

**CREATIVE CONTENT IN A EUROPEAN DIGITAL SINGLE MARKET:
CHALLENGES FOR THE FUTURE.**

Telecom Italia Contribution to the Reflection Document of DG INFSO and DG MARKT

Telecom Italia Group (TI) is active in the electronic communications market in Italy and abroad through the provision of traditional communications and audiovisual services via fixed and mobile networks, and broadcasting on analog and DTT networks.

TI is particularly interested in the debate about the identification of the real challenges for the development of a competitive online market in Europe and the need to find sound and balanced solutions amongst all stakeholders.

TI therefore appreciates the opportunity to comment on the Reflection document on Creative Content in a European Digital Single Market intended to open a debate focusing on practical solutions to be developed in order to achieving the overall objective of a European, modern, pro-competitive and consumer friendly legal framework for a genuine Single Market for Creative Content Online.

Indeed, TI considers access to creative content as essential to achieving the Digital Europe and contributing to the European competitiveness: online distribution of cultural and creative assets provides a tremendous opportunity for everyone to have access to culture and to promote the cultural diversity in the digital world. While many progress have been achieved, other remain to be done to guarantee the full potential of broadband connectivity be exploited, in particular the capacity of the networks to deliver content services, after having licitly stored, elaborated or aggregated them.

Possible EU Action for a Digital Single Market

- **Innovative legal offers to drive new business models.**

The rapid evolution of the Internet has given access to a more dynamic and rich online experience for users. In the future we will assist to a wider take-up of the participation-based web: users will increasingly access content (films, music, news, etc) through different networks and electronic devices and will want to access their preferred digital services easily anytime, anyplace and anywhere.

TI fully shares the Commission's view that traditional practices for licensing rights are not always adapted to the digital distribution in particular when it comes to rights management, exploitation and distribution.

TI welcomes the approach taken by the Commission in the reflection document where it is recognized that different trends and considerable challenges arise depending on the type of digital content and, consequently, that different measures need to be deployed in order to address the problems linked to each of such categories.

TI agrees, in particular, with the Commissions' statement that the statutory and contractual provisions relating to release windows for VOD can act as a barrier to the availability of content on digital platforms, especially in a cross border context. To meet consumers' demand, windows must be established in a non discriminatory way and taking into account the principle of technological neutrality.

TI recognizes that despite the identified barriers and challenges, new lawful services and offers are emerging. However it is still far from meeting customer demands.

TI believes that the best way to develop the market, address consumer's demand and counter the illegal use of copyrighted products online is to encourage new legal offers making available legitimate attractive offers

both in terms of pricing and choice and ensure consumers are able to enjoy content on different devices and platforms.

The licensing process should facilitate and accelerate the introduction of new business models that attract consumers, reduce copyright infringement, and reward business investment and innovation. In this context, accessing digital content should be easier and more consumer-friendly, while fairly remunerate all subjects adding value to the final outcome.

- **Creation of a streamlined pan-European and multi-territory licensing process.**

TI recognizes that the current licensing regime - very complex and fragmented at national level - is hindering the development of a genuine Single Digital Market. In order to tackle these obstacles TI considers it of paramount importance to address multi-territory rights licensing.

Indeed, TI believes that an ideal licensing model should combine the elements of multi-territorial licenses and a global repertoire. In this context, TI welcomes the joint statement adopted by major companies, collecting societies and consumer organizations participating to the Online Commerce Roundtable. This statement sets out the principles governing the online distribution of music and contains the agreement that current licensing mechanisms are too complex and that changes are needed to the way rights for online music are licensed in the EU. This represents an important step forward in the direction of the development of a European Digital Single Market.

TI considers that the most efficient way of fostering multi-territory rights licensing and promote a pan-European market for the distribution of on-line content is by introducing greater competition between collecting societies, or groupings of collecting societies, for the provision of rights licenses to users.

Right owners should be granted the choice to authorize one single collecting society to license and monitor all the different uses made of their works across the entire EU. As a result of market forces collecting societies would need to be more efficient and transparent in order to compete at pan-European level, thus leading to a reduction in tariffs. Right owners would also benefit from increased use of their rights across Europe as well as being given the right to choose the collecting society that better represents their interests.

