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Publishers
Council

Green Paper on online distribution of audio-visual works in the European Union: Opportunities and challenges towards a digital single market

*A contribution from the European Publishers Council
18th November 2011*

The European Publishers Council is a high level group of Chairmen and CEOs of leading European media corporations actively involved in multimedia markets spanning newspapers, magazines, books, journals, internet and online database publishers, and radio and TV broadcasting. One of our primary goals is to encourage sound law-making for the media industry. A list of our members is attached.

Introduction

- The EPC welcomes the opportunity to comment on the Green Paper. For the purpose of this consultation, the EPC contribution will be limited to the more general questions raised in the document. Individual members of the EPC having activities in the audiovisual field may respond individually or through their respective associations.
- The **internet inevitably brings with it the end of traditional ways of doing business**, of high barriers to entry, of incumbency rights. Nevertheless, this does not imply that copyright has somehow become an outmoded concept. There may be many who would like it to be so – and some with strong commercial interests that it should be so. But before we allow them to undermine what copyright has created, **we should think very hard about what we would be losing through further harmonisation or new exceptions.**

EPC

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- Instead **we need to find ways of managing copyright that go with the grain of technology** rather than falling back on cross-grained attempts to maintain a vanishing status quo.
- The EPC submits that **copyright is not an obstacle or a barrier to accessing content**. On the contrary **copyright is the solution to providing access while creating viable business models and pays those that invest in the content creation**. The reward for this investment must first and foremost be organised by market led solutions responding to a consumer and market demand. **When there is a consumer demand, markets naturally adapt and respond, offering appropriate licensing solutions that take into account the whole value chain:** from the creative idea to the production, marketing, distribution and finally the enjoyment of the creation. This virtuous circle ensures that the media can continue to **produce quality, trusted journalism and entertaining content** while at the same time contributing to creating value and growth in Europe.
- This response will address the questions in the Green Paper related to the main obstacles to creating a digital single market (question 1), how technology can facilitate the clearing of rights and the role of the EU (question 9), the question related to an EU Copyright Code (question 13) and an optional EU Copyright Title (question 14).

1.0 The importance of rights ownership information and the ability to manage rights directly in the digital environment

1.1 In 2010, the EPC members undertook an internal review of the current copyright laws and the conclusion was that **the current copyright regime remains fit for purpose but we may need to find ways of managing rights better in the digital environment** to seize the opportunities offered by the Internet and new technologies to make content easily accessible throughout the European internal market.

1.2 The EPC welcomes that the Green Paper recognises that **technology can facilitate the clearing of rights** and asks the question whether identification systems for audio-visual works and right ownership databases facilitate clearance of rights for online distributing of audio-visual works.

1.3 To increase access and to facilitate access to content online, whether it be audio-visual works or any other content, **there is an increasing demand for clear and easily accessible rights information.** The Internet offers a variety of solutions for the making available and enjoying content, whether through human readable licenses or machine readable licences. As **technology increasingly will allow for more automated, and semi-automated licences** - where rights and permissions in how to use the content as well as the payments will be handled in an automated way, **the content sector, in general, will need to find ways of adapting to and benefiting from these developments** while preserving the financial model and the possibility to decide *ab initio* how the content should be licensed.

1.4 To **maximise the potential offered by the power of data management online**, we need to be able to **identify the content** being used and who controls the rights in it; we need to be able to **identify the user** and the usage; we need to be able **automatically to link these various entities together to complete a transaction.** Data (those portions which do not threaten privacy or confidentiality) will need to be held **in accessible online databases** (sometimes known as registries, but not to be confused with any attempt to impose statutory registration of copyright works which we would oppose). Those databases will need to **be linked together through a trusted (and trustworthy) messaging infrastructure.** These in turn need links to **secure transactional systems** that handle payments that will support many different types of business model – from low value micropayments to high value “all you can eat” subscriptions.

1.5 This issue is also linked to question number 1 in the consultation of the Green Paper on what are the main obstacles to a digital single market: the missing link completing the thriving market for content is not copyright itself, but rather it is the **lack of a rights management structure fit for complex digital markets.**

1.6 In addition to the importance of rights management we would also like to **emphasise the needs of broadcasters and publishers in the area of direct rights acquisition.**

1.7 **Direct acquisition of rights safeguards, in the best way possible, remuneration of the original authors/producers for the online use of**



their works in full. This direct relationship is important between the original author/producer and the broadcaster/publisher as well as between the broadcaster/publisher and their customers (i.e. end users of online content, the web users).

