BSA RESPONSE TO THE EC PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET

October 13, 2006

The Business Software Alliance* welcomes the opportunity to respond to the European Commission's Consultation on Content Online in the Single Market. Please note that we have not responded to every question in the survey. Instead, we offer comment only on those questions where we feel our experience best enables us to make a meaningful contribution.

Executive Summary

Europe's online content market has grown exponentially in recent years. High consumer demand has driven the advent of many new and exciting technologies and services that give creators the confidence to make their digital works available online and that enable users to enjoy creative content how they want, when they want and at a price they want. These new ways to access and use creative content have been complimented by the focused efforts of the EU and industry to protect network and information security and privacy—making Europeans ever more willing to take advantage of new online opportunities.

We encourage the Community to stay its course and allow the market to continue to evolve from strength to strength. Our comments below endorse the following three approaches to guide this effort:

- **A light-handed regulatory touch:** In dynamic and constantly evolving markets such as online technologies and services, overly extensive regulation can impede innovation. A light regulatory touch, in contrast, tends to provide the optimal framework, enabling innovative firms to find market-driven solutions and respond quickly and efficiently to consumer demands.

- **Preserve a Comprehensive and robust IP protection system**: Intellectual property encourages the creation of content. The EU's existing IP framework—including the EU Software Directive and EU Copyright Directive—is workable and balanced and should be preserved and enforced.

- **Support for technologies that protect online content and ensure user security:** Digital rights management systems (DRMs) and other forms of security and privacy-enhancing technologies are fundamental to the success of the online content market. Creators rely on them to protect their valuable digital works, and users trust them to ensure their safety online. The integrity of these protections must not be undermined.

In addition, we invite the European Commission to assess the following potential obstacles (described and addressed under their relevant section, below) in order to foster the availability of online content.

These obstacles include - among other - the following aspects :

- **Threats to DRM technologies and making digital works more susceptible to piracy.**
- **Increasingly burdensome private copy levy regimes**
- **Limitations to the use of IP addresses in fighting security and piracy offences**
- **Lack of a community-wide license for music rights**

Responses to Survey Questions

Types of creative content and services online

1.   Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?

BSA members are involved with "creative content" in a variety of ways. Many of our member companies are directly engaged in the creation of a wide spectrum of online content. Our member companies also manage the networks over which this content is distributed, accessed and enjoyed; provide the technologies and services that enable these uses; and create the software that allows content providers to manage the online usage of their works and that promotes and protects network security and user privacy.

Consumption, creation and diversity of online content

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.

We believe that the existing European legal regime and market environment is highly conducive to the uptake of new creative content services online. We do not view any of the factors mentioned above as obstacles to such services. As discussed in response to Question 4, the EU is a world leader in terms of protecting user privacy, which in turn has given users the confidence to engage in a wide range of online activities and transactions. The EU's strong commitment to protecting network security—as evidenced in the Framework Decision on Attacks Against Information Systems, the Commission's Strategy for a Secure Information Society and the recent establishment of the European Network and Information Security Agency (ENISA)—also contributes directly to user trust in e-commerce.

At the same time, however, we highlight several potential obstacles to the growth of online content services in Europe:

- **Threats to DRM technologies**: While we address DRMs in greater detail in response to questions 25-29, we note here that DRMs are essential both in giving creators the confidence to make their works available online and in protecting user security. However, DRMs are increasingly becoming the target of efforts designed to weaken their integrity. In France, for example, legislation was recently adopted that subjects DRM providers to significant disclosure obligations with few safeguards—directly undermining the strength of DRMs and their ability to protect content and users. Efforts such as these will discourage the online distribution of content, impede innovation in DRM technologies and make digital works more susceptible to piracy.

- **Increasingly burdensome private copy levy regimes**: As discussed in our response to Question 16, private copy levies are increasingly being extended to digital media and equipment—despite the growing usage of DRMs that should, under Community law, result in decreased levies. By increasing the cost of digital products, levies weaken consumer purchasing power and demand for the goods and services that support the online delivery of content. Our answer to Question # 16 provides some figures of the economic impact of levies. For the above reasons, the Community should intervene to ensure national levy regimes operate consistently with Community law and to the benefit of all stake holders, creators and user of content alike.

