

Public Consultation on Content Online in the Single Market:

Submission by IMPA¹

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.)?

IMPA members' repertoire needs to be and is licensed to users for the purposes of on-line services. Since part of publishers' responsibility is to market and distribute as widely as possible the repertoire they represent, publishers are naturally keen to license as many users as possible both on and off-line.

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.

The list provided by the European Commission seems exhaustive.

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 harmonization in the Single Market? Etc.

The present environment involves a complex set of laws, regulations, technical requirements, and business realities that need to be followed for the successful launch of new creative content services online.

At European level, some of the most critical difficulties have recently been addressed. The Commission Recommendation on collective licensing for on line music services is a fundamental step towards achieving true pan European licensing while respecting the value of content and cultural creativity as well as diversity. IMPA members are working very hard to implement the Recommendation and a number of important deals have already been announced and continue to be worked at as a result of the Recommendation. The instrument in question must be given a chance to bear further fruits; while opposition to it by some for various often self serving reasons

¹ The International Music Publishers' Association (IMPA) is a trade association open to international music publishing groups and which currently represents the five major music publishing companies namely, BMG, EMI, Sony, Universal and Warner/Chappell Music.

Music publishers manage the promotion, licensing, royalty collection, distribution and protection of copyright in musical works written and composed by songwriters and composers (the "writers"). Music publishers generally pay writers advances against royalties following the signature of a publishing agreement in return for the rights being granted to them. Music publishers represented by IMPA are principally concerned with licensing all reproductions of musical works for example for mechanical reproduction, for the performance of musical rights (both live and recorded), for on-line use, in synchronisation with visual images in films, television programs and commercials and for use as telephone ring tones. Music publishers are assigned or licensed (in whole or in part) the rights by the writers.

mounts, we would hope that the Commission keeps standing by its own, recent, decision and gives the market the opportunity to adjust.

But licensing and new services are increasingly challenged by pirate operators and generally by illegal behavior. We believe that ISPs need to be persuaded to cooperate with content owners and act responsibly in the fight against piracy. The forthcoming review of the so called Telecom Package cannot just be concerned with increase in band width and speed of the networks, but must also form the basis for responsible behavior.

We of course are pleased to see that this consultation is concerned with music as well. While we would congratulate your services for the efforts and development of the Film Charter, we feel that the opportunity should be now taken to complete the task not just in terms of scope and sectors covered. In this respect, we stand ready to assist in further work urgently needed to achieve meaningful cooperation by ISPs in the fight against on-line piracy by way of a code of conduct and/or legislation.

We would respectfully suggest that the Commission considers legislative guidelines that allow the creative community to go after publishers and distributors of software which is mainly used for unauthorized use and distribution of protected content on the internet, with all the needed checks and balances. The recently adopted French law aimed at implementing the Copyright in the Information Society Directive has taken stock of recent case law and realities at both national and international level and includes forward looking while equitable rules aimed at tacking the issue in question. It is important that those who profit from infringements of copyright they induce users to commit are held responsible for their actions.

Member States need to implement European law more swiftly and faithfully. In many instances incorrect implementation is standing in the way of orderly e-commerce. IMPA is ready to further cooperate with the European Commission in identifying and pursuing such instances.

Education campaigns aimed at raising the level of respect by European citizens for intellectual creation and property would benefit from European blessing and support. At a time when Europe is confronted by emerging economies and challenged on the viability of traditional trade and manufacturing, innovation, creativity and culture need to be recognized as the main and most reliable assets for growth. IP protection and its recognition by ordinary citizens should become more of a priority for cultural as well as societal and commercial reasons

Finally, interoperability is also an important issue that needs to be addressed and solved going forward. We stand ready to assist the European Commission in clarifying the essential policy principles, such as security and respect for copyright which need to inspire any interoperability effort in the market place.

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?

We are obviously mindful of privacy concerns and the need to respect the rules governing personal data. However, we note that while law enforcement and data privacy have always been reconciled, current perceived tensions need to be addressed. Privacy rules should not be misused to the benefit of those wishing to shield their illegal operation or by commercial operators trying to avoid responsibility for the use of their services and facilities by customers for illegal purposes.

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?

Consumers want to access and use content across devices and platforms. While publishers have an interest in meeting such demand, they are not technology companies and do not themselves develop DRMs

IMPA notes, however, that current DRM systems tend to work only in closed systems and are designed by technology providers not to be interoperable. As a result, consumers must choose among different versions of the same content, formatted to play on particular devices. While on the one hand having multiple closed DRM technologies and content formats is important from the standpoint of encouraging competition and innovation, the lack of interoperability has led to greater consumer reluctance to adopt new DRM technologies and devices. In an ideal world, DRM systems and devices would be able to interoperate with each other. We are aware of international fora striving to achieve interoperable solutions and hope they will be successful. While we tend to think that the marketplace is possibly the best means for developing such an interoperability solution, we stand ready to assist the Commission in identifying the key policy principles that need to inspire any effort to achieve interoperability, such as for example security and respect for copyright.

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?

Piracy and the wide availability of illegitimate content online is the single most crucial hurdle.

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?

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?

IMPA believes that pan-European licensing should be a real option for rightholders and users while the value of copyright should be respected and recognized. The Commission Recommendation on collective licensing and on line music services is a key development for rightholders and consumers alike and should be given the time to bear its full potential.

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 authorized / unauthorized private copy, etc.)?

Right holders remuneration is and should continue to rely on contractual negotiations with users directly or via collecting societies as the case may be. Private copying and levies cannot and should not be used to "legalize" otherwise unauthorized and illegal activities on the internet.

Levies are not there to cleanse piracy. Unauthorized downloading is not private copying. Copies of legitimately acquired content may be authorized or could be considered as legitimate private copying on the basis of national, European and international applicable norms to specific cases.,

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?

Yes. The main barrier is piracy, the need for more forceful enforcement mechanisms and the absence of real incentives for ISPs to cooperate in stamping out illegal trade and activities on the internet. We would suggest a number of initiatives to be considered by the European Commission as per our answer to question n 3.

Networks

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?

The music sector suffers greatly from piracy. Piracy suffered by the sound recording industry equally and inevitably means piracy in the underlying musical compositions.

Of course occasional downloading by few individuals is less damaging than uploading. However, while a hierarchy of lesser and bigger infringements may seem rational, in reality, the real comparison needs to be made between uploading and collective, rather than individual and occasional, downloading. When consumers download instead of legitimately acquire/access IMPA members' content and they all do this even occasionally, the damages are immense. The cumulative effect of millions of "occasional" downloading acts is as frightening as the effects of one or more well organized "traditional" pirates. From a technical perspective, the differentiation between uploading and downloading is increasingly academic. Most p2p services in fact require consumers to upload in order to download.

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?

They certainly help, along with legitimate offerings and enforcement.

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

Peer-to-peer holds great promise as a distribution system for music. Unfortunately, the early commercial developers built their business model on expropriating intellectual property belonging to others.

Peer-to-peer services that do not allow copyrighted material to be distributed through their system offer a way to build a legitimate service that takes advantage of the medium without victimizing copyright holders.

However, the widespread availability of illegitimate content on popular P2P networks severely limits their viability for legitimate commerce

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?

DRMs are vital to our ability to offer digital content online in a secure environment. They are provided by retailers and music publishers are not themselves developing them.

While a DRM system is not foolproof and currently does not permit conversions to other DRM systems, the DRM system allows securely delivering content to and managing payments from customers. We are hopeful that interoperability will soon become a reality.

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

Please see our answer to question 3.

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