1.8 The development of **enhanced rights management** (e.g. through the work of the Linked Content Coalition) will mean more cost-effective options for direct rights acquisition and licensing of rights.

1.9 **The present legal framework supports and facilitates the circulation of audiovisual works and the development of online audiovisual media services.** However, technology and greater transparency of rights ownership information can help innovation and boost the offering of attractive programmes to consumers. Action by the European Commission could therefore usefully focus on:

- Implementing measures ensuring the “fluidity” of the whole system;
- Preserving the principle of freedom to licence, including the option of territorial licensing; and
- Promoting innovation and creativity

1.10 The key priority must be to address this issue rather than to engage in substantial changes to copyright law. The EPC presented in October 2010 **a contribution to the DG Information Society call for “[Big Ideas for the Digital Agenda](#)”¹** called “**[The Answer to the Machine is in the Machine](#)”²**. This idea set out how to put into place the first foundations of an interoperable rights management infrastructure. Our big idea is now **progressing to a full project implementation phase through the newly formed [Linked Content Coalition](#)**.³

1.11 As part of the Big Idea initiative, during 2011, the EPC has been consulting with, and **working with a variety of stakeholders to identify the requirements and potential for such an infrastructure**. From this year long preparatory phase, **three essential requirements emerged** for the facilitation of efficient rights clearance which are needed in order to respond to the technological challenges:

¹ http://ec.europa.eu/information_society/events/cf/dae1009/item-display.cfm?id=5256

² <http://www.epceurope.org/factsheets/epc-a-big-idea-from-the-european-publishers-council.shtml>
<http://www.epceurope.org/factsheets/the-answer-to-the-machine-is-in-the-machine-faqs.shtml>

³ www.linkedcontentcoalition.org



- a. Better and **more consistent rights information** provided to partners **throughout the supply chain**;
- b. Better and **clearer rights information provided to end users** (B2B and consumers); and
- c. Facilitating the creation of a voluntary but effective **market for automated and semi-automated rights trading**.

1.12 All of these are essentially about **better management of rights data**. The third of these is inevitably the most complex but is also the most important; this is what will enable **the creation of a real networked market in rights**.

1.13 Through the **Linked Content Coalition** we aim to continue work over a 12 month period **to create the standardised communication layer**; this requires standards for (i) identity, (ii) semantic interoperability, and for (iii) human and machine interfaces.

1.14 The questions the project seeks to address are the following:

- i. How do people who want to trade in rights find each other?
- ii. How can they trade cost-effectively?
- iii. How do we persuade more people to trade in rights?
- iv. How do we support a trading infrastructure in the long term?

1.15 The EPC believes that this project can bring benefits to **the audio-visual sector in particular where rights information is particularly complex** due to the number of contributors involved in the creation of a work. Thus **easier access to rights information and identification** of the ownership of rights **will lead to easier rights clearance**.

1.16 The EPC would encourage the European Commission to **support business to go with the grain of technology** and use the way the internet works **to find sustainable business solutions**. To impose **changes in copyright law** in a market that is still finding its way in terms of organising the foundations for efficient rights information and new ways of licensing **would be premature, and could hamper the investment stakeholders are currently making to build interoperable rights information systems**.

2.0 An EU Copyright Code and an optional Unitary Copyright Title

2.1 A number of directives have already been harmonised within the EU, when it has been proven necessary to do so. **To codify this in one single instrument would appear to give little added value to the current situation and could prove disruptive** just at the very moment when rightsholders need stability and legal certainty.

2.2 It is perhaps **tempting to see the developments in technology**, which have given rise to new and competing routes to market of content, often through unauthorised third party aggregation and distribution, **as giving rise to the need for change**, including further harmonisation of copyright through a copyright code. As the EPC outlined above and as stated in its Vision Document for Copyright in the 21st Century, **an evaluation of whether or not barriers to accessing content could be overcome more effectively by adapting and innovating in licensing solutions should be undertaken before changes to the law**. Technology has the capacity to deal with and to recognise different sectors' and companies' requirements as well as differing copyright systems.

2.3 The **systems of copyright have their different traditions**: the common law approach is significantly different from the other parts of Europe that have an author's right approach; the common law approach is more tuned to exploitation of economic rights whereas the civil law approach puts the author's rights at the heart of any transaction. There are clear differences in relation to ownership and how a work receives protection, whether it is through the definition of originality or an author's own intellectual creation, and the importance of moral rights.

2.4 **Copyright provides the basis for the livelihood of the creator; it is the way the artists and creators get paid**. The creative sector has a strong cultural, often national links due to languages in particular, and that rights are traded very differently across the so called copyright industries. The EU should **only engage in harmonisation** in areas **where there is a proven need**, and when solutions cannot be provided by the market, for example, this is the justification for the **proposal for an orphan works directive**.

