

FIAD – International federation of film distributors associations
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Creative content online – Policy/Regulatory issues for consultation

- 1) DRM systems have a double objective: the first is to allow to better adjust offer and demand according to what the user wishes to acquire (for example streaming vision or downloading, time for use) and what the right holders wishes to commercialise, particularly regarding the release of the works on other networks (issue of the windows of exclusivity) ; the second objective is to protect the release of the works regarding illicit uses. One may observe that in many other fields of consumer goods, for example computer technology, some hardware machines and some consumable goods are linked to a trademark or a model without leading to any consequence for the development of these sectors. In the field of audiovisual consumers are used to interoperability of the systems; there is no need to doubt that manufacturers of hardware and software will find their interest in interoperable systems. Therefore DRMs are an essential element of the release model of contents whose production cost is high, such as films.
- 2) According to the first principle exposed here above, the information of consumer is as a matter of fact drawn to the specificities of DRM of the works they wish to acquire.
- 3) Licence agreements may seem complex but they result from the necessity to precise on a juridical point the conditions for using the works. However it does not appear that that complexity would prevent the development of offers on line.
- 4) Alternative dispute resolution mechanisms are often used in the relations between consumers and sales agents. Their general use depends from the procedural law in each country.
- 5) Many SMEs in the audiovisual field offer their contents on line or are going to do so. The specificities of on-line release make easier the access to a market allowing a release either directly or through a portal. Therefore the access to DRM solutions do not seem to be a concern for SMEs.
- 6) We will deal here with the question of multi-territory rights licensing only in the audiovisual field, letting stakeholders interested by other works, particularly musical works, to answer regarding their fields. In the audiovisual field these licenses are the consequence of the methods for financing and releasing the works. For European works national rights are the counterpart of exclusivities for a national territory which themselves are the consequence of presales. These national exclusivities come from the fact that there is the addition of national markets (or eventually linguistic ones) and not a single market. The Commission supports the release of the works through the MEDIA program and perfectly knows how the European cinema is financed by presales (theatrical distribution, video, televisions) requiring territorial exclusivities. These are matched with time exclusivities (windows) which make difficult the

operation with multi-territory rights licensing. It is possible that in the future operators will buy rights for several territories for some works but in the short term that seems unlikely.

- 7) See answer for point 6. More precisely the question of multi-territory rights licensing may lead to questions of competition and vertical integration which the Commission will not fail to examine.
- 8) Actually multi-territory rights licensing are a possibility to make easier the access to back-catalogue works. Regarding cinematographic works the windows (theatrical, video, VOD, pay television, free television) are linked to the first release of a work in the cinemas of a specific country and that release may spread over several months. So the idea of back-catalogue works may only be applied to works more than two years old as mentioned in the question. The MEDIA program works to shorten the delays between release dates in Europe but these dates depend from technical reasons (the preparation of linguistic versions) and commercial reasons (choice of the dates, lessons to be taken from the release in the production country). One may note regarding American films that to the exception of some well expected ones to the number of dozens their release is not on the same date but over some weeks. Art house American films with a similar release as European films regarding their release patterns have their release dates spread over several months, just as European films.
- 9) The respect of copyright needs a good faith, committed and efficient cooperation between interested parties (rights holders and ISPs). The implication of national authorities in the process of this cooperation is necessary for its good achievement, most of the times that cooperation is still to be made.
- 10) The French memorandum (known as 'accords de l'Elysée') is an example to follow. The French stakeholders will remain vigilant regarding its operation process, condition to make it an example.
- 11) Filtering measures are a way to prevent infringements to copyright. Their operation process requires the cooperation between rights holders and ISPs. They are not the only solution to prevent the infringements to copyright. Other measures are necessary, as provided by the 'accords de l'Elysée'.

Remark: on February 19th, 2008 the European audiovisual observatory has published a survey showing that from the end of 2006 till the end of 2007 the number of VoS services has grown from 142 to 258. So we see the development of a new market which does not seem to suffer from the present regulation and operating systems of the industries.