

## Public Consultation on Content On Line in the Single Market

Questionnaire response from the Music Lessons research project  
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### Important note

This is not a response from a content producer /rights holder but a summary of our research observations, where relevant in the context of on-line content in Europe.

### Questions

#### **Types of creative content**

- 1) We as a research group produce content of an academic and practical analytical nature concerning the creation, storage, distribution and revenue aspects of various forms of on-line content.
- 2) We consider there is a need for a strong focus on user-generated content, which goes beyond the audio- and audio-visual sectors. The whole development of Open Source software, and open content is vitally important. Here one can expect a major clash of interests between large content owners (global corporations) whose needs are related to producer-led marketing and protection of assets, and the mass of individuals, groups, SMEs etc. involved in finding new solutions to old problems, and improving existing ideas.

#### **Consumption, creation and diversity of on-line content**

- 3) The IPR regime has become far more Draconian with the shift to a digital environment. Strict interpretation means that no one can do anything (download, manipulate) content in a digital form without the express permission of any person or institution claiming rights to the material. This means the risk of breaking the law can enhance unnecessary fears of violating protected content, and thereby hinder innovation.

It is also important that attempts to come to terms with “insufficient harmonisation” in the Single Market should not favour solutions which involve fewer but larger actors in different business areas, via creating new or strengthening existing oligopolies. This could harm SMEs ability to innovate, and ignores the positive aspects of the subsidiarity principle. The September 2005 Recommendation on cross border licensing of on line music content could have exactly this negative effect.

- 4) There has been a shift towards a less liberal view to the concept of “fair use” which can lead to a decrease in the general public’s understanding of and support for the concept of copyright. Most analyses at present seem to pitch content owners against users (consumers). Creators thereby get left out of this analysis – they are both users

and content owners. They need to get ideas and inspiration from existing ideas, and also need leeway to be able to improve existing creations without breaking the law. Attempts by content users to introduce over intrusive DRM systems to control what users can or cannot do is also likely to erode support in society for IPR legislation, and thereby have a negative effect on creativity in the long term.

5) Proprietary restrictions are also likely to undermine consumers' faith in IPR if seen to be unreasonable, unpractical, or a means to force consumers to buy "the same thing" several times via changing platforms/formats. This becomes even more disastrous for creativity if proprietary systems, not compatible with others, are also linked to content from specific sources. An example is the case of new "embedded" musical works which are sold together with Sony Ericsson mobiles. These only include recordings from the Sony-BMG Record Company, thus excluding creative products from other producers from this relatively new channel between creator and consumer.

6) Cultural diversity in the audio- and audio-visual sectors has moved from traditional mainstream media (radio/TV) to the Internet and above all to Peer-to-Peer (P2P) file sharing networks. The legal regime on the other hand encourages large rights owners to try to hinder this development. It also makes it hard for a user to know whether it is legal or not to download much material one finds on the Net.

**A general proposition would be for a new demand to be placed on large, vertically integrated media companies, namely that they must produce an annual, independently audited report, together with financial reports on their contributions to cultural diversity.** This approach has had a positive effect in the environmental sector (where it has been implemented).

Indications by large media conglomerates (e.g. Universal Music) of an intention to sue operators such as You Tube (because individual users post their own versions of copyrighted materials) are also an indication of the forces in operation against individuals sharing and circulating their own creative works or versions of existing works.

7) Policies such as those in the Recommendation from DG Internal Market on rules for on-line licensing of music in Europe (see section 3 above) could well enhance concentration of ownership and oligopoly power. The major beneficiaries of this could be content owners from outside Europe, thus exacerbating the current trade deficit in the music sector with above all the USA.

Efforts should focus on access for creators to open communication channels between creators and audience, with a high permitted degree of interactivity between the two groupings. Cultural diversity should be viewed in the context not only of supporting heritage, but also as an economic asset. The activities of SMEs especially in cross border variants should be enhanced and not limited by legal IPR restrictions which encourage large firms to become repositories for rights, rather than active promoters of rights.

