



the Consortium for Interoperability in IP services

Contribution
to the
"Creative Content Online in the Single Market"
Public Consultation

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Information on Voipex

VOIPEX Consortium was created in Italy in 2005. The members of VOIPEX are various Italian telecom companies, broadcasters, IP developers, content providers, scientific and public entities.

Its main purpose is to promote the efficient and sustainable development of an open market for interoperable SoIPs – Services over Internet Protocol (including IPTV, DRM, VOIP, Instant messaging, Directory and Presence Services, etc.) – by supporting and preferring solution based on open and non-discriminatory standards/protocols.

Its main activities are defining technical conditions, selecting standards, writing intra-consortium rules, release conformity certifications about the QoS and the interoperability for the product and services of its members.

Introductory note

Voipex (the "Submitter") wish to let the Commission know that they have welcomed this consultation with enthusiasm, because interoperability in IP technologies are one of their main concerns, together with enlargement and openness of the online content market.

The Submitter agree that most of the Commission's analysis - as described in the Staff Working Document - is a reasonable and sound pathway for development of the content online industry and market; however, we think that interoperability in DRM systems is not the only key issue in development of online creative content services. Two other factors are equally important if we talk about online high added-value content and premium content delivery (e.g. TV programs, interactive TV services, movies, etc.): interoperability in the IPTV chain and Net Neutrality.

As much as we were glad to see these issues discussed in the Staff Working Document, we were surprised that no question was posed on the subject in the consultation; we do hope that sometime soon a specific consultation/initiative (e.g. a Commission study) is launched on these matters. At present time, complete triple-play vertical integration in a "walled garden" environment is the only model accepted and implemented by the telcos who run IPTV services¹.

Both the business model and the technology are built exclusively around the telco's competition needs, relegating the other actors of the value chains (e.g. broadcasters and ISPs) in a secondary

¹ see Prosperetti E., Tripaldi G., Visco Comandini V., IPTV Missed Expectations: can regulation do the trick?, SIDE Conference, Milan 2007, http://guidotripaldi.typepad.com/documents/IPTV_missed_expectations_SIDE07.pdf



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position. This model crushes the consumer by reducing the total number of people who use the IPTV services in a country, and it reduces the number of players in the value chain (electronics manufacturers, software developers, content and format authors and producers, interactive services developers and providers, etc.) with anticompetitive effects.

In particular, all the innovation in content production and distribution who pass through interactivity between the content and the public, cannot be developed without a common standard along the IPTV tech chain. This is because adapting the interactive services for too many proprietary IPTV systems, would raise too much the production cost, eventually, definitively discouraging the system development (or keeping it at a lower level of functionalities), therefore lowering the customers interest in IPTV over traditional TV.

Instead, a common technological standard would enable and promote a horizontal integration model. In this model every player focuses mainly in its own core business, building new value on it instead of stealing value from the adjacent layers.

This would stimulate innovation in every layer, attracting investment because of the bigger audience that the adoption of a common standard allows.

This would also enable the development of a robust ecosystem in the value chain, increasing the economy correlated to the IPTV market

Net Neutrality is a topic which was already quickly mentioned in some past consultations, but not in deep. We think that is very important to define some base principles before some market policy jeopardizes the possibility of achieving the enforcement of such goal.

Net neutrality is not yet officially defined; furthermore, research on the matter generally applies to U.S. network scenarios, however it is fairly easy to argue that a lack of neutrality dramatically affects the online market development.

The greater the power of a network carrier to alter the neutrality of how contents are transported over the network, the greater is its ability to influence and distort the online contents market, because of the alteration of the relationship between the contents providers and the consumers through the discrimination of transport quality.

In addition, a walled garden scenario, poses the telco operator in the ideal position to “control the floodgates” and decide which information/content will reach its users (and at what Quality of Service) and which will not.

Degrading a competitor’s service is something which might already be happening without the user’s knowledge and a regulatory intervention on the matter is urgent.

