COUNCIL OF
THE EUROPEAN UNION

EN

Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment

2905th EDUCATION, YOUTH AND CULTURE Council meeting
Brussels, 20 November 2008

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION,

1. REFERRING in particular to

– the Charter of Fundamental Rights of the European Union of 7 December 2000 which guarantees the protection of personal data, freedom of expression and information and the protection of intellectual property;

– the UNESCO Convention of 20 October 2005 on the protection and promotion of the diversity of cultural expressions1;

[1] Council Decision 2006/515/EC of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (OJ L 201, 25.7.2006, p. 15).

– Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 on audiovisual media services[2], which sets out a number of requirements as regards cultural diversity and the promotion of European works by linear and non-linear audiovisual media services;

– Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights3;

– Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market4, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data5 and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector6;

2. CONSIDERING with interest

– the Commission communication of 3 January 2008 on creative content online in the single market, the resulting consultation of stakeholders and setting up of a European platform of creative content online and the Commission's intention of contributing, in cooperation with the Member States, to finding ways of meeting the challenges identified in this connection;

– the European Charter for the Development and the Take-up of Film Online of 23 May 2006;

– the Memorandum of Understanding on Diligent Search Guidelines for Orphan Works, signed on 4 June 2008, under the auspices of the Commission, by representatives of libraries, archives, audiovisual archives and right holders;

– the initiatives launched by the public authorities or by professionals in a certain number of Member States and in some extra-European partners in order to find practical concerted ways of encouraging the development of legal online offer and preventing and combating piracy, such as: awareness-raising campaigns, the organisation of interprofessional cooperation, self-regulation or coregulation agreements, the introduction of non-judicial, educational, step-by-step mechanisms, etc.;

---

2 Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27).

3 OJ L 167, 22.6.2001, p. 10
OJ L 157, 30.4.2004, p. 45.

4 OJ L 178, 17.7.2000, p. 1.

5 OJ L 281, 23.11.1995, p. 31.

6 OJ L 201, 31.7.2002, p. 37.

3. NOTES that:

– the online distribution of cultural and creative assets, particularly via the internet, provides a tremendous opportunity for everyone to have access to culture, economic development, employment and cultural diversity;

– there is still considerable potential for developing the range of cultural and creative content available legally online in Europe;

– online piracy, which in some cultural and creative sectors is reaching a critical threshold, is likely to do lasting harm to the appropriate remuneration of copyright holders and holders of related rights; besides its consequences for the marketing of traditional media (CD, DVD, etc.), it is a major factor holding back the development of the legal provision of cultural and creative content online on which, to a large extent, the dynamism of the European industry for cultural and creative content depends, and threatens cultural creativity and diversity;

– although the use of technical systems for protection (Technical Protection Measures (TPM)) or rights-management information (Digital Rights Management (DRM)) may in some cases, while taking due account of the principle of personal-data protection, contribute to protecting and managing rights in the digital world, the lack of interoperability or transparency of these systems creates insecurity for consumers and limits their use of the content offered by the various platforms;

4. BELIEVES in this context that

– the development of a legal online offer which is diverse, of high quality, accessible, easy to use and consumer friendly, on the one hand, and preventing and combating piracy, on the other, are necessary for the development of the information and communication society and the promotion of cultural diversity in the digital world;

– it is indispensable for right holders to be guaranteed appropriate remuneration if creation and cultural diversity are to be fostered;

5. CONSIDERS that in pursuing these objectives account should be taken of:

– the need to ensure a fair balance between the various fundamental rights, particularly the right to personal data protection, freedom of expression and information and the protection of intellectual property, and to seek, when implementing Community law, solutions in compliance with the general principles of Community law, in particular the principle of proportionality[7];

– consumers' expectations in terms of access and the ease of use of services and the diversity and quality of the content offered online;

– the diversity and transformation of the business models of enterprises in this sector, particularly small and medium-sized enterprises, and the constant rapid evolution of technologies;

---

[7] CJEC judgment of 29 January 2008, Productores de Música de España (Promusicae) v. Telefónica de España SAU, case C-275/06.

– the variety of developments in digital economies, the situation of the legal offer online and the extent of the problem of piracy in the Member States, as well as the legal traditions of each of them;

– the need to promote cultural diversity in Europe, in particular by encouraging online services to help develop European cultural and creative content;

6. INVITES MEMBER STATES to

– launch or encourage concerted approaches by the parties concerned, as soon as possible, designed to find concrete, effective, fair and proportionate solutions promoting the development of legal online offer and the prevention and combating of piracy;

– encourage, where appropriate and in accordance with their legal traditions, the parties concerned to review the periods within which films may be made available (media timescale covered by Article 3d of Directive 2007/65/EC) in order to encourage the diversity and attractiveness of legal offer of films online;

– contribute actively to the promotion of European audiovisual and film offer by linear and non-linear audiovisual media services in the context of the transposition of the Directive relating to audiovisual media services, notably through exchange of best practice;

7. INVITES THE COMMISSION

– to contribute to improving knowledge, in close cooperation with the Member States and with the professionals concerned, particularly through the development and pooling of statistical data, of the digital cultural economy in all its diversity, in particular of legal online offer, and of piracy: its scale, its causes and its consequences for the economy of creation and cultural diversity;

– to distribute information, particularly that provided by the platform, on best practice and innovative responses to the challenges identified in the context of the consultation of 3 January 2008;

– within 18 months, to present a report based on contributions by the Member States on the various initiatives being undertaken to develop legal online offer and to prevent and combat piracy;

– to examine how to increase the digitalisation and online distribution of cinematographic and audiovisual works in the framework of the implementation of Community programmes, notably the MEDIA programme;

– more generally, to contribute by means of all relevant policies to the development of legal online offer and the fight against piracy;

8. INVITES THE MEMBER STATES AND THE COMMISSION, within their respective competences, to

– improve consumer information, in particular through objective information campaigns, on copyright and related rights and the consequences of failure to observe them and, more generally, to make all players, including professionals, aware of the consequences of piracy for creation and cultural diversity;

– contribute to consumer information on the conditions for the use of content on different equipment and platforms and on the restrictions applying to the use of technical measures to protect and manage rights;

– initiate or encourage efforts by industry, right holders and consumers to work together to promote the interoperability and ensure the transparency of technical measures to protect and manage rights, for example by means of a system of identification/labelling;

– pursue the objective of cultural diversity, in particular in their policies on copyright and related rights in relation to online cultural and creative content;

– contribute actively to reinforcing compliance with and protection of copyright and related rights at international level, in the framework of the relevant bilateral and multilateral agreements and political dialogue and cooperation with third countries;

9. INVITES THE PARTIES CONCERNED to launch consultations or to join them, in a constructive spirit, with a view to

– finding concrete, effective and fair solutions promoting the development of legal online offer and the prevention and combating of piracy;

– promoting the interoperability and ensuring the transparency of technical measures to manage and protect rights."