

Intellectual Property Rights and Digital Rights Management Systems

Intellectual Property Rights which work in the digital era are essential to both the creative sector and the overall development of the Information Society.

Intellectual property rights (IPRs) - such as copyrights, patents, trade marks and so on - provide the legal protection upon which authors, inventors, firms and others rely to protect their creations. IPRs determine what use can legally be made of the creative work, and so are crucial to ensuring that authors are rewarded for their efforts.

Today's digital technologies allow perfect, inexpensive and unlimited copying and dissemination of content - legal or otherwise. Without adequate protection and enforcement, therefore, authors may not make their content available in digital form.

With this content, however, digital technologies could potentially create huge new markets, both for existing content and new 'added value' services based on existing content. This is more than just an opportunity for Europe's creative sector - innovative services are a vital driver for the development of the Information Society as a whole.

IPR rules therefore need to be adapted to our digital times. A balance must be found between the interests of right holders and users, protecting the original creative investment and enabling legal or licensed re-use by others.

Enabling Rules

In the last decade, several new legal instruments have been adopted or proposed to harmonise part of the IPR environment at European level, ranging from a proposal for a Software Patent Directive to the Directive on the Enforcement of Intellectual Property Rights (2004/48/EC, 29 April 2004).

The legal framework for digital content IPRs in the EU was established by the **Directive on the Harmonisation of Copyright and Related Rights in the Information Society (2001/29/EC)**. This addresses the use of technological measures to protect content against illegal use, and calls for voluntary measures by rightholders to protect copyrighted material whilst encouraging the interoperability of different copyright protection systems.

The Role of DRM

In supporting the development of interoperable technical systems for protecting copyright, the Directive addresses the use of Digital Rights Management systems (DRMs).

DRMs are technologies that identify and describe digital content protected by IPRs. They can be used to enforce usage rules set by right-holders or prescribed by law for digital content. They can also facilitate legal copying and reuse of content by establishing a secure environment in which right-holders are remunerated for private copying, on-line content is paid for, and illegal copying is prevented.

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High Level Group

A Commission "Broadband Content Workshop" in July 2003 showed that operators, internet service providers, content providers, broadcasters and the entertainment industry need adequate DRMs to develop successful content-based business models.

Market take-up of DRMs, however, is patchy. Although devices are being progressively "DRM enabled", most consumers do not yet have devices equipped to use DRM services. It is also unclear whether, or how much, they would pay for them.

The Commission therefore established a **High-Level Group on DRMs** in March 2004, as part of the eEurope 2005 Action Plan. The High Level Group Final Report, presented on 8 July, 2004, reflects a consensus on basic principles and recommendations for future actions in three areas.

DRM and Interoperability

The High Level Group found that while open standards are best for true cross-platform interoperability, various scenarios are currently possible, ranging from different proprietary systems through to standards-based convergence.

It was agreed that DRM must not be allowed to become a commercial or technology licensing control point, that DRM implementation must not be undermined by lack of compliance, and that DRMs must fit business models, not vice versa. Recommendations included:

- Stakeholders should continue work on open, cross-platform DRM systems and standards;
- The EU should foster open standards and discuss compliance mechanisms with stakeholders;

- Member States should foster open standards, ensure that DRM security will not be undermined and enforce anti-piracy measures.

Migration to Legitimate Services

Although the development of the online market is well underway, its progress has been seriously hampered by massive online piracy.

Encouraging consumers to use legitimate online services is therefore fundamental to the creation of a thriving e-content market. DRMs will play an essential part, enabling new business models and preventing unauthorized use.

In the **HLG paper on Migration to Legitimate Services**, the stakeholders therefore called on the EU and Member States to reflect in policy positions that abuse and unauthorized file sharing of copyrighted content should not be tolerated, and to provide political commitment to protect content delivered by DRMs.

Other recommendations included actively promoting awareness among consumers of legitimate alternative offerings, and that interoperability is needed to create consumer confidence.

Private Copying Levies and DRM

Private copying levies were introduced in the 1960s and have been since established in different ways in many European countries. They were introduced to compensate right holders for reproductions made for private use ('private copying').

Private copying is a limitation to the exclusive reproduction rights of authors, performers and producers. The Copyright Directive (2001/29/EC) to some extent harmonises the scope of the private copying limitation across Europe, where no commercial aims are pursued and fair compensation is provided to the rightholder. Private copying must also be compatible with the so-called *Three Step Test*.

The **HLG paper on Private copying levies and DRMs** aimed to identify a few key principles on which the HLG members could agree. These are:

- Private copying must comply with the three step test. In particular, private copying exceptions cannot prejudice the normal exploitation of the work or the phonogram or videogram;
- Levies cannot be used to justify acts that constitute an infringement of rights. Levies are not and were never intended to constitute a mechanism to compensate for piracy;
- The way forward is a system based on existing exclusive rights backed by technologies that ensure a secure environment where such rights can be licensed and enforced;

- Alternative compensation schemes or similar measures are clearly not the way forward for the dissemination of content in digital networks and for the development of new and innovative services;
- DRMs establish usage rules and are a useful tool to fight piracy;
- In this context, double payments to the rightholder (payments on the basis of a levy and payments on the basis of a licensed use) must be avoided.

Important divergences exist regarding these key issues, further complicated by the fact that levy systems were never harmonised at EU level.

Ongoing Consultations & Projects

While the Group reached a consensus on the three papers, the consumer's trust and confidence aspects could not be addressed comprehensively, and the consumer side did not support the papers on 'Legitimate Services' and 'Private copying'.

In order to allow a larger number of stakeholders to express their views, it has been decided to launch a wider, informal consultation on the Final Report. Following an on-line consultation (July – September), a workshop will be organised in the course of November 2004.

Finally, certain EC Programmes cover DRMs:

- **IST Research**, particularly the "Networked audiovisual systems and home platforms" Strategic Objective;
- The **eContent Programme**, which supports the increased availability, use and distribution of European digital content.

See Also:

- Factsheet 19: eContent & eContentplus
- FactSheets 28: IST Research Activities

All Factsheets and more can be downloaded from "Europe's Information Society: Thematic Portal", below.

Further Information

- **DRM:** see eEurope: <http://europa.eu.int/eeurope/>
- **Europe's Information Society: Thematic Portal** http://europa.eu.int/information_society/
- **Information Society Directorate-General:** Av. de Beaulieu 24, 1160 Brussels info-desk@cec.eu.int