We also wish to point out that, as on every issue, net neutrality has “radical” positions and reasonable positions: we believe that the “core” of the matter is that the user should be informed of the degree of intervention of the telco operator on its Internet access and should be free to request a non-altered service if he/she so desires. The non-altered (neutral) service should have a reasonable QoS.



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Answers to Consultation

Digital Rights Management

Question 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?*

The Submitter agree that the adoption of interoperable DRM systems is to be pursued in order to support the development of online creative content services.

With this in mind, it is very important to provide a definition of "interoperable DRM" as there are many levels of interoperability and many possible ways to achieve such goal.

In particular, we agree that consumers are presented with unacceptable licensing policies and believe that enforcing these policies through technological protection measures may ultimately result in limiting consumers' rights against the law.

The Commission's approach is very reasonable, we strongly agree that "DRM interoperability means that they can choose different devices and still use them with different 'download-to-own' services; for content producers or content aggregators interoperability means they are not locked into one distribution channel that forms a gatekeeper to the marketplace, for device and ICT developers, interoperability means that their products can be used with different content services" and support that the official adoption of such definition for DRM interoperability" (see page 7, Creative Content Online Communication).

All the above mentioned conditions should be satisfied simultaneously to have an interoperable service.

This is because we believe that a better use of technology produces better policy towards consumers.

Interoperability should, in fact, be based on a general new copyright law principle by which every user has the right to access digital content in interoperable format, when necessary to exert his/her rights to use and view content.

This may be done through soft law instruments or by creating "ad hoc" digital rights regulation authorities, through legislative instruments similar to the one created in France by DADVSI legislation.

We propose that the Commission does present its own recommendation on the matter.

In this respect, our view of a "interoperable DRM" it that of a "workable" interoperable DRM, which provides effective support to online content and is beneficial to consumers:

1) is not based on the technical solutions of a single vendor but relies on open specifics and standards;

2) may be further developed in functionality, security and innovation by any entity who so wishes (e.g. open source);

3) complies with the principles stated by Law as required by WIPO Copyright Treaty, i.e. the technological protection measures may not forbid to the user to use a right which is lawfully his/hers;

4) is a technological companion to a digital rights' "country of origin" principle.

It is clear that a tool which carries information on rights such as the one described above, needs to be readable at a "universal" level and may not be in proprietary format.

This is why interoperability is becoming more and more inevitable in the digital legal framework.

It may be helpful to point out that there is a distinction between Digital Rights Management (which may or may not include Technological Protection Measures and Information on Rights), Technological Protection Measures, which are the restrictive part of Digital Rights Management and Information on Rights (which is a passive identification method, which may be activated, but does not include management).

Question 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?*

As stated in answer no. 1), we believe that a better technical interoperable DRM will lead to better and more transparent conditions.

Meanwhile, a clearer legal framework concerning what can and cannot be done in existing licensing policies may help consumers' approach to content online.

In fact, ethical issues arise from possible uses of DRMs to extract personal information about the user's consumption habits or to trace illegal doings of the user.

DRMs should be a modern form of encouraging the distribution of works of art and not a tighter form of enforcement and of limiting the distribution of same.

The "Peppermint Jam" case in Italy, about a content owner who privately traced alleged peer-to-peer downloads of copyrighted content and filed suit, without presenting clear evidence and a valid investigation method, to obtain names (which are personal data) from IP addresses (which are publicly available) is the essence of this issue: a "poor" DRM could have given away personal data away even if the content owner did not have the right to access the data in question.



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The Submitter want that the fight to piracy is based on appropriate filings to public authorities and not on clandestine private investigations. the Submitter do not however want to contrast the possibility of content owners investigating wrongdoings as long as this is done with safeguards for public trust and that, when wrongdoings are found, clear evidence is presented, before access to personal data is permitted. the Submitter also require that the user is not contacted by third parties; the Submitter believe that a notice by his/her access provider is the most efficient method and that take-down or facing sanctions should be a personal decision.

In this respect, DRM, should not interfere with data privacy rights and principles of Law should always prevail on arbitrary digital hardware/software implementations of rights' management technology.

Question 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?*

We believe that a simple system of licenses such as the one developed by Creative Commons would be the ideal solution in terms of clarity and transparency of EULAs.

