

EXECUTIVE SUMMARY
**QUESTIONS & ANSWERS CONCERNING CREATIVE CONTENT
ONLINE IN A COMMON MARKET**

EGEDA is a rights' management body set up by audiovisual producers in 1990 which represents and defends the interests of audiovisual producers in Spain and Latin America and manages the copyright granted to audiovisual producers. In 2006, EGEDA developed a VOD platform called 'Filmotech.com' managed by a subsidiary EGEDA DIGITAL. Filmotech.com enables viewers to watch audiovisual works from any place in the world, at a reasonable price, with a very good quality and in a safe environment, safeguarding the European Film Heritage. EGEDA Digital works on an individual licensing system since each producer will decide on the conditions of exploitation of his/her works (streaming, temporary or permanent download) and the price. The aim of EGEDA Digital is to create economies of scale by agglomerating a significant repertoire of works – most independent producers individually cannot manage these rights. Collectively they represent a large market share, and therefore they cannot be ignored by users of audiovisual works.

EGEDA welcomes the Commission initiative to issuing a Communication on Content Online in the Single Market.

The production and commercial exploitation of European cinematographic works currently depends on a business model that has been being imposed more by the market than by the leaders in the cinematographic world and without the intervention of the public administrative authorities. The special peculiarity of this business model is the segmentation of the different relevant markets. Both the general production and the states or MEDIA programme incentives make it obligatory to respect a certain hierarchy of commercial exploitation. Most of this legislation does not take into account the possibility that the release of the product onto the market may be prior to or at the same time as its commercial exploitation in the cinema.

In addition, we would like to emphasis the following points:

- EU funding, ie MEDIA 2007, should help structure that offer pan-European solutions that are respectful of producers' commercial decisions;

- The Commission should find ways to ensure that the revenue stream generated by new operators such as telecoms from the use of the European content is re-invested in content creation.
- The Commission should ensure that competition rules should guarantee market access to European productions on non discriminatory licensing terms.

Digital Rights Management:

DRM are important to rightsholders, on the one hand to monetise their work, and on the other hand to protect films online. The first concern of audiovisual producers, even before interoperability, is the efficiency and security of the rights management systems. It seems evident that the deliberate lack of interoperability between different rights management systems tends to artificially fragment the online market content, so this situation and its causes must be examined in light of competition rights. Interoperability is a key condition to boost online services' revenues, as it extends the potential market by increasing costumers' choice and by increasing the willingness of consumers to adopt digital systems. DRM should not be implemented unilaterally by hardware manufacturers without the agreement of the content industry.

Finally, the Commission should keep in mind that DRMs are not the universal remedy. As DRMs can manage remuneration attached to certain exclusive rights, levies are still the only appropriate possibility to remunerate exceptions. Levies provide the opportunity to maintain the exception to the benefit of consumers while DRMs provide the opportunity to exploit exclusive rights.

With regard to the possibility that DRMs systems have to make use of personal information about consumers, we understand that this is inevitable in paid-for services except when they are produced through an intermediary mechanism that, without affecting the functioning and interoperability of the management systems, prevent the provider of the content from accessing the consumer's personal data.

Consumers must have the opportunity to resolve conflicts caused by the DRMs systems with providers in an efficient, economical and simple way and as a rule, consumers cannot take on the cost or the duration of judicial proceedings, which is why we are encouraging consumer-friendly alternative mechanisms for resolving conflicts to be made

available and based on simple and clear regulations (e.g. establishment of consumer arbitration systems which are processed electronically via the internet).

Multiterritorial Licences on Rights

Devising a suitable licensing mechanism allowing film producers to maximise exposure and helping on-line service providers to identify right holders is a critical step towards a successful strategy for developing an effective European digital film market. In respect of a possible Recommendation, the question is whether it will cover all the market operators or only those operators that act as management bodies. Copyright management organisations have been adapting themselves to the circumstances imposed by the market and have greater obligations than other economic operators. Commission has placed special emphasis on the possible territorial segmentation of the markets derived from the intervention of these management organisations, without having carried out the same reflection regarding the commercial operators that do not act in this way.

Collective licensing represents a convenient way to ensure online distribution of content for European SMEs without giving up on commercial freedom. The advantages are: guarantee for users to have access to a large catalogue of works without spending time and resources identifying individual right holders, enabling thus lowers transaction costs, increases the economic value of rights trading, better negotiating position for independent producers. A full network of reciprocal agreements ensuring clearance for the exploitation of protected works in every EU country, is essential for the good functioning of VOD platforms. The advantage is that every EU territory will be covered, as far as it ensures revenue flows back to right holders. In any case, the decision regarding issuing mono-territorial or multiterritorial licences must be under the preview of the rights holders.

EGEDA believes in the "long tail" theory. Business models based on that theory will obviously benefit from easier licencing of this back-catalogue.

Legal Provisions and Piracy

EGEDA considers the illegitimate distribution of films online as its main problem. Cooperation with telecom operators and ISPs is vital and should be sought, as well as ensuring effective implementation of

protection recognised in the various applicable European directives, some of which should be reviewed (article 12 e-commerce Directive on ISPs exemption). Establishing systems for the voluntary resolution of conflicts and within a framework of self-regulation by the sector is essential for the functioning of the system. But the current EU regulation concerning personal data protection, together with a varying transfer to Member State law depending on the country, has created a real defensive barrier for offenders which should be reviewed.

Furthermore, EGEDA fully supports the French initiative to seek effective and concrete measure to enforce Intellectual Property Law (Memorandum of Understandings). This is an example of cooperation between ISPs and rightsholders which should be widened to the rest of Europe.

Finally, following the Belgian case *Sabam v. Scarlet*, EGEDA does not see why filtering solutions that have been found being effective in preventing online copyright infringements should not be enforced on a European scale.