



Response to the European Commission's [Public Consultation on Content Online in the Single Market](#)
(28 July 2006)

EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organisation of national library, information, documentation and archive associations in Europe. Subjects on which EBLIDA concentrates are European information society issues, including copyright & licensing, culture & education and EU enlargement. We promote access to information in the digital age and the role of archives and libraries in achieving this goal. We represent the interests of our members to the European institutions, such as the European Commission, European Parliament and the Council of Europe.

Introduction, paragraph 4

'So EU policies should aim at promoting fast and efficient implementation of new business models, for the creation and circulation of European content and knowledge online'

Comment by EBLIDA

EU policies should also promote the circulation of royalty-free content and knowledge, especially amongst citizens, businesses, educational and cultural institutions. Such circulation is useful in itself, and it encourages a thriving market.

Introduction, paragraph 10

'The [proposed] Communication will take into account the results of the online creativity conference[s]'

Comment by EBLIDA

Bearing in mind the aim of 'preserving public interest objectives and ensuring the protection of consumer interests' (paragraph 6), it should be remembered that the successive conferences organised in that series are attended almost exclusively by right holders and their representatives and their principal theme is the protection of copyright rather than the maximum or optimal diffusion of content.

Questionnaire (introduction)

We urge the Commission to recognise that educational institutions make extensive use not only of 'educational content' but also of audiovisual media of all the kinds listed, as well as games online and online publishing.

Question 1 (what kind of services do you offer?)

Large libraries often offer digitised versions of their holdings, especially 'showpiece' works that are difficult to consult elsewhere. Libraries of all kinds frequently offer on-line to the public their catalogues of their holdings. Catalogues are not perhaps 'creative content', but they are important in providing access to creative works, especially literary and artistic works. The online offerings of libraries are substantially different from their offline services. Digital versions of holdings, for example, are expensive to produce and are few compared with the physical items held in a library. Question 1 seems to indicate

that the questionnaire is addressed to organisations which are, primarily, producers or distributors of creative content. If the EU is to encourage the production of creative content, it should consult extensively with the users of creative content. Notorious difficulties for industry have occurred when users' wishes have been disregarded (for example, the desire of users of popular music for single songs and single tracks). Obstructions to creativity occur when the needs of users are overlooked (for example, in the legal protection of technical protection measures, even when they prevent lawful uses of creative works: please see our answer to question 3).

Question 3 (take-up of creative content services)

The major concerns of libraries are:

- § the legal inviolability of technical protection measures, even when they obstruct uses of works that are permitted by law
- § the lack of interoperability between DRMs
- § The patchy adoption by Member States of the exceptions to copyright. An exception, in accordance with the Berne Convention, may not harm the interests of right holders, and the 'Information Society' Directive respects that restriction. There can therefore be no objection in principle to all the exceptions listed in Article 5 of the Directive being made available in all Member States. Such a measure would bring about much of the harmonisation intended by the Directive.

Question 4 (protection of public interests)

In our view, provision for public interests is being eroded. Traditionally, copyright law has embodied a few limited, exceptional uses of copyright material, in order to facilitate education and the diffusion of culture without harming right holders' interests. Such exceptional uses are sometimes obstructed by digital rights management systems, and in some Member States the statutory exceptions may be set aside by the contracts which almost always govern the delivery of online material.

Question 5 (online content on different devices)

In our opinion the use of online content on mobile devices such as cell phones, PAD's etc is extremely important for educational and cultural activities. The possibility of creating access on different platforms and in different online environments will facilitate a greater and more patron-driven usage of online content. The European legal framework should reflect the very real advantages and extra value created by seamless interoperability and multi-platform usage.

Question 6 (cultural diversity)

Cultural diversity is not easily self-sustaining online and needs encouragement. It flourishes best when many individuals and small organisations, as well as major commercial entities, are offering work online. The Commission should mount a publicity campaign for 'Creative Commons' licences, which protect the interests of individuals and SMEs who wish to circulate their creative work online without payment.

Question 8 (new business models)

We assume that the mention in this question of 'special offers for groups or communities, for instance schools, digital libraries, online communities' means lower prices for such groups. We do not believe that such offers are likely to arise spontaneously amongst commercial providers. In our experience, as digital libraries and educational institutions, commercial content providers divide their market into segments and then apply the highest price to each segment that they believe it can bear. Since online content is copyright (therefore a monopoly product) and is almost invariably delivered under

contract, there is no escape, for cultural and educational institutions, from this treatment. For example, a university library must purchase online journals at the price set by the publisher for universities, and cannot take advantage of a lower price offered (for example) to schools. It is unlikely that offers of online content will be made beyond the national level, since the main method of delivery is by contract, and contracts operate most easily on a national basis. Moreover, online providers often set their prices nationally according to their perception of what their customers can afford in the various territories.

