IFPI announces new optional copy control symbol for CDs (17 Sept. 2002), [http://www.ifpi.org/content/section\\_news/20020917.html](http://www.ifpi.org/content/section_news/20020917.html). The logo looked as follows:



software products for many years, and are now widely used online by a large number of industries and content providers. There is nothing in particular about online content services that would warrant a change in settled EULA practices. Indeed, the Member States' insistence in applying their own domestic consumer-protection laws to online services<sup>5</sup> means that there is actually little practical scope for harmonizing or greatly simplifying such EULAs.

(4) ***Do you agree that alternative dispute resolution mechanisms in relation to the application and administration of DRM systems would enhance consumers' confidence in new products and services? Which commendable practices do you identify in that respect?***

- ***Alternative dispute resolution mechanisms might be helpful in some situations, so long as their scope is voluntary and realistic.*** As with other areas of commerce, there may be some areas, such as misleading product marketing or product refunds, where consumers and industry could benefit from industry-led voluntary ADRs. Any idea that DRM-based products or services could be redesigned through ADR or any other mechanism is ill-advised and should be firmly ruled out.

(5) ***Do you agree that ensuring a non-discriminatory access (for instance for SMEs) to DRM solutions is needed to preserve and foster competition on the market for digital content distribution?***

- ***No different rules for SMEs are needed in relation to DRM.*** There is no evidence of any discrimination against SMEs in this market. Technology or content providers that do offer their DRM-based solutions to third parties do not do so in any way discriminatorily to SMEs. Microsoft certainly offers Windows Media DRM to anyone that wants to use it, on reasonable and non-discriminatory terms. As to technology and content providers like iTunes that use "non-interoperable" DRMs, there is likewise no discrimination: Neither large companies like Microsoft nor SMEs can get a license to use the Apple DRM. This is simply market competition between competing business models, and does not warrant interference or regulation.

### **Multi-Territory Rights Licensing**

- ***In general terms, content licensing should remain at the full discretion of the rights owner.*** Software, publishing, phonogram, music and even film licensing in many cases can already be negotiated centrally for multiple territories. Multi-territorial licensing should be encouraged as a matter of good business practice and convenience. Rights societies should have the ability to facilitate competitive multi-territorial licensing.
- ***Any restrictions or dividing up of membership or territories among collecting societies unjustifiably impedes EU-wide licensing of online content.*** Territory and membership limitations among European authors' rights societies have made it difficult for internet-based music services in particular to obtain pan-European rights clearances. Press reports indicate that the European Commission has challenged these limitations, which is entirely appropriate.

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<sup>5</sup> See, e.g., Art. 3(2), Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market: "This Directive does not concern ... rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State."

- **Private-copy levies should be phased out.** Private-copy levy schemes, by implying greater “rights” to copy than the consumer has actually bargained and paid for in the digital environment, undercut new market-based online options, rendering some business models impossible and others less viable and less attractive. This undermines the very usage and pricing flexibility that the digital revolution was meant to promote, and instead promotes a return to one-size-fits-all content offerings of the past. Non-market levy systems simply must be phased out.
- (6) **Do you agree that the issue of multi-territory rights licensing must be addressed by means of a Recommendation of the European Parliament and the Council?**
- **A Parliament and Council Recommendation may be helpful but not dispositive for encouraging multi-territory licensing.** Industry-led agreements, particularly ones encouraged by the Commission in the Content Online Platform, are vital. Competition cases may be needed to address any particular abuses by the collection societies. New legislation may be needed to make progress in phasing out private-copy levies.
- (7) **What is in your view the most efficient way of fostering multi-territory rights licensing in the area of audiovisual works? Do you agree that a model of online licences based on the distinction between a primary and a secondary multi-territory market can facilitate EU-wide or multi-territory licensing for the creative content you deal with?**
- (8) **Do you agree that business models based on the idea of selling less of more, as illustrated by the so-called "Long tail" theory, benefit from multi-territory rights licences for back-catalogue works (for instance works more than two years old)?**
- **In response to questions 7 and 8: Issues of licensing and preferred business models for the audiovisual sector are best left to that industry itself.** Any other parties would seem ill-suited to second-guess the market.

