



**Pact response to All Party Parliamentary Internet Group inquiry into Digital Rights Management**

**Dec 21 2005**

## Executive summary

- 1) The Producers' Alliance for Cinema and Television (Pact) is the UK trade association representing the commercial interests of UK film, television, animation, distribution and interactive content companies. We have a membership of more than 800 companies.
- 2) Pact welcomes the opportunity to respond to the All Party Parliamentary Internet Group (APIG)'s inquiry into Digital Rights Management (DRM). In particular, we agree with APIG that DRM "permits the creation of new business models" and that portraying the issues around DRM as merely a consumer versus publisher debate is misleading.<sup>1</sup>
- 3) In facilitating new business models, DRM is a potentially significant tool for sustaining growth in the UK's creative industries. These industries contributed over £53 billion to the UK in 2002 and grew at an average of 6% between 1997 and 2002 - double the rate of the economy as a whole. They contributed over £53 billion to the UK in 2002, accounting for 8% of GDP and supporting 1.8 million jobs.
- 4) In stimulating new business models in the creative industries, DRM will also create opportunities to offer more choice to the consumer/citizen. As APIG states: "DRM permits the creation of new business models where you buy the right to read a book just once, or pay a fraction of a penny every time you play a song. This allows publishers greater flexibility in the services they offer and leads to increased consumer choice."<sup>2</sup>
- 5) Providing this choice is key to preventing copyright theft. Pact supports the development of effective deterrents such as anti-piracy laws, as well as educating the public about the value of intellectual property and the impact of copyright theft. However, in addition, providing the customer/consumer with a legitimate, commercial alternative to illegal downloading is widely recognised as part of the solution to the theft of intellectual property, as evidenced in the music industry. DRM is a tool for creating this legitimate alternative.
- 6) We would also urge APIG to consider the important distinctions which exist between technical protection measures and electronic rights management information. Although both these groups relate to the management of rights in the digital environment, and as such may be referred to as DRM, they have different functions for rights owners.

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<sup>1</sup> APIG announcement of public inquiry on DRM.

<sup>2</sup> *ibid.*

- 7) Essentially, technological protection measures refer to methods which practically limit the way in which a consumer can use a product or service. This is focused on theft prevention, such as stopping people making copies or taking off encoding.
- 8) The second type, management systems, encompasses identification and licensing. They are effectively stock management tools, and tools through which the interests of rights owners can be identified, their uses recorded and, through this, remuneration arranged. Rather than preventing copying, they could, for example, facilitate tracking material during authorised copying. We have addressed the legislative context of these issues in our response to Section 8.

## Key issues and questions

### 1) Effects of DRM on traditional tradeoffs in copyright law

- 1) Risk taking and creativity must be encouraged in new online markets if the UK's creative industries are to continue as one of the economy's fastest growing sectors. To achieve this, content creators must be able to secure a return on the successful intellectual property they generate.
- 2) An effective rights protection mechanism is central to this, and the *2003 Copyright and Related Rights Regulations* are therefore providing increasingly significant safeguards for the independent content creation industries across the UK. In its risk assessment for implementing the *2001 Copyright Directive*,<sup>3</sup> which led to putting into effect the 2003 regulations, the Government recognised:

*“Digital technology permits perfect copies of works to be made and transmitted almost instantaneously across national boundaries, and it is widely accepted that strengthening and harmonisation of basic rights is necessary in order to ensure that copyright laws can be in a position to cope effectively with the demands of the information society. In particular, the ease of unauthorised use of digital copyright material on the internet requires the introduction of common rules specific to online transmission and electronic copying, coupled with stronger sanctions and remedies to deal with wilful illegal activity when on a damaging scale. Effective legal protection is also required for technological measures which right owners are now applying to their works in digital formats and environments in order to protect these works against all infringements and assist in the management of rights.”*

- 3) These key issues addressed in the 2003 regulations have created safeguards that benefit both consumers and creators, and have no doubt encouraged the development of new online services. This is exemplified in the emergence of effective, legitimate online music services.
- 4) This year, IFPI reported:<sup>4</sup>

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<sup>3</sup> Directive of the European Parliament and the Council of the European Union of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society - 2001/29/EC.

<sup>4</sup> IFPI online music report 2004.

In 2004 the available catalogue on the biggest legitimate online music services had doubled from around 500,000 tracks to around one million tracks;

The number of online services where consumers can buy music has increased fourfold to more than 230 worldwide, with over 150 of these services being in Europe.

- 5) Copyright exceptions and limitations have evolved over time, but the underlying principle established in international treaties, and more recently within Article 5.5 of the *Copyright Directive*, should be supported. This provides that:

*“Exceptions and limitations... shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rights holder.”*

## **2) The legislative environment for new types of content sharing licence (such as Creative Commons or Copyleft)**

- 1) Since the existing regime had enabled rights owners to choose whether they wish to license the use of their works by means of sharing licences such as Creative Commons, it is unnecessary to make legislative changes to permit them.
- 2) However, in the interests of creating a commercial environment that encourages investment in the creative industries, such types of content sharing licence must provide an appropriate financial return for rights owners.