2.5 We have real concerns that **harmonisation could lead to a “race to the bottom”** and undermine certain long standing concepts and protections in the different systems. Of course **many companies will wish to expand their business models as demand increases and, as they are already, find new markets outside their home territory**. However, if companies are obliged to invest in multinational licences as a matter of course, they will only invest in works that have broad appeal. **Given the global nature of the industry, the benchmark of return on investment could end up being what will succeed in the largest global markets**. Inexorably this will lead to a **diminution of certain genres of film or TV series** which is not in the interests of either the cultural diversity of the European production sector or of European citizens.

2.6 A **move to a unitary title** also has other implications. Unlike patents and trademarks, creative works do not need to be registered to benefit from protection; such protection is conferred to them automatically by the Berne Convention and TRIPs. **The creation of an optional Unitary Copyright Title would seem to imply that some kind of registration would be necessary** in order to benefit from protection. While voluntary rights registries will undoubtedly lead to more efficient rights management and licensing, to impose a patent/trademark model would disregard the proper function of the creative sectors, how they invest, create and distribute their content.

3.0 Conclusions

- ***Embracing and exploiting technology***

3.1 The media recognise better than anyone **that the internet is a catalyst of change on an unprecedented scale**. The landscape is changing out of all recognition, **new value chains are forming, new business models emerging**. We see extraordinary opportunities for creativity and growth across the sector. If we get that right, then sustainable models for content online can emerge at scale.

3.2 These will certainly include **paid models, which are quickly becoming part of everyone’s online experience**, especially in the audiovisual field. This can only be a good thing because in a world where advertising is



presently the dominant (or only in the case of most professional press content online) revenue stream content online, without alternative streams of revenues we are limiting the size of the content market to the size of the advertising market. And **advertising revenue is simply inadequate alone to fund professionally produced content** – whether it be television news gathering, investigative journalism, education, entertainment or sport.

3.3 The **development of paid models is especially important in smaller market and language areas**. In these areas/countries the local broadcasters/publishers have a key role in making local offline/online audiovisual content available to public (in local languages). That is why it is important that their businesses remain robust, also for sake of the freedom of speech.

3.4 **Without copyright, there is no mechanism that will give the return on investment** that is essential to encourage entrepreneurs to continue to innovate in content creation and distribution. And the survival of an effective copyright regime will depend entirely on finding ways of making copyright work with the network, not against it – exploiting technology, not fighting it.

- ***A rights management infrastructure for the 21st Century***

3.5 As the distribution of all types of media moves **from physical to network, the rights-dependent nature of the copyright industries become more explicit**. Essentially, **every transaction relating to content is a “rights” transaction** – at every stage in the supply chain - from creator to consumer, the units of commerce are *rights to access and use the content*, rather than the content itself.

3.6 This leads to an enormous **growth in the number of rights-based transactions** that need to be managed. This can only be **supported by some automation** because of the relatively low value of many of these transactions. Further, the traditional barriers between the different media sectors and territorial distribution models are breaking down as all content distribution moves onto the internet.



3.7 As set out in the [EPC's Big Idea for the Digital Agenda](#)⁴, what **we need is the development of a global market infrastructure which enables the automation of managing rights** on the internet; this is not *Digital Rights Management* as commonly understood but rather the **development of a standardised data infrastructure for the management of digital rights**. This is what lies at the heart of the work of the [Linked Content Coalition](#)⁵.

3.8 The connectedness of the internet provides us with the **opportunity to build such an infrastructure in a distributed way**, not through huge and costly centralised IT development projects, but through the development of **distributed solutions, dependent on technical standards for data interchange**.

3.9 **The direct acquisition of rights safeguards, in the best way possible, the remuneration of the original authors and producers for the online use of their works in full**. This direct relationship between the original author, producer and the broadcaster and publisher as well as between the broadcaster, publisher and their customers is key to growth.

3.10 The development of **enhanced rights management** (e.g. through the work of the Linked Content Coalition) will **mean more cost-effective options for direct rights acquisition and licensing of rights**.

3.11 **The present legal framework supports and facilitates the circulation of audiovisual works and the development of online audiovisual media services**. However, technology and greater transparency of rights ownership information can help innovation and boost the offering of attractive programmes to consumers. Action by the European Commission could therefore usefully focus on:

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⁴ http://ec.europa.eu/information_society/events/cf/dae1009/item-display.cfm?id=5256

⁵ www.linkedcontentcoalition.org

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