

Report by Arne Wessberg: Branch Talks in September – October 2008

Reports of the Ministry of Education 2008:32

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OPETUSMINISTERIÖ

Undervisningsministeriet

MINISTRY OF EDUCATION

Ministère de l'Éducation

Ministry of Education
Department for Cultural, Sport and Youth Politics
P.O. Box 29, FIN-00023 Government
Finland
<http://www.minedu.fi/>

Helsinki University Print 2008

ISBN 978-952-485-612-6 (PDF)

ISSN 1458-8102

Publications of the Ministry of Education 2008:32

To the Ministry of Education To the participants in the branch talk

The enclosed document is a report of the branch talks on the promotion of electronic commerce of copyrighted content and reduction of illicit file sharing over the internet conducted in September and October 2008.

The talks constituted a useful review of the situation in and prerequisites for electronic commerce on the internet. They also created a basis for further action.

In the light of the talks, there are good grounds for proposing that discussions between representatives of the branch be continued with a view to developing favourable conditions for commerce in creative contents.

My view is, however, that mere development of procedures for the branch will not create sufficiently favourable conditions for commerce in creative content. Action by authorities is needed alongside legislative measures.

The reports and proposals of the working groups set up from amongst the parties to the talks have been submitted to the Ministry and are available to those interested in the matter.

The talks were conducted in a very constructive spirit. I thank all those participating in the talks.

The talks were conducted in a constructive spirit. I thank all those participating in the talks. I especially want to thank the chairs of the working groups Marcus Wiklund, Sami Kilkkilä, Timo Lehtimäki and Marko Rajaniemi.

Helsinki, 18 November 2008

Arne Wessberg

Branch talks on the promotion of electronic commerce of copyrighted content and reduction of illicit file sharing over the internet September – October 2008

By a letter dated 18.8. 2008 (Annex 1), the Minister of Culture and Sport, Mr Stefan Wallin invited a group of high-level experts to discuss possibilities to promote electronic commerce of copyrighted content and to reduce illicit file sharing over the internet.

The parties to these branch talks represented the film, music and gaming industries, internet service providers, content business companies, and authorities. The talks were an open process and involved altogether 70 people.

The branch talks process comprised three meetings, in addition to which there were three working groups preparing matters for the meetings. These working groups dealt with business and information, legal issues and technical issues. They worked intensively, meeting weekly between the talks. As a result of this work, the technical and legal working groups produced memorandums for the talks held on 9 September.

The business and information group continued working throughout September and October. The reports and the proposals prepared by it form the basis of the further measures put forward here.

These reports and the proposals and material of the business and information group will be presented to the Ministry of Education as part of the branch talks reporting.

Background

The creative industries represented around four per cent of Finland's gross domestic product in 2007. The foremost content in electronic commerce was music and film.

According to the estimates of the branch, digital on-demand music trade amounted to only five per cent (€ 5 mill.) of Finnish music business in 2007, whereas the corresponding figure in Europe is 15 per cent and in the United States nearly 30 per cent. The ratio of lawful to unlawful downloading is 1:20.

On-demand film commerce has not really taken off in Finland. According to the industry's own rough estimate, it makes up only 0.1 per cent (c. €100 000) of DVD trade, not including the on-demand services of television companies. It is estimated that around 81 million illicit downloadings take place in the Nordic countries each year: 47 million in Sweden and 10 million in Finland. The estimated value of illicit downloading in Finland was 106 million euros in 2007. Correspondingly, the sale and rental of DVDs in Finland totalled around 20 million, with an estimated value of 150 million euros.

According to the latest estimate, there are still some 100,000 active peer network users in Finland. Peer-to-peer communications are estimated at 50 per cent of the total telecommunications. All file sharing in peer networks is not illicit sharing of copyrighted materials.

Prerequisites of electronic commerce

1 Increase in electronic commerce through service development

All internet users do not download web content illegally. It can be said that the challenge for the branch is to induce the majority of consumers who never buy content over the internet to begin using web-based services.

