



BERTELSMANN
media worldwide



The Walt Disney Company



CMBA

CreativeMediaBusinessAlliance

2 November 2005

A EUROPEAN CHARTER FOR ON-LINE CONTENT

The Creative and Media Business Alliance has already expressed its readiness to help develop a European Charter on co-operation with ISPs to combat jointly on-line IP infringements and to encourage the development of new markets*. We are hereby contributing an outline of the essential elements that are required for such a Charter to be effective. We look forward to elaborating on these ideas in future communications and in dialogue with the European Commission. We also take this opportunity to applaud the Commission for seizing the initiative to launch consideration of a European Charter.

A Charter should help enable content to reach its potential as a broad band driver

Creative products and services are increasingly being distributed on-line legally in formats and at prices attractive to consumers. A variety of business models are being tested and employed. They all have at least one element in common: they are premised on the notion that creative content is not freely available in endless quantities and is not a public good available for the taking to amortize investments in infrastructure or to secure advertising revenues from making copyright protected content available without prior permission.

Content is the product of intellectual endeavors and substantial financial investments. Content creates jobs and drives growth. In the off-line world, the need to nurture and protect content and the investment it represents is accepted by all delivery platforms. The same should be true for the on-line world. This requires the involvement from all interested parties, but more particularly the cooperation from telecoms and Internet Service providers.

This should be all the more the case since content is also an important internet broadband driver with great untapped potential that is only beginning to emerge. A Charter, properly designed and effectively implemented, could unleash this potential within a permission-based framework under fair and reasonable terms. To do so, a European Charter should address the essential elements set forth below.



BERTELSMANN
media worldwide



Lagardère



Reed Elsevier



SONY & BMG
MUSIC ENTERTAINMENT

TimeWarner



UNIVERSAL MUSIC GROUP
INTERNATIONAL

The Walt Disney Company



WARNER MUSIC
INTERNATIONAL

CMBA

CreativeMediaBusinessAlliance

The Charter should address all forms of Copyrighted Content

This could be done either via one charter or via a number of sector specific charters linked by a horizontal chapter covering general principles.

Essential Elements of a Sound Charter

- **Model contractual clauses for subscribers needed**

ISP customers need to know in advance that creative works such as films, other audiovisual works, music, books, magazine, and newspaper articles are protected by copyright almost invariably, and may not be made available without the consent of the holder of the rights. They should be so-informed in the subscriber contracts entered into with ISPs. They should also be advised that if illegal activities are detected repeatedly, suspension or termination of service may result irrespective of additional legal remedies that might be applied. Most ISPs general conditions already contain clauses regarding the violation by subscribers of legal provisions. It is important to create incentives for all ISPs to implement such clauses to ensure fair conditions of competition. Existing contracts should be updated to reflect these conditions and they should be enforced effectively.

- **Implemented through collaborative responses to infringements...**

A culture of acceptance of free unauthorized access to valuable copyrighted content is at risk of setting in on a widespread scale. If allowed to flourish, it will come at the expense of all concerned. A variety of measures are needed to turn around the trend. One such measure is a collaborative response by ISPs and rights holders. At its core, it should consist of a couple of escalating notices to infringers, culminating in termination, or at least suspension, of subscriptions for recidivists. The objective is to develop an efficient, effective system for passing on infringement notices and ultimately dealing with repeat infringers.

- **Enabled by deployment of facilitating technologies...**

Technologies are available to help identify and prevent infringing activities, both by individuals and by those who induce infringements. These technologies should be deployed by intermediaries to limit infringements on their networks. Such a step could serve as one indicator to justify benefiting from the safe harbor provisions of the Electronic Commerce Directive that limit the liability of certain



BERTELSMANN
media worldwide



UNIVERSAL MUSIC GROUP
INTERNATIONAL

The Walt Disney Company



WARNER MUSIC
INTERNATIONAL

CMBA

CreativeMediaBusinessAlliance

intermediaries under certain conditions. Intermediaries and content owners should jointly develop technologies addressing infringements by individuals. Prejudicial activities, such as peer caching, should not be allowed.

- **Supported by a comprehensive communications campaign**

Communications tools need to be developed and implemented that are tailored to the on-line environment, that create a sense of responsibility to respect content, and that increase awareness of the consequences of infringements for rights holders and infringers.

The Commission Should Remove Alleged Legal Impediments to an Effective Charter, whether Real or Subterfuges of Convenience

It has become fashionable for some to claim data privacy constraints to plead against effective actions to tackle infringing activities by individuals. Legitimate privacy protection can and must be safeguarded and, with reasonable precautions, this can be achieved without vitiating the achievement of other public policy objectives such as abiding by laws duly deliberated and enacted. Data protection should not be an impediment to the reasonable retention, preservation and access to evidence for legitimate purposes. It is essential to ensure that infringing activities are not protected by anonymity.

The Commission Should Promote the Rapid Adoption of a EU Charter

There is a sense of urgency about getting an effective Charter agreed and deployed. Consumers want and are entitled to expect legal services. Content owners and ISPs have an interest in delivering them as long as illegal on-line activities are deterred. It needs to be delivered quickly, in order to facilitate nascent initiatives at the national level to promote a core common approach to an internet challenge that is without frontiers.

Ideally, a Charter based on wide agreement between stakeholders could be further strengthened by official endorsement in a formal act from the EU institutions. This would make the Charter an effective vehicle for delivering the results expected by CMBA members.

*See CMBA Communication of 12 September 2005