#### Legal Offers and Piracy

- **Piracy plagues the content industry, representing a \$39.6bn worldwide problem for the business software industry alone.** In the business software sector, the industry estimates that 35% of business software in use worldwide from offline and online sources (36% in the European Union) is infringing, at a value of approximately \$39.6 billion—\$11.0 billion in the European Union alone.<sup>6</sup> The games-software sector estimates its worldwide losses from piracy at €2.5 billion, not including online piracy.<sup>7</sup> The other content-specific sectors publish piracy statistics annually.
- **Digital piracy damages legitimate online commerce, and causes wider economic and societal damage.** Digital piracy—unauthorized, unpaid electronic copying and distribution—competes unfairly with and undermines the business models for legitimate online content distribution. This kind of piracy, no less than physical

<sup>6</sup> IDC/BSA, Global Software Piracy Study (2007), <http://w3.bsa.org/globalstudy//upload/2007-Global-Piracy-Study-EN.pdf>.

<sup>7</sup> <http://www.isfe-eu.org/index.php?PHPSESSID=1rpvquvgallqk60ka6bju85l87&oidit=T001:a31bfad925b6f3ba0336731398e36fef>

piracy and counterfeiting, brings lost legitimate sales, lost taxes, lost jobs in upstream and downstream industries and lost innovation and competitiveness.<sup>8</sup>

**(9) *How can increased, effective stakeholder cooperation improve respect of copyright in the online environment?***

- ***Industry and government-led publicity campaigns can improve public awareness of and respect for copyright.*** The software and information-technology industry associations of which Microsoft is a member, as well as industry associations in every other content sector and some governments, conduct regular intellectual-property as well as anti-piracy awareness campaigns. We view these as vital for making the public aware of legitimate products and services, promoting respect for copyright, and deterring illegal use of copyright material. The business software industry, for example, provides cyberguides for parents and students, and a Guide to Software Management for businesses.<sup>9</sup> Microsoft itself provides on its website practical information for consumers about copyright, licensing and piracy, including information about *How to Tell* whether one is using licensed or illegal software products.<sup>10</sup> Some of the most effective campaigns of this sort are jointly developed between industry and government.
- ***Cooperative anti-piracy actions can effectively promote awareness and deterrence.*** The content-based industries increasingly are cooperating in investigating and taking action against particular cases of online piracy. Cross-industry discussions in such groups as the ICC's Business Action Against Counterfeiting and Piracy group (BASCAP) have highlighted how the infringers' techniques and distribution mechanisms are exactly the same no matter what infringing content is being offered; some of the same sites even offer multiple types of infringing content. Note that data-protection authorities in some countries (such as Belgium) have taken the position that the law restricts rights owners' ability to collect evidence online and take legal action against online infringement. Such a rule not only violates the WTO TRIPs requirement that rights owners must have effective means to take civil as well as criminal action to address infringement, it sends precisely the *wrong* message to online infringers as to respecting copyright.

**(10) *Do you consider the Memorandum of Understanding, recently adopted in France, as an example to followed?***

- ***Voluntary, cross-industry cooperation and agreement are needed to tackle online piracy.*** Issues of online piracy are technically diverse and complex, and involve a host of content providers, telecommunications service providers and other stakeholders. The negotiating group for the particular Memorandum of Understanding (MOU) in France did not include all relevant sectors, particularly the software sector, and the MOU's future progress is not yet clear. But the apparent good will of those sectors that were represented in its negotiation illustrates the type of voluntary, cross-industry dialogue that is the only way to address these issues effectively.

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<sup>8</sup> See IDC/BSA, Expanding the Frontiers of our Digital Future: Reducing Software Piracy to Accelerate Global IT Benefits (Dec. 2005), [http://www.bsa.org/idcstudy/pdfs/White\\_Paper.pdf](http://www.bsa.org/idcstudy/pdfs/White_Paper.pdf).

<sup>9</sup> <http://www.bsa.org/country/Tools%20and%20Resources.aspx>.

<sup>10</sup> <http://www.microsoft.com/piracy/default.msp>.

