

ANNEX

Creative Content Online – Policy/Regulatory issues for consultation

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?

The STIM mission is to license musical works of 60 000 creative members and other musical rights entrusted with STIM. By licensing these rights to music users STIM fosters a maximized circulation of musical works at the same time as the rights holders are remunerated according to the Swedish copyright act.

In theory DRMs could be the solution of both fostering dissemination of content and keeping rightholders control over content but in reality the development has shown the opposite result. Out of a consumers perspective DRMs have until now served as systems “locking in” legal music downloads not to mention the problems with interoperability and other technical problems. The freedom to handle downloads between devices without complications makes illegal downloads much more attractive out of a consumer perspective and ads up hampering the developement of legal music services.

When licensing music STIM has no DRM demands and STIM does not create economic or other obstacles when the consumer wants to use the downloaded work in a device of the his or hers own choice. Licensing must be swift and simple, payments must be secure and report systems must function containing which work, all rights holders, where and how many times a musical work is used in order to fullfill the STIM mission to pay rightholders individually.

- 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?

DRMs have, as far as STIM knows, not contributed to a functioning marketplace for use of music. Legalized licensing based on voluntarily agreements between all parties concerned foster easy access for consumes.

Fostering circulation of music combined with maintaining the economic rights in the copyright act a watermarking system to track use of music seems preferable. With a smart non-breakable watermarking system it would be possible, when volumes of transactions are expanding, to go on remunerate rightholders individually according to their wish without hampering the easy disseminationand of musical works to consumers.

- 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?

Nobody knows if this is a remedy reducing complexity and if it is not adding new complexity for the end user (consumer) and if it would support the development of online creative services in the Internal market. STIM has no opinion about the EULAs at this stage.

- 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?

The consumers today has a very tempting and easy-to-reach alternative: Illegal downloading. Besides cost of download and other flop sides from a consumers perspective (see above) any complexity will be another hindrance to the development of legal alternatives.

STIMs strategy since 1996 is offering licenses covering the the musical creators rights entrusted to STIM. That is unfortunately not enough as there are other rights holders involved in a download of a musical work with different licensing strategies. Dispute resolution mechanisms between DRMs seem as another complexity.

- 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?

Se answers above

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?

If it will lead to a more clear total picture and avoid counteraction between DGs. The Commissions good intentions to strengthen European culture compared with anglo-american counteracts by reality.

Multi-territory rights licensing has so far been formally addressed by three Director Generals and is also commented by a fourth. Even if the goal is strengthening European culture the development in reality point at an opposit direction.

1. The Recommendation by DG Internal Market emphasizing rightholders right to withdraw their rights (as they by the way always have been able to do).

There are four major rightholders (Universal, EMI, Warner Chappell, Sony/ATV) representing anglo-american repertory and international popular hits in Europe. Encouraged by the Recommendation they have made different moves to increase their economic returns of the anglo-american repertory in Europe well aware that music service provider or internet radio station can not operate in Europe without

anglo-american repertory. In Europe there are 400 000 creators of music, members of collecting societies, representing the European music repertory. To STIMs knowledge all these creators own theircollecting societies and want to stick to their societies. The societies have been the European creators own licensing tool for almost a hundred years to implement in practice their economic rights in the copyright law.

2. The SO from DG Competition. Threatened by fines collecting societies representing about 400 000 European creators are forbidden to represent each other in each others territory. When the music service or Internet broadcaster have got their license from the four major publishers for anglo-american repertory and popular international hits he will have less incentive looking around for a “rest-license” covering European ”non-commercial” repertory.

3. The Communication on Creative Content Online from DG Information Society: Quote: “ensuring that European Content achieve its full potential in contributing to European competitivnes and in fostering the availability and circulation of the great diversity of European conten creation and Europe’s cultural and linguistic heritage.” See answers above.

4. DG Education and Culture working for strengthening the European Culture.

See answers above.

- 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?

STIM represents musical rights. Audiovisual works includes a wide range of different types of works as films, tv-series, film videos, music videos, tv-commercials, art-film and more. Music in audiovisual works includes performing rights, mechanical rights, synchronization rights, some of which are dealt with by publishers work for work. It is unclear to us what is a primary and secondary multi-territory market.

- 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)?

Back catalogue is a term used by music publishers.

“The long tail” theory, less of more – for example European music from different countries which you usually can’t find on the top-hundred-lists – is the positive result of Internet as an outstanding way of disseminate all types of music (not only top list repertoire) to consumers. The recent developement of the European market for multi-territorial licensing is until today a question about the four major music publishers strategies to increase their economic returns on anglo-american repertory in Europe. If the cross boarder licensing solutions do not include the European creators represented by their societies, it will be difficult for them in the future to use

their collecting societies to get remuneration according to copyright law. In the long run it might hamper the Commissions goal to develop European musical culture.

Legal offers and piracy

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

STIM is in favour of cooperation and has recently invited telecom companies and other rights holders involved in musical works to discuss a file sharing license built on voluntary basis.

It depends on who are the stakeholders going to cooperate. Stakeholders (when we talk rights holders and music) are about 400 000 European music creators, a few thousand independent publishers, four major publishers (Universal, EMI, Warner Chappel, Sony/ATV), a few thousand independent record companies, four major record companies (Universal, EMI, Warner, Sony/BMG).

It depends on the meaning of “effective cooperation”. If it means cooperation between stakeholders who covers the most sought-after repertory by users (anglo-american and other popular international repertory) the four majors (publishers and record companies) covers about 70-80% - a market decision. If “effective cooperation” means reaching the Commissions goal strengthening the European repertory against the anglo-american then you must include in the cooperation European creators and independent publishers and record companies.

- 9) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to be followed?

It is an interesting example built on voluntary bases.

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

Yes it might be if the filtering is effective.

Please submit your comments by **29/02/2008** in electronic format. All submissions will be published on the Commission’s website if not requested otherwise. Contribution to be treated confidentially should indicate this at the top of the first page. Should you want to add a cover letter please do so in a separate document. In case your comments exceed four pages, please provide an **executive summary**. All submissions should be mailed to the functional mailbox of the Audiovisual and Media Policies Unit of the Directorate-General for Information Society and Media: avpolicy@ec.europa.eu.