



Commission of the European Communities
Directorate-General for Information Society and Media
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Submission concerning the Communication on Creative Content Online in the Single Market

Viestinnän Keskusliitto (The Federation of the Finnish Media Industry) expresses its thanks for the opportunity to make a submission on the Communication from the Commission on the theme of Creative Content Online in the Single Market (KOM(2007) 836 Final). We respectfully comment on the matter as follows:

Main messages

1. **Publishing activity must be taken into consideration more effectively.** The measures envisaged in the Communication are not adequate if the intention is to promote online content services in the Single Market. The main attention in the Communication seems to be focused on music and audiovisual products, whereas it would be important to examine also ways of improving the prerequisites for electronic publication activity. Markets for different creative contents function in different ways, for which reason also measures must be tailored in a way that allows for this difference. “One size fits all” solutions may be harmful.
2. **Copyright solutions to promote online publishing.** A distinction must be made in copyright questions between freelancers and authors who are in employment relationships. It would be desirable to make it easier to acquire the rights to works created within an employment relationship by enacting legislation under which there would be a presumption that the rights have been transferred to the employer. This would make possible the development of new, innovative online publishing services. If a decision is reached to issue a recommendation concerning the availability of creative content, it should include a recommendation that copyright to works created within an employment relationship will be transferred to the employer under the provisions of the legislation, unless otherwise agreed by the parties.
3. **Different management of rights in different sectors.** Individual management of copyright suits publishing in an online environment. What is involved in electronic publishing is publishers’ core business, in which companies must be able to license their products directly

to customers without intermediaries. When music licensed by copyright organisations is used online, users should be able to obtain licences from one point for the necessary broad area of use. We do not see a clear need at this stage for a recommendation concerning licensing of audiovisual works.

4. **Competition must not be skewed.** Something that must be taken into consideration in all promotion of the use of online content is that intervention in the operation of the market must not be made in a way that skews competition. There is no justification for using public funds to provide products or services that companies operating on a commercial basis offer on the market.
5. **There must be a serious approach to online piracy.** Online piracy is a threat to the content business and there is a need for extensive cooperation between the various stakeholders in order to combat it. Unauthorised use of content published online, for example with the aid of linking techniques, is a phenomenon to deal with which adequate legal tools must be available.
6. **Lower the VAT applicable to electronic publishing.** It would be possible to promote the production of creative online content also with the aid of the means that value-added tax provides. We do not support harmonisation of the reduced VAT rates applicable in various Member States, but Member States should have the opportunity to apply the lower rates, including zero rate, that are applicable to printed products also to online products. The recommendation could contain a separate provision to this effect. It should be emphasised in this provision that the zero tax rate or the present reduced rates must not, however, be jeopardised.

Take account of the special features of different content sectors

The Communication places a special emphasis on music and audiovisual works, with less attention given to questions relating to online publishing. We consider this regrettable, because Commission measures should also be used to support the prerequisites for successful European publishing.

Various types of content differ from each other in many respects. For example, news material in newspapers is specific to a given date and the market is national or confined to a specific language area. Music, by contrast, can be listened to over and over again and the music market does not conform to national frontiers.

Uniform regulation, with special questions relating to some or other specific content type in its background, can prove very detrimental in another sector of the content business. For example, solutions devised on the basis of online distribution of music can be completely inappropriate in the case of electronic publication of magazine or newspaper online material or books. Mass-use rights for music are managed by the copyright organisations, whereas electronic publication rights belong to a publisher's own core business and are individually managed by the publisher. These differences must be taken into consideration in any future recommendation and other regulation.

Copyright-related means

Employment-relationship copyright

It is possible to use the means that copyright offers to promote distribution of online contents. The most effective means from the perspective of online publishing would be EU-level regulation to the effect that economic copyright to works, photographs and databases created within an employment relationship would be presumed, under a special provision to be incorporated in national legislation, to have become the property of the employer, unless otherwise agreed by the parties. A comparable solution has already been made in the Directive on the legal protection of computer programs.

A distinction must be made in regulation of employment-relationship copyright between freelance artists and authors who work within an employment relationship. A presumption of the transfer of copyright should not apply to freelance artists, who themselves bear the risk of their works being distributed. By contrast, authors who are in employment relationships do not have to bear this risk, which has been transferred to their employer. The compensation that authors receive for their creative work is their salary and all of the ancillary benefits of their employment relationship.

The online publication market still has a lot of potential the utilisation of which regulation of employment-relationship copyright would promote. The development of new, innovative online publication services requires a legal certainty in which to operate, something that does not exist in the present situation. Companies operating in different EU Member States are also in unequal positions given that the issue of employment-relationship copyright has been resolved in some states, but not in others.

Media companies' prospects of competing with providers of various search engine-based services, operators and other providers of content services would be enhanced if opportunities to acquire copyright were to be improved by means of a legal provision creating a presumption that copyright on works created within an employment relationship belonged to the employer.

In our opinion, binding EU regulations or at least a recommendation to the Member States should be issued with respect to employment-relationship copyright.

Digital Rights Management (questions 1-5)

The use of DRM systems must be at the free discretion of the right holders. Many right holders, in the publishing sector for example, have chosen to offer their published material free of charge online. This must continue to be possible.

Interoperability of DRM systems is in and of itself a matter deserving of support. It is advisable to inform consumers openly about the properties of systems and the terms and conditions on which they may be used.

In relation to DRM systems, a discussion of levies for private copying has long been in progress. The area of application of levies to different kinds of recording platforms has been constantly broadening. A levy system is administratively ponderous and expensive and abandoning it should be seriously considered. Private copying is a phenomenon that can be allowed for in another way, for example in the pricing of the product to be copied.

