

CMBA

CreativeMediaBusinessAlliance

Brussels, 15 October 2008

CMBA response to the Issues Paper on

OPPORTUNITIES IN ONLINE GOODS AND SERVICES

As an informal alliance comprising trade associations and individual companies active in the advertising, broadcasting, film, music and publishing sectors, the Creative Media Business Alliance (CMBA) represents a wide range of activities of the different content industries. It notably covers the production and distribution of many types of creative content. Our members ensure a European offer of high quality and diversified content in an attempt to meet consumer demand in line with the various cultural specificities across Europe.

The CMBA welcomes this opportunity to comment on the Issues Paper. Our core concern is the ability to deploy business models which ensure a rich offer respecting cultural diversity and media pluralism while ensuring a fair return on investments.

The arrival of the internet as a true mass communications medium in the last fifteen years has truly revolutionised many of the business models of CMBA members. Our industries are keen to explore new ways in which to expand our core competence – the creation and distribution of creative content – and welcome the interest of the European Commission in identifying and breaking down barriers to trade as and when they arise.

Given the wide range of stakeholders in the CMBA, our response to the Issues Paper will be brief and focused on the territoriality of copyright, as outlined by the following question in the Issues Paper:

The need for territorial licensing of copyrighted content, and whether that need varies depending on the type of content and/or the revenue model being used

Licensing models are necessarily different depending on the type of content which is being distributed. One licensing model will not fit all content industries. The industries that the CMBA represents encompass a wide range of content creation and distribution models which have their own characteristics and therefore different needs. In addition to the language issue, different content sectors have different traditions of management of rights.

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The CMBA submits that there cannot be any single response to whether creative media businesses should support a particular model. The answer to this question will – and should – vary from one instance of commercial negotiation to another. The most important issue at stake here is therefore the need to preserve the contractual freedom that currently allows parties to enter into commercial negotiations with a view to defining the most appropriate arrangement in each individual case. When considering such questions, it seems appropriate to recall that creative and media businesses engage in this kind of contractual negotiations on a daily basis. Rights clearance is an integral part of the activity of creative media businesses and is in fact what makes content production and distribution possible and viable in the first place.

The current diversity of “licensing models” in the online marketplace is what drives the launch of new services and new business models. As new and various business models are being tested and embraced by the creative industries, it is clear to the CMBA that no one business model could be effective at meeting the diverse needs of European creators, different content sectors and consumers. Hence, what is needed is a flexible system based on contractual freedom, not a one-size-fits-all solution. The current flexible system that allows right holders to license their content as they deem most appropriate from a commercial point of view – be it on a national, linguistic or multi-territorial basis – should therefore be preserved.

To conclude, the CMBA believes that regulatory intervention is unnecessary and that the content industries should not be required to adopt specific licensing models. Finally, the CMBA would like to draw attention to the fact that this forum might not be the right place for such issues to be addressed as the Online Commerce Group is not representative of all actors and sectors involved.