

## **FAEP response to the European Commission consultation on Creative Content Online February 2008**

### **Introduction**

The European Federation of Magazine Publishers (FAEP) is the representative trade association of the European periodical press. We represent national magazine associations from EU Member States, as well as corporate members such as Axel Springer, Time Warner and Lagardère Active. In total, we represent the interests of 15,000 publishing companies, turning out more than 50,000 titles per year, directly employing nearly 200,000 EU citizens (with a multiple of that figure involved in the upstream and downstream activities) and with annual turnover in the EU in excess of 40 billion Euros<sup>1</sup>.

FAEP warmly welcomes the European Commission Communication and staff working paper on creative content online. Magazines reach an average of 80% of all EU adults. The periodical press is a key element of Europe's cultural heritage and makes up an essential part of the pluralistic mix of information, entertainment and academic achievement. The market is dynamic and new launches are very frequent – magazine publishers operate on the cutting edge of societal developments and address all facets of life. As such, the periodical press industry is a key player in the *knowledge economy* so loudly touted by the European institutions.

Electronic make-up, advanced printing techniques and online publishing have, in recent years, led magazine publishers to progressively adapt part of their organisation and processes, and to develop new business models. While the main part of our editorial content is still delivered to readers in paper form, an increasing amount of content is offered to readers online. In some cases the online offer is complementary to the print product, while in other cases it is a direct replica of the print version, often with added imbedded features and interactivity (.pdf publications sent via email or to be downloaded from websites, for example).

Press publishers face numerous challenges to go online: creation of new systems of managing and delivering content, organisational changes and training costs, elaboration of new editorial/publishing processes, high costs of promotion and referencing among the leading search engines and portals and implementation of the related techniques.

An important part of the online press is made available on the Internet for free. To finance this content, publishers are reliant on advertising.

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<sup>1</sup> The periodical press industry includes retail magazines, specialist magazines, business to business magazines as well as scientific and academic journals.

At a time when the competition for advertising revenues is increasingly fierce and budgets are dispersed across existing and new media channels, Europe's magazine publishers are clearly concerned about any potential loss of revenues through measures (compulsory or otherwise) which would affect the ability to carry advertising and other commercial communications in our publications, both paper and digital.

Whilst publishers can base their business model online from advertising resources, they also develop other ones based, for example, on subscriptions.

Press products should be considered of first priority for special VAT treatment throughout the EU and should unequivocally be included in the lowest available rate - which ideally should be zero - in each country.

Lower VAT rates are one of the key elements that will enable publishing companies to keep producing and offering consumers quality content.

Periodical press publishers were among the first media to bring their content online and the sector continues to invest heavily in online content offering for Europe's citizens. Publishers have offered journalists the chance to blog; introduced forums, put databases of content online, made their archives available, embraced video content in addition to the text and photos, making their offer more interactive to meet their readership expectations. This experimentation, innovation and investment of periodical publishers in the digital environment is taking place at a time when many other players are also doing the same and in conjunction with the changing expectations of European readers, in particular of the young age group, representing the future of readership.

The experience gained by magazine publishers in developing online offers makes them a vital stakeholder for the platform the Commission is setting up. Publishers would be particularly interested in taking part in the debates concerning business models, financing of content and management of intellectual property rights.

Publishers need the clear support of the European Commission to ensure a richly diverse and pluralistic Press for the future which, even in the Internet age, remains such a vital part of free world democracy.

## Questionnaire

### 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?**

To make content widely accessible to all is key for publishers. While some publishers do or intend to use DRMs, some others do not use them for economic reasons (it is too expensive, in particular for the many thousands of SME publishers) or for security reasons as it does not always prevent illegal use. The legal protections for DRMs (both "technological measures" and "rights management information") already recognised in law at both EU level and within EU Member States should be maintained.

FAEP believes interoperability is a priority if the consumer is to have a variety of creative content available on different platforms. This should not be done at the expense of security nor be imposed through regulation. To ensure the effectiveness of DRMs and acceptance by consumers, industry players should find best adapted solutions for each different business models.

**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?**

Clear and transparent information is fundamental to maintain a relationship of trust between publishers and consumers. The exact extent of the licence consumers obtain when acquiring digital content and the possibility to play it on different devices should be understood and agreed before a consumer decides whether or not to buy the content.

