

European Commission
DG Information Society and Media
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COPYSWEDE and KLYS with joint statement regarding the EU commission's Communication on Creative Content Online in the Single Market, (COM (2007) 836)

Copyswede – the co-operative economic association Copyswede has as its objective to conclude agreements and to collect and distribute payment for certain further exploitation of copyright protected works and performances on behalf of the artists' member organisations and in cooperation with the producer organisations as well as radio and TV companies. The areas in which Copyswede has primarily worked relate to the further use of works and performances in the form of sound and moving pictures, primarily radio and TV programmes. Copyswede has 14 member organisations that all represent authors and performers in Sweden.

KLYS – The Swedish Joint Committee for Artistic and Literary Professionals – is an umbrella organization for different artistic occupational groups within word, sound, image, stage and airwaves. Through its 18 member organisations KLYS represents c. 30 000 professionally active Swedish authors and performing artists within different forms of art. KLYS's foremost task is to improve the artists' conditions through coordinating the member organisations' views on matters of common interest such as copyright, the labour market and social insurance matters, tax matters and those relating to freedom of expression.

Introduction

Behind each creative content of music, film, literature and art on the Internet there is a human creative effort, an artist with the ambition of reaching a public in order to amuse, disturb, entertain, criticise, debate or affect in some other manner. It is the artists creative effort that is basically the motive force and the prerequisite to all creative content online. Today's highly industrial media scene makes it easy to overlook that a right holder is not always the same thing as an author or performing artist. It is important to distinguish the different categories of right holders, as they have different interests and motives. In order for consumers in Europe to have access to films, music, news or plays online, it is necessary for there to be opportunities for right holders, as in authors and performing artists, to be paid in proportion to the creative effort they represent. The development of new content services in the EU is promoted through a strong copyright where the author or performing artists have control over their work and can receive reasonable payment for their work.

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COPYSWEDE ÄR EN EKONOMISK FÖRENING FÖR KONSTNÄRSORGANISATIONER NÄR DET GÄLLER BEVAKNING AV UPPHOVSRÄTT I NYA MEDIER, BLAND ANNAT VIDEOGRAM, KABEL-TV OCH SATELLIT. I COPYSWEDE INGÅR FÖLJANDE MEDLEMSORGANISATIONER: BILDKONST UPPHOVSÄTT I SVERIGE (BUS), FÖRENINGEN SVENSKA TECKNARE, FÖRENINGEN SVERIGES KONSTHANTVERKÄRE OCH INDUSTRIFORMGIVARE (KIF), SVERIGES LÄROMEDELSFÖRFATTARES FÖRBUND (SLFF), NORDISK COPYRIGHT BUREAU (NCB), SVENSKA ARTISTERS OCH MUSIKERS INTRESSEORGANISATION (SAMI), SVENSKA TONSÄTTARENS INTERNATIONELLA MUSIKBYRÅ (STIM), SVENSKA FOTOGRAFERNS FÖRBUND, SVENSKA JOURNALISTFÖRBUNDET, SVENSKA MUSIKERFÖRBUNDET, SVERIGES DRAMATIKERFÖRBUND, SVERIGES FÖRFATTARFÖRBUND, SVERIGES YRKESMUSIKERFÖRBUND (SYMF), TEATERFÖRBUNDET.

FÖRENINGEN INNEHÅR F-SKATTEBEVIS. REGISTRERINGSNUMMER FÖR MERVÄRDESKATT: 01769602-003601.

It is good that it has been noted on the part of the Commission that art and culture is an important economic factor, but it is important in this context to also stress other values of culture than simply that art serves as a contributory factor to economic growth. Culture shall never be merely an instrument for achieving economic growth when the principle of artistic freedom is threatened by political utilitarian way of thinking. It is important to carefully balance cultural and financial interests against each other.

New content services may, as the Commission stresses in the announcement, need both economy of scale advantages and the cultural diversity that the EU's single market has to offer. What is disturbing in this context is that, in its communication, the Commission does not even mention the UNESCO convention on protection on cultural diversity. According to article 151 of the Treaty of Amsterdam, the EU shall strive to promote and respect cultural diversity. Cultural diversity, with its fantastic richness of creative content, is of importance to several different sectors of society and has, for these reasons, come close to the three areas of development, economic, social and sustainable development in the Lisbon Strategy. It is of the utmost importance that the discussion on cultural diversity and UNESCO's convention on protection on cultural diversity is raised and achieves a central position in the continued work aimed at development of creative content on the online in the single market.

Challenges and proposals

The four horizontal problems that the Commission identifies are all complex. Copyswede and KLYS's response is restricted to more comprehensive matters, though with certain intensifications.

In the Commission's Staff Working Paper, in the chapter on challenges, problems are envisaged with regard to a number of anticipated effects of the private copying levy system (PCL).

