

## EXECUTIVE SUMMARY OF IFPI'S CONTENT ONLINE SUBMISSION

**29 February 2008**

This summary only provides a gist of IFPI's position with regard to the various issues raised and is not destined for publication on the Commission's website. For a complete understanding of IFPI's position and views on the various aspects raised in the consultation paper reference is therefore made to the full IFPI submission, which is the one that should be published on the Commission's website.

### **Digital Rights Management (questions 1 – 5)**

IFPI welcomes the fact that the Content Online Communication acknowledges that DRM are a key enabler. DRM have indeed been instrumental in setting up online business models and DRM continue to play a key role, as these technologies allow for a great variety of business models to develop. IFPI firmly believes that DRM interoperability is essential to the development of a robust online market for music, and record companies remain committed to promoting interoperability in all the appropriate fora. However, it is necessary for DRM manufacturers/digital platforms to engage in finding solutions, as record companies alone cannot reach the goal of full DRM interoperability.

As long as DRM technologies are not interoperable it is a fact that certain platforms with a very strong market position continue to benefit from the lack of interoperability to further reinforce their position on the relevant markets both upstream and downstream. Competition rules may, depending on the specific circumstances, contribute to addressing certain aspects related to (non-discriminatory) access to DRM solutions.

### **Multi-Territory Rights Licensing (questions 6-8)**

The Communication seems to imply that the principle of territoriality could be detrimental to the development of a European market in online content. We would like to underline that territoriality does not stand in the way of multi-territory licenses. Record producers do grant multi-territory licenses to online service providers and have done so for some time. Copyright has always been based on territoriality, and this principle is acknowledged in all relevant international instruments as well as in ECJ case law and in the relevant EU Directives. Territoriality is important also in practice as it safeguards adequate protection of rights within the Internal market and allows the record producers to apply business models, including so-called staggered releases, which maximise the chance of success of each release to the benefit of all right holders.

IFPI agrees with the Commission that the availability of multi-territory licenses is important to the development of a thriving online market. The recording industry has already come up with new and innovative ways to ensure the availability of pan-European licenses for the entire world repertoire and continues to develop this market. The main problems with licensing of European digital music rights relates to the refusal of the authors' societies to adapt their practices to the new on-line and mobile environment, in particular their inability to offer EU-wide blanket licenses on fair and non-discriminatory terms and to open their services to any form of competition. The Commission Recommendation for music<sup>1</sup> failed to address these obstacles to cross-border licensing. Therefore, given the failure of the existing Recommendation to address the problems indicated above, and given that this area is in constant development and new services and business models continue to evolve

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<sup>1</sup> Commission Recommendation of 18 May 2005 on Collective Cross-Border Management of Copyright and Related Rights for Legitimate Online Music Services

we believe that for the time being the market should be given time to find adequate solutions.

As for the Long Tail it is obvious that the greater the number of potential customers exposed to the Long Tail the better because the likelihood of finding niche fans interested in the long tail products increases. It follows that business models based on the theory should benefit from the availability of multi-territory licenses. We reject, however, the idea that Long Tail products should be subject to any type of special licensing regime.

#### **Legal Offers and Piracy (question 9-11)**

IFPI greatly welcomes the focus in this consultation on online piracy. Online piracy has become the number one obstacle to developing a thriving online music market.

For several years now, IFPI has been asking for the cooperation of Internet Service Providers, in particular access providers, to help control the unauthorised offer and dissemination of protected content online. However, so far negotiations have not led to any meaningful results. There are a number of feasible and reasonable options that ISPs can take to help address copyright infringements on their networks and that can in some cases be supported by technological solutions. Recent developments, in particular the French "Olivennes Agreement", have contributed to creating increased awareness of the need for ISP-cooperation in other EU Member States and thus to placing this on the political agenda. These developments also illustrate that strong political pressure is necessary to ensure that the relevant stakeholders, in particular ISPs, meaningfully engage in finding effective and fair solutions to the problem. IFPI therefore urges the European institutions to ensure that the parties cooperate and that ISPs play a responsible role in the fight against piracy.

The French MOU is a very important example of ISP cooperation which has created considerable and long needed momentum in Europe. In particular, the MOU recognises that ISPs are in a position to help in the fight against online piracy and that they must do so. The MOU creates an effective warning and sanctions system and ISPs can also be requested to take any other measure "in order to prevent or put an end to an injury created by the content of an online service". Other parts of the MOU, such as undertakings regarding non-interoperable DRM, are very specific to the French context.

The rapid evolution of technology has exacerbated the problem of mass infringement of copyright online, and we believe that technology has the capacity to address it. The sheer size of the problem lends itself to a solution that can be automated and scaled to deal with a large volume of infringements. When filtering measures are implemented by ISPs, they have the potential to be extremely effective, given the unique position of ISPs as the gateway to all traffic on the internet.

ISPs are in the technology business and they already implement technology to manage traffic across their networks for their own commercial interests. Independent studies suggest that as much as 80 % of all Internet traffic is P2P. Technology would assist in managing this traffic and free more network capacity to the benefit of both right holders and ISPs.

Against this background, it is a logical and feasible step for ISPs to implement technology to prevent or address copyright infringements on their networks. At a basic level, there are at least three technical options (outlined under question 11) available to ISPs to prevent or stop infringements, which can be implemented in various ways to enforce the ISP's copyright policy. None are overly expensive or burdensome, and all can be implemented without disruption to regular services. These options are not mutually exclusive, and could be implemented across an ISP's entire network, or at the level of an individual user or users, in conjunction with a warning and disconnection program as described under questions 9 and 10.