## **3) How should copyright deposit libraries deal with DRM issues?**

- 1) The *Legal Deposit Libraries Act 2003* provides important flexibility for the Secretary of State to make regulations concerning the legal deposit of works published in media other than print.
- 2) Discussions are taking place between representatives of publishers and libraries to ensure that deposited works can be read and accessed

subject to the agreed limitations of the deposit rules, and bearing in mind the three step test which must apply to any copyright exceptions or limitations.

- 3) No specific right for libraries to circumvent technological protection measures is thought to be necessary in the context of these discussions.

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

- 1) The developers of technical protection measures are not usually the same companies or individuals as the owners of the copyright works to which they are applied. Recognising this, it must be for the developers of technical protection measures to decide upon the commercial value of their own products.
- 2) The fact that the owner of copyright material chooses to publish or distribute their work in conjunction with a technological protection system developed by a third party should not mean that the owner of the copyright material takes on responsibility for the obsolescence of the third party product.

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

- 1) The concern behind this question was much debated during the process leading to adoption of the *Copyright Directive*. The purpose of technical protection measures could very easily be undermined if specified groups of people were able to circumvent the measures on the grounds of relying upon recognised copyright exceptions.
- 2) However, rights owners generally wish their works to be appreciated by as wide an audience as possible, within the recognised copyright regime. In view of this, rights owners have been willing to make arrangements for accessible copies of works to be made available to visually impaired people.
- 3) The provisions now included in sections 31A and 31B of the *Copyright, Designs and Patents Act 1988* (as amended) illustrate how access can be accommodated without overriding the entitlement of rights owners to publish works in copy-protected electronic form.

**6) What legal protection systems should DRM systems have from those who wish to circumvent them?**

- 1) The provisions already included within Section 296Z of the *1988 Copyright, Designs and Patents Act* (as amended) should continue to be recognised.

**7) Can DRM systems have unintended consequences on computer functionality?**

- 1) Developers of technical protection measures will seek to ensure that new products are tested to avoid unintended consequences of use in line with general consumer law.
- 2) However, where unintended consequences do arise, existing consumer protection rules should provide the route to recourse. Just because one product amounting to a technical protection measure delivers unintended consequences, the general development and marketing of technical protection measures should not be limited by changes to the law.
- 3) We would support appropriate standardization processes. We would refer APiG to the 2004 report of the European Commission's *High Level Group on Digital Rights Management*. This highlights the importance of interoperability across different platforms.

**8) The role of the UK Parliament in influencing the global agenda for this type of technical issue**

- 1) UK legislation such as the *2003 Communications Act*, which ushered in the new terms of trade between independent producers and broadcasters, has played a significant role in developing sustainable, globally successful independent production companies. The Act and the terms of trade allow independent companies to retain rights to the intellectual property they create, thereby allowing them to share in the value chain and generate the revenues which will attract further investment.
- 2) One example of the considerable impact this has had is the worldwide success in selling remake – or ‘format’ - rights to independent programmes such as *Pop Idol*, *Big Brother* and *Who Wants To Be A Millionaire?* Ofcom states:

*“The terms of trade have helped open up international format markets to producers. This has proved particularly lucrative for UK independents, with the US and Germany representing particularly important markets.”<sup>5</sup>*

- 3) To sustain such growth, Pact would submit that the UK Parliament and Government must ensure that those rights are adequately protected. Parliamentary recognition of and support for the value of copyright and other intellectual property is increasingly important within the digital knowledge economy. Otherwise, opportunities for the creative industries within the UK to continue to develop will be eroded.
- 4) An important way for Parliament and Government to promote the value of intellectual property is through education. The Government has for example committed to working with business leaders in order to embed the so-called CREATE principles within their own corporate and social responsibility commitments. These principles were developed through the Creative Industries Forum on Intellectual Property and were designed to express the key aspects of the value of intellectual property in the modern economic and social setting.
- 5) As these principles outline, improving understanding, respect and trust is not helped by the use of convenient terminology for a range of new products and services, with a variety of purposes, under the generic heading of DRM. Greater understanding will help ensure that, if there is unfavourable publicity over one product, the public does not tar all products under the same generic description with the same brush.
- 6) We would also illustrate the important role Parliament and the UK Government have to play in highlighting and implementing the distinction between technical protection measures and electronic rights management information.
- 7) This distinction is important in the debate over possible new regulations and should be addressed in any education campaigns. It is important to ensure that consumers are not misled over what a product or service does or does not offer, and that regulations do not apply to more DRM elements of production than is necessary.
- 8) The difference between protection and management was properly recognised within Articles 6 and 7 of the *2001 Copyright Directive*, and recognised within the UK when implementing the directive through adoption of the *2003 Copyright and Related Rights Regulations*.

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<sup>5</sup> The Communications Market 2005, Ofcom, page 203.

- 9) Sections 296ZA to F of the *Copyright Designs and Patents Act 1988* (as amended) now refer to “technological measures” as “any technology, device or component which is designed, in the normal course of operation, to protect a copyright work other than a computer program.”
  
- 10) Section 296ZG applies to electronic rights management information. Subsection 7 (b) describes this as “any information provided by the copyright owner or the holder of any right under copyright which identified the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.”

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