

# **BERTELSMANN AG RESPONSE TO THE COMMISSION PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET**

Brussels, 13 October 2006

Bertelsmann has, with great interest taken note of the public consultation on content online in the single market and welcomes the possibility to contribute.

## **QUESTIONS**

### **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.)?**

*Bertelsmann's divisions offer a great variety of creative content online from magazine and newspapers to books; audio and audiovisual content in various formats:*

- § *Gruner + Jahr is an internet pioneer among magazine publishers as early as the mid-90s and operates more than 50 websites worldwide. Furthermore Gruner + Jahr runs a large press database, with more than 7.8 million articles one of the most comprehensive press archive in Germany.*
- § *Random House, world's largest general interest book publisher makes its publications available in digital format (eBooks) and offers online sales services where books can be ordered. Random House's products are available online in more than 10 countries around the world.*
- § *Bertelsmann's music arm SonyBMG makes new releases and back catalogue available through internet music providers in either single track format or album format and operates in over 40 countries worldwide*
- § *RTL Group explores various possibilities to make audiovisual content available across various platforms. Examples include various Video-on-demand models, audiovisual content offer on Internet portals, mobile TV, or user-generated content offers.*
- § *arvato: .arvato mobile is Europe's leading mobile entertainment provider and enables network operators, media companies and internet-portals to offer their*

*customer first-rate mobile content and innovative applications. It works closely with the music industry and rights holders from the movie-, games- and television-industry:*

- 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.**

*No comment*

### **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.**

*Grouped answer question 3 and 17*

*Online services have been developing rather fast all over the European Union the last few years, as content owners are digitizing their content and exploring new business models: Certain problems however remain:*

- § *Online piracy: online piracy remains one of the main barriers for the take off of legitimate online service. Online piracy needs to be tackled from different angles; liability for encouraging and facilitating infringement should be ensured and clarified on legislative level; cooperation between the content industry and internet service providers should be encouraged; single market rules concerning intellectual property protection should be better implemented and enforced;*
- § *Absence of one-stop-shop pan – European licences for music rights: restrictive license practices by authors' collecting societies make it difficult for users to obtain a pan-European license ;*
- § *The Term of Protection for sound recordings should be extended from 50 to 95 years. A longer term of protection will eliminate the existing disadvantage European performers and producers have vis-à-vis the US and other trading partners and will be an incentive for producers to make their back catalogue available for new distribution models and formats.*
- § *High taxation levels create a disadvantage vis-à-vis our non-European com-*

- petitors. The VAT regime for online commerce of products should be revised;*
- § *Lack of public awareness of copyright: the EU has an important role to play in increasing the public awareness of copyright through public/private awareness campaigns and/or education projects at schools. At the same time any undermining of the current copyright regime, through for example; expanding exceptions should be avoided;*
- § *Lack of interoperability: interoperability enables a flexible use of the creative content made available through online services. The lack of interoperability should however be market solved. Bertelsmann is not supportive of any regulatory intervention but favours stakeholders' dialogue which should be encouraged by the legislators;*
- § *Insufficient deployment of robust and secure DRM systems: the use of robust and secure DRM systems should be encouraged; though we do not support legislative action in this area we clearly see a role for the European Commission as facilitator of the stakeholder's dialogue.*

**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?**

*Current data and consumer protection laws ensure adequate protection of public interests.*

**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?**

*Interoperability will ensure the availability of and access to a large variety of creative content online and is a priority. In this context standard for new media devices and the reduction of barriers form essential requirements for the functioning of interoperability and for a strong position in the global competition. Platform and equipment interoperability should however not be achieved through detriment of security. Interoperability should go hand in hand with the development of robust and secure DRM (digital rights management) systems. As already mentioned under question 3 interop-*

*erability issues should be solved at the marketplace and not by regulatory intervention, however legislators could play a role as facilitator for a stakeholders dialogue..*

- 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?**

*Online services have already proven to be the ideal environment to foster cultural diversity due to their practically non-existent entry barriers. Pluralism is inherent to the technical characteristics of these new services. A further fostering of cultural diversity through, for example, quotas, is not desired. An unnecessary regulatory burden should be avoided as it would only discourage investment in such services hampering therewith their rapid take off.*

#### **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.**

*The European content industry is by nature very rich in diversity, this diversity is one of its greatest strengths vis-à-vis competitors from other regions. To stimulate further growth and to remain competitive on global level the content online industry in Europe needs a set of specific conditions, in what the US are yet much beyond. Such as: an attractive tax regime; respect for intellectual property rights; effective implementation and enforcement of single market rules; technological neutrality and interoperability in the distribution of creative products and services and an uniform level of protection for sound recordings by extending the term of protection from 50 to 95 years (see also grouped reply to question 3 and 17).*

## **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?**

*Bertelsmann's different divisions are exploring and experimenting with various new business models. Such services might be offered on either a pan-European basis, or on national level.*

*The creative sector needs to have flexibility and the choice of which business models make the most sense; no one-size-fits all model should be imposed.*