In order to foster competition among collecting societies it is also important that a set of rules is provided at European level to guarantee transparency in respect to the terms and conditions applicable to online content and services. These rules should apply to the establishment and status of collecting societies (common accounting obligations would for example enable users to assess efficiency which is a key issue in the justification of the level of tariffs), to their relation to users (publication of tariffs and criteria on which tariffs are established which must refer to the actual nature and value of the rights being offered) and their relation to content owners.

With regard to the proposals made by the Commission in its reflection document, TI expresses its agreement with the one related to the aggregation of the other two “digital copyrights” (on top of the “making available right”) involved in the interactive online dissemination (i.e. the digital right of reproduction and the digital performance right) thus simplifying the online rights clearance.

TI also supports the creation of a one-stop-shop integrating the various layers of different rights and rights holders into a single license. In order to increase transparency and facilitate the identification and the exercise of the relevant rights, it would be opportune to establish an online database containing information on rights and their owners. This would allow not to lose an important part of the existing content and to make it available to the subjects which are willing to licitly exploit it.

However, although in general supportive of those proposals, TI underlines the needs of further discussing these two initiatives in order to identify the best adapted solutions to issues such as how to distribute the jointly collected revenues, or the determination of the body entrusted with the administration of the information contained in the database.

Regarding the proposal of extending the scope of the Satellite and Cable Directive so that once an online service is licensed in a EU Member State, the licence would be valid in all the Member States, it must be noted that the Directive has not changed the structure of right licensing in the audiovisual market, since rights remain essentially licensed on the basis of the distribution media (terrestrial, satellite, cable, internet, theatrical, DVD, etc), the ways it is offered (free, pay, tv, ppv, VOD), the duration, and the territory.

The Cable and Satellite Directive only applies to “free to air” content (and excludes cinema and sports events), whereas news Online business models might necessitate a mix of pay and advertising support, not to mention a possible larger use of technical protection measures: those aspects need to be taken into account in extending the Directive, not to mention a need to make it fully technology neutral.

Further examination is also needed in order to see how the suggested amendment will be combined with the implementation of the Commission decision of July 2008 (‘CISAC’) on the licensing of music by collecting societies.

- **Definition of a European Copyright Law.**

The growing importance of the digital environment offers new possibilities for distributing creative content, opening the door for consumer to access creative content online wherever they are and wherever they go.

The abovementioned opportunities are however blocked by several barriers: territorial fragmentation of licensing conditions and the consequential continued existence of 27 diverging copyright systems in Europe are in fact hampering innovation and creativity and hindering consumer access to content.

A simpler and harmonized copyright regime could help overcoming the problem of fragmentation of national laws, enhancing security and transparency for right holders and users, as well as reducing transaction and licensing costs.

Against this background, TI believes that benefits could come from a more profound harmonization of certain aspects of the copyright laws in order to create a more coherent licensing framework at European level.

Indeed, Telecom Italia considers that the EU legal framework in force strike the right balance between the right owners and the ISPs and that the attention at EU level should be focused on specific areas such as rights management, private copying exemption and licensing regime.

A stronger harmonization of the regimes regulating such aspects could in fact help in increasing the legal offer and facilitate access to content.

While considering that the legal framework has to be improved, TI is deeply concerned about the possible introduction of some alternative forms of remuneration, such as mandatory online “content fees”. Such a levy cannot be deemed as the right solution for remunerating content owners. This would have disruptive effects on the new services and business models. It is worth noting that, beside the payment of the due amount for the licit exploitation of the rights through the licences, a compensation for content owners in the form of a levy is already provided for by the law (art. 5.2.b of Directive 29/2001) as a legal exception to the exclusive right of reproduction. As a matter of fact, whereas 35 of the Directive provides that “rightholders should receive fair compensation to compensate them adequately for the use made of their protected works or other subject-matter”. The rules governing private copy and fair compensation are the outcome of a delicate balance of interests among stakeholders, which, as far as Italy is concerned, is currently being reviewed.

In the proposed scenario, any introduction of other forms of compensation requires the rethinking of the situation globally, since it is fundamental not to penalise some stakeholders, in particular network providers and users, introducing unjustified discrimination between the different - but equally important - parts of the industry.