



EC Consultation on Content Online in the Single Market

October 2006

A contribution to encourage the development of innovative business models and seizing the digital opportunity to the benefit of creativity

IMPALA was set up in 2000 to address the image of the music industry at consumer and political levels. It aims at contributing to a world of diversity, free choice, which nurtures creativity and talent in representing independent music companies.

It wants entrepreneurship in music business to be promoted. It will fight against collective dominance of a few large media conglomerates whose policy would be to prevent market access or impose barriers to entry by raising promotion and marketing costs. IMPALA believes in the music industry's cultural and social mission.

90% of record companies and music publishers are small and medium sized enterprises driven by a passion for music. They are technology and consumer friendly.

Independents take the view that the music industry has a future. Figures show that there has never been so much interest in music. The digital revolution is shaking up business assumptions. It is the end of something but also a new beginning.

IMPALA takes the view that the future should deliver:

- reward to creators of music
- diversity in music genre and expressions
- reward to risk takers in creativity
- consumers satisfaction and legal security

Like for other content industries, the financial assets of a music company are copyright based. The oligopolistic situation existing in the offline market should not be repeated in the distribution of content through digital networks. The online world needs to remain an open door for any type of content provider. Legitimate online platforms need an attractive catalogue of musical works to succeed in the market place; to obtain this catalogue a multiterritorial licensing scheme is most wanted.

There is no music industry without proper copyright protection. However copyright should not be used to comfort predatory or monopolistic behaviors. It should not be a bottleneck to innovation and new ways of consumptions.

This paper aims at exploring ways to go about rewarding holders of copyright in the music field. It is based on the following principles:

- Intellectual property remains the main driver of innovation and creation
- Multiterritorial licensing schemes are essential for attractive online catalogues.

As a consequence:

- Independents do not want their revenues to depend on a fee established by some authority. **They are opposed to any form of compulsory licensing or legal or global licence.** The market and commercial negotiation should remain a decisive force.
- They want to be able to negotiate on a collective basis with ISPs and network providers or other appropriate hardware and software companies (handset manufacturers, consumer electronics, software firms etc) involved in new exploitation models that wish to profit from traffic generated by music.
- The continued existence of individual territorial societies is becoming anachronistic in a European and online world. Licences should be given for Europe as a whole through one stop shops as required. As independents, we have plans to set up our own society doing exactly that in areas of the online world that the majors wish to deal with individually.
- Independents do not want a situation which would prevent them to monitor the way music is being used – for accurate collection and distribution of royalties to songwriters and performers.
- Commercial licensing is the best way to promote differentiation of services and the emergence of a competitive digital market place with different music offerings and experiences.
- It is necessary to preserve the current internet solidarity, which provides users with access to the entire repertoire and service providers with access to all potential customers. Corporate control of the Web would reduce consumer choice and stifle the spread of innovative and independent ideas that we have come to expect online. Removal of network neutrality would throw the digital revolution into reverse.

This proposal is about supporting a new way of doing business with a view to preserving the incentives and opportunities for innovation and changes. It requires commercial negotiations and a framework acceptable to music fans.

Essentially the industry requires support to monetise activities linked to music distribution on the digital networks and recordings on digital equipments. IMPALA members note that the development of broadband networks is essentially subsidized by the music industry. ISPs and telcos sell access to broadband on the back of the availability of free music. This situation is unfair. IMPALA members accept new forms of consumption of music as long as revenue flows for the creators are generated.

PEER TO PEER AND PRIVATE COPYING

New forms of consumption – a new deal with consumers and their representatives

Consumers copy and share music to benefit from the new experiences offered by technology. In general they do this out of love for music and interest in sharing this passion for music. The computer has become a major music device, loaded with music files. Burning and sharing are very frequent usages of digital music. Music is then downloaded on portable music players.

These are new ways of discovering music and artists. File sharing is not just about stealing music; it encourages listeners to check out tips and develop new interests.

Independent record companies recognize this new form of consumptions and do not wish to prevent it. Teenagers in particular have become addicted to this. It is likely that in the future new form of delivery will make the copying or burning an unnecessary proposition.

