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**CEEP Contribution:**

**Public Consultation on  
Content Online in the Single Market**

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Centre européen des Entreprises à Participation Publique et des Entreprises d'Intérêt Economique Général

European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest



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CEEP Contribution:

Public Consultation on Content Online in the Single Market

**Executive summary:**

CEEP welcomes the Consultation on Content Online and is happy to contribute to the debate on behalf of its members.

CEEP companies' strategy is indeed in consistency with the Commission objectives to stimulate the growth of a European single market for online digital content (films, music, games...), to promote the cross-border delivery of diverse online content services on different platforms, to promote editors and to energise the presence of content providers of all kinds supplying to customers the services they are looking for.

Online content markets are growing with extraordinary speed; their size in Western Europe is expected to triple by 2008. Almost every day a new product, service or a major deal is announced. A complex new environment is clearly starting to evolve, though few are yet able to predict reliably its future shape, or to forecast which business models will succeed.

In such a fast-moving environment, characterised by multiple uncertainties, it is particularly important that any planned legislative measures be evidence-based, properly-targeted, and in full conformity with the subsidiarity principle. It is equally important to ensure consistency with existing EC policy initiatives.

The EU's approach to media regulation should promote diversity and competition and facilitate the transition to digital modes of delivery, giving market players the necessary flexibility to develop the most appropriate solutions to issues as they arise.

*CEEP has chosen to address the following issues raised by the questionnaire which are key to its members and highlight the European General Economic Interest.*

## **Data protection**

CEEP agrees that the profile of data protection issues is likely to rise as online content markets develop. Increased use of electronic networks to consume content necessarily provides more scope for the gathering of customer information. Therefore, the focus on effective enforcement of existing rules should be the priority.

## **Content licensing**

Collecting society policies and practices:

To stimulate the launching of new services, CEEP supports efforts by DG MARKT to introduce greater competition and transparency into collecting society operations – notably the 2005 Recommendation on cross-border licensing for online music sales. This initiative now merits a determined follow-up for other sectors active in the online world.

Pan-European licensing:

On the one hand, the overall potential for development of pan-European services should not be over-estimated and should take into account of the fact that this is an area with a particular scope for unintended consequences. On the other hand, the matter is of importance to certain stakeholders including Communications sector players. The Commission should therefore proceed with caution, basing policy on a proper cost-benefit analysis rather than a purely political commitment to European integration.

Rights clearance:

CEEP agrees that current procedures are often overly-complicated and lengthy. There may be a role for the Commission in this area – perhaps as a facilitator for the exchange of best practice and experience. In particular, the creation of artificial borders in the online world should be prevented by a coherent approach on (collective) licensing rules for cross-border services, based on the country-of-origin principle for such services.

## **Copyright infringement**

Existence of the EU legal framework:

The EU legal framework - notably the e-Commerce Directive and the Directive on IPR Enforcement - allows for effective action against copyright infringement.

Sector companies are committed to their responsibilities under this framework which balances the interests of rightsholders against other considerations – notably the rights of law-abiding telecoms users and society's need for an open "common carrier" electronic communications platform.

Piracy:

CEEP companies are active players in the fight against piracy, e.g. on the European level, participation in the elaboration of the Charter "Film on Line" initiated by Commissioner Viviane Reding. This charter allowed players to agree on ways to curb piracy.

CEEP believes that efforts should be made to fight lucrative piracy and releaser pirates. Lucrative piracy is the engineering and reselling of CD or DVD on the basis of data downloaded from peer-to-peer networks. Releaser groups are the pirate groups who are competing to release any content before

its commercial exploitation. According to internal study, for the movie industry, less than 100 groups across the world are responsible for 80% of the release of pirated movies. The fight against lucrative pirates and release groups is out of the scope of Communications' sector as they require criminal investigation.

