

## **Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on Creative Content Online in the Single Market**

**EBLIDA** (The European Bureau for Libraries, Archives and Documentation Associations) welcomes the opportunity to comment on this Communication from the Commission.

We believe that this communication raises a number of important questions relating to the creation of online content in a European perspective. We are acutely aware of the problems, including high costs, of rights clearance and the urgent need to find workable solutions on which libraries, users and right holders can agree on and which can bring works of the 20<sup>th</sup> century to the benefit of the European citizen. The communication also raises the question of the use of Digital Rights Management and complexities of usage restrictions. EBLIDA feels that there the Communication needs some clarity on this issue and to clearly distinguish between technical protection measures and digital rights management.

EBLIDA believes that a greater understanding and awareness of rights and restrictions by the end user will create a more balanced market for online content and help to re-establish the balance between copyright holders and user interests.

EBLIDA supports the suggestion for the establishment of a "Content Online Platform" at the European level and we would urge the Commission to include library organisations and associations in this discussion forum as libraries are important stakeholders in the dissemination of and access to online content in Europe through the network of libraries that they represent. EBLIDA would be pleased to contribute to the forum.

### **Annex**

#### **Creative Content Online – Policy/Regulatory issues for consultation**

Q1 Interoperability is always desirable in the internet age. Commercial entities establishing proprietary systems generally have to make them interoperable in the end, so resistance to interoperability is inefficient.

Q2 Consumers should be informed before making their purchase as to the limiting effect of any technical system and any systems in use should be as user friendly as possible.

Q3 Complex licences are a burden to consumers and cause disrespect for copyright. EULAs should never contain provisions denying the use of lawful exceptions to copyright and end users should be aware of their statutory rights under law.

Q4 Consumers are highly unlikely to make use of dispute resolution mechanisms. In practice they are in a take-it-or-leave-it position. The only concept that might assist consumers is an easily-accessible ombudsman to make quick rulings. Disputes should be avoided by ensuring that commercial offerings are transparent and fair. The most important element of fairness is a guarantee of the consumer's ability to benefit from statutory exceptions to copyright.

Q 6 – 8 These questions seem to assume that multi-territory licensing is desirable. For it to be attractive to consumers, an ombudsman in the consumer's own Member State should have competence to rule on consumer – business licensing disputes, regardless of the State of origin of the business.

Q8 Because of their use of the English language, right holders in Ireland and the United Kingdom have for many years enjoyed the possibility of multi-territory licensing (through worldwide English-language rights). But so far, the long tail has not been significantly exploited by the largest right holders. From experience in the UK, only when consumers and small businesses gain access to the long tail are works exploited rather than hoarded.

Q 9 -11 The Memorandum of Understanding in France was signed by ISP's, music and movie representatives in order to act directly against big illegal file sharers. We do not believe that this is an example to follow. ISPs should be prevented from filtering the content beforehand.

Firstly the privacy issue is at stake here. ISPs will, in essence, be spying on their own customers.

Secondly any possibility of filtering on a large scale as a preventive measure conflicts with the liability of providers as laid out in the E-commerce Directive. Article 12 of this Directive states:

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Member States shall ensure that the

service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

Thirdly, how would it be possible to exercise the rights under an exception as a consumer?

To establish whether the download is illegal a system of digital fingerprints of copyright protected works could be introduced. However this system should be used in the correct way and not as a preventive measure. If a copyright holder reports an (alleged) infringement the copyright holder should inform the service provider who identifies the work and the copied work by the digital fingerprint.

There is undoubtedly a need to improve a multi-stakeholder understanding of and respect for copyright in an online environment. Transparency and balance are key issues – it is essential to uphold the concept of user and statutory rights and to ensure that users are aware of their rights as well as applicable restrictions. New and more user friendly (and non-proprietary systems) business models from the creative industries will undoubtedly also facilitate a better understanding and therefore acceptance and respect of copyright.

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**EBLIDA, the *European Bureau of Library, Information and Documentation Associations*, is an independent, non-profit umbrella organisation of national library, information, documentation and archive associations in Europe. Subjects on which EBLIDA concentrates are European information society issues, including copyright and licensing, culture and education and EU enlargement. We promote access to information in the digital age, and the role of archives and libraries in achieving this goal. We represent the interests of our members to the European institutions, such as the European Commission, European Parliament, and the Council of Europe.**

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