

Comments of Reed Elsevier on European Commission reflection paper on “Creative Content in a European Digital Single Market: Challenges for the Future”.

As one of the major European publishers of professional information and online content based services to the Science, Medical, Legal and Business sectors, Reed Elsevier is pleased to contribute to the European Commission’s reflection paper. As a leading internet publisher, making information available to the widest possible community of users to promote innovation and collaboration is our core mission. Our objective is to support our professional users to enable them to do their jobs better.

We welcome the reflection paper’s recognition that making professionally produced creative content available online is a high-risk business. The paper clearly states that copyright is the basis for creativity. It is also an essential precondition to publishers’ continued investment and innovation in the creation and dissemination of digital content, both in the particular case of the cultural industries but also more broadly across all forms of publishing. There are two factors that are key to success: the first is professional expertise in creation, selection and dissemination of content and the second is the ability to efficiently and rapidly rebalance activity towards digital product, thereby optimising access opportunities and the development of new offerings and functionalities.

Reed Elsevier has been engaged in this transformational journey for some 15 years and now counts in excess of 50% of its revenues from online delivery. The cost of this exercise should not be underestimated. We invested some €300m on e-publishing technology and distribution in the last decade, including digitising all backfiles of our scientific journals. The result is that, as an example, any one of our 10 million research users can reap the benefit of this investment by accessing anywhere, anytime on their desktop the Lancet volume 1, issue number 1, dated 1823. Electronic journals have been a huge success. In UK universities for example, the number of peer-reviewed articles downloaded by researchers in the last three years has more than doubled. Replicated globally this increased access to high quality peer reviewed scientific content is making a genuine difference to the Science and Health communities we serve.

This is just one example of the transformational activity occurring in the publishing sector. However, it is a good example of how important it is for policy makers to leave the time and the space to let the market seize these opportunities and develop innovative solutions for the future.

Despite the talk of the “European Digital Agenda”, it is not clear that the Commission has understood this. In proposing in the reflection paper to call into question the current copyright regime, or remuneration systems and structures, the Commission seems to be attacking the fundamentals of the economic model on which creative innovation is based. This is deeply misguided.

That is not to say that that business models should remain static. The marketplace by definition is in constant evolution, which is to be celebrated and encouraged. However, policymakers should stand back. Destabilizing existing or future businesses by attempting to force one model over another, interfering in business relationships or attempting to pick winners, is a dangerous path, both from an economic perspective but also from an ethical one.

In the reflection paper, the Commission underlines the need to create a regulatory environment which favours the transition to digital, and benefits the objectives of cultural diversity, innovation, creativity and enhanced user outcomes.

It seems to us that there are two broad options:-

The first is where the creators and innovators in the broadest sense are able to freely contract, control and exploit the outputs of their endeavour and investments. This requires strong intellectual property protection combined with respect for freedom of choice and of contract.

Alternatively, and one fears that this concept is being put forward by some, a situation where the *droit d'auteur* is downgraded to a mere question of remuneration, mandatorily managed by collective intermediary organisations. In our view, such a system would destroy innovation and thus negate the benefit of the digital value add.

Copyright is not merely the right to be remunerated. It is the foundation stone enabling the right to choose *how your content is used* and for economic players, *how to conduct your business*. These concepts are fundamental to a free society. For the European Commission to be calling these values into question is alarming.

The reflection paper mentions the possibility of streamlined pan European and /or multi territory licensing processes. We already engage with reproduction rights agencies and multi territory purchasing consortia where the business case so indicates, and will continue to monitor what efficiencies are to be gained by collective negotiations. However, this must be done on a case-by-case basis as best suits the respective contracting parties. There cannot be a single format that fits all media businesses or content types.

The reflection paper mentions the possibility of adopting a "European Copyright Law " by means of regulation in order to create a "more coherent licensing framework ". An additional federal title would merely create an added layer of complexity. A replacement of national laws would be drastic and highly disruptive. It is difficult to see what benefits of such an ambitious project could bring that would outweigh the destabilising effect of years of complicated, costly and potentially divisive debate.

The reflection paper also raises the idea of compensation through ISP's for mass illegal copyright infringement. This strikes us as inappropriate conceptually, and from a practical perspective. ISP's should engage in mitigating the harm caused by illegal downloading but a flat rate tariff as suggested is not the solution. It would be confusing for users, incompatible with copyright enforcement activity and cut across existing and developing legal licensing models.

The reflection paper also calls for harmonisation of exceptions and discusses whether some should be made mandatory. We see no evidence of the need to do this. There is however clear evidence of the weakness in the enforcement regime which the paper disappointingly ignores. Some countries such as the UK and France are taking measures to fight piracy. A robust enforcement mechanism of the rule of law against all violators should be a high priority for the Commission.

In conclusion, we would submit that whilst it is healthy to have a debate on such issues, many of the proposals raised in the reflection paper are misguided. As a European Company and a global leader in innovative solutions for the science, medical, legal and business markets, we rely on the twin foundation stones of strong intellectual property protection and freedom to contract to drive our business. We would urge the Commission to focus on delivering an environment that will help, not hinder, our ability to create value for the communities we serve.

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