

20 October 2006

To: European Commission
Information Society and Media Directorate-General

RESPONSE TO THE EUROPEAN COMMISSION PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET

From the UK Association of Online Publishers (AOP)

ABOUT AOP

The UK Association of Online Publishers (AOP) is an industry body representing online publishing companies that create original, branded, quality content. AOP champions the interests of approximately 160 publishing companies from diverse backgrounds including newspaper and magazine publishing, TV and radio broadcasting, and pure online media. Together they publish more than 1,800 products¹ and their websites have a combined audience of almost 20m users, or an active reach of 68 per cent of the UK internet population.²

AOP presents a unified voice to industry and Government, specifically to address issues and concerns relating to all areas of online publishing. AOP publishes original research, hosts forums, conferences and events, covering a range of topics from paid-for-content, subscription models and data protection, through to copyright, content management, new technologies and audience measurement.

Members include: Associated Northcliffe Digital, BBC, BSkyB, Channel 4, CMP Information, CNET Networks, Condé Nast Interactive, Dennis Interactive, The Economist Group, Emap, Financial Times, Future Publishing, GCap Media, Guardian Unlimited, Haymarket Publishing, Incisive Media, Independent Digital, IPC Media, ITV Online, The National Magazine Company, News International, Reed Business Information, Reuters, Telegraph Media Group, Trinity Mirror, VNU Business Publications and Which? In addition, PPAi (Periodical Publishers Association Interactive) retains a corporate seat on AOP Board: representing the interests of magazine publishers online.

INTRODUCTION

Increased use of digital technologies is having a significant impact on the way in which publishers from all publishing heritages compile and design their products and services, and subsequently publish and make available their goods and services to customers and individual consumers.

Ultimately, consumers and publishers share the same objectives, involving affordable access to a wide range of content to satisfy effective demand for consumption across an ever increasing number of delivery platforms and devices. The successful use of new technologies (or "new media") embracing delivery platforms, electronic rights management systems, and

¹ AOP Census report 2006

² Nielsen/NetRatings, Q4 2005

technical protection measures will help to support these ambitions, stimulating new business models and creating opportunities for business to offer more choice to the consumer/citizen.

The latest results from the UK Internet Advertising Bureau (IAB) and PriceWaterHouse Coopers reveal that total UK internet advertising reached £917.2m in the first half of 2006, taking a 10.4 per cent share of the overall advertising market. It is predicted that UK online advertising spend will reach £2bn in 2006, and is expected to overtake the 11.4 per cent achieved by national newspapers before the year is out.

The enormous changes being experienced by the media market as a result of digital technology and changing audience consumption patterns imply new added costs for publishers, in terms of technology, resource and training. Digital publishers are still experimenting with new business models online and do not necessarily know what shape the markets within which they operate will take in the future.

For these reasons, AOP warmly welcomes the European Commission consultation asking online content providers to help determine what policies at European level are necessary to help new business models develop.

RESPONSES TO THE QUESTIONS POSED IN THE CONSULTATION:

Types of creative content and services online

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.)?

All AOP members offer online services, including websites, mobile content services, email services, RSS/web feeds, podcasts, and digital editions (visual replicas of printed products, viewed on-screen). AOP members' products encompass consumer, business to business and contract-published websites, and increasingly involve the use of new electronic rights management systems to help improve the provision of publications and services to subscribers.

The opportunities for archiving and cross referencing of articles and features, and new commercial partnerships, are being developed by industry as it works with an increasing number of content aggregators and search engines.

It is important to recognise that the boundaries between the different types of creative content and services identified by the Commission, and between the various creators of those services, are becoming increasingly blurred. For example, online publishers are creating video and audio content for consumption via the web and other digital platforms – for example News International's *Sun Online Video News*, or *Guardian Unlimited's* podcasts.

However, the technical similarities in the way that a digital, on-demand magazine or newspaper service and a television programme service are delivered and made available for access to consumers should not lead to confusion over the basis upon which such services are subject to regulation of their content.

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.

There are real dangers in broadening the scope of the future Communication.

This is evidenced by the difficulties that have arisen in addressing possible extension to the scope of the Television Without Frontiers (Audiovisual Media Services) Directive.

