



**PUBLIC HEARING**  
**On**  
**THE GOVERNANCE OF COLLECTIVE RIGHTS MANAGEMENT IN**  
**THE EU**

**Organised by DG Markt**

**23 April 2010**

**BEUC Intervention**

*Disclaimer: check against delivery*

First of all, I would like to thank the European Commission and DG Internal Market in particular for stimulating a debate on such an important topic and for inviting BEUC- the European Consumer Organisation to present the position of consumers.

BEUC is the European association of 43 national independent consumer organisations and has long been involved in promoting consumers' interests and rights in the digital environment.

Copyright law exists to encourage creativity and innovation for the benefit of society as a whole. To do this it needs to achieve balance through the recognition of both the interests of creators and investors, and the interests of consumers. Consumers have an interest in ensuring that innovation is encouraged, and that creators and innovators receive a fair return for their work. However, consumers also have an interest in competitive markets; copyright confers monopoly privileges, which restrict competition and impose costs on consumers.

Given the limited time, I will limit my comments to three aspects that we consider of paramount importance:

1. The need to facilitate multi-territory licensing of copyright;
2. The need to establish a competitive and well-regulated market for the collective management of copyright;
3. The need to reform the current copyright levies systems.

**1. Facilitate multi-territory licensing of copyright**

Consumers seeking to buy copyright protected content online are often only allowed access to online stores directed to their country of residence. Such barriers lead to a significant reduction of choice for consumers, particularly for consumers from the new Member States where there is a less abundant service offer. In addition, territoriality of copyright may lead to price discrimination to the detriment of consumers. Right holders tend to define markets along national borders and set different prices and conditions for identical products and services in each Member States. For collecting societies, the current fragmentation of online content market along national borders is a way to secure extra revenues from national licensing.

However, such a market fragmentation is contrary to the very notion of the Internet as a borderless environment and goes against the objective of the European Commission to establish a **Digital Single Market**.

BEUC strongly believes that the EU should seek to facilitate multi-territory licensing of online content with the aim of enabling consumers across the EU to get access to content of their choice irrespective of their country of residence and allowing commercial users to develop new and innovative business models for the online distribution of content.

A system based on extended collective license, as experienced in the Nordic countries, could resolve some of the complexities of rights' clearance with regards to what the Creative Content Reflection document terms "internet licensing". This system removes the burden from commercial users to engage in costly research efforts in order to identify the right owner and conduct lengthy licensing negotiations. It also provides users with the certainty that they can offer content services without the risk of litigation for copyright infringement.

As a complementary mechanism, BEUC supports the **creation of a database** that would provide information related to ownership of copyrights. It is important to ensure open, transparent and non-discriminatory access to the information contained within this "central database". Clear rules on management and accessibility therefore need to be adopted.

However, the success of the implementation of extended collective licensing would require each national collecting society to grant a single license for the whole repertoire of all right holders across Member States. Hence, the European Commission would need to address issues in relation to the governance and transparency of collective rights management organisations as a matter of urgency.

## **2. Need for competition and regulation**

BEUC has always believed that in a fast evolving environment, regulatory authorities need to ensure that all market players, be it commercial users or rights' administrators, and comply with the rules.

The recent study by the Spanish Competition Authority on collective management of copyright has been a clear sign that the current monopolistic management of copyright is becoming obsolete in the face of technological developments.

Due to the societies' strong negotiation position as monopolies, negotiations with commercial users are far from balanced and may entail the risk of restricting the availability of content to consumers. As all other monopolies, collecting societies should be strictly regulated

Competition rules can be an efficient tool to improve the current system of collective rights management. In order to ensure that collecting societies do not abuse their dominant position and that they compete in terms of quality of their services and level of administrative costs, it is essential to ensure that commercial users are able to choose a collective society in the Member States of their choice, in order to clear rights for the provision of content services either across the EU or in those countries they want to provide their services to. Within such a competitive environment, the costs for the licensing of content online will be reduced to the benefit of the end-user.

Competition authorities should also ensure that the online content market is not monopolised by a small number of major content providers. The role of competition rules should be to ensure that consumers “do not get more of less”, in the sense that unless the market is open to competition, consumers might only be granted limited choice, while content providers will not have the appropriate incentives to improve the quality of their services, compete in terms of prices and develop consumer-friendly business models.

However, liberalisation through competition will not achieve results unless it is combined with the adoption of regulatory measures. BEUC believes that regulatory intervention is required to ensure transparency in the operation of collecting societies. Self-regulatory measures regarding transparency and governance of collecting societies have been in place for a long time, without however achieving satisfactory results. BEUC therefore calls upon the European Commission to adopt common principles and standards governing the supervision of collecting societies through the establishment of independent, regular and expert control mechanisms.

Regulatory oversight of tariffs is also needed and to this end, the Commission should conduct a comparative review of regulatory systems for collecting societies on an international level, with particular focus on how regulatory systems ensure that fair tariffs are set.

### **3. Reform of the current copyright levies systems**

Issues of collecting societies’ governance and transparency are particularly apparent with regard to the way in which levies are imposed and administered across member states, and have raised considerable concerns. Collecting societies enjoy a monopoly in imposing levies and identifying their beneficiaries. Levies are justified under the fair compensation provision in the InfoSoc Directive but collecting societies mostly impose levies on an arbitrary basis that are not justified in terms of the economic damage caused by private copying.

BEUC has recently published a discussion paper on copyright levies and fair compensation, in which we have identified a number of problematic areas related to the current copyright levies system:

- Copyright levies are simply a tax and constitute a system of “rough justice”. They apply to both consumers that engage in acts of private copying and to consumers that do not engage in these acts;
- Second, consumers have to bear the cost of levies even if the act of private copying causes no more than minimal economic harm to right holders;
- Third, levies apply to multi-function products that are not dedicated primarily to private copying acts;
- Fourthly, payment of fair compensation is only due when consumers copy legally and is not intended to compensate right holders for acts of illegal copying. BEUC is concerned about the efforts by rights holders to increase the total amount of copyright levies to compensate for the alleged losses of their revenues due to unauthorized use of copyright-protected material;
- Fifthly, consumers currently have no idea that they pay for a copyright levy and what they pay for.

BEUC strongly believes that copyright levies as a form of compensation do not correspond to the needs of the digital environment and should be progressively phased out. The more digital content consumers are able to acquire as part of licensing services, the less need there is for private copy compensation, since right holders will be directly and fairly compensated.

The last point I would like to raise is that the organisation of today's Hearing is a very positive first step towards the reform of the current copyright management framework. However, it is imperative that the European Commission adopts concrete actions as follow-up to the Reflection Paper on creative content online. A number of issues remain to be solved and most importantly the absence of clear and absolute consumers' rights from the current copyright framework.

Despite the increasing relevance of copyright law to their daily lives consumers are provided with hardly any information when it comes to copyright. According to the research by Consumer Focus 73 per cent of British consumers are 'Never quite sure what is legal and illegal under current copyright law.

A number of permitted uses of copyright-protected material are only allowed as exceptions and limitations to the copyright owners' exclusive rights. However, these exceptions and limitations are not absolute conditions and consumers often face unclear boundaries as to which acts are permitted under the current copyright legislation.

It is time for action and the European Commission should adopt concrete measures and actions to ensure that our copyright law keeps pace with the digital developments and establish a simple, consumer friendly legal framework for accessing digital content in Europe's single market, while ensuring at the same time fair remuneration of creators.

Thank you

END