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Address to the EABC/BSA (European-American Business Council/Business Software Alliance) Conference on Digital Rights' Management

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

High level Industry Seminar/Global Industry Roundtable on Levies & DRMs

Brussel, 12 October 2005

I am delighted to have the chance to speak to you today – thanks very much to Michael [Maibach – President of EABC] and Francisco [Mingorance – Director of BSA] for providing us all with this opportunity to exchange views and to share some thinking.

I appreciate that this seminar brings together the leading players in both the EU and the US within the technology, software and consumer electronics manufacturing industries. Each sector is, of course, a separate industry in its own right. Taken together, you are at the cutting edge of innovation in Information and Communications Technologies (“the ICT”).

Your presence indicates the importance of the issue before us this afternoon.

Like you, I attach great importance to the link between a healthy system of intellectual property rights and innovation. Innovation based on new knowledge and technology is now widely recognised as a key driver for productivity and wealth creation in the global economy of the 21st century.

A key objective of the Lisbon agenda is to promote innovation. This includes removing obstacles to the growth of online services. Our aim is to encourage growth in the delivery of music and film services in digital form online.

This is something on which we are working hard. Yesterday, the Commission agreed to adopt a Recommendation on Management of Online Rights in Musical Works. This Recommendation addresses obstacles in the licensing regime in the online environment. In particular, it is aimed at the activities of collecting societies that manage rights on behalf of right-holders and grant licences to commercial users.

You are also an important part of the picture. The ICT sector provides the hardware and software that content providers such as the artists, musicians, record labels, film makers can use so that consumers can enjoy the delivery of music and films in new and quite frankly, increasingly wonderful ways.

As the Internal Market Commissioner, I would like to see how the Internal Market can assist in growth in both innovation and prosperity in my own portfolio which includes copyright policy. What better way to promote innovation than by encouraging the use of Digital Rights Management technologies – DRMs - in the digital delivery of content in a secure way for consumers.

So today we are here to talk about how we in the Commission can assist the ICT sector in putting the innovation that is at the heart of DRM technologies to use - so that other parts of the IP community can deliver protected content securely to consumers.

In 2001, the European legislature put in place the legal framework to support the use of DRMs, namely the Copyright Directive.

We did not require DRMs to be used to deliver content to consumers. However, no discussion on DRMs can take place in the Community without addressing the issue of private copying. The Copyright Directive sought to create a balance between the use of DRMs as a direct means of payment for content that is delivered to consumers and individual Member States’ policies on private copying.

The Copyright Directive defined the scope of legitimate private copying by individuals, and left it to Member States to determine how right-holders would be compensated.

The majority of Member States apply copyright levies to compensate for private copying on the basis that this “rough justice” system is the way to compensate right-holders. Some Member States do not apply levies at all, believing that an upstream licence fee is sufficient to remunerate right-holders. This minority of Member States allows very limited private copying for time shifting purposes only.

There was one major condition to the flexibility given to Member States. The Copyright Directive provides that Member States should take account of the degree of use of DRMs in any national system of fair compensation for right-holders. This condition was to act as an incentive to reduce or “phase out” levies and to lead to more individual transactions whereby consumers could contract directly for content with the content provider for the type and number of private copies they wish to make.

My services held a consultation with Member States and all stakeholders in October of last year to assess whether DRMs were being successfully deployed in a manner consistent with the provisions of the Copyright Directive.

We asked MS to provide details of what was happening in relation to copyright levies, and whether DRMs were being successfully deployed in a manner in which allowed levies to be “phased out” or reduced.

In short, we wanted to know whether the 2001 Copyright Directive had “delivered.”

The results of that Consultation demonstrated that there was very little positive to report on the impact of DRMs on levy systems.

The Consultation also revealed that levies are unequally applied - whether in terms of equipment, media or the amounts across Member States - and that there is a lack of transparency in relation to collection and distribution of these monies. It appears that the availability and use of “digital rights management” technologies have not had an impact on Member States’ policy with regard to levies.

Indeed, a worrying trend is apparent. Levies that were applied to photocopiers or cassette decks are being increasingly deployed on digital equipment, multifunction devices such as personal computers, hard disks and even printers.

In conclusion, what we have found is that copyright levies are now increasingly applied to digital equipment and media as a form of compensation for rightholders whose works are subject to private copying.

We in the Commission are concerned that this is being done without due account being given to DRMs which can provide alternative ways of compensating right-holders for private copies.

We also believe that there is inadequate transparency about the application and collection of the copyright levies. I appreciate why you in the ICT industry are understandably aggrieved about this.

I understand that, for example, industry figures suggest that the total amount of levies collected in Member States in 2004 is over half a billion euros. However, the total amount of levies actually claimed in the same year is over 1 billion. If these figures are correct, this suggests that there are half a billion Euros claimed but disputed.

These disputed claims mean that money is retained pending resolution. This money is largely from the innovation budget and is closely related to new technology development. In which case, it is European industry and European consumers that are missing out.

Furthermore, this climate of uncertainty affects the launch of new products. The fact that a new product may or may not attract a levy may delay the distributor placing the product on the market.

There is evidence that where right-holders receive payment directly through DRMs, the equipment and media are still subject to a levy. Some would say this is “double dipping” or “double payment”.

Finally, the distribution of the levies has led to complaints from right-holders in other Member States who do not believe that they are getting their fair share.

So, where do we go from here?

As I have said, I appreciate the contribution your sectors can make to the achievement of our Lisbon goals. That is why I believe that this issue should be addressed.

As I have said, this week the Commission agreed to adopt a “Recommendation on Online Music Licensing”. My services now propose to deal with the relationship between DRMs and copyright levies and are currently working on an initiative for 2006.

There are various options under consideration which we will air with stakeholders thoroughly. I would particularly welcome your views on which is the best way to go.

The first option is to leave it to the marketplace to develop. We believe that “the pure technology” issues such as the robustness of the technology, the acceptance by consumers can be left to the market.

In the period 2001-2005, the Commission advocated letting the market develop on the levies issue as well. But the Consultation held in 2004 did not suggest that allowing the market to develop unassisted produced the required result. There doesn't seem to have been the trade off between increased use of DRMs and decreased use of levies. Indeed, the opposite is true –copyright levies developed for the analogue environment are beginning to become entrenched in the digital environment.

Another option would be to amend the Copyright Directive to determine the mode and level of fair compensation in a more specific manner. This is likely to produce a binding result but would be a very lengthy legislative process and is unlikely to produce results for some time.

A third option, which may be worth considering, is the following:

- to establish guidance or criteria which would assist Member States in identifying the availability and use of digital rights management technologies;
- to determine at what point the widespread deployment of DRM technologies would “trigger” a reduction or adaptation of the levy schemes;
- to provide for transparency in relation to the application, collection and distribution of copyright levies.

In such an approach, guidance could also include benchmarks on determining the availability and use of DRM technologies. These benchmarks should trigger an effect this would have on the level and type of fair compensation by triggering reductions or adaptation of the levy schemes.

As yet, I have not reached a definitive view in the matter and, as I have said, your views would be very welcome.

However, I believe that whatever form that this initiative takes, reform of the levy system would be welcomed by all stakeholders including Member States but especially the ICT industry.

Naturally, and in keeping with the better regulation approach of this Barroso Commission, any initiative will, of course, be preceded by an Impact Assessment. I am hopeful that we will be able to make progress, one way or another in 2006

Ladies and gentlemen, thank you for your time. My officials will be available to take your questions.