A wide number of individuals is now using the Creative Common licenses, which - in their extended version - are fairly complex legal text.

However, the fact that the main terms have been reduced to graphic symbols helps people understand what license they want to choose.

DRM policies could be grouped into similar categories on the basis of the rights they grant/deny.

Of course interoperability is a requirement: there would be no guarantee for a proprietary license whereas an interoperable license could easily be certified and verified by a public body.

Question 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?*

ADR systems may prove useful to build a better relationship between content owners and consumers. Content owners are likely to accept more flexible and modern enforcement policies if they know they can count on speedy dispute resolution methods and consumers will likely accept a dispute resolution which aims at establishing if the consumer "does" or "does not" have the right to do something in an acceptable timeframe (in the future, also in real time), rather than a system based on criminal sanctions.



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A reliable and interoperable DRM system may prove a decisive tool in building an ADR system: the disputed content might remain "locked" until the right is ascertained.

Question 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?

We believe that a non-discriminatory access to DRMs which are necessary to access walled garden content delivery networks should be provided to contrast the "walled garden" anti-competitive method.

This is because, in those cases, DRMs are not used to safeguard intellectual property rights but only in as an anticompetitive instrument in a "barrier-to-entry" function.

Interoperable DRMs which comply with the definition proposed in answer no. 1) are, however, always a better solution to proprietary DRM solutions even if with non-discriminatory access.

We also appreciate the Commission's interest in SMEs as our association promotes innovation and investments by SMEs in the ICT sector and is therefore aware of the great difficulties encountered by SMEs in the sector.

SMEs should be encouraged as they have the newer ideas and are always faster in their internal processes; access to resources should not present unjustified barriers to entry for SMEs.

Multi-territory rights licensing

Question 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?

A recommendation of the European Parliament and Council could prove useful in harmonizing the issue of multi-territory rights licensing provided such harmonization addresses the needs of consumers and is not just an additional enforcement opportunity for right-holders.

We agree that fragmentation is an issue that should be urgently addressed.

Multi-territory licensing should however be conditioned to the use of the licenses in the licensed territories and there should be no licensing for entities who do not have an authorization as media content providers on an Internet platform.

Multi-territory rights licensing should, in fact, not become an instrument of monopoly of rights and, with this, an instrument for locking up the right to use copyrighted content on the Internet.



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Question 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?

It is a fact that digital content may be marketed separately as a primary right without intermediaries. There are numerous forms of licenses and business models which benefit from the above mentioned business models and licenses.

We agree that online licenses could bring clarity to this evolving situation, however, propose that these models be agreed upon in a separate workgroup with the cooperation of content and network stakeholders or in a subsequent more specific public consultation.

The growing number of VOD models should also be monitored in this regard.

We note in addition that the VOD market is growing especially where there is a clear relationship between VOD providers and State aid, without a grievance of any kind on pure network transport.

Question 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 regulator should work to allow right holders to license and content providers to buy rights for content without worrying about the territorial aspect and jurisdiction.

Certainty of right-ownership and of “who has licensed which rights for what territories/languages” is crucial in this respect.

Once certainty (e.g. through certified databases of interoperable rights) is possible, long tail structures might be able to work efficiently since media service providers would be able to negotiate favorable conditions for large numbers of media contents.

However this should happen without tax variables on the network component.

Bit-taxes damage the long tail principle if applied to the network (i.e. to transport).

Only the sale of content can be subject to moderate taxation, provided there is a return by the State in contribution to activity of the content provider.



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Legal offers and piracy

Question 9)

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

Currently, there is a vast use of peer-to-peer techniques, for legitimate and non-legitimate purposes, because, in many cases, the desired legal on-line content is not available to the end-user.

Most users would respect copyright (or evaluate a legal alternative) if they were presented with one. However, exclusives, release windows, cross-licensing and territorial licensing policies prevent end users from accessing "any content anytime, anywhere", thereby giving illegal peer-to-peer a large incentive.

This is the area where stakeholder cooperation should intervene.

Content owner should ensure content at reasonable conditions to users.

