



20.10.2006

European Commission
The Directorate General Information Society and Media
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QUESTIONNAIRE ON CONTENT ONLINE IN THE SINGLE MARKET

The Confederation of Finnish Industries EK is the leading business organisation in Finland. It represents the entire private sector, both industry and services, and companies of all sizes. EK's member companies represent more than 70 percent of Finland's gross domestic product and over 95 percent of exports from Finland. EK has 44 different branch federations with a membership of 15.000 companies in all, which employ about 900 000 employees. EK represents copyrights holders and users as well as content and product manufactures/producers/importers or distributors.

EK welcomes the consultation on content online in the single market and has used the questionnaire document as a basis for its comments. However, we would first like to provide some general comments on the issue and then reply to some of the specific questions. Our replies are nevertheless limited to general statements.

General remarks

As a starting point EK would like to point out that the significance of copyright issues has grown rapidly in digital environment and especially in the field of content online. Even though the national copyright laws of EU member states have been harmonised to a certain extent, the protection of copyright and related rights is taking place within a framework of very complex legal and economic issues. At the same time new technology is providing opportunities for an increasing number of new players and the contribution of copyright-based activities to the national economies is growing. Therefore, it is of utmost importance to find a proper balance between the right holder's rights and the exploitation of these rights.

In order to exploit the possibilities of digital revolution to the benefit of all parties, the protection of intellectual property in electronic

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commerce should be enhanced. This should be done in a way that encourages creativity in the information society and does not in any way hamper the development of new applications and services.

The importance of the role of self-regulation by market players is ever increasing in the online environment. This is also in line with the principles of better regulation. Additional restrictive legislation will hamper the development of new competitive online services and content. There is no need for further legislation as the current EU and national legislation and self-regulation guarantees an adequate level of protection for consumers and minors.

However, there is a need for new and more efficient means to combat piracy and counterfeiting worldwide. There exist also new forms of piracy that need to be tackled more efficiently. Thus, there is a strong need to enhance cooperation in order to fight against piracy and counterfeiting at all fronts. EU should take a more prominent role at the international level in order to fight against piracy and counterfeiting.

There is also a clear need to take additional actions to increase public awareness of the damages piracy does and a need to strengthen the general understanding of copyright and intellectual property rights in general. Quick technological development of online technologies has created to some extent a false assumption of free online content in the minds of citizens and public institutions. There is a need to raise awareness of the meaning and economic rationale of copyright protection and other legislation relating to online services and content.

EK would also like to point out that there exists a risk of unfair competition in the online content market if the role of the public institutions is extended. Neither EU nor national public funding should be misused in the production of new public online content or services that compete with European commercial content and services production. Such a misuse would weaken the commercial online content and services market and ultimately decrease national tax revenues.

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.)?

EK represents copyright holders and users as well as content and product manufacturers/producers/importers or distributors. Our members offer a wide range of online content and services-

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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.

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.

The present environment is not enough conducive to developing trust in and take-up of new creative content services online. There several concerns regarding the present environment:

Despite of the harmonisation, the overall copyright legislation at EU-level and in many Members States does not contribute to the creation of new competitive European online content and services by online content industry. This is mainly because the acquisition of copyright does not meet the needs of European information society. In order to make European online content services more attractive and competitive, the scope of copyright protection should be harmonised without delay, and ownership of copyright should be assigned to the employer by law in Europe.

The legal framework should also take into account that new technology will increase consumer choice and availability of content online including copyright works and permit price points that reflect the consumer's actual use. The EU should take steps forward to urge Member States to promote to reduce or phase out levies for digital products, as digital rights management technologies allow control of private copying, so that right holders are fairly remunerated.

Copyright levies were introduced to remunerate the loss of revenue to legitimate private copying in the analogue world, where copying devices were used only or mainly for private copying. The copyright levies remuneration system was justifiable in the analogue world. However, this is not the case any more in the digital world. Digital rights management technologies allow control of private copying, so that right holders are fairly remunerated. Right holders can through different technologies deliver content in ways that end users can enjoy when and where they choose. Also the number of copies allowed can be varied so that consumers only pay for the copies required. At the same time it is essential to guarantee that the digital rights

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management principles and systems are transparent and respect the balance between right holders and consumers.

We would also like to point out that the European legislation does not facilitate the use of various platforms by online content industry. The current copyright acquisition processes are often too burdensome and time consuming. They may also lead to double or multiple copyright compensations if the same online content is delivered to the same user at the same time through different platforms. Any new platform, for example mobile-tv, to deliver the same content to the same audience at the same time should not create a basis for new, double compensations. If the issue of double, multiple copyright compensations is not solved rapidly, there is a serious risk that the European content online industry will not be able to respond to the need of the users, consumer. This will eventually weaken the competitiveness of the European industry and hinder the development of European Information Society and thus be against the main goals of the Lisbon strategy.

