

DIGITAL INTEROPERABILITY FORUM

RESPONSE TO THE EUROPEAN COMMISSION GREEN PAPER ON THE ONLINE DISTRIBUTION OF AUDIOVISUAL WORKS IN THE EUROPEAN UNION: OPPORTUNITIES AND CHALLENGES TOWARD A DIGITAL SINGLE MARKET

The Digital Interoperability Forum¹ (DIF) welcomes the opportunity to contribute to the Commission's consultation on the online distribution of audiovisual works. DIF members² represent all parts of the broadcasting, communications and multimedia paid-for content value chain, including transmission, hardware, software, middleware, platform operation and content provision. DIF members have a strong interest in the continuing success of digital TV and information society services in Europe.

Today DIF members are involved in the delivery of content to a wide range of devices and platforms, including conventional set top boxes, mobile phones, tablets, computers, etc. and cable, satellite, DTT and IPTV platforms as well as the internet. This expansion of distribution mechanisms has been driven by consumer demand for content to be available at their convenience. Of particular relevance for this consultation is that the transition from a more traditional means of distribution, such as the set top box, to the plethora of devices seen today has been market-led, i.e., it is based on demand coupled with commercial arrangements and technology solutions developed by industry without any external stimulus such as regulatory intervention.

DIF's focus is on technology policy issues, particularly – but not exclusively - in relation to interoperability and standardisation. Accordingly DIF's response is confined to those questions which have a technology dimension³. DIF's members will be responding also directly or through other associations of which they are members.

¹ www.difgroup.eu

² BSkyB, Canal+, Deutsche Telekom, Irdeto, Liberty Global, Microsoft, Nagravision, NDS, Pace, Sky Deutschland, Sky Italia, Viaccess and Zetacast

³ Questions 1, 4, 8, 9, 25 and 26.

Question 1

What are the main legal and other obstacles – copyright or otherwise - that impede the development of the digital single market for the cross-border distribution of audiovisual works? Which framework conditions should be adapted or be put in place to stimulate a dynamic digital single market for audiovisual content and to facilitate multi-territorial licensing? What should be the key priorities?

As noted above audiovisual content is already available via many devices and, where commercially justified, also on cross-border basis. This is the result of the development on online and other business models by market players.

DIF is aware that policymakers and some stakeholders consider that there is lack of interoperability which (it is alleged) frustrates the availability of content across devices and across borders. In this context DIF observes that consumers do not expect the “interoperability” which seems to be a nirvana for policymakers: consumers are made aware of and understand that different devices give them access to different content. However, a subscriber expects interoperability of "his authorised content" for a clearly defined subset of devices offered when he subscribes and this means not only that such content is available on those specific devices but also that it is received without diminution of quality and reliably (e.g. without outages to the service). All of these "quality features" have to be achieved step-by-step, keeping the integrity of the service at the highest level rather than focusing on distribution of content to the maximum number of devices in the market. Thus, differences in content availability arise not because it is technically impossible but because there may be concerns about content protection/security, data protection, the quality of the visual image, integrity of the service, etc.

Similarly where a device or content is made available by different companies consumers are aware of what they can access and what they cannot. For example, a subscription to a satellite service in Spain will provide access to the services of the Spanish satellite platform operator and not to those of, say, a Polish satellite operator and a game authored for use on a PS3 may not operate on a Nintendo Wii. In the latter example such differentiation contributes to innovation and competition.

To DIF's knowledge there has been no substantive attempt to quantify the cost of the alleged "lack of interoperability" which would be a prerequisite prior to considering any regulatory intervention. DIF considers that this lack of evidence may be due to the fact that "lack of interoperability" has become a policy mantra. Thus, DIF would urge the Commission to disregard claims or suggestions that technological interoperability is hindering the availability of online audiovisual content. DIF notes, however, that there may be other issues, e.g. Spectrum availability, barriers to cross-border use of payment mechanisms, etc, which may have an inhibiting impact.

Question 4

What technological means, for example individual access codes, could be envisaged to enable consumers to access "their" broadcast or other services and "their" content, irrespective of their location? What impact might such approaches have on licensing models?

