



EPC | European
Publishers
Council

**RESPONSE FROM THE EUROPEAN PUBLISHERS COUNCIL TO THE
PUBLIC CONSULTATION ON THE FUTURE OF THE INTERNAL MARKET
COMMUNICATION FROM THE COMMISSION
July 2006**

We agree to this reply being published.

Profile of the respondent

Please indicate which of the following categories you represent:

Private citizen / Business / **Representative organisation** / Public administration / Other

The European Publishers Council (EPC) is a high level group of Chairmen and Chief Executives of leading European media corporations whose interests span newspapers, magazines, books, journals, online database and internet publishing as well as in many cases significant interests in private television and radio. A list of our members is attached.

Question 3:

Do you agree with this choice of priorities? Are there others in your view?

The EPC supports the five priorities listed by DG MARKT in its discussion paper and would also like to emphasise that safeguarding the principles of mutual recognition and country-of-origin is the most effective way of encouraging a thriving media industry. In addition, self-regulatory approaches should always be preferred over statutory control.

Traditional newspapers and magazines cross borders and almost all publishers now have online publications that are universally accessible. For us, as with any business likely to cross borders, what is essential is legal certainty - legal certainty that whatever we distribute will be legally acceptable wherever it ends up; legal certainty that we will not be subject to 25 different legal systems in the 25 different Member States of the European Union – and potentially liable for a panoply of legal actions which may differ from one country to another.

For EPC members, the Country of Origin principle means that “service providers”, including the media (press, TV, radio, internet) and the advertising they carry, are subject only to the law of the country where they are established, and that Member States may not restrict services from a provider established in another Member State which complies with their home country rules.

Without this principle, the internal market cannot thrive: small and medium-sized enterprises in particular are discouraged from exploiting opportunities afforded by the internal market because they do not have the means to evaluate and protect themselves against legal risks involved in cross border activity or to cope with the legal complexities. Consumers and other

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users of services are also discriminated against – not able to benefit from a larger choice of competitively priced and potentially better quality services that would otherwise be available; often denied a service by service providers unsure of their legal position when providing the service from other Member States and often denied the use of the chosen service by overly restrictive national regulations.

Advertising is a vital source of revenue for newspapers and magazines and helps keep their price low. The same applies to television and indirectly to films. Advertising also plays a vital part in the national economy because it helps manufactures to talk freely to consumers providing important information about their goods and services. So important is this freedom that it is protected by the European Convention on Human Rights. Proposals and ideas for new European laws which might restrict advertising threaten the competitiveness of the European media. Less freedom to advertise and less information mean fewer newspapers and magazines and less consumer choice.

As in the US, advertising standards and ethics are governed by a well developed system of self-regulation in Europe and the industry is committed to a continuous process of improvement.

The media and advertising industries have put in place a comprehensive system of self-regulation across the EU, coordinated by the European Advertising Standards Alliance (EASA).

Statutory control should be kept to the bare minimum and only ever contemplated on the basis of developing the competitiveness of the internal market. Therefore, any statutory intervention should always be based on the principles of country of origin control which reduces the regulatory burden.

Question 5:

In your experience, does the internal market offer sufficient opportunities for businesses? Why (not)? Where do you see barriers?

A large number of new opportunities for businesses are offered by the development of technology, especially in the media and information sectors. However, it appears that the regulatory framework does not always allow businesses fully to exploit the opportunities created by the technological advances as, in some Member States, there seems to be a tendency for a strict, sometimes protectionist approach to regulation. In view of that, the regulation at the EU level, aimed at removing barriers to opportunities for businesses, should leave less room for local "tightening" of any framework legislation by the national government.

This is especially relevant for the regulation of the media sector, which bases its business on the dissemination of information and ideas, without fear of either prior control or restrictions to free circulation. To prevent against any such attempts at restriction, all EU regulation which touches on the media sector, even indirectly, should:

- always in a very clear and straightforward way stress that it cannot in any way be used to limit freedom of expression;
- always be based on the country of origin principle, so that no EU member state government is able to control the dissemination of ideas on its territory in a more strict way than that envisaged by fundamental principles of freedom of expression, enshrined in any EU regulation;

- pass the proportionality test and be based on self-regulation rather than statutory regulation.