EK is also worried about the intentions of the collecting societies to extend their roles. The extension of the role of collecting societies endangers the future of the online content industry. Collecting societies were created to manage the mass use of copyrighted works. EK stress that this role of the societies still is and remains important in the field of mass use. However, their role in the digital environment is different. For example digital rights management technologies allow control of private copying, so that right holders are fairly remunerated. Right holders can through different technologies deliver content in ways that end users can enjoy when and where they choose. Also the number of copies allowed can be varied so that consumers only pay for the copies required

EK supports the idea of removing the main obstacles to the growth and availability of internet-based services in the EU (e.g. offering effective models for cross-border licensing of copyright-protected content in the online environment). In the Commission's consultation in summer 2006 on Copyright Levies in a Converging World, the Commission presented a number of problems within the current system of copyright levies. Our members think that new forms for right holder's remuneration should be found in the future (e.g. move towards more consumer friendly cross-border licensing systems).

It is also important that in a ubiquitous society content can be transferred through different networks and platforms. Different networks and platforms should support each others so that end user, consumer is able to choose the most convenient way to receive online content.

There is too much European as well as national legislation covering online environment. The role of self-regulation among market players should get more significant role in online context. Any additional

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restrictive regulation would diminish development of new online content and services. Hence, there is a need to strengthen the role of self regulation.

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?

The protection of adequate public interests is ensured in the online environment. For example in Finland the usage of identification data has been precisely legislated and it provides sufficient protection for consumer's privacy. Also the usage of personal data (e.g. credit card information) is precisely legislated and provides security vis a vis consumer's fears in relation to misuse of his credit card information.

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?

It is very significant for the future development of European level online content and services, manufacturers of devices and users/consumers of these online content and services that all online content can be accessed and used on many different devices and platforms. The service providers need to be able to guarantee that users can reach any content on any device. The ultimate goal is to reach a ubiquitous society where content is transferred via different networks in a manner that such networks support each other and end-user's terminal is able to choose the best way to receive content.

As stated in answer 3 the European legislation does not facilitate the use of various platforms by online content industry. The current copyright acquisition processes are often too burdensome and time consuming. They may also lead to double or multiple copyright compensations if the same online content is delivered to the same user at the same time through different platforms. Any new platform, for example mobile-tv, to deliver the same content to the same audience at the same time should not create a basis for new, double compensations. If the issue of double, multiple copyright compensations is not solved rapidly, there is a serious risk that the European content online industry will not be able to respond to the need of the users, consumer. This will eventually weaken the competitiveness of the European industry and hinder the development of European Information Society and thus be against the main goals of the Lisbon strategy. Thus, there is a need for common EU principles on this issue. Basis should be derived from the rights already procured, e.g: rights for extensive broadcasting rights vis a vis population (e.g. DVB-T) should automatically cover any other possible way of transmission of content in other networks as well to the same end-users.

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6. How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?

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Competitiveness of European online content industry

7. If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? Please give examples.

The essential weakness of online content and service industry in Europe concerns complicated copyright structures. European level online content and services cannot afford any new collecting societies, levies or other costs if Europe wants to be able to compete with US and other regions of the world. There is no need for new roles for the collecting societies in online world as there are efficient technological means to remunerate copyright holders.

The main strength of European online content and industry is Europe's cultural and linguistic diversity and the appreciation of high-level education.

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

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?

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

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.

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As stated in answer 5, it is very significant for the future development of European level online content and services, manufacturers of devices and users/consumers of these online content and services that all online content can be accessed and used on many different devices. The user-demand is to reach any content on any device

11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?

Payment and price systems

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?

13. What kinds of pricing systems or strategies are used in your field of activity? How could these be improved?

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?

As stated in answer 2 the main obstacles to growth and availability of Internet-based services at the EU level has to be removed. One option could be to introduce effective models for cross-border licensing of copyright-protected content in online environment. Anyway, any measures that lead to increase of consumer prices, such as strengthening the position of complicated copyright structures, should be avoided.

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?

In Finland, for example the launching of mobile television services has not been succeeded due to the demands of collecting societies for double compensation for the delivery of the same content the same audience. Also the Finnish ICT sector has faced some difficulties reaching reasonable agreements with the collecting societies and the interpretations of the copyright act vary to a great extent between parties.

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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.)?

As stated in answer 3 the EU should take steps forward to urge Member States to promote to reduce or phase out levies for digital products, as digital rights management technologies allow control of private copying, so that right holders are fairly remunerated.

