



Associazione Italiana Internet Providers

**AIIP's RESPONSE
TO THE EUROPEAN COMMISSION CONSULTATION ON:
A COMMUNICATION ON CONTENT ONLINE
IN THE SINGLE MARKET**

Commission Question 1. *Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?*

AIIP (Associazione Italiana Internet Service Providers) is the main Italian association of Internet service providers with 44 members amounting to an annual turnover up to 2 billion Euro (for more information see the website www.aiip.it). AIIP members are active on all layers of the telecom industry providing voice (PSTN and IP based), Internet access (BB and NB), wireless access, carrier capacity, value added services, IP-based applications as well as innovative and creative online contents & services.

Online contents of AIIP members include gaming and IPTV, and to a lesser extent all others. Online services of AIIP members include editing, assembly and distribution of enduser-produced contents (video, photo, text, music, blogs).

Commission Question 2. *Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.*

In theory any and every form of online content, including content created by amateurs or spontaneously inserted on an online network, should be considered by the present consultation and accordingly be included within the scope of the future Communication. The purpose should be to ensure the creation of a competitive and free environment whereby innovative content may develop and growth as a result of creativity and genuine new investments.

We wish to point out that extending to a larger number of subjects - commercial and non-commercial - a clear regulatory framework aiming at creating and broadcasting online content is a factor which brings growth to the industry as a whole.

In addition to online content, AIIP strongly believes that also "new online services" (editing, publishing, etc.) shall be attentively addressed by the European Commission. Creative online services play a important role in stimulating, supporting and developing online content and making them available to everyone. Therefore they represent an autonomous creative phenomenon and they must be protected and encouraged like online contents.



Associazione Italiana Internet Providers

Thus, a wider scope of the Communication including online content and services would be more coherent with the Commission's objectives aiming at encouraging development, distribution and access to content by users. Thus its focus should be firstly creativity and thereafter business.

Commission Question 3. *Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.*

Various kinds of barriers can hinder the development of online content and the creation of a competitive integrated European market. As you will see below, some of this barriers/obstacles are not completely endogenous in the online world, but they are strictly connected to the competition situation of the broadband access market. It must be pointed out that the interrelation between access regulation and online content market is strong and pervasive and shall be seriously considered, although from a regulatory point of view two different frameworks apply: the Electronic Communication Framework for broadband access and the Television Without Frontiers Directive for online market.

We believe the Communication shall address the following barriers/obstacles:

(i) Lack of interoperability and vertical integration

An important issue is the current lack of interoperability amongst the various layers composing the online content distribution chain: network, devices, proprietary DRM systems, complex payment systems and everything which may bring to the creation of a potential walled garden situation. As a result, the content distribution chain may be artificially fragmented and only a fully vertically integrated operator controlling the various layers will prevail, to the detriment of creative and innovative new entrants.

The above may happen because the current regulation does not prohibit or regulate the vertical integration model. As a result, vertical integration and lack of interoperability may become a strong weapon for the incumbent to prevail in the market irrespective of creativity and investments. The result thereof will be a formidable disincentive for innovation and competition.

Furthermore, one should note that a vertical integrated operator could be induced to leverage its dominant position in the access market (broadband access, voice, other communication services) to put the customer in a lock-in situation using tying and bundling of services with content.

As a result, we fear that an IPTV/content online system driven by vertical integrated operators **will lack a model, which is instead a basic feature of the Internet, by which any user may put and seek any content online anywhere.** To the contrary, dominating IPTV operator wish to impose end-users which content they have access to or make available.

One solution should be to clearly mandate interoperability for IPTV content and services. However, it is not clear what could be the basis for such a resolution. In Italy AGCOM refused to solve



Associazione Italiana Internet Providers

the issue under the market 18 analysis process as they believed that IPTV is not a mature market which may be subject to ex-ante regulation. It remains unclear, however, whether such an issue could be solved via the application of market 12 rules (bitstream), since the Italian incumbent operator (Telecom Italia) officially deny that bitstream rules may be used to address IPTV failures (and AGCOM has not taken a clear position yet).

Also article 5 of the Access Directive could be a solution (Directive 2002/19/EC).

Therefore, guidance on IPTV interoperability is urgently needed.

(ii) Access pricing issues

A very substantial barrier to the creation and diversity of online content may be the cost of the wholesale bandwidth by the incumbent, when the access to altnets is provided through bitstream or wholesale. In some countries (including Italy) this is due to the fact that the wholesale/bitstream price is still regulated on a retail-minus basis instead of a cost-plus basis. As regards Italy, AIIP estimates that the current price is 10 to 100 times higher than cost-plus.

