

Public Consultation on Content Online in the Single Market

Response by Intel Corporation

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Executive summary:

Intel Corporation commends the European Commission's Directorate General for Information Society and Media for initiating this consultation. Development of a vibrant digital content market place will be of prime importance to the Lisbon and i2010 strategies and it is very appropriate for the Commission to seek stakeholders' views on the opportunities and challenges in this regard.

Intel has not provided answers to all of the questions. We have focused on those areas that we believe deserve particular attention, based on our experience. For more than a decade, Intel has worked closely with content providers and technology companies on developing and deploying new technologies that enable new forms digital content business models.

The content, communications and ICT industries have a shared interest in providing consumers with new and exciting content experiences. Succeeding in doing this means new revenue streams all parts of the value chain, from artists to device makers. It is by no means easy. Constant technology innovation continues to challenge existing business models and paradigms, and these can take time to adapt.

The technology and business issues are global in nature. The same technologies are in use across the world, and content providers and technology companies increasingly operate internationally if not globally. Therefore, business and technology challenges mostly do not call for a particular European solution.

Where we believe the European Commission and Member States should focus attention is on addressing policy and regulatory barriers and challenges which are specific to the EU, and which can be assumed to have a significant impact on the future success of the European digital content market place. Our recommendations are therefore:

1. Proceed urgently with reform of European levies systems

The 20 different complex, intransparent and costly levies systems in operation in the EU is one of the most striking differences between Europe and other regions. Adapting these systems to the digital environment must be a top priority. The European Commission should proceed with comprehensive reform of levies systems in EU Member States, to bring the systems in line with Directive 2001/29 (Copyright Directive). We commend the Commission for having decided to take action on this issue. We urge all Commission services to work towards a robust reform instrument that creates full transparency in the application, collection and distribution of levies, and ensures full compliance with the Directive. This can only be to the benefit of right holders, industry and consumers, and drive forward the digital content market place.

2. Follow up on initiatives on licensing for EU-wide content distribution

The European Commission has itself identified inefficient and cumbersome processes for online music licensing as a barrier to deployment of online content services in Europe. The Commission issued a Recommendation on the matter in 2005. We encourage the Commission to keep focus on reform of licensing regimes to enable more efficient content licensing for EU-wide distribution. We encourage the European Commission to monitor the situation carefully and take further action as necessary.

3. Enhance consumer awareness of copyright, private copying, and copyright levies

The European Commission and Member States should take initiatives to promote information to consumers on two key aspects:

Copyright and legal use of content: We consider that there should be more comprehensive education and information available for citizens and consumers about what is and what is not legal use of content. The boundaries of any exceptions to copyright, in particular private copying, must be well-understood and accepted by the public. The Commission and Member States should consider appropriate actions that could be taken in this area.

Private copying and levies: Although most Member States operate these systems, consumers are mostly unaware of levies that are payable and why. It is not desirable that consumers are required to pay such fees without being notified and without understanding clearly what uses these levies are meant to compensate for.

Use of DRM/TPM: Consumers should be able to easily understand whether content they legally purchase has is protected by DRM, and understand which devices they can play this content on. This is critical to consumers' ability to make well-informed choices about the many different types of devices and formats available. We invite the Commission and Member States to consider appropriate education initiatives.

Intel response to the questionnaire

Q1. 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.)?

Intel Corporation does not itself provide content or services online. However, Intel works closely together with numerous content providers, distributors, service providers and others to enable exciting and attractive digital content offerings, both online and offline. Intel Corporation provides marketing services for online content providers through retail, service provider and our Viiv Experience Pack co-marketing programs. These programs promote commercial content experiences from independent Music, Movie, TV, Sports, and Games services as well as Personal Creativity application providers. These independent services are co-marketed by Intel because they offer flexible business models like subscription, pay-per-view, download to own and/or free content (advertising sponsored) that appeal to consumers which buy PCs containing our products. All of the premium content available through these independent providers is licensed and protected by DRM for advanced usage models like view on HDTV, view from the network in the home, transfer to portable media players, playable on unconnected PCs and transfer to removable media. Consumers have already demonstrated their enthusiasm for these new content services, which offer more choices and personalized service. Broadband has removed significant barriers to consumers finding and enjoying these new services and Intel is proactive to insure the content owner's rights are protected with the services featured in our programs. Intel also works with Content Service Infrastructure Providers which manage, encrypt and distribute content to licensed territories, manage online consumer accounts, syndicate services and manage secure PC client software for the content providers. We often match-make content providers with leading infrastructure providers to accelerate service time to market and insure there are high quality on-line experiences available to consumers.

