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All Party Internet Group

Digital Rights Management Inquiry Submission

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1 RIGHTS.COM

Rightscom is a UK-based consultancy that specialises in the provision of solutions for the management, trading and protection of intellectual property rights and digital content in the network environment. Rightscom has established a trusted position as an international consultancy with a unique body of business and technology knowledge about the management of all types of digital media. Rightscom's clients include a wide range of organisations in the digital media content industries, technology providers and regulators including the European Commission.

2 DIGITAL POLICY MANAGEMENT

Digital Rights Management in its broadest sense is an extremely complex issue which is frequently over-simplified. The debate therefore needs to be widened to "Digital Policy Management" (DPM). DPM is about defining, describing, communicating and enforcing *policies* which control the access to and use of *any* form of network resource. DPM should provide:

- Certainty of identity of content resources (what is it?);
- Certainty of identity of parties (who is "offering" and who is "consuming"?); and
- Certainty of definition of ways in which resources may be used (how can it be exploited?).

Fully functional DPM therefore, includes:

- A significant "Policy Data Layer" which manages information about the resources, the parties, and the policies;
- A "Policy Communication Layer" which ensures all parties in any transaction are kept cognisant of the policies that surround it; and
- A "Policy Enforcement Layer" which ensures the policies are adhered to.

The last subset, the Policy Enforcement Layer, includes the technologies generally known as Technical Protection Measures (TPMs). This is the area where controversy generally gets focused. Issues in this arena cannot be solved without taking the wider view of DPMs in their totality.

These concepts have existed in the physical world since the dawn of the first act of commerce. So, for example, consumers choose to shop at Tesco's because they have an understanding of the company's ethos and they know that they will be able to purchase quality goods. These concepts, which focus on trust and predictability, now have to be extended and remodelled for the network environment. If they are not the utility of the network will simply decline.

3 STANDARDS DEVELOPMENT

In the network environment things do not work without standards. There are a huge range of domains where standards are required for the virtual world. The context of DPM is no different in order to create predictability in the network for all stakeholders. Work has already been undertaken by different stakeholders but the focus has largely been domain specific; for example on one media type (International Digital Publishing Forum¹) or on one platform type (Open Mobile Alliance²). It is only in the last couple of years that more work has been undertaken which focuses on standards which cross domains. However, there are very few stakeholders (other than consumers) whose interests can be said to span the whole virtual world.

Regulators therefore have a role to play in ensuring that these standardisation activities are not conflicting, are appropriate and do not have unintended consequences by centralising power.

4 WHETHER DRM DISTORT TRADITIONAL TRADEOFFS IN COPYRIGHT LAW?

Clearly, it can. It is possible (though by no means inevitable) for DPM to be used to make exceptions to copyright less accessible. For example, disabling "cut and paste" is a way of making the "quotation" exception unavailable. However, to say it has been withdrawn is too simple. The exception remains, but a simple short cut is a little less accessible.

DPM can make it impossible to do things that are not even seen as exceptions under copyright law because (in the physical world) such things do not involve copying. So, for example, the act of lending a book can be made difficult or impossible using DRM. If the copy of a book has been obtained legitimately from a service provider using a business model which ties the book to a specific hardware platform, it is impossible to lend the book. In the physical world you buy a book and it is yours to do what you want with including lending to a friend. The access using DPM places a new conditionality on the use of the book that previously did not exist.

It is therefore the business model which imposes the conditionality. DPM is merely the mechanism by which it is enforced.

5 HOW COPYRIGHT DEPOSIT LIBRARIES SHOULD DEAL WITH DRM ISSUES

Anything that includes any kind of encryption algorithm of the kind that all DRM systems rely on is potentially inimical to the access principle. It is much safer to provide content to deposit libraries without any form of protection as this reduces the complexity of migration or emulation strategies needed to ensure long-term

¹ <http://www.idpf.org/>

² <http://www.openmobilealliance.org/>

preservation and access, and offers a better chance of recovering data in the event of a disaster.

