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CMBA

CreativeMediaBusinessAlliance

Strasbourg, 15 February 2011

Encouraging Digital Progress

"People, not machines, made the Renaissance."
JARON LANIER

The Creative and Media Business Alliance (CMBA) is an informal grouping of Europe's top media and creative businesses and their associations. The CMBA was launched in 2004 to speak with one voice and call upon the EU to fully acknowledge the importance of our sector in efforts to foster innovation, growth and employment. The creativity we finance, produce and market is the soul of the Knowledge Society.

This paper is a reflection on the current status of the Digital Agenda. It emphasizes three main notions, which should form the basic pillars of a successful EU policy on media, culture and copyright in the digital age. The CMBA believes that a *Digital Renaissance* is within our reach and our members are actively contributing to it by developing and launching new business models. However, to ensure success, we believe that enthusiasm for technological possibility must go together with consideration for societal values and widely-accepted rights and obligations.

We see that a phenomenon of "commoditization" is currently accelerating business cycles in communications infrastructure, IT and consumer electronics. Technology and broadband development has created an increasing hunger for "data" – including creative content and personal data. In this context, calls are often made to free "technology" from legal constraints and to shield those who use and operate that technology against liability for unlawful acts. These unlawful acts might for instance entail breaches of privacy, disregard of consumer protection rules or infringement of copyright. The CMBA considers that such calls for "liability privileges" should be resisted. On the contrary, we believe that it is high time to treat the Information Society as a normal part of society, subject to the rule of law, and not as a separate entity.

- **Culture as inherent part of technological progress**

Culture gives substance and individual meaning to technological progress. "Culture" is human innovation and the most vivid illustration of individual creativity. The EU's Digital Agenda seems too often to focus on unleashing innovation for the sake of technological progress per se, when it is in fact culture, individual creativity and technological progress taken together that make the digital highways worth traveling. Today, the means to innovate and distribute culture have substantially increased. Anybody can reach a worldwide audience with a few clicks on a mobile device. Creative content is an ever more valued part of what makes products and services online attractive. Human innovation and individual creativity should thus be at the heart of the Digital Agenda – rather than being considered, as is sometimes suggested, as mere "added value" – and they cannot be incentivized without copyright.

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- **Copyright as digital property**

Copyright is the creator's digital property. It attracts investment and frees creativity from dependence on the charitable donations of a patron or of the State. Freedom of expression and protection of the works of the mind are important features of a democratic system – and this remains true in the digital realm. Whether through *droit d'auteur* or copyright, those who invest in creativity are granted marketable rights in the EU. Rights that can then be traded, sold, and invested in to encourage and reward creation as well as dissemination of creative works. The fact that copyright is the basis for a wide variety of business models is important to understand as some would like to reduce copyright to much less than a property right.

It should be recalled that the EU's Charter of Fundamental Rights recognizes intellectual property among our fundamental rights and freedoms (Article 17.2). In this context, copyright as property rights is an essential engine for human innovation and for financing creativity. These rights, coupled with contractual freedom, allow for a marriage of creativity and technology that continues to bring growth to the EU while respecting local tradition and meeting actual market demand. In this context, we wish to state that we disagree with voices reducing copyright online to a mere remuneration right or less. Copyright is also the right to provide services where it is commercially meaningful and not just the right to be paid once, despite subsequent commercial use.

- **Copyright as provider of solutions**

Much attention has focused of late on free access to copyrighted works. Some public institutions feel they should be able to exploit their holdings without having to go through any licensing efforts, and yet others would like to be able to clear a whole range of rights for the whole of the EU, preferably at much reduced rates. All of these interests have agitated the risk of a "digital dark hole for 20th century content" (because most of last century's content is made up of in-copyright material) and point to transactional difficulties and rights clearance costs as illegitimate obstacles. Yet this does in no way justify overruling the intellectual property of creators.

Predictably, the quest to prove copyright's inadequacy involves an effort to paint copyright as the problem rather than the solution. This quest has started with the one case in which it is, by definition, harder to obtain a license: works for which the author cannot be identified or located, i.e., "orphan works". By moving orphan works into the center of the debate, the impression may be given that somehow orphan works are the symbol of copyright as a problem rather than a solution. These statements not only ignore the fact that pragmatic solutions are being developed (e.g., the agreement for "oeuvres indisponibles" in France, which also covers orphan works) but also brush aside the existence of a thriving licensing market in copyright content today in Europe.

The CMBA supports increased access to protected works but "access" should not be equated with uncontrolled and unremunerated access to content. Absent the prospect of copyright protection, the works in question might not have been created in the first place. It would seem anti-competitive for publicly-financed institutions (e.g., archives) to compete with those properly licensed to distribute content, or for commercial actors to exploit others' digital assets without having negotiated with the right holder. Providing access to copyright works is at the core of the creative and media business we engage in every day. Rights clearance can thus not be equated with an obstacle; it is the essence of our activity (alongside production).

Protecting our past is very important and digital preservation is thus an imperative. This said, it cannot translate into expropriation. What to some may seem as only "data" to be fed into an ever growing pipe, to us is the source of Europe's cultural diversity and ingenuity at its best.