

EUROPEAN COMMISSION
 Information Society and Media Directorate-General
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Public Consultation on Content Online in the Single Market
A response by Tuotos, Finnish Audiovisual Producers' Copyright Society
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Tuotos represents over 500 independent Finnish film and audiovisual producers. Tuotos promotes the rights of audiovisual producers and administers the collectively collected remunerations to audiovisual producers. Finnish audiovisual producers administer their exclusive rights mainly themselves, collective management is present in retransmission, private copy levies and educational licensing solutions

The three member associations of Tuotos are Association of Independent Producers in Finland, Central Organization of Finnish Film Producers and Finnish National Group of IFPI.

Tuotos is a national partner of AGICOA (Association of International Collective Management of Audiovisual Works) and collaborates with Eurocopya (European Association of Audiovisual Producers' collective management societies). Tuotos is also a member of The Copyright Information and Anti-piracy Centre (CIAPC) in Finland. We support CIAPC's and Eurocopya's responses to Content Online in the Single Market Consultation.

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.

Definition of content as provided in the introduction of the consultation is already very broad, considering various types of content & markets - which differ very significantly from each other – as one content or market.

This applies especially to the sub-category of Online Audiovisual Media where films & TV programs as well as news, sports, videoconference and blogs/vlogs are all put together as a whole.

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.

The anti-copyright attitude is very strong among for example ITC industry and young people at least in Nordic countries. This is partly due to the late and slow implementation of the legal frame needed for the legal online markets.

The growing broadband penetration has led to massive illegal up- and downloading of protected content. Intellectual property protection should be fully implemented at European and world-wide level. At European level, this means effective implementation of protection recognised in the various applicable European directives (Copyright Directive, IPR Enforcement Directive, ...) in cooperation with stakeholders (telcos, ISPs, right holders and consumers). Drawing on the arrangements set out in the European Charter for the Development and the Take-up of Film Online, the Commission should provide a framework of appropriate measures soon.

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?

Adequate protection of public's interests (privacy, access to information) needs to be ensured in the online environment. Even though balance between public's interests and other private interests (such as intellectual property rights protection) seems adequate, sometimes privacy issues hinder investigation of online piracy.

For example in Finland ISPs are not allowed to check the identity behind dynamic Internet Protocol (IP) numbers in case where right holders inform ISPs about an infringement done by one of their customer. Therefore they cannot act on rights holders' notices of claimed infringements. In most of the cases a simple notice from the right holder and passed by the ISP would probably stop the infringement. Because of the lack

of these reasonable ways to stop the infringement, right holders are forced to rely on criminal complaints or civil court applications for right of information from the ISP.

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?

Interoperability is a major concern for both consumers and right holders.

Consumers need to be adequately informed about the exact level of interoperability between various content and devices, as content and devices are today often linked (for instance iTunes online platform and iPod devices). They also need to recognise some possibilities of private copying that does neither challenge what was deemed acceptable in the analogue world, nor infringe copyright. Such private copy facility should in return be remunerated to the benefit of right holders.

It also happens that copyrights are being blamed for the lack of interoperability even if the actual reason is the technical interoperability. For the consumer it is often impossible to separate reason or origin for interoperability.

For audiovisual producers, interoperability is a key condition to favour increase of online services' revenues, as it extends the potential market.

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?

Cultural diversity is not self-sustaining and it needs to be fostered. This is especially vital for countries like Finland with only a small population sharing the unique language and culture.

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?

European film industry is very much nationally and regionally segmented. This is typically the case in Finland with a language that only about five million people understand. VOD and other online services offer a platform for works that would be difficult to distribute in more traditional ways and they offer a possibility for wider distribution. Unfortunately, film consumption is mainly conditioned to marketing and promotion. Furthermore the same national and regional barriers are encountered online as in the analogue world.

A "new" audience, that consumes films only or mainly online, would potentially have a positive impact on film industry of (small) European countries. We all know that an audience for online films already exists, but unfortunately this audience is not loading and watching the films from legal sources. The challenge is in developing profitable online services.

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?

Content producers, at least in Finland, are much too often faced with the demand that they should give their content for free for online and other digital use. A perfect starting point for securing the revenues for professional audiovisual producers would be acknowledging that they are as entitled to a fair share of the profits as other players on the field (e.g. operators and ITC industry).

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?

The setting up of one stop shop systems have to be done in co-operation with all the relevant parties. Audiovisual producers are already co-operating Europe-wide in collective management (for example in retransmission); this expertise and experience of collective management societies is a good base for planning and building new practises.