However, business models for some types of high-value content have shifted from sale to access. Digital content owners may be far less willing to deposit these items in deposit libraries in digital form if the libraries are going to provide unrestricted access to them.

If deposit libraries are to be successful in the network environment a trusted network environment (i.e. DPM not just DRM) is critical to the establishment of a system of legal deposit for digital content.

6 HOW CONSUMERS SHOULD BE PROTECTED WHEN DRM SYSTEMS ARE DISCONTINUED

This situation has not yet been seriously encountered but it will be soon. If access rather than ownership becomes a more accepted model then it becomes a real issue, particularly for subscription services. For example, if you discontinue a subscription with Real Networks, your access to the music you have obtained from Real Networks automatically ceases. This is a fair enough business model (as long as users understand it when they sign up).

Problems arise if Real Networks ceases trading. Subscribers may still be willing to pay but there is no one to pay, and therefore no way of retaining access. Regulators may wish to consider the pros and cons of whether some form of a universal key should be put into escrow (for example with OFCOM) so that in the event of discontinuity it would at least be possible to unlock protected content.

7 TO WHAT EXTENT DRM SYSTEMS SHOULD BE FORCED TO MAKE EXCEPTIONS FOR THE PARTIALLY SIGHTED AND PEOPLE WITH OTHER DISABILITIES

The solution is likely to lie more in working with rights owners to agree frameworks for making content available rather than forcing DRM developers to install some kind of "tunnel". Evidence from our clients suggests that content owners are very willing to try to support the requirements of, for example, visually impaired people if a sensible system could be devised. Therefore we would expect that accommodations can be arrived at to provide commercial solutions for all kinds of disabilities.

The question implies that DPM systems themselves are the problem, rather than the inappropriate application of a business model or technology. Regulators should focus on the prevention of these inappropriate applications.

8 WHAT LEGAL PROTECTIONS DRM SYSTEMS SHOULD HAVE FROM THOSE WHO WISH TO CIRCUMVENT THEM

Whilst being in principle sensible to create a tight mesh of different instruments to enable rights holders to protect their interests, there are significant problems that will need to be addressed in the framework of existing legislation. Firstly, in order to develop good DPMs, researchers and engineers need to try to circumvent existing DPMs to learn from their weaknesses. This is the only effective way to enhance DPMs. Secondly, DPMs should be used by content owners to protect their intellectual property only within a wider legislative environment which also provides protection to other stakeholders, particularly consumers.

9 WHETHER DRM SYSTEMS CAN HAVE UNINTENDED CONSEQUENCES ON COMPUTER FUNCTIONALITY

The main issue with many modern DPMs is that they install some software on a user's device over which the primary control does not lie with the owner of the device but with the organisation installing the DPM. While the user may know that a DPM is being installed the user is not necessarily in a position to determine the nature of the changes in his device's behaviour. These problems have been amply demonstrated by SonyBMG's recent use of the XCP technology from First4Internet to prevent copying of physical CDs.

10 THE ROLE OF THE UK PARLIAMENT IN INFLUENCING THE GLOBAL AGENDA FOR THIS TYPE OF TECHNICAL ISSUE?

The APIG has rightly identified that this is a global issue. However, it is likely that the European institutions will become closely involved, and the role of the UK government is in that environment. The agenda has been set out above.

Regulators should not view this agenda solely in the context of the protection of, essentially high-value institutionally owned intellectual property or other digital content. An increasingly large percentage of all known digital content will be created by individuals. For example, an individual may wish to share photographs of a family holiday on <http://flickr.com/> but only to a specified list of relatives. That user therefore needs the benefits of DPM to achieve those ends just as much as an institutional rights owner.

Thus the long-term emphasis within the virtual market-place for digital content will increasingly be about managing large volumes of low-value content rather than solely on the protection of high-value, institutionally owned digital content.

11 CONTACT

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