European culture and democracy are based on principles of freedom of opinion and freedom of the press, achieved through several centuries of struggle. The common value of freedom of expression has enabled cultural diversity and economic performance. By definition, this freedom implies the right to free expression, subject to subsequent accountability in the courts, through the enforcement of general laws.

EU media policy should build on the values of freedom of expression by reducing restrictions to content and advertising in media to support the future platform of user-driven information and communication and maintain the EU as a leading market place for the creative media industry.

The proposed Audiovisual Media Services (AVMS) Directive (COM (2005) 646) proposes the extension of rules developed in the broadcasting environment to all audiovisual media services in the EU.

AOP supports the review of the Directive, but has previously highlighted concerns over why its scope should be extended to all services that are provided "on request" - an area already reserved to the E-Commerce Directive, which AOP believes to be functioning effectively.

AOP believes that broadcast services, which are licensed, enjoy a unique position in our information society. Regulations that apply to push-services are proportionate and necessary solely within that context. Such a regulatory regime does not incorporate unlicensed pull-media, and should continue not to do so.

However, in monitoring the continuing debate about the possible scope of the AVMS Directive, the AOP welcomes proposals from the UK Government to seek amendments to the proposed Directive which would establish a clearer definition of the "on demand services" which may fall within the scope of the Directive. Wording recently proposed by the UK Government helps to address some of our concerns over the scope of the Directive by linking more closely the concept of "on demand service" to services whose principal purpose is the provision of programmes which are in a format suitable for television broadcasting, and the nature and means of access leading users to reasonably expect the regulatory protection to fall within the scope of the Directive.

This will be particularly important for AOP members, since many already provide television broadcast services alongside the new online "publishing" services which are being developed to take advantage of the opportunities opening up through advances in digital technology.

Any definition of on demand services relevant to the new Directive could extend restrictions, such as the requirement of licenses, the supervision of content by authorities and the denial of full freedom of opinion, that are typical of the broadcasting sector, beyond television to media and services that are editorially driven in entirely different ways to broadcasting. This could affect all "on-demand" audiovisual media services such as websites that offer editorial information in audiovisual formats. The current and necessary freedom that exists for this kind of service would be reduced in many ways by the envisaged regulations. There exists the danger of a structural reversal in the relationship between the freedom of press and opinion, as the rule, and the restrictive regulation of broadcasting, as the exception. It is misconceived to apply licensed regulatory concepts to unlicensed media.

The E-Commerce Directive Article 3 Paragraph 4 (a) (i) already contains suitable provision for derogation such that Member States may not restrict the freedom to provide information society services from another Member State except where such measures are necessary for:

"...the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons."

Against this background, AOP believes that the existing derogated regulatory and self-regulatory regimes in Member States for print media are wholly appropriate and proportionate to extend the responsible approach of the paper-based print publications to that of the online media.

Such an extension to existing national regulatory and self-regulatory codes could, in the view of AOP, include audiovisual and other types of editorial content, and could equally be applicable to an extension of existing national regulatory and self-regulatory codes for advertising.

It is important to acknowledge the increase in user-generated content, typified by sites such as MySpace and YouTube, which means that consumers themselves are engaged in creating, disseminating and sharing their own content, and can be owners themselves of intellectual property.

This rise in user-generated content, coupled with the wealth of new independent businesses springing up to take advantage of new commercial opportunities offered by digital technology, hailing from all over the world and accessible within the EU, raise significant enforcement challenges for regulators. However, this should not lead to removal of the existing effective derogated regulatory and self-regulatory regimes which have worked for the professional publishing services supplied by AOP members to date.

Consumption, creation and diversity of online content

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.

Yes; in general, structures are in place to help build trust in and take-up of new online services. This is already being provided by the growth in the number and range of online services attracting significant numbers of users.

However, more work needs to be done, particularly in the areas of improving media literacy and developing citizen's appreciation of the value of intellectual property.

