AETIC
Asociación de Empresas de Electrónica, Tecnologías de la Información y Telecomunicaciones de España

Creative Content Online – Policy/Regulatory issues for consultation

Digital Rights Management

1) Do you agree that fostering the adoption of interoperable DRM systems should support the development of online creative content services in the Internal Market? What are the main obstacles to fully interoperable DRM systems? Which commendable practices do you identify as regards DRM interoperability?

Interoperability allows different services to be adapted to different platforms and devices. So this means a great advantage for the consumer, who increasingly requires access to content regardless of platform or device. It is clear that existence of interoperable DRM systems seems to be good for the development of this market, and so no external mandate seems currently to be needed in order to achieve it.

Interoperability should work in three directions: (i) on devices (ii) on providers and (iii) on platforms. Interoperability would make it easier for companies to decide which DRM platform to use, rather than acting on obligations from providers and collecting societies.

DRM should be freely adopted, not be imposed by rights-holders. Only in this way the market will be able to achieve the most convenient solution for end users and, thus, for interested agents.

The use of DRM technologies in relation to online creative content services is necessary for copyright holders and network operators to prevent unauthorized duplication of the works licensed to ensure continued revenue streams and for the development of the market. In any case, we think that the benefits of using DRMs should focus more on making available new business models than in piracy issues.

Differences among industrial interests and commercial interests of rights-holders, content platform operators and technology companies seem to be one of the main obstacles.

This is because both manufacturers and operators at this moment regard DRMs as a way of building brand loyalty; they seem keener on reaping these benefits than on achieving standardization. It is not clear at this point if this is the right approach for developing the e-content market.

In practice, DRMs are developed/adjusted for each specific service, device and/or platform: therefore for a specific service, the main obstacle would be the variety of different devices, not only within the same type of platform (Mobile, PC, IPTV) but also among the different platforms the user could try to use later: for example, content bought through a specific mobile handset cannot be used later on a PC platform and often cannot be transferred to a new mobile handset if the user wishes to change the brand, carrier, etc.

AETIC considers it would be useful for interested agents to work on the implementation of an international standard that would define the structure for this system, in order to create scale economies and promote a global market not controlled by any one provider of DRMs solutions.

The standardization process is a key issue for the development of DRM interoperability. But not only the promotion of standards is important: DRM standards like DRM OMA have a lot of problems with third party patents not included in the patent pools. This situation creates uncertainty for operators and other content distributors which make it difficult to commercialise a standard implementation.

Nevertheless, it might be useful to adopt an intermediate solution to mitigate existing difficulties before defining an international standard for all systems. Such stepping stone could

be the use of standards developed from SDOs or to enable devices to interface with multiple different platforms.

In this respect, improving DRM transparency (e.g. providing consumers with a clear description of compatible products/platforms etc), provided it is properly implemented, would allow the consumer to be aware of the limits of DRM, and therefore be able to choose the most appropriate solution.

2) Do you agree that consumer information with regard to interoperability and personal data protection features of DRM systems should be improved? What could be, in your opinion, the most appropriate means and procedures to improve consumers' information in respect of DRM systems? Which commendable practices would you identify as regards labelling of digital products and services?

Consumers are looking for new ways to make it easier for them to access content in a way that suits their needs. This is probably an area in which interested agents are already working to make improvements.

Consumers need to understand that the DRMs are keys in order to facilitate access to content. In this sense, consumers need to know that DRM is a key device for the management of legal content on line, that would imply advantages for them such as allowing them to download audio or video files from a secure network site, without virus or malicious codes: choosing content with flexible payment models and; of course, transferring that content to their private devices.

Likewise, it is necessary to tackle the perception that has grown up amongst consumers that DRMs unfairly restrict their rights and their flexibility in using the content they purchase and, at the point of purchase, to provide them with clear information about the presence of DRM, and the key rights it implements e.g. device/number of copy authorized.

