

AUTHORS' LICENSING & COLLECTING SOCIETY

Submission to the Public Consultation on
Content Online in the Single Market



Introduction

The Authors' Licensing and Collecting Society Limited ('ALCS') is the UK rights management society for writers of all genres of literary and dramatic copyright works including fiction, journalism, plays, poetry, academic texts, TV and radio scripts and story-lines, dramatisations, translations, abridgements and adaptations.

Established in 1977 and wholly owned by its writer members (of whom there are currently 53,000), ALCS is a not-for-profit, non-union organisation. The Society's governing body, the Board of Directors, is composed of elected Ordinary writer members, and writers nominated by its two Corporate members, the Society of Authors and the Writers' Guild of Great Britain. Since its foundation, ALCS has paid writers over £130 million in fees and today it continues to identify and develop new sources of income for writers. Additional information about ALCS is available on our website at www.alcs.co.uk

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Consumption, creation and diversity of online content

3. Developing secure systems to house online content is critical if users and business are to trust the medium. Whilst the internet provides a new opportunity for creators to offer their works and expand their market segment through the creative use of technology, anxieties over piracy threaten potential investment in the sector.

Publishers and producers have displayed a reluctance to release content online due to a lack of confidence in DRM systems featuring Technical Protection Measures (TPMs) in preventing the illegal content distribution. Although considerable investment has been made in developing digital technology and business models, overall roll-out of content has been conservative rather than exhaustive, particularly amongst film studios.

The violation of rights protected content erodes the revenue stream in all aspects of the content chain affecting the creator who is dependent on the remuneration received through primary and secondary rights. The security of remunerative rights is dependent on the performance of DRM systems and the closure of illegal distribution networks. Uncertainty in both these areas threatens trust which is acting as a barrier to the take-up and investment in new services online.

5. The speed of technological progress will inevitably produce interoperable devices capable of storing and transferring any formatted content. This will put a great deal of power into the hands of the consumer whose opportunities to share and distribute content will increase. Interoperability adds value to content for the consumer in so far as it enables one to manipulate content form for lifestyle convenience.

Unfortunately, the current legal framework does not necessarily add value for the creator. The user only has to be in receipt of one copy of the creator's work and this could easily have been acquired through peers as opposed to legal distribution. So far as this trend continues creators, publishers and producers will lose revenue as a result of increased interoperability for the user.

New business models and transition of traditional ones into the digital world

8. The transition from analogue to the digital age has broadly corresponded with a behavioural shift from viewing content "as scheduled" to "on-demand".

The internet is a major new platform for viewing audio/visual content and will soon be adopted by broadcasters as an alternative transmission mode. This will challenge existing content business models by virtue of its regulatory "light touch" and encourage online content distribution.

The internet represents a huge opportunity to develop business models which reward the creator, publisher and producer of content alike. Collective management may speed up digitalisation by providing collective rights management solutions in the areas of streaming, online Video on Demand, licensed Peer to Peer Technologies and access to digital libraries; it can do this by providing access to copyright materials which are legally compliant whilst respecting author's rights.

10. The key to realising the potential of online content distribution is the reliability and speed and quality assurance of broadband. Until this is guaranteed, users are likely to prefer traditional methods of content delivery such as television and radio. A major factor determining the potential educational use of broadband in schools will be the success of Regional Broadband Consortia (RBC) in delivering UK educational technology needs. A sufficient level of media literacy will need to be in place to prevent any skills barrier.

11. The internet increases the opportunity for the user to view creative works whilst increasing the risk of failing to remunerate the creator. Once primary rights have been negotiated, the author bound by contractual terms may not always benefit from value added to the work as it passes through the content chain. The value accrued by those at the top of the content chain may be disproportionate compared to the amount the creator receives.

Excluding the creator from the revenue stream will affect the quality and quantity of content supplied. Publishers, producers and distributors therefore benefit considerably from the certainty that creators will be appropriately remunerated. This assurance also encourages the development of talent, restricts migration to alternative professions and stimulates the qualitative and quantitative output of creative works.

The sustainability of the digital model depends on the remuneration of all aspects of the content chain, including creators. Elements within this chain may financially benefit in the short-term by excluding others, but ultimately this can only result in a break-down of the chain.

Policy makers can address the problem by looking at appropriate remuneration models that give creators access to the revenue stream and are cost effective. Collective licensing models have the potential of clearing rights quickly and efficiently and increasing the legal availability of content for the consumer than would otherwise have been possible.

Payment and price systems

12/13 Payment systems used by collecting societies for analogue media, have to a great extent relied on manual mechanisms for assessing content usage. For example, a manual record of photocopied content being made by teachers in schools.

Advances in technology have produced more accurate ways of assessing usage. Transactional data produced through content gateways where usage is accurately recorded has resulted in greater transparency for both rights holder and content user. The development of secure DRM systems is needed to preserve the direct relationship between pricing and usage. Unauthorised content usage would require compensatory remuneration to be added.

