

ETNO Reflection Document in reply to the EC “Creative Content Online” consultation



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Executive Summary

- ETNO welcomes the EU initiative to launch a consultation on the joint DG Info and Markt “Reflection Document on Creative Content in a European Digital Single Market: Challenges for the future”. We particularly support the approach taken by the document, namely;
 - Putting the Consumer at the heart of the debate
 - Recognizing that the basis for any discussion must be the differences between various categories of protected works.
 - Recognizing the fact that the problem of illicit file-sharing is complex and must be addressed by a multitude of measures.
- ETNO’s comments focus on how best to achieve a real and future-oriented single digital market for Europe.
- **A discussion on the opportunities and barriers to the European Digital Single Market to foster the growth of creative content online is essential.** Consumers want to use new broadband-based services to access content, any time, anywhere, using any device. In turn, new media platforms are offering tremendous opportunities for the distribution of legitimate content or other information society services. Whilst consumer demand for online content is growing at extraordinary speed, there are still obstacles preventing the development of the European online content market, such as the lack of EU-wide and multi-territory licensing arrangements.
- **The Information Society in general is built upon the ability to share content and to interactively develop ideas and facts**

online. In a rapidly-changing area characterised by multiple uncertainties, it is important to ensure that all barriers that inhibit the creation of new legal content services are lifted. Since the “digital economy” has become a key priority it is important to ensure consistency with existing policy initiatives - including those where other Commission departments are involved.

- **ETNO Members are actively playing their part in the continuous development of new and innovative business models.** Indeed the aim of any initiative must be to meet customer demand for price-worthy, secure and user-friendly services - to develop new attractive business models.

Comments

Consumer access

We welcome proposals to raise consumer’s confidence in the online business. It is essential to ensure further clarity and simplicity for the users’ rights. The current situation does not provide consumers with clear and easily available information on users’ rights. Often available information is conflicting, user rights for use of content vary from site to site and depend on the terminal, software etc. Further clarity is also needed for copyright exceptions (“fair use”) which differ from country to country. In other words consumers need more clarity and simplicity.

Harmonisation of EU copyright

The notion of a long-term fully harmonised EU Copyright is complex. On the one hand both rightsholders, users and ETNO members would benefit from an easier and swifter licensing system facilitating the development of innovative cross-border services. On the other hand it is a fact that any harmonisation of copyright, traditionally, has led to more stringent protection and enforcement measures. Would harmonisation measures inevitably lead to stricter copyright? It is important to firmly define and agree upon the aims of harmonisation, before looking into details.

In addition, whilst discussions on further harmonisation of copyright in the EU are useful, it will be a lengthy exercise. There is also a need for urgent measures to be considered particularly regarding licensing and collecting society.

Licensing/Collective society

Current procedures for rights clearance can be time consuming and expensive. As a result, the growth and availability of new Internet-based content services in the EU - such as web-casting or on-demand downloads - are not as widespread as they are in the US. Rights holders and consumers alike would benefit from the availability of additional distribution channels, and consumers would ultimately benefit from lower prices that would result from more effective competition among collecting societies.

For effective rights clearance in the European Information Society it is important that rights can be cleared for many or all countries within the EU in an effective and simple way, such as through one contract i.e. a "one stop shop". Each collecting society should be able to grant multi-territorial licenses on the basis of improved reciprocal agreements between the collecting societies. Against this background ETNO supports the promotion of competition between collecting societies on the market for rights management and further transparency. Furthermore, regulation for multi-territory licensing should be harmonised for all types of content, not only for music.

The creation of an online database of copyrights would contribute to streamlined and effective licensing.

ETNO believes that any and all type of business models would benefit from multi-territory licenses. In our view the most efficient way of fostering multi-territory music rights licensing in the area of audiovisual works would be to grant pan-European licences on the basis of improved reciprocal agreements between the collecting societies.

With regard to individually-managed rights, the potential for anticompetitive practices by owners of premium content remains a concern for ETNO Members - though these concerns are generally less acute than previously. In any case, action to deal with these concerns is a matter for competition law rather than new sector-specific policy initiatives.

With regard to the question of rights clearance, ETNO agrees that current procedures are often overly-complicated and lengthy. We encourage the Commission to explore further options, such as an on-line database of rights, to simplify existing rules.

Levies

ETNO welcomes the Commission's reflection on the logic behind the use of levies to compensate illegal downloading. Our members are

important facilitators and distributors of digital content, through a variety of channels and commercial offers. ETNO recognises the importance of rights holders to be properly compensated, but believes that the system of copyright levies is outdated and not suited to the European Information Society. Copyright levies were introduced in Europe on analogue media, and in some countries also on reproduction equipment, during the 1980's to compensate right holders for certain excessive copying that was done for private use.

Remuneration should be, as far as possible, directly directed towards the usage and the relevant users rather than on all users through levies.

ETNO would welcome support for more transparent, technical protection measures which empowers users to decide on what basis they access content, and allow rights holders corresponding compensation.

Copyright infringements

ETNO believes that the current framework delivers the right balance between rightsholders and ISP's. The Reflection Document is based upon the need for a reformed balance between rightsholders and users. Efficient Intellectual Property enforcement is necessary, but it is equally important that policies to combat IPR infringement should not penalise those involved in the legitimate distribution, creation or consumption of content to the detriment of general public support for copyright. The protection of intellectual property rights could already be enhanced if the existing legal framework would be applied properly and proportionally by Member States, stakeholders and the respective authorities. The amalgamation of serious crime and illegal downloading in the debate has not been helpful neither generally nor in re-establishing respect for copyright.

The debate regarding illegal activities on the Internet frequently focuses on copyright. Positions are often very strong. ETNO wishes to emphasize that the best way to counteract illegal file-sharing of copyrighted material is through the availability of accessible, secure and price-worthy legitimate content to meet consumer demand. In the area of copyright infringement, there is also a need for adapting court-based procedures to situations created by new technology. Access to such procedures needs to be made quicker and cheaper.

Advertising campaigns or sponsoring events provide additional tools to promote the distribution of legal content online. Awareness campaigns could highlight the importance of intellectual property as an economic good and object of cultural value.

Another prerequisite to increase legal offer of content in the European Union would be the harmonisation of existing national rules, for example dealing with private copyright exemption, compensation for

private copying or, as already mentioned above, on a practicable licensing regime. These should be the major aspects to be discussed at European level.