The application of these three principles would significantly limit the possibility of imposing regulatory barriers for media businesses, by the EU member state governments.

Question 6:

Do you consider that the internal market is 'innovation-friendly'? Why (not)? Where, in your view, are the main barriers to innovation? Which steps should be taken in order to ensure that the internal market is more innovation-friendly?

The establishment of an internal market, through removal of barriers to goods, services, people and finance should normally foster innovation and growth. However, additional layers of regulation can act as a break on innovation if companies consider the hurdles of regulatory compliance and legal risk assessment to be overly costly in time or human resources.

This issue is very important for businesses based on digital media, where traditional free-to-air television has ceased being the sole method of disseminating moving images. More and more moving images are used to disseminate information or ideas through the internet and mobile devices. Whilst these images may resemble traditional TV because they are displayed on a screen they should not be regulated as such as the business models which underpin new media services are more akin to publishing.

Questions of spectrum scarcity and high barriers to entry no longer apply to new media. Therefore the regulatory framework should adapt, leaving the provision of new media services subject to minimum regulation. For example, the free circulation of such services is already assured through the E-Commerce Directive which is based on sound internal market principles. Important European laws of Data Protection and Unfair Commercial Practices will also apply to these services, together with the general laws of defamation, obscenity and racism etc., as well as in many cases sector specific self-regulation. E-newspapers and e-magazines often use moving images. Internet portals and vortals use moving images. Moving images are used to transmit information in telecommunication networks - through mobile and traditional telephony.

As yet no one is able accurately to predict which type of media will dominate the future media market. Thus it would be unwise to impose any artificial limits based on regulation applicable to traditional media, as it may result in "elimination" of one or more types of the media by media regulators who could not understand how media in the digital age will function in future. The basic principle applying not only to media but to any type of business dependent on innovation should be: innovation first, regulation second. Only by applying such a principle can the EU internal market exploit fully the possibilities created by innovation on terms of innovative products, services or processes.

Question 7:

Do you consider that the current IPR regimes foster growth and innovation? In your experience, where is more focus or action needed?

The raison d'être of EPC members is to disseminate content in a variety of formats in print and electronically on digital platforms. We favour wide dissemination of our works provided that our rights are respected. Our members are at the forefront of new media services. For instance

- Newspapers were amongst the earliest media groups to develop websites, either on a free, paid-for or hybrid basis.
- In the scientific, technical and medical field, Reed Elsevier, with its 'ScienceDirect' platform, offers its customers access to a huge range of information sources with a variety of payment models, both subscription and pay per use.
- The same is true of Reuters in the field of online financial information.
- In the book industry, Macmillan (owned by EPC Member Holtzbrinck) recently announced its 'BookStore' project - a searchable repository of digital book content, with e-commerce technology for purchasing titles.)

Growth and innovation based on IPR may only exist if there is certainty in the case of establishing IP ownership and rules of its legal use by users. Also innovation is only viable if the results of research or new ideas can be adequately protected in favour of the person who made the investment resulting in innovation. This brings us to the statement that innovation is not possible without effective and efficient protection of copyright and other intellectual property.

One of the working groups at the Creative Economy Conference held last year in London concluded that *"Copyright is crucial. In this new era, everything becomes a subset of IP. We believe that copyright has been a highly effective mechanism to generate creative wealth in the industrial mechanical age, and the concepts of copyright will continue to do this as they adapt to the online era."*

The protection afforded by IPR regimes should be effective. Any rightsholder should have the right to remuneration for the use of his IP by a third party to an extent reflecting his investment, while any other unauthorised use of his rights should be a breach penalised by sanctions constituting a further strong deterrent against such breaches. The protection should also be efficient, meaning that in cases where for social reasons IP should be widely accessible, there should exist a system which in a simple manner would enable the rightsholder to obtain remuneration for the IP used.

The above is of great importance to a business which creates IP as its main asset, such as media publishers. Any IPR system which would enable "open and free access" or in any other way deprives media publishers of a return on their investment in IP would severely worsen business conditions for them. It would also put the European media publishers in a uncompetitive position vis-à-vis media from non-EU member states. Therefore, in order to ensure the appropriate level of competitiveness and investment in innovation based on IP, the current IPR framework should in principle be maintained. The EU regulations should acknowledge that IP rights are generated from creativity and investment and, as in the case of any business, any investment will only be undertaken provided that its fruits will enjoy the appropriate level of legal protection from theft or other illegal use by third parties.

