

Response to the Commission's Public Consultation on Content Online in the Single Market

Filmfolket Sweden represents the major part of the Swedish Film and TV Industry, and was founded in the beginning of 2007 as the result of an initiative within the Swedish Film Agreement¹.

Filmfolket aims at expanding the environment for legal alternatives for Film and TV on the internet, and at reaching viable solutions on piracy in Sweden. We cooperate with other Right Holders Organisations and have together, among other things, issued antipiracy trailers, school material, as well as various information campaigns.

Filmfolket welcomes the Commission's Consultation and agrees on the fundamental conclusion that the content online within the EU has not been used to its full potential due to a number of problems, most notably piracy.

Furthermore, as the Consultation discusses, ISP involvement in the fight against piracy is vital. In fact it can be the most potential measure of solving the current situation. ISP involvement in combination with other measures such as information, can prevent further damage from piracy, and help reverse today's situation. It is our opinion that action at the community level is crucial in reaching this aim.

There are several legal alternatives to illegal file sharing and other downloading of illegally uploaded content in Sweden. However, for obvious reasons, the providers of these services find it impossible to compete with illegal file sharing. As the recent Swedish governmental Commission on Copyright on the Internet (the Renfors Commission) points out: "The extensive infringement of copyright caused by illegal file sharing is a substantive obstacle to investments and development of legal online services"².

As the Consultation points out, the present situation leads to significant efficiency losses. This is especially true in Sweden,³ a country that is lagging behind most EU Member States when it comes to the protection of right holders on the Internet. As an example, the directive 2004/48/EC has to this day not been implemented in Sweden.

¹ The Swedish Film Agreement is the support system for the financing of film productions in Sweden. Signatories include the Swedish government, the TV-channels, the Swedish Film Distributors' Association, Swedish Exhibitors Association and the Swedish Film Producers' Association. The parties to the Film Agreement together represents 20 000 people working in film, tv and related areas in Sweden.

² Ds 2007:29 Musik och Film på nätet - hot eller möjlighet?, Page 17

³ In "Svensk Upplevelseindustri" a study by Value Formation the estimated losses in 2007 due to piracy for the TV, movies, Book publishers, music and computergames was estimated to 6,2 billion SEK (650 million Euro).

As we have found that the first eight questions of the Consultation falls somewhat outside the scope of Filmfolket's remit, we have chosen to limit our response to cover only the last three questions of the consultation.

Legal offers and piracy

9) How can increased, effective stakeholder cooperation improve respect of copyright in the online environment?

There have been numerous attempts to counter piracy by stakeholder cooperation. Stakeholder cooperation has an important place in enhancing the understanding of intellectual property rights and their importance to the modern economy. As technological developments demand that the fight against piracy on the Internet adapts continuously, stakeholder cooperation furthermore has a vital part to play in finding the proper response.

As we see it, effective stakeholder cooperation is a useful tool if it is underpinned by regulation. Stakeholder cooperation works only if all the affected parties take part. With a voluntary system we will run the risk that some stakeholders will seek competitive advantages by opting out. Therefore, stakeholder cooperation can never replace regulation, but may become an effective mean in transposing regulation into practical and cost efficient solutions, taking into account the complexity of the issues involved.

The UK's recently published comprehensive plan for government support for the creative industries (Creative Britain, New Talents for the New Economy) states that the UK government are planning new legislation that require ISPs to cooperate on taking action against piracy by April next year.

Earlier opposition from ISPs may well be in declining as ISPs now, to a higher extent than before, are moving into the content sector. However, in Sweden the Renfors Commission confirms that the ISPs are not yet prepared to engage in voluntary stakeholder cooperation. In fact, on a direct question, the Commission found that the ISPs would not take any kind of responsibility for the piracy situation. The Commission therefore states that regulation is the only way forward.

To sum up, stakeholder cooperation is important, but will only work if the relevant parties are forced to participate and work towards a common goal, defined by regulation.

10) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to be followed?

The French Memorandum of Understanding is a significant step forward in seeking a viable and stable solution to the piracy issue. The above mentioned UK plan for government support for the creative industries, pointing out that regulation will become necessary if voluntary agreements fail to deliver, shows that a consensus is growing on how to deal with piracy throughout the EU.

Most importantly, the action plans in France and the UK are oriented towards practical solutions. The key lies in the involvement of ISPs and the setting up of effective systems to oversee the agreements.

We would strongly favour a community approach along these lines. The common market for creative content is in need of an approach based on common minimum standards. Without a community initiative sanctions against copyright intrusion will vary to a degree which will run contradictory to the goals of the common market. Right holders will have one set of rules in some Member States and a different set of rules – or lack of rules – in others.

11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?

As recent court cases in Belgium and Denmark have shown, filtering/blocking sites with illegal content may be an efficient tool.

Content recognition technology, such as fingerprinting and watermarking data files are contiguous issues where there are present attempts to cooperate with ISPs. These systems may provide technical solutions to track copyright breaches but will need mandatory ISP involvement to succeed.

Furthermore, as the Belgian and Danish examples show, there is a lack of coherence in the implementation of the copyright directive throughout the EU. In some Member States the implementation lacks the stringency of e.g. Denmark and there are numerous cases of incorrect implementation.

Furthermore, filtering helps users to avoid breaching copyright rules unwillingly.

We see the advantages of filtering which can be part of a package of solutions, however active ISP involvement based on a proper legislative framework should, in our opinion, be explored as a first step.

Stockholm 29 February 2008

Eric Broberg

Filmfolket Sverige