



## **DIF Response to Public Consultation on "Creative Content Online"**

The Digital Interoperability Forum (DIF) is a cross-sector forum engaged in the promotion of industry-led solutions to interoperability issues. DIF membership includes stakeholders representing all parts of the content delivery chain: Arqiva, BSkyB, Deutsche Telekom, Groupe Canal+, Liberty Global, Microsoft TV, Nagravision, NDS, Pace Micro Technology, Premiere, Qualcomm, Samsung, Sky Italia, TF1, Virgin Media and ZetaCast.

DIF welcomes the opportunity to contribute to the Commission's recent consultation on Creative Content Online, given DIF members' considerable experience in the areas of infrastructure and hardware provision, software, including security and content distribution and creation. DIF members are already working together with other stakeholders to deliver broad consumer choice in a competitive environment, including the distribution of audiovisual content online. DIF therefore looks forward to participating in any future work of the "Content Online Platform" to be set up by the Commission.

The main business issues for content delivered online are similar to those for content delivered by other means of distribution; online delivery is an alternative mode of content distribution which will benefit the consumer in terms of choice and convenience, but it remains part of the overall creative content market. However, there are challenges which the creative content industry is addressing, relating to the protection of intellectual property and the security aspects of online delivery. DIF advocates industry-led cooperation as the most flexible and effective means of improving respect of copyright in online and other environments. Stakeholders from all parts of the content delivery chain should work together to address content protection issues, whilst providing support for the legitimate provision of new and innovative services.

DIF's response to the specific Policy and Regulatory issues raised in the Annex to the Communication is set out below.

### **Digital Rights Management**

*1) Do you agree that fostering the adoption of interoperable DRM systems should support the development of online creative content services in the Internal Market? What are the main obstacles to fully interoperable DRM systems? Which commendable practices do you identify as regards DRM interoperability?*

DIF believes that the real issue from the perspective of the consumer is "content portability". "DRM interoperability" is one aspect of this, but it should not be given excessive prominence by being considered in isolation from the other aspects. Resolving the overall set of issues relating to "content portability" requires many different stakeholders to work together to create a combination of technological solutions and business models to support the growth of a dynamic new market in providing creative content online.

Content portability is an issue around which discussion is already taking place between stakeholders in the digital content marketplace: consumers, service providers and content owners. Consumers expect convenient access to compelling content at a reasonable price; service providers expect a fair return on investment in infrastructure, content aggregation and delivery; content owners expect a fair return on their investment in creating content. The expectations of all of these stakeholders will have to be satisfied in order for the market in content online to realise its full potential.

Consumers are free to choose between alternative means of purchasing content that may provide different options in terms of portability and ease-of-use, as well as price. For example, in the music download marketplace the demand for more portability is increasingly met through the sale and distribution of DRM-free digital music files, often at a higher price than the same content with restricted rights. This evolution in the business model is the result of a **voluntary** response to market demand by the music copyright owners and music service providers, which highlights the importance of allowing a competitive market to flourish.

One technological development that DIF would like to highlight is the recent completion by DVB of the specification for Content Protection and Copy Management (DVB-CPCM). Several DIF members have been active contributors to this effort, which provides a voluntary framework to facilitate interoperability of commercial digital content delivered to consumer devices for both home networking and remote access. DVB-CPCM, which is a further demonstration of industry's ability and willingness to find market-led approaches to interoperability, has been submitted for publication by ETSI.

*2) Do you agree that consumer information with regard to interoperability and personal data protection features of DRM systems should be improved? What could be, in your opinion, the most appropriate means and procedures to improve consumers' information in respect of DRM systems? Which commendable practices would you identify as regards labelling of digital products and services?*

DIF agrees that consumers need to be provided with clear information to enable them to make informed decisions on whether to choose or reject specific services and products. It is therefore important, as the Communication emphasises, for service providers and content owners to provide unambiguous and comprehensible information to the consumer about what they can and cannot do with content, before they commit to purchasing it.

The regulatory environment should seek to preserve as much choice as possible for all stakeholders, including the choice to offer content that meets consumer expectations and social preferences in different ways. The offerings may meet content portability demands in a certain way, may offer portability for a premium, or may emphasise simplicity and ease-of-use over portability of content. Whether or not consumers choose to accept these offerings is for them to decide in the marketplace; the important role for policy makers is to allow the marketplace to facilitate the dialogue between consumers, service providers and content owners on these issues. It would be counter-productive to the development of a dynamic market if regulation were to be introduced which restricted the ability of service providers and content owners to provide a range of offerings and hence ensure that each consumer is able to choose the combination of cost and functionality that best meets his needs.

The most effective labelling schemes are generally those which are industry-led. DIF therefore looks forward to participating in future discussions around improving consumer information about how products and services provide content portability, in order to help consumers to make an informed choice about such offerings.

*3) Do you agree that reducing the complexity and enhancing the legibility of end-user licence agreements (EULAs) would support the development of online creative content services in the Internal Market? Which recommendable practices do you identify as regards EULAs? Do you identify any particular issue related to EULAs that needs to be addressed?*

DIF agrees that a clear and unambiguous end user licensing agreement is what consumers expect. However, there does not appear to be anything specific to online content services that would require a change from the on-line licensing practices that consumers have been familiar with for many years (e.g. for software purchases).

*4) Do you agree that alternative dispute resolution mechanisms in relation to the application and administration of DRM systems would enhance consumers' confidence in new products and services? Which commendable practices do you identify in that respect?*

It is not clear that alternative dispute resolution mechanisms are required in order to stimulate the growth of the market. As noted earlier, the most important contribution to enhancing consumers' confidence in new products and services would be to improve the clarity of information to the consumer about the content portability in the devices and services that they are offered.

*5) Do you agree that ensuring a non-discriminatory access (for instance for SMEs) to DRM solutions is needed to preserve and foster competition on the market for digital content distribution?*

DRM technologies should be made available under fair, reasonable and non-discriminatory terms, as already appears to be the case. It is also important to ensure that the regulatory environment adopts a technology-neutral approach in order to preserve and foster competition in the market.

### **Multi-territory rights licensing**

*6) Do you agree that the issue of multi-territory rights licensing must be addressed by means of a Recommendation of the European Parliament and the Council?*

DIF has no comment on this issue.

*7) What is in your view the most efficient way of fostering multi-territory rights licensing in the area of audiovisual works? Do you agree that a model of online licences based on the distinction between a primary and a secondary multi-territory market can facilitate EU-wide or multi-territory licensing for the creative content you deal with?*

DIF has no comment on this issue.

*8) Do you agree that business models based on the idea of selling less of more, as illustrated by the so-called "Long tail" theory, benefit from multi-territory rights licences for back-catalogue works (for instance works more than two years old)?*

DIF has no comment on this issue.

## **Legal offers and piracy**

*9) How can increased, effective stakeholder cooperation improve respect of copyright in the online environment?*

DIF has no comment on this issue.

*10) Do you consider the Memorandum of Understanding, recently adopted in France, as an example to followed?*

DIF has no comment on this issue.

*11) Do you consider that applying filtering measures would be an effective way to prevent online copyright infringements?*

DIF has no comment on this issue.