Question 10 (technological barriers)

DRMs are the most serious technological barrier. They generally obstruct access to online content whenever a user seeks to take advantage of a statutory exception to copyright. The exceptions to copyright are designed to maximise use of material in ways that do not harm the right holder. They have a long and successful history, and their existence is part of the balance between the right holder's monopoly of rights in a work and the public interest in the dissemination of knowledge. But researchers, educational and cultural institutions, private citizens and small enterprises can barely benefit from these exceptions when they are applied to online content. Though their purpose is to encourage innovation and creativity, the exceptions are usually rendered void by a combination of access under contract supplemented by the use of DRMs to obstruct any access which is not specifically authorised by the right holder.

Question 12 (price systems)

As customers for online content, we find some common kinds of pricing to be unsatisfactory, inhibiting purchase by libraries. Since our holdings are a source of raw material for creativity for many classes of people, this situation can be counter-productive in the long term. For a discussion of this, see section 11 ('Peculiarities of the market') in *"Scientific publications: free for all?"* Tenth report of Session 2003-04, UK Parliament, House of Commons Science and Technology Committee, London: The Stationery Office, 2004 (HC 399-1).

Question 14 (Multi-territory or Europe-wide licensing)

Multi-territory or Europe-wide licensing may be advantageous to producers or distributors. It is to the disadvantage of customers, whether they are individuals or corporate entities. If trade in online content is to be encouraged, further obstacles must not be put in the way of the customer. Customers frequently require permission for many small uses of a large variety of material whose rights may be held by many right holders. It is difficult already for customers to locate the potential source of the permissions and to negotiate them. If the source of the permission might be in any Member State, obtaining a licence would become more time-consuming, and legitimate use of online content would be curtailed. When legitimate use becomes more difficult, a risk always arises that illicit use may be developed. A simple pan-European innovation would be to incorporate all the available exceptions to copyright into the law of all Member States.

Question 16 (remuneration of rights holders)

On the whole, right holders have substantial control of remuneration through the contracts they conclude for the delivery of content to customers. Levies are justified only where private copying is permitted by law and where it is possible for consumers to make lawful private copies without reference to the right holder. This set of circumstances is becoming rare in the online environment and the justification for levies is accordingly diminished.

Question 17 (legal barriers)

The development of creative content depends not only on successful 'industries' but also on a thriving and interested market of individual and corporate customers. In addition, the creation of content depends heavily on the use and knowledge of existing content. Current legal barriers hinder the use of existing content, both for consumers and potential creators. The exceptions to copyright are progressively becoming unavailable, and the term of copyright, at 70 years after the death of the creator, is too long to act as a true incentive to creativity or investment, and is actually obstructive to the use of the work of previous generations.

Question 20 (networks)

If the Internet were to become a multi-layer, multi-tariff utility, the following would clearly suffer: small and medium-sized enterprises, individual creators, consumers, and public service creative institutions like museums, galleries, libraries and universities. They would suffer through not being able to launch, expose, or market their creative content so cheaply and easily, and by increased competitive advantage on the part of large enterprises which would be able to afford the best access to the Internet and the best exposure of their online products.

Question 22 (education about copyright)

One cause of illicit use is indeed ignorance about copyright. However, most proposals intended to overcome such ignorance concentrate on the acts forbidden to consumers. Far more would be achieved if consumers were educated first about what, and how far, they may copy works legitimately. Right holders do not seem to wish to publicise legitimate uses, yet it seems obvious to people working in libraries that more information about legitimate use will tend to lead to less illicit use.

Question 25 (digital rights management systems)

Libraries tend not to use DRMs because they usually promote their online services and products as a gratis public good. Libraries believe that DRMs are an appropriate means to manage and secure the distribution of copyright material if, and only if, they are not merely designed to prevent access to the material. If they are mere protection measures they almost inevitably prevent authorised use as well as unauthorised use, because they do not recognise exceptional copying established by statute. DRMs would be excellent if they genuinely mediated (rather than prevented) access, and if they genuinely managed income amongst right holders. We know of no DRM system that seriously manages rights beyond restricting access until payment has been made.

Question 30 (non-commercial services)

Very large quantities of content are offered gratis online by public bodies and by independent creators keen for their work to be seen and appreciated. Non-commercial offerings are a vital part of creative content, yet are usually overlooked by policy-makers.

Question 32 (role of public authorities)

National and regional authorities should encourage favourable business models for educational and cultural institutions and public libraries, allowing these types of institutions to use and provide online content for their users in non-commercial settings.

It is also important that public institutions be able to lend or allow for the use of software that enables the use of content with educational purposes.

Question 33 (actions at EU level)

At EU level the following legislative changes would be beneficial:

- § making all the available exceptions to copyright operate in all Member States
- § mitigating the absolute legal protection afforded to technical protection systems so that they do not necessarily obstruct the limited copying permitted by law through the exceptions
- § Establishing clearly in law that any contractual term purporting to nullify a statutory exception is void.

The Hague, 10 October 2006