A good example is the way in which the 2006 European Charter for the Development and Take-up of Film Online has supported the greater adoption of the CREATE Principles for copyright education and awareness. The CREATE Principles have been designed as a tool to promote the key aspects of the value of intellectual property in the modern economic and social setting. They cover the importance of

- Creativity
- Respect for rights
- Education about why the rights affect everyday lives
- Access to work on fair terms
- Trust between creators and consumers
- Economic benefits from intellectual property, stimulating jobs, business and economic growth

“Respect” for rights and “Trust” between creators and consumers of intellectual property are particularly relevant for development of digital rights management technologies as the ways in which consumers can access and use copyright material become increasingly varied in the digital environment.

Improving understanding, respect and trust is not helped by misunderstandings about the range of new products and services, with a variety of purposes, which might be described under the generic heading of “Digital Rights Management”. Greater understanding is needed about the different products which can fall within a generic description of Digital Rights Management (DRM).

Important distinctions underlie the way in which “technological protection measures” and “rights management information systems” are being adopted to support the operation of new online services. The Commission should support improved education and awareness of these topics in cooperation with industry.

In particular, rights management information systems will become increasingly important to the on line magazine sector for improving the reliability of online services, supporting payment systems and assisting with the back office functions that will help service potentially complex (but nevertheless economically vital) allocation of revenues to rights owners, whilst keeping payment mechanisms for consumers appear customer friendly and transparent.

This will help to encourage the public to understand that, as in any business, there are some products which work more effectively than others. However, it is completely wrong to suggest that because of unfavourable publicity over one product, this somehow means that all products under the same generic description are tarred with the same brush.

In addition AOP believes that the legal protections for DRM, already recognised in law at both European and within EU Member States, should be maintained, in order that industry can develop and offer an increasingly diverse choice of products and services for the consumer, including online and digital publications.

Recognition of and respect for copyright are fundamental to the development of new content-driven online services. In this respect the harmonisation provisions within the EC Copyright and Related Rights Directive have been important and valuable for the industry. However, when considering how network security issues and the development of technological protection measures and rights management information systems which support the delivery of content online, it is important to remember that copyright exceptions and limitations are applied in law only in special cases which do not conflict with a normal exploitation of a work or other subject matter and do not unreasonably prejudice the legitimate interests of a rights holder. This flexible test has worked well to enable and accommodate recent rapid technological developments. It should continue to be recognised and observed.

Rather than imposing forced exceptions to DRM systems for specialist groups, which serve to reduce incentives for investment in innovation, voluntary systems must be allowed to develop, bearing in mind that it is in the commercial interests of publishers to ensure that consumers are not alienated, and that effective demand for their products and services is maintained.

In looking to develop trust in new online services it is important to remember that the market for DRM solutions is a nascent one. There are few nascent technologies for which there are not initial technical problems. The Commission should continue to monitor developments in the marketplace, and the way that new technological protection measures and rights management information systems are brought to market, but recognise the careful balance of interest established by the framework already provided for under the EC Copyright Directive.

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?

The primary goal of a publisher is dissemination and monetisation of content to the widest number of people; this is without doubt one of the main drivers of the industry. The internet, by its nature a global medium, means published content has the potential to reach a far greater audience than was possible with traditional media products.

Web traffic to AOP members' websites from outside the UK averages 30 per cent. As many as one in six (or 17 per cent) of AOP members find that more than half of their traffic comes from abroad.³

We need to maintain the balance between a sound economic situation and the public interest, because these two elements are necessary to achieve the Lisbon Agenda which is key to Europe's future.

Nevertheless, in general we believe that the EU has already put in place the necessary instruments to maintain this balance and any further intervention would result in detriment to the European economy. There are a few exceptions.

One important exception of major concern to publishers relates to the Rome II proposal. In particular we are concerned about the issue of defamation and personality rights. In the Commission proposal, it was possible that potential victims could sue digital publishers using the applicable law of any country in Europe – so called "forum shopping".

The Council text adopted by Council of Justice Ministers meeting at the beginning of June this year now excludes defamation from the scope of Rome II – this would mean that a status quo as regards cross-border defamation cases/applicable law will be maintained. It is not an ideal solution for the media, but it is the very least we would have accepted from among the other negative options being discussed.

