ANSOL's reply to Digital "Rights" Management public consultation

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Abstract

DRM restricts access, and fails to prevent unauthorised copying. Legal framework which strenghtens DRM hurts the Free Market, rather than strengthning it, or how it has been quite eloquently said,

DRM is theft. We're the stakeholders!

Executive Summary

It is our understanding that, although some very few but economically very powerful commercial interests allege benefits, the common market is suffering from wasted resources and trade barriers, penalising both citizens and enterprises.

Since DRM technologies in effect manage user restrictions, rather than user rights, we will use throughout this document the more adequate word "Restrictions" rather than "Rights".

As such, in our understanding of the technology, DRM stands for Digital "Restrictions" Management, rather than Digital "Rights" Management.

Throughout pages 2 to 7, we will reply to the public consultation.

Replies on Digital "Restrictions" Management

Question 1

> *D*o 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?

The problems with DRM from the point of view of content producers are those of a) access restrictions, b) cost of development, c) return of investment, d) interoperability and e) consumer back-lash.

a Individual content producers very seldom have any resources at all for developing it. Since they aren't widely known, adding access restrictions to their content actually reduces the net-worth of their work since it will hardly be playable by any user. Such people usually prefer to publish in unrestricted and extremely popular formats (MP3, for instance), as a means of achieving the widest audience possible.

b Developing DRM systems is extremely costly from individual content producers to major ones. Advanced methods are thoroughly investigated, looking for means of restricting access to content at the same time as the keys to access said content are distributed (otherwise, the content would be unplayable at all). Since this is clearly a case of giving the locked jewel box and its key to an untrusted holder, it is a really hard to solve problem.

c It is such a hard problem to solve, that in fact any and all DRM systems up to today have been broken in short time-frames. A costly development that is proven worthless by a teenager (such as the case of Jon Lech Johansen[1], who broke the DVD Content Scrambling System DRM method when he was sixteen years old) has a quite unattractive negative return of investment. Even Bluray or HD-DVD released movies have had more distribution on Peer-to-Peer networks in DRM-less form that the DRM versions released on disc.

d Since DRM is a problem of giving the locked jewel box and its key to an untrusted holder, interoperability is actually something which cannot exist in a successful DRM system, for interoperability means giving away the model for building they key itself. That way, anyone can implement the DRM system to obtain access to the content, and free it of any access-restrictions imposed by the DRM.

e The only means, so far, to achieve a reasonable level of success, is to remove control of the computer from its owners. One of the most famous

[1] http://en.wikipedia.org/wiki/Jon_Lech_Johansen

attempts has been when Sony recently installed, without the user's knowledge, computer software (known as a "rootkit") specifically designed to render its media capabilities under the control of Sony. This was quickly found but, since the development of this rootkit had the partnership of Microsoft and most of the major anti-virus/spyware software editors, only by independent investigators. The tremendous consumer back-lash drove Sony to publicly apologise, settle a class-action suit in the USA, and publish software which would remove the "rootkit". Further investigations proved this software was non-effective and a fresh re-installation of the operating system was advised by independent investigators.

In addition, DRM systems are being abandoned by many large stakeholders (in fact the four biggest music labels – EMI, Universal, Warner and Sony BMG – decided to abandon DRM altogether and started selling their music catalogues without any DRM, in plain MP3 files, at Amazon). We think that this is a clear sign that the major content producers concluded that adoption of DRM was not fostering the development of online creative content services.

Since online creative content services (legal and non-legal) without any DRM have been extremely successful so far, we do not agree that creating and adopting any DRM systems will support the development of online creative content services.

As a matter of fact, we believe that any effort in improving interoperability on DRM systems will endorse higher levels of adoption of those systems, which in turn curtail any creativity, since much of software, and music or any media development depends on knowledge and on the free circulation and access to that same knowledge of digital content. So, it will be very bad for every element in the value chain of the digital content business, especially to consumers. And it will limit, obviously, any creative process that is the root of any expansive, well-to-do, and driving market.

Question 2

> *D*o 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?

There are no personal data protection features on DRM systems. Personal data protection features are granted by high security, widely tested and proven algorithms, such as e.g. RSA. Since DRM has been provenly ineffective, any alleged data protection feature on a DRM system should be taken as an attempt of confusing the consumer into believing something good will come out of it, for him, when in fact such is not the case. The technologies that actually grant personal data protection features already exist, are widely known and interoperable. They are diametrically distinct from DRM systems.

We advise endorsing consumer friendly Free Software operating systems for consumers, so we must point out that the most used Free Software copyright license, the GNU GPL, has a new version (GPLv3) which is under wide adoption[2] rate. In order to better protect user's rights, this license does not permit any work it covers to «*be deemed part of an effective technological measure under any applicable law fulfilling obligations under article 11 of the WIPO copyright treaty adopted on 20 December 1996, or similar laws prohibiting or restricting circumvention of such measures.*» As such, strenghening DRM will create a trade barrier to Free Software operating systems.

Finally, every DRM product and service should be clearly labelled and identified. Consumers must be fully informed about all the "Restrictions" which are imposed by DRM on a product which is about to be obtained. An example of typical DRM restrictions is forbidding timeshift.

