ONCE CONTRIBUTION TO THE EUROPEAN COMMISSION'S CONSULTATION ON CONTENT ON LINE IN THE SINGLE MARKET (COM(2007)836)

1. IDENTIFICATION

The Spanish National Organisation of the Blind (ONCE) is a non-profit making organisation formed by all blind and severely partially-sighted people in Spain. ONCE's mission is to provide services to people with special needs stemming from blindness, whether this occurs from birth or through vision loss later in life, promoting their full social integration in society.

This is possible thanks to ONCE's participation in the Public Game Sector through the granting of a state concession to manage a lottery called the "Cupón" and, more recently, other types of lotteries. The income derived from these lotteries allows ONCE to provide social services in education, rehabilitation, vocational training, employment, accessibility, culture, new technologies, sport and other fields to its 66,000 plus members.

Moreover, through its Foundation, ONCE contributes also to the integration of people with other disabilities (approximately 4 million Spanish citizens).

This way, ONCE and its Foundation, secure employment to more than 100,000 people, 78% of them being workers with some type of disabilities.

Abroad, and basically through the ONCE Foundation for Solidarity with Blind People in Latin America (FOAL), ONCE also carries out important cooperation programmes aimed at improving the quality of life of other blind people from different parts of the World.

Finally, in the field of the European Union, ONCE has been one of the most active social organisations in promoting policies and programmes that have had positive consequences for the disability sector, a work that it carried out in cooperation with Public Authorities and, above all, with European organisations from the social sector to which it belongs.

2. INITIAL COMMENTS

We are conscious of the constant emerging of new and more and more creative content and services online. In this context, operators, consumers and users, governments and regulators are faced permanently with new challenges.

The availability of contents online may represent an added value for blind or partially sighted people in comparison to people who do not have that disability, as their building taking into account accessibility principles will allow the access of this group to contents both new and very important that existed only in a medium of difficult access for people who have visual problems.

Although this Communication does identify issues that particularly affect blind and partially sighted people, in particular issues with transfer of copyright, digital rights management schemes and interoperability, it does not at any point mention the issue of accessibility as one of the issues that the Commission will seek to address.

ONCE welcomes the opportunity to contribute to this consultation with a view to helping the Commission prepare a Recommendation on Creative Content Online. We particularly welcome the Commission's proposition to set up a Content Online Platform to discuss issues around the online distribution of creative content and would be keen to participate.

3. CONSULTATION QUESTIONS

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?

We are convinced that fostering the adoption of interoperable DRM systems would be a very acceptable mechanism to get a greater access to specialized information (music, mathematics, thematic literature, etc.). Naturally, all accessibility and interoperability processes should guarantee the access and control of visually impared people, especially electronic payment systems (identification, safe and confidential payment).

One of the major challenges faced by blind, partially sighted and other print-disabled people is accessing information, including accessing digital content.

The big problem with protection measures within DRM systems is that while they do help prevent unauthorised use, they can also prevent authorised use. We are very concerned that both blind and partially sighted people, and indeed others with a reading related disability such as dyslexia, can be denied full and equitable access to knowledge and culture if DRM schemes are inadequately designed or unfairly deployed.

Blind, partially sighted and other print-disabled people read electronic material in general, and online content, in particular by modifying the way in which it is presented. However, it is important to understand that the modification of the format does not in any way mean a modification of the content. They may do this through magnification, transformation into synthetic audio or the use of a temporary or 'refreshable' Braille display.

In some instances, the software with which to make these changes is incorporated in mainstream packages, but the most flexible and adaptable solutions are dedicated screen-reader software - this form of access if often called 'assistive technology'. More generally, assistive technology refers to additional equipment or support that enables people with some type of impairment to use mainstream consumer products and services.

The issue is that the technical protection measures within DRM systems can react to assistive technology as if it was modifying the content and committing an illicit operation. The DRM systems applied to e-Books and e-Documents can thereby prevent access by people who use assistive technology.

