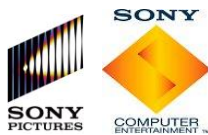




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# CMBA

CreativeMediaBusinessAlliance

## WHAT THEY WANT, WHEN THEY WANT, WHERE THEY WANT – “CONSUMER EXPERIENCE” AND THE CREATIVE MEDIA INDUSTRIES (2 July 2007)

The Creative and Media Business Alliance (CMBA) is an informal grouping of some of Europe's top media and creative businesses and industry associations. It was launched in November 2004 to give the sector a strong and united voice at the European Union level. The CMBA notably calls upon the European Commission, the European Parliament and the EU Member States to focus on the creative and media businesses in their efforts to foster innovation, growth and employment in the Information Society. (For more information: <http://www.cmba-alliance.eu/>).

The CMBA believes that the consumer experience lies at the heart of our industries' business models. We urge the European Institutions to allow the promising new opportunities in electronic communication of content to develop, in the interest of the widest menu of cultural choices, for the benefit of both consumers and industry by:

- maintaining competitive markets, and
- protecting the legitimate expectations of all stakeholders,

without adding unnecessary layers of legislation and without handicapping the evolution of the market for digital content and media.

The Commission should in particular encourage greater cooperation between all stakeholders to ensure that all relevant laws – both “consumer protection” and “copyright” are respected across the market.

### The Consumer Experience of Content and Media

As today's European economy undergoes a major shift from goods to services, the creative and media industries play a key role in the move towards a knowledge-based economy. We offer audiences in Europe and around the world something unique and of growing importance to other industry sectors: **experiences**. Whether we inform, educate or entertain, our sector has always been at the forefront, continuously striving to provide consumers with **what they want, when they want it and where they want it**.

The printing press made books, newspapers and periodicals accessible to a wider public; the phonogram made music performances available to an audience greater than any concert hall could accommodate; television and video made films accessible at home. Yet it is not the cinema projector, the CD carrier or the digital reader that is at the heart of the creative economy; creative **content** and how the public experiences it are what matters.

Tomorrow's bandwidth and devices will enable consumers to communicate, interact and experience in ways that we cannot imagine

<http://www.cmba-alliance.eu/>

today. However, one thing we do know for sure is that consumers will always want to be informed, educated and entertained.

Our ability to bring the experience of exciting and innovative content to the consumer is built on the following premises

- ***The basis for creators to make a living and continue to create is intellectual property (IP)***

Intellectual property enables those who create for a living to reap the benefits of their work. Indeed, IP increasingly forms the economic basis for people to find meaningful work in Europe's knowledge-based economies. IP, coupled with the Internet's reach and flexibility, allows the European creators and distributors to reach both local and global audiences.

- ***The basis for investment in content production and distribution is intellectual property***

Intellectual property offers the economic basis for investment in creation: making a film, investing in a database, marketing a music album or a publication or securely distributing a TV show. Our companies also provide an editorial role which guarantees standards of quality that audiences appreciate and rely on and consumers have come to expect quality experiences from our brands. Competitiveness and the protection of investment through IP are prerequisites for European business and culture to be successful and visible internationally.

- ***The basis for the audience experience is intellectual property***

Audiences will usually have the opportunity to experience creative content in exchange for payment or for giving some of their time. They can choose from the many business models that creators and businesses have developed on the basis of intellectual property. Some experiences will be free to the consumer, for example advertising-financed television. Others require a subscription or a one-off fee for example by purchasing a cinema ticket, renting a DVD or taking out a subscription to a magazine. In some cases, people will prefer to buy a tangible object embodying IP, such as a book, a CD, a DVD or a magazine.

For purposes of regulation, the CMBA believes it is worthwhile differentiating between three closely related but distinct concepts, namely "consumer experience", "consumer convenience" and "consumer expectation".

- ***"Consumer experience" is the heart of our business***

Ultimately, whether the public likes or dislikes a specific piece of creative content or media depends largely on the quality of the consumer experience. In the film sector, the successful film has to recoup not only its own investment but also the resources devoted to the other less successful or possibly more culturally difficult ventures. The same applies to the recording industry where part of a company's return on a top selling artist is used to create a virtuous cycle of re-investment to give other artists a chance to succeed.

In the book world, we could take as an example, the best-known book of the last decade Harry Potter. When the medium-size publishing house Bloomsbury accepted J.K. Rawlings's

manuscript, who could have predicted the success of the young wizard? This success has in turn given the means to the publisher to invest in many new talents and quality books.

