



**CONTENT ONLINE IN THE SINGLE MARKET
RESPONSE BY BRITISH TELECOMMUNICATIONS PLC
TO THE PUBLIC CONSULTATION BY DG INFSO
October 2006**

BT thanks DG INFSO for the opportunity to provide input to the forthcoming Content Online Communication.

The company has already participated in elaboration of the Questionnaire response that is being submitted on behalf of the European Telecommunications Network Operators' Association. We have little to add to the points made in this document.

We would nevertheless highlight our agreement with the following general comments:

- Online content markets are developing with remarkable speed. There is much evidence to suggest that we are currently at the first inflection point in the S-curve that typifies development on business activity associated with new technologies. In such a context the need for public policy interventions to encourage market development is not self-evident. On the contrary, since the topology of future markets and the identity of successful business models remains largely unknown, there is a particularly high risk that such interventions will lead to unintended consequences.
- We are currently unable to identify any obstacles to market development which require action at EU level, and which cannot be adequately addressed by existing initiatives and/or the rigorous application of competition law.

Turning to more specific issues which are touched on in the DG INFSO questionnaire, BT has a number of concerns which help to illustrate the first of the general comments made above:

- With regard to copyright infringement, BT would reiterate that the existing EU legal framework already provides for the possibility of effective legal action against infringers.

“Graduated response” proposals that are being advocated as a solution to P2P infringements will require ISPs to take decisions on the validity of complaints that are properly taken by a court, thereby “privatising” the administration of justice and shifting the costs of enforcement from rightsholders to ISPs. Their implementation will threaten the efficacy of the discretionary anti-piracy cooperation already undertaken by BT and other ISPs, as well as undermining the “common carrier” principle which is central to the Internet’s social and economic value.



BT would note that such proposals have already been rejected in industry-led discussions regarding the Film Online Charter. We also see growing evidence of the content industry's willingness to develop business models that work "with the grain" of new technology. Having itself had to deal with the Internet's impact on what was once the company's main revenue source, BT would suggest that this approach is likely to be more fruitful than attempts to change the current legal framework.

- The formulation of the net neutrality issue in Question 20 of the DG INFSO document is highly misleading (the Internet is *not* based on the principle of net neutrality as defined in the question, and network operators *are* already allowed to offer preferential, high quality service to some service providers). Existing features of the E-Communications Framework – notably the distinction between wholesale and retail services, requirements for operators with significant market power to provide fair, reasonable and non-discriminatory access, and local loop unbundling – should mean that net neutrality is a non-issue in the EU. Accordingly, the Commission should focus on effective enforcement of current rules.
- The scope of the current proposal for revision of the Television Without Frontiers Directive will undermine the viability of self-regulatory regimes, thereby lowering rather than raising levels of consumer protection. The effectiveness of such regimes typically depends on their ability to "name and shame" members responsible for infringements of their rules. In other words, the incentive for compliance is the risk of damage to members' brands. The prospect of naming and shaming will not have the same deterrent effect on providers which have not invested in positioning themselves as suitable for a mass audience. Self-regulation which has to include such providers is unlikely to be workable. Consequently, consumers will no longer have the option of resort to a clearly-identified "safe island" represented by services which are supervised by a recognised self-regulatory body. User interests will be protected only by laws which cannot be effectively enforced in an environment populated by thousands of service providers - many of them outside the EU.
- Unclear definitions and overlapping obligations in the same proposal threaten to create a distortion of competition between broadcasters and on-demand providers, compromising the latter's ability to supply low-cost or free programmes which do not have their integrity compromised by advertising breaks or product placement. More specifically, the proposal fails to consider that the viability of traditional 30 second spot advertisements will be limited in the on-demand environment. Much commercial communication is instead likely to consist of content items which are not linked to specific programmes in on-demand catalogues, and which can only be viewed by users who actively choose to do so. Such content items will typically be much longer than spot ads on broadcast TV, thereby risking classification as "programmes" and prohibition under the draft Directive's provisions on product placement and sponsorship ■