However, the agreed text provides for a review of the Regulation four years after its adoption. The review article (26a) makes a particular mention for the review process to examine cross-border defamation in the EU. It is vital that any such review takes account of the practical concerns already raised by the industry.

Furthermore, an important clause granting primacy to Internal Market legislation (such as the E-Commerce Directive) was deleted by the Council.

A second area of concern relates to Data Retention.

In the context of combating terrorism and organised crime, the European Commission proposed a Directive which would set down a minimum amount of time that providers of publicly available electronic communications services or of public communications network must retain data and the circumstances under which they must disclose this data in order to prevent, investigate, detect and prosecute serious criminal offences.

This proposal for a directive on the retention of data processed in connection with the provision of public electronic communication services, amending directive 2002/58/EC was adopted on 15 March 2006.

We understand and support the need to fight against terrorism. However, no comprehensive consideration has been given to the matter of investigative journalism in Europe.

³ AOP Census report 2006

The retention of traffic data from telephones, mobile phones and the internet during a year lead to the creation of vast databases. For journalists and the media in Europe, it means that government authorities could routinely monitor and find out about the identity of sources and other journalistic research activities. Investigative journalism is essential to an open and democratic society and can only carry out its function if sources are protected. With this directive, every source of information will have to fear that their identity could be exposed. Without the certainty of protection, the number of sources will diminish. This represents a serious threat to democracy as it weakens its Fourth Pillar by gravely affecting press freedom.

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

We support consumer demand driven interoperability between devices, respect of copyright and the use of DRM (provided the rights holder wants to make use of them). Interoperability between devices is increasingly expected from consumers, and market led solutions to interoperability are likely to lead to considerable investment in providing for interoperable access.

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?

In our view, cultural diversity can and should be fostered online. Publishers are major contributors to cultural diversity in Europe.

Respect for copyright should be the common basis both for works for which investment is needed and other types of content (e.g works published under open access or creative commons). There are some 80m pages in the internet and therefore enough room for all. For example, while *Wikipedia* has become a very popular tool to search for information, the Oxford Dictionary of English is still one of the most important, widely used and paid for, dictionaries for English language.

Competitiveness of European online content industry

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.

For our industry to remain competitive in an increasingly global marketplace, we must be sure that the key legislative structures that support our business provide for a level playing field with competitors outside Europe.

In the online world, publishing companies find themselves competing (for audience share and advertising spend) with a variety of new players from outside the EU. For example, approximately 80 per cent of online advertising spend in the UK is currently search-based, therefore going to five (US based) dotcom companies: AOL, Google, MSN, Orange (formerly Wandadoo) and Yahoo.

It is vital, therefore, that the EU takes a lead in ensuring that territories outside the EU adopt and enforce legislation to reflect the International Treaties in place for the recognition and

effective enforcement of intellectual property rights (particularly the Agreement on Trade Related Aspects on Intellectual Property Rights – the TRIPS Agreement).

One current imbalance of particular concern to publishers relates to the recognition of rights in databases.

The Commission working paper on the competitiveness of the publishing industry⁴ reports that the productivity of the publishing industries in the EU is higher than in the US. The paper acknowledges that the sector is under strong pressure due to the increasing digitisation of content which is changing modes of distribution. We believe it is important to strengthen the competitiveness of the European publishing industries in the digital era by providing the necessary protection to secure investment. In this sense, a positive step at EU level has been the introduction in 1996 of the "sui generis"⁵ right which achieves this goal for non-original databases.

The publishing industry is entirely dependent on building, maintaining, marketing from and selling data of every conceivable kind: it is one of the cornerstones of the information economy in which Europe is an international leader.

Estimates from these businesses show that as much as 30 per cent of their costs involve the compiling and maintenance of databases: an investment which could be around €60bn annually in the EU.

One of the reasons for the growing success of database-driven businesses in the EU is the existence of the sui generis right, which underpins the huge investment in these companies.

The fact that the European Commission has even considered removing this right has sent shock waves through the industry and is forcing companies to revisit their investment proposals for the future.

AOP strongly contests the suggestion that the creation of the sui generis right has had adverse effects on competition. Completely to the contrary, our members believe that the introduction of this right has provided a catalyst to publishers (in particular SMEs and the business and professional publishers) to invest more in the production and use of databases.

