

To: The Directorate-General Information Society and Media of the European Commission
From: Nicholas Bentley
L'Ecole de la Combe

Re: Public Consultation on Content Online in the Single Market

I thank the commission for the opportunity to respond to this important issue of content online in the single market. The changes wrought by the digital environment on the trade and distribution of copyrighted works is significant and I argue that this situation requires a reevaluation of the use of 'copies' as the trading commodity. Below, I briefly introduce the concept of Intellectual Contributions and a possible, Internet based, rights trading environment that would maintain the copyright balance in a digital world. Following that I answer a few of your specific questions from this Intellectual Contributions and Rights Office perspective.

If nothing else, I would ask the commission to take a broad view of the issues involved and consider the traditional principles of the copyright regime and how these can be best preserved as creative works move to the new dynamic digital environment.

Sincerely,

Nicholas Bentley

Intellectual Contributions and Rights Trading:

Copyright in an analogue form has worked well for the last 200 years but the rise of digital technologies has produced many real and perceived problems for the copyright regime and the complexity of copyright is starting to have an impact on the lives of everyday consumers. Various solutions have been proposed to adapt copyrights works to this new digital environment. Notable options are: Liberal licenses such as produced by the Creative Commons; Strict licensing backed up by new laws and Digital Rights Management in the form of Technological Protection Measures; And, calls to free up distribution of copyrighted works while supporting authors and creators with funds garnered from flat taxes and levy systems. All the above have been well documented by others.

An Intellectual Contributions model has been developed to examine how traditional copyright uses the proxy of copies as a means to link intangible expression to the tangible world, how this allows trading of copyrighted works and why this linkage breaks down when digital copies are the transmission medium. Further analysis of this contributions model suggests that DRM in the form of technological protection measures is not an ideal solution and that an alternative regime, where individual rights to the creative work are allocated, regulated and traded, might be a productive route forward. The paper describing this contributions model concludes by presenting a distributed 'Rights Office' system that would facilitate a practical, Internet based, implementation of this trade in rights and offers new business models while protecting the availability of intellectual works for the overall benefit of society.

A technical paper introducing the Intellectual Contributions model and the Rights Office system can be found here:-

http://www.omidyar.net/group/intellectual-contributions/ws/trading_rights_to_digital_content/

and further information is presented on the Indicare site here:-

http://www.indicare.org/tiki-read_article.php?articleId=133

Response to specific questions raised by the Commission:

2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.

More personal content and information will be held on central servers online (e.g. Google note book and email services). Measures to provide legal protection of this personal content should be considered.

3. Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.

Extension of broadband services to all is required and continued improvements in broadband capacity will be required in the future. At present there is insufficient interoperability between devices and a lack of harmonisation of prices and licensing terms within the single market and internationally.

8. Where do you see opportunities for new online content creation and distribution in the area of your activity, within your country/ies (This could include streaming, PPV, subscription, VOD, P2P, special offers for groups or communities for instance schools, digital libraries, online communities) and the delivery platforms used. Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles?

The Rights Office system described in the paper referenced above is a rights trading environment and content delivery system designed specifically for digital content that is to be distributed over the Internet. It is a distributed system employing peer-to-peer protocols with the possibility for everyone, both creators and consumers, to participate. As the Internet is a global entity this new peer based system would automatically have an international level of operation.

12. What kinds of payment systems are used in your field of activity and in the country or countries you operate in? How could payment systems be improved?

The Rights Office trading system could support integrated funds transfer for the purchase of content. European and international agreements that would support this international trade would be a obvious benefit and a clearly defined tax structure for the trade in intellectual works is also necessary.

14. Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic

and legal challenges do you identify in that respect?

The Rights Office system is designed around individual licensing of all content. The development of a set of licenses, a modular set of licenses, that would work at an international level would be a benefit to all. Think in terms of [Creative Commons](#) type licences that can be concatenated to form a complex licence that can be applied to each work as the consumer trades access rights to the work.

16. How should the distribution of creative content online be taken into account in the remuneration of the right holders? What should be the consequences of convergence in terms of right holders' remuneration (levy systems, new forms of compensation for authorised / unauthorised private copy, etc.)?

The Rights Office system takes a whole new perspective on this issue of right holders' remuneration. It relies individual trading of rights to a work and ensures a balanced level of remuneration by supporting a dynamic environment that generates consumer fidelity. Many new businesses models can be implemented to benefit from and support this environment. There would be no need of levies or arbitrary taxes and such measures could distort a fair trading environment by giving 'free' copies an advantage. I call on the commission to carefully consider the impact of levies and media taxes on alternative market models.

23. Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?

Peer-to-peer technologies would form an integral part of the Rights Office system. P2P networks could be used to distribute properly identified works because copies of the works would be of secondary importance compared to the trading of rights and the proper identification of works would tend to be self regulating. The advantages of P2P technologies can be used to enhance the legal trading of rights to intellectual works in the Rights Office environment.

Digital Rights Management systems (DRMs)

Questions 25 through 29:

A firm distinction should always be made between 'Rights Management', that identifies and manages rights, and 'technical protection measures' that try and enforce rights through control of copies and reproduction equipment. Rights management is perfectly justified and a good business practice. Technical protection measures (TPM) can easily go too far and restrict valid legal use of a work while adding to system costs and often inconveniencing users.

While rights holders should be free to use TPMs if they choose to, any mandating of a particular protection technology (e.g. All electronic equipment must recognise and act on a certain code transmitted by the rights holder – 'a broadcast flag'), by government or other central authority, will create additional costs and inconvenience for all other rights holders who choose not to use that particular technology. Any mandating of this type of technology should be avoided at all costs.

The Rights Office system is designed to give the distributed works a minimum overhead, while firmly identifying rights holders, so that legal copies can compete with 'free', non-

authorised, copies. Mandating the use of TPMs would have a negative impact by distorting the market place in favour of the unauthorised copies.

33. What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?

I am developing a rights trading environment for distributing intellectual works in digital format on the Internet. This is an innovative approach based on the Intellectual Contributions model that analyses how all parties interact in the distribution chain and how the trade of intellectual works should evolve from the traditional copyright model. Support for more research and development in this area would greatly aid the development effort. Specifically, research could include further analysis of information and creative works as replicators where legal copies can be shown to compete with illegal copies in a dynamic environment (see [Evolutionary Theory and DIPR](#) for more on this.) Also research into the possibility of a standard set of licences that could be used to define a spectrum of rights to creative works would be a useful activity.

Nicholas Bentley