

**To: European Commission  
Information Society and Media Directorate-General**



**European Commission Public Consultation on  
Content Online in the Single Market**

**Response from the Periodical Publishers Association**

**The Periodical Publishers Association (PPA)**

PPA is the trade body for UK magazine publishers, and in this role welcomes the opportunity to respond to the consultation launched by the European Commission on Content Online in the Single Market.

The association's membership consists of some 500 members who publish or organise over 4,400 products or services. These include over 2,500 consumer, business and professional magazines and nearly 1,000 online products. PPA members produce a large range of directories and websites, in addition to organising conferences, exhibitions and awards.

Many PPA members offer online services, including websites, online versions of print publications and publications only available online, or through electronic transmission. Online publications also encompass consumer, business to business and contract magazines, and increasingly involve the use of new electronic rights management systems to help improve the provision of publications and services to subscribers.

**Introduction**

Increased use of digital technologies is having a significant impact on the way in which magazine publishers compile and design their products and services, and subsequently publish and make them available to customers and individual consumers. In particular magazines have been part of the front line within the creative industries in promoting interactivity between publishers and their consumers. The concept of consumer contributions to magazines, now being described as "user generated content", is not new to the industry. However the way that technology is opening up the number of ways in which such interactivity will add to, and shape many new publications and on line services based around them in the future, is central to the strategic thinking of companies working in the sector.

In looking to embrace the opportunities opened up by on demand delivery through electronic transmission, consumers and rights holders share many common objectives, involving affordable access to a wide range of content to satisfy effective demand for consumption across an ever increasing number of delivery platforms and devices. The successful use of new technologies (or "new media") embracing delivery platforms, electronic rights management systems, and technical protection measures will help to

support these ambitions, stimulating new business models and creating opportunities for business to offer more choice to the consumer/citizen.

The magazine industry is a key part of the successful creative economy within the United Kingdom. Its success particularly relies upon the work of writers, editors, photographers, designers, journalists, and many other creative people who ultimately earn their living from the appeal of their intellectual property.

Copyright and other intellectual property rights are central to the economy of the magazine industry. Without them the industry may be unable to recoup its investment in the copyright works within magazines, through their presentation in diverse and innovative ways within new products and services.

PPA therefore welcomes the opportunity to respond to the Commission's consultation concerning the preparation of a Communication to explore added-value options that could be taken at European level to improve the competitiveness of the European online production and distribution industry. It is hoped that our comments will help to highlight the specific role which the magazine industry plays within a currently increasingly competitive environment.

QUESTIONNAIRE
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**Types of creative content and services online**

**1. Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?**

Yes, the opportunities afforded to PPA members through the use of electronic transmission are being embraced in a wide range of ways. Podcasts and links to audio and audiovisual material providing breadth and depth to the way that material is accessed on line are now adding to the early digital editions of magazines which more closely resembled the look and feel of offline publications.

The archive opportunities and cross reference of articles and features are being developed by industry as it works with an increasing number of content aggregators and search engines.

However the magazine or periodical style behind publications remains an important part of distinguishing the on line services being developed by members. This distinction is important when considering the way in which regulation is applied to the editorial content of such services.

The technical similarities in the way that an on demand magazine or periodical service and a television programme service are delivered and made available for access to consumers should not lead to confusion over the basis upon which such services are subject to regulation of their content.

PPA has been concerned about proposals to extend the scope of the Television Without Frontiers Directive in the new Audio Visual Media Services Directive in ways that would ignore this important distinction.

In this context PPA welcomes proposals from the UK Government to seek amendments to the proposed Directive which would establish a clearer definition of the “on demand services” which may fall within the scope of the Directive. Wording recently put forward by the UK Government helps to address our concerns over the scope of the proposed Directive, by linking more closely the concept of “on demand service” to services whose principal purpose is the provision of programmes which are in a format suitable for television broadcasting, and the nature and means of access leading users to reasonably expect the regulatory protection to fall within the scope of the Directive

**2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.**

There are real dangers in broadening the scope of the future Communication. This is evidenced by the difficulties that have arisen in addressing possible extension of the scope of the Television Without Frontiers Directive.

