

Contribution on the Communication from the Commission on Creative Content Online in the Single Market

Responding to the Commission's invitation, the Agencia Española de Protección de Datos (hereinafter referred to as AEPD), as the Spanish data protection supervisory authority in accordance with Article 28 of the Directive 95/46/EC, taking into consideration its duty of protect the individuals' rights and freedoms with regard to the processing of personal data, would like to issue its opinion of the proposals contained therein.

INTRODUCTION

The AEPD is conscious of the importance that a fully developed market for online creative content may have, both for citizens and companies. For citizens, it may mean a new way for create public opinion, and to improve the freedom of expression rights. For companies, it means the possibility to exploit new services, contributing to economic growth and job creation.

Furthermore, AEPD is aware of how the consequences of the piracy and the unauthorised sharing of copyrighted contents by Internet are concerning to the content owners and to the industries. In this sense, the AEPD acknowledges the necessity of implementing measures to safeguard the interests of holders of intellectual property rights against this kind of fraud.

Notwithstanding the aforementioned, this Authority is obliged to remind that the development of new technical measures for the enforcement of copyright must always respect the obligations and rights set down in the Data Protection legislation, guaranteeing the protection of the privacy of the individuals.

AEPD COMMENTS TO THE COMMUNICATION COM(2007) 836 FINAL

Taking into account that the Communication from the Commission is aimed at interested stakeholders, from the creative contents point of view, this Agency considers that the data protection problems don't fit in any of the particular issues for consultation raised therein. For that reason, the AEPD respectfully presents the following comments:

- As the International Working Group on Data Protection in Telecommunications has state on its "Common Position on Privacy and Copyright Management", the AEPD considers that the privacy-friendly protection of intellectual property in essential for the development of global commerce.
- One of the most commonly used DRM system is that one which consists in tagging each copyrighted work with a unique identifier, using digital watermarks. As

emphasises the Article 29 Data Protection Working Party¹ on his “Working document on data protection issues related to intellectual property rights” (WP 104, dated January 18, 2005), these tags should not be linked to an individual except if this link is necessary for the performance of the service, or if the individual has been informed and has consented to it.

- In order to improve consumers’ information in respect of DRM systems, this Agency approves of the initiative suggested by the Commission, regarding to provide consumers with an accurate and easily understood labelling system. Anyway, when the use of a DRM system means the processing of personal data, this labelling system should not be limited to inform about interoperability and usage restrictions, but should also include the information established by the data protection legislation in the corresponding Member State.
- Likewise, the processing of personal data collected by these methods should comply with the principles relating to data quality, stated in article 6 of Directive 95/46/EC.
- The AEPD would like to remind that ISPs should not disclose personal data to third parties, without prior consent given by the data subject, except in those cases specifically provided by Law. At the moment, ISPs are not under the obligation of establish co-operation procedures with the holders of intellectual property rights, nor to retain the data relating to electric communications for fighting piracy purposes.
- As the Court of Justice of the European Communities recognizes in the judgement in case C-275/06, dated 29 January 2008, at present the exceptions permitted by the directives on the protection of personal data allow the possibility of the establishment by the Member States of the measures necessary for the protection of the intellectual property rights. Therefore, any legislative change set in motion by the Commission should take into account the general principles of Community law, in order to permit a fair balance between the rights to protection of property and those to protection of personal data.
- Finally, this Authority would like to state its will to take part in the “Content Online Platform” proposed by the Commission, either directly, either by means of the Article 29 Working Group, as a way to promote the reach of the fair balance claimed by the Court of Justice of the European Communities.

¹ This Working Party was set up under Article 29 of Directive 95/46/EC.