Due to the cost of the bandwidth, several altnets will be hindered from providing online content to their subscribers, while content providers will have less options and opportunities to have their products distributed through the Internet.

(iii) Quality issues

One should ensure that access to a network which enables everyone to reach everyone without Quality of Service discrimination (Net Neutrality) will be guaranteed.

To make an example, it is very important that operators offering streaming content distribution services are able to offer their users uninterrupted bandwidth. This depends on the availability of an open interoperable network and access conditions, otherwise the users should know that the service they are acquiring will not support streaming content but only offline viewing (e.g. podcasting).

(iv) Third party billing

Another very severe barrier is the lack of an adequate system of third party billing. Unlike mobile market (where a business model has emerged spontaneously, although imbalanced and quite expensive for content providers) in many countries third party billing does not exist for broadband. Thus, while customers of incumbents (meaning dominant broadband operators) can buy from the incumbent itself contents and pay via the traditional telephone bill, customers of altnets wishing to get online content provided through altnets networks shall use other (and less satisfactory) payment systems. The same applies to incumbent's end-user wishing to get access to content provided by altnets.

As a result of the above, incumbents may get an improper advantage by abusively using their dominant position and distorting the emerging content online market. In fact, the contents available through the incumbent will be more accessible thanks to the easiest payment system while other contents will be discriminated. The result will be less competition, innovation and growth.

The solution would be mandating third party billing upon incumbents (broadband dominant operators) at cost oriented prices.

Commission Question 5. *How important for you is the possibility to access and use all online content on*



Associazione Italiana Internet Providers

several, different devices? What are the advantages and / or risks of such interoperability between content and devices in the online environment? What is your opinion on the current legal framework in that respect?

Getting access to a content through different devices will be certainly a formidable driver. The advantage will be, of course, the creation of a wider, competitive and pan-European integrated market for online content. End-users will be encouraged to get access to content and pay for it, thus creating a virtuous circle. To the contrary, artificial technical barrier to content circulation may frustrate the demand.

Moreover, end-users will be guaranteed in case the licensed content (or the technology/device supporting it) is not more available for any reason.

To the opposite, a locked-device system will create new monopolies because of the resulting net-effects which would hinder competition in both content supply and in services and technologies supply.

A correct approach to online content distribution is therefore to be based on the principle of interoperability for content standards and devices.

Commission Question 6. *How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?*

Cultural diversity would be finely guaranteed by a proper implementation of the Internet model for IPTV, that is to say a model without access bottleneck where anyone may put and seek any content online anywhere. To the contrary, online content distribution does not, at present, have specific access mechanisms by which the author of the content may make content available on IPTV/cable without negotiating with content providers. As a result, dominating IPTV operator may impose end users which content they have access to.

Once again, the competitive distortions on the access level may jeopardise a basic fundamental principle for online content.

Solution would be to make sure that IPTV develops as a true open Internet model, unlike by now.

Moreover, space and access on new media platforms should be reserved for independent content. A channel based on the Creative Commons model could be a sound proposal.

Commission Question 7. *If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? Please give examples.*

The online content industry in the North American region has been boosted by the fact that culture and language are common to the whole region and are generally familiar to rest of the world. As a result, the potential market for such products is worldwide and economies of scale can be easily exploited.

By contrast, the languages and cultures of Europe are more fragmented and have smaller reference markets. Although European culture and languages still have a vast area of influence and are potentially



Associazione Italiana Internet Providers

more creative, they do not have - unlike US - the same strength when it comes to serving as ingredients and key elements for online content production.

This situation is not irreversible: actions need to be taken by EU as a whole to share with other nations and people European culture and languages and, within the Union, to generate European online content which may circulate wider through the EU.

The fact that some Member states (including Italy) have a history of dubbing and localizing every content does not help in knowledge of other Member States' language/culture.

Contents with subtitles should be encouraged, also using the technologies offered by online media.

Commission Question 8. *Where do you see opportunities for new online content creation and distribution in the area of your activity, within your country/ies (This could include streaming, PPV, subscription, VOD, P2P, special offers for groups or communities for instance schools, digital libraries, online communities) and the delivery platforms used. Do you intend to offer these new services only at national level, or in whole Europe or beyond?*

If not, which are the obstacles?