For example, the hardware industry's view is presented that the PCL system in Europe, and then first and foremost the fact that these are different in the member countries, has an inhibiting effect on the free movement and that this in turn impacts on the dissemination of the hardware that is presupposed for online distribution of creative contents. Copyswede and KLYS can agree that there can be found good reasons for discussing the PCL system's structure and the levies at a European level, since differences between the member states run the risk of complicating the handling of PCL in different ways. However, it can be noted from a Swedish perspective that the assertion - that PCL systems prevents the free movement of the products in question and would thereby also affect the single market for the distribution of creative contents - is totally without foundation. The range of relevant products on the Swedish consumer market is very good. As a consequence of the Swedish PCL legislation's construction Copyswede, together with the domestic electronics industry's organisations, carefully follows the development of the market for these products with the aim of noting, in time, any excessive market disturbances.

The same section also deals with the problem concerning consumers, who are paying PCL on an ever-increasing number of products, also being prevented in their private copying by copying protection. DRM can, according to the Commission, have a negative effect on the consumers' willingness to acquire new services online for digital content. In this context it is also stressed that, according to the Copyright Directive, Article 5.2 (b), when determining the level of PCL the presence of copying protection should be taken into account. It is quite clear that this way of thinking is aimed at situations when PCL is payable on equipment for copying, i.e. devices

without their own ability to record, as the presence or lack of available sources can be expected to influence the extent to which the equipment is actually going to be used for private copying. In Sweden, however, payment is only made on storage media and devices with their own storage capacity and even then only on such storage media and devices that are especially suitable for private copying. One may then note that as far as storage media etc. are concerned any occurrence of copying protection has a self-regulating effect in relation to PCL since copying is only made of such material that is available for copying. If, in the future, copying protection should lead to reduced private copying on e.g. empty CD-R discs, then the sales of these will naturally diminish to a corresponding extent. It may, however, be noted that no development in such a direction can be reported from a Swedish perspective. The range of non-copying protected material in the form of CD:s, downloads and TV and radio transmissions are still extensive and largely unaltered. It is worth noting that the DRM system that, to a certain extent, is employed for certain online distribution (downloads), does not influence subsequent private copying. Neither the TPM system that restricts the possible number of copies or locks the media file to a player from a certain manufacturer or certain manufacturers, nor so-called watermarking, affects the fact that the private copying that occurs shall be covered by the PCL system. Where Sweden is concerned, the PCL system and the consumer's opportunity for private copying are currently a facilitating prerequisite at present for the development of consumer-friendly services for creative content online.

The question of interoperability of DRM systems is difficult to analyse and since the motive force behind the development of DRM systems is the hardware manufacturers and distributors' striving to find new business models for their activity, rather than the rights holders and consumers' interests and needs.

With regard to the problem area that the Commission identifies and calls "legal offers an piracy" it may be briefly stated that increased dissemination of creative content is partly achieved by a harmonised, strong copyright. This should be the point of departure in the discussion that is to be conducted in the "Content on-line platform" proposed by the Commission.

In order to be able to offer Europe's consumers increased access to creative content there is a need for a living, creative sector that, in turn, means that authors and performing artists are paid for their achievements. Copyright, both the economic rights as well as the intellectual rights, are of fundamental importance to cultural workers. Payments based on copyright are one of the most important sources of income for these occupational groups. The intellectual rights protect the authors and performing artists from violating changes to their works and performances. A strong copyright protection comprising an effective sanctions system and opportunities for the authors and performing artists to take action against breach, is therefore of the utmost importance for cultural workers' rights that, in turn, leads to increased production and dissemination of creative content online.

Continued development of legal offers, education-related initiatives as well as increased cooperation from Internet operators are additional important factors in combating illegal activities and creating a good basis for a wider access to content online. Copyswede and KLYS would in particular like to emphasize the responsibility of the Internet Service Providers in the fight against online piracy.

Concluding comments

On the basis of the communication, it is not possible to form a clear idea of how the Commission has envisaged how a future discussion forum at the EU level will be organised and function. As the communication appears today, there exists a clear risk that important aspects will not be illustrated. It is imperative that discussion of cultural diversity and the UNESCO convention on protection on cultural diversity is raised and afforded a central position in the continuing work.

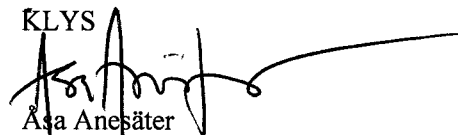
However, Copyswede and KLYS regard it as positive that “co-operation” is recommended and also that the Commission has identified stakeholders who can be expected to be affected by work on creative content online in the single market. It is, of course, important for this co-operation to be an open and creative discussion where the relevant stakeholders are invited to take part when the development of new models for creative content online within the EU is formulated.

On behalf of
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