**(11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?**

- **Online filtering can be workable and helpful in some areas of online activity, particularly hosted sites like User Generated Content (UGC) video services.** Microsoft has joined a coalition including CBS Corp., Dailymotion, Fox Entertainment Group, MySpace, NBC Universal, Veoh Networks Inc., Viacom Inc. and The Walt Disney Company which jointly developed a set of Principles for User Generated Content Services.<sup>11</sup> The Principles include developing and implementing identification and filtering technologies that would check user content for illegality before it is posted. These Principles, attached as Annex I, are an example of where voluntary cross-industry dialogue can make progress on these issues.
- **Broader filtering of general internet traffic involves more difficult questions of technical feasibility and economic reasonableness that need to be examined closely with full participation of all relevant stakeholders.** The Olivennes report in France marked the agreement of the participating service providers and content industries to investigate broader identification techniques and filtering options to deal with infringing content on the internet more generally.<sup>12</sup> In the discussions to follow, there will be real questions of technological feasibility that must be honestly addressed and resolved, in particular whether filtering systems that work in UGC sites or in smaller-traffic areas like university networks can realistically be scaled up to handle an entire ISP's or country's traffic without diminution of service or raising broader policy issues. The impact of the encryption of infringing traffic also needs careful examination; present filtering technologies are virtually useless on encrypted traffic. Moreover, broad filtering systems will not be cheap. Questions of the economic reasonableness of any proposed solutions and of the appropriate party(ies) to pay the costs of such systems must be dealt with frankly and fairly. Again, these simply underscore the importance of truly representative cross-industry discussion and cooperation on such matters.



## Conclusion

- **Microsoft requests to participate in the Content Online Platform.** As a major creator and publisher of online content, as the developer of many of the technologies used to protect, deliver and use content online worldwide, and as a provider of online services to others, Microsoft is uniquely situated to provide informed and balanced assistance on these issues. Microsoft has participated in other similar groups in the past, such as the Commission's ICT Task Force, and requests to participate in the Content Online Platform's deliberations.

Microsoft would be pleased to provide any further information that the Commission may request. Please contact:

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<sup>11</sup> See the press conference announcing the UGC Principles, [http://www.ugcprinciples.com/press\\_release.html](http://www.ugcprinciples.com/press_release.html), and the terms of the UGC Principles themselves, <http://www.ugcprinciples.com/index.html>.

<sup>12</sup> Mission confiée à Denis Olivennes, Rapport au Ministre de la Culture et de la Communication: Le développement et la protection des oeuvres culturelles sur les nouveaux réseaux (Nov. 2007), <http://www.culture.gouv.fr/culture/actualites/conferen/albanel/rapportolivennes231107.pdf>.

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**ANNEX 1**  
**USER-GENERATED CONTENT PRINCIPLES**  
[www.ugcprinciples.com/index.htm](http://www.ugcprinciples.com/index.htm)

## Principles for User Generated Content Services

Foster Innovation. Encourage Creativity. Thwart Infringement.

Read the  
Press Release

The following  
companies support  
these principles:



Dailymotion



Microsoft



veoh

viacom

Leading commercial copyright owners ("Copyright Owners") and services providing user-uploaded and user-generated audio and video content ("UGC Services") have collaborated to establish these Principles to foster an online environment that promotes the promises and benefits of UGC Services and protects the rights of Copyright Owners. In this context, UGC Services are services such as Soapbox on MSN Video, MySpace, Dailymotion and Veoh.com, and not other technologies such as browsers, applets, email, or search services. While we may differ in our interpretation of relevant laws, we do not mean to resolve those differences in these Principles, which are not intended to be and should not be construed as a concession or waiver with respect to any legal or policy position or as creating any legally binding rights or obligations. We recognize that no system for deterring infringement is or will be perfect. But, given the development of new content identification and filtering technologies, we are united in the belief that the Principles set out below, taken as a whole, strike a balance that, on a going-forward basis, will result in a more robust, content-rich online experience for all.