- **Efforts to limit the use of IP addresses in fighting internet offences, including security threats and online piracy**: Internet protocol addresses —the numeric addresses allocated to a machine used to access the Internet—have proven essential in identifying the source of network security attacks and providing for a safer online environment for users. Some data privacy regulators, including the EU's Article 29 Working Party, have taken the position that IP addresses qualify as personal data within the meaning of EU data protection law—even where the organization processing those addresses cannot attribute them to identifiable persons. This interpretation is both inconsistent with the data privacy rules and threatens to impede private sector initiatives for promoting online security. We encourage the Commission to provide clarity in the ongoing debate regarding the status of IP addresses, to ensure that IP addresses can continue to serve their vital role in promoting network security.

- **Lack of a community-wide license for music rights**: As we explain in detail in our response to Questions 14 and 15, the lack of a Community-wide copyright licensing mechanism for online rights has served as an obstacle to industry's ability to roll-out EU-wide services in music. We encourage the EU to address this issue speedily.

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?

As the consultation recognises, uptake of new online services for creative content depends on building and maintaining a foundation of trust. Users will not take full advantage of online offerings if they are concerned that their personal information could be accessed or compromised. Europe's existing legal structure goes far to respect user rights. Through a range of legal instruments, including the Data Privacy Directive and Electronic Communications Privacy Directive, the e-Commerce Directive and the Framework Decision on Attacks Against Information Systems, for example, users can be confident that their data and confidential information are protected. Industry—including many BSA members—has complimented these efforts by offering a range of products and services focused on ensuring user

security and privacy.[1] A recent case illustrates the effectiveness of the existing European privacy protection regime. Specifically, the swift and forceful measures taken by the judiciary – in an isolated case of breach of EU privacy rules –demonstrated that the existing regime protects consumers' privacy and offers efficient and dissuasive ways to compel content providers to abide by the law. Following this widely advertised case, when have not heard of any similar situation in Europe.

We point to two specific areas where more could be done, however:

- **greater clarity on the nature of the security obligations arising under the ECP Directive**: At present, the ECP Directive requires providers of electronic communications services to apply "appropriate" technical and organizational measures to safeguard the security of existing services commensurate with the level of risk to individual privacy. Providers of online content and services, however, would benefit from clearer and more precise security rules, provided that they do not mandate specific technological standards. The current rules are causing confusion among providers of online services and content, who remain entirely uncertain as to what those actually require in individual cases.

- **encouragement of the adoption of best practices:** Users play perhaps the most important role of all in protecting their own security online. Accordingly, it is important that they be encouraged to follow certain best practices in this area. Many technology neutral, industry-led recommendations on security best practices already exist. The Commission could lead by example and incorporate such best practices into their own activities. This would, among other things, help to ensure that consistent practices are applied across Member States.

5. **How important for you is the possibility to access and use all online content on several, different devices? What are the advantages and / or risks of such interoperability between content and devices in the online environment? What is your opinion on the current legal framework in that respect?**

The ability to access content on a variety of devices is a determining factor in consumers' purchasing decisions. Offering the best consumer experience, with selected security and playability features agreed upon by the consumer, is tantamount.

Specifically, if too little content is available, if it is too expensive or unwanted playability features reduce the consumer's experience, they may not like one product or approach and will vote with their wallets by going elsewhere. This is why efforts need in order to inform consumers of the rights and playability features attached to a specific offering (including, price, number of copies, playability features, etc).

From a creator's perspective and considering the ease at which digital files without technological protections may be reproduced and distributed, playability preferences on access to content, or the devices to which content can be transferred, are legitimate and appropriate solutions to encourage the widest possible online content usage while protecting the rights of content creators.

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[1] Together, these efforts are clearly working. A recent study done for the UK Department of Trade and Industry found that the portion of UK businesses affected by security incidents decreased last year by 12%, from 74% to 62%. The costs of security breaches to large businesses decreased by 50%. *ENISA Quarterly,* June 2006, p. 15.

Regarding the current legal framework, the EU Copyright Directive protection, gives every author of creative content, amateur or not, the choice and freedom to distribute and protect the fruit of his creativity, freely or against remuneration. Choice and flexibility are embedded, by design, in modern European copyright law and specific changes to this framework are not warranted. Similarly, DRM technologies – and their ability to protect authors from unlicensed uses of their works while satisfying a diverse and vibrant consumer demand - must continue to benefit from full legal protection against circumvention.

With this in mind, we believe the current legal framework — in which content providers compete vigorously in the marketplace in offering diverse online content and services — is working and should be preserved.

Ultimately, the evolution of a healthy online content market as a response to piracy is challenging, takes time to develop and requires significant innovation. This is reflected in the many different models and services that are being launched on a regular basis, in an attempt to find the right balance between right holder needs and consumer expectations.