A second problem with DRM systems comes from the possible disabling of speech functions by the rightholders of publications. Blind or partially sighted people who buy e-Books can therefore find themselves unable to read them using the synthetic speech function and ONCE can show many examples of instances where this has happened:

- Both Adobe Security and Adobe DRM can be configured to restrict the set of access tools, such as screen readers, and commercial publishers will typically choose to disable all accessibility features on material in PDF format.
- The same is true with Microsoft e-Book Reader: in addition to having an anti-piracy function (known as the owner-exclusive function), the book also has user restrictions such as the disabling of the text-to-speech capability and the limitation of the use of the book to one device. This means that a visually impaired user will not be able to download the book from a desktop PC onto a more congenial device such as a laptop Braille note-taker.

It should be remembered that only 5% of books which are published are ever made available in any format other than standard print, thus excluding blind and partially sighted people from the vast majority of publications and hence from access to knowledge, culture and entertainment. In theory the advent of e-Books and e-Documents should help reduce this deficit thanks to screen-reading technology. It is therefore even more unfortunate to encounter DRM systems which stop blind and partially sighted people from legally accessing this work.

ONCE therefore strongly believe that DRM systems need to be made not only interoperable but also accessible:

- **Interoperability** means that blind, partially sighted and other print disabled people must be able to download content from a PC to a specialist device such as a laptop with Braille display, at least.
- **Accessibility** means that visually impaired people must be able to access protected content which they have legally acquired. This issue can be addressed in two ways: the first is to set up a system where the DRM scheme is able to recognise a trusted accessibility tool and then unblock content for that tool. The second way is to devise instructions only available to authorised users of trusted access tools.

Adobe has taken some steps to resolve the issue by developing a reader that is now able to recognise and establish a trusted relationship with two screen-readers, Window-Eyes and JAWS. This means that allowing access to DRM-protected content is now reportedly the default position of the reader

Additional issues that need to be addressed in the development of online creative content services in the Internal Market are:

- the general lack of application of website accessibility standards,
- the limited understanding on the part of some publishers as to how best to structure digital content files for efficient conversion into accessible format
- the growing broadcasting of audiovisual content online rather than via offline digital media

The Web Accessibility Initiative (WAI) guidelines provide a useful handbook on how to make web content accessible and we urge public and private websites to follow these guidelines.

One of the key determinants of accessibility is the tools used to create and publish digital content. For example, most web pages are created by the Content Management System software that put the page together by combining a page template with the content created by the author. If the template is inaccessible or if the software does not allow the author to provide accessible information, such as alternative text for images and other non-text content, the resulting pages will be inaccessible.

The same is true for other tools used to create digital content such as blogs, forums, podcasts etc. ONCE therefore believes it is vitally important that these tools are capable of producing accessible content and that they allow authors to do so.

We also believe that the European Commission needs to examine how best to address issues linked with the accessibility of audiovisual material broadcasted online. As broadcasters move to distributing TV and radio content over the internet, it is essential they develop platform that are accessible to disabled users. For blind and partially sighted people in particular, this means being able to access spoken menus and audio-description of TV programmes.

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?

Having sufficient and adequate information about the interoperability and accessibility features of the digital products or services consumers intend to buy, is an essential consumer need. Information should be reliable, understandable and transparent.

In order to improve information, it would be necessary to activate the circulation of written, spoken documentation, etc. on this type of services, given the important advantages it provides to specific users through appropriate contents.

ONCE is concerned that there is still no legal obligation on retailers to indicate the interoperability status, accessibility status and security levels of digital products and services. Users with reading-related disabilities wishing to purchase an e-book will therefore not know in advance whether they will be able to access it.

From our perspective, it is crucial that equipment manufacturers incorporate design-for-all principles into their designs and take accessibility into account from the start.

However, pending comprehensive, fully-inclusive design, ONCE believes that labelling schemes for products endowed with DRM should be developed to indicate clearly how the bona fide beneficiary of an exception can gain ready access to the material in question, whether that is from the publisher or through technological means.

3) Do you agree that reducing the complexity and enhancing the legibility of end-user licence 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?

EULAs should be as clear and concise as possible, but we believe that this has a minor influence on the service increase in itself. It would be very important to set very clear service cancellation clauses.

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?

Users' confidence would increase if newly created services follow a good practice policy, supported by the Authorities.