In addition to these activities, Intel invests in innovate start-up companies through its venture capital arm, Intel Capital (ICAP). Intel has created a \$200m Digital Home fund for investing in innovative technology in this area.¹ ICAP has made investments in companies such as Anytime, Gteko, Synacor and Zinio.

¹ Intel Capital, Intel's venture capital organization, makes equity investments in innovative technology start-ups and companies worldwide. Intel Capital invests in a broad range of companies offering hardware, software and services targeting enterprise, home, mobility, health, consumer Internet and semiconductor manufacturing. Since 1991, Intel Capital has invested more than US\$4 billion in more than 1,000 companies spanning more than 30 countries. During this time, about 160 portfolio companies have been acquired and another 150 have gone public on exchanges around the world. In 2005, Intel Capital invested about US\$265 million in about 140 deals with approximately 60 percent of funds invested outside the United States. For more information on Intel Capital and its differentiated advantages, visit www.intelcapital.com.

Intel's Role in Content Protection and DRM efforts. Intel respects, and works to protect, the intellectual property rights of others. Intel has played an active role in creating the DVD Copy Control Association, which provides the protection system for DVD videos. Intel has played a leading role in the formation of open content protection systems. Intel is a founder and member of the following entities which license open content protection or DRM systems: (a) the 4C entity that developed and licenses Copy Protection for Pre-recorded Media (CPPM), designed to protect digital music, and Content Protection for Removable Media (CPRM), which protects copyrighted music and video stored on recordable-removable digital media; (b) Digital Transmission License Administrator (DTLA, LLC) that developed and licenses Digital Transmission Content Protection (DTCP), which protects compressed, commercial entertainment content when transmitted over various local connections, including home networks; (c) Content Management License Administrator (CMLA, LLC) that developed and licenses a DRM trust model to be used in conjunction with products and services based upon the Open Mobile Alliance DRM version 2.0 specification; and (d) the more recently formed Advanced Access Content System (AACS-LA, LLC) to protect digital content, such as high definition video, on newly emerging high capacity optical discs (High-Definition DVD and Blu-Ray). In addition, Intel developed and licenses High-bandwidth Digital Copy Protection (HDCP) to protect decompressed digital video output from set top boxes, PCs and other video source devices to new high definition digital displays. Intel's investment of technology, personnel, and other resources in these efforts to protect valuable entertainment content reflects Intel's deep commitment to develop a reasonably protected environment to enable new business models and market-segments.

Intel's vision of DRM-enabled markets. Intel believes that rights holders should be free to use technical protection measures to support new digital business models. We believe that creative content offerings that give consumers flexibility, portability, and choice—which can be enabled by existing and emerging content protection and DRM technologies when reasonably deployed—will succeed in the marketplace and benefit both consumers and rights holders. Ultimately we believe that market forces can drive development of business and technical models that (a) provide new, compelling services for consumers that preserve or extend existing consumer content usage models, (b) protect content owner interests and encourage content owners to make content available in a digital environment, and (c) create an environment of robust technical innovation.

Q2. 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.

Traditionally, distribution of cultural and commercial content has taken place from a well-defined set of providers (record labels, film studios, publishers), through well-defined channels (public performances, cinema, TV, radio, CD, VHS, DVD, books etc.) to their audiences and consumers. This well-established order has been challenged by three factors: digitisation of content, ubiquitous broadband connectivity, and rapidly increasing computing capability at rapidly decreasing cost.

These three factors enable citizens and consumers to do several things that were previously impossible.

