



**European
Blind Union**
Ευρωπαϊκή Ένωση Ομοσπονδίας
Blind Union

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EBU Response to the European Commission Consultation on the Communication on Creative Content Online in the Single Market (COM(2007) 836)

About EBU

The European Blind Union (EBU) is a non-governmental and non profit-making European organisation. It is one of the six regional bodies of the World Blind Union, and it is the only organisation representing the interests of blind or partially sighted people in Europe. EBU aims to protect and promote the interests of blind or partially sighted people in Europe. EBU currently has 45 member countries, each represented by a national delegation.

EBU welcomes the opportunity to contribute to this consultation with a view to helping the Commission prepare a Recommendation on Creative Content Online. We particularly welcome the Commission's proposition to set up a Content Online Platform to discuss issues around the online distribution of creative content and would be keen to participate.

We are happy for our contribution to be made public. For further information or clarification, and to arrange future discussions, please contact in the first instance Anne Spinali, European Campaigns Officer, anne.spinali@rnib.org.uk, +44 (0)207 391 2087.

The European Blind Union has responded to those parts of this consultation which we deem most relevant to us.

Digital Rights Management

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?

EBU has already pointed out in previous responses to consultations and in its work on the EUAIN Project that there is a major problem with protection measures within DRM systems, which is that while they do help prevent unauthorised use, they can also prevent authorised use. We are very concerned that both blind and partially sighted people, and indeed others with a reading related disability such as dyslexia, can be denied full and equitable access to knowledge and culture if DRM schemes are inadequately designed or unfairly deployed.

Blind, partially sighted and other print-disabled people read electronic material in general, and online content, in particular by modifying the way in which it is presented. It is important to understand here that the modification of the format does not in any way mean a modification of the content. They may do this through magnification, transformation into synthetic audio or the use of a temporary or 'refreshable' Braille display.

In some instances, the software with which to make these changes is incorporated in mainstream packages, but the most flexible and adaptable solutions are dedicated screen-reader software - this form of access is often called 'assistive technology'. More generally, assistive technology refers to additional equipment or support that enables people with some type of impairment to use mainstream consumer products and services.

The issue is that the technical protection measures within DRM systems can react to assistive technology as if it was modifying the content and committing an illicit operation. The DRM systems applied to e-Books and

e-Documents can thereby prevent access by people who use assistive technology.

A second problem with DRM systems comes from the possible disabling of speech and magnification functions by the rightholders of publications. Blind or partially sighted people who buy e-Books can therefore find themselves unable to read them using the synthetic speech or magnification function and EBU members have many examples of instances where this has happened:

- Both Adobe Security and Adobe DRM can be configured to restrict the set of access tools, such as screen readers, and commercial publishers will typically choose to disable all accessibility features on material in PDF format.
- The same is true with Microsoft e-Book Reader: in addition to having an anti-piracy function (known as the owner-exclusive function), the book also has user restrictions such as the disabling of the text-to-speech capability and the limitation of the use of the book to one device. This means that a visually impaired user will not be able to download the book from a desktop PC onto a more congenial device such as a laptop Braille note-taker.

The February 2007 *Study on the implementation and effect in Member States' laws of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society* points out that, in order to allow individual beneficiaries of exceptions to exercise their rights, some Member States like Denmark and Norway have granted users, under strict conditions, a right of 'self-help' to circumvent TPMs in order to make a lawful use of a work. In Germany, a general right of self-help has also been introduced for public authorities and for purposes of public administration and the judiciary.¹ In the UK, the current Gowers Review of Intellectual Property is also recommending authorising format shifting for private copies and preservation, still under strict conditions.

It should be remembered that only 5% of books which are published are ever made available in any format other than standard print, thus excluding blind and partially sighted people from the vast majority of publications and hence from access to knowledge, culture and entertainment. In theory

¹ ETD/2005/IM/D1/91, p. 393.

the advent of e- Books and e-Documents should help reduce this deficit thanks to screen-reading technology. It is therefore even more unfortunate to encounter DRM systems which stop blind and partially sighted people from legally accessing this work.

