

**BITKOM Position
on the Final Report of the High Level Group
on Digital Rights Management
(March —July 2004)**

The German Association for Information Technology, Telecommunications and New Media e.V. (BITKOM) represents a total of 1,300 companies. Its roughly 700 regular members employ some 700,000 people and generate revenues of 120 billion euros. These companies include manufacturers of data terminal equipment and infrastructure, new media agencies, as well as content, service and software providers. BITKOM is working to improve the regulatory framework in Germany, modernize the education system and promote an economic policy, which focuses on innovation.

BITKOM supports the Final Report of the High Level Group on Digital Rights Management. As the Commission stated in its Communication on the Management of Copyright and Related Rights in the Internal Market, DRM systems are an important, if not the most important, tool for rights management in the digital world¹. DRM technologies create new opportunities for the content- and IT-industry, as well as for the consumer how to use, to licence, to protect and to control digital content. The success and distribution of DRM systems depends on the agreement and acceptance of all stakeholders. Thus it is absolutely necessary to bring together all stakeholders to identify the important aspects, critical points and challenges related to DRM to bring forward DRM-technology and its use. BITKOM would therefore like to make some comments and suggestions with regard to the final report:

1. DRM and Interoperability

BITKOM agrees that standards and interoperability of DRM systems play a fundamental role to establish DRM as extensive as possible. That's the reason why the ICT-Industry is working together intensively in several standardisation groups to elaborate standards and interoperability of DRM. Nevertheless it is a difficult and long process to reach a common base which needs time. Some crucial points in this process are the following:

- DRM and interoperability solutions can be reached best by industry standardisation groups. So industry has to work further on open cross-platforms.
- Open standards should be preferred as common base for DRM.
- DRM solutions must be consumer-friendly, secure and flexible. Interoperability is necessary to reach as much consumer acceptance as possible.
- Market forces are the primary drivers in this area and political or legal instruments should be avoided and used only if necessary.

¹ Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: The Management of Copyright and Related Rights in the Internal Market, COM (2004) 261fin, 16.04.2004, page 11.

- The European Commission as well as member states must support the standardisation initiatives politically and financially. The Commission should work further on bringing together the different stakeholders. European initiatives should be supported in particular. On the national level it must be clear that DRM solutions are one of the most important tools for rights management in the digital area. Member states must act in this sense, e.g. the use of technical protection measures must be clearly enhanced, anti-piracy measures must be enforced. On national as well as on European level R&D projects must be promoted politically and financially.
- During the ongoing process of the High Level Group, Mobile Hardware should be taken into account as well.
- The content industry must be more active and bring its content more aggressively in the digital market. In the past the content industry was too hesitant, because they feared losses in the offline-market and the rights management was not clearly defined. This should change.

2. Private copying levies and DRM

BITKOM supports the Commission's statement on "Levies and technological measures". But in our view the Commission should stress more clearly that private copying levies are a compensation system of the analogue world which has to be phased out in the digital age. It is well-known that the different national levy systems were never harmonised. That's the main reason why a common position on this issue is so difficult to reach. Because of this the Commission plays the key-role in building a European wide new compensation system for the future based on individual licensing provided by DRM technology. Some important points which should be taken into account are the following:

- Individual licensing with the help of DRM systems gives rightholders the opportunity to be compensated in relation to the actual use of their works. They can decide individually how each of their contents shall be used and define the conditions in detail.
- There is no justification for copyright levies in the digital world. Copyright levies are only acceptable where individual licensing is not possible, e.g. for copiers.
- Copyright levies are no compensation for piracy. DRM systems are a useful tool against piracy.
- Double payment to rightholders (caused by payments for individually licensed content plus the levies for the equipment or media with which the content is obtained) must be strictly avoided.
- When setting the amount of the remaining levies the use of technical protection measures has to be taken into account.
- Individual licensing by using DRM technology on the one hand and copyright levies on the other hand can exist in parallel for some time. But compensation by levies must be phased down, because individual licensing is growing. In the long run levies must be phased out.
- Market and competition distortions through different levy systems and very high levies must be avoided.

Berlin, 14. September 2004