



## **Response to the European Commission consultation on the EBLIDA Final Report of the High Level Group on Digital Rights Management, March-July 2004**

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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, DRM, information society, education and culture matters.

EBLIDA promotes access to information and culture in the digital environment for the purposes of education, research and private study.

EBLIDA welcomes the initiative taken by the European Commission in setting up the High Level Group on Digital Rights Management. However, EBLIDA considers it a missed opportunity for the European Commission not to include a representative of the library community amongst the members of this Group. Libraries as content intermediaries and managers of information have a vast amount of experience, especially university libraries, in dealing with access to and use of content by users within a secure network and the rights management thereof. EBLIDA is most willing to propose suitable representatives, especially of the university library community, to the High Level Group meeting in November 2004.

### 1. DRM and Interoperability

EBLIDA welcomes the definitions as set out in this report. They are clear and simple. EBLIDA supports the conclusion of the report that it is important that DRM ensures and enhances consumer's choice and competition. Choice and competition can only be achieved if consumers can shop around in order to obtain the best price and are able to negotiate the licensing terms that they require for the use of the content. This is very important for content intermediaries such as libraries. Nevertheless the reference to "strong licensing terms" on page 8 raises our concerns in this respect. Does "strong" mean non-negotiable licensing terms or only limited use allowed?

### 2. Private copying levies and DRM systems

EBLIDA agrees with the HLG members that double payment to rights holders in the respect of private copying levies and technical measures (payment on the basis of a levy and payments on the basis of a licensed use) must be avoided.

### 3. Promoting migration to legitimate services on the Internet

EBLIDA supports the European Commission and the industries fight against piracy and the need of migration to legitimate services on the Internet. However, not all free of charge uses of content obtained from or transferred over the Internet should automatically be classified as piracy. Copyright laws around the world recognise free of charge uses of material protected by copyright. These are called the exceptions to copyright. DRM systems must respect such exceptions granted to users of copyrighted material under their national copyright laws.

Exceptions to copyright are part of the balance of legal provisions and we are disappointed that the HLG has accorded them so little attention. They are very important to users, and, in principle, the exceptions legitimise the right holders' monopoly so they should always be taken into account by right holders.

It is therefore very important that the licences for the access and use of on-line content 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.

EBLIDA is pleased with the acknowledgement by the European 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"). We would like to offer our full support in any examination the European Commission plans to undertake.

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

- Data protection
- Lawful circumvention
- Clear labelling and guidance: permitted and restricted uses of material should be evident to purchasers before they make their purchase
- DRM systems must be user friendly

#### Data protection

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

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.

#### Circumvention

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

#### Digital Rights Management Systems must be user friendly

Digital content must be easy to access and use. User friendliness is crucial for DRM systems. The acceptance of the user will only be encouraged by the friendliness of the system.

*The Hague, September 2004*