European culture and democracy are based on freedom of opinion and freedom of the press that were achieved through several centuries of struggle. The common value of freedom of expression has enabled cultural diversity and economic performance.

By definition, this freedom implies the right to free expression, subject to subsequent accountability in the courts, through the enforcement of general laws.

Whilst special provisions were established for television broadcast services under the Television Without Frontiers Directive, the proposed Audiovisual Media Services (AVMS) Directive (COM (2005) 646) proposes restrictive content regulation for all audiovisual media services in the EU.

Characterised as a restrictive exception, television broadcasting has been the only medium that is subjected, as a rule, to broad state intervention. Extension, albeit partial, of the latter to other media cannot be justified. Typical examples of this intervention include the requirement of licenses, the supervision of content by authorities and the denial of full freedom of opinion due to restrictions on communication that are imposed for political reasons. It has been accepted, until now, that the Television Directive necessarily limits these restrictive regulations to television, as an exceptional case, thereby respecting the priority given to the freedom of other media. The current situation would not change even if the said Directive were to incorporate television services delivered via other broadcasting channels (IPTV or web-TV).

EU media policy should build on these values by reducing restrictions on content and advertising in media to support development of the future platforms for user-driven information and communication, and maintain the EU as a leading market place for the creative media industry.

However, the widening of the scope the AVMS Directive to include non-linear audiovisual media could extend restrictions that are typical of the broadcasting sector beyond television, to media and services that are editorially driven in entirely different

ways to broadcasting. This could affect all “on-demand” audiovisual media services such as web sites that offer editorial information in audiovisual formats. The current and necessary freedom that exists for this kind of service would be reduced in many ways by the envisaged regulations. There exists the danger of a structural reversal in the relationship between freedom of the press and opinion, as the rule, and the restrictive regulation of broadcasting, as the exception. It is misconceived to apply licensed regulatory concepts to unlicensed media.

### **Consumption, creation and diversity of online content**

**3. Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.**

Yes, in general structures are in place to help build trust in, and take up of, new online services. This is illustrated by the growth in the number and range of online services attracting significant numbers of users.

However, more work needs to be done, particularly in the areas of improving media literacy and developing citizen’s appreciation of the value of intellectual property.

A good example has been shown by the way in which the 2006 European Charter for the Development and Take-up of Film Online has supported the greater adoption of the CREATE Principles for copyright education and awareness.<sup>1</sup>

Two of the CREATE principles, “Respect” for rights and “Trust” between creators and consumers of intellectual property, are particularly relevant for the development of digital rights management technologies, as methods to access and use copyright material become increasingly varied in the digital environment.

Improving understanding, respect and trust is not helped by misunderstandings about the range and purpose of new products and services, which might be described under the generic heading of “Digital Rights Management” (DRM). Greater understanding is needed about the different products which can fall within a generic description of “Digital Rights Management”.

Important distinctions underline the way in which “technological protection measures” and “rights management information systems” are being adopted to support the operation of new online services. The Commission should support improved education and awareness of these topics in cooperation with industry.

In particular, rights management information systems will become increasingly important to the on line magazine sector for improving the reliability of online services, supporting payment systems and assisting with the back office functions that will help service potentially complex (but nevertheless economically vital) allocation of revenues to rights

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<sup>1</sup> Please see Annex 1 for the CREATE principles

owners, whilst keeping payment mechanisms for consumers appear customer friendly and transparent.

This will help to encourage the public to understand that, as in any business, there are some products which work more effectively than others. It is, however, completely wrong to suggest that because of unfavourable publicity over one product, this somehow means that all products under the same generic description are tarred with the same brush.

In addition, PPA believes that the legal protections for “DRM”, already recognised in law at both European and Member State level, should be maintained. This will ensure industry can develop and offer an increasingly diverse choice of products and services for the consumer, including on line and digital publications.

Recognition of copyright and respect for it is fundamental to the development of new content-driven on line services. In this respect the harmonisation provisions within the EC Copyright and Related Rights Directive have been important and valuable for the industry. However, when considering how network security issues and the development of technological protection measures and rights management information systems which support the delivery of content on line, it is important to remember that copyright exceptions and limitations are applied in law only in special cases which do not conflict with a normal exploitation of a work or other subject matter and do not unreasonably prejudice the legitimate interests of a rights holder. This flexible test has worked well to enable and accommodate recent rapid technological developments. It should continue to be recognised and observed.