Consumers are now able to create their own content (personal photos, video, theatrical and musical performances) and make it available to others through new channels and fora. The rapid rise of blogs is an excellent example. Literally millions of people now publish their own writings on subjects of their choice and interest. Similarly, newsgroups and Internet communities now enable people sharing the same interests to discuss, comment on and create material of their own choosing. Another example of technology enabling new forms of content creation and delivery is the widely used collaborative online encyclopaedia www.wikipedia.org. Content is submitted by users all over the world who pool knowledge and expertise on any imaginable subject. Websites such as www.myspace.com and www.youtube.com, were unknown a few months ago and are now wildly popular and used by millions around the world for sharing of people's own video content. Finally, technology now enables aspiring artists to produce and publish music themselves in a quality that previously required expensive professional studio equipment.

These new forms of content creation and dissemination challenge existing business models and create tension in established commercial distribution networks. Some existing commercial market players are quick to embrace and make use of the new opportunities created by technology, while others feel far more threatened.

It is important for the Commission and policy makers in general to ensure that legislative initiatives are not used simply to protect existing business models at the expense of new ones that would otherwise emerge as a result of market place innovation.

Q3. 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.

There are a wide range of market forces at play driving development and uptake of creative new online services. Sometimes the desire for increasingly rapid change, however, leads us to unreasonable expectations. In truth, the growth of creative new online services is proceeding at high speed as both consumers and businesses explore and accept new business models and value propositions. Both business and consumers will naturally take some time to move away from more traditional content delivery and consumption patterns. For example, global consumption of DVD content, currently viewed as a traditional media distribution technology, is now just peaking at the same time online movie distribution is beginning. It took the DVD business, and consumers, the better part of a decade to (almost completely) move to and displace the VHS business. Not even the incredible success of iTunes has materially displaced the CD. In this context, the business environment will continue to

evolve to create new services and products to serve consumers, and consumer behaviours will adapt and change over time.

In general, technologies and increasingly services are global in reach and application, and a vertical European perspective is in many instances not directly relevant. The same technologies are in use in the EU as elsewhere, and if deployment of new content services is slower in the EU than elsewhere, it cannot be explained by technology issues. The same is true for the business environment; many content providers and distributors operate on a global scale, and can be expected to exploit business opportunities as effectively in Europe as elsewhere.

Recognizing that both businesses and consumers need some time to adapt is particularly important when considering legislative or regulatory measures to speed a particular result, as the market will most likely resolve in due course what might appear as obstacles today. In this context, the Commission should narrowly focus its regulatory efforts on only the most obvious barriers to take-up of creative online services, in Europe.

If there is a single technological impediment to the roll out of some services, it would have to be bandwidth limitations on the IP pipes that deliver those services. Fostering a regulatory environment that encourages investment in bandwidth and new communications technology (e.g., WiMAX) is an area the Commission should continue to focus attention on, with an emphasis on creating an investment environment that will enable truly ubiquitous broad-band connectivity in both the home and mobile environments.

Where the Commission should focus its efforts is in the legal/regulatory environment. Here, we note two very obvious barriers to take-up of creative online services, of particular European relevance.

One barrier is the legal **environment for content licensing** in Europe (please see question 14).

The other barrier is the continuing, unfettered spread of **copyright levies** on digital devices and media which enable distribution and consumption of online content (please see question 16).

Network security/reliability:

Intel is not aware of cases in which digital content services are being hampered by fears of network security problems. The Internet is used for activities that require much higher levels of security and reliability than commercial content distribution. Examples are banking, financial services, eHealth, and sensitive government services.

In all areas of commerce, including online content services, managing security threats is always a work in progress, and security technology providers are in a constant state of innovation to meet the demands of their customers and support their customers' businesses. Intel and the ICT sector at large are in dialogue with the Commission and Member State authorities on many of these important issues. From a regulatory perspective, Intel believes focus should be on enforcement of current legislation against bad actors, as a method to increase trust in the use of technology. Further,

Intel encourages increased funding of research and development in the area of security, and public/private collaboration on such activities. Public authorities and industry have a shared responsibility to ensure that users and consumers are well-informed about perceived and real security issues and remedies.

Q4. 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?