European initiatives such as the Television across Frontiers have not succeeded in promoting pan-European distribution and access to content from European producers. In fact, the absence of a single European standard for terrestrial digital television has

served to increase availability of large volumes of cheap products from abroad (cheap since production costs have more or less already been covered in other markets).

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

8) A positive development will require a mixture of P2P networks where the curious can post and discover new exciting materials (with some form of revenue generation/distribution) and “legal” high quality delivery sites for specific materials similar to those in existence (e.g. iTunes). Many will be local or national – interest for domestic content seems to be on the increase.

9) Continued growth – but the range of choice will depend on the legal regime applied as regards IPRs.

10) P2P technology will be a must in more and more areas. The tainted reputation ascribed to P2P in the rhetoric of the large content owners is therefore to be regretted. Efficient distribution of large content files when requested simultaneously by many consumers can only be done efficiently by using P2P technology. Some broadcasters, e.g. the BBC and the EBU have already realised this and are experimenting with different options.

11) Widespread broadband rollout is seen by the Commission as a prerequisite for a shift towards a ubiquitous information society. File sharing activities are driving broadband usage. Balancing the needs of content owners and broadband suppliers could produce a win-win situation. P2P networks should therefore be made legal via some sort of surcharge on broadband bills. This would satisfy both goals of cultural diversity AND broadband dispersion.

### **Payment and price systems**

12/13 A variety of unit price systems and subscription models. Improvements could involve a traditional mix of financing, direct and indirect. For example, music on the radio is paid for via a mixture of revenues, from licence fees and/or advertising/sponsorship revenues.

### **Licensing, rights clearance, right holders remuneration.**

14) The complex system of rights clearance must be simplified, but not in a way causes current tariff systems (often based on national cultural traditions/habits) to collapse. Up to now, the focus of Commission analysis has been primarily on the Collective Rights Management (CRM) organisations which represent primary rights owners such as composers and publishers. This is rather strange, since neighbouring rights owners (organisations representing performers and producers) have used their exclusive rights to delay the deployment of legal delivery systems until they could achieve far better revenue share of consumer prices than in the analogue physical world.

The combination of such a redistribution of revenues between creators and producers, coupled with lobbying pressure to extend the period of copyright protection for, e.g.

phonograms, to up to 90 years after their production date, will only exacerbate this redistribution of revenues between the creative community/industries.

15) CRMs representing composers and music publishers in the Nordic Baltic area have a functioning system for clearing rights in 8 different EU territories according to a one-stop shop principle. This should work in other areas of the EU. It could also be a counter weight to moves to create an oligopoly of central-European large CRMs, with all the related negative consequences for subsidiarity and cultural diversity.

16) Producers' use of their exclusive rights has created an extraordinary redistribution of revenues between rights holders (to the benefit of the producer). This is not positive for creativity in the EU.

### **Legal and regulatory barriers**

17) The IPR regime is out of sync with the development of technology. Incumbent players with large repositories of rights, defending old business models, use their muscle and lobbying rhetoric to hinder innovation, SMEs and creative innovation based on consumer curiosity and consumer creativity.

18) Very little engagement from government sources. The "issue" is "owned by the ministry of justice which sees its role as implementing existing laws whether they are in or out of sync with reality.

### **Release windows.**

19) The traditional marketing chain in the music sector has been almost totally turned upside down in the digital arena. In the past record companies produced a new recording of an artist, promoted the artist's record in the radio market, and if it sold, then considered supporting a live concert.

In the digital environment, consumers find music on the Internet, seek concert experiences, and then purchase physical products. The traditional business model of the vertically integrated music industry cannot handle this reversed process, thus their heavy lobbying against file sharing etc.

### **Networks**

20) We see two important structural changes.

Cultural diversity has moved from main-stream and traditional media (television, radio and newspapers) to the Internet.