Rather than imposing forced exceptions to DRM systems for specialist groups, which serve to reduce incentives for investment in innovation, voluntary systems must be allowed to develop, bearing in mind that it is in the commercial interests of publishers to ensure that consumers are not alienated, and that effective demand for their products and services is maintained.

In looking to develop trust in new online services it is important to remember that the market for DRM solutions is a nascent one. There are few nascent technologies for which there are not initial technical problems. The Commission should continue to monitor developments in the marketplace, and the way that new technical protection measures and rights management information systems are brought to market, but recognise the careful balance of interest established by the framework already provided for under the EC Copyright Directive.

**4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?**

The primary purpose of publishing is to provide access to the widest number of people and this is without a doubt the main driver of our industry. We need to maintain the balance between a sound economic situation and the public interest, because these two elements are necessary to achieve the Lisbon Agenda objectives - the key to Europe’s future as a knowledge-based economy.

Nevertheless, in general we believe that the EU has already put in place the necessary instruments to maintain this balance and any further intervention would result in detriment to the European economy. There are a few exceptions.

One important exception of major concern to publishers relates to the Rome II proposal. In particular we are concerned about the issue of defamation and personality rights. In the Commission proposal, it was possible that potential victims could sue publishers using the applicable law of any country in Europe – so called “forum shopping”.

The Council text adopted by Council of Justice Ministers meeting at the beginning of June this year now excludes defamation from the scope of Rome II – this would mean that a status quo as regards cross-border defamation cases/applicable law will be maintained. It is not an ideal solution for the media, but it is the very least we would have accepted from among the other negative options being discussed.

However, the agreed text provides for a review of the Regulation 4 years after its adoption. The review article (26a) makes a particular mention for the review process to examine cross-border defamation in the EU. It is vital that any such review takes account of the practical concerns already raised by the industry.

A second area of concern relates to Data Retention which we address further in Annex 2.<sup>2</sup>

**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?**

We support customer demand-driven interoperability between devices, respect of copyright and the use of DRM (provided the rights holder wants to make use of them). Interoperability between devices is increasingly expected from consumers, and market led solutions to interoperability are likely to lead to considerable investment in providing for interoperable access.

**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?**

In our view, cultural diversity can and should be fostered online. Publishers are the largest contributors to cultural diversity in Europe.

Respect for copyright should be the common basis both for works for which investment is needed and other types of content (e.g. works published under open access or creative commons). There are around 80 million pages in the internet and therefore enough room for all. For example, while Wikipedia has become a very popular tool to search for information, the Oxford Dictionary of English is still is one of the most important, widely used and paid for, dictionaries for English language.

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<sup>2</sup> For comments on data retention, please see Annex 2.

Finally it is relevant to note that linguistic diversity is less of an issue for the publishing field than for other industries since most EU citizens read in their native language and these are the natural market for magazines published locally, or published online primarily aimed at audiences wishing to read in a particular language.

### **Competitiveness of European online content industry**

**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.**

In 2001 the publishing sector generated 0.82% of United Kingdom Gross Domestic Product (compared to an EU average of 0.48%). Across the EU-25 the sector employed nearly 750,000 people, in almost 64,000 companies. Small and medium sized enterprises (1-49 employees) represented 97% of all publishing companies in the EU, but the 0.8% of companies which employed more than 250 people accounted for more than half of the total turnover of the sector.

But for our industry to remain competitive in an increasingly global marketplace, we must be sure that the key legislative structures that support our business provide for a level playing field with competitors outside Europe.

This is true for copyright legislation. It is vital that the EU takes a lead in ensuring that territories outside the EU adopt and enforce legislation to reflect the International Treaties in place for the recognition and effective enforcement of intellectual property rights (particularly the Agreement on Trade Related Aspects on Intellectual Property Rights – the TRIPS Agreement).

One current imbalance of particular concern to publishers relates to the recognition of rights in databases.