It was noted in the talks that there is demand for creative contents. But innovative business models for legal supply of creative content are still seeking their form. Prerequisites need to be created for the development of business models.

Profitable trade in creative content requires

- (1) availability and diverse content supply,
- (2) new business models and distribution methods that are practicable from the consumer's point of view and
- (3) regulation that makes business sense, and
- (4) prevention of unauthorised file sharing and use of content.

As a means of promoting electronic trade in content, the participants in the talks suggested enhancing supply and services, boosting demand, heightening consumers' awareness and attitudes, and intervening in illicit sharing.

The talks also tackled other challenges and possibilities relating, for instance, to new models of income generation, service quality and the usability, ease, pricing and attractiveness of content, and possibilities to make lawful use of contents rewarding.

It transpired in the discussions that domestic content suppliers are not on a equal footing with international suppliers in all respects. The selling price of a product is determined on the international market. The challenge for domestic suppliers is to respond to this competition.

Authorities are expected to safeguard favourable conditions for domestic operators, for example by harmonising the level of Finnish VAT with that levied on operators abroad. Further, attention should be paid to the development and adoption of micro payment procedures.

2 Increasing electronic commerce and developing favourable conditions by means of communication

The parties to the talks were in agreement that communication targeted to the consumer, including media education, should be developed and increased in as many forums as possible. To this end, a skeleton communications plan was drafted (in the proposals of the business and information working group). In its further elaboration all the parties have a task to do.

The target groups of the communications plan could be the current wideband clients, future customers of content services, households - children and young people, the public at large, and end-users who share content illicitly.

It was proposed that the plan be devised and carried out by professionals, such as a communications firm.

The hope was expressed that authorities contribute to the drafting and implementation of the communications strategy.

3 Development of favourable conditions through reduction of illicit downloading and sharing

3.1 On means of reducing illicit downloading and sharing

Illicit distribution of copyrighted materials is a major economic issue both nationally and internationally. It undermines possible income formation of those doing creative work, the prerequisites for creative production and commercial potential. This influences the willingness of production companies to invest as well as job creation and job opportunities in the field.

Rights provided under by the Copyright Act are infringed if a protected work is downloaded for private use without the authorisation of the right-holder. Downloading is not a crime, whereas the peer-to-peer sharing of the work without authorisation is a crime. Illicit peer network services compete on the market with legal services. As the illicit services are free, their “competitive position” is overwhelming.

It was noted in the talks that means for speedily intervening in illicit sharing need to be created. It was considered crucial that the illicit “market” gets smaller and that the legal market grows. As to the means, the parties had different and even differing views. Internets service providers stressed the need to evaluate the performance of the current procedures. Creative content right-holders also hoped for new means.

The discussions brought up a method based on targeted messages to individual end-users who illicitly share contents over the internet. The right-holder would send the message in his/her own name. It would be up to the internet service provider to deliver the message to the owner of the internet connection. The message would tell individual internet users that they are breaking the law. A message like this could be assumed to influence at least some end-users’ conduct. It would also inform the parents of children and young people that their internet connection is used for unlawful purposes.

Internet service providers, among others, had reservations about transmitting such targeted messages. Creative content right-holders saw that a targeted message alone is not enough but needs to be backed up by procedures for making sure that the person receiving the message also corrects his/her conduct.

In the course of the branch talks it was investigated whether it is possible to realise targeted communication within the scope of current legislation and contractual practices. It was noted that legislation governing data protection in electronic communications limits the possibility of internet service providers to pass on the messages in question to connection owners.

Putting in place a procedure for a situation in which the person receiving the message does not change his/her conduct would also require looking into means provided for in legislation and into the need and possibility to change them above all as regards the statutory rights of connection owners. The effects should be assessed in advance.