Online content distribution requires considerable technical flexibility (technical protection measures, online payment methods, usage rules etc) and while complex in design, should be invisible and simple for the consumer. Trying to legally manage these emerging services and models will stifle innovation and leave right holders, service providers and consumers with limited choices and offerings.

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

9. **Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.**

Surveys predict continued dramatic growth in the online content market. In 2005, for example, a BSA-commissioned study demonstrated that the DRM-enabled online music market is growing exponentially in Europe, and is expected to reach ¤559.1 million by 2008, compared with ¤27.2 million in 2004. A more recent study by Forester Research forecasts an increase to ¤1.136 billion in 2008. By 2011, the online music market in Europe is expected to grow to ¤3.895 billion, representing 35.7% of the total music market (online and physical carrier sales).

10. **Are there any technological barriers (e.g. download and upload capacity, availability of software and other technological conditions such as interoperability, equipment, skills, other) to a more efficient online content creation and distribution? If so, please identify them.**

The potential technological barriers listed in this question are addressed separately.

- **Download and upload capacity**. For years, BSA has supported governmental efforts to encourage consumer uptake of broadband, including by providing incentives for private-sector investment in infrastructure. That said, users in most regions of the EU today have relatively affordable access to broadband Internet, and private investment in broadband infrastructure in the EU seems to be healthy. Accordingly, while we continue to support government efforts in this area, we do not believe that limitations on data transfer capacity present a serious technological barrier to the growth of online content, at least for the majority of European consumers or businesses.

- **Availability of software**. Online content is typically accessed through browsers, media players, text readers, and similar software programs. These programs are widely available for free or at very low cost, and prices for such programs are if anything decreasing. Thus, there are no grounds whatsoever for believing that the availability of software poses a barrier to online content. On the contrary, the ubiquity of extremely affordable software for accessing online content has been one of the key drivers of growth in this area.

- **Interoperability**. On the narrow question of interoperability, the evolution of a healthy online content market as a response to piracy is challenging, takes time to develop and requires significant innovation. This is reflected in the many different models and services that are being launched on a regular basis, in an attempt to find the right balance between right holder needs and consumer expectations. Online content distribution requires considerable technical flexibility and while complex in design, should be simple for the consumer and allow the consumer to make informed decisions based on easily available information. Trying to manage through regulation these emerging services and models will stifle innovation and leave right holders, service providers and consumers with limited choices and offerings.

  BSA members support industry lead efforts to inform consumers about playability and usage rules of their products. Such notices would provide sufficient criteria to enable consumers to purchase the product that best fits their needs.

- Unless there is a stated abuse of a dominant position, both content providers and consumers have equally legitimate, pro-competitive reasons to request security protection and agree upon playability features in the design of the products or services. In order to avoid deceptive practices, however, usage rules and other playability features need to be made clear to consumers.

- **Incompatible business models.** Interoperability between devices should not hide the inherent incompatibilities between different business models. Today's business models include, for example, paid downloads, subscription services and, in the near future, free content paid for by advertising. In an ideal world without technical limitations and where DRM technology would seamlessly supports transfers between all devices, there would still be no technical solution to playability issues between content acquired through a 'pay per download' and a 'streaming' service. Technology alone cannot reconcile the healthy diversity of business models and usage rules agreed between consumers and content owners.

Licensing, rights clearance, right holders remuneration

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?

Yes, creative businesses benefit from Europe-wide or multi-territory licensing and clearance. While the existing copyright protection regime in Europe does not require specific changes the national fragmentation of the internal market in terms of access to copyrighted repertoire limits the choice and offering available to consumers in different countries.

15. Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?

Yes. BSA members are leaders in online delivery systems for creative content, particularly music. The lack of a Community-wide licence for rights in music has made the roll-out of these services in Europe laborious and time-consuming. Clearing on-line rights in music can involve securing the rights of communication to the public, making available and reproduction rights of performers and producers on a territory-by-territory basis.

BSA supports a one-stop-shop mechanism to facilitate Community-wide licensing of music. Any such mechanism must permit user choice, however. Users must be free to choose the organisation, irrespective of location, whose licence offers the most suitable terms for their needs without losing any element of pan-EU coverage; customer allocation provisions should not limit user choice. A possible precedent for these types of arrangements was established in the off-line world under the IFPI-BIEM framework agreements, where record companies could approach any authors' mechanical rights society within the EU and secure a Community-wide licence based on the reciprocal agreements that exist between the BIEM member societies.

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.)?

