Informal Consultation
On the
High Level Group on Digital Rights’ Management – Final Report

Comments and observations by the International Federation of Film Producers’ Associations (FIAPF)

FIAPF broadly supports the analyses and conclusions contained in the HLG Report on DRMs. We welcome the choice of the HLG to focus on a range of priorities which – in our view – need to be approached jointly and simultaneously if DRM-enabled business models are to take root and stimulate growth in Europe’s digital environment.

In particular, FIAPF welcomes the group’s focus on “trust by users, with a particular emphasis on security and privacy” and on “migration towards legitimate services”. The two issues are linked and their successful resolution presents – in our view – the single biggest challenge to DRM deployment today. Without efficient trust protocols, users will turn away from start-up services and content producers will be reluctant to supply quality content, for fear of widespread unlicensed uses. Similarly, the existing file-sharing networks on high-band internet today – whilst not in themselves a negative development – need to contribute to the success of the new audiovisual broadband economy, instead of undermining its economic viability through permitting a critical mass of illegal exchanges. For this quantum change to take place, a concerted approach is required between public institutions, the content industry, P2P software providers and ISPs.

FIAPF also welcomes the Commission’s initiative to extend the consultation started through the HLG and hold a workshop later in the year. Our federation was disappointed not to have been invited to join the HLG, whose appointment process was widely perceived by our industry as having been opaque and discretionary. We hope that, from now on, the process of consultation over an issue considered vital for the future prosperity of our sector, will be open, transparent and fair.

The remarks and observations which follow have been organised under chapter headings coinciding with those in the HLG report.

1. DIGITAL RIGHTS MANAGEMENT

On the definition, role and current status of DRMs, FIAPF believes all stakeholders in the successful deployment of DRMs in the EU market, are damaged by the endemic levels of piracy affecting the broadband universe in its current shape. Conversely,
they shall all benefit from technology that adopts and implements usage rules and security solutions across the chain of consumer uses. All parties to this discussion should therefore jointly envisage DRMs as a conduit towards the secure distribution of legitimate content on legitimate services, backed up by innovative business models.

FIAPF agrees with the report’s observation that – although DRMs are making headway in the consumer market – the deployment remains progressive. Mobile telephony may become an important test-bed for the more generalised up-take of DRM-enabled content delivery. However, the transition of the consumer market from analogue to digital does raise question about the speed of up-take of DRMs.

Whilst it is very difficult to predict the commercial future of DRMs in the current technology/business model/consumer demand configuration, FIAPF is certain about one parameter: services based on DRM-enabled delivery of audiovisual content need to be based on reliable end-to-end content protection technology, including trusted media players capable of recognising metadata containing usage rules and conforming with those. Without such solutions, the gap between the technology and the audiovisual sector’s willingness to supply, will remain too wide to ensure the successful take-up of DRMs does occur.

On the issue of standards, FIAPF shares the report’s stated conviction that open standards would be the fastest and safest road to delivering interoperability. The alternative route, product-by-product, license-by-license, can drive DRM growth with a degree of efficiency, but it may make compatibility between devices a lesser priority and lead to discrepancies in the application of content protection solutions, to the detriment of the consumer.

Over the past two years, FIAPF has observed the work of the DVB (CPCM) with respect to conceptualising a common standard for content use in family circle networks in the broadband environment (Authorised Domain). Although progress has been slow, we are encouraged by results shown by DVB on this difficult challenge during the past year and believe that the conclusion of this process will be the delivery of an open, horizontal standard whose implementation will meet both the consumers’ legitimate demands for flexibility of use, and the content producers’ no-less-legitimate requirement of preventing the widespread unlicensed re-distribution of content outside the licensed environment.

On governance and trust management, FIAPF welcomes the report’s emphasis on the need for trust models to complement the work on standards and support the successful development of DRMs.

In particular, FIAPF supports the idea that compliance is important: “a compatible but non-compliant device would undermine all the interoperating DRMs”. This interaction between the compliance and interoperability agendas is a key aspect to be considered in pushing ahead with DRM solutions in the marketplace.

On evolution and timeline, the most significant observation in the report is that there “needs to be a willingness by the consumer to forgo freely available infringing services in favour of legal services”. As the last section of the report correctly identifies (page 18), the consumer’s willingness will only be the result of proactive joint measures creating incentives to migrate to legal services and an awareness that “free” sharing of copyrighted files is theft. FIAPF also notes the HLG’s recognition of the important work of standardization being carried out presently, in an attempt to define an open standard for the legitimate circulation of content within a multi-device home digital network. The Commission needs to continue to lend its active supports to such initiatives, chief amongst them, the DVB’s CPCM.
2. INTEROPERABILITY

Interoperability has been correctly identified by the HLG as a salient priority for DRM success. FIAPF agrees with this conclusion. We also welcome the fact that the report goes some way towards connecting interoperability with content security issues, instead of narrowing the challenge down to a narrower discussion about inter-device compatibility. FIAPF believes the two issues are inter-dependent and need to be addressed simultaneously.

In this context, FIAPF welcomes the report’s reference to the fact that one of the “enabling factors” of interoperability is the availability of a wide range of content “offered with appropriate usage rules and price points is one key aspect of DRM solutions”. Indeed, in order for usage rules to have an effective application – content needs to run through devices capable of reading such rules and applying them.

FIAPF broadly agrees with the four future “scenarios” outlined in the report. We also share the HLG’s view that such technology-dependent market would initially start up with a jumble of competing systems, eventually to move towards rationalisation and market efficiency through increased standardisation.