In coming together around these Principles, Copyright Owners and UGC Services recognize that they share several important objectives: (1) the elimination of infringing content on UGC Services, (2) the encouragement of uploads of wholly original and authorized user-generated audio and video content, (3) the accommodation of fair use of copyrighted content on UGC Services, and (4) the protection of legitimate interests of user privacy. We believe that adhering to these Principles will help UGC Services and Copyright Owners achieve those objectives.

1. UGC Services should include in relevant and conspicuous places on their services information that promotes respect for intellectual property rights and discourages users from uploading infringing content.
2. During the upload process, UGC Services should prominently inform users that they may not upload infringing content and that, by uploading content, they affirm that such uploading complies with the UGC Service's terms of use. The terms of use for UGC Services should prohibit infringing uploads.
3. UGC Services should use effective content identification technology ("Identification Technology") with the goal of eliminating from their services all infringing user-uploaded audio and video content for which Copyright Owners have provided Reference Material (as described below). To that end and to the extent they have not already done so, by the end of 2007, UGC Services should fully implement commercial reasonable Identification Technology that is highly effective, in relation to other technologies commercially available at the time of implementation, in achieving the goal of eliminating infringing content. UGC Services should enhance or update the Identification Technology as commercially reasonable technology that makes a meaningful difference in achieving the goal becomes available.
  - a. If a Copyright Owner has provided: (1) the reference data for content required to establish a match with user-uploaded content; (2) instructions regarding how matches should be treated; and (3) representations made in good faith that it possesses the appropriate rights regarding the content (collectively, "Reference Material"), then the UGC Service should apply the Identification Technology to that content to implement the Filtering Process described below. UGC Services should ensure that reasonable specifications, as well as any tools and/or technical support, for the delivery of Reference Material are made available to Copyright Owners. If a Copyright Owner does not include in the Reference Material instructions regarding how matches should be treated, the UGC Service should block content that matches the reference data.
  - b. The Identification Technology should use Reference Material to identify user-uploaded audio and video content that matches the reference data and should permit Copyright Owners to indicate how matches should be treated.

- c. If the Copyright Owner indicates in the applicable Reference Material that it wishes to block user-uploaded content that matches the reference data, the UGC Service should use the Identification Technology to block such matching content before that content would otherwise be made available on its service ("Filtering Process"). The Copyright Owner may indicate in the applicable Reference Material that it wishes to exercise an alternative to blocking (such as allowing the content to be uploaded, licensing use of the content or other options), in which case, the UGC Service may follow those instructions or block the content, in its discretion.
  - d. Copyright Owners and UGC Services should cooperate to ensure that the Identification Technology is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.
  - e. UGC Services should use the Identification Technology to block user-uploaded content that matches Reference Material regardless of whether the UGC Service has any licensing or other business relationship with the Copyright Owners who have provided such Reference Material (except that UGC Services may require that Copyright Owners enter into agreements with respect to the specifications for delivery of Reference Material that are commercially reasonable and that facilitate the provision of Reference Material by Copyright Owners and promote the goal of the elimination of infringing content). If a Copyright Owner authorizes specific users to upload content that would otherwise match Reference Material submitted by the Copyright Owner, the Copyright Owner should provide to the UGC Service a list of such users (a so-called white list).
  - f. UGC Services may, at their option, utilize manual (human) review of all user-uploaded audio and video content in lieu of, or in addition to, use of Identification Technology, if feasible and if such review is as effective as Identification Technology in achieving the goal of eliminating infringing content. If a UGC Service utilizes such manual review, it should do so without regard to whether it has any licensing or other business relationship with the Copyright Owners. Copyright Owners and UGC Services should cooperate to ensure that such manual review is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.
  - g. Copyright Owners should provide Reference Material only with respect to content for which they believe in good faith that they have the appropriate rights to do so, and should update rights information as reasonable to keep it accurate. The inclusion of reference data for content by, or at the direction of, a Copyright Owner shall be deemed to be an implicit representation made in good faith that such Copyright Owner has the appropriate rights regarding such content. Copyright Owners should reasonably cooperate with UGC Services to avoid unduly stressing the Services' Identification Technology during limited periods when Copyright Owners, collectively, may be providing an overwhelmingly high volume of Reference Material. UGC Service should reasonably cooperate with Copyright Owners to ensure that such Reference Material is utilized by the Identification Technology as soon as possible during such overload periods.
  - h. Promptly after implementation of Identification Technology, and intervals that are reasonably timed throughout each year to achieve the goal of eliminating infringing content, UGC Services should use Identification Technology throughout their services to remove infringing content that was uploaded before Reference Material pertaining to such content was provided.
  - i. Copyright Owners and UGC Services should cooperate in developing reasonable procedures for promptly addressing conflicting claims with respect to Reference Material and user claims that content that was blocked by the Filtering Process was not infringing or was blocked in error.
4. UGC Services and Copyright Owners should work together to identify sites that are clearly dedicated to, and predominantly used for, the dissemination of infringing content or the facilitation of such dissemination. Upon determination by a UGC Service that a site is so dedicated and used, the UGC Service should remove or block the link to such sites. If the UGC Service is able to identify specific links that solely direct users to particular non-infringing content on such sites, the UGC Service may allow those links while blocking all other links.

