



**EBLIDA Response to the European Commission consultation
on the *Communication from the European Commission to the
Council, the European Parliament and the European
Economic and Social Committee on the Management of
Copyright and Related Rights in the Internal Market***

(COM (2004)261 final, Brussels, 16 April 2004)

EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organisation of national library, archive and information sectors associations and institutions in Europe. EBLIDA represents the interests of its members to the European Institutions with a focus on intellectual property rights, information society, professional education and culture matters.

EBLIDA promotes unhindered access to culture and knowledge in the digital environment, as proclaimed by the Lisbon Council 2000, and the role of cultural heritage institutions in achieving this goal.

EBLIDA welcomes this communication from the European Commission and, in particular, its concern in tackling the copyright-related issues arising from the advent of the Information Society and its acknowledgement that users and consumers (and more specifically, libraries, archives and educational and cultural institutions) are essential stakeholders in the process to develop community legislation on the collective management of copyright and related rights. Balance between right holders' rights and fair access of users to copyrighted material remains to be a major goal to achieve.

Community-wide licensing

EBLIDA supports the EC views that, in order to develop a Community-wide licensing for the exploitation of certain rights impacting across borders, more common ground should be developed and a policy of good governance of collecting societies established. In this sense EBLIDA agrees on the need for: granting the users the freedom to choose the collecting society from which to obtain a EU-wide license; a pricing policy which would be transparent and fair; efficient, transparent and accountable collecting societies subject to rules of good governance; the establishment of national and international dispute resolution mechanisms easily accessible to users and consumers, preferably led by public authorities or international organisations; and a transparent mechanism for the external supervision of collecting societies.

Besides this we feel there is a need for fair terms in the licences granted by collection societies. It is still very unclear if contract law can override the exceptions granted by national copyright law. It is therefore very important that the licences granted by collecting societies should include a compulsory standard clause stating that nothing in this licence shall override the provisions of statutory exceptions to copyright pertaining in the legal jurisdictions where the material is to be used. This is especially important in connection with Community-wide licensing.

Furthermore, we believe collecting societies should function as one-stop-shops for licensing as libraries (and users) would benefit from access to the whole catalogue of rights, including the digital use of works.

Digital Rights Management Systems

EBLIDA has submitted its views on Digital Rights Management systems (DRMS) to the European Commission at several occasions and has participated in the EC *ad hoc* Workshops. The views of EBLIDA, already summarised in its Position Paper on Digital Rights Management Systems (February 2003, as attached), is based on the need that Digital Rights Management systems must respect the exceptions granted to users of copyrighted material in their national copyright

laws.

We firmly believe that technical protection measures must not interfere with the legitimate use of content and should be sufficiently flexible to enable use of lawful exceptions. EBLIDA is pleased with the acknowledgement by the Commission that it is under a duty to examine within the context of Article 12 Contract Committee, whether acts permitted by law are being adversely affected by the use of effective technological measures (so called "the technological lock up" (Item 1.2.5, paragraph 5)). We would like to offer our full support in any examination the Commission plans to undertake.

Other issues to be taken into account in respect of DRMS are:

- Interoperability
- Standardisation
- Data protection
- Lawful circumvention
- Dispute resolution bodies

We fully agree with the Commission's recognition that consensus amongst stakeholders and acceptance by consumers is essential for DRMS to work successfully. Likewise we fully share the Commission's concern about DRMS' ability to trace the user's behaviour and support its view that the user's privacy should be preserved.

The Hague, June 2004

APPENDIX 1

EBLIDA Position on Digital Rights Management Systems (*February 2003*)

Introduction

1. EBLIDA, the European Bureau of Library, Information and Documentation Associations, is an independent, non-profit umbrella organisation of national library, information, documentation and archive associations in Europe. Subjects on which EBLIDA concentrates are European information society issues, including copyright & licensing, culture & education and EU enlargement. We promote access to information in the digital age and the role of archives and libraries in achieving this goal. We represent the interests of our members to the European institutions, such as the European Commission, European Parliament and the Council of Europe.

