

ETNO Reflection Document on the European Commission Communication on the Management of Copyright and Related Rights in the Internal Market

Executive Summary:

ETNO presents its views on the Commission Communication taking account of the need for more high-quality content to attract users to broadband networks and stimulate the development of e-Europe.

Regarding collective rights management, the Association underlines the need to end the legal and de facto monopolies enjoyed by EU collecting societies so that rights acquisition for on-line services can be made less time-consuming, complex and expensive.

Regarding individual rights management, ETNO highlights the role that EU competition policy must play in ensuring that exclusive rights are as easily available for on-line services as they are for traditional media.

Finally, regarding digital rights management, ETNO emphasises its support for open, interoperable systems while stressing that development of technical standards should remain market-led.

Introduction

As the representative of 41 major European telecoms operators, ETNO's interest in the Communication is linked to development of the EU information society. Since the beginning of the present decade, large investments by ETNO Members have provided a constantly-increasing percentage of EU citizens with the opportunity to connect to broadband networks. However, it is clear that more high-quality content is needed to attract more users to these networks, and to help drive the take-off of the thriving broadband economy envisaged by the EU's eEurope policy. The Communication addresses three issues – reform of collective rights management, individual rights management and development of DRM systems – which have a crucial role to play in this process. ETNO's comments on each of these issues are outlined separately below.

Collective rights management

The acquisition of rights needed to offer on-line services is often excessively complex, time consuming and expensive. These difficulties are illustrated most acutely in the music sector where – despite the market's large potential – the launch of legitimate services has been delayed, and

the absence of legitimate services has encouraged the development of illegal alternatives which contribute little to the content production economy. The development of multimedia products which incorporate third-party music rights into a larger package (eg, on-line games) is also being obstructed.

Most of the above-mentioned difficulties derive from the traditional structure of collective rights management in Europe which is characterised by de facto, or legally-established national monopolies. Such monopolies may be considered admissible in relation to forms of rights exploitation which can only be monitored through a physical presence in the territory concerned. However, they have little *raison d'être* in the on-line environment where monitoring can be undertaken remotely without a local presence.

The Simulcast agreement approved by the European Commission in October 2002 goes some way towards recognising the new technological context. It represents a step in the right direction to the extent that it provides licence-seekers with a one-stop shop, freedom in their choice of collecting society, and competition between societies with respect to their administrative costs. However, the agreement is narrow in scope (music incorporated into radio and TV shows also broadcast on the Internet), and provides rightsholders with no freedom of choice concerning their agents, and hence no competition with respect to royalty levels. Furthermore, ETNO doubts that market forces will be sufficient to ensure the establishment of similar arrangements covering all forms of on-line exploitation and other categories of copyright. In any event, competition rules must be properly applied to collecting societies in order to ensure that effective competition is not restricted.

Against this background, ETNO considers that - insofar as rights relating to on-line services are concerned - the proposed legislative instrument on collective rights management and EU competition policy should be directed urgently towards achievement of the following objectives:

- Greater transparency and control of collecting society operations - particularly with respect to governance, accounting and fees - to ensure their power is not misused.
- Greater transparency and legal certainty regarding the transfer of rights. In at least some Member States there is currently no clarity regarding the cases in which additional rights must be acquired from music publishers (eg, synchrights, ringtones).
- Freedom of choice for rightsholders. More specifically, rightsholders should not be obliged to contract with their own national collecting society. Unbundling of collecting society services must also be enforced so that, if rightsholders wish to do so, they may take advantage of new DRM technologies to administer their on-line rights on an individual basis.
- Establishment of one-stop shops and freedom of choice for users. Collecting societies must be empowered and encouraged to offer licences covering any EU territory and compete for licence-seekers' business. Users should have a choice between EU and regional licences,

- Unbundling of collecting society offerings in order to allow licence seekers to choose the best offers. An “Experimental Licence” should be established to facilitate the testing of new business models without the obligation to take out a full licence.

Individual Rights Management

Regarding rights that are typically managed on an individual basis, the main problem faced by on-line service providers is their simple availability. More specifically, the same exclusive rights which are readily purchased by traditional media such as terrestrial television are not always so easily-obtainable for purposes of exploitation via fixed Internet or 3G mobile.

ETNO recognises that the market foreclosure resulting from under-exploitation or bundling of exclusive rights and other practices unfairly limiting the availability of content for New Media is a matter for EU competition policy. The Association also acknowledges the efforts already undertaken by EU competition authorities to address the problem. Nevertheless, we regret that the issue is not highlighted in the present Communication.

Digital Rights Management

One question is not explicitly stated in the Communication, but is possibly implied by the text: should reform of collective rights management be postponed until DRM systems are more fully developed and deployed? In ETNO’s view this would be a weak excuse for delay. DRM systems offering robust levels of copy protection are already available, and have already been commercially launched by some ETNO Members.

Turning to the more explicit themes of the Communication, ETNO would strongly endorse two points:

- DRM systems should, as far as possible, be open and interoperable. Interoperability is the key to avoiding market fragmentation and achieving the economies of scale and vigorous competition that will benefit all stakeholders.
- Development of DRM systems should be market-led. Politically-inspired attempts to select technology winners risk impeding investment and innovation.

It follows that interoperability will be best achieved on the basis of industry standardisation initiatives. The EU may be able to contribute further to such initiatives through direct funding and support for R&D projects.

In addition, competition policy has a key role in ensuring that proprietary DRM technologies do not prevent development of the market by restricting interoperability. In light of the threats to competition, consumer

choice and innovation, it is unfortunate that this aspect of the Commission's responsibilities is not mentioned in the Communication.

As for the envisaged Recommendation on interoperability of DRM systems and services, its contribution remains to be demonstrated. In particular, it must be shown how this proposal will be compatible with the market-led selection of successful standards. Furthermore, since DRM is such a vast and loosely-defined sphere of activity, a rigorous, precise and selective approach will be required to identify those areas where interoperability is a priority.

Regarding copyright levies, ETNO considers that they will have no *raison d'être* in a world where effective DRM systems are widely deployed, and will hamper development of the EU broadband sector. The EU should dissuade national authorities from extending copyright levies to digital equipment and media if technological measures are applied to these. Particularly, new levies on mobile equipment, such as mobile handsets, would further hamper the successful development of the European mobile sector and give rise to trade distortions within the Single Market.

ETNO will comment in more detail on these questions following the publication of the Report of Commission's High Level DRM Advisory Group which we understand is currently in preparation.