Developments in the online world—specifically, the advent of digital rights management systems (DRMs, discussed in greater detail in response to Questions 25-29)—demand a new approach to remuneration for right holders.

DRMs (and their technological counterparts, technological protection measures) enable content owners to articulate and enforce terms of usage directly, establish prices based on permitted usage, and collect payment directly — charging consumers only for the actual uses they make of works and ensuring authors are fully and exactly compensated for the relevant usage of their works. The ability of technology to permit greater individual management of rights means that existing remuneration regimes—most notably national private copy levy systems—must be revisited.

The EU legislative framework anticipates this. Specifically, the EU Copyright Directive (2001/29/EC) expressly requires that levies be adjusted to reflect the increasing application of DRMs. Unfortunately, however, to date Member States have failed to follow the Directive's mandate.

This failure directly impedes the success of online content services in Europe. At their most fundamental, levies on digital media and equipment undermine consumer purchasing power and reduce sales of goods and services that support the online delivery of content. A recent Nathan Associates study bears out this conclusion. Overall at EU level, the Nathan Associates estimate the economic impact of currently applied and undisputed levies in 2005 as follows:

➢ ¤1.33 billion direct effect on consumers

➢ ¤747 million direct effects on industry

➢ By 2008 these effects are forecasted to increase to ¤217 million - provided that levy rates do not increase over time.

We encourage the Commission to take action with regard to national levies regimes.[2] Specifically, Member States must be required to bring these regimes in line with Community law. This means that levies must decrease year-on-year to reflect the increasing application of TPMs/DRMs for specific categories of content and/or products. At the same time, collecting societies must bear the burden of demonstrating actual economic harm caused by the copying for which levies are intended to compensate.

In parallel, the Community should move to require greater transparency and equity in the levy-setting process. Among other things, collecting societies should be obligated to provide greater public access to information regarding how levies are calculated, justified, collected and distributed. Likewise, mechanisms enabling the independent review of national levy systems and tariffs should also be established. For this reason, we strongly believe that the upcoming Recommendation will provide guidance on how the increasing application of TPMs should be reflected in levy calculations while copyright levies and TPMs coexist and levies are phased out.

Legal or regulatory barriers

17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?

Intellectual property rights (IPRs) play the same role in the online world as off-line – they give inventors, authors, and performers powerful economic incentives to invent and create, and to make the fruits of their efforts available to the public. Thus, the proposition that IPRs pose a barrier to online content has it exactly backwards: IPRs *promote* the creation and distribution of online content.

This is especially true in Europe, which benefits from a harmonised and highly workable IPR regime. The Software Directive, for example, establishes fair and balanced copyright rules for software that both promote innovation and protect users interests. This Directive has worked well in practice for nearly 15 years and there is no evidence to suggest that this will not continue to be the case.

Although IPRs do of course prohibit third parties from copying or distributing protected works without authorization, this is not a "barrier," but rather the very essence of the social bargain that IPRs represent. Nothing about the online environment supports the notion that society is somehow not getting the benefit of this bargain. On the contrary, the public today has access to an almost limitless variety of high-quality online content, most of it extremely affordable prices.

Instead, existing EU copyright protection framework, gives every author of creative content, amateur or not, the choice and freedom to distribute and protect the fruit of his creativity, freely or against remuneration. Choice and flexibility are embedded, by design, in modern European copyright law and specific changes to this framework are not warranted

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[2] For a detailed explanation of our views, we point the Commission to the recent response of the Copyright Levy Reform Alliance to the Commission's Consultation on Copyright Levies in a Converging World.

Piracy and unauthorised uploading and downloading of copyright protected works

21. To what extent does your business model suffer from piracy (physical and/or online)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between "small" and "big" ones?

Piracy—both off and online—is a significant concern for BSA members, with estimates putting the piracy rate for business software in the EU in 2005 at 35%. Workplace copying, counterfeiting and other forms of illegal distribution cost the business software industry billions of euros each year. Online piracy is also a significant challenge to our members. The explosive growth in the home and office Internet user populations has transformed the online world into a borderless and anonymous marketplace for goods, including pirated software and other digital content like music and movies.

To address this challenge, BSA invests significant resources in educating users throughout the EU about the importance of respecting intellectual property rights (described in greater detail in response to Question 22). In parallel, in the online environment, BSA engages in a worldwide notice and takedown program directed at infringing activity on Internet auction sites, Web sites (including so-called "warez" sites), file transfer protocol (FTP)sites, Internet relay chat (IRC)channels, P2P services, redirect services, mail-order sites and newsgroups. Finally, where appropriate, BSA also pursues civil and criminal legal action against infringers (both on and offline). In deploying these strategies, BSA of course recognises that not all infringements are equal—some cause greater harm than others and thus merit different responses.

