

Responses to Creative Content Online consultation from the Information Society Working Group of the Green League (Green Party of Finland). The working group advises the Green League in information society related issues and is chaired by MP Jyrki Kasvi.

Helsinki, 29<sup>th</sup> February, 2008

Information Society Working Group of the Green League

tietoyhteiskunta@vihreat.fi, <http://www.vihreat.fi/>

*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?*

RESPONSE: The best interoperability is no DRM at all. DRM has been instrumental in vendor lock-in, and the markets now seem to move towards non-DRMed content, partly due to vendor lock-in. It thus seems that markets are resolving the interoperability problem by getting rid of DRM completely, which is natural as DRM systems are mostly a problem for legal end users and not pirates. Therefore, forced DRM interoperability would be a sidetrack to what markets are doing now.

In addition, consumers already pay private copying levies (for example, for blank media) in several countries. This would also suggest that there is no need for DRM. This system is in the legislation at least in Belgium, Finland, Germany, Netherlands and Sweden of the EU countries, as well as in US and Canada.

DRM also increases prices of the devices used to play back protected media content. DRM requires devices to have computing capacity not otherwise needed. Closed DRM schemes also make it impossible to use open source software in devices used to play protected content. For example, many Japanese consumer electronics devices use Linux as their operating system.

One possibility could be to interpret DRM as an informative system: it would not preclude use of material in any way, but it would act as a vehicle to communicate licensing information in a clear and standardised way.

In addition, future media formats and provisioning methods are currently unknown and any interoperable DRM system risks being outdated relatively quickly.

*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?*

RESPONSE: Privacy issues should follow the opt-in principle, and consumers should have a real choice, not having to 'take it or leave it'. Labelling of digital products should be promoted through common nomenclature. However, which is even more important, if labelling and interoperability information is defective or incomplete, consumers should have the right to be reimbursed ("return" the products as in any distance selling scheme).

Any technical requirements (DRM or otherwise) should be clearly indicated to the consumer before purchase, in a way that binds the media provider.

*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?*

RESPONSE: Creative Commons nomenclature is a good example of a simplified EULA. It is also a good example in that it is an example of a free licence, something that empowers the customer.

Consumer rights should generally be guaranteed by law and they should always be used as a reference, against which only the exceptions would be listed. The scope of these exceptions would be limited by law, making excessive deviations from the basic rights invalid and void. The exceptions should be expressed in a customer-friendly and simple way.

Another problem with EULAs is that most consumers think that they buy media content instead of a licence to use it according to restrictions stated in the EULA.

Complex legal agreements cannot in general be seen as mutual agreements, as most people cannot really read and understand them. Click-to-accept terms and conditions are also suspect, because usually the consumer is in a "take it or leave it" position without any real possibility of not accepting the terms.

*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?*

RESPONSE: Multiple dispute resolution mechanisms including class action are a good idea, as long as their use is optional to both content creators and consumers. However, the best way to increase customer confidence is not to have DRM.

*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?*

RESPONSE: Please refer to responses to question 1 with regard to viability of such systems.

If such a system would be created, the system, its processes and software for any potential interoperable DRM should be open, accessible and applicable to products and services of any service provider without limitations, licences or financial obligations either by vendor or by customer side. Any limitations on the access to standardized technology would eventually lead to monopolistic scenarios and limitation of free trade and enterprise. This applies similarly the information and software required to implement the DRM to data and services provided by any vendor or service provider (commercial or non-commercial).

*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?*

RESPONSE: In the world of Internet services being provided transparently globally in a manner in which any user service can be provided anywhere even without the user actually knowing in which country his/her data resides in a server or a data storage, any limitation based on geographic area is bound to be questionable.

In addition, any ban for users to purchase goods or services in a different country (providing the possible fees, customs and taxes are properly paid) is a severe violation against any principles of free trade and enterprise. Typically, the goods are sold to people, not to countries they live in. As the delivery costs to different countries for products purely consisting of data are virtually the same, there is no due justification for discriminatory pricing practices based only on geographic location.

A recommendation to ensure free and open market area across EU also on this branch of enterprise would be encouraged. In addition, EU should encourage the rest of the world to adopt a similar attitude and to remove geographically based market restrictions.

This can also be seen as a culture exchange and freedom of expression question. It is not advisable to limit exchange of cultural influences by restricting their availability by territoriality rights licensing schemes.

*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?*

RESPONSE: Please refer to our response to question 6. An EU-wide single licensing policy not allowing any geographical distinctions within EU is a minimum requirement. EU should take a stand to oppose any geographically based restrictions in the global framework too.

*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)?*

RESPONSE: The Long Tail theory applies to back-catalogue works as well as for non-mainstream works in electronic trade. Territory-based licensing would damage trade in which income is generated through means described in this theory.

Relaxing multi-territory rights would most probably enable the re-discovery of older works by consumers, which would otherwise be inaccessible due to contractual problems. It would also make a culturally wider selection of works available for European consumers.

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

RESPONSE: Open standards and technologies in conjunction with transparent and balanced processes for dispute resolution will empower media users and improve respect. What will surely decrease respect of copyright is if media consumers are left outside the cooperation.

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

RESPONSE: Generally speaking, no.

The French Memorandum of Understanding is flawed and should not be taken as a positive example for the following reasons:

- It puts ISPs (Internet Service Providers) in charge of content tracking and filtering. ISPs, as private corporations, should not be concerned about the type of traffic in their networks. This is a matter for democratically chosen bodies with proper oversight, if to anyone at all.
- This abovementioned measure will also cause rise in the Internet service pricing.
- The parties in the memorandum do not include a single NGO, not to mention any digital rights organizations.
- An additional administrative overhead will be required, which will be formed with taxpayer money.
- In every case, including the digital environment, the copyright violation has many interpretations. This is another reason why consumer advocacy groups and digital rights groups from NGOs should be included in such work for memorandum. Politicians can not be entrusted to alone hold the side of the people, as they represent all areas of life, thus also commerce.

The punishment for breaking the rules of the Memorandum is, eventually, losing one's Internet connection. Internet connection is as much a necessity in information society as a phone or a television, if

not more (due, for example network banking). In an information society access to internet should be all-inclusive, thus this punishment is not acceptable.

Monitoring copyright has traditionally been left to the copyright holder, who also would pay for costs of this monitoring. According to the Memorandum, part of the cost is transferred to the taxpayers and part to the average Internet user.

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

RESPONSE: No.

If filtering is understood as being a type of censorship (blocking access to content), any filtering mechanism will eventually be misused (it took two months for Finland's net filtering system against foreign child porn sites to be misused to censor domestic non-pornographic pages, not to mention causing a diplomatic incident by blocking the remembrance site of a deceased member of the Royal house of Thailand), so creation of such systems is a bad idea from day one. Filtration is ineffective against encrypted connections and other "darknets". Filtering just forces all illegal activity to a place where they cannot be detected.

If filtering is understood as inspecting the data in transit, then it poses severe privacy problems.