We believe there is ample evidence to show that the right has played an extremely important role in the development of the information society in the EU and made the EU a desirable place in which to develop these important businesses.

Therefore, the sui generis right attributed to the creator and investor of a database should be maintained as for publishers, databases play a fundamental role in contributing to the success of the Lisbon strategy.

New business models and transition of traditional ones into the digital world

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?

Publishers see multiple opportunities for new online content creation and we envisage multiple possible business models.

⁴ Brussels, 8.10.2005, SEC (2005) 1287, page 29

⁵ Directive 96/9/EC on the legal protection of databases

Broadband penetration, technological innovations and most importantly, changing audience behaviour, have allowed publishing companies to develop new business models in recent years, and the sector continues to invest heavily in online content offering for Europe's citizens. Experimentation, innovation and investment are taking place at a time when many other players are also doing the same and in conjunction with the changing expectations of European readers.

New revenue sources for AOP members (beyond display and classified advertising, sponsorship, e-commerce and paid-for content) already include email, site management fees, list rental, fantasy games, online events/web seminars, mobile paid content, customer relationship management, and paid search.

The greatest opportunities for UK digital publishers at present are seen as those provided by specific new/growing technologies, such as mobile internet, wireless broadband, podcasting, broadband-enabled video, communities, new devices and next generation technology, pay-per-view content, new forms of advertising delivery and changing trends in music consumption.

9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.

AOP member organisations have a positive outlook for the immediate future. They forecast an average growth of 37 per cent in their online business for the year ahead⁶.

A recent report by Jupiter Research showed that weekly European internet use has risen to an average of four hours a week, overtaking print media for the first time.

Magazines and newspapers attract just three hours a week where overall media consumption stands at 19 hours a week. The research highlights that use from country to country is determined by age and broadband access.

In August 2006 Ofcom's annual communications market report highlighted the emergence of a mainly online generation of customers is revolutionising both media and telecom markets.

Customers are taking advantage of falling prices encouraged by competition and are increasing their use of broadband internet, digital TV and radio and mobile phones.

Ofcom reported that for adults aged 16-24, the internet is their preferred medium: they spend 21 minutes more online per week than the general population. This age group also watch TV and listen to radio less than the average consumer.

It is therefore essential that European publishers are allowed to compete on an equal footing with players from outside Europe, and especially the U.S., to take advantage of these trends.

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.

AOP research reveals that a shortage of resources and skills is clearly perceived as the biggest limitation on business growth at the moment.

⁶ AOP Census survey report 2006

Seventy-four per cent of AOP members reported having unfilled vacancies in January 2006, compared with 58 per cent in 2005.

Recruitment remains an important issue for many AOP members, even more so than identified in 2005. The staffing difficulties experienced by AOP members reflect the rapid growth and expansion of the online publishing industry and it would seem that this consistent growth has outstripped supply. Nevertheless, a successful increase in staffing levels underpins the limited resources. This year, 61 per cent of businesses surveyed reported an increase in headcount for their online business compared with 40 per cent in 2005. In the last year alone, 429 jobs were created by the organisations surveyed and were further demand to be met, this figure would increase substantially.

The skills shortage becomes particularly prevalent as companies look to fill advertising sales and editorial roles. Fifty-four per cent of those surveyed are recruiting for sales posts while 31 per cent currently have vacancies for editorial staff.

Sales and marketing, technical and design skills are among those expected to increase in importance. Research and analytics are also seen as important skills for the future.

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?

Copyright and related rights provide incentives and opportunities for publishers and for society at large. It is recognition of copyright that enables publishers to make works available, ensuring remuneration for their investment and the sustainable delivery of creative content. Publishers' investments in the collection of information and its delivery to the public enable them to play an important role in democratic society.

It is crucial that any digitisation or re-publication by third parties such as libraries, aggregators and search engines for purposes other than preservation, particularly when digitisation will lead to access by the public, must be done with the explicit permission of the rights holders, including the authors, producers and publishers.

Payment and price systems

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?