5. UGC Services should provide commercially reasonable enhanced searching and identification means to Copyright Owners registered with a service in order (a) to facilitate the ability of such Copyright Owners to locate infringing content in all areas of the UGC Service where user-uploaded audio or video content is accessible, except those areas where content is made accessible to only a small number of users (not relative to the total number of users of the UGC Service), and (b) to send notices of infringement regarding such content.
6. When sending notices and making claims of infringement, Copyright Owners should accommodate fair use.
7. Copyright Owners should provide to UGC Services URLs identifying online locations where content that is the subject of notices of infringement is found – but only to the extent the UGC Service exposes such URLs.
8. When UGC Services remove content pursuant to a notice of infringement, the UGC Service should (a) do so expeditiously, (b) take reasonable steps to notify the person who uploaded the content, and (c) promptly after receipt of an effective counter-notification provide a copy of the counter-notification to the person who provided the original notice, and, at its option, replace the content if authorized by applicable law or agreement with the Copyright Owner.
9. When infringing content is removed by UGC Services in response to notice from a Copyright Owner, the UGC Service should use reasonable efforts to notify the Copyright Owner of the removal, and should permit the Copyright Owner to provide, or request the UGC Service to provide on its behalf, reference data for such content to be used by the Identification Technology.
10. Consistent with applicable laws, including those directed to user privacy, UGC Services should retain for at least 60 days: (a) information related to user uploads of audio and video content to their services, including Internet Protocol addresses and time and date information for uploaded content; and (b) user-uploaded content that has been on their services but has been subsequently removed following a notice of infringement. UGC Services should provide that information and content to Copyright Owners as required by any valid process and consistent with applicable law.
11. UGC Services should use reasonable efforts to track infringing uploads of copyrighted content by the same user and should use such information in the reasonable implementation of a repeat infringer termination policy. UGC Services should use reasonable efforts to prevent a terminated user from uploading audio and/or video content following termination, such as blocking re-use of verified email addresses.
12. In engaging in the activities set forth in these Principles outside the United States, UGC Services and Copyright Owners should follow these Principles to the extent that doing so would not contravene the law of the applicable foreign jurisdiction.
13. Copyright Owners should not assert that adherence to these Principles, including efforts by UGC Services to locate or remove infringing content as provided by these Principles, or to replace content following receipt of an effective counter notification as provided in the Copyright Act, support disqualification from any limitation on direct or indirect liability relating to material online under the Copyright Act or substantively similar statutes of any applicable jurisdiction outside the United States.
14. If a UGC Service adheres to all of these Principles in good faith, the Copyright Owner should not assert a claim of copyright infringement against such UGC Service with respect to infringing user-uploaded content that might remain on the UGC Service despite such adherence to these Principles.
15. Copyright Owners and UGC Services should continue to cooperate with each other's reasonable efforts to create content-rich, infringement-free services. To that end, Copyright Owners and UGC Services should cooperate in the testing of new content identification technologies and should update these Principles as commercially reasonable, informed by advances in technology, the incorporation of new features, variations in patterns of infringing conduct, changes in users' online activities and other appropriate circumstances.