



Cable Europe

Cable Europe response to the Commission's consultation on Creative Content Online Communication

29 February 2008

Executive Summary

Cable Europe, the European Cable Communications Association, groups all the leading European cable TV operators and their national trade associations throughout Europe. The aim of Cable Europe is to promote and defend the industry's policies and business interests at European and international level, and to foster co-operation among its members. The European cable TV industry provides broadband, telephony, digital TV, including interactive services, on- and near on-demand video services to more than 70 million customers.

Cable Europe supports the Commission's approach to this debate and welcomes the Commission's consultation on this very important topic. Cable activities are closely related to the online distribution of content. The migration to digital TV allows cable customers to enjoy new ways of consuming content, notably through VOD functionalities. Cable Europe and its members are therefore keen to participate actively and contribute as best as they can to the debate that will take place in the 'Content Online Platform' to be set up in the near future.

Firstly, we agree with the Commission that other EU initiatives are closely linked to the creative content online debate and needs to be addressed here, such as the review of the Satellite and Cable Directive and of the Conditional Access Directive.

We consider that a revision of the Satellite and Cable Directive will certainly help more widespread availability for audiovisual works in the European Union by creating important steps towards a more effective system for rights clearance across the EU.

Finally, Cable Europe supports the Commission in its battle against piracy and is committed to find appropriate solutions with all stakeholders. However these should always be proportionate to existing needs and are certainly to be found at national level outside of legal enforcement. In addition, it should be remembered that European cable operators have been, and continue to be, major buyers of content through agreements with inter alia broadcasters, content producers and studio's in order for a wide variety of content to be consumed by European citizens. Making more and ever diverse content available throughout the European Union is thus one of their prime objectives.



Other EU initiatives

At a first stage, we would like to support the Commission in its sidelines initiatives such as the revision of the Satellite and Cable Directive and the Conditional Access Directive.

As we have mentioned in our previous response to the Commission's consultation on Content Online, Cable Europe considers that many issues raised in the Content Online debate are also being addressed or reviewed elsewhere, e.g in the framework of the Audiovisual Media Services Directive, the review of the Regulatory Framework for Electronic Communications Services, the e-Commerce Directive, the Satellite and Cable Directive and in the Commission Recommendation on cross-border collective management. We therefore support strongly the Commission in its effort to take advantage of the Content Online initiative to bring more coherence in this multitude of regulatory instruments.

Regarding the Satellite and Cable Directive, Cable Europe is pleased that the Commission is willing to revise this Directive and is keen to help the Commission in its revision effort. Indeed, similar in intention and spirit to the Television without Frontiers Directive of 1989, the Satellite and Cable Directive of 1993 was intended to break down national barriers and enhance trans-border broadcasting and cable retransmission of television programs within the European Union. 15 years later, the Television without Frontiers Directive has become the Audiovisual Media Services Directive to keep in line with the wind of convergence that has blown on media services, but the Satellite and Cable Directive (SATCAB) is still organised according to the old market situation where cable only offered analogue TV services. However, enormous changes have taken place, from a technological and commercial perspective. Convergence of technologies, switchover to digital TV, new technologies and transmission models over numerous (digital) platforms shows that the restricted scope of the SATCAB Directive is no longer corresponding to modern developments. It is now more than time to review this directive as well.

As the Conditional Access Directive is concerned, Cable Europe members recognize its harmonisation value but do see the need to review its sanctions and enforcement regime. Piracy of conditional access systems is a real issue for our members for which effective solutions need to be found.

Availability of creative content

Cable Europe supports the Commission in the assessment that there is a lack of availability of creative content for online distribution and that this merits action at EU level and in the framework of the 'Content Online Platform'.

The consultation document rightly points out that licensing for online exploitation is hampered by potential conflicts with rights already granted for main forms of exploitation.

Cable Europe members feel a real need for better access to (premium) content. This could be stimulated through subsidy programs, less administrative and operational burdens for the stakeholders involved and ultimately by considering ex ante



regulation imposed on content providers to allow all distribution platforms to get access to (premium) content.

Multi-territory licensing for creative content [Questions 6, 7, 8]

The Commission Communication rightly points out that there is a real need to improve the existing licensing mechanisms to allow for multi-territory licensing mechanisms. We particularly welcome the suggestion of the Commission to promote fair competition on the market for rights management.

However, developing a system where right holders would be encouraged to grant, next to the main licence, a second multi-territory license for online distribution is a first step but the initiative cannot end there as it would lead to an ineffective two tiers approach towards online and offline distribution. Cable Europe therefore encourages the Commission to examine multi-territorial licensing mechanisms for both the offline and online world.

Cable Europe endorses fully the Commission's willingness to find an effective way to license audiovisual works. Our members distribute radio and television programmes by analogue and digital means, provide video on demand services and offer broadband internet access and voice telephony. Cable operators are therefore confronted with the clearance of a number of rights for both music and audiovisual works.

Taking into account the Recommendation on cross-border collective management of online musical rights, we consider that different approaches towards music and audiovisual licensing regime and between online and offline is not efficient. The clearance of musical rights cannot be isolated from clearance of all other rights or differentiate between online and offline. Many different types of rights are involved in the cable retransmission of a channel or a cable VOD offer and together these rights constitute a package on its own.

