



Comments to: Creative Content in a European Digital Single Market: Challenges for the Future. A Reflection Document of DG INFSO and DG MARKT, 22 October 2009.

The State & University Library is an institution of the Danish Ministry of Culture. Based on its experience as a national library, as loan centre for Danish public libraries and as Aarhus University library the State & University Library would like to contribute to the consultation with this comment:

5. POSSIBLE EU ACTIONS FOR A SINGLE MARKET FOR CREATIVE CONTENT ONLINE

5.1. Consumer access

Extended collective licensing

The Nordic countries have a long tradition in managing rights on a collective basis by Extended Collective Licensing. This type of licensing mechanism is particularly well suited for licensing online content and is much to be recommended.

In the reflections paper it states.

“It is therefore one of the options mooted to tackle in particular the issues of "orphan works" and possibly also of out-of-print works. The introduction of such practices should take into account the adequate protection of the creators' rights and should not prejudice their commercial interests unreasonably. This could imply that orphan works would only be included in an extended collective licence scheme after a diligent search has confirmed their orphan status.”

The fundamental idea of extended collective licensing is that the party representing the rights holders is representative of all the rights holders of the type of works included in the licence agreement. This is a prerequisite for the collecting society to be authorised to enter the agreement in order to ascertain that the license agreement will take into account the adequate protection of the creators' rights and will not prejudice their commercial interests unreasonably. There is, therefore, no reason for having special restrictions for using extended licenses agreements in the cases of orphan works

On the contrary, the introduction of extended collective licensing circumvents the completely orphan works issue. It becomes irrelevant whether a work included in an extended collective licensing agreement of, say out-of-print works, is also an orphan work.

Exceptions and limitations

The protection of rights are harmonised but the exceptions and limitations are not. There is a need for some minimum level of harmonisation of exceptions and limitations. Just as there is a need for cross-border licensing there is a need for cross-border harmonisation of exceptions and limitations for the Internal Market to function properly.

In this context, it should be pointed out, that many problems concerning reproduction originate from the fact that the level of protection is set by the needs of the entertainment industry. The same rule applies irrespective of the fact that different types of content are subject to different levels of risks. The use-patterns and therefore the risk for copyright infringements of music and film is extremely different from the use-patterns of, say scientific journal articles.

The rules should be defined by type of content, rather than by of type of media. An example of this can be seen in the Danish Copyright Act, section 12 concerning private copying. Different rules apply to computer programs and databases in digitized form; to musical works, cinematographic works, literary works and to works of art. The level of protection is made proportionate to the actual risk involved, thereby improving consumer understanding, and the perception of the legitimacy of the rules. This is an important aspect of copyright. Copyright infringements are not prevented by draconic enforcement rules but primarily by the law-abiding behaviour of the citizens. This requires that the rules are perceived, in general, as being fair and just.

5.2. Commercial users' access

Libraries, being intermediaries between rights holders and users, face problems that are comparable to those of commercial users.

Multi-territory licensing

The ideas presented concerning “the creation of a streamlined pan-European and/or multi-territory licensing process” are positive contributions.

Especially the idea of an extension of the scope of the Satellite and Cable Directive of 1993 to online delivery of audiovisual content is positive. The rationale of this Directive should be generalised and transposed be applicable to all Internet Services and not be restricted to audiovisual works. Once an online service is licensed in one EU territory, for example the territory with which the service provider is most closely linked, then this license would cover all Community territories.

Alternative forms of remuneration

ISP compensation

The idea that

“ISPs would owe rightholders a form of compensation for mass reproductions and dissemination of copyright protected works undertaken by their customers”

is not to be recommended.

An obligation for ISPs to compensate rights holders for copyright infringements would probably lead to a situation where ISPs have the right to control their customers. To introduce such responsibility could start a dangerous development that might be in conflict with human rights principles of freedom of information and the right of expression.

"All-you-can-eat" licensing models and models based on access subscription

"All-you-can-eat" licensing models, where the price is bundled with other services may be useful in order to reduce transaction costs. However, such models must be compatible with the "rights based" approach of licensing individual works. Otherwise, libraries run the risk of being suffocated in mainstream literature. For libraries, the availability to a broad variety of works on very specialised subjects is vital.

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