

'UNLOCKING THE POTENTIAL OF CULTURAL AND CREATIVE INDUSTRIES

BEUC Statement on the European Commission's Green Paper

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Summary

BEUC strongly believes that the growth of the digital economy provides an opportunity for the creative sector to experiment and develop new business models that will respond to consumers' demand for online content.

The European Union needs to adopt a regulatory framework that will provide the appropriate incentives for investment, while on the other hand safeguarding the interests and rights of consumers. To this end:

- A fair balance of rights needs to be achieved;
- The development of new, innovative and consumer-friendly business models should be promoted;
- The availability of content online beyond territorial barriers needs to be facilitated;
- The promotion of culture and creativity should not be seen as an exclusive right;
- Public policy on enforcement of Intellectual Property Rights should be driven by credible, independent evidence, in conjunction with transparent and objective peer-reviewed analysis.

The European Consumers' Organisation (BEUC) welcomes the publication of the Green Paper on 'Unlocking the Potential of the Cultural and Creative Industries' by the European Commission. The Green Paper provides an overview of the different layers of actions necessary to ensure the creative sectors reap the benefits of digital technology developments.

The growth of the digital economy is a big opportunity for the content industry to experiment with and develop new business models that respond to a clear consumer demand for easily accessible and highly diversified content online that is of high quality.

The future growth of the internet and its ability to reach its full potential value in the economic, cultural and social spheres, depends on the EU adopting a regulatory framework that provides appropriate incentives for investment in the development of the internet. This must be done while safeguarding the rights of artists, but also those of its consumers and citizens.

BEUC would like to limit its comments on digital technologies to the opportunities they provide for creators to access new audiences and secondly, for consumers to get access to the content of their choice, irrespective of geographical borders.

I. Incorrect presumptions included in the Green Paper

➤ Culture and creativity should not be seen as an exclusive right

BEUC is concerned about the definition of cultural industries in the Green Paper. The European Commission considers the promotion of culture and creativity as the exclusive responsibility of those industries involved in the production and distribution of content. However, consumers have been engaging with new technologies and the opportunities offered to them to the point of becoming active players in the creation and dissemination of content, information and knowledge. The rise of User-Created Content (UCC) is a major component of the notion of participative internet, while it has allowed for new business models to appear and for ICT technologies to be developed further. User-Created Content needs to be afforded appropriate protection to allow for this type of content to continue developing. Users, creative individuals and companies from the cultural and creative sectors should be seen as partners in the quest for innovation.

➤ Lack of independent data on the impact of file-sharing

BEUC regrets that the European Commission endorses the data brought forward by the content industry, that the phenomenon of online 'piracy' has severely hit copyright owners and has resulted in significant economic losses. However, such significant losses have never been endorsed by independent data. On the contrary, a similar presumption fails to take into consideration a number of studies that clearly point out the positive long-term economic benefits of file-sharing, the main conclusions being the following:

- Efforts to estimate losses involve assumptions such as the rate at which consumers would have paid for legitimate products, which can have enormous impacts on the resulting estimates¹;
- File sharing has positive economic implications in the short and long-term for the creative industries²;
- Those who file-share are also the people who spend the most money buying content legally³;
- The main reason for unauthorised use of copyright-protected material is a result of the lack of available or attractive legal offers⁴;
- The adoption of repressive measures against individual users have failed to produce results⁵.

BEUC acknowledges that authors need to have their copyright protected against infringers. However, BEUC contends the level of penalty for infringements should differ, depending on the scale and motive for the infringement, whereas enforcement measures need to comply with fundamental rights and freedoms.

BEUC strongly believes that public policy on the enforcement of intellectual property rights should be informed by credible evidence, transparent and objective peer-reviewed analysis.

¹ Report by the US Government Accountability Office (April 2010) <http://www.gao.gov/new.items/d10423.pdf>. See also the document by Social Science Research Council (SSSC) on the findings of a study carried out by TERA consultants. The SSSC notes that the TERA study overlooks the fact that the money not spent on CDs and DVDs is simply transferred to other activities and sectors, which potentially contribute to EU economic and social wealth.

² Study by the Institute for Information Law of the University of Amsterdam. http://www.ivir.nl/publications/vaneijk/Communications&Strategies_2010.pdf

³ Research carried out by Ipsos Mediaz Content in the UK, it has been shown that 72 % of people who download illegally are the ones who spend more money on music; See also the study conducted in 2008 by the Norwegian School of Management. Also the study of the Canadian Department of Industry. http://www.ic.gc.ca/eic/site/ippd-dppi.nsf/eng/h_ip01456.html

⁴ Research carried out by Ipsos Mediaz Content in the UK. See also study by the M@souin Laboratory on the evaluation of the effects of the HADOPI law. <http://recherche.telecom-bretagne.eu/marsouin/IMG/pdf/NoteHadopix.pdf>

⁵ Barely 15% of internet users, who used peer-to-peer networks before the adoption of the Hadopi law, permanently stopped doing so after. Among these ex-downloaders, only one third gave up any form of digital illegal downloading, whereas the other 2/3 turned towards alternative practices of illegal downloading, that are beyond the Hadopi law, such as illegal streaming, Study by the M@souin Laboratory on the evaluation of the effects of the HADOPI law, <http://recherche.telecom-bretagne.eu/marsouin/IMG/pdf/NoteHadopix.pdf>

II. The need to promote new and innovative business models

➤ Need for new, innovative and consumer-friendly business models

BEUC calls upon the content industries to maximise their efforts to develop new, innovative and user-friendly legal services for online content. BEUC has long been calling for a thorough discussion on the development of legal business models that would be best fitted to the online world and would respond to a clearly-defined consumer demand.

