



Communication from the European Commission on
Creative Content Online in the Single Market
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Brussels, 29 February 2008

Response to the consultation paper

1. The Commission describes in its Communication on 'Creative Content Online in the Single Market' that with the emergence of new devices, networks and services the availability of creative content is offering new challenges and possibilities.

2. This is also the case for the live performance sector, which Pearle*, the European trade federation of live performance organisations, represents. Whilst traditionally the core business of the live performance encompasses the physical participation of a consumer to a performance or show at a particular place in a particular moment in time, the sector is rapidly catching up in exploring the online environment for new forms of presenting its performances. The application of creative content online is to be situated in different areas. The first application is the most developed and concerns the availability of recorded music, opera or other recorded performances online. It should be added that performing arts organisations increasingly also put live streaming of performances on the internet. A second application is to be situated in the area of arts education and e-learning via the internet and the setting up of digital libraries. A third application concerns experiments by live performance organisations to create contemporary theatre exclusively in an online environment. Daily there are new experiments undertaken both in terms of application and usage of new devices in an artistic creative context.

3. The challenges for our sector (largely non-profit organisations though equally also commercial creative industry enterprises), across all areas of applications, are very much to be situated in the legal environment of the rights management.

4. Our response to the consultation is therefore concentrating on the obstacles to fully take benefit of the possibilities that creative content online could offer. Whether in an offline or online environment, the licensing and clearance of rights is extremely complex, cumbersome and requires a high amount of administration. An orchestra or opera company may easily have to clear copyrights and performers' rights with over a hundred persons country by country. This mechanism of rights clearance is ill-adapted to the emerging possibilities for artistic content and is a hindrance to support the performing arts as a creative industry. Compared to other parts of the world, this is clearly a major competitive disadvantage.

5. Performing arts organisations in Member States, such as the UK, are furthest in exploring new business models related to digital rights management. The reason why they are in the leading position, is that they manage to have a better control on the intellectual property

1

rights on the one hand and that they have been able to reduce the number of intermediary services on the other hand.

In achieving this position they have come to agreements with performers and artists, represented by their trade-union bodies, to find contractual solutions regarding the performers rights. In terms of income for the performers this approach has learned that all parties benefit from it: the performing arts organisations find other sources of income, can thus remain in business, and therefore can guarantee employment on the basis of a more than fair wage; the performers and their trade-union representatives ensure employment, and as they invest in such an engagement they equally take advantage in such a working method. Moreover as they are directly involved, they don't have to deal with collecting management societies who give them little powers and control over the rights collected and consequently the rights they are entitled to.

Those that invested in producing and distributing their own label have also acquired more information on their consumers (audience) and thus have been able to develop new ways of contact with their audiences. This is a major argument, in terms of the role that performing arts organisations play in society and in supporting the promotion of cultural diversity.

6. Performing arts organisations in many other Member States, who have not been able to explore the creative content for online distribution precisely quote strict copyright legislation applicable in their countries, difficulties of clearing the rights with collecting societies or reaching an agreement with them.

7. As was presented by different stakeholders in a workshop organised by DG Information Society on 6 April 2005, at which Pearle* also participated, on "Towards reaching consensus on Digital Rights Management", the interoperability of DRM systems is crucial to offer the consumer the best possible usage of creative content online. However interoperability of DRM should go together with a simplification of rights licensing.

8. Pearle* believes that multi-territory rights licensing could be a positive solution to deal with the online creative content. Pearle* is only in favour of such an approach if it results in a genuine improvement when being a rights user. Since DG Internal Market launched a consultation on collective rights management in 2004, followed by a consultation on the copyright acquis in 2005, Pearle* has been calling upon the Commission to review Copyright Management in Europe. A comprehensive approach for both offline and online creative content is conditional to reach for a competitive Europe, to foster the provisions as they are described in the Unesco-convention on 'the protection and promotion of the diversity of cultural expressions', and to support the creative industries as being regarded as one of the major potential industries for growth in Europe. Simplification, transparency, efficiency, cutting red tape in the area of management of rights are essential tools. As was the case with the Recommendation on cross-border management of collective management of rights for online music (October 2005) we believe that a Recommendation will not be able to deal with all aspects of creative content online, in particular with resolving at all levels of copyrights management the simplification of rights clearance.

9. Finally Pearle* believes that the Commission should take initiatives to support the emergence of dynamic sectors as the performing arts which allow for experiments, research, new forms of audience development and education, and endorse to its full extent cultural diversity and to encourage a genuine internal market for creative content services.