It is this consumer experience of our content and media which lies at the heart of the business of CMBA members. Offline and online news services report daily about new and innovative forms of content and consumer experience that CMBA members are offering to the public in their quest to embrace today's opportunities.

- ***“Consumer convenience” is a key component of consumer experience***<sup>1</sup>

A recording allowed a listener to choose what they wanted to hear, when they wanted to hear it and where they wanted to hear it - provided there was a record player in the vicinity. Today, consumers can buy music on the Internet and listen to it anywhere with portable devices. As bandwidth increases, even more data-rich and flexible offerings will become available to a more and more demanding market. This “consumer convenience” is part of a consistent effort by our industries. Watching a film in the cinema is a different consumer experience from watching it at home, which is different again from viewing that film on a mobile player, and all of these modes of consumption may be interesting to different audiences.

Intellectual property ensures that the relationship between the creator, the investor and the audience is maintained across a multitude of business models, whether based on advertising, subscription or direct payment. For some of these specific business models, digital rights management (DRM) can play a key role. It helps to satisfy consumer demands for new formats and services as well as varying prices and consumption models. It is also a secure environment where rights can be licensed and managed and in which consumers can place their trust in the authenticity and quality of the content they consume. Such consumer convenience can include in particular content portability and accessibility.

Automated Content Access Protocol is another example of giving publishers the confidence to make more content available. The ACAP is being developed as a non-proprietary standard supported by the publishing industry and other technical and commercial actors in order to produce a global, open and flexible tool for the communication of rich information on access and use of content on the Internet.

Ultimately, it is our business to make content accessible to consumers in ways that guarantee full consumer satisfaction. This entails transparency about the terms of usage rights or license agreements, where appropriate through labelling. Ensuring content and platform interoperability is a priority for the creative and media sector to enable consumers to securely enjoy a wide variety of content and media on different platforms. Clearly, interoperability and security are not mutually exclusive. The CMBA considers that a balance needs to be struck between the two objectives, whereby neither suffers at the expense of the other.

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<sup>1</sup> The concept of “consumer convenience” should here be clearly distinguished from the very important notion of “consumer trust”, which relates to the need (sometimes through private-public partnerships – as outlined in the Commission's May 2007 Communication “Towards a general policy on the fight against cyber-crime”) to fight back instances of cyber-criminality, such as identity theft or credit card frauds.

**We believe that the Commission has a role to play in supporting industry-led self-regulatory arrangements and standardization efforts in the field of Platform and Content Interoperability, along the lines of its 2006 Communication on the interoperability of digital interactive television services<sup>2</sup>.**

- ***Legitimate “consumer expectation” is rooted in the relationship between creators, businesses and the audience***

“Consumer convenience” and, ultimately, “consumer experience” are at the heart of our businesses’ thinking. Consumers have come to expect the possibility to enjoy content in different formats. It is our mission as creative industries to ensure that consumer experience and consumer convenience remain at the very centre of our business. We strive to meet consumer demands provided that these reflect legitimate expectations. A spectator in a cinema has no legitimate consumer expectation to go home carrying the reel of the film. Someone buying a book cannot legitimately expect to take a second one out of the store for free.

The boundaries of legitimate consumer expectations with regard to the specific matter of private copying have been clarified in several European legal decisions. Private copying is an exception to copyright which is subject to several conditions set by European and international law. Exceptions only apply in certain special cases, which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

And at the very extreme, distribution for free over the internet without appropriate license is never a legitimate consumer expectation since it would break the pact between consumer, creator and business and undermine the fundamental copyright bargain that incentivises and rewards creation.

Finally, Europe should not lock the digital future into the expectations of the analogue age nor prevent new ways for consumers to experience our content and media and the fruitful continuation of the relationship between creator, business and the consumer.

Clearly, experiments will continue to be made to find the optimal consumer experience. The contractual freedom granted to creative and media businesses is of crucial importance to the development of innovative and attractive systems of content and media delivery. Imposing rigid rules defining the consumer experience will stifle innovation. We call upon the European institutions to refrain from adding layers of legislation to a developing market. Consumers should be able to continue to shop with confidence whether online or in the physical world. The consumer protection “acquis” has an important role to play in this respect. Since the general rules of consumer protection may not always be appropriate to deal with the specificity of on-line services, the Commission should think very carefully and refrain from automatically extending the acquis to new services where it doesn’t already apply.

**The CMBA calls on the Commission to facilitate, and remove possible legal obstacles to, greater cooperation between all stakeholders to enforce relevant law – be it consumer protection or copyright law – for a secure and trusted online environment in which innovation and creativity can grow for the benefit of all.**

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<sup>2</sup> (COM 2006)37final.