This question is strictly related to the one above at n. 3 relating to obstacles/barriers for the online industry. In fact, one of the consequence of vertical integration over online markets will certainly be that to consolidate national markets instead of creating a wider European environment. This is because vertical integrated incumbents are powerful within the national borders and they do not see any incentive in opening the market also for cross-borders business.

With that in mind, prices should be closely monitored so that where SMP exists, price squeeze and other price-based tactics are not used to leverage a dominant position on adjacent markets. Such kind of regulation would avoid situations of customer lock-in and of market leverage in IPTV and, generally speaking, in emerging content distribution technology markets by SMP incumbents.

This said, please consider that our members intend to provide connectivity services to be content agnostic, in respect if network neutrality, and that guarantee all the bandwidth needed to access any audio/video content with high quality. We will host content in our data servers and make it accessible on the Big Internet without imposing any access discrimination, or any technological bias.

Such kind of model could work at its best if supported by EU level regulation in favour of interoperability of all layers composing the online content distribution chain.

This will enable the "Any content/anytime/anywhere" paradigm to be enacted.

Otherwise, the online content distribution will be dominated by few incumbents which are strictly located into their own national residential market.

Commission Question 10. *Are there any technological barriers (e.g. download and upload capacity, availability of software and other technological conditions such as interoperability, equipment, skills, other) to a more efficient online content creation and distribution? If so, please identify them.*

The main technological barrier is in the terminal equipment (device) which is provided to consumers wishing to access content.



Associazione Italiana Internet Providers

Regulatory provisions are necessary to support a series of specifications (one per platform) for an interoperable set top box, available through retail distribution. Set top boxes shall be capable of connecting to broadband which connect to normal television sets. In this respect, **we believe that the standards for such set top boxes should not be proprietary** and regulatory provisions must ensure that content providers and network providers have access to each set top box on the market so that users may, in turn, access broadcast content.

Content providers should undertake to distribute an interoperable version of their exclusive contents on an open standard (to be defined).

Users could then choose between a proprietary set-top-box or an interoperable set top box. The latter could interface users with every content distributed on the relevant platform (although in a reduced version).

Again, fully interoperability of all layers composing the online content distribution chain will be a key factor.

Commission Question 11. *What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?*

There is the need to strongly separate each and every role in the chain, so everyone may compete on his specific layer in chain. Vertical integration instead brings to market foreclosure, thanks to net-effect.

Every layer in chain, has his own difficulties. The only common enemy is vertical integration.

Separation between layers imply the need for technological interoperability along the chain. Interoperability means that everyone could compete in his specific layer without compromise compatibility with layer above and below.

Another aspect is have interoperability in DRM technological chain. In this respect, it may strongly promote the legal download / distribution of content and allow more competition in the contents market and users security.

Giving a practical example, main issues are predation or bundling actions on the part of the incumbent (fixed dominant broadband operator) which is usually fully vertical integrated, uses proprietary technology, and leverages its extremely high end user broadband market share (over 70% in some European countries, including Italy) and closes the Content Distribution Network. One of the effect of this behaviour, just as an example, is to cut the ISP out of the content hosting business.

In Italy this mechanism has been given indirect "approval" by AGCOM and has not been vetoed by the Commission in the procedure concerning market 18 analysis and regulation. In such procedure AGCOM has qualified the IPTV market as an "emerging market" and has so called out any possible ex ante regulation of the market to protect small and medium companies (ISPs or TV entrepreneurs) wishing to enter the IPTV market for interactive content production and distribution. Also big broadcaster will have difficulties, because of the technology and market pre-emption of the incumbent owning the last mile.

The result is that the Italian incumbent (Telecom Italia) has the possibility of leveraging the new market with a potential to reach 97% of the households with a proprietary non-interoperable IPTV content distribution network.

This also means a foreclosure for other European entities who wish to enter the local markets of online content distribution. Proprietary network policies and market dominance will not allow new entrants,



Associazione Italiana Internet Providers

whether national or from other Member States. Again, **only interoperability and layers separation allow a real competition** and the safeguard of users interests, and at the end, assure securing in revenue stream for many actors in the market. Otherwise we have all the conditions to enable an "one-takes-it-all" situation.

12. What kinds of payment systems are used in your field of activity and in the country or countries you operate in? How could payment systems be improved?

Main payment systems are subscription, pay per view and free (advertising supported).