The Commission working paper on the competitiveness of the publishing industry<sup>3</sup> reports that the productivity of the publishing industries in the EU is higher than in the US. The paper acknowledges that the sector is under strong pressure due to the increasing digitisation of content which is changing modes of distribution. We believe it is important to strengthen the competitiveness of the European publishing industries in the digital era by providing the necessary protection to secure investment. In this sense, a positive step at EU level has been the introduction in 1996 of the “*sui generis*”<sup>4</sup> right which achieves this goal for non-original databases.

The publishing industry is entirely dependent on building, maintaining, marketing from and selling data of every conceivable kind: it is one of the cornerstones of the information economy in which Europe is an international leader.

Estimates from these businesses show that as much as 30 per cent of their costs involve the compiling and maintenance of databases: an investment which could be around €60bn annually in the EU.

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<sup>3</sup> Brussels, 8.10.2005, SEC (2005) 1287, page 29

<sup>4</sup> Directive 96/9/EC on the legal protection of databases

One of the reasons for the growing success of database driven businesses in the EU is the existence of the *sui generis* right, which underpins the huge investment in these companies.

The fact that the European Commission has even considered removing this right has sent shock waves through the industry and is forcing companies to revisit their investment proposals for the future.

PPA strongly contests the suggestion that the creation of the *sui generis* right has had adverse effects on competition. Completely to the contrary, PPA members believe that the introduction of this right has provided a catalyst to publishers (in particular SMEs and the business and professional publishers) to invest more in the production and use of databases.

All market players have tighter marketing budgets than before because of the growth of other media channels. Publishers therefore have become considerably more selective in how they do their marketing: using databases is one of the main elements in their decision-making in this regard.

We believe there is ample evidence to show that the right has played an extremely important role in the development of the information society in the EU and made the EU a desirable place in which to develop these important businesses.

Therefore, the *sui generis* right attributed to the creator and investor of a database should be maintained as for magazine publishers, databases play a fundamental role in contributing to the success of the Lisbon strategy.

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

**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?**

Publishers see multiple opportunities for new online content creation and we envisage a wide variety of possible business models.

Magazines reach an average of 80% of all EU adults. The periodical press is a key element of Europe's cultural heritage and makes up an essential part of the pluralistic mix of information, entertainment and academic achievement. The market is dynamic and new launches are very frequent – magazine publishers operate on the cutting edge of societal developments and address all facets of life. As such, the periodical press industry is a key player in the knowledge economy so loudly touted by the European institutions.

Electronic make-up, advanced printing techniques and online publishing have allowed the magazine market to develop new business models in recent years. Periodical press publishers were among the first media to bring their content online and the sector continues to invest heavily in online content offering for Europe's citizens. This experimentation, innovation and investment is taking place at a time when many other



players are also doing the same in conjunction with the changing expectations of European readers. While – for the present - the main part of our editorial content is still delivered to readers in paper form, an increasing amount of this same content is offered to readers online. In some cases the online offer is complementary to the print product, while in other cases it is a direct replica of the print version (.pdf publications sent via email or to be downloaded from websites, for example).

As explained, the online market for the periodical press is evolving, developing and changing at a very fast pace. Publishers are still experimenting with new business models online and do not know what shape the market will have in the future.

**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?**

Copyright and related rights provide incentives and opportunities for publishers and for the society at large. It is recognition of copyright which enables publishers to make works available, ensuring remuneration for their investment and the sustainable delivery of creative content. Publishers' investments in the collection of information and the delivery to the public enable them to play an important role in democratic society.

We support the widest possible economically viable dissemination and diffusion of the works we publish, be it through digital platforms or high street retailers. Many of the works published by our members are increasingly available in digital formats and some sectors have largely migrated from paper to electronic media, like B2B.

Publishers invest in creativity and take financial risks before releasing a work of the mind. Together with the authors, our ability to engage in the creative process is dependent upon the ability to be paid for this investment. Therefore, it is crucial that any digitisation by libraries for purposes other than strict preservation, particularly when digitisation is to lead to possible access by members of the public, must be done with the explicit permission of the rights holders. This will ensure the sustainability of new business models which can involve both libraries and publishers. This in turn will promote future creativity, investment in new works and thereafter enable the public to have access to a wide range of creative works.

