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**PUBLIC CONSULTATION ON “CREATIVE CONTENT IN A EUROPEAN DIGITAL SINGLE MARKET –
A REFLECTION DOCUMENT OF DG INFSO AND DG MARKET”**

[ENGLISH EXECUTIVE SUMMARY]

ANICA (*Associazione Nazionale delle Industrie Cinematografiche, Audiovisive e Multimediali*) welcomes the European Commission’s initiative to publish a reflection document on “*Creative Content in a European Digital Single Market – Challenges for the Future*” (the “Reflection Document”) and to launch a public consultation on the issue.

As part of the ongoing discussions for a European Digital Agenda, ANICA welcomes the opportunity to submit its own comments, which reflect the position of the Italian audiovisual, multimedia and cinematographic sector.

1. The Reflection Document: General Remarks

ANICA notes with interest that the European Commission (the “Commission”) intends to stimulate discussions between interest parties in order to identify appropriate strategies to increase consumers’ access to content online and aiming at creating a modern, pro-competitive, and consumer friendly legal framework “*for a genuine Single Market for Creative Content Online*”.

As far as the audiovisual sector is concerned, the Commission seems to consider film producers as being responsible for the fragmentation of the market, which would occur through the creation of a number of exploitation “windows” to support film distribution in its different formats across the EU Member States. This practice would allow film producers to maximize their own profits and to jeopardize final consumers’ rights.

As for copyright, the Reflection Document points at the fragmentation of the market and reports the existence of different national copyright systems, which prevents the creation of a pan-European licensing system. According to the Commission, among the available sub-options, it would be necessary to conduct a more in-depth review of copyright substantive law and of the methods and procedures that manage copyrights, with a view to achieving a more ambitious form of “one-stop shop” and facilitating consumers’ access to content online.

2. ANICA’s position and comments

ANICA shares the Commission’s approach to open the debate on practical solutions aimed at widening the availability of new online services in more efficient ways.

However, ANICA notes that any initiative or policy adopted in the online environment raises a number of challenges. In this respect, the Reflection Document fails to adequately consider all the economic, factual and legal aspects that the suggested policies and practical solutions may impinge on.

First and foremost, from an economic perspective, ANICA would like to stress that right holders’ contractual freedom to choose the term of distribution in order to adequately commercialize and exploit their audiovisual work is of crucial importance to maximise revenues from audiovisual content and to boost investment in the audiovisual sector. Moreover, audiovisual works’ financing systems are based upon complex business models that cannot be easily and hurriedly amended or even replaced according to different policy trends.

ANICA would like to repeat that the territorialisation of the audiovisual market and the use of “windows” for the exploitation of audiovisual works are inherent to the nature of the audiovisual content itself (e.g., the case of films distribution, which implies that the film is firstly distributed in theatres, secondly as home video and further via pay-per view and video on demand, and finally on TV channels). Linguistic and cultural factors play indeed a major role in the production and commercialization of audiovisual content and services, which explains why the territorialisation of the audiovisual sector even benefits consumers by preserving countries’ cultural diversity and enhancing research and investments within the sector for better quality products.

In ANICA’s view, the current territoriality of both copyright law and licensing systems does not hinder the development of a pan-European licensing market. The sale of exclusive distribution rights on the basis of territories, indeed, is the essence of the European film’s industry financing and distribution model and remains vital in many cases of film-making in order to secure financing prior of the shooting of the film. This practice enhances competition because it allows small-medium and independent producers to compete on a level playing field with the major multinational distributors, thus offering consumers a wider choice of products.

Secondly, from a legal point of view, ANICA would like to warn against the impact that the creation of a European Copyright Law and of a uniform rights management system may have on the Member States’ legal frameworks and intellectual property rights’ traditions.

Any modification to the current regulatory framework cannot be conceived without taking into account the need to both (i) develop a European digital Single Market, and (ii) ensure the protection and the implementation of fundamental rights. In this respect, according to Article 17 (2) of the Charter of Fundamental Rights of European Union, “[i]ntellectual property shall be protected”, as a citizens’ inalienable right and a specific expression of the right to property.

To this end, ANICA would suggest a better understanding of the audiovisual, film and music industry and a careful analysis of the position and interests of the relevant key players. The Commission could thus commit to adopt a more objective, consistent and comprehensive approach before proceeding with the definition of new policies in the online environment.

3. Conclusions

ANICA would recommend that the Commission proceeds with a further impact-assessment on the consequences that the introduction of new methods of distribution of content online would generate on current copyright law systems as well as on the current rights management practices.

ANICA wishes that the issue of piracy (both as physical exchange of audiovisual works and as file sharing) be finally addressed as an issue of extreme relevance. The increasing number of copyright infringements carried out via the Internet have led to a “creative destruction”¹ that has not been replaced by new technologies and new business models. The current framework has been in all probability too lenient towards those who illegally share files – since the users do not incur in any cost – and public authorities failed to take into adequate consideration the issue of fighting piracy to protect investment in the creative online sector.

In this respect, ANICA regrets that the Commission has shown its unannounced support in favour of amendment No. 138, which actually recognized the right to use Internet for illegal access to copyright works.

¹ See Jean-Eric de Cockborne, speech at the conference “Content Online and Creative Rights”, Brussels, 1 December 2009.

ANICA considers that emphasis should be put on piracy effects and on their quantification. The Commission should, therefore, adequately consider them when promoting new business models and amending the current legislative framework.

ANICA maintains that it would be possible to proceed with the review of the current legislative framework and with the development of alternative business models, only further to an in-depth and comprehensive study of the audiovisual sector as suggested above.

ANICA would like to thank the Commission for the opportunity to offer its own contribution to the development of the future online content markets within the EU and to take part in the ongoing debate. It authorizes the Commission to publish the present document on its website.