2. EBLIDA, together with our international colleagues in [IFLA](#), lobbied on behalf of libraries during the negotiation process for the WIPO treaties in 1996. EBLIDA has lobbied for libraries at European level on the *Directive on rental and lending rights* (1992), *Directive on harmonising the term of copyright protection* (1993), *Directive on the legal protection of databases* (1996) and the *Directive on harmonisation of copyright in the Information Society* (2001) and continues to be involved in related European initiatives e.g. digital rights management systems, collecting societies, public sector information.

Copyright and libraries

3. Libraries are increasingly being called upon to provide access to information for citizens in the

information society; for e-learning and lifelong learning, to combat social exclusion, to encourage new forms of civic government, to support business and the economy, to help bridge the digital divide. The success of the information society depends on the content being accessible to the public.

4. Copyright law impacts on most of what libraries do. It affects the services that libraries can provide to their users, and the conditions governing the access they provide to copyright materials.

Libraries and Digital Rights Management Systems

A Digital Rights Management Systems is a means of delivering content. However, DRMS are frequently seen only as a Technical Protection Measure i.e. a technical means of enabling right holders to deliver digital content in a controlled way, preventing users from having access to the content unless they meet the requirements of the right holder, be it financial or otherwise, and preventing users from using the accessed content in ways other than the right holder has given permission for.

5. Libraries are already involved in the clearance and management of rights. A properly managed introduction of Digital Rights Management Systems, in its widest sense, could assist libraries in managing their services. However, a restrictive definition of a Digital Rights Management System, which focuses on protection rather than management, may hinder libraries in managing access to their services.

6. It seems as if the legislation is being driven by the technology and its limitations. Instead, the development of Digital Rights Management Systems should be driven by the principles behind the legislation, especially with regard to the ability to benefit from exceptions.

7. We are pleased that Directive 2001/29 (the EU copyright Directive) contains exceptions, which we hope will be implemented by EU Member States. Digital Rights Management Systems must respect these exceptions, the application of which are limited by Article 5.5 of the Directive.

8. We firmly believe that technical protection measures must not interfere with the legitimate use of content and should be sufficiently flexible to enable use of lawful exceptions.

9. For a library, a Digital Rights Management System should enable efficient management and rights **clearance** and should include the following elements:

- Digital rights management;
- Management of digital rights;
- Digital management of rights;
- Contract management;
- Access management;
- Management of the clearance process.

Key issues

Exceptions must be respected

Digital Rights Management Systems should meet user expectations e.g. accommodate exceptions in different Member States. The technology can accommodate exceptions, but right holders must ensure that exceptions are respected in the business models which are developed.

Interoperability

Digital Rights Management Systems must be interoperable with respect to access to content from different devices and must enable distributor and consumer choice with respect to access to content.

Standards

EBLIDA supports standards that enable easy management across multiple content providers.

Security and data protection

Security levels should be appropriate for the content. Technical developments must not be driven only by the mass entertainment industry, which may have different requirements to the scientific and academic communities.

Data protection and privacy legislation must be respected both for individuals and for research groups.

Circumvention

Circumvention of technical measures in special cases must be possible e.g. for legal or voluntary deposit, archiving, in order to safeguard the availability of material for future generations.

Clear labelling and guidance

Products protected by Digital Rights Management Systems should carry clear information on the effects of the DRMS for the user e.g. restrictions of functionality, usage, etc. In this context, it is important that users are informed of their rights, i.e. national copyright exceptions.

Digital Rights Management Systems must be user friendly Digital content must be easy to access and use. User friendliness is crucial for DRMS protected material to be accepted by users.

Dispute resolution

Although safeguards are provided in Article 6.4.1 of the Directive, it is important that special arbitration bodies to settle disputes are established. These bodies must be efficient and inexpensive.

The Hague, February 2003