Should a public sector European digital library wish to provide access to European content, it should do so through contracts between rights holders and users in the same way as is common practice for physical content. Library access should be provided in a manner that does not interfere with the normal exploitation of content by the rights holders - as foreseen by applicable European and International law. This will encourage increased access to European works and promote the development of innovative business models without risk of unbalancing the whole creative sector.

**Payment and price systems**

**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?**

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

We envisage different payment and pricing systems possible in the online publishing environment such as pay per view, subscriptions, rental, browse inside etc. These new products and services are being tested at the moment and the market is not mature enough to draw conclusions.

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

#### **14. Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic and legal challenges do you identify in that respect?**

In the publishing industry, individual management of rights is the natural starting point for rights holders to manage their rights, whenever feasible or possible.

However, copyright and intellectual property underpins the ability for all creative businesses to license and distribute their works in flexible ways. Flexibility (supported by territorial recognition of copyright) is vital to allow companies and rights owners to secure fair and effective returns on investment. The primary market for one creative business does not mean that the same primary function is relevant for a different creative business.

In the same way, differences exist in the value to rights owners of exploitation in different Member States across the EU. This may be because of language or other cultural differences resulting in content having different perceived values in the eyes of potential "purchasers" or "licensees" in different Member States.

So whilst the concept of Europe-wide or multi-territory licensing may become appropriate to meet the demands of new services intended to be electronically transmitted for reception or on demand delivery to customers within a number of different territories, such licensing must be driven by rights owners making the choice about how best to license their rights to reach their primary and secondary markets effectively.

In turn, underlying rights owners must be able to choose to license the use of their works in connection with others either directly, through agents or through appointed collecting societies.

It is important to incentivise creative businesses to enable their works to be licensed in new ways which pick up on the opportunities opened up by new technology. It would be damaging to the creative economy of the EU if imposed regulation about the way owners might choose to exploit rights on a Europe wide or multi-territorial basis removed the chance for new balances between primary and secondary markets to be developed by rights owners.

Moves to be over prescriptive about the way in which clearances "must" be made to service the growth in multi territorial delivery are likely to stifle market led development of new services. Competition between sectors within the creative industries could also be restricted, raising Internal Market and competition law concerns.

Within the publishing sector collective societies (RROs) were established by rights holders to license photocopying. Their mandates have accordingly usually been limited to reprographic reproduction. On the one hand, some rights holders, especially large

publishing houses, have been actively experimenting and investing in new digital publishing models themselves. On the other hand, other rights holders may decide that RROs might play an important role in the sense that a rights holder may benefit from their services because their digital rights will be better managed collectively. In either case, the key issue is that rights holders have the freedom to choose how to manage their digital rights and they can withdraw them whenever they deem appropriate. For all these reasons multi-territory licensing and clearance is not currently a practical problem in our sector; it is possible to benefit from Europe-wide licenses if the necessary license is acquired from the rights holders.

**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?**

Generally our members do not encounter major problems concerning licensing and / or effective rights clearance. It is possible to clear most of the rights that they require for print publications Europe-wide without difficulties.

Nevertheless PPA has been observing with interest developments following the publication of the Commission's Recommendation on collective cross border management of copyright and related rights for legitimate online music services, as new online publications linked to magazines increasingly involves the use of sound and film (whether in the context of podcasts or new and alternative links to the presentation of material online).

**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.)?**

We would refer to our recent response to the Commission's consultation concerning the role of levies.

In our view:

- The market should be permitted to establish appropriate new systems of remuneration to reflect private copying before any legal intervention.
- Publishers should be free to choose between collective or individual management.
- Member States should remain free to maintain their system of secondary rights management.
- The European Commission should have an in-depth analysis of all the sectors benefiting from levies and not only the music sector before making any new proposal.<sup>5</sup>
- Publishers should remain free to choose between collective or individual management of their right and between different management systems (as there are, for example, different collective management organizations in each country).

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<sup>5</sup> For further comments on DRM and levies, please see Annex 3.

