

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 (COM (2007) 836 Final)

– comment by The Swedish Consumers' Association

The Swedish Consumers' Association have been asked to provide comments on the Commission consultation on creative content online in the Single Market. Our comments are set out in detail below.

1. General remarks – overarching issues

Even though we support the Commission's conclusion that these issues should certainly be regulated at European level, we are in less agreement as far as the reasons for this are concerned. The communication speaks of the 'dual advantages of economies of scale and cultural diversity'. While we are not disputing the correctness of the statement as such, as a representative of Europe's consumers the question still begs - where does consumer confidence and protection fit into that picture? Indeed, in our view one of the main advantages with regulating these crucial issues on a European level is the fact that this achieves legislative equality – where one set of rules are allowed to govern across all Member States, recognising the crucial role of consumer protection and recognition, allowing for consumer confidence to grow and cross-border trade to flourish.

Further, while it is true that European consumers increasingly access films, music, news or games through different networks and electronic devices, it is equally true that the consumer protection in these relatively new market areas is largely incoherent and incomplete. The digital rights of consumers' is an issue that The Swedish Consumers' Association, to a large extent in affiliation with the European Consumers' Association BEUC, have been heavily involved with since these issues were first brought onto the European agenda. Together with BEUC, we have previously demanded, and continue to demand the ensuring of the following rights in order to realise the full potential of the online market:

- Right to choice, knowledge and cultural diversity
- Right to the principle of "technical neutrality" – defend and maintain consumer rights in the digital environment
- Right to benefit from technological innovations without abusive restrictions
- Right to interoperability of content and devices
- Right to the protection of privacy
- Right not to be criminalised

While much work has been done in this area, most of these rights remain to be fulfilled. However, the lack of legislative clarity and cohesion has been and remains a major obstacle to the existence of consumer confidence in the online environment, but also the establishment of a strong internal online market. The filling in of these gaps is to us just as crucial as any of the other issues raised in the report. The challenge as identified by the Commission to update and clarify possible legal provisions that unnecessarily hinder online distribution of creative content in the EU, while acknowledging the importance of copyright for creation, therefore only gives half the picture – it is also about acknowledging the importance of consumers and consumer protection.

We strongly agree with the Commission in its conclusion that the existence of DRMs has severely impaired consumer confidence, and have rightly lead to perceptions of rights-owners as gatekeepers, restricting consumer choice not just to the full extent of the law, but further and beyond. Better interoperability of DRM systems would improve the level of competition and consumer acceptance necessary for the take-up of online distribution of creative content. While we support the idea of providing consumers with an accurate and easily understood labelling system on interoperability and usage restrictions, we wish to strongly emphasise that this can only be seen as a temporary solution, one that in fact consumers should be entitled to anyway. Creating interoperable DRM solutions must remain the focus of all involved stakeholders.

Further, we strongly welcome the Commission's initiative to create a 'code of conduct' setting out the rights and obligations of the involved stakeholders in relation to the fight against illegal downloading and piracy. Taking a multiparty perspective, we support the idea of creating an instrument that could promote the existence of a wide online offer of attractive content and consumer-friendly online services, as well as adequate protection of copyrighted works. Further, the emphasis of awareness raising and education on the importance of these issues is something The Swedish Consumers' Association have requested previously, and something we would be willing to actively continue to support.

2. Questionnaire

Below follows our answers to the questions, attached to the annex of the consultation. We make no claim as to the completeness of our answers: in some cases the question has been left unanswered while in others it is largely incomplete. We have instead focused on those areas that to us are the most urgent, as well as those that can be expected to fall within our particular area of expertise.

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?

As outlined above, we strongly believe that one of the key problem areas for consumers in this area has been, and remains, the existence of DRM systems and their detrimental effects on interoperability. Therefore, the adoption of interoperable DRM systems will in our view not only benefit consumers and consumer confidence, but also the development of creative content online. From our consumer oriented perspective it is difficult to see why there would be any obstacles at all against fully interoperable DRM systems, a part from an unwillingness from industry and rights holders' to let go of a certain level of control which, even though as such cannot be categorized as illegal, certainly works to the detriment of the internal market. We do not trust new initiatives like CPMC, content protection and copy management, to really provide a stable, user-friendly and interoperable system for consumers.

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?

Again as has been briefly discussed above, we believe that information and education measures guided towards consumers are parts to the solution that should be highlighted further. However, it is crucial to understand that it is only just that, a partial yet not a complete solution. The efforts to achieve a digital environment where fully interoperable DRMs are the norm must continue.

Nonetheless, educational measures are important as a complement. It is our view that consumer organizations, nationally as well as on a European level, have a potentially important role to play in that process.

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?

The Swedish Consumers' Organisation are not willing at this point to answer the above question, at the same time reserving the right to do so at a later stage.

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?

We recognize that alternative dispute resolution mechanisms could very well have a place to fill in relation to the application and administration of DRM-systems. However, we also believe that the focus of most consumers in relation to the resolution of disputes, especially in relation to consumer confidence as a whole, are more interested in having a method of resolving their dispute. Whether that method consists of a more formalized procedure or whether it is mediation, conciliation etc is in our view of a secondary nature.

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?

While for obvious reasons our main foci are on consumers and consumer rights, we do believe that DRM solutions has a largely detrimental effect on the market from a strictly business point of view. Indeed, it is not only impossible but also very dangerous in viewing different actors on the marketplace in isolation. The inherent dynamics of the marketplace is of a reciprocal nature and a distortion in competition between businesses is bound to affect consumers, if not immediately then certainly in the long-term perspective.

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?

The Swedish Consumers' Organisation are not willing at this point to answer the above question, at the same time reserving the right to do so at a later stage.

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?

The Swedish Consumers' Organisation are not willing at this point to answer the above question, at the same time reserving the right to do so at a later stage.

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)?

The Swedish Consumers' Organisation are not willing at this point to answer the above question, at the same time reserving the right to do so at a later stage.

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

We would here wish to emphasize the need for stakeholders to cooperate when it comes to educational and informational measures.

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

The Swedish Consumers' Organization is hesitant to the sort of proposal that the French memorandum is connected to. We have recently been involved in the legislative process of a similar Swedish proposal. In our response to that proposal we were highly critical to the fact that the Internet providers themselves were supposed to monitor and ultimately enforce the right to turn an individuals connection off.

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

The Swedish Consumers' Organisation are not willing at this point to answer the above question, at the same time reserving the right to do so at a later stage.

This document was prepared by Jonas Adolfsson, legal secretary, The Swedish Consumers' Association, and the signatory.

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