The growing complexity and multi-territory nature of much of the European cable business does not sit comfortably alongside today's EU rules. Under the SATCAB Directive, broadcasters who choose to distribute their channels across national borders within the internal market can clear the rights for satellite distribution or distribution on the public internet either directly with the producers or with the musical rights society in their home country. Whereas, if those same broadcasters also want to have their channels retransmitted via cable in different Member States, the retransmission would need to be cleared in every single Member State separately.

This kind of discriminatory treatment should ever more so be avoided in regard to new markets in which over the top providers (Joost, Babelgum, etc) and platform operators, using different technologies, but all offering on demand services to consumers, compete with each other.

It is therefore clear from the above that the revision of the SATCAB Directive is essential at this stage:



- The cable retransmission system should apply to all distribution platforms whatever the technology and the infrastructure used (cable, satellite, IPTV, DTT, etc) to achieve a level playing field;
- The country of origin principle available for satellite broadcast should be applicable to retransmission in order to facilitate trans-frontier television;
- The system of collective management of rights should be recognized as having the same weight as 'all rights included packages' provided by broadcasters who wish to do so to cable operators, as this would increase the overall efficiency of the rights clearance system.

Addressing this issue with a Recommendation does not seem to us the correct instrument as it is not enough binding to the Member States. We consider that a revision of the SATCAB Directive in the sense explained above will certainly help the development of multi-territory licences mechanisms. Cable Europe would be happy to discuss this issue further within the Content Online Platform. Finally, we support the Commission in its proposal to commission a study investigating the economic consequences for European audiovisual works that could result from the practice of multi-territory licenses mechanisms.

Legal offers and Piracy [Questions 1, 9, 11]

Cable Europe supports the Commission in its battle against piracy. Piracy needs to be kept in check as far as possible in order to protect the value of the creative sector.

However four caveats are needed to be addressed at this stage:

1. One should have in mind that the cable industry is strongly engaged in providing content which generates important revenues for European, local and American content providers based on revenue shares and minimum guarantees. These offers are negotiated at national level directly with content providers.
2. It is not to operators to define illegal activities. These are defined by legislation and by courts at national level.
3. Internet creates tremendous opportunities for the distribution of legitimate content (eg online games that request enormous downloading capacity) or other information society services that are essential for authors willing to succeed in the digital era. The opportunity the Internet gives for unknown artists and to promote cultural diversity in general has also to be recognised.
4. The broadband market is in many countries to become a mass market. End consumers are switching to broadband because of the superior quality versus dial up connections and due to attractive price offerings. Making ISPs the "policeman" for the internet could undermine the acceptance of broadband and therefore endanger the goals of i2010.

Following the Commission's policy in this respect, we certainly think that a solution to the piracy problem can be found outside statutory enforcement. Cable Europe's members value industry talks to find appropriate mechanisms to counter piracy and are already engaged constructively to explore possible initiatives with the various right holders communities and other stakeholders. These industry talks are most effective if they are held at national level.



Existing means can also be further examined:

- There is a strong lack of public education of consumers at national level and it is the first aspect that needs to be improved;
- DRMs are certainly a good way to protect content and have proved to be effective. They are widely deployed in almost all European countries and are increasingly providing a secure and controlled exploitation environment through which legal copying and re-use of content is facilitated and rights holders remunerated;

Filtering systems however do not appear to us as being a valid solution:

- Filtering is contrary to the mere conduit principle enshrined in the e-Commerce Directive.
- The whole question of value of filtering is raised: it seems that big majors are no longer encrypting their content and filtering would therefore not be functional anymore
- Filtering mechanisms are extremely costly. The question has to be raised how these mechanisms will be financed. It is certainly not good economic practice to request to one industry to finance another one! It would be counterproductive and would break the European Policy on Broadband and broader availability of innovative products and services.
- Last but not least, current filtering mechanisms have not at all been proved efficient.

Finally, Cable Europe strongly opposes that the ISP's role in combating piracy is dealt within the Telecoms Review. Reference in Annex I of the proposed Authorisation Directive concerning compliance with national measures implementing the Copyright Directive and the Enforcement Directive and the proposal to include in the Universal Service Directive (article 20(6)) an obligation for services providers to inform the subscriber of its obligations to respect copyright and related rights are inappropriately introduced in the Electronic Communications Framework Review. The Telecoms package has never dealt with content issues.

Cultural Diversity

Cable Europe recognizes the essential value of cultural diversity which the Commission staff working document underlines. Internet and new digital services offer excellent opportunities to promote local and European content. Diversity of content is well represented in the online space, where the Internet has facilitated an increase in content relating to European culture in all languages. This finding is significant because the Internet offers scope for the much wider availability of multi-channel television. Demand for European productions is also being driven by the proliferation of channels with the switchover to digital TV. Our members have already noticed the essential role played by 'niche channels' in promoting cultural diversity and the pleasure of their customers to access more and more local content with the choice of a large variety of digital channels.

Cable Europe 4827