ONCE agrees with the suggestion of using Alternative Dispute Resolution mechanisms (ADR) to solve disputes that may arise from the use of DRM. At the moment, the European Copyright **Directive 2001/29/EC** states that:

> **Article 5.3.b**: *"Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases […]: uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability"*; and

> **Article 6.4:** *"Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by rightholders, including agreements between rightholders and other parties concerned, Member States shall take appropriate measures to ensure that rightholders make available to the beneficiary of an exception or limitation provided for in national law in accordance with […] Article 5 (3)(b) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned".*

This means that the obligation to accommodate users' needs is on the rightholders, with Member States obliged to ensure that this can happen.

In addition, we also have numerous examples of TPMs being applied by the content provider or the service provider, not the original rightholder. This situation creates an additional barrier for blind and partially sighted people to access online content. Where

that occurs, ONCE agrees that individual users should be able to resort to an independent mediator/arbitrator as offered by Alternative Dispute Resolutions mechanisms, as this can offer a quick, non-legal solution.

ONCE would therefore welcome a Commission's recommendation on the need for harmonisation of resolution mechanisms across Europe, in particular using the ADR solution. However, we strongly believe this should not be the only measure recommended by the Commission to solve potential conflicts. Indeed, we are concerned that heavily relying on ADR also means putting the onus of making a complaint on the individual who acquired the material legally in the first place. Such a process can be demanding and time-consuming, in particular for disabled people and we would prefer to see the Commission recommend measures to ensure the accessibility of digital content.

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 suppose that restrictions with regards SMEs are related with the financial effort they need to make in view of major digital distributors for royalty payments on contents (as these are lower) and above all to guarantee that safe payment systems have a minor incidence on the final product.

ONCE believes DRM schemes and TPMs should be designed in such a way as to allow access to people using screen reading packages from the outset. If DRMs are to be given a preference for digital content distribution, we recommend that priority be given to developing technical solutions, such as:

- provision of an encryption key
- entrusting a third party with an encryption key
- developing watermarking and fingerprinting techniques
- creating a 'dedicated channel', such as a website accessible only to authorised people and where access could be tailored to individual users' needs.

Such solutions should be incorporated into licence agreements with customers such as libraries in educational establishments. We also recommend, as we have done in the past, that the Database Directive be amended so as to allow the same exceptions for access by blind, partially sighted and print-disabled people.

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?

As pointed out in the consultation, multi-territory rights licensing is not covered by existing legislation. For blind, partially sighted and print-disabled people, this means that digital content that is made accessible to them under a copyright exception in one jurisdiction cannot necessarily be made accessible in the same way elsewhere in Europe.

ONCE therefore welcomes the suggestion of a recommendation of the European Parliament and the Council on the issue of multi-territory licensing but believes it will not be sufficient to address the technical issues linked with this. We believe it will require provisions to be built into national legislation, which means a revision of relevant legislation.

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

One of the key issues for blind, partially sighted and other print disabled people is for online content to be accessible. Online content is often inaccessible due to a lack of understanding of how assistive technologies operate. This is evidenced both by the general lack of application of website accessibility standards and the limited understanding on the part of some publishers as to how best to structure digital content files for efficient conversion into accessible format.

The Web Accessibility Initiative (WAI) guidelines provide a useful handbook on how to make web content accessible and we urge public and private websites to follow these guidelines.

One of the key determinants of accessibility is the tools used to create and publish digital content. For example, most web pages are created by the Content Management System software that put the page together by combining a page template with the content created by the author. If the template is inaccessible or if the software does not allow the author to provide accessible information, such as alternative text for images and other non-text content, the resulting pages will be inaccessible.

The same is true for other tools used to create digital content such as blogs, forums, podcasts etc. It is vitally important that these tools are capable of producing accessible content and that they allow authors to do so.

Although we strongly agree that online copyright infringements need to be prevented, we are concerned about the increasing use of the Turing test in order to secure access to certain websites and block malicious software agents from gaining entry. These tests prevent visually impaired people from gaining access to certain websites and services. CAPTCHA tests for example (Completely Automated Public Turing test to tell Computers and Humans Apart), assume that humans are fully sighted and ask users to key in letters from a distorted image, which text-to-speech software cannot read. We therefore urge rightholders and website owners to put in place filtering mechanisms that are accessible to blind and partially sighted people using assistive technologies.

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For further information, you may contact:
International Relations Department ONCE
C/Almansa, 66
Madrid 28039
Tlf: 0034 91 436 53 00
otae@once.es