- § *In addition to complete eBooks, Random House sees opportunities in making its book content available on a chapter or page-by-page basis for search, preview, and sale. Audio book offerings will develop from à-la-carte and subscription to advertising-supported models. Distribution will include download, streaming and peer-to-peer models. Random House Germany will serve German-language markets independent of national boundaries.*
- § *In the countries where it operates, RTL Group is exploring various possibilities to make audiovisual content available across various platforms. Examples include various Video-on-demand models, audiovisual content offer on Internet portals, mobile TV, or user-generated content offers. The development of such services will of course vary according to the various countries/markets, however, these services could be offered nationally or at a wider European scale.*
- § *The recording industry is experimenting with many new business models such as amongst others a la carte downloads, subscriptions services, satellite radio, online streaming, mobile music, and P2P networks. Some of these models are being widely taken up by the market, while others are still in early stages of development.*

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

*Although no medium term forecast is available we expect the demand for online content in our field of activity to increase substantially. In certain sectors, such as the book publishing sector expectations are, that the demand for online book content to reach 15-20% of the print market, depending however, on the evolution of reading devices.*

**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 availability of user-friendly and secure online distribution services are key to a more efficient online content creation and distribution. Security can be improved by a rapid up-take of robust and secure DRM technologies and by increasing enforcement efforts against copyright infringement. Interoperability will enhance the consumer experience by ensuring the availability of and access to a large variety of creative content online. Interoperability should however not be achieved through detriment of security.*

**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?**

*Bertelsmann has been investing in and experimenting with new business models in order to secure new revenue streams, thereby taking substantial financial risks.*

*New revenue streams are vital if we want to continue to invest in and develop new creative talent. A dynamic and competitive online environment will not be created by hardware technology and distribution networks alone. It is the creative sector that invests in the attractive content consumers look for on the online distribution services. Without this content the new online distribution services will only be a set of empty pipes and boxes.*

*In respect of the online exploitation of content it is obvious that digital piracy is one of the main threats for securing a sustainable revenue stream. The loss of*

*income caused by digital piracy has not only greatly impacted the development of a sustainable revenue chain for online exploitation of creative content but also negatively impacts the off-line exploitation of creative works.*

*The content industry has been exploring and investing in secure ways of online distribution of creative content. However public authorities should ensure stronger enforcement to fight IP theft and online infringements effectively. Public authorities also have an important role to play in the development of awareness-raising and education initiatives thereby involving other stakeholders such as consumer organizations and hardware industry.*

### **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?**

*Credit card and bankcard payments systems are the most systems used in our field of activity other systems such as online billing systems; mobile phone payments and pre paid vouchers are becoming more common as well as pay per use, pay per click and pay per time..*

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

*Pricing strategies should be left to the business. Different pricing systems such as pay –per-use or subscription fees are currently being applied in our field of activities. Improvement of the existing systems and development of new systems will be market driven.*

### **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?**
- 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?**

#### **Grouped answer to questions 14 and 15**

*1. In respect of the licensing of music online and mobile rights a European wide or multi-territory system for the licensing of authors' rights would be beneficial. In the music sector it is currently not possible to obtain a one-stop-shop pan European license that covers the world-wide repertoire.*

*The current collective licensing system of authors' rights for online and mobile use of music, which is based upon reciprocal agreements between collecting societies, includes territorial provisions which operate in a manner contradictory to the objective of an Internal Market and impairs the development of coherent business strategies within the industries.*

*The current system is too costly and burdensome from an administrative point of view due to the fact that a multiple set of licenses have to be concluded on a territorial basis without effective competition between the societies concerned. Further problems are created due to the fact that collecting society apply non transparent pricing practices and discriminate between users by refusing to grant licenses to content aggregators and record companies to enable them to grant "all rights cleared" uses.*

*In contrast to the existing system, a system of a voluntary "multiple one-stop shop" licensing would allow for the clearance of each of such rights at a single collecting society of the users' choice for the entire EU.*

*The creation of such a system would increase competition among collecting societies with regard to administration and reporting services which they deliver as well as the level of transparency of the costs of such services for right holders and users.*



2. *Collective management of rights in the field of book publishing rarely occurs. Licensing is done on a territorial/linguistic basis*

- 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 only viable business model is one based on contractual negotiations and the exercise of exclusive rights. Flat rate remuneration such as levies or compulsory license systems are economically non-viable business models. We would like to underline that levies only relate to the kind of legal private copy exceptions that exists in certain jurisdictions and do not, cover copies made from an illegal source.*

#### **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?**

*See answer to question 3*

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

*There are currently several initiatives in different Member States level which aim to encourage the development of creative online content and service in the music sectors. Both the Italian and French government have, for example, introduced tax credits for the production and digitisation of music content which indirectly provide incentives for the production; promotion and distribution of online content. No such initiatives however exist, to our knowledge, for printed material, audiovisual or other type of creative content.*

*New content delivery models (such as mobile delivery) often require different content formats which increase the production costs considerably as the same content needs to be made available in different formats. "Tax Credit" or other tax promotion kind-like initiatives, are incentives for the content producers to make the same content available in different formats at the same time.*

