

The European Commission Communication on Creative Content Online

UK Government Response – 29 February 2008

1. This paper outlines the HM Government's response to the Communication on Content Online adopted by the Commission on 3 January 2008. It will address, but not be limited to, the questions raised in the annex to the Communication.
2. We welcome the Commission's recognition of this sector as an important one for the future of the audiovisual industries in Europe. However, we feel that the situation is more complicated than it appears to be suggesting. There are clear dangers in legislating at the EU level at this stage in such a fast moving environment.
3. The experience of the UK market suggests that many of the issues that the Commission is seeking to address will be resolved by the market as the sector develops. Intervention could distort natural market development here and as such we must be very careful to take action at this early stage only where there is strong evidence of a need to do so.
4. We would like to see more use made of evidence to support the positions outlined by the Commission – and specific proposals for a Recommendation will need to have a strong evidence base. The UK Government, and stakeholders such as the Music Users Council of Europe, supports the proposal to establish a Content Online Platform (COP) to engage with stakeholders and we consider that this new approach provides an excellent opportunity for a more detailed discussion of these issues to help, and it is essential that this process be used to develop the evidence base.
5. We question the assertion that there is a lack of availability of creative content online. Stakeholders consider that the exploitation of the technology is not an issue and there is no shortage of content.

Digital Rights Management

6. We consider that work on improving information for consumers on Digital Rights Management (DRM) is important and is a key factor in helping users to better understand and respect copyright rules. In the UK action is already being taken at Member State level – the Gowers Review made a number of recommendations on this issue, which are being taken forward by the government.
7. If the Commission is considering proposing action in relation to the application of DRMs we consider that further evidence is required – in particular evidence that there is currently market failure. The paper appears to be using evidence from problems in other sectors to justify action on creative content online. We do not consider that this is an acceptable basis on which to proceed.

8. Without the revenues protected by DRM, some nascent companies might struggle to make the transition to content online.
9. The situation on DRM across Member States varies too much for such a “one size fits all” arrangement. The Premier League has stated that, in their view, this issue should be left to the market and that regulation at this time could adversely affect choice and innovation.

Multi-territory Rights Licensing

10. At this stage we are not convinced that a Recommendation is appropriate here. The online sector continues to develop and in the absence of a clear market failure we must be very careful about interfering too early in its development.
11. In view of these concerns we would welcome further information from the Commission explaining where difficulties are currently arising and how they are limiting the distribution of online content.
12. Generally we do not think that a “one size fits all” solution is appropriate. Many of our stakeholders, such as the British Equity Collecting Society, view this as impractical for nurturing innovation in new business models, and the assertion by the Commission that Multi-territory Rights Licensing would be appropriate for businesses operating on the principles of the “Long Tail” theory is incorrect.
13. Some audiovisual content will be much more suitable for broad dissemination across Europe while the audience for other types of content may be limited to a few areas – for example due to language and cultural differences.
14. It is possible that too much reliance on multi-territory licensing may impact adversely on cultural diversity. The history of European television is one of localisation, providing high quality content which responds to local culture and interest. To the extent that this content has potential audiences outside its traditional base we would expect that the market for content would respond to this – either through multi-territory licensing or national licensing. If we seek to deliver multi-territory licensing in all areas this could actually lead to homogenisation and a dilution of the quality and cultural diversity of content. It is also possible that too much of an emphasis on multi-territory licensing could make it harder for smaller enterprises to enter the market for the delivery of content.
15. It is vital that this issue is constructively debated and analysed by the Content Online Platform prior to any Recommendation, in order to engage with stakeholders and legislators. We also consider that more work needs to be done to inform European Parliamentarians and officials about the current situation on licensing.

16. Furthermore, any discussion of a possible Recommendation in this area must take proper account of the Commission's 2005 Recommendation on Online Licensing of Music.

Legal Offers and Piracy

17. While the Internet has brought new business opportunities for rightsholders, the growth of illicit content on the internet is a key challenge and needs to be addressed.

18. The Commission outlines four areas where action can be taken to try and tackle piracy and copyright infringement – we agree with the Commission that action in these areas can help to address these issues. In the UK, action is already being taken on all these fronts with the Government playing an appropriate role.

19. Following the recommendations of the Gowers Review, the issue of illicit filesharing is currently under consideration within the UK. We remain hopeful that rights holders and ISPs will reach a voluntary agreement on co-operation, but we have made it clear that we will act if necessary. We plan to begin consultation in this area in the next few months.

20. We are concerned however that action at the European level might be unnecessarily restrictive in this area. Firstly, it is important that we recognise that in many instances we are talking about the protection of private rights and the evolution of new technologies and business models by rightsholders to respond to the challenges of new markets. We must take care not to interfere unnecessarily in these areas.

21. Secondly, given that in many instances there will be a range of possible actions/solutions that can be taken; we do not want to compel the adoption of particular solutions which may not be appropriate in all Member States.

22. For example, whilst the French Memorandum of Understanding (MoU) is important, it would be difficult to apply it as an example to be followed in every Member State, given the disparity in levels of development. Legal differences would also make a wide adoption of the French model inappropriate. But we would support information being gathered about what Member States might be doing in this area since, while the solutions might necessarily differ, the problem is common.

23. Filtering measures may be an effective way of preventing infringements; however they are not the *only* way, and it is not yet clear whether they are fit for purpose, particularly where a very high degree of accuracy is needed, such as around false positives. We also need to be aware of the possibility of a technology arms race being prompted, with file sharers moving to anonymous peer-to-peer networks. In short, they may well be part of any solution but they are unlikely to offer a panacea.