

Creative Content Online – Policy/Regulatory issues for consultation, Digital Rights Management

Response by Content Management License Administrator (CMLA) LLC

February 28, 2008

CMLA wishes to thank the European Commission's Directorate General for Information Society and Media for this consultation and the opportunity to respond to your questions. CMLA is here providing answers only to those questions where we can offer input of value.

CMLA is an entity formed to provide the necessary trust mechanisms needed for the OMA DRM version 2.0 Specification to find acceptance in the broad content distribution marketplace. CMLA's development resulted from extensive interworking with content owners/rights holders, device manufacturers, mobile and broadcast service providers and technology companies all to enable a new digital content business models using the OMA DRM V2.0. Further information about CMLA is available at www.cm-la.com.

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?

CMLA agrees that interoperable DRM systems definitely advance the development of creative online content services. The realization of a broad horizontal (standards-based) market rather than fragmented vertical (proprietary-based) markets will enable the most robust of markets for content related goods and services. The issue, however, for achieving DRM interoperability is primarily not one of a technical nature but a legal and/or business agreement nature.

Believing strongly that the optimum horizontal market should be build on the content protection of the only standards-based DRM available and believing strongly that DRM interoperability can and should be achieved by customer demand driven market agreement rather than legislative mandate, the founding companies of CMLA initiated a broad industry development of the CMLA ecosystem built on OMA DRM version 2.0.

CMLA has focused on creating a broad horizontal interoperable market for goods and service where device and service interoperability are the very foundation of the system. CMLA exists to make the Open Mobile Alliance DRM version 2.0 a standards based alternative to the proprietary solutions available and encourage free interoperability with these proprietary, vertical implementations.

In order to achieve the desired end result, interoperable digital content across multiple device implementations, an interoperable DRM technology is a necessary but not sufficient requirement. OMA DRM version 2.0, as a generic technical specification, is interoperable even with itself only as a matter of technical characteristics. To achieve practical interoperability, it is necessary to support the DRM technology with an administrative trust regime that extends to the implementations that need to interoperate. Further, if the desired interoperability requires exchange of content between different trust regimes (even for the same technology) or between different DRM technologies (and their respective trust regimes), it is necessary to arrange for appropriate authorizations (in the digital rights object accompanying the content and defining its authorized scope of uses) for transfer between DRM technologies and their trust regimes. This last requirement simply means that the rights-holder or distributor of digital must grant the appropriate (commercial) permissions for the content to be usable in an "external" DRM technology or trust system.

Interoperability among all OMA DRM devices (at the DRM level) requires a common "root of trust" so that the OMA DRM 2.0 devices and services can "talk to each other" and interoperate at the cryptographic level. A trust regime includes, among other things, a secure and trusted distribution system of the cryptographic credentials that ensure that unauthorized or malfunctioning devices will not receive content intended to be kept protected. Building a device that will enable a consumer to move acquired content from DRM A (whether CMLA/OMA or a proprietary DRM) to DRM B requires at

minimum two things: First, the device maker must be able to license DRM A and DRM B so that it can implement them both on its device, and second, the consumer must have the legal right to move the content from DRM A to DRM B. That legal right is created either directly in the rights object/license associated with the content (for example, OMA DRM enables “export” by designating the permitted output technologies in the rights object), or at the device level if the technology implementation license associated with DRM A permits the “export” (also referred to an “approved output” in the license’s compliance rules). CMLA offers a common root of trust, and establishes the technical and business rules associated with participation in that root of trust, to device makers, content providers, broadcasters and service providers to enable the desired horizontal interoperable market. Unlike many proprietary offerings, CMLA makes its licenses and cryptographic certificates/keys available on a non-discriminatory basis to any service provider, any device maker, and any content provider that desires to participate in the horizontal interoperable markets enabled by CMLA/OMA DRM. CMLA is platform agnostic, operating system agnostic, and available for license on any kind of device, without limitation for distribution of any type IP based digital content.

Because of its unique horizontal market enabling goals, we encourage broad adoption and deployment of CMLA/OMA for a wide range of digital goods and services, and in fact those digital goods and services are being deployed today around the world. The administrative and commercial burdens in enabling distribution of credentials and other trust system aspects of multiple DRM technologies and multiple DRM trust regimes – and the commercial complexity of persuading content owners and distributors to include “export rights” in licensed digital content to enable their interoperability are powerful arguments for adopting a common standard-based DRM technology across the vast digital marketplace. OMA DRM 2.0 and CMLA are uniquely placed to serve this market need which continues to be unmet due to persistent market fragmentation by a multitude of proprietary DRM offerings and by patent licensing challenges.

In addition to online, mobile and other services, CMLA has also adopted DVB-H, 18 Crypt (OMA Bcast Profile) standard to enable mobile broadcast. We anticipate this will be fundamental in the growth of the mobile broadcast market in the European Union.

To address your question of obstacles, CMLA would first note that intellectual property costs have been and remain the most significant barrier to the uptake of standards based technologies like OMA. While some progress has been made in the market place (which we are pleased to see) this remains the single biggest impediment to adoption. CMLA calls on patent rights holders to be forward looking, and contribute to making standards based technologies competitive in the market place from an implementation perspective. Standards based technologies simply will not thrive if their cost structures are not competitive.

Another obstacle to success of the horizontal market is the action of individual players in the system to build protected sandboxes for just themselves. This grows out of a belief that they must control their customer or they will lose them. This results in market fragmentation and when done by many players across the ecosystem destroys the economies of scale that make the horizontal market huge for all. This action alters the cost structure of the overall market and in turn reduces their own market opportunity. CMLA encourages all participants in the system to resist such fragmentation and join in building the robust horizontal market. When the environment enables “any content to be available on any platform, anywhere” the consumer market will be larger for all participants than is ever achieved with fragmenting protections.

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?

CMLA agrees that consumer information about an offering must be complete and accurate to properly inform a purchase decision prior to the purchase. This must include information about interoperability and personal data protection. CMLA, however, is not directly involved in this issue and therefore declines further comment to these questions.

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?

CMLA does not engage in any end-user license agreements and therefore does not comment on these questions.

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?

CMLA does not directly engage with consumers on dispute resolution issues and therefore does not comment on these questions.

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?

CMLA would refer to it's answers to question one.

Multi-territory rights licensing

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?

One of the objectives of CMLA was to establish a licensing entity that would greatly assist the rights licensing community through increased standardization of terms across territory boundaries as those terms relate to content and service protection of the distributed content. It does not however, address the many other issues that may be involved in the multi-territory licensing of content. Within the CMLA ecosystem the licensing of rights has been significantly improved and should not require recommendation by the Council.

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?

CMLA believes this is a question for rights holders.

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)?

CMLA does not consider itself able to bring value to this discussion.

Legal offers and piracy

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

CMLA endeavors to provide a forum where a broad range of stake holders can work together to create compelling horizontal markets. .

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

CMLA does not consider itself able to bring value to this discussion.

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

CMLA believes that governments should not mandate consumer policing either at the device or service/infrastructure level in order to prevent or identify copyright infringements.