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

Although advertising remains the dominant revenue source for AOP member companies, 37 per cent of AOP members charge for online content, which contributes 18 per cent of revenues.⁷ Of that 18 per cent, more than three-quarters (78 per cent) is from subscriptions, and 22 per cent is from one-off payments. Sponsorship makes up nine per cent of online revenue.

Various different payment and pricing systems are in operation in the online publishing environment such as pay per view, subscriptions, rental, 'wallets', mobile phone payments, etc. These new products and services are being tested at the moment and the market is not mature enough to draw conclusions.

⁷ AOP Census report 2006

Licensing, rights clearance, right holders remuneration

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?

In the publishing industry, individual management of rights is the natural starting point for rights holders to manage their rights whenever feasible or possible.

But copyright and intellectual property underpins the ability for all creative businesses to license and distribute their works in flexible ways. Flexibility (supported by territorial recognition of copyright) is vital to allow companies and rights owners to secure fair and effective returns on investment. The primary market for one creative business does not mean that the same primary function is relevant for a different creative business. The licence fee expected from the first broadcast of a new television programme will be a key primary source of revenue. The licence fee secured for the use of a well known piece of music within the same television programme may be seen as important, but secondary, revenue for the owner of the music.

In the same way, differences exist in the value to rights owners of exploitation in different Member States across the EU. This may be because of language or other cultural differences resulting in a programme having difference perceived values in the eyes of potential "purchasers" or "licensees" in different Member States.

So whilst the concept of Europe-wide or multi-territory licensing may become appropriate to meet the demands of new services intended to be electronically transmitted for reception or on demand delivery to customers within a number of different territories, such licensing must be driven by rights owners making the choice about how best to license their rights to reach their primary and secondary markets effectively.

In turn, underlying rights owners must be able to choose to license the use of their works in connection with others either directly, through agents or through appointed collecting societies. The choice of which route to follow will be dictated by the value attached by the relevant group of rights owners to the market in question, and the practicalities of direct licensing versus the benefits (and costs) to the rights owners of allowing their rights to be licensed through a collecting society in the light of such valuation.

It is important to incentivise creative businesses to enable their works to be licensed in new ways which pick up on the opportunities opened up by new technology. It would be damaging to the creative economy of the EU if imposed regulation about the way owners might choose to exploit rights on a Europe wide or multi-territorial basis removed the chance for new balances between primary and secondary markets to be developed by rights owners (with different patterns of primary and secondary markets emerging for say books, music, films and sound recordings depending upon the value that consumers attach to the new service offered to them through technological advances).

Moves to be overly prescriptive about the way in which clearances "must" be made to service the growth in multi territorial delivery are likely to stifle market led development of new services. Competition between sectors within the creative industries could also be restricted, raising legal Internal Market and competition law concerns.

The key issue is that rights holders have the freedom to choose how to manage their digital rights and they can withdraw them whenever they deem appropriate. For all these reasons multi-territory licensing and clearance is not currently a practical problem in our sector; it is possible to benefit from Europe-wide licenses if the necessary license is acquired from the rights holders.

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?

Generally our members do not encounter major problems concerning licensing and/or effective rights clearance.

Nevertheless AOP has been observing with interest developments following the publication of the Commission's Recommendation on collective cross border management of copyright and related rights for legitimate online music services, as new online publications linked to magazines increasingly involves the use of sound and film (whether in the context of podcasts or new and alternative links to the presentation of material online).

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.)?

The market should be permitted to establish appropriate new systems of remuneration to reflect private copying before any legal intervention. Publishers should be free to choose between collective or individual management of their right, and between different management systems (as there are, for example, different collective management organisations in each country).

Member States should remain free to maintain their system of secondary rights management. The European Commission should conduct an in-depth analysis of all the sectors, not only the music sector, benefiting from levies before making any new proposal.

Legal or regulatory barriers

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?

There is concern over the regulatory burdens, heavy social costs and taxation levels within the European Union which are not reflected elsewhere in the world (particularly those applicable to new online services originating outside the EU but receivable within the EU), which make it difficult for companies operating within the EU to compete on equal terms with the U.S. and other regions.