Copyright levies were introduced to remunerate the loss of revenue to legitimate private copying in the analogue world, where copying devices were used only or mainly for private copying. The copyright levies remuneration system was justifiable in the analogue world. However, this is not the case any more in the digital world. Digital rights management technologies allow control of private copying, so that right holders are fairly remunerated. Right holders can through different technologies deliver content in ways that end users can enjoy when and where they choose. Also the number of copies allowed can be varied so that consumers only pay for the copies required. At the same time it is essential to guarantee that the digital rights management principles and systems are transparent and respect the balance between right holders and consumers.

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?

See our answer 3. The European online content industry cannot afford complicated copyright structure and strengthening the position of collecting societies.

Furthermore copyright structure should facilitate the use of different platforms and modification of works to be used in such platforms. Any new platform for relatively same online content or service to the same user at the same time cannot be basis for new compensation. The view that each new platform or distribution channel leads to a new right compensation leads back to the times when technology did not produce new platforms or distribution channels at current pace. This does not work in favour of the content industry nor the users.

One of the main regulatory barriers hampering the development of online content and services is the lack of employer's copyright in most EU countries. The acquisition of copyright by online content industry should be facilitated in cost effective way in order Europe to be able to compete with US. The copyright regimes should be simplified and the

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ownership of copyright to the employer should be assigned by law in EU.

18. How does the country you mainly operate in encourage the development of creative online content and services?

Release windows

19. Are "release windows" applicable to your business model? If so, how do you assess the functioning of the system? Do you have proposals to improve it where necessary? Do you think release windows still make sense in the online environment? Would other models be appropriate?

Networks

20. The Internet is currently based on the principle of "network neutrality", with all data moving around the system treated equally. One of the ideas being floated is that network operators should be allowed to offer preferential, high-quality services to some service providers instead of providing a neutral service. What is your position on this issue?

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?

See our general comments.

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?

See our general comments. Information, education and awareness-raising campaigns will be necessary in order to increase knowledge, understanding and acceptance of the copyright system and thus helping to limit piracy. In order to find a proper balance between the online content industry, creators and consumers/users regarding the use of copyrighted works online, it is important to raise awareness of citizens. However, proper balance can only be found if the copyright system is fair and reasonable.

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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?

Any commercial online content and services can be based only on business models that respect copyright and does not form unfair competition regardless the form of content aggregation service. There exists no business model without appreciation of copyright and other relevant right holders' consents which can be obtained for a consideration or for free.

Rating or classification

24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?

Digital Rights Management systems (DRMs)

25. Do you use Digital Rights Management systems (DRMs) or intend to do so? If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?

As far as we are aware, DRMs are not yet widely used in online industry (they are used to some extent in online music and video content sales). Main reason for this could be that currently available DRMs are still rather expensive and complicated to use. The use of DRMs will most likely increase when more customers friendly DRMs are available on the market. This however requires that the levies will be abandoned accordingly.

We would like to highlight the possibilities DRMs can provide to business and consumers. Through DRM, there are new technological means through which rights holders can more directly protect their interest and to be compensated directly in a manner commensurate with the intend use. However, at the same time there is a need to ensure that consumers are able to understand what they are purchasing and what they are entitled to do with the digital content.

The copyright levies remuneration system was justifiable in the analogue world, where copying devices were used only or mainly for private copying. However, this is not the case any more in the digital world. DRM technologies allow control of copying, so that right holders are fairly remunerated. Right holders can through different technologies deliver content in ways that end users can enjoy when

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and where they choose. Also the number of copies allowed can be varied so that consumers only pay for the copies required. Therefore, licensing through digital sales provides fairer remuneration mechanism for right holders. The remuneration they receive is correlated to actual use of their copyright works.

In addition to this, payments through digital sales licensing means are not subject to substantial administrative costs.

Recently conducted studies provide evidence that levies increase the cost of digital products to consumers, artists and industry in Europe. An Economic impact study conducted by the Copyright Levies Reform Alliance tackles the direct cost of levies applied to blank digital media and digital equipment and the broader economic impact of levies on consumers and artists through higher market prices and lost sales revenue.

From industry point of view it is important to note that DRM system costs are carried by ICT companies. The additional burden of levies acts as a disincentive from investing in developing new delivery methods, creating new markets and enabling new business models.

26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?

27. In the sector and in the country or countries you operate in, are DRMs widely used? Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?

See our answer 25.

28. Do you use copy protection measures? To what extent is such copy protection accepted by others in the sector and in the country or countries you operate in?

29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?

Complementing commercial offers with non-commercial services

30. In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in?

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See our general comments.

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.)?

The users/consumers of online content and services should be allowed to use European online content and services in a technology neutral manner with devices, DRMs etc. that are based on open standards.

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.)?

See our answers 3 and 5.

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?

See our answers 3 and 5. There should be a principle for online content for any device, the general understanding and awareness of copyright and other intellectual property rights should be enhanced and there should be an efficient way to exchange experiences and best practices at EU level.

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