Licensing, rights clearance, rights holders remuneration

14. The scope of benefits from European or multi-territory licensing in the creative industries depends on the type of business. Collective management systems offer the possibility of multi-territory rights clearance through an established network of agreements - rights clearance is obtainable, despite the presence of different territorial legal regimes.

15. Finding the correct balance between using technology to disseminate works and to protect rights and creativity is undermined by the availability of illegal Peer-to-peer (P2P) file-sharing software enabling users to access and share copyright works on a grand scale. The losses suffered by

creative industries as a result affect the future of creative and economic investment and the breadth and quality of content that is offered to consumers.

Greater attention by policy makers is needed to address such illegal networks and support moves towards operator licensing arrangements or other measures designed to provide a fair return to rightsholders in recognition of the value of their works used within these networks.

Legal or regulatory barriers

17. Unlawful content circulation by P2P networks or through ISPs will precipitate a loss of revenue throughout the content chain and may hamper creativity by reducing the creators' revenue stream. Licensed P2P networks which remunerate stakeholders in the content chain are one answer, but attention needs to be given to closing down unauthorised networks profiteering by breaching copyright laws. In this regard IP laws need to provide sufficient flexibility to allow enforcement activity (where necessary) to be targeted at the most appropriate level.

Networks

20. The provision of approved licensed services that provide a high level of integrity by remunerating rights holders and allowing the user to download content safely are preferential to services that do not respect copyright law, and should be treated as such. Measures to increase the visibility and accessibility of these services would provide greater clarity to the user as to which are legal and not.

Piracy and unauthorised uploading and downloading of copyright protected works

22. If piracy is to be successfully combated, improving IP rights awareness across all sectors and groups is a key goal. Illegal distribution relies on recipients distributing illegal content (knowingly or not). Biting the hand that feeds piracy is only part of the solution. Empowering online users with greater IP awareness may encourage informed decision making as to what content to view, and act as a deterrent for consuming illegal material.

In terms of improving IP awareness, ALCS supports the work undertaken by the UK Patent Office to provide workshops and advice for new and small businesses, as well as the measures aimed at younger people such as the "THINK kit" - an interactive learning device designed to increase IP awareness amongst students.

23. The use of P2P networks have recently been used to distribute legal content. In the UK NTL, BitTorrent and CacheLogic have launched a technical trial to evaluate high-speed, legal video downloads in the UK featuring a variety of audio/visual content. If the trial is successful, it may reveal a new model of legal distribution. However, it is vital these ventures obtain full rights clearance from all stakeholders in the content chain, including the creator. P2P networks are content driven and the creator has to be recognised in this process if s/he is able to continue.

Digital Rights Management Systems

25. We do not use DRM systems as a means to controlling access to copyright material. We do provide information about rights ownership that may be used in DRM systems.

27. Organisations in our sector – managing the secondary rights of authors and editors – do not tend to use DRM systems directly, since they tend not to offer direct access to copyright material.

29. Data-interoperability is a particular issue. In some situations, ALCS maintains partial repertoires, in which rights are collectively controlled by representatives of both publishers and authors under the terms of a specific licence. Under such circumstances, information about works and the rights associated with them must be shared, and in some cases, disputes must be resolved and authority established over particular data.

Messaging standards, with agreed ontologies, are very useful in sharing data that describes copyrighted items, the rights and licences associated with them, and the people / parties that own / benefit from them.

Standard Identifiers, such as ISBNs, which identify copyrighted items without ambiguity, are also important tools in the transmitting and seeking of information about copyrighted items and their properties.

The co-operative development of both of these methods for sharing information is essential in any distributed rights management system.

The use of such methods can allow broad rights management processes to be distributed across different computer platforms, different proprietary rights management systems, different territories, repertoires, creation-classes, licence-types and legal systems.

Complementing commercial offers with non-commercial services

30. The use of public/private partnerships in providing non-commercial services can be an effective solution to harness the resources of the content provider and the technological expertise of the content aggregator. ALCS welcomes increasing the availability and accessibility of content to all whilst ensuring all rights are protected in the process.

Unfortunately, some content aggregators justify the practice of providing content without respecting copyright as part of a general aspiration to provide content to all. They deem the use of such content to be of no commercial value despite the fact that money is made by using content they do not own, or have rights to.

The i2010 Digital Libraries programme presents opportunities to develop partnerships between content rightsholders, cultural institutions and commercial technology providers to enable access to on-line content within an agreed framework.

What role for public authorities?

An assessment of contractual relationships within the online content chain would reveal how equitable returns are, particularly between creator and publisher/producer. Similarly further data on the creator's position in the overall development of content on-line frameworks would help to assess how sustainable online content delivery is in terms of the quality of the content itself.

Both aspects should be considered in the broader policy debate.