EBU therefore strongly believes that DRM systems need to be made not only interoperable but also accessible:

- Interoperability means that blind, partially sighted and other print disabled people must be able to gain equivalent access to electronic information using computer systems that are modified to compensate for a particular impairment, as is available to non-disabled people using ordinary computers. Typical modifications to ordinary computers include a larger screen display, a screen reader or magnifier, braille display or alternative input device.
- Accessibility means that visually impaired people must be able to access protected content which they have legally acquired. This issue can be addressed in two ways: the first is to set up a system where the DRM scheme is able to recognise a trusted accessibility tool or assistive technology product and then unblock access to that content for that product or tool. The second way is to devise alternative sources of content that are only available to authorised users of trusted access tools.

Adobe has taken some steps to resolve the issue by developing a reader that is now able to recognise and establish a trusted relationship with two screen-readers, Window-Eyes and JAWS. This means that allowing access to DRM-protected content is now reportedly the default position of the PDF authoring tools produced by Adobe.²

A third solution would be to get rid of DRM systems altogether, a solution that the publisher Random House will be implementing when selling audio books via digital download as of 1st March 2008. Indeed, following a six-

² Appendix A: Accessibility Basics (http://www.adobe.com/enterprise/accessibility/reader6/appx_a.html)

"Within the security settings of Adobe PDF documents is the option to Enable Text Access for Screen Reader Devices for the Visually Impaired. Authors can choose not to allow printing, copying, extracting, commenting, or editing. However, to allow screen reader access for people using screen reading devices to read the tagged PDF document, the Enable Text Access for Screen Reader Devices for the Visually Impaired must be selected. This is selected by default."

months tracking of DRM-free sales of audio books, Random House Audio has found that there is no correlation between DRM-free distribution and an increased incidence of piracy. They have therefore decided to allow their retail partners to sell audio books in the MP3 format to foster new audio sales. We very much welcome this decision.³

Finally, EBU believes that the European Commission needs to examine how best to address issues linked with the accessibility of audiovisual material broadcasted online. As broadcasters move to distributing TV and radio content over the internet, it is essential they develop platforms that are accessible to disabled users. For blind and partially sighted people in particular, this means being able to access audio-description of TV programmes, whether they are provided via traditional broadcasting means or online. One of the issues is that, at the moment, no broadcaster provides audio description for its online services. This is an area where urgent progress needs to be made given the increasing convergence of broadcast platforms. Since it is already possible to obtain TV content via the internet, stream it to a television screen in a different room and watch it there, it is important that the devices enabling these services make the programme name, programme information and programme guide accessible via speech output on the platform on which the viewer is watching the content.

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?

Having sufficient and adequate information about the interoperability and accessibility features of the digital products or services consumers intend to buy, is an essential consumer need. Information should be reliable, understandable and transparent.

EBU is concerned that there is still no legal obligation on retailers to indicate the interoperability status, accessibility status and security levels of digital products and services. Users with reading-related disabilities

³ <http://www.boingboing.net/2008/02/21/random-house-audio-a.html>

wishing to purchase an e-book will therefore not know in advance whether they will be able to access it.

From our perspective, it is crucial that equipment manufacturers incorporate design-for-all principles into their designs and take accessibility into account from the start.

However, pending comprehensive, fully-inclusive design, EBU believes that labelling schemes for products endowed with DRM should be developed to indicate clearly how the bona fide beneficiary of an exception can gain ready access to the material in question, whether that is from the publisher or through technological means.

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?

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?

EBU agrees with the suggestion of using Alternative Dispute Resolution mechanisms (ADR) to solve disputes that may arise from the use of DRM. At the moment, the European Copyright Directive 2001/29/EC states that:

Article 5.3.b

Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases [...]: uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

and

Article 6.4.

Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with [...] Article 5 (3)(b) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned;

This means that the obligation to accommodate users' needs is on the rightholders, with Member States obliged to ensure that this can happen.

The issue, as pointed out in chapter IV of the *Study on the implementation and effecting Member States' laws of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*⁴, published in February 2007, is that "the implementation of article 6(4) of the Directive has led to a vast array of different solutions with respect to the persons entitled to claim the exercise of the limitation on the basis of this provision. In some Member States, only individual beneficiaries may claim the application of the limitation, while in other countries, interest groups and other third parties also have the right to do so. In yet other Member States, administrative bodies may be entitled to force rightholders to make the necessary means available to beneficiaries of limitations. Denmark and Norway do grant users, under strict conditions, a right of "self-help" to circumvent TPMs in order to make a lawful use of a work. In Germany, a general self-help right for public authorities has expressly been introduced, according to which TPMs can be circumvented for purposes of public administration and the judiciary. The rightholder applying TPMs is additionally obliged to make circumvention tools available for that purpose should self-help not be possible."