DIF notes that the concept of "individual access codes" is not new. An "access code" is simply a piece of data given individually to user, thereby giving the user "only" access to content. Access codes are fundamental to the design and implementation of successful conditional access (CA) and digital rights management (DRM) system which ensure that consumers access the content to which they are entitled (and only that content). In the case of conditional access used in a STB ensuring authorised access can be achieved by pairing the smart card to the STB which is registered to a particular address. (This approach allows also for the distribution of regionalised services.) In this respect both CA and DRM systems facilitate legitimate access to content, whether paid-for content or free-to-air content.

The requirement for and the implemented access solution may vary according to the value of the content being offered: there is "no one size fits all". In DIF's experience criteria which influence the decision about the selected authorisation method include:

- The economic value of content and, hence, security requirements;
- The capabilities and functionalities of devices and media;
- The robustness of such devices with regard to piracy;

- Modes of delivery of content;
- Rights available from rights owners;
- Licensing and compliance regimes for existing content protection systems; and
- Expectations from end-users as to what functionality offered by new DRM - based services should be.

DIF would be interested to understand what more the Commission has in mind. The means of authorising access to content is examined in a number of standardisation activities and DIF would be pleased to share its knowledge in this area.

Question 8

How will further technological developments (e.g. cloud computing) impact upon the distribution of audiovisual content, including the delivery of content to multiple devices and customers' ability to access content regardless of their location?

The cloud offers opportunities for both content production and distribution. This was the subject of a DIF roundtable discussion in September 2010⁴. The discussion highlighted a number of issues, including whether the AVMS the regulatory regime was applicable to cloud-distributed audiovisual content.

Already there are a number of approaches by industry to create interoperability frameworks at a technical level which facilitate the delivery of content to multiple devices. Amongst there are the over the top (OTT) streaming protocol such as MPEG-DASH, DLNA and DTCP-IP. There are also a number of collaborative projects, such as the one supported by the French Government, are under development or have been developed on related subjects (particularly around cap-digital, the French business cluster for digital content and services in Paris and the Ile de France region).

⁴ <http://www.difgroup.eu/uploads/DocsAndMediaManager/documents/DIFRoundtable.pdf>

A number of DIF members are also actively involved in UltraViolet⁵, a cloud-based interoperability framework that offers authentication between digital services and devices, and a brand and conformance programme. Ultraviolet is designed to maintain content integrity and security, allow the use of any authorised DRM, and give content providers greater confidence to use the cloud. UltraViolet has already been launched in the United States.

In DIF's view these developments are another demonstration that industry is driving technology to enhance further the availability of online content within existing legal frameworks.

Question 9

How could technology facilitate the clearing of rights? Would the development of identification systems for audiovisual works and rights ownership databases facilitate the clearance of rights for online distribution of audiovisual works? What role, if any, is there for the European Union?

As a general point DIF notes that technology is, of course, capable of being used to facilitate clearing of rights. In this context DIF is in contact with the original promoters of the Linked Content Alliance and is interested to explore further how this concept could be implemented in the audiovisual world. However, as the Commission will understand from the points made previously in this submission there are crucial questions relating to content protection, including copy management, which have to be addressed and which would need to be integral to any technology used for rights clearance. Moreover, any identification system would have to be capable of co-existing (or be interoperable) with other systems and databases already in place or in development.

DIF considers that further work should be done on the commercial requirements for a solution such as that embodied in the Linked Content Alliance project. (Identifying commercial requirements is the normal precondition for development of a technical standard or specification.) Following on from that

⁵ <http://www.uvu.com/>

there is a substantial task in first identifying the various systems which already exist, before embarking on technical work to establish what is required to achieve interoperability (should this be deemed necessary). Given the numerous interested parties DIF can envisage a role for the Commission in acting as an assembly point to ensure a full exchange of information. However, DIF would suggest that the Commission should refrain from advocating any one solution. In DIF's view history shows the dangers of policymakers and regulators trying to "pick winners".

Question 25

What would be the practical benefits of harmonising accessibility requirements to online audiovisual media services in Europe?

DIF would find it helpful if the Commission could clarify this question. Does it refer to accessibility functionalities of devices or accessibility features of online audiovisual media services? If the former DIF notes that there are already accessibility features in many devices and it is important not to disrupt legacy deployments. If the latter DIF observes that, while many online audiovisual services are global by nature and this could suggest a global approach is preferable, the cultural differences which exist internationally and throughout the EU should also be acknowledged.

Question 26

What other actions should be explored to increase the availability of accessible content across Europe?

As with Question 25, DIF would be grateful for clarification of this question.