It should be clear for the customer that DRM will allow the development of new contents and new consumption models that will provide for more choice and utility for them in the medium term.

Consumers must be informed about the rights they are acquiring with absolute certainty. Agents should be aware of this and work towards solving this problem.

Likewise, it would be really useful to label digital products and services, indicating their rights and restrictions to the access of contents, trying to achieve a familiarity between consumers and these new products/services. Consumers have to perceive this product as a positive way of access, not as a barrier.

3) Do you agree that reducing the complexity and enhancing the legibility of end-user license agreements (EULAs) would support the development of online creative content services in the Internal Market? Which recommendable practices do you identify as regards EULAs? Do you identify any particular issue related to EULAs that needs to be addressed?

Unnecessarily complex EULAs contribute to the negative perception of new consumption and business models and may, therefore, deter some consumers.

In order to reduce the complexity and enhance the legibility of end-user, the EULAs should have transparent, easy and simplified clauses.

It would be a good practice to highlight key restrictions (e.g., ability / right to transfer to other devices, limitations on the number of 'burns') at the time of purchase not bury this in the small print.

4) Do you agree that alternative dispute resolution mechanisms in relation to the application and administration of DRM systems would enhance consumers' confidence in new products and services? Which commendable practices do you identify in that respect?

We do not think that alternative dispute mechanisms are so important in order to improve consumer confidence on DRMs. In this respect, good and well-targeted communication actions and customer habit would be more useful.

Ultimately, consumers want access to the content, and they do not expect to go through a lengthy administrative process to achieve it.

Likewise, there are several mechanisms in order to enhance security and confidence to consumers such as licenses, agreements, legislative measures (for example, intellectual property laws) and technical mechanisms based in protective instruments (such as digital certificates).

It is necessary to launch the DRM system as a system with the aim to enhance the welfare of consumers and not as an access barrier to quality content.

The advent of DRM systems means important changes in relation to the traditional management of rights, since its main objective is to avoid unauthorized uses of content. This new model implies a new way of managing rights as it avoids duplicate payments to the rights-holders; first as a levy due to the private copy included in the purchase of devices and secondly in the acquisition of the right to use this particular content. Moreover, we should avoid incongruence such as the payment of a copyright levy due to a private copy whenever a DRM does not permit you to make that copy. In conclusion, this system will imply a change in the traditional remuneration system, based on the future development of a "fair payment" for both the consumer and the rights-holders.

To achieve this new model, it is necessary to harmonize legislations between countries regarding remuneration systems (levies, quantity, devices) since the diversity of legislations hinders the creation of a global management remuneration system even within the EU.

5) Do you agree that ensuring a non-discriminatory access (for instance for SMEs) to DRM solutions is needed to preserve and foster competition on the market for digital content distribution?

We consider that open standards and interoperability, as defined by the industry, are the best way to broaden the access to DRM solutions.

Multi-territory rights licensing

6) Do you agree that the issue of multi-territory rights licensing must be addressed by means of a Recommendation of the European Parliament and the Council?

First of all we believe that any proposal must be workable in practice regarding this issue. In practice, this will be easier if industry works together rather than if something is imposed from outside.

Even more important than multi-territory licenses, it would be desirable to encourage the creation of multi-repertoire licenses within the European Union. The European Commission should encourage Member States to allow for the creation of global multi-repertoire licenses, and not only a multi-territory ones, which are just an incomplete solution and do not reflect one of the main EU objectives, the Internal Market.

The development of multi-territory licenses, without ensuring global multi-repertoire licenses, would hardly suppose any benefit for the market, because the access to these types of licenses is very strict and limited.

AETIC is of the view that this should constitute an Internal Market concern (Article 3.c of the ECT). While in most economic areas, the EC is working hard to build an internal and common market, with Intellectual Property Rights there are still significant frontiers dividing the different Member States.

Likewise, a pan-EU license could be attractive to an operator only if it provides advantages without creating extra administrative/reporting burdens on them.

