



British Music Rights is the consensus voice for more than 50,000 British songwriters, composers, music publishers and their collection societies. Our membership includes the British Academy of Composers & Songwriters, the Music Publishers Association (MPA), the Mechanical-Copyright Protection Society (MCPS) and the Performing Right Society (PRS).

British Music Rights welcomes the Communication on Content Online as we believe it is a positive step forward in helping to foster the development of a digital online market place.

Composers and songwriters create because they want their music to be heard and enjoyed by as wide an audience as possible, on as many platforms as possible. The relationship between creators and their audience has always been the lifeblood of the music industry; a situation that remains unchanged in the digital world. Creators however, whose endeavours provide the foundation of the online music industry, also want and need to be paid. Flexible licensing schemes offered by our music publisher and collection societies members have ensured the wide availability of music to users both off and online.

The online music market is continuing to develop at rapid pace; any imminent intervention could easily negate already ongoing developments. On that basis we would ask the Commission to consider carefully before undertaking any market intervention, particularly at this rather sensitive stage.

Detailed answers to questionnaire:

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?

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?

Generally we would support the concept of interoperable Digital Rights Management systems, however this is set firmly against our belief that market problems should be addressed by market solutions. It should be for consumers and industry to decide any possible question of interoperability between different platforms.

While industry has endeavoured to create totally transparent DRM systems it is becoming clear that the investment and operational overhead required to provide a seamless consumer experience is of questionable commercial value.¹ Major record companies are already testing DRM-free products, and will increasingly be providing consumers with these in the future.

We see no reason why this trend should not continue and would predict that the issue of interoperability will become less relevant if not, indeed, obsolete.

¹ <http://www.moconews.net/entry/419-midem-orange-plans-drm-free-music-rentals-still-talking-to-nokia>



A clarity of definition is also crucial when discussing Digital Rights Management; i.e. whether we talk about technological protection measures or rights management information. Collecting societies and music publishers are actively involved in the development of standards for rights management information required for the smooth functioning of the online music market. As commendable practices we put forward initiatives such as ACAP and DDEX.²

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?

The licensing systems our members employ are exclusively based on a business to business model. Generally we would agree with the need to clarify the legibility of licenses which are directed towards the consumer; despite this, it would be our conviction that very few end users actually read EULAs.

We would also suggest that any clarity should also extend not only to DRM, but also to some of the all-encompassing model licenses used in the digital world such as Creative Commons. Our experience would lead us to have concerns that creators, especially young creators, do not fully understand the implications of granting this type of personal license - particularly with regard to the impact on any future performance royalty income.

The full financial implications of this type of license should be explained in detail to the creator so that they might be best placed to make an informed decision.

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?

Access should always be available via licensing on commercial conditions.

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?

No. Any further Recommendation on multi-territory rights licensing will be disastrous if the Recommendation has a spill over effect to music and contradicts the approach already taken by the Commission for musical works in 2005. It would also confuse both right holders and licensees and, subsequently, lead to a considerable delay of the positive developments on music online which have commenced because it.

It is noteworthy that, in the field of musical works, the Recommendation of 2005 was not the decisive catalyst to enable pan- European licensing; it only provided a supportive role for market developments which were already in motion. Such developments will have led to the approach chosen by the Commission in October 2005 anyway.

We welcomed the Commission's calls for greater transparency and better governance of collecting societies which will enable right holders to choose a collecting society or societies with clear standards of transparency and good governance. The need for individual collecting societies to apply best practice based on right holders' choice will enhance market developments without unduly intervening in the commercial licensing of rights.

² www.the-acap.org; www.ddex.net.

And the market is developing: A variety of models have been developed and are being assessed in practice; such as the agreement between the MCPS – PRS Music Alliance and Peer music, an independent music publisher, to represent its repertoire for Pan-European online and mobile licensing from the first of January 2008 in co-operation with the Spanish collecting society SGAE re the Latin repertoire. Warner Chappell, a major music publisher has appointed three collecting societies to represent its Anglo-American repertoire across Europe. With discussions predating the Recommendation on Music Online; the Anglo-American repertoire of EMI Music Publishing is administered by CELAS, a joint venture between the MCPS-PRS Music Alliance and its German equivalent GEMA managing EMI's online and mobile rights across the EEA. In France, Universal Music has appointed SDRM to grant pan-European digital licenses of their English and French language repertoire.

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)?

We are not sure about the link between Long Tail and multi territorial licenses, but suggest that any developments will be based on the choice of the consumer.

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

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

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

It is unquestionably true that all interested parties have a role to play in providing a complete market solution.

There are clearly organisations, external to the music industry, who have built, and will continue to build asset values founded on the creativity, talent, ability and energy of creators, songwriters, composers, musicians and performers, who in turn derive little if indeed any benefit at all.

Yet BMR is clearly of the opinion that solutions should be based on licensing rather than policing.

We are currently working with a broad range of interested parties to create new mechanisms: ones which we believe will provide a commercial solution, ones which we believe will provide direct benefit to all participants, and ones which we believe will build the market for online music benefiting music consumers and users alike.

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