Content aggregators should provide an easy and interoperable content platform.

Internet service providers should allow their users access to the content platform without trying to limit users to "walled garden" type services which leave peer-to-peer issues unsolved.

In fact, we believe that the best solution to online respect of copyright is to convince users that a legitimate solution is better through attractive business models, pricing and quality of service.

The RadioHead rock band has recently released a drm-free version of their latest album on the Internet.

Downloading was subject to a donation and could, in theory, be free.

A large number of users who downloaded the music, chose to pre-order also the deluxe version of the cd, which had a substantial cost (GBP 40,00).

The RadioHead operation was a pre-market operation since the download closed when the album entered traditional retailing and demonstrated how legitimate alternative downloads may be pursued without hampering traditional sales.

In this respect, content owners should accept enforcement methods which rely less on criminal sanctions and are more oriented to preventing and informing consumers about copyright violations.

Notice and notice/Notice and takedown procedures may help enforce copyright online subject to the following conditions:

- a trustworthy and non privacy-intrusive method of certifying copyright violations;
- the ISP is not responsible for violations (as stated by the principle of mere conduit); we must underline that the principle of mere conduit is openly violated in Italy by Legislative Decree no. 70 (Section 17 paragraph 3), which introduces liability for the Internet Service Provider who does not report his Client to the criminal authorities, when aware of a copyright infringement. This kind of liability is not provided for by art. 15 of Directive 2000/31/CE.
- the ISP does not become responsible under civil or criminal law even if it alerts its client (notice) to give him/her the possibility of takedown and so prevent further violations: we observe that this is not currently entirely true in some member States, such as Italy as criminal law finds the Internet service provider to be an "accomplice" of the client in the violations for having given the client an opportunity to avoid sanction.



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We also wish to avoid, at all costs, that cooperation between stakeholders results in an "automatic" chain of enforcement by which a content owner accesses the logs of an Internet Service Provider, finds traces of infringement and, with a dedicated software, sends out filings to the relevant authorities against the alleged infringers.

This would scare consumers away from digital content and from the industry itself, nullifying the very essence of copyright (right to "copy" under the law, but right to "copy").

On the contrary, the right chain is that the content owner who observes a violation of his rights, notifies this violation to an authority who notifies the provider who, in turn, forwards this information to his client. The client, informed of the supposed infringement and of his responsibilities, will freely evaluate the notification and, in case, the opportunity to cease his illegal behaviour or face sanctions.

Question 10)

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

The French "Olivennes" MoU is an example to be followed only in part.

The positive contents of the MoU, in our opinion, are the following:

- the application of sanctions is under the control of the judge;
- sanctions are applied by a specialised authority;
- content-owners obligation to build large legal content libraries

The negative contents, which might be removed or, at least, modified, are the following:

- the French MoU sanctions the subscriber which is not always the real infringer (e.g. a hospital or university has many people accessing at the same time, an hotel, an office building, etc.)
- the sanction is a semi-perpetual denial of Internet access which is part of a constitutional right to communicate, there is no such constitutional protection for copyright, a fine in case of repeat violation is more than sufficient
- music and video should be released online simultaneously if peer-to-peer is to diminish; the French MoU provides for release of music "within a year's time" which is not competitive with illegal peer-to-peer, which, generally has previews of to-be released premium content.
- filtering is invasive of user's privacy as detailed in the next answer

Question 11)

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

We are contrary to filtering measures since there is no effective filtering technique, proven to be 100% sure of safeguarding non-copyrighted legal content from filtering.

Filtering is therefore invasive of users' privacy and of users' right to communicate for unjustified purposes.

In fact, protecting the economic interests of copyright holders gives no ground to monitor all electronic communications with filtering measures and algorithms.



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In addition, filtering would dramatically increase the cost of access to high speed broadband and, therefore, affect digital divide.

As detailed above, we prefer a system in which the user may be "educated" to use legal download because it has a better user-experience, it has a richer content library, it is more secure and offers better service.

It is always possible to photocopy books, however most people buy novels in bookshops, because the "legal" book offers a more rewarding experience, the same must happen for digital media content.



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