



20.05.2003  
DAJ/HR/mp  
*Original: English*

## EBU MEMORANDUM ON DIGITAL RIGHTS MANAGEMENT

### Impact and importance of DRM for broadcasters

A universally-accepted definition of Digital Rights Management does not (yet) exist. Most frequently, the keyword DRM stands for the management of rights by digital means and thereby encompasses not only technical *anti-copying protection measures* but also the electronic *administration of contractual rights*. The latter could be the technical processing of rights "metadata" of protected matter (information on usage and/or media limitations, etc.), including the tracing and monitoring of usage of such protected matter. Anti-copying measures are intended to control digital copying, such as the number of copies, the storage or redistribution thereof or, where necessary, even to prevent the making of any such copies. In the enforcement of contractual terms, e.g. when the DRM scheme controls the length of time of viewing or listening, these types of DRM measures may partly overlap.

The basic idea behind the development of DRM is to facilitate the licensing and acquisition of copyright or neighbouring rights through technical means, while also preventing by such means premium content from being used without authorization. Although the idea of making licensing easier can generally be shared both by rightholders and users (as distributors) of protected content, it should also be realized that certain rights or mass use of protected matter, e.g. for multi-repertoire licensing in the area of music, cannot, in practical terms, be authorized or remunerated otherwise than through collective management agreements.

It is apparent that both radio and television broadcasters must be intensively involved in any discussion of a possible DRM scheme for digital broadcasting. For example, DRM solutions may be helpful with respect to controlling the *use* (i.e. redistribution) of protected content but they should not be applied with the intention of limiting *access* to such content. Widespread access to new digital services requires the desired competition to be maintained on all delivery platforms, in order to avoid a foreclosure of certain markets or similar "gatekeeping" effects.<sup>1</sup> Moreover, DRM measures should make the broadcaster's own administration of rights acquisition and licensing significantly easier, e.g. allowing for the automatic reporting of the use of musical works and commercial phonograms. In addition, concerning mass piracy

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<sup>1</sup> See the EBU comments on the EC Commission's Working Staff Paper on "Openness and interoperability in digital television", of 14 February 2003, at the EBU's website at [www.ebu.ch/departments/legal/position.php](http://www.ebu.ch/departments/legal/position.php).

of their own premium content via the Internet, such as with respect to television programmes on major sports events, broadcasters have certain interests in controlling such illegal copying and redistribution activities.

On the other hand, the above-mentioned interests cannot fully determine the most appropriate technical solution. It must be taken into account that premium content which is particularly sensitive to mass piracy is included only in a very small part of the regular programme output of free-to-air broadcasters. Moreover, the main interests of today's (or future) e-commerce operators differ structurally from the regular activities pursued by EBU Members. As a general rule, technical protection should be proportionate to the actual piracy threat and apply where that threat actually occurs. Consequently, any DRM application for broadcasting would require sufficient *flexibility* to deal with various situations.

DRM issues are closely related (but not limited) to the implementation of the 2001 EC Copyright Directive for the Information Society. However, DRM is a *complementary* (technical) protection measure only and cannot - and certainly should not - be used to overrule the legal framework for copyright protection. It is of prime importance that any DRM system should include certain safeguards, such as for traditional exceptions or limitations under national copyright laws.

Insofar as DRM schemes are not limited to the control of unlawful usage via the Internet, they may also have an impact on the generally-desired transition from analogue to digital broadcasting. This means that, in addition to the obvious need for *absolute interoperability* and standardization, the extent of broadcasters' active implementation of DRM technology and the possible dilemma of encryption are at stake. It goes without saying that any DRM scheme must respect the principle of free flow of information and should not limit the possibilities for free-to-air broadcasting via satellite. Consequently, any technical solution should allow the broadcaster itself to decide whether or not it wishes to encrypt the broadcast signal at the source. Particularly in view of the free movement of broadcasting services in the Internal Market, DRM schemes should always support, and preferably increase, the public's access to a wide choice of European programmes.

### **Principles and requirements**

N.B. The requirements under sections B and C are, to a large extent, specifications of the general principles under section A. The requirements under section D follow on also from the relationship of public service broadcasters with the general audience.