## 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?**

*No comment*

## 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?**

*No comment*

**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?**

*The music and publishing (books and magazines) are greatly affected by both physical and online piracy. The broadcasting industry is faced with signal theft. Piracy undermines our business model. Due to the loss in sales, investment in creative content and new business models declines and jobs are lost.*

*Bertelsmann divisions take action to curb piracy on different levels.*

§ *Industry led legal actions: these are taken by individual businesses, and federations;*

§ *Government led legal actions: Bertelsmann divisions assist national anti-piracy organizations and national law enforcement authorities in the fight against piracy;*

§ *Awareness/Education initiatives: Bertelsmann divisions participate in awareness and education campaigns initiated by industry federations, cross-industry coalitions or legislative bodies.*

**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 play an important role in the fight against piracy. Most education and awareness-raising campaigns are business initiated. Governments are unfortunately not very active in setting up awareness and education initiatives and should be more pro-active in respect of awareness.*

*Education in and respect for copyright starts at school and should be part of the educational programme for youngsters.*

*The EU has also an important role to play and should explore the possibilities media literacy initiatives can play to increase the awareness of copyright issues.*

**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?**

*Illegal use of P2P technologies should not be tolerated as it clearly leads to copyright infringement. The recent judgement in the Grokster and Kazaa cases condemned the illegal use of Peer-to-peer (P2P) distribution platforms.*

*Legal use of P2P distribution platforms can be seen as a new business model for legal distribution of copy protected content and should be encouraged. The by arvato, a Bertelsmann division, developed GNAB download platform is a good example how P2P distribution platforms can be used in such a way that the owners of copyrighted material are adequately protected. GNAB is an innovative technology that combines a centralized, traditional Internet download platform with a decentralized or P2P network. The protection of all copyrights are ensured and the rules and requirements of the individual licensors are respected.*

### 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)?**

*Self and co-regulation systems have been proven successful, as they take local characteristics and specifics into account. Successful national schemes are the proof that there is no need for an EU harmonized rating practice.*

### Digital Rights Management systems (DRMs)

**25. 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.**

**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?**

*Digital Rights Management are used for the delivery of all creative content provided by the Bertelsmann divisions. Random House Germany only sells its digital content through retailers and platforms which operate DRM systems. DRMs are considered appropriate to manage and secure digital content online. (Watermarking is not regarded as a sufficient protection mechanism.)*

*The majority of the music provider services to which we licence our music content are supported by digital rights management systems.*

**26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?**

**27. In the sector and in the country or countries you operate in, are DRMs widely used? Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?**

Grouped answer question 26 + 27

*Our different divisions have access to appropriate DRM systems.*

*DRM systems have been widely accepted by the music industry; the music service providers and the consumers. DRM systems used by the music industry are relatively well developed. They are reliable and user-friendly.*

*In the book publishing sector however, DRM is still in a very early stage of development and not yet widespread in every EU Member State. The systems available in this sector offer a basic level of protection but are still far from secure throughout the lifecycle of digital content. They are sometimes difficult to use and understand for consumers.*

*To be fully effective DRM systems need not only to be robust from a technological point of view but also need adequate legal protection against circumvention.*

**28. Do you use copy protection measures? To what extent is such copy protection accepted by others in the sector and in the country or countries you operate in?**

*Copy protection measures have so far only be used by Bertelsmann's music division. SONY BMG is not currently newly releasing its traditional CD format with copy protection. Releases last year of CDs in the US incorporating so called XCP copy protection resulted in significant regulatory and legal problems in the US and elsewhere and were withdrawn.*

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

*It is still very unclear which DRM system(s) will prevail. From a content provider side, Bertelsmann supports a market-based development, but sees a strong*

*need for interoperability (which necessarily includes cooperation of DRM vendors on trust models).*

### **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?**

*Non commercial services can play a role in the preservation and archiving of the cultural heritage that currently is not made, or cannot be made available commercially for various reasons. Making content available is first of all a matter for the rights owners, they decide how, when and what will be made available.*

*Public/private partnerships can be envisaged but only if rights owners are guaranteed that their exclusive rights are respected and protected.*

### **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.)?**

*No comment*

### **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.)?**

*National governments and regional entities have an important role to play on the following levels:*

- § *Deterrence of IP theft and online infringements through a combination of effective legislation and strong enforcement activities*
- § *Development of awareness/education initiatives*
- § *Facilitating stakeholders' dialogue, notably between various rightsholders in view to foster equitable solutions for the emergence of new business models in the online environment.*

**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?**

*We would welcome following EU action on both legislative and non-legislative level*

*(listed in random order):*

- § *Stronger deterrence against copyright IP theft by strengthening the current proposal harmonising criminal sanctions*
- § *Enforcement and implementation of internal market rules as regards the collective licensing of authors rights*
- § *Introduction of effective dispute settlement mechanism in respect of collective rights management*
- § *Introduction of good governance rules to guarantee transparent and efficient collective rights management*
- § *Extension of the term of protection for performers and producers in Europe to 95 years*
- § *Review of VAT regime for online commerce*
- § *Stimulate self-regulatory systems to meet public policy objectives*
- § *Development of education and awareness-raising initiative*
- § *Encourage stakeholder dialogue in respect of interoperability issues*