

Opinion of the Asociación de Internautas about on-line retailing in Europe

From a general perspective, the Asociación de Internautas (A.I.) proposes taking into account the following points:

1. Small and medium-sized enterprises (SMEs) are at a clear disadvantage in this market compared to the big companies, and this should be solved. The motive is the following:

Copyright should be somehow internationally centralized. While the big companies have the structure and resources to be able to sign agreements with the copyright holders' associations in each country, SMEs cannot afford the complexity of the signing and control of these agreements with each country. Therefore, this prevents their ability to compete in a globalized world.

The ideal scenario would thus be that the main copyright holders' association -or the one that is to be designed- in each country (in Spain would be SGAE, for instance) is in charge to manage the author's rights of the music belonging to any other country. This way, SMEs would only need to sign agreements with their national association in order to sell any kind of music from any country.

Nowadays, this is not happening because of the lack of agreements among the various copyright holders' associations. For instance, many of these associations outside Spain haven't signed agreements with Spanish SGAE yet. Consequently, these societies should have to develop an automatic mechanism for the liquidation of these rights to their counterparts in the country where the music file that is being sold has these rights registered. However, in the current scenario -and to be able to do something like iTunes did- these SMEs should create a different on-line shop (one per country) and should also establish filters to make sure what music can or cannot be sold in each one, something that is completely out of reach for SMEs, given their size, structure and limited economic resources.

To sum up, to avoid creating malfunction in competitiveness and to guarantee the equality of opportunities for every enterprise, the best solution in our opinion would be that the copyright holders' associations in each country were able to manage the authors' rights of every other country, being these associations the ones in charge of liquidating the rights among them, acting as a transparent proxy for the actual on-line reseller of the work.

2. In regard to the technical issue of limiting the selling of certain works according to the country where the sale is actually taking place, we would like to stress the following fact:

The difficulties for the "restrictions per country" in the Internet already came up in late 2000, when the U.S.A. Yahoo! search engine was imposed from France -according to a court ruling- to block the access to the selling or auctioning of Nazi products addressed to the French Internet users. They came to the conclusion that a 70% of the connections could be automatically blocked (in short, certain connections truly and voluntarily state the actual origin of the user) while the remaining 30% could:

- a) cheat the machines simulating a different country of origin, or
- b) the user could simply declare a different country of origin.

Eventually, Yahoo! opted for self-regulation: they completely removed the selling of such products from its auctions service. So, there can be sophisticated systems to detect the country of origin of an Internet user, but they will *never* be 100% reliable; moreover, dealing with machines, they will be easily cheated. Hence, we would like to stress the uselessness of these kind of technical measures.

In case of opting for the above mentioned solution, (i.e: each national copyright holders' association manages the rights of its counterpart in the rest of the world and liquidates the author's rights to them on behalf of the actual reseller) the need for limiting technical measures of a doubtful effectiveness would be also removed.

Besides it would make easily available the sale of any work in any country to the enterprises that want to sell them, no matter their size nor their economic capacity, thus boosting the development of this kind of on-line business.

Víctor Domingo, President of the A.I.

www.internautas.org

www.internautas.tv

presidente@internautas.org