



EBLIDA response to the European Commission's Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market.

The European Bureau of Library, Information and Documentation Associations (EBLIDA) is an independent umbrella association of library, information, documentation and archive associations and institutions in Europe representing 135 members in all EU member states and other European countries.

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EBLIDA, the European Bureau of Library, Information and Documentation Associations, welcomes the opportunity to submit its comments to the Green Paper on the online distribution of audiovisual works in the European Union published on 13.7.2011 [ref. COM(2011) 427 final]

We appreciate the initiative taken by the Commission to launch this first step in the attempt to close the gap in the availability of online services for consumers by creating a European framework for copyright licensing of multi-territorial and pan-European services

The focus of the Green Paper is the commercial online services regarding audio visual works. Libraries and Cultural Heritage Institutions are basically of a non-commercial character providing services to either the community at large or well defined user groups of specific educational establishments. Therefore many of the asked questions are not relevant in this context.

The points of direct interest for libraries and cultural Heritage Institutions are found in section 5. However, we would like also to address some detailed points made in the Introduction and the section on Policy Approaches

Introduction

The last paragraph of section 1.1, in the context of infringement of copyright, refers to 'enforcement and cooperation by intermediaries'. Libraries are intermediaries between, on the one hand, the holders of copyright in materials made available by the library, and on the other, the

patrons of the library who use the material. How the patrons use the material is normally outside the control and knowledge of the library. In general libraries would maintain a principle of neutrality in such cases and not become involved in disputes in which they are not a contesting party. Furthermore, law enforcement is not an objective of library's activities, and the necessary legal and technical prerequisites for libraries to function as law enforcement agencies are normally not present.

In the second paragraph of section 1.2, several reasons are given for the fragmentation of the online market, but the reasons do not include the most obvious, namely that each Member State has its own copyright regime.

Policy Approaches

The focus of the Green Paper is the commercial online services regarding audio visual works. Libraries and Cultural Heritage Institutions are basically of a non-commercial character providing services to either the community at large or well defined user groups of specific educational establishments. Therefore many of the asked questions are not relevant in this context.

Question 3: Is a copyright system based on territoriality in the EU appropriate in the online environment?

Answer: No, most of the problems raised by the Green Paper are attributable to the multiplicity of copyright regimes in the various Member States.

Question 9: How could technology facilitate the clearance of rights? Would the development of identification systems and rights ownership databases facilitate ...clearance?

Answer: It would be a mistake to rely on technology to solve the underlying problem, which is the difficulty of identifying rights owners and maintaining contact information about them. Technology cannot perform the task of recording the changes of ownership during the lifetime of a copyright, nor of recording ownership and contact information once the copyright has ceased to have commercial value, when no one, not even the owners, has any interest in recording or advertising the ownership.

Question13: What are the possible advantages and disadvantages of harmonizing copyright in the EU via a comprehensive Copyright Code?

Answer: The advantages are improved legal certainty for all users of copyright material. There are no disadvantages provided that the exceptions and limitations to copyright are made mandatory, rather than optional, in all Member States.

Section 5.1, 'Film heritage institutions'

The lack of legal certainty described in this section applies to libraries and archives of all kinds, all of which may hold audiovisual works. It is unrealistic to consider that an institution called a 'library' or 'archive' contains text-based works only. Equally, a 'film heritage institution' may

contain works of other types. This section takes a too narrow view of the problem, which is faced by a great variety of educational and cultural institutions.

Question 21: Are legislative changes required in order to help film heritage institutions fulfil their public interest mission? Should exceptions of Article 5(2)(c) (reproduction for preservation in libraries) and of Article 5(3)(n) (in situ consultation for researchers) of Directive 2001/29/EC be adapted in order to provide legal security to the daily practice of European film heritage institutions?

Answer: These exceptions should be mandatory.

Question 22: What other measures could be considered?

Answer:

1. There is an urgent need for collective licensing mechanism that makes it possible to clear rights in a simple and effective way.
2. It should be considered how it may be possible, within the limits of the three step test, to remove the limitation to 'dedicated terminals on the premises of establishments', because it keeps the serious study and enjoyment of European culture firmly within the technological constraints of the 20th century. The constraints of in situ consultation run counter to the dynamic educational and cultural infrastructure which is essential for the smart, sustainable and inclusive growth embodied in the Commission's Europe 2020 Strategy.

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