22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?

BSA believes that education about copyright and IP plays a vital role in encouraging respect for IP, and when done in conjunction with strong copyright legislation and effective enforcement, create the required three-pronged approach required to reduce piracy. BSA has programs in every EU member state which together reach more than a million companies each year providing free tools to help small and medium-size businesses harness the potential of their software assets, recognize the value of intellectual property, and avoid the risks of using pirated software in their businesses.

While there will always be users determined to flaunt local laws and regulations, the use of unlicensed software in the workplace is often also attributable to negligence and poor asset management practices. Software licensing can be something that eludes managers' list of priorities or enterprises can be victimized by unscrupulous computer manufacturers and dealers who install illegal copies of software onto the computer equipment they sell without the appropriate licenses. Initiatives that raise awareness about copyright requirements and legislation are critical to ensure that European businesses can make smart choices about their software assets and leverage technology in ways that deliver more value to their own businesses and European economies as a whole.

While BSA focuses the majority of its efforts on reducing illegal software use in the workplace, educating young people about copyright and the value of intellectual property is important early on to ensure an understanding and respect for copyright and IP when they enter the workplace as tomorrow's business leaders. BSA campaigns targeting young people in Europe have been conducted in Austria, Germany, Ireland, Italy, Norway and Poland.

The BSA-sponsored German "School Week" campaign has emerged as an interesting model for such education initiatives, and could be an ideal vehicle for EU communication with European young people about copyright and the value of IP. The program sought to educate about digital copyright, the

economic impact of piracy and the related network and information security risks in a series of hourly lectures to pupils (ages 12-16) and teachers with an evening seminar for parents. Over an 18 month period, the program visited 54 schools in 12 cities reaching 16,000 students and 2,300 parents and generated strong positive feedback from school authorities as well as members of the German Parliament who subsequently attended and participated in several of the seminars which added PR value to the event. EU support for these types of campaigns, whether financial or in the form of co-branding, would be welcomed and would allow BSA to engage even more young people and their parents in these important programs.

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?

BSA members are united in their belief that peer-to-peer technologies offer tremendous potential for supporting legitimate business models that fully respect the rights of copyright owners. That said, we also recognise that the use of peer-to-peer technologies for infringing distribution of copyright materials is one of the most serious challenges facing copyright owners today. We strongly support effective legal measures to prevent such piracy and believe that all stakeholders in the online world have a role to play in fighting piracy. At the same time, it is imperative that governments avoid policies that stifle technological innovation by putting legitimate technologies at risk, or exposing technology companies to frivolous litigation.

Significantly, technologies are already available to ensure that the owners of copyrighted material are adequately protected when their works are distributed in a peer-to-peer environment. DRM technologies in particular can be used to preserve the benefits of peer-to-peer networks, but in a manner that protects proprietary or other protected content against misappropriation or misuse.

The key benefits of peer-to-peer networks over more traditional, server-centric networks include the more efficient distribution of content, greater resilience and resistance to failure; and potential cost savings (since they enable desktop PCs to perform server-like functions, thus reducing the number of servers an organization must have).

Digital Rights Management systems (DRMs)

Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.

This section addresses questions 25 to 29 of the Questionnaire

BSA members approach DRMs from several different perspectives: as developers of DRM technologies; as content owners who apply DRMs to our own products; and as online service providers who use DRM systems to protect third-party content. These perspectives give us a rich understanding of DRM technologies and a deep appreciation of their potential uses.

In our view, DRMs offer exciting new opportunities for content owners and consumers alike. By making it easier to manage digital content and protect it from theft, DRMs give content owners the confidence to make their most valuable works available online. This in turn benefits consumers, who enjoy quick, inexpensive access to a greater amount and diversity of content than is typically available off-line,

which can be accessed across a tremendous variety of devices. Rather than answer each of questions 25 through 29 individually, we focus our responses on three important issues raised in these questions.

- **Benefits of DRMs.** One of the principal benefits of DRMs is that they help prevent theft of digital works. This is absolutely essential if online content services are to be commercially sustainable over the long term. As DRM systems have become more sophisticated, however, they also support an extremely diverse array of distribution and business models. Examples of such models include purchase and download of single works for unlimited use; subscription services; rental services; video-on-demand and pay-per-view systems; preview-based models; and real-time distribution of content. By supporting such a wide range of business models, DRMs give consumers more choices in accessing online content, promote competition, and give content owners greater flexibility in offering consumers viable and attractive alternatives to piracy.