The European Union should monitor these imbalances and consider how fairly to reduce these burdens to free its creative and media industries to compete on a level playing field in a global marketplace. At the same time, it is vital that the EU takes a lead in ensuring that territories outside the EU adopt the International Treaties in place for the recognition and effective enforcement of intellectual property rights (particularly the Agreement on Trade-Related Aspects of Intellectual Property Rights – the TRIPS Agreement).

On fiscal policy

Member States should be able to decide themselves whether to grant the possibility for reduced VAT rates to be applied to online press. EU-level intervention in this the fiscal area is extremely harmful to further investment and innovation of publishers online.

On advertising regulation

An inherent part of freedom of expression and freedom of the press is the freedom of commercial communication. Restrictions on public speech on economic matters should not be allowed.

At a time when the competition for advertising revenues is increasingly dispersed across existing and new media channels, online publishers are clearly concerned about any potential loss of revenues through measures (compulsory or otherwise) which would affect the ability to carry advertising and other commercial communications within websites and other online products.

The adverse impact of such a loss would undoubtedly have negative consequences for the development of a thriving digital publishing industry throughout Europe.

We reiterate our full and committed support for the ongoing work to enhance existing, and develop new, effective systems of advertising self-regulation throughout the internal market.

In this sense, we would also like to underline that the promotion of advertising self-regulation by the European Commission should not be seen as an indirect way to encourage industry to self-regulate to the point of not to advertising at all. This would remove the right for companies to promote themselves, goods and services responsibly and would be an entirely unacceptable end result for the economic well-being of the media.

EU media policy should build on these values by reducing restrictions to content and advertising in media to support the future platform of user-driven information and communication and maintain the EU as a leading market place for the creative media industry.

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

Copyright protection and the effective implementation of the EC Copyright Directive and other Directives in the copyright acquis has been vital to encouraging the development of now online content services.

Release windows

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?

N/A

Networks

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?

There is little doubt that quality content delivered by trusted brands is of higher value to consumers than the vast majority of content on the web. Currently, search engines don't do enough to recognise this and thus fail to be as useful or valuable to consumers as they could be.

Piracy and unauthorised uploading and downloading of copyright protected works

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?

Digital publishers suffer from online piracy where pirates copy parts of, or an entire, website and pass it off as something else, sometimes to the detriment of consumer trust of that publisher's brand. Of particular concern is the unauthorised use of mast heads and trademarks developed by our members for new publications, when third parties seek to benefit from the investment in goodwill of our members without respect for their intellectual property rights.

Intellectual property is the cornerstone of publishing industries and the measure by which the people who contribute to creativity can be remunerated. The production of new creative content is usually made possible by the reinvestment of revenues from existing creative content. Yet this virtual circle is threatened by the increasing illegal use of intellectual property.

The EU must provide a strong legal foundation, based on copyright, if it wants to have the internationally competitive creative industries that are at the root of a world class knowledge economy.

The EU and national governments need to do more to track down and pursue illegal use of intellectual property rights. There is an urgent need to create a stronger deterrence against IP crime and online infringement, through a combination of effective legislation and greater government commitment to enforcement activity.

Just because intellectual property is intangible, it doesn't mean that it has no value. As previously stated, we believe that the Commission and the governments of Member States have an important role to play in helping to educate consumers about the importance of copyright. Media literacy, including a better understanding of the value of intellectual property will be increasingly important for the citizens of Europe in the future, if we are to compete in the increasingly competitive global marketplace for goods and services.

The EU should seek agreements with third countries that counterfeiting and piracy are criminal offences that should be treated no less seriously than other criminal offences such as forgery, theft and fraud.

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-raising campaigns are essential to fight piracy both in the analogue and in the digital world. Please see our response to question 3 above relating to the promotion of the CREATE Principles.

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?

AOP member BskyB has experimented with peer-to-peer (P2P) distribution technology with its *Sky By Broadband* prototype service: a hybrid solution that uses both a Content Delivery Network (CDN) and P2P (or 'grid') distribution of feature-length video content over the public internet, allowing for high quality encoding, with high security. If content is downloaded, this

uses the CDN; if streamed, it uses the grid. Unlike P2P services like BitTorrent, no users can upload content to the grid. Every content asset is encrypted and virus checked, using digital signatures - each 1mb segment has a digital code assigned, secure network protocols, and user authentication. All content is centrally managed by Sky.