⁴ ETD/2005/IM/D1/91, p. 393.

In addition, we also have numerous examples of TPMs being applied by the content provider or the service provider, not the original rightholder. This situation creates an additional barrier for blind and partially sighted people to access online content. Where that occurs, EBU agrees that individual users should be able to resort to an independent mediator/arbitrator as offered by Alternative Dispute Resolutions mechanisms, as this can offer a quick, non-legal solution.

Some member states have already set up ADR schemes to reconcile differences. The UK, for example, has set up a system where the government is itself designated as the prime conciliator. But other Member States provide only for access to courts in the event of a dispute.

EBU would therefore welcome a Commission's recommendation on the need for harmonisation of resolution mechanisms across Europe, in particular using the ADR solution. However, we strongly believe this should not be the only measure recommended by the Commission to solve potential conflicts. Indeed, we are concerned that heavily relying on ADR also means putting the onus of making a complaint on the individual who acquired the material legally in the first place. Such a process can be demanding and time-consuming, in particular for disabled people and we would prefer to see the Commission recommend measures to ensure the accessibility of digital content.

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?

EBU believes DRM schemes and TPMs should be designed - if they are needed at all⁵ - in such a way as to allow access to people using screen reading packages from the outset. If DRMs are to be given a preference for digital content distribution, we recommend that priority be given to developing technical solutions, such as:

- provision of an encryption key
- entrusting a third party with an encryption key
- developing watermarking and fingerprinting techniques

⁵ Again we refer you to Random House's decision: <http://www.boingboing.net/2008/02/21/random-house-audio-a.html>

- creating a 'dedicated channel', such as a website accessible only to authorised people and where access could be tailored to individual users' needs.

Such solutions should be incorporated into licence agreements with customers such as libraries in educational establishments. We also recommend, as we have done in the past, that the Database Directive be amended so as to allow the same exceptions for access by blind, partially sighted and print-disabled people.

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?

As pointed out in the consultation, multi-territory rights licensing is not covered by existing legislation. For blind, partially sighted and print-disabled people, this means that digital content that is made accessible to them under a copyright exception in one jurisdiction cannot necessarily be made accessible in the same way elsewhere in Europe.

EBU therefore welcomes the suggestion of a recommendation of the European Parliament and the Council on the issue of multi-territory licensing but believes it will not be sufficient to address the technical issues linked with this. We believe it will require provisions to be built into national legislation, which means a revision of relevant legislation.

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?

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)?

Legal offers and piracy

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?

One of the key issues for blind, partially sighted and other print disabled people is for online content to be accessible. Online content is often inaccessible due to a lack of understanding of how assistive technologies operate. This is evidenced both by the general lack of application of website accessibility standards and the limited understanding on the part of some publishers as to how best to structure digital content files for efficient conversion into accessible format.

The Web Accessibility Initiative (WAI) guidelines provide a useful handbook on how to make web content accessible and we urge public and private websites to follow these guidelines.

One of the key determinants of accessibility is the tools used to create and publish digital content. For example, most web pages are created by the Content Management System software that put the page together by combining a page template with the content created by the author. If the template is inaccessible or if the software does not allow the author to provide accessible information, such as alternative text for images and other non-text content, the resulting pages will be inaccessible.

The same is true for other tools used to create digital content such as blogs, forums, podcasts etc. It is vitally important that these tools are capable of producing accessible content and that they allow authors to do so.

Although we strongly agree that online copyright infringements need to be prevented, we are concerned about the increasing use of the Turing test in order to secure access to certain websites and block malicious software agents from gaining entry. These tests prevent visually impaired people from gaining access to certain websites and services. CAPTCHA tests for example (Completely Automated Public Turing test to tell Computers and Humans Apart), assume that humans are fully sighted and ask users to key in letters from a distorted image, which text-to-speech software cannot read. We therefore urge rightholders and website owners to put in place filtering mechanisms that are accessible to blind and partially sighted people using assistive technologies.