This labelling would allow that new business models promoting true consumer choice can get a chance to develop in the common market. This includes labelling of software, for instance:

> *T*his is Free Software. The software license of this program gives you the freedom to
>
> 1. Run the program, for any purpose.
> 2. Study how the program works, and adapt it to your needs. Access to the source code is a precondition for this.
> 3. Redistribute copies so you can help your neighbor.
> 4. Improve the program, and release your improvements to the public, so that the whole community benefits. Access to the source code is a precondition for this.

Question 3

> *D*o 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?

We generally agree that EULAs should be made smaller and easier to read, since most users don't read them. However, in many cases the legal frameset is such that it's highly difficult to just reduce and simplify the EULAs. One thing that should help would be the recommendation of not creating several documents or cross-reference documents in EULAs. One obvious case is the typical Privacy Policy, that is usually separated from the actual EULA.

[2] http://gpl3.palamida.com:8080/#ConversionStatus

Question 4

> *D*o 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?

We believe that consumers shouldn't have more confidence in new products and services unless they are more safe to them than they are nowadays. In that respect, we believe that the absolution of DRM systems would greatly enhance consumers' confidence in new products and services. The proof that consumers don't like services with DRM is, for instance, the statement from 7Digital telling that ditching DRM from their service was translated in a rise of 188% of business volume.

Question 5

> *D*o 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?

We believe that the concept of DRM is defective by design. Since DRM solutions are designed to discriminate access to content, any enhancement to a DRM solution isn't enough; we believe that eliminating DRM solutions is needed to preserve and foster competition on the market for digital content distribution.

Replies on Multi-territory rights licensing

Question 6

> *D*o 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?

Yes.

Question 7

> *W*hat 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?

We don't believe that adding complexity to the framework is a good step to solve the multi-territory rights licensing issue. We believe in the creation of a platform to multi-territory licensing that avoid the need of a primary and a secondary market.

Question 8

> *D*o 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)?

Yes.

Question 9

> *H*ow can increased, effective stake holder cooperation improve respect of copyright in the online environment?

Markets many times regulate themselves in that respect. The only way consumers will value copyright in the online environment is to create competitive business models that will relate copyright ownership with added value.

Question 10

> *D*o you consider the Memorandum of Understanding, recently adopted in France, as an example to followed?

Never, not in similar terms, since the Memorandum of Understanding is a step backwards on the issue. The Swedish Justice Department Cecilia Renfors made a plan similar to the French Olivennes Memorandum, and Karl Sigfrid, along with six other deputies from the Moderate Party, published an article in the Expressen newspaper where they say that «decriminalising all non-commercial file sharing and forcing the market to adapt is not just the best solution. It's the only solution, unless we want an ever more extensive control of what citizens do on the Internet. Politicians who play for the anti-piracy team should be aware that they have allied themselves with a special interest that is never satisfied and that will always demand that we take additional steps toward the ultimate control state.»

Also deserving analysis where the reactions to the Memorandum of Understanding: after it was highly criticised, since the document was made without the participation of representatives of consumers and internauts, CSA and NPA Conseil made a study that reached the conclusion that 49French people older than 15 are against the Memorandum, 40and 11

UFC-Que Choisir[3], one of the greatest French associations for consumer rights, also said that that the Memorandum was «excessively tough, potentially

[3] http://smallr.net/quechoisir-olivennes

liberticide, anti-economic and constitute nonsense if considered against the history of the digital era», since this new measures to fight "piracy" are joining a set of penal prosecution for counterfeiting that can lead someone into three years of jail and 300 thousand Euro in fines. More about their oppinion can be read in their report.

Question 11

> *D*o you consider that applying filtering measures would be an effective way to prevent online copyright infringements?

Filtering measures are a trade barrier. As much as the so called Great Firewall of China creates trade barriers[4], it will be worse for ISP's and consumers in many technical aspects, like Quality of Service, with no positive effect, since there's no possible technical way to prevent online copyright infringement. Also, filtering measures can't faithfully distinguish legal uses of the content, thus such mechanisms end up affecting negatively those who comply with copyright laws.

Who wrote this paper

About ANSOL

ANSOL, Associação Nacional para o Software Livre (National Association for Free Software) is a non-profit portuguese association which has as objectives the promotion, development, research and study of Free Informatics and its social, political, philosophical, cultural, technical and scientifical repercussions.

Since DRM, Digital "Restrictions" Management requires software to "work", and since we believe it is the right of all software users to be able to run software for any purpose, study and modify it, as well as distribute it, in pristine or modified form it is only a natural urge that we collaborate with the legislative sector in order to assure the aforementioned user's rights which are known as The Free Software Definition[5].

We hope this reply contributes to an improvement in the legal framework, which got out of balance with the publication of Directive 2001/29/EC and some national implementations.

About Rui Miguel Silva Seabra

Rui Miguel Silva Seabra has a degree in Computer Sciences, from Universidade do Minho, in Braga Portugal, and works full-time as a Firewall and Systems Administrator at SIBS, SA, a finance IT company, and in no way represents or intends to represent any opinion in the name of his employer. As Vice-President

[4] http://arstechnica.com/news.ars/post/20080227-eu-may-begin-treating-net-censorship-as-a-trade-barrier.html

[5] http://www.fsf.org/philosophy/free-sw.html

of ANSOL and a collaborator of the DRM Work Group, wrote this reply in collaboration with other members of this Work Group, namely Marcos Marado.

About Marcos Marado

Leader of the DRM Work Group, Marcos Marado works at Sonae.Com and in no way represents or intends to represent any opinion in the name of his employer.