Rating or classification

24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?

A labelling system for digital content could have serious implications for the online press and any such proposals should be subject to a regulatory impact assessment. The UK government has assured the printed press that age stamping or similar restrictions would not be imposed on their material for reasons of democracy and freedom of expression. On this basis it is not clear why it would be workable to place age restrictions or similar restrictions on digital media without setting a precedent for other media.

Digital Rights Management systems (DRMs)

Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.

25-29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?

AOP believes that the legal protections for DRMs, already recognised in law at both European level and within EU Member States, should be maintained, in order that industry can develop and offer an increasingly diverse choice of products and services for the consumer, including online and digital publications.

While some publishers do or intend to use them, some others do not use DRMs for economic reasons (it is too expensive, in particular for the many thousands of SME publishers) or for security reasons as it does not always prevent illegal copying.

Rather than introducing additional regulation at this stage, the Commission should recognise that the market for DRMs is a nascent one, and monitor developments in the market place, but recognise the careful balance of interest established by the framework already provided for under the EC Copyright Directive. Consumer acceptance will play a role in DRMs application.

Interoperability is a priority for publishers, if the consumer is to have a variety of creative content available on different platforms. Publishers strongly support interoperability, but this should not be at the expense of security. Secure DRM solutions need a system-wide support so that continuity of security is maintained across platforms.

Publishers are addressing ways in which rights management information systems (using digital rights management) can be made more transparent and efficient both for users and consumers. A number of initiatives are under discussion including the project to develop an Automated Content Access Protocol. It is hoped that the project will be launched with the backing of the World Association of Newspapers, the European Publishers Council and the International Publishers Association in the later part of the year.

Complementing commercial offers with non-commercial services

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?

We accept that non-commercial services can complement commercial offerings in the publishing sector, as long as those services avoid disrupting the delicate balance which allows publishers to invest in content creation and dissemination.

Publishers invest in creativity and take financial risks before releasing a work of the mind. Together with the authors, publishers' ability to engage in the creative process is dependent upon the ability to be paid for this investment. Therefore, it is crucial that any digitisation by libraries and other aggregators for purposes other than strict preservation, particularly when digitisation is to lead to access by members of the public, must be done with the explicit permission of the rights holders, including the authors, producers and publishers. This will ensure sustainability of new business models which can involve both libraries and publishers which in turn will promote future creativity, investment in new works and thereafter enable the public to have access to a wide range of creative works.

Should a public sector European digital library wish to provide access to European content, it should do so through contracts between rights holders and users in the same way as is common practice for physical content and always in a manner not interfering with the normal exploitation of such content by the rights holders, as foreseen by applicable European and International law. This will encourage increased access to European works and promote the development of innovative business models without risk of unbalancing the whole creative sector.

Finally initiatives such as the EU project, "2010: digital libraries", are welcome by the industry as long as access to copyrighted works is provided under contractual solutions and in full cooperation with all stakeholders and respect of copyright legislation.

What role for equipment and software manufacturers?

31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs, etc.)?

N/A

What role for public authorities?

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

Governments should support improved education and awareness to all consumers and in particular citizens about what "intellectual property" actually is, and why it is important to them. In this context it is important that people understand better how intellectual property is really relevant to their lives both culturally and potentially economically.

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?

The Commission, the governments of Member States and linked public authorities can play an essential role in fostering new business models in the online environment in providing funding facilities for rights holders to develop their own digitisation programmes that in turn

allow them to offer legal online services to users. Another important role for such bodies to work closely with industry in helping to educate citizens and consumers about the importance of copyright and raise awareness of the damage online piracy causes to the creative sector and to all society in general.

AOP would welcome the opportunity to provide further background concerning the points raised in this submission, should this be helpful.

UK Association of Online Publishers (AOP)

Queens House

28 Kingsway

London WC2B 6JR www.ukaop.org.uk

For more information please contact Alexandra White, director of AOP:

Alex.white@ukaop.org.uk, or 020 7400 7510.