

Business Software Alliance Response to the Communication on Creative Content Online in the Single Market

29 February 2008

The Business Software Alliance* (BSA) welcomes the opportunity to respond to the European Commission's Consultation on Content Online in the Single Market and the related Communication on Creative Content Online. Please note that we did not respond to every question in the survey. Instead, we offer comments only on those questions where we feel our experience best enables us to make a meaningful contribution.

Piracy and Olivennes-Style Mandatory Internet Filtering

Piracy—both off and online—is a significant concern for BSA members. The piracy rate for business software in the EU in 2006 at 36% and illegal distribution of software did cost the industry over 9 billions EURO that particular year.

Yet, while BSA supports the right of ISPs and rights holders to enter into purely voluntary agreements that each believe is in their respective business interests to manage network traffic, including those mitigating the effects of those network users who repeatedly misuse their Internet service to infringe copyright, we strongly oppose the imposition of regulatory requirements on ISPs and technology providers aimed at detecting, intercepting or preventing online copyright infringements. BSA believes the French agreement is not a truly voluntary agreement, but a technology mandate given the legislative, regulatory and enforcement role played by the French government in the agreement.

Filtering proposals misidentify as a technology problem what is really an enforcement problem. In addition to the technical challenges, another potential impediment to these efforts relates to privacy regulations in the EU. Overboard interpretation of privacy laws by some European authorities have arguably made it illegal for right holders to effectively investigate open and

* **About the BSA:** The Business Software Alliance (www.bsa.org) is the voice of the world's software industry and its hardware partners before governments and in the international marketplace. With offices in Brussels, London, and Munich, BSA is active across the European Union and in more than seventy countries around the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include: Acca Software, Adobe, Altium, Apple, Attachmate, Autodesk, Avid, Bentley Systems, Borland, CA, Cadence Design Systems, Centennial Software, Cisco Systems, CNC Software/Mastercam, Corel, Dell, EMC, Enteo, Graphisoft, HiT Internet Technologies, HP, IBM, Inaz, Intel, Intergraph, LMS International, Mamut, ManageSoft, McAfee, Microsoft, Microstar, Mindjet, Monotype Imaging, Nemetschek, O&O Software, Panda Software, PTC, Quark, Quest Software, SAP, Scalable Software, SGS, Siemens PLM Software, SolidWorks, SP Grupo Sage, Softline Pastel, Staff & Line, Sybase, Symantec, Synopsys, Tekla, The MathWorks, and Trend Micro.

notorious piracy in the Internet. Addressing this issue would have a far more beneficial effect on the fight against online piracy than mandates to deploy technologies that are both intrusive and of questionable efficacy.

Digital Rights Management and Interoperability

DRM technology will continue to play an integral role in the development of the online content market and room should be given to experiment with different models that meet consumer demands. The perception that DRM interoperability is a hindrance to the development of the online content market is mistaken as we have no data indicating that the abandonment of DRM protection (for music downloads) has led to a significant market uptake. More importantly, many other business models in other creative sectors, such as inexpensive, consumer-friendly subscription services, simply cannot exist without some form of DRM technology. Legislative mandates in the name of “interoperability” should be strongly disfavored, in that they cut off important innovation and experimentation in developing these new business models.

Also, criticism and reduced use of DRM has created a situation where the position of content creators is further weakened in the sense that they cannot rely on DRM technologies to account for the actual use of their work and obtain proper remuneration. Similarly, consumers do not benefit from more choice or lower prices. Consumers are being hit with higher and new copyright levies on a variety of equipment that have no relevance to private copying (mobile phones, computers, etc.) as collecting societies in Europe are emboldened to apply more levies due to the increase in piracy and the decreased use of DRM in the music sector. Moreover, these copyright levies are perceived by the consumer as a blanket authorization to copy, hence jeopardizing the efforts to fight piracy. This pattern is worrying and should be tackled responsively, by all stakeholders as it precipitates potential new difficulties for other creative sectors and a further erosion of content protection and exclusive rights.

Similarly, with regard to the question on End User License Agreements (EULAs), BSA does not believe that reducing the complexity and enhancing the legibility of EULAs will have any impact on the growth of online distribution of content. EULAs already conform to the ample and rigorous requirements of EU and national consumer protection laws and provide assurance and protection for consumers. Many vendors also make additional disclosures to highlight certain features of interest to customers, a practice that will be driven by marketplace demand.

Other aspects of the Consultation

For the rest, we reiterate the points made in our previous 2006 submission* as to the optimal approach to further creative content online:

- **Preserve a comprehensive and robust IP protection system and apply a light-handed regulatory touch, if and whenever necessary**
- **Support technologies that protect online content and ensure user security**

In addition since these issues were not tackled after the 2006 consultation, we urge the European Commission to address the following obstacles (as described in our 2006 submission) in order to foster the availability of online content:

- **Threats to DRM technologies and making digital works more susceptible to piracy**
- **Increasingly burdensome and un-transparent private copy levy regimes**
- **Limitations to the use of IP addresses in fighting security and piracy offences**
- **Continuous lack of a community-wide license for music rights**

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For further questions and enquiries, please contact Francisco Mingorance, franciscom@bsa.org.

* http://ec.europa.eu/avpolicy/docs/other_actions/contributions/bsa_col_en.pdf