During the branch talks, technical devices were also surveyed as a basis for further work both in the promotion of electronic commerce and in the reduction of illicit file sharing over the internet.

3.2 Developments in other EU countries and within the EU

During the talks the parties followed developments especially in France, the United Kingdom and Sweden.

In France a proposal was submitted for an Act on “culture and the internet” based on a solution made in the branch last year. The Bill was passed by the Senate and will come before the National Assembly in early 2009. According to the Bill, a new authority will be established which will together with internet service providers take care of information to be sent to those illicitly sharing files over the internet. If the offence is repeated, the sanction would be intervention in the internet connection on a temporary or permanent basis.

After years of debate the UK Government gave internet service providers and rights holders one year to come to a voluntary solution to the problem of illicit peer-to-peer file sharing. The branch consultations will continue up to early 2009. The measures will be based on a memorandum of understanding drafted during the summer of 2008. Accordingly, the internet service providers began a three-month pilot in sending information and warning letters to those participating in illicit file sharing.

Sweden has conducted the same kind of round of talks as the current talks in Finland. Possible further action is being considered.

The proposals of the European Commission for changes in the so-called Telecom package take up regulations which also relate to safeguarding copyright in the communications market. Actively considered during the discussion of the proposal were also conditions which must be imposed on intervention in a client’s telecommunications connections in respect of fundamental rights and data protection.

The chairman's assessment of necessary action

General conclusions

The branch shows clear willingness to invest in electronic commerce in contents and to develop the supply of creative contents if the conditions for profitable business exist in Finland. There is demand for creative contents.

Some of the measures needed are best implemented by the branch itself, in which the public authorities should not intervene otherwise than by supporting these measures and by supervising them within the scope of their statutory powers.

Some of the measures needed — preparation of possible legislative action — would require action from the competent ministries (Ministry of Education, Ministry of Justice, Ministry of Transport and Communication, Ministry of Employment and the Economy).

It is clear that no single measure is enough. It is similarly clear that inaction is no option.

Measures – branches

Developing electronic services by means of increased and diversified supply and investment in consumer-friendly services. Increasing consumer confidence in services.

Developing innovative technical methods for increasing lawful supply and reducing illicit distribution on the internet.

The branches initiate the drafting and implementation of a detailed communication plan in networked cooperation with communication operators across the board.

Developing services which also children and young people can easily use. “Children’s music and video store”. “Young people’s music and film store”. Electronic pocketbook.

Could the branch — internet service providers, holders of rights to content, and content business companies — jointly outline voluntary action which would enable illicit sharing to be cut down, irrespective of possible amendments to legislation?

Measures – authorities

Authorities support the action taken by the branches to increase communication and implement the communication plan. The implementation of the communication plan should be synchronised with other action.

Finalising the review of legislation. To what extent is it possible within current legislation to intervene in illicit file sharing over the internet?

Preparation of possibly needed amendments to legislation geared to reduce illicit file sharing over the internet. It would be important that legislation allows communications and targeted messages to be delivered to connection owners whose IP addresses are used for illicit file sharing.

The fundamental rights and legal protection of internet users must be safeguarded.

Examination of other measures needed to step up Finnish electronic commerce. VAT practices in regard of electronic services. Electronic payment. Funding for product development. Development of the branches' own ethical codes and self-regulatory mechanisms.

Carrying on the contacts between the branches and authorities

The branch talks showed that there is willingness to improve conditions for lawful commerce in creative contents and common views of ways in which this could be achieved in Finland.

All those invited to and participating in the open process had opportunities to discuss and generate ideas regarding matters which concern the branch as a whole around the same table. The hope was expressed that the cooperation and open discussion of this kind be carried on. Work promoting electronic commerce should continue.

Some of the measures discussed can be realised over a short time span, others need work in a longer term to be realised.

The Ministry of Education could — in collaboration with the Ministry of Transport and Communication, the Ministry of Justice, and the Ministry of Employment and the Economy — maintain up the cooperation group representing different parties in the branch as a forum for sharing information and as an organisation doing the long-term work.