In the meantime right holders should receive a fair compensation in exchange of the private copy exception. As a result levies for private copying must remain and should cover all sorts of recording machines and means until there are commercial licences in place. In the absence of a commercial licence between the music industry and the computing or the consumer electronics industry there is no other alternative for right holders to get paid in the absence of effective DRM and in the absence of agreement with the technology industry on the functionalities of such DRM. IMPALA does not believe that DRM will ever be an effective solution for the control or monetisation of private copying and file sharing.

IMPALA supports consumers' demand for device interoperability and the ability to pass music files on to friends or family as long as there is payment to the creators and producers. Such payments can come either through a private copying levy scheme or through a licensing agreement between right holders and the other stakeholders involved in digital delivery of content - ISPs, telecom operators, software companies, manufacturers of recording machines and devices, etc.

Network neutrality

The independents have consistently taken the lead to liberate the online market and to ensure its competitive success. The importance of a vigorous development of content online platforms is vital for spreading European music and fostering cultural diversity world-wide. Broadband access and network neutrality should be maintained so as to avoid any discrimination, ensuring that the independents' catalogue is accessible with no restrictions.

DRM as a tool to achieve a pleasant customer experience

DRMs are adopted by a minority of companies, and for a minority of releases. In general independents do not use copy protection devices to prevent copying or sharing. DRMs in their current status do not work and are easily evaded. Even if they did work, and were universally applied, they could not replace levies, since they allow copies in many forms, in any event.

Independents take the view that digital rights management are useful as a tool to monitor usage and enable the management of rights to facilitate rights trading and access to music. Anti-copy systems penalize unfairly music fans which cannot do what they want with the music they bought. Copyright's essence is to spread creativity.

As long as content is paid for, DRMs should be a tool enabling to track usage and to distribute with accuracy revenues collected on behalf of authors, composers, music publishers, performers and producers.

LICENSING

Multi-territorial licensing system

The importance of collective licensing to this vital stakeholder group cannot be underestimated, especially at a time when the majors are increasingly seeking to license their rights directly especially in new media, in terms of both music publishing and recording.

EU wide licences given on a one-stop-basis are required for a healthy development of online distribution channels. The internal market is the appropriate economic environment for a multi-territorial licensing system. Licensing should not constitute a bottleneck to technology and new service developments – therefore the mechanism of negotiation and licence delivery should be simple and fast.

IMPALA recommends going straight to a single European society which would be charged with dealing with all users and rights owners (and therefore also with bringing in local rights and dealing with local users, whether through local presences or agents or otherwise). This would need to be accompanied by regulatory and competition controls as well as a European arbitration system - designed to protect rights owners, users as well as consumer value and choice, and of course cultural diversity. As independents, we have plans to set up our own society doing exactly that in areas of the online world that the majors wish to deal with individually.

PROPOSAL TO MONETISE DIGITAL DISTRIBUTION

Record companies have been granted the right to authorize or prohibit the making available of their recordings on interactive networks. Usage of the technology has made the implementation of this right a difficult proposition.

Today 97 % of downloads are unpaid (it is estimated that at least 250 million tracks are downloaded each week from file swapping services – in the meantime the industry sold 352 million tracks for the whole year of 2004)¹. The number of infringing music files available on the Internet is estimated at 885 million (January 2006).

In the meantime record companies have made huge efforts and investment to digitise their copyright assets. Without government support (unlike the cinema industry) independents have had to build systems driving the digital efforts and enable accounting to artists. Today titles deleted in the physical world remain available in the digital world. Access to niche genres – an independent specialty – is capturing a great proportion of consumers' attention. More than two million songs are now available on line.

On the other hand music is making an enormous contribution to the digital economy – it drives new consumption patterns and contributes to accelerate the roll out of broadband and mobile platforms. However today less than 5% of European internet users buy music online and a third of consumers that download music files on the Internet do not buy music anymore.

Broadband access spending rose by 56.2% in 2004 to 17 billion USD (from less than 1 billion in 2000). At the same time recorded music spending decreased by more than 20% (from 14 billion USD to 11.4 billion USD at the end of 2004).

The Internet access spending in Western Europe is expected to grow from USD 41.9 billion in 2004 to USD 71.6 billion in 2009, an 11.3% compound annual increase. The growth rate of recorded music will fall by an estimated 1.9% compound annual rate from 2005 to 2009, offset to some extent by increased spending due to mobile music and licensed digital distribution (estimated at a 7.2% compound annual rate).

