

Submission to the All Party Internet Group on Digital Rights Management

Prepared for Granada International by Martin Blakstad 13th January 2006

The whole DRM issue is very important to us as a major content owner and some issues we would like to be included in the APIG considerations are:

- The need to set minimum protection standards - both copy and forward protection.
- Enforcement of rights abuse protection – whether the current legislation is adequate or draconian enough to dissuade pirates
- Concern over the profusion of standards and the fact that most are linked to parties with vested interests e.g. Apple, Microsoft etc. This has the potential to distort the market
- The additional cost of having to provide the different DRM solutions which are not inter-operable
- Cross industry standards – e.g. between mobile, PDA and broadband DRM
- Protection of territorial rights in the age of the Internet
- Watermarking & tracking of illegal copies and enforcement
- Criminal vs Civil offence for infringement of copyright

In the debate about copyright in the digital age, there are two basic interest groups: rights owners and rights users. Digital Rights Management aims at protecting content of the rights owners and controlling the associated attributable rights as accessed by the rights users. Digital rights management is a general term and includes all types of management of content, including copy restrictions. The term is often confused with copy protection and technical protection measures (TPM). These two terms refer to technologies that control and/or restrict the use and access of digital media content on electronic devices with such technologies installed and it is important to include all aspects of “wider” DRM.

As we see it, digital rights management includes two important parts which together enable a number of business scenarios.

- The first part, content protection, enables Service Providers to protect content by binding usage to a particular device or set of devices.
- The second part, rights management, encapsulates usage and business rules in a license that is enforced by a client-side DRM engine. Examples of rules are to restrict the right to copy content to a CD, or to restrict playback to a certain number of times in a given time period.

There are a number of proprietary protection systems that will only allow the content to be played on compatible devices. Examples of this are iTunes where Apple have “FairPlay”, RealNetworks have “Helix DRM”, “OpenMG” from Sony etc. The compatibility issues around these systems give concern to providers of content as they put a barrier to potential viewing by the end consumer and raise concerns about consumer access to acquired content if they change their hardware, thereby distorting the market.

Security can be offered in three ways:

1. The first is protection against physical theft, or a ‘lockdown’ mechanism, which generally takes the form of blocking the device’s operation should it be used outside the customer’s residence. Identifying individual devices has privacy implications but generally takes the form of using unique serial numbers and hardware (e.g. MAC) addresses.
2. Conditional access and
3. Copy protection. Content must be encrypted from the point of its origin to the point of display, with viewing permissions strictly controlled. It is a concern if content has to have protection encoding embedded and that code causes problems for the users in terms of ease of viewing or even allowing access by hidden viruses e.g. the recent Sony Music case.

Some Current Enforcement Issues:

The situation appears not to be clear but the following is a basic overview of where we believe the position stands at present. For illustration some International examples are given.

EU Draft Criminal Measures Directive

This is a Directive that is still at the proposal stage – I do not believe it has been adopted yet by the Commission.

It follows on from the Enforcement Directive

The key points of the proposals are:

- Criminal offences applies to *intentional infringement*
- On a *commercial scale*
- And the offences of aiding, abetting and inciting will also be included.

One of the issues of principle here is whether and to what extent copyright infringement should be criminal (as opposed to civil). English lawmakers have always fought shy of imposing criminal liability on individuals for copyright infringement on the basis that, in principle, illegal copying is not morally equivalent to theft; as a content owner we may have a different view.

We understand the Treasury recently announced a wide ranging review of Intellectual Property headed by Andrew Gowars and that one of the specific terms of reference is:

... whether the current technical and legal IP infringement framework reflects the digital environment and whether provisions for “fair use” by citizens are reasonable.

The following are some concerns we hope will be addressed by the above review and/or by the APIG

File sharing – A major concern

The profusion of file sharing systems such as Bit Torrent, Kazaa etc are a real concern to our industry as it is possible to obtain a programme via the Internet within hours of it being transmitted. This causes concerns not only for the exploitation of primary but also secondary rights.

To what extent are P2P software providers responsible for copyright infringement (i.e. to what extent will the law penalise those who facilitate copyright infringement by others – such as Grokster, Kazaa)?

How are rights owners to pursue individual file sharers?

In general in Anglo-Saxon jurisdictions, civil remedies are preferred unless the copying is on a large commercial scale. But different jurisdictions take different views. Some cases in the last 12 months demonstrate this:

In Norway a man from Sandefjord was found guilty of running an illegal file sharing service from his employer's server. He was sending out film and music files to up to 300 people at a time. A civil action is likely to follow.

In Sweden, an individual called Andreas Bawer was convicted for distributing a "Swedish movie" and fined.

In Spain, the Spanish website Weblisten which offered song downloads was shut down by court order after admitting criminal copyright infringement. The website had continued to make songs available despite successive civil actions against it.

In Taiwan, a court recently convicted a P2P file sharing service, its principals and an infringer for criminal copyright infringement. The firm, Kuro, was fined approximately US\$90,000 and the principals and the user were sent to jail for terms of up to 3 years. It had been charging for the downloads but had not paid anything for them.

Consumer protection and DRM

We are aware that Consumer protection law must also be considered with DRM (as shown in other countries in the examples below), however a principled approach to liability in the new media environment is essential – beginning with recognition at a political level of the need to protect copyright.

In Norway the Consumer Ombudsman is undertaking an evaluation under the Marketing Act as to whether copy protection is legal.

In France an investigation of EMI and Fnac is ongoing under consumer protection laws.

In Belgium, the 2004 Test-Achats case (also brought on the basis of consumer protection legislation) held there was a right to make a copy for personal use under Belgian law – and copy protection denies that right – similar to reasoning in the Norwegian “DVD Jon case”.

In the US, Sony BMG have recently been sued by the state of Texas over copy protection mechanisms on DVDs under the Texas Consumer Protection Against Computer Spyware (CPACS) Act, which includes provisions that punish those who hide software from a computer's owner.