Privacy:

These questions are relevant and important. EU privacy legislation (The 95/46 Directive) is an appropriate framework providing safeguards for the protection of personal data, and the law continues to require robust enforcement. Online content services (like any other business) are required to comply with the data privacy legislation in the countries in which they operate. To our knowledge, there have not been widely reported cases of such service providers/distributors breaking data privacy laws. It may in some cases be appropriate for regulators to provide guidance to companies on how to comply with the existing legislation (e.g. how to provide effective notice and choice).

Access to information:

At present, Intel is not aware of cases in which public access to information has been severely curtailed in the online environment. European and international copyright legislation embodies a balance between the interests of right holders and users. While rights are exclusive, they are accompanied by important exceptions. The Commission and Member State governments need to ensure this balance between legitimate interests is maintained.

For example, some stakeholders consider that DRM technology should be designed and deployed, by legislative mandate, in ways which would undermine this balance. DRM technology can theoretically be used to enforce draconian usage rules, prevent normal and reasonable use of legally purchased content, as well as police user behaviour. Intel believes such measures would be counterproductive, unreasonable and ultimately unacceptable for citizens. We strive to ensure that the technologies we create and deploy strike a balance between legitimate right holder and consumer interests.

Another example of actions which could threaten the balance of legitimate interests is the tendency in many countries to repeatedly extend the term of copyright protection. We understand that some stakeholders are currently requesting yet another extension, this time for sound recordings and performances, from 50 to 70 years. Repeated, retroactive extensions of term of protection risk undermining the public domain. Maintaining a vibrant public domain is critically important to ensure access to information, creativity and innovation.

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?

Technology enabling interoperability: industry progress

Intel, and many others in the ICT sector continue to work towards an environment in which “any content is available on any platform anywhere”. The industry has made tremendous progress in delivering compelling digital consumer experiences in digital media, both offline and online. And technological advances create new consumer expectations, for example in terms of improved interoperability.

This success is the result of close cooperation among industries and companies: right holders (f.x. record labels and motion picture studios), distributors, technology companies and ISPs/telecommunications providers. The process is a difficult one because it requires participants to adapt their business plans, technology choices etc. in order to make progress.

One example of such successful collaboration is Digital Transmission Content Protection (DTCP)². DTCP was jointly produced by five member companies — Hitachi, Intel, Matsushita (MEI, also known in the U.S. as Panasonic), Sony and Toshiba — as an outgrowth of the Copy Protection Technical Working Group (CPTWG). These companies are informally known as "the five companies" or the "5C. DTCP is the technology enabling consumers to record cable television on a digital video recorder (DVR) for later viewing, and enjoy video on demand. Without DTCP, content owners would have been reluctant to ever allow video on demand or pay-per-view digital movies, much less permit a DVR to receive digital television content.

It is worth noting that the Digital Living Network Alliance (www.dlna.org) recently formally adopted DTCP-IP as required on devices that implement link protection. This allows a protected link from any devices that receives content to any device in the home network that will consume or render it. Interoperability is facilitated in that these end devices need only implement DTCP-IP in order to receive content from any device with any sort of content protection regardless of conditional access or DRM implementation as long as those implementations have a DTCP-IP output.

Example: Interoperability in online music

In general, Intel believes the market is responding well to consumer demands for differ. Consider the example of online music. Early online music services such as Pressplay and Musicnet afforded consumers very little device interoperability. Tracks could only be streamed from PCs, not transferred to portable players, nor burned to CDs. These offerings failed to excite consumers, both because of this problem and because labels were reluctant to license their catalogue for online distribution.

² DTCP defines a cryptographic protocol for protecting audio/video entertainment content from illegal copying, intercepting and tampering as it traverses digital interfaces such as IEEE 1394, Universal Serial Bus (USB*) and IP-based home networks. Transparent to consumers, DTCP allows people to enjoy high-quality digital pictures and sound without any noticeable performance or quality impact. For additional information visit http://www.intel.com/standards/case/case_dtcp.htm.

But, when Apple introduced its hugely successful iTunes service, it offered a far more compelling consumer experience. iTunes customers could place purchased tracks on three different computers, on their iPods, and burn to several CDs, and the catalogue of content on offer was much larger than that made available by earlier offerings. There are more now literally hundreds of online music services available on the market offering similar functionality, many of them without restrictions on the type of music player which can be used.³

This demonstrates how a competitive market seeks to satisfy consumer demands, both for interoperability and for other attributes. Intel believes that increasing ease of use and flexibility will continue to be valued by consumers, and that the market will put in place solutions to satisfy them.

