

As the representative body of composers, songwriters, music publishers and their collecting societies in the UK, British Music Rights welcomes the opportunity to respond to the public inquiry into the issues surrounding Digital Rights Management (DRM) initiated by the All Party Parliamentary Internet Group (APIG).

**Whilst further legislative intervention (previously suggested in an APIG recommendation to Government)<sup>1</sup> would be premature in this still nascent market, we suggest that Government and Ofcom monitor market developments and engage with all appropriate stakeholders to encourage viable business solutions in this area. Specifically we recommend:**

- That this enquiry begins with a dispassionate presentation from a technical practitioner into what DRM technology is complete with an explanation of all its different component parts and possible uses. Too often DRM is treated as synonymous with copy protection – which is but one part of the DRM landscape. Industry would be happy to suggest someone to make this presentation.
- Ofcom undertakes the necessary evidential research into how DRM is currently employed and whether there is any role for the regulator to mandate or encourage the adoption of an open and interoperable industry wide DRM standard, with consideration of existing research already undertaken by the UK Broadband Stakeholder Group and the EU High Level Working Group, amongst others. Ofcom should take an international lead in this area.
- Government and Ofcom consider the experiences of international market successes such as South-Korea and Japan, as well as subsector markets such as UK mobile telecoms.

We agree with the terms of reference for this inquiry that this is not a black and white, consumer versus industry discussion and that DRM systems should be employed for the benefit of all interested parties, be it right holders or consumers. It is unfortunate that recent blunders in the application of technological protection measures for CDs stigmatise the discussions on DRM (the Sony/ BMG debacle with root kit software tools used to conceal data, and thus potentially enabling an intruder to obtain access to a user's computer without being noticed). Equally, the current lack of interoperability between numerous DRM systems based on proprietary technology such as Apple's Fairplay system causes irritation for consumers as well as frustration for music creators and publishers.

### **Clarity of DRM terminology**

A limited and uniform definition of DRM<sup>2</sup> can not sufficiently take into account their numerous and very flexible functions. We understand DRM terminology (as based in UK / EU law) as:

- Technological protection measures, which protect digital content and have an important role to play in the secure distribution of digital online content, e.g. facilitating new business models such as Windows JANUS DRM enabling limited download subscription services to mobile devices.

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<sup>1</sup> As advanced by point 19: APIG inquiry report, Revision of the Computer Misuse Act, 2004

<sup>2</sup> The European Commission defines DRM systems as "*technologies that describe and identify digital content protected by intellectual property rights, and enforce usage rules set by right-holders or prescribed by law for digital content.*"

- Rights management information, which provides means for right holders and collecting societies to assist and streamline their administrative operations (licensing, auditing, monitoring, distributing royalties to their members etc.) required for the smooth functioning of the online music market.

### **Practical significance of DRM systems**

For the constituency we represent DRM systems are mainly useful tools for collaborative rights management technology which facilitate the development of new business models. DRM has played a key enabling role in the recent success of online music services ensuring that composers and music publishers are being remunerated for their creativity and investment.

Composers and music publishers will always endeavour to offer commercial users and individual consumers' ways to listen and access music according to their demands. Attractive, high quality content services offered to consumers is propelling the growth of digital platforms and operators as evidenced by the forthcoming Spectrum research report "*showdown on the digital highway*."<sup>3</sup>

### **Response to specific APIG inquiry questions:**

#### **Whether DRM distorts traditional tradeoffs in copyright law?**

No; DRM do not distort the balance established by copyright.

Perpetuity: Some have said that DRM systems effectively grant perpetual protection for works, but this is inaccurate as far as EU and UK copyright law is concerned: One precondition of the protection of technological protection measures and rights management information is that the work protected is still in copyright.

Exceptions: The interests of right holders and the public domain are adequately balanced by existing legislation (e.g. the European Copyright Directive of 2001):

- Article 6 (4) expressly addresses the relation between exceptions to copyright and technological protection measures.
- Article 5 (5) refers to the internationally established three step test, i.e. that any exception to copyright must be limited to certain specific cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

The legitimate interests of beneficiaries of exceptions to copyright are best addressed between the parties concerned which have a comprehensive understanding of the complexity of the issues at hand.

#### **Whether new types of content sharing licence (such as Creative Commons or Copyleft) need legislation changes to be effective**

No. To the contrary, most of these content sharing licences are based on, and rely upon existing copyright legislation in order to be effective. Some of these licences, such as Creative Commons, operate by creators signing away their rights irrevocably forever, for the world and for free. Whilst Creative Commons licences might be appropriate in some circumstances, given their perpetual and irrevocable nature we would urge anyone intending to use them to seek legal advice beforehand as to whether this licensing model is appropriate for their planned career path.

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<sup>3</sup> To be published on 11<sup>th</sup> January 2006.

### **How copyright deposit libraries should deal with DRM issues**

The legitimate interests of deposit libraries, including application of DRM, should be dealt with in discussions between the stakeholders concerned. In the UK, publishers and libraries are already engaging in open and constructive discussions at the Joint Committee on Legal Deposit and the Legal Deposit Advisory Panel in order to find workable solutions.

### **How consumers should be protected when DRM systems are discontinued**

The discontinuation of DRM systems will have no impact on consumers' access to works since they only exist in regard of a specific copy/ format of a work and do not affect the underlying work itself. Additionally, we are not aware that this problem has arisen in practice, or is likely to arise since a discontinuation of DRM is not in the interest of hard -, or software manufacturers.

### **To what extent DRM systems should be forced to make exceptions for the partially sighted and people with other disabilities**

Again, this is best dealt with between the relevant stakeholders. A good example is the discussion between the UK publishing community and the Royal National Institute of the Blind to ensure comprehensive access for visually impaired people to books in a format of their choosing whilst at the same time reassuring right holders that their works will be adequately protected. A Government sponsored pilot based on the Visually Impaired Persons Act 2003 is now running for six months. Notably, the discussions are based on the genuine desire to enable access for visually impaired people and not on costs.

### **What legal protections DRM systems should have from those who wish to circumvent**

We recognise the importance of legal protection for all forms of DRM as established at European level through the Copyright Directive and internationally by the WIPO Internet Treaties. Future business models can only work if a legitimate legal framework is applied in practice rewarding the intrinsic value of creativity in any platform including online, mobile, and traditional broadcasting. However, if technological protection measures were employed properly – it would be less of a sport to circumvent them in order to infringe copyright.

### **Whether DRM systems can have unintended consequences on computer functionality**

As discussed at the recent UK Presidency Creative Economy Conference in London, the ideal DRM system will enable users to access and use music according to their choice in a convenient and transparent way.

We share the concern of consumers on the recent blunder on copy - protected CDs. Technological protection measures are important; offering right holders the security to prevent illegal copying or communicating to the public. Nevertheless, right holders have to be responsible for both proper labelling and for sensible application of DRM. In addition, those applying technological protection measures need (a) to be thorough as to the technology employed and (b) transparent as to the software they need to apply on the individual computer for the efficiency of their DRM. It is unfortunate that public discussions on DRM in general have been tainted by specific problems with technological protection measures.

### **The role of the UK Parliament in influencing the global agenda for this type of issue**

We urge Parliament to take a watching brief of the still nascent market for DRM, in particular monitoring the discussions between the stakeholders on interoperability without actively legislating at this stage. Government and Ofcom have roles to play in bringing stakeholders together to ensure effective collaboration with industry groupings in order to develop and broker solutions at a national level.