

RadioCentre Response to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on

Creative Content Online in the Single Market

Background

1. RadioCentre is the industry body for Commercial Radio. Formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), its members consist of the overwhelming majority of UK Commercial Radio stations, who fund the organisation.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry in the UK - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

General remarks

3. We support these steps to investigate further the single market for online media. As stated in our submission to the consultation in 2006, we welcome the introduction of a more simplified regulatory framework covering licensing, digital rights management and intellectual property.
4. The market for online content and distribution presents many challenges. Most are legalistic, for instance that of protecting or licensing copyrighted material made available online. Other challenges are of a practical or logistical nature, relating to the actual transference of creative content to the online environment.
5. Radio is a ubiquitous, portable and mobile medium which needs to be accessible on as many platforms as possible. UK Commercial Radio broadcasters are under inescapable pressure in the digital environment, and consequently they are increasingly seeking to make their content available to listeners via new transmission modes such as cable, satellite and the internet. Online services such as internet simulcasting, webcasting, podcasting and track downloads are growing in popularity amongst consumers.
6. Radio broadcasters face an increasingly expensive and complex situation in which they must seek to stabilise their positions and defend revenues in order to pay for the technological, rights and content investments required in the online world. This change is taking place in an environment where competition from powerful new entrants and for advertising revenues is fierce and where some of the regulatory, rights and technological issues remain unresolved.
7. Rights owners fear illegal copying of their work once it is put online. These fears can make it difficult for radio broadcasters who include music in their on-line offers to reach viable licensing deals for exploitation of music in the digital world.
8. As important rights users in the analogue, digital and online environments, Commercial Radio broadcasters absolutely support the need for fair and equitable remuneration for rights owners and are already working with rights owners to play a part in the fight against

piracy. However, we believe that rights users, such as UK Commercial Radio, could do more with respect to piracy if their discussions with rightsholders were not always confined to negotiations about price.

9. There is concern that the licensing systems currently in place are making radio's development in the online world difficult. UK Commercial Radio is mostly targeted at local, regional or national audiences and due to language barriers, demand is primarily limited to English speaking populations. Stations wishing to operate outside their country of origin (e.g. via the internet) are faced with the territoriality difficulties associated with the different rules and tariffs applying to other Member States. Consequently, we support the move towards a one-stop-shop model to cover European, or global, music rights whether analogue or digital, on-line or off-line.

Policy/Regulatory issues for consultation

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?

10. Please note, that the following is based on our broad experience of the interaction between DRM system, online content, and consumers. However, we do not claim to have extensive knowledge of DRM systems.
11. We regard interoperability as being the user's ability to use content obtained from different providers on the same device. Interoperability is an important area for the future of DRM'd material and would benefit both consumers and producers; it is important to allow consumers to play the content of their choice on the device of their choice without having to re-purchase material. It is also important for content providers like Commercial Radio services which want their listeners to be able to access their content in a variety of ways on a number of devices.
12. Lack of interoperability can have significant implications for both businesses and consumers. Closed, incompatible DRM systems are sometimes reputed to be misleading and can lead to confusion amongst the public. They also hinder authorized use. It has been reported that closed, proprietary DRM techniques have had an impact on online music sales. Fragmentation creates additional difficulty for consumers, making them more likely to opt for unprotected content, which can include illegally copied material that is readily available on file-sharing and peer to peer networks. This is against the interests of rights and content owners. They may even chose to avoid particular digital media tools altogether if it means that they cannot have the access to the content they want. Lack of interoperability also creates extra work and expense for content owners and distributors, who need to invest in multiple DRM technologies in order to reach the widest number of consumers.
13. For DRM systems to be successful, they must be acceptable to the consumer i.e. they must be non-intrusive, and interoperable; and they must be cost-efficient, effective and market-enhancing for content owners.
14. We believe obstacles to interoperable systems can be both technological and user-related. Many companies agree that interoperability is important, particularly for digital media. However, given the complexities involved, they often differ on what is necessary to achieve it. We are aware that there are significant technical challenges to DRM interoperability, with regard to the technical language used and the common methods for authentication etc. At a technical level, we believe that progress can be made with the collaboration of those who design and implement the systems i.e. the key players in the market such as Apple and Microsoft.