7) What is in your view the most efficient way of fostering multi-territory rights licensing in the area of audiovisual works? Do you agree that a model of online licenses based on the distinction between a primary and a secondary multi-territory market can facilitate EU-wide or multi-territory licensing for the creative content you deal with?

The most efficient way to foster immediate multi-territory rights licensing would be to guarantee to carriers, ISPs and right owners the freedom to negotiate full rights (global multi-repertoire) in any of the EU countries under a full competitive scenario. Otherwise, any form of establishing fees unilaterally by copyright owners or collecting societies means supporting the current monopoly situation, which is detrimental for end users.

"Primary" and "secondary" are not terms we commonly encounter in licensing so it is not clear what is meant by this. Is this intended to promote the granting of non-exclusive licenses in the music and audiovisual sectors, so that even where a "primary" license is granted to a more traditional media operator, such as a TV channel, a second license can still be granted to a new media operator better able to exploit content online?

Any action aimed at promoting the competition in contents and rights is good for the market, even the segmentation in Markets 1 and 2.

An initial step towards multi territorial licenses could be based on allowing the consumer to access the content from any Member State and removing technological measures that support these restrictions.

8) Do you agree that business models based on the idea of selling less of more, as illustrated by the so-called "Long tail" theory, benefit from multi-territory rights licences for back-catalogue works (for instance works more than two years old)?

AETIC believe that all type of business models would benefit from multi-territory rights licenses, not only the so called "Long Tail".

Legal offers and piracy

9) How can increased, effective stakeholder cooperation improve respect of copyright in the online environment?

The creation of discussion groups and platforms would be useful for increasing cooperation between different players. These discussion groups and/or platforms would analyze, identify, define and promote different alternatives for offering content and implementing new business models.

10) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to be followed?

AETIC thinks that there are a lot of technical, commercial and legal difficulties to implement the principles and measures set out in the French MOU. Since there are a lot of unclear issues, any position about the MOU should be based on the study of the concrete actions derived from the MOU. We consider therefore that it would be necessary to examine the obligations one by one to say whether we agree/accept them or not.

There are some legal questions contained in the obligations there established that we do not agree with; for example, an ISP cannot accept to implement, in the peer-to-peer framework, a system of notifications for alleged illegal downloading coming from the customers, except when there is an order/decision of a Judicial Body and only when the ISP has been duly notified of this order/decision. If not, many Constitutional rights (i.e. secrecy of communications, consumer's privacy, personal data protection, etc) could be infringed.

In the Web (www) environment, it would be different as in Spain the implementation of a notification process with the alternative of creating an administrative independent body is being considered. This could be a solution (at least for the Web www environment) but it would depend on how it will actually work in practice.

Even though the French MOU seems to be very ambitious, many stakeholders are very sceptical about the practical implementation of this MOU in future legislation as the MOU would have to go through Parliament in order to modify at least four French current laws: copyright, data protection, telecommunications and consumer protection.

11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?

Filtering measures are based on filtering technologies: p2p, bit torrent, etc. As a matter of principle, use of technologies should not be punished rather improper use of the content.

From a business point of view, we believe that fighting against piracy is not only a question of implementing technology measures but of offering "value for money". The key to success would be to achieve the right balance between both. The problem is that currently, the strategy of many content providers is the opposite, requesting technological measures that are increasingly complex, difficult to implement, and demanding very high prices for the content, which make most of the new business models impossible.

Finally we believe that much of the 'battle' involves addressing customers' expectations. Users want to access quality content and customers' general perception is that once they have paid for content in one format they should 'own' it and be able to use it across multiple platforms. Conceptually, customers do not understand why they need to buy two separate versions of the same track/video for use on their mobile and PC respectively, and why they cannot then burn this content for use in a CD/DVD player. The industry should work together to facilitate this OR educate consumers on why this is not possible so they do not feel that they are being 'ripped off', which may be used as justification to purchase illegal versions/strip DRM.