
**Intellect's comments on:
A Reflection Document of DG INFSO and DG MARKT
Creative Content in a European Digital Single Market: Challenges for the
Future**

21 December 2009

Introduction

Intellect welcomes the Commission's Reflection Document as a thought provoking and forward looking document, opening an important and topical policy debate on the role of copyright in the digital era. Intellect has already called for a move towards a single digital market particularly in relationship to licensing and appreciates the opportunity to contribute to this consultation.

About Intellect

Intellect is the UK trade association for the IT, telecoms and electronics industries. Our members account for over 80% of these markets. These industries together generate around 10% of UK GDP and 15% of UK trade. Intellect represents over 750 companies ranging from SMEs to multinationals including technology providers, ISPs and the consumer electronics sector. A number of our members are also content providers. For more information, go to www.intellectuk.org

General

Intellect shares the view of the growing importance of the creative industries to the economy and the responsibility to nurture and grow the sector for the benefit of the economy, business, government, and the citizen.

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Intellect appreciates the way that the reflections paper sets out the current relevant legislation and the challenges ahead. We have made some general observations in this section and followed with some more specific observations around future action.

Key to growing the creative industries is to make access to legal digital content easier and more attractive across a European Digital Single Market.

This will have the triple benefit of increasing the demand for content, reducing illicit copying and serving the EU consumers.

Content is being produced from a wide variety of players from the large multinational to the one man band and not forgetting the user themselves. Technology providers deliver this content in a variety of means eg fixed, mobile, over the internet, broadcast through a host of platforms and through a variety of business models.

New and emerging actors have to be recognised, consulted, and engaged as legitimate stakeholders in the wider, on-going copyright debate.

We note this Reflection Document is co-authored by INFSO and MARKT. We feel however that these two DG's might not reflect the whole of the stakeholder chain. Previously other DGs have also shown an interest in the creative industries and copyright issues especially in the digital context. Cross-DG interests have not always demonstrated a consistent and synchronised approach to EU copyright policy.

Intellect urges the Commission to take a consistent, holistic approach with clear ownership and power of initiative to empower and facilitate EU initiatives in this critically important area for the digital economy. A clear message stating which DG has ownership of digital copyright policy would be extremely helpful.

Intellect believes that the current EU copyright legislative framework is not broken. Wholesale reform is not required. There is however scope for a more consistent interpretation across the member states in some areas.

Intellect believes that online and off line content should not be subject to different rules

Specific observations

- **Collective Rights Management** - We agree that the issues linked to licensing transactions raised by the Commission warrant further exploration.
- **Licensing Efficiencies:** There is a need for more streamlined, efficient pan-European commercial licensing to bring a rich variety of compelling legal offerings to consumer. The more digital content and uses of such content that consumers acquire as fully licensed at the outset the less need there is for device levies because rights holders are then directly and fairly compensated.

- **CISAC (International Confederation of Societies of Authors and Composers) decision:** The Commission's 2008 CISAC decision was an important step towards reforming the collective music licensing landscape in Europe and creating a better functioning market. It was only a starting point and more needs to be done.
- **Aggregation of Rights:** Rights in the same work may be controlled by a number of different parties, which is inherently contrary to the aims of efficient licensing. A single right in musical compositions, combining what the Reflection Document calls "the two indispensable 'digital copyrights' involved", i.e. the digital right of reproduction and the digital performance right would be a step forward.
- **One-stop shop:** The Reflection paper also raises the notion of a "more ambitious form of one-stop shop" meaning that the diverse rights in a particular work or sound recording would be re-aggregated so they can be integrated in a single licence. This deserves further examination to see if it could lead to more efficient rollout of new business models premised on pan-European commercial licensing. The "One-Stop-Shop approach is an attractive concept, but Intellect urges caution in implementation. Care must be taken to avoid creating a monopoly. Any implementation must ensure competition between the various clearing houses.
- **Licensing, not levies:** Rightholders should be remunerated through direct licensing, not private copy levies. Levies should not be seen as a primary revenue stream for digital content. Direct licensing is more appropriate and fairer for all. Levies are hampering the development of effective licensing models, because licences can be structured to carve out activities (to the detriment of end-users) where private copy levies are regarded as potentially more lucrative than direct licensing.
- **Private copy levies:** The highly fragmented, unpredictable and unfair national levies systems and claims we face today in various Member States are not in step with the concept of the Digital Single Market. The current system is contrary to the functioning of the Internal Market. The private copy levy system across Europe is in need of urgent and radical review. The Stakeholder Forum initiative established by Commissioner McCreevy more than 18 months ago has still not produced any tangible results. Firmer, more open and transparent leadership at European level is needed. We urge the Commission to reinvigorate the activity. Addressing the scope of the private copy exception would be a starting point – see below.
- **Transparency for Rights Clearance:** It would be useful, for more effective rights clearance and hence access, to develop more transparency about the repertoire of works controlled by each licensor in openly accessible databases.
- **Harmonised European Copyright Law:** There may be a benefit in the long run of having a truly unified legal framework for copyright in Europe. This must not be seen as a simple quick fix. The impact would need to be carefully analysed and better understood particularly as regards transitional arrangements and the legacy effect of national copyright. However, there are aspects of copyright which would benefit from an EU-level approach, and where immediate benefits would be realisable, notably in the area of private copy exceptions.
- **Consistent approach to the boundaries of the "private copy exception":** It would be beneficial to harmonise the maximum scope of private copy exceptions in the EU, so all Member States would have consistent rules, tidying up the fragmentation we have today. To be clear, this is not a call for all

Member States to have exactly the same private copy exceptions, but it is a call for the maximum scope of the private copy exception to be defined at EU level. It would still be permissible for Member States to have narrower, but not broader, private copy exceptions within their national laws.

- **Separation of commercial licensing and cultural subsidies:** It would be beneficial to separate collective rights administration from the work of subsidising national cultural initiatives to avoid potential conflicts.
- **Education and Awareness:** Intellect is of the view that education and awareness campaigns for consumers are an essential part of any proposal to significantly reduce illicit copying. Such campaigns would help clarify the boundaries of legal private copying and so help avoid inadvertent illicit copying. They would also encourage legitimate purchase of content by pointing out the benefits of providing a rightful return to the creator. The European Commission and Member States have a key role to play here.

Alternative forms of remuneration

The consultation document invites substantive comments on this point.

Intellect fully supports that rights holders should receive a fair reward and that effective measures are needed against unauthorised copying. However we are firmly of the view that raising a special fee to compensate the rights holders for illicit copying is totally unacceptable. Why should stakeholders eg ISPs and consumers, that would gain no benefit from the money collected, be asked to compensate the rightsholders?

Furthermore such schemes would effectively legitimise and encourage more piracy and discourage investment in the development of legitimate licensing models.

Policy should focus on achieving an efficient, dynamic licensing environment bringing attractive and diverse legal offerings to consumers, where rightholders are remunerated commensurately through direct licensing.