In this respect, one should note that Italian television code (Legislative Decree 177/2005) prevents the network provider from billing the contents. This rule is acknowledged within the traditional television sector.

Conversely, when turning to IPTV or IP based broadcasting, we find that the telecom incumbent is currently authorised to bill contents provided on through IPTV. This is a clear discrepancy.

We believe that a third party billing system is the solution requiring the network service provider to "open" its billing system to third parties on a non-discriminatory basis.

Also, promoting new entities which offer electronic money services using the electronic money Directives to address consumer's lack of trust in supplying credit card information for very small online payments.

Commission Question 13. *What kinds of pricing systems or strategies are used in your field of activity? How could these be improved?*

To time, Triple Play bundling seems to be the model. This is a serious competition issues when the bundle is made by the telecom incumbent.

Commission Question 14. *Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic and legal challenges do you identify in that respect?*

It will be essential to obtain rights' clearance from only one entity. Such clearance should be valid for the Internet even though the Internet operates in a multi-jurisdictional environment.

The rights should also cover simultaneous transmissions on all licensed platforms.

However, we fear that a multi-territorial license released without interoperability provisions, could strengthen dominant positions on a European level.

Commission Question 15. *Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?*



Associazione Italiana Internet Providers

There is no clear definition of Internet, IPTV, xDSL, etc. and, hence, obtaining the relevant rights from the licensors gives no certainty. The licensor may license the rights to other licensees by means of unclear or conflicting definitions.

Also, there is no certainty as to who has title to license rights on certain contents (e.g. vintage movies may have many subjects claiming that they hold rights for the Internet).

Commission Question 16. *How should the distribution of creative content online be taken into account in the remuneration of the right holders? What should be the consequences of convergence in terms of right holders' remuneration (levy systems, new forms of compensation for authorised / unauthorised private copy, etc.)?*

Online legal distribution systems have proven to work (see Apple's iTunes) when the DRM system is reasonable enough.

A DRM system must not limit the rights of the licensee to a point where authorised private copy is no longer possible as this may have antitrust implications.

We absolutely oppose any kind of levy on access revenue because it would be insane to oblige the Internet industry to subsidise the richer and profitable majors sector.

Commission Question 17. *Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?*

AIIIP will describe the Italian situation, which however could be similar to other European countries.

In Italy the system focuses entirely on the centralised collecting society named SIAE.

Contents must have had prior exploitation in order to be protected by SIAE. Registration with SIAE requires a fee payment, which can be an obstacle for some innovative content: in fact most alternative or young authors are not willing or able to pay registration.

In addition, one should note that registration with SIAE does not certify the merits of the content but only the date of creation.

The above system should be changed in order to create incentive for the creation of new online content.

Commission Question 18. *How does the country you mainly operate in encourage the development of creative online content and services?*

As stated above, one of the key measure to encourage the development of online content is interoperability. In this respect, we would like to mention two initiatives being created in Italy.

VOIPEX

The consortium VOIPEX (www.voipex.it) was created in order to promote set top boxes and CDN standards which support interoperability mechanisms which may be applied to the proposal described under answer no. 10. Please note that this is a private initiative, no funding or support by the State has been received.



Associazione Italiana Internet Providers

Italy is also slowly trying to promote various "portals" where content, coming from public libraries, is available and searchable. However, such projects are mainly at risk because they do not receive adequate funding. This situation is now slowly changing as two government agencies (Culture and Regional Affairs) are progressively enacting policies to promote digital services for innovation (e.g. tourism portal www.Italia.it, Commission for innovation in regional public services, etc.).

The above mentioned policies will probably include extending broadband throughout the country and, in addition, extending the services available through digital terrestrial and satellite television. In this respect a commission (Italia Digitale) has been appointed by the Communications Minister.

Dmin.it

In Italy an independent research group (Dmin.it) has published a policy proposal for the development of a digital media market.

The dmin.it proposal is based on two principles: (i) preserving a correct competition dynamics in the relevant markets. This includes maintaining the operators' broadest freedom as to the most convenient technological solutions and (ii) facilitating the broadest fruition of content and services by all citizens. This includes selecting suitable access and interoperability criteria and protecting them with appropriate regulatory and consensus-seeking action.

