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Stakeholder consultation on European commission draft communication on creative content online in the single market

PYRAMIDE EUROPE makes the following submission. PYRAMIDE EUROPE is the GEIE representing, through national associations, mainly photographers but also other visual creators across Europe and numbering some 80,000 professionals.

We thank the European Commission for the opportunity to comment on the draft **on Creative Content Online in the Single Market** (COM(2007) 836 final). We will focus our submission to commenting on the questions that are relevant to the activities of professional photographers and other visual creators in Europe.

General

The European Commission “intends to launch further actions to support the development of innovative business models and the deployment of cross-border delivery of diverse online creative content services”. For reason brings forward that “the market for online creative content is emerging and developments take place at a rapid pace”. “This calls for a twofold approach to deal with already identified challenges” and “to launch further discussions on some of the existing and forthcoming challenges”.

There is no doubt that creative content in network are increasing and that it developed rapid. A developing, that has important impacts on the European society and its citizens. It is therefore a deplore lack that the European Commission, at the same time as it set about over a complex and diverse area, confine oneself to promote innovative business models and cross border creative content services. An confining that in it self affect other important aspects of the changing process. How does for example innovative business models UNESCO:s convention on the protection and promotion of the Diversity of Cultural Expressions? What are the more practical aspects that the European Commission in different forums, from different standpoints are discussing compensation for private use?

Perhaps the Public consultation and the “Content Online Platform” can widen the scope about future challenges. Something we welcome and certainly take part in. We would, at the same time suggest that the discussion does not confine to the Internet and open networks, but also in some aspects include closed networks. In closed networks, there is a great potential for innovative business models and cross border content services.

Availability of creative content

The European Commission point out as major obstacles for the development of online content services, lack of availability of creative content and lack of active licensing of rights on new platforms. The obstacles form of a relatively new market, right holders fear to losing control and the preferred choice to protect existing revenue streams. Out of that licensing for online is “hampered by potential conflict with rights already granted for main forms of exploitation”.

Here, we mean, that the European Commission are on the right track when they indicate the obstacles. We should be pleased to see that the European Commission looks forward to these obstacles. In what way are they connected to the facts that the concept rights holder includes everything from individual author to worldwide dominating multinational media companies? Media companies that more and more corporate with technological industries.

How should we look to developing, that on one hand give innovative business models, but on the other hand limit control and distribution of creative content to a few companies? Possible and inevitable developing if we accept the unbalanced conditions that often are reality between the individual creative author and companies that distribute and deliver content.

An excellent way to support developing of creative content services should be to limit the possibility of unfair contracts about exploitation of author’s rights. That should create conditions for joint licensing’s and regulations of rights on new platforms. If content services should develop with increasing access to creative content, must in the first hand authors be given reasonable possibilities for business and circumstances for creative working. That will enable cultural diversity in the creative content in a different way than by innovative business models that only aims to economic “growth, work and new thinking in Europe”.

Another important question is financing of content services. Here one could see different possibilities that could be analysed more closely. Today we see growing investing in advertisements on open networks, which is a condition for a large part of the business models that deal with content delivery. How will market for advertisement develop and how will that impact on use of DRM and TPM? Are there innovative business models that are based on user-generated contents? Could Public Services interact with user-generated content?

About the problem arising from orphan works, would we give prominence to the fact that it is not only an economic question, it is also a question about respect for moral rights. Orphan works is a large problem for photographer and other visual artists. The solution is in the first hand to prevent orphan works by a strong obligation to mention the author name when using his work. The further handling could be solved in a practical and easy way by extended licenses (the Nordic model) in combination with that organisation for rights holders, which also give license, took on its liability to execute diligent search.

Digital Right Management

DRM and TPM are far from a solution to problems with piracy. As mentioned before does the concept rights holder include everything from individual author to some of the world biggest and dominating multinational media companies at the same time, as problems are different for

different work of art. DRM and TPM system that will be developed financed and controlled by dominating media companies risk to lock up individual authors in a state of dependence, without possibility to innovative business models.

The complexity of problems will be much wider if we include closed networks. Here could we today see another form of piracy that carries out by media companies, which business model is to sell information content without having all right to the hole content. There are either, for an example, no possibilities by DRM for a photographer to handle use by copying a picture from one DRM, TPM and web based magazine or scanning from analogue original. From that point of view is it important to clarify that if, for example, website includes DRM and TPM or it is technical possible to print out, it does not signify that digital copying and printing of a including work is permitted or in any way signed for free use.

We recommend a solution based on a developed system for compensation for private use by levies on media and equipments. Further more we also recommend solutions that rise and stimulate legal alternative to piracy by use of technical possibilities and under consideration of users need. We also recommend the European Commission to look over and creates legal possibilities to licensing in accordance with for example the Danish proposal about general extended collective license.

To boost author's position and inform about importance of authors rights for society and its citizens are never wrong. However, we do not believe that the repressive French method will have success to neither public opinion nor technical.

On behalf of Pyramide Europe

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