

DG Information Society and Media
The European Commission
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Public Consultation on Content Online in the Single Market

TO EUROPEAN COMMISSION

Kopioisto, a joint copyright organization, administers licenses and distributes remunerations to copyrights owners. Kopioisto represents over 46 000 Finnish copyrights owners who belong to 45 member organizations representing authors, photographers, performing artists and publishers in all fields of creative work. Kopioisto is an active member in international copyright organizations IFRRO and CISAC. In addition, Kopioisto has bilateral agreements with reproduction rights organizations in several countries worldwide.

INTRODUCTORY REMARKS

Kopioisto welcomes the Commissions' notions that EU policies should aim at promoting fast and efficient implementation of new business models for the creation and circulation of European content and knowledge online.

Kopioisto supports the Commission view that self regulation must keep playing a key role in the online environment. Furthermore, it is important that the Commission has recognized the groups of stakeholders whom the issues of online content concern.

TYPES OF SERVICES ONLINE (Question 1)

It should be first noted that convergence has affected the content industries profoundly. E-commerce for multimedia content is one of the few types of transactions that can be performed entirely online: search, locate, browse, order, pay and receive the content, all online. The ability to use online channels expands the opportunities for business models.

Kopioisto grants licenses mainly for offline uses at present. However, Kopioisto has actively developed voluntary licensing schemes also for online uses in different areas.

As to other services a part from rights clearance, Kopioisto has services enabling licensees and other parties to give information to Kopioisto also online. For instance, audiovisual producers can report their AV-works via internet to Kopioisto.

CONSUMPTION, CREATION AND DIVERSITY OF ONLINE CONTENT (Question 3)

As to the legal environment, there is no need to make substantial changes which could easily distort the carefully build up balance in the copyright framework. A fair balance of rights and interests between the different categories of right holders, as well as between the different categories of right holders and users of protected works must be safeguarded.

The current legal environment is sufficiently conducive to develop trust in and take-up of new creative content services. However, it must be stressed that legal instruments relating to online content services need a constant and focused review in order to serve their purpose in offering the basis for services.

Online delivery of intellectual property is a license -based transaction that depends totally on legal protection. Predictability and stability in the legal framework conditions, especially in respect of copyright legislation is therefore crucial. It is equally important that users comply with the laws and that public authorities assist in achieving this objective.

COMPETITIVENESS OF EUROPEAN ONLINE CONTENT INDUSTRY (QUESTION 7)

We think Europe has every chance to compete successfully in the field of online content markets. This is partly because of well established structures for individual and collective licensing of the use of copyright works, which includes established copyright societies in nearly all Member States. Taking advantage of the competitiveness that this offers could greatly enhance the European content industry.

In order to be competitive, it is crucial that different players interact at an early stage of online business development.

Users of intellectual property want online and web based access to information, content, rights clearance and subscription. They also want an easy and convenient way to access the material, which includes for some uses centralized rights clearance mechanism. How these user requirements are met depends on the interest of right holders as well as on their will and possibilities to take advantage of the established licensing structures.

NEW BUSINESS MODELS AND TRANSITIONS OF TRADITIONAL ONES INTO THE DIGITAL WORLDS (Question 11)

When examining the question of revenue streams from the point of view of copyright holders, there is a potential problem of non-transparent consumer-price in the online licensing and in other new media services. To give an example; when the operator offers mobile television services for customers, the fee for the service consists of many elements such as the transfer of data, access fee, content fee etc. In order to maintain fair balance between various stakeholders, it is important to maintain a transparent pricing system. This way also consumers know which elements the price for the service

consist. EU competition law also requires emerging media markets to be transparent as regards pricing structures.

LICENSING, RIGHTS CLEARANCE, RIGHT HOLDERS REMUNERATION (Questions 14-16)

There is so far no indication that creative businesses would benefit multi-territory licensing to any significant extent. The existing licensing schemes enable a simple and functioning access to global repertoire.

The existing territorial system has worked well to this day. No one has clear picture about the consequences of multi-territory licensing. Our view is that it would result in a situation where the users' position in rights acquisition would become more complicated; the user would have to compile its' own license and used repertoire would become narrower. Furthermore, the users' possibility to get local and efficient service in their own language would be endangered. The user of works would often need additional services to the mere delivery of the content. National structures therefore generally provide the preferred alternative.

Due to the above mentioned reasons, the mass use of copyrighted works is generally licensed by copyright societies. Therefore, multi-territory licensing in these circumstances is less of an issue. Self regulation and normal market mechanism are the best tools for guiding these issues.