### **Legal or regulatory barriers**

**17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?**

There is concern over the regulatory burdens, heavy social costs and taxation levels within the European Union which are not reflected elsewhere in the world (particularly those applicable to new on line services originating outside the EU but receivable within the EU). Such burdens make it difficult for companies operating within the EU to compete on equal terms with the U.S. and other regions. The European Union should monitor these imbalances and consider how fairly to reduce these burdens to free its creative and media industries to compete on a level playing field in a global marketplace. At the same time, it is vital that the EU takes a lead in ensuring that territories outside the EU adopt the International Treaties in place for the recognition and effective enforcement of intellectual property rights (particularly the Agreement on Trade-Related Aspects of Intellectual Property Rights – the TRIPS Agreement).

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

Copyright protection and the effective implementation of the EC Copyright Directive and other Directives in the copyright acquis has been vital to encouraging the development of now online content services.

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

**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?**

We suffer from both physical and online piracy. Some well-known magazines directly after publication are copied, printed in enormous quantity and sold in a very short time in certain eastern European countries and throughout Asia. We also suffer from online piracy where pirates copy the entire magazine and make it freely available to download on websites. Of particular concern is the unauthorised use of mast-heads and trademarks developed by our members for new publications, when third parties seek to benefit from the investment in goodwill of our members without respect for their intellectual property rights.

Intellectual property is the cornerstone of publishing industries and the measure by which the people who contribute to creativity can be remunerated. The production of new creative content is usually made possible by the reinvestment of revenues from existing creative content. Yet this virtual circle is threatened by the increasing illegal use of intellectual property.

The EU must provide a strong legal foundation, based on copyright, if it wants to have the internationally competitive creative industries that are at the root of a world class knowledge economy.

The EU and national governments need to do more to track down and pursue illegal use of intellectual property rights. There is an urgent need to create a stronger deterrence against IP crime and online infringement, through a combination of effective legislation and greater government commitment to enforcement activity.

Just because intellectual property is intangible, it doesn't mean that it has no value. As previously stated, we believe that the Commission and the governments of Member States have an important role to play in helping to educate consumers about the importance of copyright. Media literacy, including a better understanding of the value of intellectual property will be increasingly important for the citizens of Europe in the future, if we are to compete in the increasingly competitive global marketplace for goods and services.

The EU should seek agreements with third countries that counterfeiting and piracy are criminal offences that should be treated no less seriously than other criminal offences such as forgery, theft and fraud.

**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?**

Education and awareness-raising campaigns are essential to fight piracy both in the analogue and in the digital world. Please see our response to question 3 above and Annex 1 relating to the promotion of the CREATE Principles.

### **Digital Rights Management systems (DRMs)**

**Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.**

**25-29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?**

While some publishers do or intend to use them, some others do not use DRMs for economic reasons (it is too expensive, in particular for the many thousands of SME publishers) or for security reasons, as it does not always prevent illegal copying.

The legal protections for DRMs already recognised in law at both EU level and within EU Member States should be maintained.

Rather than introducing additional regulation at this stage, the Commission should recognise that the market for DRMs is a nascent one, and monitor developments in the market place. Consumer acceptance will play a role in DRMs application.

Interoperability is a priority for publishers if the consumer is to have a variety of creative content available on different platforms. The publishers strongly support interoperability. This should not be done at the expense of security. Secure DRM solutions need a system-wide support so that continuity of security is maintained across platforms.

Publishers are addressing ways in which rights management information systems (using digital rights management\_ can be made more transparent and efficient both for users and consumers. A number of initiatives are under discussion including the project to develop an Automated Content Access Protocol. It is hoped that the project will be launched with the backing of the World Association of Newspapers, the European Publishers Council and the International Publishers Association in the later part of the year.

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

#### **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?**

We accept that non-commercial services can complement commercial offers in the publishing sector as long as those services avoid disrupting the delicate balance which allows publishers to invest into content creation and dissemination. For example in journal publishing, successful publications are cross-subsidising other works, in the case of scientific journals, smaller or less-financed science communities.

In terms of legal deposit, copyright and related rights provide incentives and opportunities for publishers and for the society at large. Please see our response to question 11 above.

