



CONFINDUSTRIA

ASSOCIAZIONE NAZIONALE INDUSTRIE  
CINEMATOGRAFICHE AUDIOVISIVE E MULTIMEDIALI



Viale Regina Margherita, 286 - 00198 ROMA  
Tel: +39 6 44 25 96 1 - Fax: + 39 6 44 04 128 Web: [www.anica.it](http://www.anica.it) - E-mail: [anica@anica.it](mailto:anica@anica.it)

**CREATIVE CONTENT ONLINE – POLICY/REGULATORY ISSUES FOR CONSULTATION**

**A. 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?***

In ANICA's view, the development of an interoperable and open DRM system, based on a common scheme for the identification and tracking of contents and works protected by copyright would encourage the distribution of creative content online. ANICA believes that DRMs should not be used as a tool for the commercial policy of online distributors (i.e. as an instrument to control the circulation and use of a product by end-users) but they should be genuinely aimed at ensuring that the online distribution of content does not unduly leave the door open to piracy and other violations of copyright.

The major obstacle, at the moment, is to be found in the absence of a common model for the use of DRMs by all operators. In order to overcome this obstacle, it would be necessary for the European Commission to provide the necessary guidelines, at least with non-binding measures. Those guidelines should be implemented by national authorities or directly by operators.

***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 labeling of digital products and services?***

ANICA believes that consumers should be aware, when they purchase online content covered by copyright, that such content is protected through a DRM system. However, customers should also be clearly informed that the purpose of DRM systems is exclusively to ensure that the rights of content owners are protected. Information about the functioning of relevant DRM systems should be made available on websites offering content online. Transparency of market practices would reinforce consumers' confidence in the legal market for content online.

ANICA deems essential for national authorities to promote effective communication campaigns, developed and managed with the most representative bodies of right holders, users and consumers.

**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?**

In ANICA's view, it is crucial that consumers are aware of the importance of EULAs and of the negative consequences that violations of those agreements may have for the creators and owner of content. Mutual respect between right-owners and users is a function of the protection of cultural diversity.

Beyond any doubt, the cooperation between representatives of the industry and of the users would lead to improve, where necessary, the wording and accessibility of EULAs, particularly of those parts of the agreements which are the most relevant to users.

**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?**

ANICA firmly believe that, in order to prevent disputes over the application of DRM systems, the best strategy would be to make clear, in terms understandable by the general public, the rights and duties which users acquire when they purchase creative content online. The content industry is suffering from a lack of effectiveness of enforcement of copyright protection. This should take priority over the introduction of ADR mechanisms connected to the use of DRMs.

**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?**

The possibility of using fair and effective DRM systems should be open to all content creators. Therefore, the adoption of an open and non discriminatory standard for DRMs should be encouraged by the EU.

## **B. 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?**

The issue of multi-territory licenses is very complex, and is a consequence of the fragmentation of rights, not only on a geographic basis, but also between more right holders within the same national territory. If, on the one hand, the availability of multi territory or pan-European licenses can be identified as an ideal condition for an increased availability and circulation of cultural content, on the other hand this condition seems to be currently incompatible with the structure of national markets and the commercial practices adopted by operators in the various territories. A recommendation would be useful only if it indicated balanced and practicable solutions. The models proposed to date do not seem to provide an adequate solution for the issue of multi territory licenses.

**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 licences 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?**

**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)?**

At present, there is no agreement on any prospective study which may support the option for one particular business model rather than the other (long tail vs. primary/secondary markets). The most viable organizational and economic solution should necessarily descend from an agreement between network operators, ISP and right owners. Such an agreement is yet to be reached.

## **C. LEGAL OFFERS AND PIRACY**

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

ANICA deems cooperation between stakeholders to be extremely important. The distribution of creative content online is an opportunity for the development of content production and distribution, the growth of broadband Internet services and the competitiveness of the equipment industry. None of these industries involved can develop without or at the expense of the others. Therefore, stakeholders should cooperate, for example through consultations and the definition of common code of conduct, in order to develop systems and practices capable of hindering violations of copyright.

ANICA, on the other hand, believes that an intervention of the public sector, at both the European and the national level is necessary in order to ensure that copyright enforcement can be fast and effective.

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

ANICA favors solution such as the Memorandum of Understanding adopted in France on 23 November 2007, since it involves all the public and private parties in supporting the development of a market for content online, requiring the respect of copyright as a primary condition.<sup>1</sup> We also note that the said Memorandum calls for a generalized application of reduced VAT rates for cultural products throughout the EU. ANICA strongly supports this point.

ANICA believes that network operators, Internet Service Providers and content-sharing platforms should cooperate with right-holders in order to avoid that protected contents are illegally exchanged online. A system of tracking should be put in place to this end at the European Level.

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<sup>1</sup> "Accord pour le développement et la protection des oeuvres et programmes culturels sur les nouveaux réseaux". Available at the following URL:  
<http://www.culture.gouv.fr/culture/actualites/index-olivennes231107.htm>.

A system of automatic warnings and sanctions may, without harming the rights and the privacy of users, provide adequate and effective protection of copyright. It is undeniable that a solid and effective enforcement structure should be put in place by member States. This does not necessarily entail the institution of a new administrative authority, provided that the enforcement of copyright is guaranteed.

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

ANICA would like to recall the ruling of the Brussels court of 12 July 2007 in the *Sabam v. Scarlet* case.<sup>2</sup> This ruling not only shows that it is possible and workable to impose a filtering system on Internet traffic in order to prevent illegal file-sharing. The judgment also shows that imposing a filtering measure guarantees copyright protection without infringement other rights protected by EC Law, such as the right to confidentiality.

The decision above should be taken as a benchmark by European legislators and/or regulators in order to provide a EU-wide solution to the problem of online piracy.

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<sup>2</sup> Available at the following URL: <http://www.juriscom.net/jpt/visu.php?ID=939>