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Stakeholder Consultation on European Commission Draft
Communication on Creative Content Online in the Single Market

I. Introduction

This submission is made by the Design and Artists Copyright Society (DACs). DACs is the UK's copyright and collecting society for artists and visual creators. Established in 1984 as a not-for-profit organisation to promote and protect the copyright and related rights of artists and visual creators, DACs is constituted as a company limited by guarantee under UK law, and is currently governed by a board of non-executive directors comprising representatives from a range of artistic disciplines alongside others drawn from business and the legal profession.

DACS achieves its objectives of promoting and protecting visual creators' intellectual property rights (IPRs) by offering the following services:

- Transactional licensing and individual rights management as an agent for our UK and international membership of over 50,000 artists
- Collective Rights Management for the entire UK visual repertoire through participation in a range of collective licensing schemes, with the addition of mandates from fourteen professional associations and trade unions representing 15,000 visual creators, and several thousand visual creators participating in our annual collective licensing distributions.
- Artist's Resale Right administration: new service of collection and distribution of resale royalties launched by DACs in February 2006 pursuant to UK implementation of Directive 2001/84/EC.

Our authority for individual rights licensing comes from individual mandates from creators or their beneficiaries in the UK appointing us as their exclusive agent to administer rights conferred under s. 16 of the UK Copyright, Designs & Patents Act 1988 (as amended), and via reciprocal agreements (based on the CISAC model) with similar visual art copyright societies in 28 countries around the world. All agreements cover individual and collective rights management (including the artist's resale right).

In addition, DACs belongs to the following international federations: EVA, IFFRO, and CISAC.

For further information on DACs' activities, please refer to our official website: www.dacs.org.uk .

II. General Observations

DACS would like to thank the European Commission for seeking its opinion through this consultation. As representative of a numerous and varied constituency of copyright owners, we wish to participate in what we hope will be a constructive debate on the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market (COM (2007) 836 final).

Whilst limiting our submission to commenting on the questions relevant to the activities of our members as visual creators, we would like to point out that literary and audio visual works do regularly incorporate our members' works and the developments in particular in the audio visual sector will therefore also have an impact on the utilization of our members' rights. We would also like to draw the attention of the Commission to further commitments of the European institutions in the field of copyright that we consider important when assessing the various points in this consultation process: the necessity to reward authors and performers if they are to continue their creative and artistic work (Recital 10 of Directive 2001/29/EC) and the recognition that an efficient system of copyright and related rights is "one of the main ways of ensuring that European cultural creativity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers" (Recital 11 of Directive 2001/29/EC).

III. Digital Rights Management (DRM) (Questions 1-5)

In our role as a collecting society licensing our members' works on an individual and on a collective basis, we consider the right to deploy DRMs and Technical Protection Measures (TPMs) as being essential in the online environment.

The fast-paced technological developments in the online sector and the increasing interoperability of devices that enable access and content-shifting on an increasingly broader scale make it necessary for right holders to protect their works through DRMs and TPMs.

The right to use or not to use DRMs provides for the necessary security for copyright owners who wish to utilize their rights in a digital environment and to secure remuneration for the investments made in creating their works. Through the employment of these measures individual creators are enabled to communicate their works to a broad audience without risking their works to be misappropriated and their rights being violated.

The possibility of pursuing circumventions of DRMs or TPMs provides for a valuable additional basis of protection and enforcement of creator's rights.

However, we do agree with the Commission that the true objective of DRMs and TPMs will be achieved only through cooperation between the various players in a value chain which enables right holders to enforce their rights in the digital environment and that supports the development of business models adapted to consumer demand and needs. The current situation where DRMs are used to create gatekeeper situations and where media companies try to artificially lock up digital content to create brand-driven monopolies in order to control the market, does not assist in improving the already negative public view of DRMs and the public attitude towards them.

We therefore support the Commission's efforts to improve the interoperability and transparency of DRM systems in particular in the light of consumer acceptance. We think that an improved

perception of DRMs and TPMs, in particular regarding their real purpose to protect copyright owners' rights lawfully and effectively, will have a positive impact on piracy and circumvention practices. We believe that a well-conceived and well-functioning DRM system will also have a positive impact on the availability of creative content on the internet, as an improved and more standardised DRM system will incentivise creators and distributors of creative content to make creative content available online.

We also agree that ensuring a non-discriminatory access for example for SMEs to DRM solutions is needed to preserve and foster competition in the market for digital content distribution. It is therefore essential to concentrate on the development and implementation of effective standards to facilitate interoperability. We also believe that a more standardized approach and a more competitive market will benefit individual creators who are currently faced with cost intensive solutions to protect their works and rights online, which can deter creators from employing DRM. The perceived risks of making works available on the internet in the absence of realistic protection options may mean a creator chooses to make their work not available at all via the internet.

In our role as collecting society, DACS together with its associated societies already endeavours to offer a consumer friendly licensing service for our members' works and to reduce the complexity and enhance the legibility of licence agreement in particular for end-users. As an example in September 2007 DACS launched a broad communication initiative aimed at all sectors of users for artistic works, explaining industry-specific requirements for the licensing of visual works and supplying extensive information about the licensing process, in particular accounting for the significant increase in online and digital uses across all sectors.

With regards to alternative dispute resolution, we are of the opinion that the mechanisms should remain licence-based. We do not see any need for the community to intervene in this respect. (Please refer to the submission of IFRRO, of which we are an associate member).

In addition we would like to use this opportunity to call upon the Commission to further engage in informatory and educational activities about DRMs and TPMs in general, but also which address consumers/end-users and rights holders in particular.