Such criteria are expressed as follows:

* For content: a content provider who holds exclusive distribution rights to content for a given delivery system must also offer that content, on the same delivery system, via an interoperable Digital Rights Management (iDRM) technology adopted at the national level. Such a technology, together with its protocols, standards and governance criteria, will offer to each operator the security levels it needs and will guarantee that:

- o Any consumer will be able to access all content distributed on a given delivery system by using a single type of device that is open and interoperable. As an analogy, the device will have the same user functionality of the "single decoder" that the Italian law mandates for satellite broadcasting. A consumer will be able to select the device of his choice among those available on the open consumer electronics market realised according to public specifications;

- o Any provider will be able to offer content using the business model that he deems to be most convenient (e.g. clear-text distribution, pay TV, pay-per-view, ecc.) with the certainty that the DRM technology adopted at the national level is compatible with a broad range of end-user devices available on the open market. If the provider wishes to utilise proprietary DRM technologies to distribute content for which he has exclusive rights, he shall also distribute such content using the iDRM technology adopted at the national level. When doing so the provider may decide to replicate or not the business model adopted with content distributed using his proprietary technology;

- o Anybody will be able to offer services and hardware/software solutions using the standards and protocols of the platform, possibly requesting, when the platform governance rules so require, conformity certificates;

* For networks: any operator of a two-way network, such as the Internet, shall also include pure Internet access service in his offer. Such access shall:

- o Be "service agnostic" and therefore it may not assign different priorities to the transport of different types of information, unless this is requested by the user;

- o Be provided at non discriminatory conditions with respect to other offers of the operator;



Associazione Italiana Internet Providers

o have technical characteristics (such as bitrate) that are already present in other commercial offers by the same operator;

* For payments: a consumer will be able to use “accounts” managed by account providers that are based on guaranteed monetary circuits such as credit cards, bank accounts, prepaid cards, ecc. The state of the account will be aligned to the selected payment form at regular intervals or on demand thereby decreasing transaction costs.

Commission Question 19. *Are “release windows” applicable to your business model? If so, how do you assess the functioning of the system? Do you have proposals to improve it where necessary? Do you think release windows still make sense in the online environment? Would other models be appropriate?*

We believe that release windows systems do not make any sense in the online environment. In a converging world they constitute an artificial mechanism designed to maximise profits at the expense of consumers and competition. Release windows should not be mandated by legislator and when existing on the basis of contractual agreements should be subject to antitrust scrutiny.

Commission Question 20. *The Internet is currently based on the principle of “network neutrality”, with all data moving around the system treated equally. One of the ideas being floated is that network operators should be allowed to offer preferential, high-quality services to some service providers instead of providing a neutral service. What is your position on this issue?*

Net Neutrality is the main reason for the successful development of Internet and remains one of the key factor to foster growth of the on-line contents industry. Preferential access networks would kill the Internet as we have learned it so far, because barriers will be created to new alternative and innovative contents. The European content industry would particular suffers such a situation. In facts, although US companies (see MSN, Google, Yahoo, Ebay etc.) rather than European ones appear more concerned about Net Neutrality issues, it is clear that the former will have, in any case, resources to resist and negotiate favourable conditions with access incumbents, whereas European providers, which are smaller and less powerful, will risk to be kicked out of the market.

This is why we believe that Net Neutrality will foster development of European contents over national barriers and must be preserved at any cost.

Commission Question 21. *To what extent does your business model suffer from piracy (physical and/or online)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between “small” and “big” ones?*

We are against piracy as any kind of violation of law. In addition, as ISPs we are suffering piracy practices which involve not remunerative bandwidth usage and create for service providers heavy liability risks, and related costs, vis-à-vis rights holders.



Associazione Italiana Internet Providers

This said, we strongly believe that access to content is the engine of the future Internet and therefore sanctions for improper use should be proportional so as not to unduly affect the incentive to surf. Thus, administrative sanctions should be imposed for small violations (which cannot be considered "piracy", having regard to the profile of the concerned person and the gravity of his/her behaviour), while very strong and effective sanctions (eventually criminal ones) should be provided for organized and massive violations (piracy).

Italian ISPs are always available to co-operate with rights holders in order to fight piracy, also beyond the duties prescribed by the applicable legislation, provided that privacy and constitutional rights of customers are respected.

Commission Question 22. *To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?*

Education and Awareness are a key and should be supported and developed to create a correct and conscious approach to the Internet.

National legislation should be harmonised in a way to permit access providers to inform the customer about complaint received by rights holders.

