

TONO, the Norwegian Performing Rights Society has received COM (2007) 836 final:

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on Creative Content Online in the Single Market.

TONO supports this initiative and wishes to submit the following comments on the questions raised in the Annex to this Communication.

TONO is a copyright society with 15.000 members, representing the rights of composers, lyricists and music publishers in Norway. TONO is a non-profit organisation and receives mandate and authorisation from the members directly.

TONO naturally supports the development of creative content services in Europe, and it is important to address the challenges raised by the stakeholders such as the risks of premature legislation in an evolving market, including the cooperation between rightholder groups, interoperability and securing cultural diversity. TONO will contribute in the best possible way to help create the necessary basis for useful discussions e.g. in the “Content Online Platform” as recommended by the EU Council and European Parliament.

The advancement of new technologies and media platforms provide great opportunities and efficient new ways of distributing content online such as music, films, television etc. This contributes to the pressure that has been applied to finding new ways of licensing creative content, and TONO would here like to stress the importance of maintaining an efficient collective management system for copyright clearance, which is for the benefit of the cultural society.

In light of the fact that the main part of content and rights usage is licensed and takes place in each of the individual member states of EU, it is natural that the best innovative solutions to new licensing structures are created at national level. Therefore it is of vital interest to our members that initiatives aiming to promote pan-European licensing agreements, in no significant way must undermine the national collecting societies effort to create the best solutions on a national level. For instance, it would be detrimental to the national collecting societies and the local users of creative content, if repertoire is withdrawn from the societies so that there no longer would be any one-stop-shops at a national level.

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?

DRM-systems have primarily had the reputation as a controlling mechanism for the entertainment industry being able to control how, when, how often, for how long, with whom, on which machine consumers can enjoy audio and audiovisual materials. The shift is hopefully now towards viewing DRM as a non-intrusive tool for studying aggregate data on usage for the purpose of fairly distributing revenues to rights holders. Digital Rights Management-tools have so many other functions than simply being a copy-controlling device. We must welcome this shift since it should provide a better potential for the general public to enjoy a wider range of choice, and at the same time enable the rightholder organisations to distribute the remuneration correctly. This is also essential for the technological development of creative activity in the European Union member states.

However, since TONO do not require such DRM copy-control devices in our general online licensing, TONO has not acted as a premise provider to the content industry on such systems, commercial formats or hardware. It has not been relevant or even in TONO's interest to create obstacles for the consumer when downloading licensed works legally. By their nature, such copy-control devices limit the consumer's ability to access and exploit creative content such as music and films. TONO's members have always favoured making available of creative content to people instead of locking up such creative content. It is therefore much more interesting to view the potentials for DRM systems which e.g. enable handling secure report systems that function well between various platforms, in order for TONO to pay the rightholder correctly.

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?

It is important to distinguish between consumer information with regard to interoperability and with regard to data protection features of DRMs. As regards data protection features of DRMs, it is TONO's understanding that both at EU level and at a national level the legal protection measures should be sufficient enough to guarantee that consumers are duly informed on any data processing that may affect their privacy. When it comes to recommending policies or practices on DRM-systems with regard to consumer information, TONO agrees with the general policy that consumers should be informed in a clear, accessible and fully-fledged way of their rights and duties when they are granted access to copyright protected content.

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?

If it is indeed correct that the complexity of EULAs are viewed as obstacles to the development of online content services in the Internal Market, this would clearly not be favourable in TONOs view. However, complex contracts and various contractual conditions are accepted in general by users of other types of online services, such as sales of digital goods and software. The point of online content services is that they may allow for different types of access to the digital content whether it is permanent or temporary downloads, streaming, subscription services, possibility or lack thereof in order to make digital copies, etc. It is of course necessary that the end user knows what types of usages are allowed. Any lack of information on this will create legal uncertainty for him/her, and this would certainly not be in TONOs members interest.

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?

TONO naturally believes in dispute resolution mechanisms if these form a better foundation for consumers ability to purchase legal online content and services. However, it is important to make sure that elaborate dispute resolution mechanisms in them selves do not constitute further complexity to the overall versatile distribution of creative 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?

It is TONOs view that the stakeholders involved in distribution of creative content should be given the chance to agree on a common –or at least- open standard, before measures are taken at EU level.

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?

The outcome of the Directive 2007/65/EC and the evaluation in process of the Recommendation on online management of music rights (2005/737/EC) should be taken into account before any new recommendation is passed. It is therefore TONOs opinion that there should be no immediate rush as regards the need to propose regulation via such soft law. However, multi-territory rights licensing has so far been formally addressed by no less than 3 different Director Generals, and is also being commented by a fourth DG. Even if the goal all

along was to strengthen European culture by involving 4 DGs in this process, the development seems to be heading in an opposite direction.

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?

Cooperation amongst stakeholders, and a genuine dialogue with the European Commission is important in order to foster an adequate system of multi-territory rights licensing.

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)?

The "long tail" effect is noticeable in both legal downloading services and file sharing networks including a mix of legal and illegal materials. It is a phenomenon that could foster cultural diversity if the entire content was distributed on a legal basis. But it also comes into conflict with major media companies' desires to sell more copies of fewer high profile products, products by super stars who have often received gigantic up-front royalty payments. The potential advantages for creativity, and in particular user-generated content are enormous. To encourage major audio and audiovisual producers to accept this change of business models, and at the same time facilitate the legal basis for such services, could well require some encouragement from the European Commission/Parliament.

Legal offers and piracy

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

The most important element for the reduction of piracy is giving right holders adequate legal tools to enforce their rights. But this enforcement of rights cannot be done without the cooperation of ISPs. In fact, apart from certain services that offer consumers access to content without the proper licence, such as allofmp3.com, online piracy is mainly caused by users of P2P services like Usenet/Limewire. Legal proceedings can be initiated to stop this illegal exchange of copyright protected content. However, these are massive copyright infringements and taking each case to court is not a sufficient and effective way to putting an end to this activity, which emphasises the need for close ISP cooperation in this field.

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

Regretfully TONO is not in any position to comment on this MoU as such.

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

If the filtering mechanisms are effective and doesn't create obstacles for the legal distribution of music, they might be proven suitable for the purpose.

Sincerely Yours

Cato Strøm
Managing Director

Contact of reference:

Inger Elise Mey
Director of Online Media
TONO/NCB
E-mail: mey@tono.no
Cc: cato.strom@tono.no