However we have our doubts about pan-European licensing: European-wide licensing supposes European-wide promotion, which is probably unaffordable for most European stakeholders. As long as VOD services are developed on a territorial basis, in order to be adapted with other – traditional – means of distribution and broadcasting of audiovisual works, there is no need for right holders to envisage pan-European licensing or

authorisations. Ad hoc instruments can perfectly deal with territories and windows, and secured geo-localisation DRM systems are already available.

Interested parties in VOD exploitation rights (telcos, ISPs, cable and IPTV broadcasters, VOD platform operators...), although sometimes global actors, need to clear right for the relevant national market, and not necessarily for the whole European market.

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?

There are no major problems in rights clearance specific to online services.

Film and audiovisual producers are responsible for the exploitation of the works they produced. In order to do so, the exclusive rights of the different participants have to be transferred to the producers. Existing presumption of transfer of rights could also be automatically extended to on line distribution provided the producers grant the licensors a fair share of the new revenues.

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.)?

Online distribution is governed by exclusive rights implemented by DRMs. This is not to be mixed with levies which compensate an exception to said exclusive rights, such as the exception for private copy. Levies have not proven to be an obstacle to the development of online services and related devices, to the contrary. Levies are actually complementary to DRM's: they legitimately compensate right holders for usage of protected works than cannot or will not be managed or prevented through DRMs.

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?

The intellectual property regime constitutes the exclusive protection benefiting to right holders and their works in order to protect their investments and patrimonial rights. IPR is therefore a key element in the protection and renewal of investments in produced protected audiovisual content. Without such produced new audiovisual content, most new online services would become pointless and unattractive to consumers.

For the consumers IPR legislation gives the possibility to legally use professional content; IPR legislation makes online markets possible.

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?

Release windows are successfully used in Film distribution; on line distribution is considered as a new exploitation window. Online services are developing in accordance with release windows and adjusting to traditional exploitation windows and markets.

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?

Internet piracy is seriously hampering the development of legal online film business. CIAP estimates that there are over 150 000 active file shares (music, audiovisual works and games) in Finland.

Legal online services can be a mean to fight piracy by offering the consumer best quality services. In addition to this right holders should have reasonable ways to stop the infringements. At the moment the biggest shortage of curbing the problem, is the lack of quick, simple, efficient and at the same time educative and reasonable ways to stop the infringement.

Creative content and services must get cooperation from other players on the online market; especially from Internet Service Providers (ISP). At the moment ISPs are making revenues from some of their customers' infringements. ISPs must take their share of responsibility in stopping infringements of the copyright protected content. As explained earlier under question 4, due to the privacy legislation in Finland the ISPs cannot act on rights holders' notices of claimed infringements. In most of the cases a simple notice from the right holder – passed by the ISP - would probably stop the infringement.

Cooperation with telecom operators and ISPs should be sought. Drawing on the arrangements set out in the European Charter for the Development and the Take-up of Film Online, the Commission should provide a framework of appropriate measures soon.

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?

The piracy problem cannot be solved without strong ongoing educational programs. As the principles of copyright are much the same in the EU, there could easily be educative material, which could be used in most of the member countries.

A specific program for awareness and educational campaigns could be developed at European level to support member states and/or right holders campaigns.

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?

Certainly this can be possible. Still one must bear in mind that changing the landscape from unauthorized P2P services to legal ones does not happen without proper legal framework, protection for creative content and swift ways to stop unauthorized P2P services.

32. What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?

Public authorities should maintain a balance between the different stakeholders and prepare a playing field where new entrants could be welcomed.

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 market for video on demand services represents a cultural and commercial opportunity for the European film industry. The growing number of video on demand services reflects the public's interest in this mode of consumption. However, the offering of European films is uneven, depending on the video on demand services provided and the countries covered.

The Media programme 2007-2013 should contain a specific action devoted to video on demand, intended to make available the catalogues of rights to European films, facilitating the clearing of rights, the making available (media and standardisation adapted to online distribution), availability of language versions and facilitation of upward flow of revenues.

Such support should enable the shortcomings in the offering on certain services and in certain language areas to continue to be corrected. Such support should be formulated so as to be an incentive for rights holders to make available European works.

In parallel, developing an *ad hoc* program to finance fight against piracy and awareness-raising campaigns should be put up at European level.

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

Yours sincerely,

Tuotos ry



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executive director