In Italy this cannot happen because of the current wording of art. 17/3 of Legislative Decree 70/2003 (implementing the Electronic Commerce Directive) whereby the ISP shall immediately inform the police about potential piracy infringements as soon as it has knowledge thereof, otherwise it will face civil liability. This provision, to be read together with the fact that Copyright legislation requires the police to prosecute infringements *ex officio*, prevent ISP from informing the customers of the alleged violation; in fact, once they receive a complaint from the right holder, they have to forward it immediately to the police and thereafter they cannot contact the customer, otherwise they would be regarded to facilitate a crime.

The above is absurd but we have to face it because it is a rule of law.

The provision of Legislative Decree 70/2003 is certainly in contrast with the Electronic Commerce Directive as far as it concerns access providers, that is to say companies carrying out "mere conduit" activities. Accordingly, AIIP has recently filed a position with the Internal Market Directorate asking for an initiative against the concerned provision.

Moreover, we observe that certain awareness campaigns by right-owners associations tend to concentrate on the idea that any download of audiovisual content may be a copyright violation. This approach is not proportionate to the social phenomena we intend to fight against and it may cause great damage to the online media industry and to emerging business models.

Commission Question 23. *Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?*

P2P has been de facto and unreasonably banned in Italy, hampering innovation and business models such as the ones emerging in USA. The result is a strong presence of illegal P2P.



Associazione Italiana Internet Providers

One could imagine a file-sharing platform requiring authorisation (for free or subject to a fee) from the rights holders or a collecting society for each download. However, we do not know whether authors and collecting society may agree and on which conditions.

Commission Question 25. *Do you use Digital Rights Management systems (DRMs) or intend to do so? If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?*

We are in favour of DRM as long as they are used and developed within an appropriate regulatory framework which sets the limits of the rights/prohibitions included in a DRM policy and make sure that DRM are not applied in a way to create artificial and anticompetitive obstacles to the online content market.

Also, as previously said above, interoperability of DRMs is essential.

Commission Question 29. *Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?*

DRMs should also not be a vehicle to secure a terminal/PC so that its owner may be prevented from accessing the content he/she decides to store on the device based on analysis of the content by third parties (the hardware/software manufacturer, etc.).

Also, as previously said above, interoperability of DRMs is essential.

Commission Question 30. *In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in?*

Opening of public archives on the Big Internet at high quality will foster users' take up of online content as it will encourage to try these services. See for instance www.raiclick.rai.it which is a very good model and has certainly encouraged end-users to watch TV on-demand.

However in the current Italian regulatory framework (considering the latest outcome of market 18 regulation, see our answer to question 3), there will be no obligation for IPTV providers to grant third parties access to content providers offering on-demand archives. To time IPTV providers have total control of their networks and may enact a user lock-in policy. This conduct should be prohibited by way of ex-ante regulation.

Commission Question 32. *What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?*

Public authorities should consider that some of the issues described above cannot be solved by market mechanisms. In fact, it is likely that dominant operator will try to leverage their dominance, especially when related to bottleneck issues, to extend it to the new IPTV market. Therefore, a certain degree of



Associazione Italiana Internet Providers

regulation will be necessary, and this must be done immediately in order to avoid pre-emption of the market. In particular, public authorities should:

- Keep incumbent's networks open and cost-oriented as long as the market is dominated and not competitive; attention shall be paid also at retail level;
- Put on-line all public content of interest;
- Standardise set top boxes and DRM;
- ensure and make mandatory interoperability of all layers of the online content distribution chain (devices, set top boxes, DRMs, etc.);
- Avoid at all cost all walled gardens, irrespective whether they are network based, DRM based, OS based, etc.

Commission Question 33. *What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?*

EU should be vigilant and avoid pre-emption abusive behaviours by incumbents. EU should stimulate NRAs to address the actions listed above in the answer to question 32, also for the reasons commented at our answer to question 3.

Clarification is needed whether the above interoperability, vertical integration and competitive issues fall within market 12 or market 18 analysis. There is no doubt, however, that the concerned measure require ex-ante regulation, while market mechanism or competition actions will not be sufficient to solve the problems and may open the door to market pre-emption by dominant operators, especially telecoms incumbents.

Brussels, 13 October 2006

For more information please contact:

Innocenzo M. Genna
AIIP Representative for EU
inno@innogenna.it
0032 496 381144

About AIIP

AIIP is the main association in Italy for Internet service providers with 44 members amounting to an annual turnover up to 2 billion Euro (for more information see the website www.aiip.it).