15. Of course any collaborative steps can only be the result of a business decision made by the operators of such systems. However, we believe that further 'attitudinal' issues may form obstacles in this regard. The different approaches among key industry players mean that different business models, market shares (incumbency and/or market dominance) and business strategies etc may all have an impact on attitudes towards, and the possibility of, DRM interoperability. In today's competitive climate, we believe that it will be difficult to encourage competing market players to interoperate.
16. In light of these competitive pressures, we believe that collaboration via the granting of access through licences to DRM technology and associated rights could potentially encourage greater interoperability. Collaboration could also bring about the development and implementation of market-based standards to further promote interoperability.
17. With regard to legislative and regulatory approaches, we believe that, wherever possible, solutions should be industry-led and market-driven, as opposed to mandatory, but we believe that it would be acceptable for Government to provide frameworks for cooperation within which market forces could operate.
18. Non-interoperability makes for a restriction of choice for consumers and is anticompetitive. Ultimately, we believe that competition should be between content rather than between delivery systems. Supporting the development of interoperable standards for digital content would signal a commitment to cross industry growth and prosperity. With interoperability of systems and devices, online creative content services are likely to see rapid growth in the Internal Market.
19. We believe successful DRM systems are those which balance the rights of content producers and the legitimate expectations of consumers. The key to ensuring consumer acceptance is, in turn, increasing transparency of information and good communication. However, it is important to note that providers must be wary of 'misuse' of DRM, as it is this that leads to consumer frustration, and potentially lost business, and in such cases, inhibits rather than fosters the development of online creative content services. We believe that the problems associated with online content are better off using DRM as a way to 'manage' rights as opposed to simply a means to enforce or protect rights. Indeed, many large stakeholders are choosing to abandon DRM systems, for example music labels who have begun to sell downloads in non-DRM'd MP3 files. It is therefore worth noting that online creative content services without DRM can also be successful.

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?

20. More must be learnt about the degree of acceptance of DRM by consumers, and what consumers' concerns and expectations are with regard to the use of digital content. Consumers are increasingly facing complex terms when purchasing online creative content such as music or film. These consumers are not necessarily fully aware of the usage restrictions applied to that content, what they will get from a given DRM system or how their personal data will be used - there are concerns that some DRM systems might invade people's privacy by tracking and transmitting personal data.
21. As stated in paragraph 17 we believe that increasing transparency of information and good communication are essential factors in fostering consumer acceptance. According to Intel, "consumer notice requirements in connection with content protection and DRM are not only appropriate, but will in fact help drive both the deployment of new business models and consumer acceptance of content protection and DRMs generally". RadioCentre agrees.

22. Consumers should be told exactly what they can and cannot do with songs and films they buy online. Content producers and distributors should ensure that there is clear labeling of digital products and services prior to use – for example labels should make clear how easy it is to move from one device to the next. Various DRM mechanisms such as watermarking or encryption should be clearly signaled on any online content. In the long term, the development of media literacy combined with increased transparency from producers and distributors, should help to ensure that consumers understand the digital products and services they are purchasing and what they can reasonably expect to be able to do with that digital content.

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?

23. We generally believe that the majority of EULAs are too complex for the average consumer, and in many cases users simply skim read or do not read them at all.

24. However, it can be dangerous for consumers not to read licence agreements as these can provide important information about the software and what the end user is agreeing to. Therefore, where possible EULAs should be made shorter, simpler and easier to read.

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?

25. Our understanding is that some dispute resolution processes such as the use of feedback or trust metrics are believed to empower consumers by giving them information with which to make more informed trading decisions. However, we believe that it would be difficult to give consumers more confidence in new products and services online unless any DRM around these products was made more transparent, less intrusive and safer than it was previously.

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?

26. Yes. Interoperable systems should lead to universal use; however we recognise that a solution to the complex technical, cost, legal, business and governance issues will take a long time to achieve.

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?

27. RadioCentre is concerned that the licensing systems currently in place are making radio's development in the online world difficult. Most UK radio programmes are targeted at local, regional or national audiences and are not generally listened to outside of the radio station's terrestrial reach just because they are available over the internet¹. A few UK based commercially funded radio services have aspirations overseas but mainly in English language speaking territories. As broadcasters, Commercial Radio operators have an interest in those models which acknowledge that the same content is made available through analogue and digital platforms and therefore dual payments or rights clearance are not viable. Consequently, we support progress towards a one-stop-shop model to cover European, or global, music rights whether analogue or digital, on-line or off-line.