What we need is a stable legal framework protecting the rights of rightsholders who make available their content to third party users on a commercial basis, whilst giving time to the market to work out the business and technical solutions needed to achieve the new copyright compact amongst all players through collaboration and a permission-based framework. This collaboration is already happening in a number of areas, such as with search engines, libraries etc.

Furthermore, there is an urgent need to provide through legislation a proper recognition of the research, development and investments made by publishers and their need for commercial flexibility to move and develop their content in a highly competitive environment. This can only be done by tackling the question of ownership of rights in content created

under employment contract to bring European content producers into line with their US counterparts.

A new concept for employment related copyright in Europe would cover all economic rights, including future rights which cannot be excluded. Publishers must have adequate control over their copyright to be able to adapt effectively to changes in their environment without asking for the consent of each employee each and every time they wish to develop new formats for new delivery platforms.

Publishers across Europe are faced with Court cases – where their employees refuse to allow secondary exploitation of content created during the course of their employment without additional payment. This is rendering some editorial ventures on the Internet and/or through other content distribution platforms such as mobile, uneconomical and is one of the areas where Europe loses in terms of competition with the United States or Asia.

We are not asking for something completely new. Copyright law has already been harmonised throughout the EU regarding software programs created by employees under contract. Software copyright is vested in employers which puts European software producers the same IP rights as their non-European competitors. We need the same rights as our competitors in the US. There is no room for unfair competition from outside or indeed from within the EU (through middlemen i.e. collecting societies or levy collectors).

We need a new statutory approach to copyright instead of having to rely on contractual collective licensing as a way round the lack of a statutory right of ownership in favour of employers.

The “work for hire” concept, adapted from the American model, operates similarly in the UK and the Netherlands. It is no coincidence that these two European markets have been more successful in rising to the challenges of producing new formats for consumers with the confidence of a secure legal regime, underpinning their investment.

Question 11:

Do you think that voluntary standards for services would be beneficial? If so, in which sectors should they be introduced?

The EPC stands for high ethical standards supported by assiduous self-regulation in both advertising and editorial content. The EPC does not support EU-wide codes of practice for editorial content, preferring instead to rely on national, or company level codes which reflect national sensitivities.

Press self-regulation has been an effective means to regulate the press. It serves two main purposes. It protects press freedoms and it protects citizens from abuses of those freedoms by the press. Communications media must be free and independent of government in order to perform their indispensable role of informing electorates and so underpinning the foundations of democracy. It is so important that it is protected by the Charter of Fundamental Rights of the European Union, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Media freedom is never absolute. It is subject to many legal restraints include laws of defamation, data protection, and copyright. National codes ensure high standards and ethics, also covering norms of taste and decency in each individual EU Member State. Such subtle matters are not appropriate for EU wide legislation.

Advertising standards and ethics are governed by a well-developed system of self-regulation in Europe and the industry is committed to a continuous process of improvement. Statutory control should be kept to the bare minimum and only ever contemplated on the basis of developing the competitiveness of the internal market. Therefore, any statutory intervention must be fully justified and proportionate and should always be based on the principles of country of origin control, which reduces the regulatory burden.

The EPC is actively involved in promoting responsible advertising through its participation in EASA (European Advertising Standards Alliance) and as a member of the Advertising Roundtable set up by DG SANCO.

The EPC asks the Commission to continue its efforts in promoting self-regulation as an effective alternative approach to regulation and acknowledge more positively the commitment as well as achievements which the industry has made.

In addition, some categories of advertising are already banned or restricted in all media by European or national laws. The European Commission could initiate a process in discussion with the media to identify categories of advertising which could be de-regulated, for example prescription medicines.

MEMBERS OF THE EUROPEAN PUBLISHERS COUNCIL

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Mr Francisco Pinto Balsemão, Chairman and CEO, Impresa, Portugal (Chairman)
Sir David Bell, Chairman, Financial Times Group, UK
Mr. Jose-Maria Bergareche, CEO, Vocento, Spain
Mr Aldo Bisio, CEO RCS Quotidiani S.p.A Italy
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