We see an urgent need to clarify that DRMs do not and cannot replace the 'conventional rights' comprised under the heading of copyright, nor can they be seen as the primary means of enforcement of copyright law of protected material in the digital environment. As a collecting society we are regularly confronted with a strong belief by end-users that the internet is a rights-free environment, in particular if creative content is not protected with DRMs. This undesirable substitution often leads to situations where users believe that works are free to take/use if these are not protected by DRMs.

IV. Multi-Territory rights licensing (Questions 6-8)

DACS does not believe that there is a need for the European Parliament and the Council to address the issue of multi-territory rights licensing by means of a Recommendation. As mentioned in the Commission Staff Working Document accompanying this consultation, DACS has already very successfully embraced multi-territorial licensing models. We also believe that copyright as a territorial right should be strengthened in particular in the light of preserving and promoting Europe's cultural diversity.

However, we would welcome further information and education of consumers and other stakeholders (for example ISPs) that Community copyright regulation has only been partial and

that rights in general have to be obtained for each Member State in which the content should be or has been made available; and resulting from this that individual Member States' copyright laws have to be respected when licensing on a multi-territorial basis. We do not believe that the concept of multi-territorial rights licensing should be abused to create safe-harbours within the Community, but on the contrary that the cultural diversity within Europe should be maintained and respected.

Drawing on the discussion in the Commission Staff Working Document we would also welcome further guidance as to the place where the act of making available to the public takes place in each instance.

In line with the submission by IFFRO (see above) we would like to emphasise that multi-territorial licensing within the Community does already take place. As outlined above DACS operates as part of a network of associated societies through reciprocal representation. The network currently subsists of 33 collecting societies in 29 countries worldwide, whereby most of the Member States of the European Union are covered. The network is therefore in a position to operate on a multi-territorial licensing basis which benefits content users whilst ensuring that right holder receive the remuneration they are entitled to.

We also think that there is no need for the Community to further promote competition on the market for rights management, in particular in the field of author-generated content. Competition is already taking place and there are no apparent restrictions to engage in rights management. However, we do not think that a further fragmentation of the market would be beneficial for content users nor for rights holders. In particular in the field of online exploitation of copyright protected works it is, as outlined above, already difficult to educate and to communicate to users the necessity to respect intellectual property rights and therefore to uphold the value of copyright. We see a substantial risk for the devaluation of copyright by further promoting competition in an already competitive market and by regulating a market that very efficiently established and regulated itself as regards to multi-territorial rights licensing.

V. Legal offers and piracy (Questions 9-10)

DACS welcomes the Commission's suggestions regarding a stronger cooperation between stakeholders to fight online piracy and in particular the Commission's preparedness to invest in the raising of awareness and the engagement in educational activities.

Piracy and unauthorized up- and downloading of copyright-protected content constitutes a major concern for contributors. It restricts the availability of creative content online and it discourages creators believing in the effectiveness of the system, because of the infringement of their rights without any real means to monitor the usage of their works and to pursue the breach of their rights. We therefore think that awareness-raising activities and sensitizing initiatives on a European level would be beneficial and helpful in clarifying for users that the internet is not a rights-free environment. As described above DACS and its associated societies are already active in raising this awareness and in making licensing processes as transparent and easily accessible as possible. There is therefore no justification for non-compliance with the legal obligations under copyright law when using a work online. Also, as outlined above, through the offering of multi-territory licensing authorizations for the use of works are sufficiently broad and users are easily covered for their regular activities.

We are also in favour of an improved cooperation of ISPs in stopping dissemination of infringing content and we believe that co-operation procedures like codes of conduct may be useful in enforcing legal obligations in a quick and cost-effective manner, rather than by instigating legal

proceedings without a real possibility of stopping the ongoing infringement of copyright and avoid further infringements until the case is resolved in court.

Experiences for example with eBay have shown that cooperation between stakeholders is effective in improving respect of copyright in the online environment. eBay maintains a program which enables rights holder to terminate auctions that infringe their rights, inter alia copyright. It shows that the majority of infringers contacted was unaware of their legal obligations to licence the use and showed interest in obtaining a licence that enables them to maintain their activities. DACS therefore believes that stronger cooperation on a broader scale would be helpful to raise awareness and respect for copyright protected works in the digital environment.

We also think that the Memorandum of Understanding in France as referred to in the consultation might be a workable solution in particular with respect to quick and cost effective dispute resolutions. However, as this model seems to be relatively new DACS favours the view that it would be preferable to monitor the activities and the effectiveness of this solution before finding European wide solutions following this example.

With regards to the application of filtering measures by ISPs DACS would like to encourage further investments in this area and broader education. The implementation of filtering measures to prevent the abuse of networks for the infringement of copyright and the dissemination of infringing copies of works is preferable to the current situation that contractually obliges end-users of networks to use the services in a lawful way; this current solution requires right holders to monitor the use of their work on an extensive and worldwide basis.

However, we are also aware that the current copyright laws in Europe provide for various exceptions from the licensing requirement and we therefore recognize that not every unlicensed reproduction online might actually constitute an infringement.

We therefore suggest further investments in the development and the fine tuning of these mechanisms to protect and enforce copyright owners' rights effectively, but also to find the necessary balance between these rights and the rights of end users as provided for in the various national copyright laws. We strongly believe that the application of filtering measures paired with a stronger cooperation between stakeholders will encourage rights holders to make their works available online and to enhance the availability of creative content online.

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