Publishers are addressing ways in which rights management information systems (using digital rights management) can be made more transparent and efficient both for users and consumers.

The protection of personal data is also looked after carefully and the legislation in place both at European level and national level owes to be respected.

The work on the Automated Content Access Protocol (ACAP) should be noted by the Commission. ACAP has been developed to communicate information about permissions and rights policies for online content in a way that can be understood by computers. The technology is envisaged as a way of allowing publishers to communicate to search engines in an automated fashion how the content on their websites can be used.

However, this could be extended to allow all users of online content to discover ownership and rights attached to individual digital items and potential licensing opportunities.

**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?**

Publishers agree that improving readability of end-user license agreements will enhance consumer acceptance of the license terms.

Internet allows many types of use and modalities and end-user licence agreements contributed to the development of new internet services by facilitating software transactions. Regulation should not limit those possibilities and the contractual freedom should be preserved. Too many information requirements can lead to consumer confusion but oversimplification might have an adverse effect.

We do not think any particular issue regarding EULAs should 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?**

If alternative dispute resolution mechanisms are usually a faster and cheaper way to solve conflicts, we don't think these mechanisms would enhance consumer trust in online content. Indeed, it is up to businesses to develop the best DRMs solutions that permit them to develop new products and services that consumers will purchase with confidence.

**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?**

Promoting interoperability and dialogue amongst Internet stakeholders, developing standards for DRMs solutions should lead to more competition on the market. Specific regulatory intervention could have a negative impact on the market development and hinder innovation of information society services and technology.

### **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?**

FAEP is naturally concerned with the economic welfare of its member companies. Online editions in particular clearly offer the possibility of providing content and services

to the single market. It is therefore necessary that publishers have the *right* to grant multi-territory, indeed pan-EU, licenses, but this cannot become an *obligation* as that would foreclose all sorts of other cross-border partnership options that a publisher might prefer. The contractual freedom of individuals must be preserved.

**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?**

FAEP does not think that multi-territory licensing needs to be fostered. In our sector, apart from a few well-known international 'brands' written in one of the major languages, most magazines in Europe are consumed at national, regional and local level. The majority of the press in Europe does not have transfrontier features.

Different languages, interests for national or local news and very specific content, limit the attraction of magazines across borders. No EU-wide law will impact on this specificity of the Press. Instead, it is not uncommon to see a magazine brand style and, sometimes, content licensed to publishers (or merely a subsidiary) in other countries who then adapt to readers preferences.

Besides we do not see how the Commission can differentiate between a primary and a secondary market when the industry itself is still evaluating, testing new business models and markets. The system of licensing actually in place and based on the current copyright legislation allows for flexibility and any new service to be developed.

**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)?**

As already mentioned above, the legislation in place is sufficient for content providers to create new services meeting the needs of the consumers. Suggesting that after two years, a work has been fully exploited and falls in a back-catalogue would ignore how markets operate. This question is based on the false premise that content has a short finite shelf life.

In the magazine sector, databases are at the heart of almost every aspect of this diverse business and its competitiveness and profitability. Publishers invest significantly in creating and maintaining databases and making archives searchable - allowing quality content to be delivered to their readers when a specific event occurs or a new trend develops and reignites interest in previously published works.

Also the diversity of Magazine titles -in the EU today, there are more than 50.000 magazines titles produced by over 15.000 publishing companies- covers a great amount of very diverse interests that for many of us would be considered as niche market.

FAEP would also like to underline that the Commission Digital Library initiative has launched a discussion that should lead to a solution facilitating access to and use of

orphan works. Magazine publishers are participating in this exercise that should bring concrete results in the course of this year.

## **Legal offers and piracy**

### **Questions 9 to 11**

Free Access to the public internet is a necessary precondition for freedom of the press and sustainability of the media business as well as for the freedom of information.

Therefore the following distinction is very important:

On one hand the voluntary cooperation of providers such as host providers, search engines, forum providers, etc, with right holders can be appropriate, depending on respective circumstances of the relationship and of the conditions of the cooperation to enable educational, contractual and technological actions to stop undue utilization.

On the other hand we cannot foresee filtering or content related control by access providers - be it voluntary or mandatory.