Proposals for a "graduated response" that were advanced in the context of the Film Online debate will require ISPs (Internet Service Providers) to take decisions on the validity of rightsholder complaints that are properly taken by a court, thereby "privatising" the administration of justice and shifting the costs of enforcement from rightsholders to ISPs. In other words, ISPs are being asked to provide a service to rightsholders. It follows that if the graduated response is to be discussed at all (it is probably illegal in some Member States), it is necessarily a matter for bilateral commercial negotiation.

Claims continue to be made that ISPs have a moral obligation to voluntarily accept a larger share of enforcement costs since they profit from copyright infringement. Such claims have no foundation in the economics of IP networks. In fact, heavy use of peer-to-peer networks by copyright infringers adds significantly to ISP backhaul costs.

### **DRM interoperability**

CEEP companies support the goal of interoperability for the subset of DRM technologies concerned with copy authorisation and prevention (we define "interoperability" in this context as the ability of users to consume content on the device of their choice, irrespective of its source). Achievement of this goal will favour **a user-friendly customer experience, thereby encouraging market growth**. Policy on this issue needs to be developed with the following points in mind:

- It is important to avoid confusing technical incompatibility issues and the lack of interoperability which results from use of proprietary DRM systems to implement specific business models. The latter obstacle is mainly a matter for the market, provided that no abuses take place. As consumers truly value interoperability, it is expected that vendors with the most flexible offerings will be those that thrive.
- Any attempt to favour a particular standard risks impeding investment and innovation. It will also heighten security risks by introducing the same vulnerabilities to all content and systems.

### **Net neutrality**

CEEP regrets the misleading formulation of this issue in Question 20 of the Questionnaire (the Internet is *not* based on the principle of net neutrality as defined in the question and network operators *are* already allowed to offer preferential, high quality service to some service providers). CEEP companies also wonder about the reasons for its inclusion. The net neutrality question is already being discussed as **part of the 2006 Review of the EU e-Communications Framework** and it should be settled in the same context. The opening of a separate debate elsewhere risks creating uncertainty for all economic actors involved.

### **Cultural diversity**

The goal of fostering cultural diversity is a major one and remains valid notwithstanding the technology changes. Future online content markets will provide consumers with unprecedented choice – both in terms of the quantity and variety of content that they are able to access.

As regards the circulation of self-produced contents, the high competition at work in the online world will be the best incentive for content distributors to answer their clients' need for various platforms to

exchange their own creative contents (cf the present success of video blogs where contents are produced by European citizens and made available on services like MySpace or videoblogs).

The user is becoming the supplier: a « **prosumer** »:

- of content (blog, wiki, Flickr),
- of taste/emotion (Amazon, Delicious),
- of goods (eBay),
- of contacts (myplace)
- of relevance (Google pagerank),
- of reputation and feedback (eBay, Tripadvisor),
- of storage and server capacity (P2P),
- of connectivity (wifi sharing, mesh networks)

The development of such activities, which are very important to the promotion and spreading of European culture and the support of cultural diversity should not be hindered.

As regards linguistic diversity, it is closely linked to both the availability of European works on national platforms and the possibility granted to content distributors to develop European platforms. Regulation in favour of the legitimate availability of the European-created content, such as referred to the above with respect to content licensing, would strengthen the targeted cultural diversity.

### **DRM and rightsholder licensing**

Existing DRM deployments provide firm evidence of the technology's capacity to guarantee rightsholders', contractual licensing methods and to protect against illegal copying of work. Against this background, CEEP companies support efforts by DG MARKT to ensure proper implementation of Article 5.1 of the EU Copyright Directive so that the incidence of levies is correctly linked to effective DRM use.

### **Actions to be taken at the European level**

At EU level, CEEP believes that the **appropriate actions** necessary for the growth of the EU sector for ICT and media, while fostering general interest, **are as follows**:

- to stimulate digitalization of content - Media Plus Programme
- to ensure to all market players the access to legitimate content and fluidity of rights
- to grant a maximum of flexibility for all stakeholders in the markets of digital media platforms in order for them to be able to invest in a fair and comprehensive legal environment – stimulating innovation in the development of new services and new business models linked to advertising.
- with regard to interoperability to find the most appropriate balance between the legitimate request for the security of content and the standardisation.

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