Multi-territory rights licensing (questions 6-9)

Licensing of electronic rights does not suit the role of copyright organisations in publishing activity. Electronic publication belongs to publishers' core business, which is based on direct relations with customers. The resource inputs that publishers make into productising content, marketing,

distribution, taking care of customer relations and developing business operations must not be jeopardised through the activities of outside licensing intermediaries. Individual licensing suits online publishing.

Music, the rights to which have traditionally been managed through copyright organisations, constitutes a mass-use market in its own right. Multi-territory licensing suits the online use of music more naturally. What is essential is that music users obtain the licences they need for the geographical area they want from one point.

However, there is no good reason to extend a management solution that works in the music sector to other types of material. This applies quite especially to online use of magazines, newspapers and books, which are different in character from music. The publications market is to a large extent based on national culture and language.

It is not possible to adopt a stance on the question asked in the annex about distinguishing between primary and secondary markets in online licensing without a more precise explanation of the licensing model envisaged.

On the basis of the Communication, we do not see any clear need for a recommendation on multi-territory on-demand rights licensing for audiovisual products. The matter will have to be studied in greater detail before a decision is made. It is possible to develop licensing on the basis of existing regulations to cover geographical areas larger than an individual state.

Combatting piracy (questions 9-11)

Copyright protection is a fundamental prerequisite in the production of both printed and electronic publications; without it, the entire foundation of the business would collapse. Effective protection is also in the consumer's interest, because it guarantees that companies will have the possibility to produce richly varied and high-quality materials for consumers to use. Thus copyright promotes implementation of freedom of speech.

The battle against piracy must be taken seriously and cooperation between various stakeholders in this matter must be encouraged. The concept of piracy must be understood so broadly that it includes also unauthorised commercial exploitation of online published contents with the aid of linking techniques (so-called leeching). Adequate legal means of intervening in this kind of activity must be brought about in order to ensure that the production of new content is not jeopardised.

A Commission working document associated with the Communication mentions that, in accordance with a Memorandum of Understanding adopted on 23.11.2007, France will establish a new Internet authority with the power to ban persons who illegally distribute files from accessing the Internet. It is asked in the annex to the Communication whether the French Memorandum of Understanding is an example to be followed.

Cutting off communication links is a very serious infringement of the right of free speech, and could prevent access to not only illegal, but also perfectly legal material. Likewise, cutting off prevents, in addition to disseminating illegal messages, also the possibility of using the Internet to publish legal messages. Looked at from the perspective of freedom of speech, cutting off communication links is not a desirable way of tackling Internet piracy. The problem is difficult, but at least in part it can be combated by providing legal material, which in turn would be helped in

publishing by introducing the regulation of employment-relationship copyright that is mentioned in the foregoing.

We draw attention in this context also to advance checking of television subscription programme services and the fees to be charged for this, because these fees must not become an obstacle to the development of online content services. Where subscription programme services are concerned, self-regulation on the part of the actors involved is the primary alternative. Self-regulation based on child-welfare considerations has worked very well in actual TV broadcasting in Finland.

Without a more detailed explanation of how filtering measures to prevent copyright infringement would work and how they would be focused on different kinds of online content, we are unable to reply to the question in the annex to the Communication concerning the effectiveness of these measures. Also in relation to this question, special attention must be paid to respecting freedom of speech.

The competition perspective

Legislative solutions or public money must not be used to skew competition nor weaken the prospects for companies operating on a commercial basis to be able to do so viably. Online markets for many content products have not consolidated themselves yet, but are still only developing. Different business models and earnings logics are still seeking a shape for themselves under the pressure of severe competition.

The roles and tasks of the public authorities and commercial actors must be kept separate from each other. The tasks of the public authorities do not include, for example, producing educational materials or online distribution of commercially produced content through library, archive and museum institutions. Measures of this kind are conducive to undermining the foundation of commercial actors' investments; it is specifically on this foundation that demand for materials rests.

Tax-related means

Tax-related measures also provide means of promoting production of creative online content.

The EU Commission is currently examining possibilities of harmonising the Member States' reduced VAT rates. Taking into consideration the national and language- and culture-related character of publishing markets, we do not support harmonisation of lower VAT rates throughout the EU.

Instead, it would be important to allow the member States to apply the reduced VAT rates currently levied on printed products, including the zero rate, also to publications in electronic form. In Finland, no VAT is charged on sales of magazines and newspapers that have been subscribed to for a period of longer than one month and the VAT on books is 8%. It would be desirable if the same zero rate and reduced 8% rate could be applied also to electronic publication.

Publishers bear the freedom-of-speech-related responsibility for content in the cases of both print and online publications. The same tax treatment would be justified also from the perspective of freedom of speech. An online publication is equatable to a print publication, not other types of electronic services.

Something that is extremely important in further work concerning reduced VAT rates is that the possibility of preserving the existing reduced and zero rates is not in any way jeopardised.

Content Online Platform

The Commission's proposal to create a Content Online Platform forum as a framework for European-level discussion is worthy of consideration. At its best, an open dialogue between various actors can promote understanding between the parties and improve the competitiveness of the European contents business.

We emphasise, however, that the forum can not have any role whatsoever in actual copyright negotiations, which are always a matter between right holders and users.

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Viestinnän Keskusliitto (The Federation of the Finnish Media Industry) is an umbrella organisation for the media sector and printing industry. Its task is to promote the conditions essential for the effective operation of the sector with the aim of ensuring a diverse range of mass media services for the Finns. The Federation represents about 800 companies with some 30,000 employees. The companies represented have an approximately 80% share of the mass media market in Finland. The Federation's members are the Finnish Periodical Publishers' Association, the Federation of the Printing Industry in Finland, the Finnish Newspapers Association, the Finnish Book Publishers' Association, the Association of Finnish Broadcasters and the Association of Finnish Television Broadcasters.

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