The web has moved relatively quickly from a predominantly one-way (client – server), read-only medium to a more two-way, participatory, collaborative and interconnected medium (server – server).

The last structural change implies that there is a need for symmetric broadband access. Presently ADSL is used very much in building broadband networks. ADSL is asymmetric, which means high bit rate to the user and low bit rate from the user. ADSL will not fulfil future user requirements. In principle there are no difficulties to provide symmetric broadband access for fixed cable.

Mobile 3G systems are also asymmetric but this comes from more natural technical limitations – limited battery power in the terminals – and thus more difficult to solve.

### **Piracy and unauthorised uploading and downloading of copyright protected works.**

21) Old business models suffer from the effects of new technology – this is no reason to outlaw new technology or those who use it. The term “piracy” is unfortunate if it does not refer to commercial activities where criminals seek to earn money from stealing from others. This is not the case when individuals with a curiosity for music seek new experiences, and then in all probability purchase cultural products/experiences. Many SMEs in the music sector rely on up and downloading for the marketing of their products.

Our research and those of others proves that many groups of file sharers actually purchase more cultural products than non-file-sharers. Those downloading films buy more cinema tickets than those who do not download copyrighted films.

22 Such campaigns, if organised by dominant content owners, can have a very negative effect on those generally interested in cultural experiences and products. The aim is to counter consumer-led marketing with producer-led marketing. This is probably not good for cultural diversity or the economic potential of this same diversity.

23 P2P can certainly be used in a way that content owners rights are respected if the rights owners (and network operators) are agreed on its value. This does not seem to be the case at the present. Many new business models are emerging from the music sector where smaller record companies have learnt to survive in and utilise the P2P environment. Many examples are given in the Music Lessons project reports.

### **Rating or classification.**

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### **Digital Rights Management Systems.**

25) DRM systems for managing copyright must not be over-intrusive. They should be used for aggregate monitoring and not for intrusive control of how, when, with whom, how long, users have the right to consume digital materials.

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### **Complementing commercial offers with non-commercial offers.**

30) NA

### **What role for equipment and software manufacturers?**

Some users may be informed and able to compare media products incorporating DRM and act accordingly but the majority of the users are not aware of DRM. Indicare produced a study in 2005 of the awareness of DRM among European digital music users. The discouraging result was that on the average 63% of the users had not heard of DRM at all.

A report “Evaluating DRM: Building a Marketplace for the Convergent World” from the Center for Democracy & Technology, Washington, USA, presents an attempt to evaluate DRM in the market place in terms of questions reviewers of DRM systems should be asking. These questions include:

Transparency:

Are users given sufficient information about any impact the DRM system can have on potential uses of the content or interoperability with different terminals. Is the information given sufficiently clear, easy to find and given at relevant times.

Effects of use:

What are the limits of use? Does the DRM system allow for time shifts, place shifts, sharing within reasonable limits, creative modifications within reasonable limits? Is there a risk to lose control if a company goes out of business?

Collateral impact:

Is there any risk for users privacy to be exposed? What type of information is “phoned home”? Any risk that users terminals will stop working?

Purpose and user benefit:

Is the DRM introduced to lock users into old business models or to limit users choices or to innovate new business models?

Manufacturers and software industry can interpret these questions as an input to user-oriented specifications and describe systems in such terms to help users in their choices.

**What role for public authorities?**

32/33 It is vital that the policy incompatibilities noted in our response and elaborated upon in the Music Lessons project reports are taken seriously by governments, authorities at both the national and the regional (EU) level. This is not the case at present. An immediate priority is the incompatibility between various forms of legislation (competition law, IPR legislation) and the realities of the market, consumer preferences etc. Many goals that feature prominently in the EU agenda (Lisbon, i2010) are being hindered by such incompatibilities.

Public authorities can review DRM against the same criteria as suggested above for equipment and software manufacturers.