#### **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?**

The Commission, the governments of Members States and linked public authorities can play an essential role in fostering new business models in the online environment in providing funding facilities for rights holders to develop their own digitisation programmes that in turn allow them to offer legal online services to users. Another important role for such bodies to work closely with industry in helping to educate citizens and consumers about the importance of copyright and raise awareness of the damage online piracy causes to the creative sector and to all society in general.

Periodical Publishers Association would welcome the opportunity to provide further background concerning the points raised in this submission, should this be helpful.

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## **Annex 1 - The CREATE Principles**

The CREATE principles were developed in the United Kingdom through the work of the Creative Industries Forum on Intellectual Property and have been designed as a tool to promote the key aspects of the value of intellectual property in the modern economic and social setting. They cover the importance of

- Creativity
- Respect for rights.
- Education about why the rights affect everyday lives.
- Access to work on fair terms.
- Trust between creators and consumers.
- Economic benefits from intellectual property, stimulating jobs, business and economic growth.

## **Annex 2- Data Retention**

In the context of combating terrorism and organised crime, the European Commission proposed a directive which would set down a minimum amount of time that providers of publicly available electronic communications services or of public communications network must retain data and the circumstances under which they must disclose this data in order to prevent, investigate, detect and prosecute serious criminal offences.

This proposal for a directive on the retention of data processed in connection with the provision of public electronic communication services, amending directive 2002/58/EC was adopted on 15 March 2006.

We understand the need to fight against terrorism by all means and support it. However, no comprehensive consideration has been given to the matter of investigative journalism in Europe.

The retention of traffic data from telephones, mobile phones and the Internet during a year lead to the creation of vast databases. For journalists and the media in Europe, it means that government authorities could routinely monitor and find out about the identity of sources and other journalistic research activities. Investigative journalism is essential to an open and democratic society and can only carry out its function if sources are protected. With this directive, every source of information will have to fear that their identity could be exposed. Without the certainty of protection, the number of sources will diminish. This represents a serious threat to democracy as it weakens its Fourth Pillar by gravely affecting press freedom.

## **Annex 3 - DRM and Levies**

Increased copying or dissemination of works without payment of licence fees or remuneration on a structural base will not benefit the content industry. For every primary or secondary right conferred, publishers must obtain return on their investment. The content industry generates jobs and investment in the neighbouring sectors: paper, distribution, advertising, ISP's, ICT equipment, etc.

In most EU Member states, to remunerate exceptions to the right holders exclusive right, especially the private copy exception, a levy system has been implemented reflecting previous practical difficulties in controlling the use made by the consumers as it would intrude on their privacy and as it is difficult to enforce on individual basis.

However, in the digital environment, the development of technical protection measures and rights management information systems makes it increasingly possible for rights owners or service providers (with appropriate consents from consumers) to monitor and control how individual customers use copyright material that they wish to license.

The Commission should take into account that these technologies are expensive and as most publishers are small size enterprise, it is difficult for them to install such technologies on their content.

The relationship between rights owners and electronic service providers should be increasingly taken into account when considering the fair remuneration that should flow to rights owners in respect of private copying.

When individual management cannot practically operate, levy systems have proved to be a solution that provide for fair compensation. This is why most EU Member States have introduced or expanded these systems in the past years.

Whilst foreign rights holders often receive their remuneration via their local collecting societies under bilateral reciprocal representation agreements, it is not always the case. No rules prevent them from demanding remuneration directly in foreign countries

Different distribution policies in different Member States can give the impression that what is recognised as “fair remuneration” in one Member State is not recognised in the same way in another Member State.

Reasons for different distribution policies and rules should therefore be disclosed and be as transparent as possible.

In its consultation on copyright levies in a converging world, the Commission suggest that “in a convergent environment the analogue era distinctions between transmission, consumption and copying will merge and become meaningless”. This is not accepted. Copyright law recognises a number of distinct restricted acts. Copyright owners have exclusive rights in relation to each of these restricted acts. The value that rights owners choose to attribute the different acts when one or more are licensed simultaneously is a matter for commercial practice.

Publishers should remain free to choose between collective or individual management of their right and between different management systems (as there are, for example, different collective management organizations in each country).