Copyright societies offer on behalf of right holders transactional (case by case) and so called "blanket licenses", i.e. that the license grants the user preauthorization to use a work at a set of standardized conditions. They also administer legal licenses which operate in a similar way to blanket licenses. Foreign repertoire is usually included in the license on the basis of bilateral agreements between organizations. The network that results from the bilateral agreements is comprehensive. In most cases a user will be able to access a global repertoire through the national organization in a one-stop-shop – which is very efficient from the point of view of users. There is no indication to show that any other approach would reach a similar density of coverage.

It should be stressed that the online environment does not alter the normal structure where the tariffs and other conditions are negotiated with users. Additionally, online environment does not change the fact that in the field of individual contracting such as publishing or filming, copyright organizations do not interfere with the contracts between authors and publishers/ producers.

Nor does the online environment have an automatic effect on levy systems and systems for compensation for private copying. Digital Rights Management systems (DRMs) give customers a great choice in content selection, flexibility, speed, ease of access and price precision. Right holders may not want or need to track every single use of the work within a company or in the private sphere. Therefore, at present DRMs offer partial solutions only. Levies provide fair compensation to right holders when their works are used beyond their primary exploitation which is typically to purchase the content. The majority of the European Union Member States have introduced them to compensate right holders for private copying.

LEGAL OR REGULATORY BARRIERS (Question 17)

Firstly, there is a risk of premature and excessive regulation of online content and services before the business has taken its' wings. Therefore, excessive regulation may constitute a barrier and should be avoided in the EU level.

Lack of stability in the legal framework may constitute another barrier. Predictability in framework conditions is essential. This is particularly important in respect of copyright, be it the economic or moral rights. The constant reviewing of copyright directives, sometimes combined with indications that radical changes in the copyright framework may be in the making, does not have a positive effect on the creative industries. Stability in the fundamental principles and the established balance in the Intellectual Property framework are crucial.

Moreover, it is important to note that copyright is not a barrier or hindrance to the development of the information society but the mechanism which ensures its continued development. Historically, copyright has served its' purpose as a support mechanism for creativity and dissemination of results of creativity.

LEGAL OR REGULATORY BARRIERS (Question 18)

Finland is in many respects advanced in the development of online content and services. There is a fruitful interaction between private and public sector in advancing the content industry. An important element in promoting the rights acquisition and administration is Finnish Copyright Act (entering into force 1.1.2007), which includes provisions of extended collective license also for online uses. These provisions aim for swift and easy access to broad repertoire.

PIRACY AND UNAUTHORISED UPLOADING AND DOWNLOADING OF COPYRIGHT PROTECTED WORKS (QUESTIONS 21-23)

Unauthorized use of materials is a threat to content industry. Digital technologies offer a wide range of possibilities for further use, which makes unauthorized use even more damaging to these sectors than in the analogue environment. Right holders aim at providing easy and affordable access to their works through different means, including the licensing of legitimate use of portions of works through copyright organizations. This benefits the user community and makes it un-necessary to treat unauthorized use softly.

There is no need to make a distinction between "small" and "big" infringements. It is important to convey the message that unauthorized use is not acceptable and that requires tracking down any form of it. There are, naturally, reasons to treat piracy for commercial purposes, which should be treated as a criminal offence, differently from unauthorized use for non-commercial purposes.

DIGITAL RIGHTS MANAGEMENT SYSTEMS (QUESTIONS 25-29)

Regarding DRM –systems in relation to systems for compensating private copying, see the answers to questions 14-16 above.

Kopioisto defends the right of creators and users to use or not to use DRMs. Copyright societies themselves use them and have been and are involved in developing such systems. Copyright protection relies increasingly on technological measures to manage and protect their rights when disseminating material electronically online.

Access to content online is a rights transaction. Once a work is received it is frequently re-communicated in different ways. This “super-distribution” is of great economic value. It sometimes exceeds the value of the initial sale of the work itself. A rights management system which captures the value of the super distribution in a networked environment is vital.

CONCLUDING REMARKS

In order to find balanced and effective solutions to European content online licensing in the single market, all the relevant stakeholders should interact more than today and in earlier stages of a new business creation process. Legal protection of copyrights, freedom of contracting and self regulation should be guarded as guiding principles also in the online environment.

The question of copyrights should be among the first and most important issues among technology and market analysis when building new business models to online markets. This kind of approach would increase different stakeholders’ understanding of the key issues which have to be solved in order to find successful business concepts in online environment. This would increase European players’ ability to take advantage of new opportunities and adapt quickly to changing market conditions and Europe’s competitiveness in global online markets.

Kopioisto is looking positively to the future. We are sure that through open and creative interaction between relevant stakeholders the right solutions will be found in order to enable European online content markets to gain momentum and to become an important driver to European economy.

Yours sincerely,

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