The content industry has failed to give a timely response to the emergence of new technologies that have called into question the traditional models of production and distribution. On the contrary, their efforts have been focusing on the adoption of repressive and often disproportionate measures for IPR enforcement which go beyond the existing legislation and do not comply with the users' fundamental rights and freedoms. It would have been preferable if these resources were channelled to the development of new business models for legal offers.

BEUC does not condone copyright infringement; rather it is a symptom of the lack of legitimate offers for online content. Although we believe that authors need to have their rights protected, we are confident that the establishment of a legal regime that allows all consumers within the European Community to buy content online on a pan-European basis at a fair price, has the potential to contribute to the significant reduction of unauthorised use of copyright-protected material. Where business models have been developed and tried, the results have been promising⁶.

Despite the fact that some creative industries have quickly realised the impact of digital technologies and have developed innovative business models⁷, more needs to be done.

It is equally important to raise consumers' awareness of existing legal offers. According to the results of research conducted by Consumer Focus in the UK, four in ten people were unable to name a single online music service at all - despite there being over 20 on the market. Nearly nine out of ten UK consumers (85%) who are aware of online music services, have only heard of two established brands - iTunes and Amazon.

The findings show how most consumers do not know where they can buy music online - a problem which is contributing to the current high levels of online copyright infringement. Before dealing with copyright infringement by prosecuting people, it is only fair for the music industry to do more to promote legal services. This approach will also see industry gain through more sales without the need for prosecutions, whose costs end up being met by all consumers.

⁶ For instance, the launch of Spotify, the music streaming service, has helped curb the illegal downloading of music. Research sponsored by moneysupermarket.com has indicated that 62% of those who admit carrying out illegal downloads reckon that Spotify has helped them reduce the amount of files they are illegally grabbing.

<http://www.moneysupermarket.com/c/pressreleases/spotify-reduces-illegal-downloading/0007218/>

However, Spotify is only available to consumers in a limited number of Member States.

⁷ See for example the landmark deal that Channel 4 signed with YouTube, becoming the first broadcaster worldwide to make full-length TV shows available to users of the Google-owned video-sharing website.

➤ **Availability of content beyond territorial borders**

It is important to ensure that legal business models are equally available to all consumers within the European Community. Consumers seeking to buy copyright protected content online are often allowed access to online stores aimed at their country of residence only. Such barriers lead to a significant reduction of choice for consumers, particularly for consumers from the new Member States where there is not an abundance of services on offer.

Furthermore, right holders tend to define markets along national borders and set different prices and conditions for identical products and services in each Member State⁸. For Collecting Societies, the current fragmentation of online content market along national borders is a way to secure extra revenues from national licensing.

However, such a market fragmentation is contrary to the very notion of the internet as a borderless environment and goes against the objective of the European Commission to establish a **Digital Single Market**.

BEUC strongly believes that the EU should seek to enable consumers, right across the EU, to get access to content of their choice irrespective of their country of residence and allowing commercial users to develop new and innovative business models for the online distribution of content⁹.

➤ **Balance of rights**

Copyright law should aim to encourage creativity and innovation for the benefit of society as a whole. To do this, it needs to achieve a fair balance by recognising both the interests of creators and the interests of consumers.

Creators have to receive a fair return for their work and their creativity, thus also serving as an incentive for the creation of new works. Although consumers have an interest in ensuring that innovation and creativity are encouraged, they also have an interest in competitive markets; copyright confers monopoly privileges, which restrict competition and impose costs on consumers.

From the perspective of European consumers, copyright's current balance is far from perfect. Many consumer usages of copyrighted content, such as the copying of digital music onto a portable device, technically infringe copyright. In these and many other cases, the law is simply out of step with reality.

The concept of users' rights is absent from the current copyright framework. A number of permitted uses of copyright-protected material are only allowed as exceptions and limitations to the copyright owners' exclusive rights. However, these exceptions and

⁸ For instance, a price comparison for the album 'Only by the Night' by the Kings of Leon on Amazon mp3 shows that a UK Consumer will have to pay €7.53, whereas a French person would have to pay €9.99 and a German €6.62. Study by Matrix Insight on business practices applying different conditions of access based on the nationality or the place of residence of service recipients - Implementation of Directive 2006/123/EC on Services in the Internal Market, commissioned by the European Commission, DG Markt.

⁹ For more details, see BEUC's response to the Reflection Paper on creative content online, X/003/2010 - 05/01/10.

limitations are not absolute conditions and consumers often face unclear boundaries as to which acts are permitted under the current copyright legislation.

Striking a balance between these competing, but cooperating interests requires the recognition of a set of clear, comprehensive and absolute consumers' rights.

The establishment of rights should become a central aspect of the European copyright framework.

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