- **Availability of DRMs.** DRM-enabled online content delivery systems are becoming increasingly commonplace and user-friendly. A large and growing number of successful online content delivery services already use DRMs, including such recognized names as Fnacmusic, Virginmega.fr, iTunes, Movielink and CinemaNow. Worldwide, 420 million songs were downloaded from legitimate music services in 2005 alone; over one million titles were downloaded from Fnac's online music service, Fnacmusic, between its launch in September 2004 and May 2005. A recent study by Forester Research forecasts an increase in the DRM-enabled online music market from ¤21 million in 2004 to ¤1.136 <u>billion</u> in 2008. Clearly, DRMs are satisfying an important and growing market need in the online entertainment market.

It is vital to recognise, however, that DRM-enabled online services extend well beyond traditional entertainment. For example, the British Library's secure electronic delivery service, which has made over one hundred million items available to researchers and library patrons worldwide, is DRM-enabled. DRMs also permit the distribution of business software applications through a range of delivery mechanisms and are critical to the ongoing task of upgrading the security of computer networks and reducing their vulnerability to viruses and other attacks..

- **DRMs and interoperability.** Although market forces will drive increasing levels of DRM interoperability, DRM interoperability already exists today on a number of different levels. Many successful and widely deployed DRM technologies are openly licensed so that they may be implemented by virtually any device. Examples include DTCP, WMDRM, Helix, CSS, CPPM/CPRM, AACS, and OMA DRM, to name just a few. Also, many of these DRM systems are licensed under rules that permit the handoff of content to other DRMs systems, provided that these other systems are recognized as "trusted" based on their ability to maintain downstream security for the content. Efforts are underway to facilitate such mutual trust between DRM systems through simple and cost-effective processes. In sum, while DRM interoperability challenges exist, industry has already made significant headway in resolving them, and we can expect to see much further progress in the near future. Ultimately, if playability features or security considerations reduce consumers' experience or device their expectations, they will vote with their wallets by going elsewhere. Hence the importance of informing consumers of the features attached to a specific offering (for example the number of copies included in their license and specific playability features).

What role for equipment and software manufacturers?

31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs, etc.)?

European companies are already heavily engaged in the creation and distribution of creative content and services online. Many leading European firms (some of which are mentioned in our response to

Questions 25-29) have built successful services and solutions around DRM technologies and now play a key role in the management and delivery of online content. Europe's mobile phone industry is also a market leader in deployment of creative content and services, as traditional single use mobile phones give way to multi-function devices connected to the Internet and supporting a wide variety of content offerings.

What role for public authorities?

32. What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?

We encourage national governments to work closely with stakeholders—including industry and users — to identify opportunities to foster new online business models. That said, we respectfully caution these governments to avoid unwarranted intervention in this area. In dynamic, fast-moving markets such as online technologies, the market itself is best placed to lead. New technologies are developing rapidly, and convergence is changing the way consumers receive and use information and content. Self-regulation ensures that industry maintains the ability to respond rapidly and appropriately to changing conditions and new consumer demands; rigid rules, in contrast, can hinder market innovation. A light-handed regulatory touch also ensures that consumer demand and industry competition—not government regulation—determine which products and services succeed and which do not.

The evolution of a healthy online content market as a response to piracy is challenging, takes time to develop and requires significant innovation. This is reflected in the many different models and services that are being launched on a regular basis, in an attempt to find the right balance between right holder needs and consumer expectations.

Online content distribution requires considerable technical flexibility (technical protection measures, online payment methods, usage rules etc) and while complex in design, should be invisible and simple for the consumer. Trying to legally manage these emerging services and models will stifle innovation and leave right holders, service providers and consumers with limited choices and offerings.

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?

We reiterate the points made in our executive summary as to the optimal approach:

- **A light-handed regulatory touch**
- **Preserve a Comprehensive and robust IP protection system**
- **Support for technologies that protect online content and ensure user security**

In addition, we urge the European Commission to assess the following potential obstacles (described and addressed under their relevant section, above) in order to foster the availability of online content:

- **Threats to DRM technologies and making digital works more susceptible to piracy.**
- **Increasingly burdensome private copy levy regimes**
- **Limitations to the use of IP addresses in fighting security and piracy offences**
- **Lack of a community-wide license for music rights**

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