

Answers to the consultation on “Creative Content Online”

The European Commission has launched a wide-ranging consultation on the need to introduce a system to regulate Content online within Europe as well as the conditions for its implementation. The Commission requests ideas and suggestions on this issue.

The European Producers Club is an association made up of the most important independent film producers from all over Europe. Our main objective is to promote European cinema and help build a strong European film industry.

The European Producers Club wishes to play its part in the European Commission’s consultation process by submitting this document. It deals only with the questions most directly linked to film production, though other elements might, in the long term, make a notable impact on the audiovisual landscape.

Before answering the questions included in the consultation, we feel it is absolutely essential to underline that, **should no tangible and effective action be taken to combat piracy, the development of broadband internet access and the free content movement could well signal the end of the European film and its industry.**

We believe that it falls within the European Commission’s remit to encourage determined action on this momentous issue. Not only is it an absolutely vital question for the film industry but also for the European economy as a whole. If the public were to no longer accept the concept of intellectual property, we would soon be unable to protect or find a viable economic model for the production of creative content. We are sure the Commission is aware that this is not only an extremely significant part of the economy, but also the sector showing the highest rates of growth.

On the question of the DRM and their interoperability

As a preamble we would like to underline that rights-holders should always be able to freely control their rights.

Questions 1, 2 and 3

The desire for interoperability is heralded by some consumer organizations and supporters of free content as a so-called right to interoperability. This is sadly nothing more than cover for their excessive leniency towards those who choose to ignore copyright.

We are of course open to and supportive of a move towards the greatest level of interoperability possible, but only if stringent copyright protection is ensured.

The only form of public protection that we feel would be necessary is the obligation to inform users of the possibilities left open to them by the DRM in question. With this in place, the most flexible and interoperable services should succeed merely on the basis of supply and demand, provided that customers are sufficiently informed.

This does not have a particularly significant effect on cinema on demand, the question of interoperability being only partially relevant for two main reasons: - Near Video on Demand or streaming film rentals, ie. the right to watch a film within a given time frame is, for the time being, more common than outright sales. Indeed, most films are only watched once. Consequently, the question of copying the film onto another medium does not necessarily arise – the same film is often available simultaneously and on a non-exclusive basis via various services, thereby covering most reception and storage methods.

Regarding the information given to the consumer, there is a need to clarify what the consumer is really buying. This obligation of information could be covered by a national law.

Question 4

The alternative dispute resolution mechanisms in relation to the application and administration of DRM systems would certainly be an opportunity for both consumers and new products and services.

Question 5

A non-discriminatory access to DRM solutions may preserve and foster competition on the market for digital content distribution. However the EPC does not wish to see the European Commission interfere in this matter. There is no need of regulation on both European and national level. Let's allow the market to regulate itself.

On Multi-territory rights licensing

Question 6

European films are very rarely available in several countries at the same time. Only very high budgeted films, vigorously promoted and combining factors which make them easily recognisable by the general public in several countries, can allow themselves this privilege. Other films require either success on a national level, or to be shown in one or more festivals before they can succeed abroad. This imposes different release dates. Even if release dates can be coordinated, the release of major films must be organized on a country-by-country basis – due to the cultural variety in Europe (and that movies work on different dates in different countries best).

Multinational services are equipped with the necessary technology to offer certain films only in the countries in which they own the rights (geocaching or geolocation technologies): this presents no significant problems.

Issuing pan-European licenses would have give a serious competitive advantage to the few organizations operating on a Europe-wide basis, i.e. the american majors while seriously reducing the number and variety of other European films released outside of their home country, of which there are already very few.

The EPC thinks that this matter should rest with the producer's own intention and free will, and should never be included in any European regulation.

Question 7

The distinction between the primary and secondary multi-territory market is not clear. This can represent a number of different meanings for film producers. In any case, whatever it may signify for the European Commission, it would never justify fostering multi-territory rights licensing.

Members of the EPC, and more widely the Film Industry, are strongly opposed to multi-territory rights licensing.

Question 8

The EPC believes that while the Long Trail theory may adequate for many retail services, it is not relevant for our sector, due to the monetary sums involved and the length of time needed for recuperation (closer to 7 years, rather than the 2 years mentioned by the EC).

On legal offers and piracy

Question 9

The EPC deplores that this key question for the future of our industry is listed as the last one to be answered.

We believe that increased cooperation between all the parties involved should improve the respect of copyright. The “parties” have to be understood in a restricted sense: only the professionals and the groups whose properties are at stake should take part in the discussions and negotiations. Consumers need to be heard and their opinions considered in the negotiation process, but they cannot be considered as among the professionals involved in the negotiation of legal ways to protect copyright in the online environment.

Question 10

We consider French proposal called the “Olivennes Mission” as an example to follow and to foster in each European Country. We also fully support the recent initiative taken in the UK by the DCMS to implement the graduate response for downloading illegal music and film files.

Question 11

The EPC would like to note the Sabbam/Scarlet ruling delivered on June 28th 2007, where the judge of the Brussels Court of First Appeal considered that the consequences of the possible blocking of legal file exchange were negligible in comparison to the damages created by the exchange of illegal files.

The judge also considered that filtering systems are sufficiently efficient to be imposed upon ISPs as an effective solution in the fight against piracy.

The EPC supports this decision, which clearly identifies the capacity of public authorities to impose solutions against piracy to ISPs.

The EPC shares these opinions and supports the tribunal’s request that ISPs use all existing means to fight efficiently against piracy.