Consumers are buying millions of portable digital music players.

¹ Source Billboard January 2006

Whilst consumers are charged subscription for their internet or broadband connections the record companies that produce and distribute that popular music are struggling to find a business model that reward their efforts because illegitimate activities are taking place on the networks (essentially through illegal P2P file sharing).

This means that a business that is composed of essentially SMEs is in effect subsidizing large telecom operators, internet service providers or consumer electronics manufacturers. It is like as if governments had allowed cable companies – to encourage investment in cable – to use broadcasting content for free – broadcasters would have unfairly subsidized cable.

This paper is aimed at proposing an architecture to monetise usage made of copyright protected music on the networks and to propose the creation of an EU wide licensing system given on a one-stop-shop basis.

The current online business model does not work for the music community (artists, publishers and producers). Whilst Apple is selling millions of i-Pods, NOKIA millions of music enabled phones and British Telecom a lot of DSL subscriptions, the music industry is restructuring.

IMPALA would like to build a partnership with technology companies and service providers. It would like to engage with them to negotiate a price for the access of their subscribers or members to music content. The Independents would also like to create a single European society which would be charged with dealing with all users and rights owners for licensing the use of independents' works across Europe.

IMPALA calls on consumers' organisations to support this proposition.

The independents – through an IMPALA structure - are ready to negotiate such a blanket licence that represents 20% of the sales of world music repertoire; this would address the difficulty of locating the right holders and obtaining a licence.

This blanket multi-territorial licence would be paid by operators of broadband networks, companies providing music services, consumer electronic and computer manufacturers with a view to remunerate artists and music companies. The contract would also prevent operators to market or promote their services or machines on their ability to support the infringement of copyright rules. This remuneration should be subject to a commercial negotiation, which would be managed by a society created by the Independents. This society would as well be responsible for the administration and management of such licensing system.

Conclusion

Cultural creation is a public interest objective. Supporting creativity is as important as supporting innovation in the context of the Lisbon Strategy. The aim of copyright is to create the incentives for music to be composed, performed and distributed. Copyright works need to count on open distribution channels to achieve the public, diversity in music genres and expressions being crucial for fostering European cultural assets. Legitimate online platforms need to offer appealing catalogues and an EU wide licensing scheme is essential for attaining this objective.

The spread of music cannot be made at the detriment of the creators of music and ultimately consumers, starved of choices or threatened with litigation.

The EU has a key role to play in ensuring that creators benefit from the development of the online market. At a European level, several factors may help the music industry to take hold of the opportunities offered by digital platforms:

- Develop and implement targeted EU support policies sustaining collective efforts to provide pan-European licences to digital service providers;
- Provide financing facilities for R&D activities ensuring participation of music SMEs in the framework of the 7th Framework Programme;
- Support the digitisation of music catalogues from SMEs;
- Carry out consumer behaviour surveys in the context of the fragmented European market;
- Encouraging platforms that cluster technology companies with content companies;
- Maintenance of the internet's democracy by warranting network neutrality.

Finally, terminating the pending debate opposing levies and DRMs could only contribute to a more constructive cooperation between creative industries and IT industries in order to develop content online.

IMPALA is the international trade association devoted to representing the interests of independent record companies and publishers and to promoting the expansion and competitiveness of independent music in the interest of cultural diversity.

IMPALA was established in April 2000 to help independent record companies and music publishers represent their own agenda and organise themselves in the face of increasing concentration in the music sector.

IMPALA has over 3 500 members across Europe including the top independents: Beggars Group (UK), Bonnier Amigo (Sweden), Cooking Vinyl (UK), Edel Music (Germany), Epitaph (US/NL), !K7 (Germany), Gazelle (Sweden), Playground (Sweden), Naïve (France), PIAS Group (Belgium), Red Bullet (The Netherlands), Roadrunner (The Netherlands), V2 Music Group (UK), Wagram (France) as well as national trade associations from Denmark (DUP) France (UPFI), Germany (VUT), Israel (PIL), Italy (PIM), Norway (FONO), Spain (UFI), Sweden (SOM) the UK (AIM) and the Catalanian independent association APECAT.

For more information please visit: www.impalosite.org