Role of governments

The concept of interoperability continues to attract much attention in policy debates and in the media. This is somewhat puzzling as, there is no evidence or credible example of 'lack of interoperability' hampering consumer take-up of digital content services.

Intel does not believe that any change in the European legal framework is warranted to foster interoperability. There is no evidence of market failure, and no public policy concern to justify legislative intervention. In particular, the law adopted recently by the French legislature, seeking to mandate "DRM interoperability" is misguided and will most likely be a setback to content distribution in France.

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?

The European Commission and Member State governments are right to concern themselves with this question. It is probably fair to say that many people in Europe have concerns about cultural and linguistic diversity, and some see the online environment as a particular challenge in this respect.

We would make two observations on this issue. One is that the online environment provides opportunities rather than threats for dissemination of content without mass market appeal. The online environment is distinguished from physical distribution by one important characteristic. There are no limits on the breadth of catalogue which can be offered. Consider the difference between a traditional mainstream record shop and an online music service. The traditional record shop has only a limited number of shelf metres available, and it has to offer music that has broad appeal, in order to make profits. The online music shop has no such constraint. It can offer catalogue in whichever language, and by artists that are not well-known. This is because there is no opportunity cost to offering content with 'narrow' appeal, and there is almost no marginal cost because of the low price of storage capacity. Therefore, the online

³ See for example: <http://www.pro-music.org/musiconline/news050119c.htm>

environment provides much better scope for offering content that only interests a small number of customers.

The other point we would make is that Member States continue to have the possibility to support production of local-language content (whether books, music, film, theatre etc.). Most if not all Member States do so and will no doubt continue to do so. Such ‘public service’ content can of course be made available online as well as offline, and this is being done.

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.

No comment

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?

No comment.

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

No comment.

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.

As we have explained above, we do not consider that technology presents barriers for content creation and distribution. On the contrary, technology constantly creates new opportunities.

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?

We would assume that content distribution in the EU faces similar challenges in terms of securing revenue streams as elsewhere. Intel and the technology sector at large has contributed and continues to do so by developing and making available (often at no cost) technologies (DRM/TPM) that deter unauthorised access and distribution of content (piracy). We note that the EU legal framework includes provisions against circumvention of such technologies. To our knowledge, these laws are enforced vigilantly in the EU, and should be. We would add that the Commission and Member

State governments can play an important role in informing consumers about which content uses are allowed under the law (private copying) and which are not (piracy).

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?

No comment

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

No comment

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?

We believe complicated and expensive licensing systems for online content distribution are a major factor explaining slow progress for online content in Europe. Rights clearance systems in Europe seem much less conducive to online distribution than those operated in the US.

In July 2005, the European Commission published a “**STUDY ON A COMMUNITY INITIATIVE ON THE CROSS-BORDER COLLECTIVE MANAGEMENT OF COPYRIGHT**”.⁴

In this study, the Commission remarked the following:

“The EU suffers from a lack of innovative and dynamic structures for the cross-border collective management of legitimate online music services. This affects the provision of legitimate online music services. [...] The online music market is growing at a rapid pace. This is especially true for **the US, where the online music market is expected to grow to € 1.27 billion by 2008. In contrast, online music revenues in Europe are expected to reach € 559 million by 2008.**

In 2004, online music revenue in Western Europe amounted to € 27.2 million (23.4 million attributable to “downloads” and € 3.8 million to subscription-based services). The US market amounted to € 207 million (€ 155.9 million attributable to downloads and € 51.1 million to subscription-based services). **In 2004, US online revenues were almost eight times higher than those achieved in Western Europe. For 2005, online music revenue is expected to rise to € 106.4 million within Western Europe**, while the US revenue will forge ahead to € 498.3 million. This gap between US and Western European online music revenue needs to be redressed.

[...] the Commission can identify at least one issue where action is required at Community level in order to narrow this gap. **This issue is the way in which copyright for online music services is cleared across the 25 Member States that comprise the EU.**

⁴ http://ec.europa.eu/internal_market/copyright/docs/management/study-collectivemgmt_en.pdf

The European Commission took an important step to address this problem in its “Recommendation on collective cross-border management of copyright and related rights for legitimate online music services”, (OJ L 276/54, 21 October 2005).