Whilst FIAPF has no means of guessing what route(s) such standardization process will take (de-facto standards, standards-based convergence), we strongly believe that the Commission could help both accelerate and rationalise this evolution, by helping foment inter-sectoral dialogue between consumers, content producers, consumer electronics and IT manufacturers, and putting political emphasis on the key priorities of interoperability, trust and content security, would help the move towards coherent standardization.

3. ENABLING FACTORS

FIAPF agrees with the inventory of enabling factors listed in the report. We point out that – while the report is correct in pointing out that the “availability of a wide range of quality licensed content” is one such factor – the industry’s preparedness to make such content available will only reach critical mass if other enabling factors are already present. In this respect, the relevant items in the inventory include “Trust”, implementation of “The personal authorised domain” and “Security”.

On the Authorised Domain (AD), the pioneering work conducted within DVB (CPM) should continue to receive the full support of the Commission. The successful delivery of an open standard supported by the majority of media players’ manufacturers and which could be implemented throughout the digital broadcast chain, would be a significant win for Europe, politically and technologically.

4. ISSUES

The inventory of issues which constitute lingering obstacles to DRMs is useful. On the the last bullet point, it is somehow a truisms to suggest that “DRM must fit the business model and not the opposite”. There is no doubt that new content delivery business models will remain on the shelves if DRM configuration is broadly lacking in terms of trust, security and the ability of systems to read and interpret content usage rules. In this respect, the Commission can still play an important part in discussing with the manufacturing and IT sectors the appropriate standards to adopt for business models to be successfully applicable, be they in proprietary systems or in open, convergent standards.
On the issue of “Control points”, FIAPF agrees with the report’s conclusion that existing trade regulations and competition law is already an appropriate framework for dealing with restraint of trade and other abuses which may develop in a New Frontier technology-led market such as DRM.

5. CONCLUSIONS AND RECOMMENDATIONS

The conclusions and recommendations of the HLG report appear are generally useful and positive. In particular, FIAPF welcomes the Commission’s stated intention to continue to support the work on open standards such as MPEG, OMA and DVB. We also applaud the recommendation to Member states to ensure that “the enforcement of anti-piracy measures is effective”.

However, FIAPF is concerned that these conclusions seem to externalise the issue of content security instead of making it an integral part of the DRM standards’ discussion. The environment for broadband platforms cannot rely solely on conventional anti-piracy measures to become the secure, trusted distribution chain it needs to become. Whereas other parts of the report mention the need to incorporate content security solutions in DRMs themselves, the Conclusions and recommendations are lacking in this respect. Specifically, the personal computer, whilst having the potential to become the leading media entertainment platform of the future, is still fraught with deficiencies in security terms. These gaps need to be addressed as part of the overall DRM strategy.

PRIVATE COPYING LEVIES AND DRMs

FIAPF agrees with many of the remarks in the HLG report on this important issue. In particular, we salute the report’s recognition that:

- Levies are only justified when there is no practical way of enforcing the reproduction right – they are not therefore the expression of a so-called “consumer right” to private copying, but only a toleration;

- The private copy exception must be compatible with the three-step test (Article 5.5 of the Copyright Directive);

- Levies cannot be “used to justify acts that constitute an infringement” – they are not a “tax” on piracy...

On the issue of levies and technological measures, FIAPF shares the vision outlined in the report that the future should be “a system based on existing exclusive rights backed by technologies that ensure a secure environment where such rights can be licensed and enforced”. This vision is consistent with the spirit of the Copyright Directive.

A difficult balance must be struck however, where a transition may be required between levy-based systems and DRM-enabled business models. The Copyright Directive provides the legal framework for such a transition. However, FIAPF is concerned about the possibility that existing levy regimes may be jettisoned without sufficient guarantees that the technological measures meant to enable the new payment methods would deliver the security and functionality required, backed up by an effective range of sanctions to deter circumvention.

PROMOTING MIGRATION TO LEGITIMATE SERVICES ON THE INTERNET
Peer-to-peer file sharing is a unique product of the internet age. Whereas it is legitimate to celebrate its value as a vehicle for cultural exchange of public domain material and to encourage it as such, its widespread use as a medium for piracy is threatening to undermine the very economic basis on which the business of film and audiovisual production rests.

The HLG reports mentions 800 million illegal music files traded over P2P networks in June 2004. The data is staggering and the report’s contention that this ongoing situation has resulted in severe employment and investment levels in Europe’s music industry, makes for grim reading.

FIAPF’s members are aware that the threat of illegal file swapping has begun to attack the audiovisual industry in significant ways too. As bandwidth increases in the digital internet environment, and as PC processor speed continues to improve, the speed required to download a feature film file to a reasonable definition, is decreasing dramatically. With these technological factors in place, there are few films opening for the first time in a movie theatre today, who will not simultaneously be offered up as illegal files on the internet.

As the report correctly identifies, this type of illegal use will not yield to any single measure. What the issue requires is a multi-pronged approach, involving coordination between the content industries, ISPs, Government and consumer groups. At the core of the required strategy is education: deliberate, malicious infringement is an attitude found only amongst a narrow fringe of internet users, who need to be pursued with appropriate tools of civil and criminal law. The majority need basic education about copyright and the long-term link between widespread infringement and the reduction in consumer choice. FIAPF welcomes the report’s call for “an unequivocal political commitment on behalf of EU Member states and EU institutions”.

Missing from the report’s inventory of measures is the role of ISPs in contributing to a reduction of illegal file trading on P2P networks. In France, a coalition of music industry, government and ISPs have recently announced a train of coordinated measures to deal with the problem. The package includes measures taken directly by ISPs, from early notices to cancellation of the user’s connection. FIAPF believes the Commission could usefully encourage similar initiatives in the rest of the European Union.

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