¹ In the main, listening outside of the station's TSA (total survey area i.e. reach) e.g. via the internet is of little interest to the advertiser.

28. Despite liberalisation in broadcasting and other sectors, the collective rights management system remains characterised by territorial restrictions, lack of transparency and efficiency, monopoly power, and, in some markets, lack of appropriate arbitration and/or conflict resolution systems. Most of the solutions will have to be found at national level but some will need a European approach. Any approach must involve a full consultation with both rights holders AND users. We would be against anything that would result in a system that would increase the difficulty for commercial users to clear rights, thus making the process more costly and complex.
29. One of the problems associated with convergence is that rights are granted on a Member State level, not on an EU or global level, and different rules apply within each Member State. This inhibits the formation of a level playing field within Europe. The music industry is increasingly trying to introduce a "country of reception" rule and impose "pay per play/rate per track per stream" to internet simulcasting. This amounts to unsustainable double payments and possibly different territorial scopes and criteria for the same content – whether analogue, on-line, off-line or digital, and thus different legislations for the clearance of music rights. A European or worldwide music collection agency would benefit those businesses wishing to operate outside their country of origin.

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?

30. Currently, stations need to seek licences from the Collecting Societies in the territories concerned, however there are disparities amongst Member States. Ultimately, a rights user should be allowed to purchase whatever rights he requires, for whatever purpose wherever he wishes to exercise them, from any Collecting Society in the EU against clear, published tariffs. There should be competing one-stop-shops for all music rights whether for analogue or digital, on-line or off-line platforms. Broadcasters would then be able to choose which society they deal with based on the most favourable terms. This would introduce competition between societies – in terms of overheads, efficiency and service delivery. It is essential that these are genuine one-stop-shops for all parties (rights owners and rights users) guaranteeing all respective rights, regardless of individual label or Collecting Society affiliation of the various rights owners.
31. This competition between collecting societies will be to the benefit of all parties – owners, users and to the consumers that access the music – but this can only come about if users have an effective and efficient licensing structure, and a choice of who to go to for a grant of rights. This would also enable cultural diversity to flourish and ensure that all European music gets equal playtime and remuneration on European airwaves and networks.

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)?

32. Yes. Any multi-territory model must ensure the continued availability of smaller repertoires and cultural diversity.

Legal offers and piracy

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

33. Collaboration and cooperation between all stakeholders is indeed important. Education and awareness initiatives to create an understanding of the value of copyright amongst consumers are critical, and some form of enforcement mechanism will be inevitable. However, in reality, the only way consumers will value copyright in the online environment

is to create competitive business models that will associate copyright management with added value.

34. As important rights users in the analogue, digital and online environments, UK Commercial Radio broadcasters absolutely support the need for fair and equitable remuneration for rights owners and are already working with rights owners to assist the fight against piracy.
35. UK Commercial Radio has reached agreements on metadata transmission with the IFPI. It supports record companies' rights and the need to protect them. However, it insists that the right to broadcast protected works, performances and recordings (accompanied by fair remuneration) should not be hindered by means of protection against piracy (such as DRM), given the associated problems alluded to in question 1).
36. It is important to note that rights users, such as UK Commercial Radio, believe they could do more in this respect if their discussions with rightsholders were not always confined to negotiations about price.

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

37. We believe that wherever possible, remedies should be industry-led and market-driven, as opposed to mandated by legislation. We believe that it would be acceptable for Government to provide frameworks for cooperation within which market forces could operate.
38. With regard to the French situation, we can foresee that there may be privacy issues relating to the fact that French internet users will have their usage subject to monitoring by ISPs to ensure that content is not being pirated. This could have a knock-on effect resulting in impediments to use of legitimate content e.g. legal P2P traffic. This could also result in an increase in fees for internet users, in order to pay for the costly technical measures needed to implement the MOU.

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

39. Filtering measures could be a powerful way of eliminating infringing material and activity online.
40. However, the technology would need to be sufficiently sophisticated so that filtering mechanisms would not filter out the use of legitimate content (and take into account the exceptions and limitations of copyright) thus negatively impacting upon consumers who comply with the relevant copyright laws.

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