The chairman of the branch talks

The chairman is ready to

- participate in the meeting of the Ubiquitous Information Society Committee and present the foundation created in the branch talks for possible further action
- also inform the ministerial working group on industrial and copyright matters.

Letter of invitation 13.8.2008

Subject:

Branch talks on the promotion of electronic commerce of copyrighted content and reduction of illicit file sharing over the internet

The Ministry of Education will launch talks in order to promote electronic commerce in creative contents. To this end, ways will be explored for facilitating legal distribution over the internet and reducing illicit distribution, for instance by means of information and the development of operational practices in internet services supply.

The talks will be opened and concluded by State Secretary Stefan Johansson. The Ministry of Education invites Mr Arne Wessberg, former Director General of the Finnish Broadcasting Company YLE, to preside over the talks. After the talks, decisions will possibly be made concerning follow-up action and its timetable.

With the purpose of launching the talks and necessary reviews, the Ministry invites a group of experts to explore the matter. The development of operational procedures is intended to be an open process. The chairperson may also invite other persons to contribute to the work in addition to the representatives of the stakeholders listed in this invitation.

The launch of the talks will take place on Tuesday, 2 September 2008 from 12.15 to 14.45 at the Ministry of Education, Meritullinkatu 1, meeting room Jukola.

Objectives

- 1 The aim of the talks is to find out which kind of operational practices, dissemination of information, other measures and cooperation between the parties concerned could be used to improve conditions for the distribution of electronic commerce of copyrighted content and appreciably reduce the volume of illicit file sharing over the internet.
- 2 Should the parties to the talks opt for the development of operational practices as the way to proceed, a proposal for a contractual protocol or some other document guiding practices in the branch will be drawn up at the talks.
- 3 The talks will pay particular attention to statutes on the confidentiality of communications and on the identification and personal data in telecommunications data retention, to internet service providers' contractual relations with their clients, and to considerations relating to consumers. It will be appraised whether the new solutions are realisable within the present legislation and contractual practices, or whether these need to be amended.
- 4 The consideration of the matter will be informed by ongoing projects for generating new solutions in the matter in other EU countries.

Where necessary, the chairperson may arrange other national events to look into the matter.

The outcome of the talks and possible proposals for measures will be presented to the Ministry of Education no later than 31 October 2008.

The findings will also be reported to the Ubiquitous Information Society Advisory Board and the matter will be submitted to the Ministerial Working Group on Intellectual Property Rights.

Parties to the talks:

Arne Wessberg, former Director General of the Finnish Broadcasting Company YLE

Film and TV production and distribution; the music and games industries:

Maajohtaja Leif Lindblad, Warner Bros Entertainment Finland Oy

Toimitusjohtaja Juha Tynkkynen, Zodiac Television Finland Oy Ab

Toiminnanjohtaja Arto Alaspää, Suomen Ääni- ja kuvatallennetuottajat ÄKT ry

Toimitusjohtaja Katri Sipilä, Säveltäjien Tekijänoikeustoimisto Teosto ry

Toiminnanjohtaja Riku Olkkonen, Suomen peliohjelmisto- ja multimediahdistys Figma ry

Toiminnanjohtaja Antti Kotilainen, Tekijänoikeuden tiedotus- ja valvontakeskus

Internet service providers:

Johtaja, Televisio- ja sisältöpalvelut, Janne Yli-Äyhö, TeliaSonera Finland Oyj

Tuotejohtaja Panu Lehti, Elisa Oyj

Toimitusjohtaja Anu Nissinen, SWelcom Oy

Konsernijohtaja Jan-Erik Frostdahl, DNA Oy

Toimitusjohtaja Reijo Svento, Tietoliikenteen ja tietotekniikan keskusliitto FiCom

Content business:

Toimitusjohtaja Håkan Gabrielsson, Viestinnän keskusliitto

Executive Vice President Veli Sundbäck, Nokia Oyj

Kehityspäällikkö Anders Stenbäck, SanomaWSOY Oyj, Musiikkilataamo

Etäkaupan johtaja Mika Leiponen, Anttila Oy/NetAnttila

Verkställande direktör Jonas Dahllöf, SF Anytime

Representing public authorities:

Johtaja Anja Peltonen, Kuluttajavirasto

Pääjohtaja Rauni Hagman, Viestintävirasto

Tietosuojavaltuutettu Reijo Aarnio

Johtaja Jukka Liedes, Opetusministeriö

Ylijohtaja Pekka Nurmi, Oikeusministeriö

Osastopäällikkö Liisa Ero, Liikenne- ja viestintäministeriö

Hallitusneuvos Marja-Leena Rinkineva, Työ- ja elinkeinoministeriö

Senior Advisor Marko Rajaniemi, Ministry of Education, will act as secretary to the talks. The Ministry of Education may also invite other experts to assist the talks.

The chairperson of the talks group may commission necessary expert reviews in support of the work.

The costs of the branch talks will be defrayed from item 29.01.01.1

Minister of Culture and Sport

Stefan Wallin

Director General

Riitta Kaivosoja

Distribution Listed participants

For information Permanent Secretary Harri Skog
State Secretary Stefan Johansson
Political Adviser Carl Haglund
Department for Cultural, Sport and Youth Policy

On-demand services of creative content:

Music (www.latauslista.fi):

- Aina Musakauppa <http://musakauppa.aina.fi/>
- Citymarket CM-Store <http://www.cm-store.fi/>
- Radio Rock Store <http://store.radiorock.fi>
- DNA Musiikkikauppa <http://musiikkikauppa.dnainternet.fi/>
- MTV3 <http://download.mtv3.fi/>
- NetAnttila <http://download.netanttila.com/>
- CDON.COM <http://downloads.cdon.com>
- Elisa Jukeboksi <http://www2.jukeboksi.elisa.net>
- HeseTV <http://www.hesetv.fi>
- HS musiikkilataamo <http://musiikkilataamo.hs.fi>
- iTunes <http://www.apple.com/fi/itunes/>
- Lumo Musiikkikauppa <http://musiikkikauppa.lumonetti.fi>
- MSN.fi <http://sib1.od2.com/common/framework11.aspx?shid=075E002E>
- Gigantti <http://musiikki.gigantti.fi/>
- MTV Music Shop <http://shop.fi.mtve.com>
- Nokia Musiikkikauppa <http://music.nokia.fi>
- NRJ Kauppa <http://www.nrjkauppa.fi>
- phnet musiikki <http://www.phnetmusiikki.fi>
- Poimuri <http://www.poimuri.fi>
- POP CITY <http://pop.city.fi/>
- Saunalahti Musakauppa <http://www2.musakauppa.saunalahti.fi>
- Tune Download Shop <http://shop.tune.fi/>
- WAP Funman <http://wap.funman.fi/>
- WAP Musiikkilataamo <http://wap.musiikkilataamo.fi>

Film:

- Film2Home www.film2home.fi
- Pixoff Provisual oy <http://www.pixoff.net/>
- Sf Anytime Bonnier Group www.sf-anytime.com
- Nelonen Media <http://www.nelonen.fi/nettitv/>
- MTV3 Anytime MTV Oy <http://nettitv.mtv3.fi/>
- Arena YLE <http://arena.yle.fi/>
- Tilausvideopalvelu Sonera
<http://www.sonera.fi/Laajakaista/Palvelut/Laajakaista+TV>
- Elisa Oy <http://elisa.net/elisatv/>
- Welho <http://play.welho.fi/>
- Canal+ WebTV <http://webtv.canalplus.fi/>

Games:

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ISBN 978-952-485-612-6 (pdf)

ISSN 1458-8102