

Content sector common submission on the Green Paper on Copyright in the Knowledge Economy

The signatories of this submission welcome the recognition by the Commission Green Paper that “a high level of copyright protection is crucial for intellectual creation. Copyright ensures the maintenance and development of creativity in the interests of authors, producers, consumers, and the public at large”. The acknowledgement in the document of copyright as an incentive to create and to invest in talent, production and distribution is especially important for the creative sector, content providers and distributors who are increasingly investing in new online business models.

The main pillar of European Copyright legislation is the 2001/29 Directive (the “Directive”) which responds to the obligation on the EU to comply with the international obligations arising from the so-called Internet WIPO Treaties. This European Directive has only been implemented in all the EU Member States in 2006 and therefore, in our view more time is needed to assess its impact on the Knowledge Economy. We believe it is too early to propose any re-opening of the Directive or of the system of exceptions without the danger of upsetting the delicate balance achieved. In our experience, the Directive has been the driving force behind the launch of a wide range of digital content services.

Our position may be summarized as follows:

- there is no need at this time to revise the Directive - the interests of all stakeholders in the value chain of the knowledge economy are adequately reconciled in such a manner that the final outcome continues to function well;
- there is no need, and indeed real dangers in upsetting this fine balance of interests by narrowing the scope of copyright protection by means of new exceptions and limitations or restrictive rules which hamper development of revenue-generating business models;
- it is vital that, in considering the range of issues and options set out in the Green Paper, the Commission focuses on how best to create a genuine knowledge economy whereby financial investments in the content business are effectively safeguarded and rewarded, rather than pursuing ways to facilitate uncompensated use of copyright-protected material through new exceptions;
- The Internet has created opportunities for new players as well as new routes to market for established players, all of which is to be

welcomed. But some of these new players have established businesses which ride on other companies' creative works without those companies' consent. It is vital that EU legislation should neither promote nor facilitate illicit Internet based "free-riding" services. The Directive's provisions with regard to exceptions should not therefore be broadened beyond their present scope.

Having reviewed the Green Paper and the questions posed about rights, exceptions and licensing, it is our conclusion that :

1. The EU copyright acquis has been highly successful in establishing a robust legal framework with sufficient flexibility to provide balance between rightsholders and the interests of users.
2. The challenges thrown up by technological change affect the application of the law, rather than the law itself.
3. Underpinned by the fundamental principles set out in the "Three-Step Test" the EU regime of a range of harmonised exclusive rights and an exhaustive list of copyright exceptions provides the basis for access solutions in the digital environment.
4. A further essential aspect that needs to be taken into account when exceptions or limitations are considered is the fact that cultural diversity and the different legal traditions need to be respected, along with the principle of subsidiarity.
5. The EU copyright acquis has facilitated the creation of an equitable market, in which everyone who contributes value – from the creators, their producers and publishers and their distributors and retailers – can receive a fair reward.
6. Such has been the success of the creative and media industries sector that in the average OECD country, between 5 and 6 percent of GDP comes from the creative industries.
7. However, with the widespread increase in dissemination of works in digital formats, including online, piracy of these works has increased exponentially.
8. Therefore any exceptions and limitations must take account of the further increased risk of unauthorized digital dissemination, particularly in the absence of adequate collaboration with Internet Service Providers intermediaries who often hide behind existing limitations of liability and data protection rules.
9. The creative industries must be able to rely upon sound intellectual property rights to provide legal and economic bases

from which to innovate, invest and expand offers to the consumer.

10. It is our assessment that instead of considering new exceptions and limitations to copyright, attention needs to focus on how best to operate within the current framework, with practical solutions, such as licensing, and automated ways of providing machine-to-machine permissions¹. The Three-Step Test already ensures that copyright exceptions do not conflict with such solutions;
11. As for the suggestion to consider introducing a new exception on user generated content, it is essential to consider whether the corresponding activities are covered by existing exceptions or limitations. It is our view that they already are: article 5.3(k) of the Directive exempts uses "for the purposes of caricature, parody or pastiche". The implementation of this exception in national laws varies semantically but achieves compatibility of solutions.²

We therefore take the view that existing exceptions already provide for the necessary conditions to foster user-generated content (UGC) and have seen no evidence to the contrary. In fact, Europe has witnessed the growth of some of the most successful UGC sites in the world.

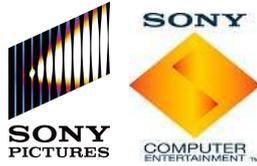
12. The European Institutions may wish to consider facilitating a dialogue between stakeholders on a case by case basis before any review of existing legislation. A successful example of such a collaborative approach is the Memorandum of Understanding on Orphan Works achieved under the auspices of the European Commission between all stakeholders, including libraries.
13. As far as the European Commission considers the need to promote free movement of knowledge and innovation as a "Fifth Freedom" in the single market, it should be borne in mind that copyright law actually promotes the dissemination of content. Moreover, it should be noted that the European Treaties enumerate exhaustively the different internal market freedoms.
14. Finally, we consider that EU Copyright law is sufficiently harmonised and Community efforts should rather focus on

¹ See www.the-acap.org for a cross-industry solution to automated information on permissions for access to and use of content.

² Some national laws expressly provide for a parody exception (for example France, Belgium), or cover parodies under the umbrella of a transformative use (Nordic countries) or of a "free use" defense (Germany and Portugal for example). While there is no express parody exception under UK law as such; an equivalent effect is achieved and has proved successful for over a century based on whether there is effective copying of a substantial part of an existing work or not.

proper implementation of existing legislation, fostering creation and the development of viable new business models and the fight against piracy. While the digital environment offers exciting opportunities, it also allows for massive illegal activities at the click of the mouse. More action is needed in regards to these important matters in order to ensure the continued creation, dissemination and access of European quality content. Only then shall the goal set out in the Lisbon Strategy for Europe to be the most competitive Knowledge-based Economy in the world by 2010 be achieved.





TimeWarner The WALT DISNEY Company



ACT – Association of Commercial Television in Europe

Bertelsmann AG

CEPI - European Coordination of Independent Producers

ENPA - European Newspaper Publishers' Association

EPC – European Publishers Council

EURO CINEMA – Association de Producteurs de Cinéma et de Télévision

EUROCOPYA – European Federation of Joint Management Societies of Producers for Private Audiovisual Copying

FAEP – European Federation of Magazine Publishers

FEP-FEE - Federation of European Publishers

FIAD - International federation of film distributors associations

FIAPF – International Federation of Film Producers Associations

GIART - The International Organisation of Performing Artists Collecting Societies

ICMP – Confederation of Music Publishers

IFPI – representing the recording industry worldwide

IFRRO - The International Federation of Reproduction Rights Organisations

IMPALA- Independent Music Companies Association

IVF – International Video Federation

Lagardère

Mediaset S.p.A.

MPA – Motion Picture Association

Reed Elsevier Group plc

Sony Pictures Entertainment

Time Warner

The Walt Disney Company

UNI-MEI - Global Union for Media, Entertainment, Arts & Sports