The Commission recommends as follows “Member States are invited to take the steps necessary to facilitate the growth of legitimate online services in the Community by promoting a regulatory environment which is best suited to the management, at Community level, of copyright and related rights for the provision of legitimate online services”. Further, the Commission asks Member States and collective rights managers to report on a yearly basis on the measures they have taken in relation to the Recommendation. Finally, the Commission states its intention to assess, on a continuous basis, the development of the online music sector and, if necessary, take further action at Community level.

We wholeheartedly support such efforts to modernise the legal environment for licensing of content for online distribution. This should be a key element in the Commission’s overall strategy for facilitating content online.

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?

See question 14.

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.)?

The spread of copyright levies in the digital environment

In May 2006, the Copyright Levies Reform Alliance (CLRA) released an economic impact study detailing the full impact of European copyright levies on consumers, artists and the information & communications technology (ICT) industry.⁵

The report tackles the direct costs 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.

With €1.2 billion charged in copyright levies on digital media and equipment throughout the EU in 2005, the study explains how the cost burden ripples through the economy resulting in a total direct impact of €2.1 billion on consumers and the ICT industry. When accounting for the impact of levies on prices, consumer demand and industry sales, the total impact is double the amount of levy collected.

The report also finds that copyright levies indirectly affect sales of online music and ringtones at the expense of creators and artists. When levies reduce unit sales of digital equipment, there is less demand for the music that sells on these products.

⁵ <http://www.bsa.org/eupolicy/press/newsreleases/pressrelease16may2006nathanstudyclra.cfm>

By way of example, the study analysed the impact of levies on sales of portable digital music players in France and found lost sales of 974,000 units, which contributed to over €1.8 million in lost online music sales in 2005. Combined, the direct and indirect effects of the levy on digital music players in France were nearly three times greater than the amount of money collected by the levy.

The European Commission – Commissioner Charlie McCreevy - announced in October ⁶ 2005 its intention to launch an initiative to reform levies systems in Member States where such systems are in place. The Commission noted that a thorough review of practices and implementation of the Copyright Directive, demonstrated that practically no Member State had taken significant steps to bring its levy system into conformity with the Directive. In particular, little or nothing had been done to take into account the availability and use of DRM and TPM (technical protection measures).

We strongly support the Commission’s decision to take action in this area. We understand that the reform initiative is currently under discussion in the Commission services and we encourage the services involved to support DG Internal Market in their attempt to modernise European levies systems and adapt them to EU legislation and the digital environment.

The consequence of not tackling this problem would be to further slow down deployment of new online content businesses to the detriment of consumers, artists, the industry and of course the i2010 and Lisbon objectives.

Ultimately, in the longer term, a paradigm shift is probably necessary in this area. A comprehensive solution to the problem, for example in a revised copyright directive, would be a general provision to the effect that authorised uses should be considered paid for at point of sale. A consumer purchasing copyrighted content does so in the knowledge that certain uses are authorised, and it should be assumed that the sales price takes into account these uses. Where the content provider has applied DRM, the consumer enters a contractual arrangement and accepts the limitations on copying the DRM might imply.

If Member State legislators deem that applicable exceptions to exclusive rights introduced by legislation requires further compensation, such compensation should be a matter between the state (tax payers) and right holders.

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?

We have already commented under questions 14 and 16

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

⁶ http://ec.europa.eu/commission_barroso/mccreevy/allspeeches_en.htm

No comment

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?

No comment

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?

Network neutrality has a much larger scope than indicated by the question, and should be dealt with in a separate comprehensive survey. Intel does not wish to comment further in the context of this consultation.

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?

Intel does not produce or distribute content. We are aware that piracy poses a significant problem for many right holders. We support effective enforcement of intellectual property laws in Europe and elsewhere.

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?