#### **A. GENERAL PRINCIPLES**

Any DRM system should respect the underlying principles of European Community law and policies, such as:

- the free movement of broadcasting services, on the basis of the country-of-origin principle,
- the promotion of cultural and linguistic diversity, and
- the strengthening of the European audiovisual industry.

In particular, any DRM system should be compatible with regulatory aims to help ensure that all European citizens have access to a wide choice of radio and television programmes from different Member States.

If DRM technology is used for broadcasting on a global basis, then broadcasters must first be granted the substantive rights (e.g. through a WIPO Treaty) upon which the legal protection of such technology can be based.

Any DRM system for broadcasting must guarantee the integrity of the broadcast signal and the editorial freedom of broadcasters.

## **B. BROADCASTERS AS CONTENT PRODUCERS**

### **1. Anti-copying protection methods should be flexible and tailor-made, in proportion to the perceived piracy threat given the type of medium, the value of the content and the way such content is made available to the public**

DRM anti-copying technology should focus primarily on providing a reasonably effective remedy with respect to the unauthorized redistribution of premium content via on-demand services over the Internet.

### **2. No mandatory regulation, unless interoperability cannot be guaranteed otherwise**

Voluntary consensus on a single, open standard is the best solution. If that cannot be achieved, full interoperability of technical standards and no addition of unreasonable costs should be guaranteed, particularly from the consumer's perspective (i.e. allowing for a horizontal receiver/recorder market).

### **3. Due account of the legacy issue**

A certain period for equipment migration should be ensured, in order to meet reasonable expectations (of all parties involved) on the continuing usefulness of production, recording and other electronic equipment.

## **C. BROADCASTERS AS USERS OR DISTRIBUTORS**

### **1. DRM systems should not be used to make obsolete the benefits for broadcasters resulting from exceptions or limitations under copyright law**

This applies, in particular, to the possibility of making incidental reproductions of protected matter for broadcasting purposes.

## **2. DRM systems should not interfere with the broadcast signal**

Anti-copying protection is inherently different from conditional access. Consequently, DRM systems should always leave the choice of whether or not to scramble the transmission of the signal to the sole discretion of the broadcaster concerned. Visible, audible or time-delaying effects caused by copy-protection measures may occur only once the signal is captured or recorded on DRM-compliant devices.

## **3. DRM systems should facilitate or simplify the usual clearance of rights**

The usual clearance of rights for broadcasting and related activities via collecting societies should not be hindered. Moreover, DRM systems should not be misused to obstruct the acquisition of transnational rights and/or the availability of cross-border broadcasting services, or as a means of foreclosing the markets for on-line and/or on-demand services.

## **4. DRM systems should be cost-efficient**

DRM schemes should not lead to an increase in administrative costs or give rise to other costs for legitimate digital broadcasting. Moreover, the implementation of any DRM solution imposed by content providers is acceptable for broadcasters only against fair reimbursement of their costs. This applies, in particular, if it is required that a DRM scheme should be embedded into the broadcast signal.

## **5. No liability after implementation of DRM**

DRM schemes for broadcasting are acceptable only under the strict condition that broadcasters are exculpated from any liability for infringement by third parties.

## **D. INTERESTS OF VIEWERS/LISTENERS**

### **1. Private copying**

DRM systems should allow broadcasting services' viewers/listeners to make a personal copy of programmes, in particular for time-shifting purposes. Concerning the private use of such copies, DRM systems should not negatively affect the attractiveness of digital technology for viewers/listeners, thereby jeopardizing a rapid change-over from analogue to digital broadcasting.

### **2. Platform neutrality**

DRM systems should be equally suitable to all forms of broadcast delivery (e.g. terrestrial, cable, satellite, UMTS), in order to ensure the availability of broadcasting services to the public over different media platforms.

### **3. No prejudice to legitimate privacy interests**

DRM systems should not require the registration of individual viewers/listeners or their signal-receiving equipment (i.e. other than for supplementary warranties or services). Moreover, DRM schemes which include the processing of data on, or control over, the personal recording activities of broadcasting services' viewers or listeners should be subject to their consent after they have been adequately informed of the purposes of such measures.

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