We believe consumer education and awareness about the value of copyright are extremely important. The European Commission and Member States have a key role to play in this field, and we would encourage more activity in this field. In particular, it would be very appropriate for governments to define clearly and explicitly what is, and what is not, legal use of copyrighted content under their laws. The Commission and Member States should provide notification to consumers about the extent of the private copying exception (where such an exception is in place), and should ensure full transparency of any levies which the consumer pays to benefit from this exception. Currently, it seems to us that many consumers are unaware of what private copying is, and what they are paying for it. Providing such clarity is a responsibility the Commission and governments share.

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?

No comment.

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)?

No comment.

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?

We have commented above. In general, it is clear that the content industry uses DRM for distribution of almost all content categories, both offline and online. The growth of DRM-enabled content distribution is likely to continue.

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?

We note that some content providers choose not to apply DRM, and that some content providers apply DRM to parts of their catalogue, whilst publishing other parts unprotected. There is no and there should be no obligation to use DRM. Content providers and distributors should be free to make decisions on how they wish to structure their business models, including whether to use these technologies or not. Clearly, this issue is linked to the question of fair compensation: Where content distributors choose non-application of TPM/DRM for a distribution model for which such technologies are readily available, additional compensation in the form of levies should not be due. In such scenarios, content distributors have already included a provision for private copying in the sales price of the content.

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?

There are several DRM technologies available in the market. The rapid growth of distribution of protected content indicates that content providers consider that these technologies are appropriate for their business models.

With regard to transparency, there have been examples where consumers have not been properly notified about the fact that the purchased content was protected, and that restrictions on playability applied. Content distributors should provide full notification to consumers as regards use of DRM. There have also been examples of

content protection technologies which caused technical problems and security risks for consumers.

In general, it is clear that those online services and physical formats that have gained widespread popularity are also those which apply DRM in a user-friendly way. Consumers are free to choose the products and services that provide the benefits they are looking for.

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?

We have already commented on the uptake of these technologies. We note that they are available and used for most content distribution models.

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

No comment.

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?

No comment.

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.)?

In our experience, the European ICT industry is taking advantage of the opportunities presented, and has been doing so for a long time.

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 answer to question 33.

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?

Where we believe the European Commission and Member States should focus attention is on addressing policy and regulatory barriers and challenges which are specific to the EU, and which can be assumed to have a significant impact on the future success of the European digital content market place. Our recommendations are therefore:

1. Proceed urgently with reform of European levies systems

The 20 different complex, intransparent and costly levies systems in operation in the EU is one of the most striking differences between Europe and other regions. Adapting these systems to the digital environment must be a top priority. The European Commission should proceed with comprehensive reform of levies systems in EU Member States, to bring the systems in line with Directive 2001/29 (Copyright Directive). We commend the Commission for having decided to take action on this issue. We urge all Commission services to work towards a robust reform instrument that creates full transparency in the application, collection and distribution of levies, and ensures full compliance with the Directive. This can only be to the benefit of right holders, industry and consumers, and drive forward the digital content market place.

2. Follow up on initiatives on licensing for EU-wide content distribution

The European Commission has itself identified inefficient and cumbersome processes for online music licensing as a barrier to deployment of online content services in Europe. The Commission issued a Recommendation on the matter in 2005. We encourage the Commission to keep focus on reform of licensing regimes to enable more efficient content licensing for EU-wide distribution. We encourage the European Commission to monitor the situation carefully and take further action as necessary.

3. Enhance consumer awareness of copyright, private copying, and copyright levies

The European Commission and Member States should take initiatives to promote information to consumers on two key aspects:

Copyright and legal use of content: We consider that there should be more comprehensive education and information available for citizens and consumers about what is and what is not legal use of content. The boundaries of any exceptions to copyright, in particular private copying, must be well-understood and accepted by the public. The Commission and Member States should consider appropriate actions that could be taken in this area.

Private copying and levies: Although most Member States operate these systems, consumers are mostly unaware of levies that are payable and why. It is not desirable that consumers are required to pay such fees without being notified and without understanding clearly what uses these levies are meant to compensate for.

Use of DRM/TPM: Consumers should be able to easily understand whether content they legally purchase has is protected by DRM, and understand which devices they can play this content on. This is critical to consumers' ability to make well-informed choices about the many different types of devices and formats available. We invite the Commission and Member States to consider appropriate education initiatives.