

Broadband Stakeholder Group

**Cross-industry UK response to Public Consultation
on Content Online in the Single Market**

13 October 2006

Background

The Broadband Stakeholder Group is the UK government's advisory group on broadband take-up and services, and represents the views of over 400 players, large and small, across the UK broadband value chain¹.

While BSG has co-ordinated this paper, the response has been written in consultation with a wider range of industries involved in the development and distribution of online content in the UK, including content players in the music, games and publishing industries via the Digital Content Forum², broadcasters, ISPs, mobile operators, telecommunications and technology companies.

Many of these industry sectors, as well as individual companies, will be responding directly to this consultation and this paper does not attempt to summarise or represent any of those responses. Instead, the aim here is to complement detailed, sector-specific responses by offering a converged, cross-industry view from the UK on the issues raised in the consultation.

The topics covered by Content Online are wide-ranging, complex, contentious and, above all, crucial to the future success of UK and EU content businesses. As such they inspire lively debate and mean that unanimous views on the issues do not always exist. However, we have found it useful in the UK to consider these issues from a cross-industry perspective, and to identify commonalities and agreement where they exist – a process that has been supported by the UK government. It is on this basis that we offer this primarily strategic and top-level response to the question of how the EU can best support these emerging industries, rather than answering each question in detail.

Introduction

The creative industries are vitally important to the UK – representing 8.4% of GDP and growing at twice the rate of the economy as a whole³ – and as such we strongly welcome the Commission's interest in this area, as well as the opportunity to respond to this consultation. It is in the interests of all EU citizens that online content industries are able to evolve and become more competitive in an environment that stimulates growth and attracts investment. We are committed to achieving these goals within the context of the i2010 and Lisbon agendas and welcome the

¹ For more details see www.broadbanduk.org

² For more details see www.dcf.org.uk

³ <http://www.ukinvest.gov.uk/2/d/10028/en/GB/1.0.html>

Commission's aim to capitalise on convergence and reap the full value of the emerging market for online content.

As the consultation document identifies, the rapid emergence of new content and services has presented consumers, government and industry with both opportunities and challenges, which will need to be overcome if we are to take full advantage of the digital opportunity. Challenges in the guise of piracy, the development of interoperable DRM systems, the creation of workable business models and the establishment of effective pricing and payment systems, for example, are being tackled by companies and industries on a daily basis, as other consultation responses will illustrate. However – and this is the key point this document wishes to make – we advise that DG InfoSoc shows restraint in attempting to solve these problems through new actions and initiatives at EU level, at this stage. These issues are already being dealt with through a combination of industry, member state and EU actions and/or reviews. While ongoing EU support for industry-led initiatives in the form of research, dialogue, information sharing and finance, for example in the battle against piracy, is welcome, we warn that additional EU intervention may be inappropriate at this time. There are three key points supporting this conclusion:

Key points

1. Allow the market time to develop its own solutions

Digital content markets are evolving and unpredictable, with new content, formats, distribution platforms and business models emerging and disrupting the status quo on an almost daily basis. As such, massive paradigm shifts in market dynamics are taking place, with structures, partnerships and interdependencies in flux. It is as yet unclear which approaches will be successful, and which new entities might yet emerge as key market players.

Such fundamental shifts and rapid developments have undoubtedly resulted in the emergence of a series of bottlenecks and obstacles, as companies take time to understand the new marketplace and find appropriate solutions. While there may not yet be agreement about how best to overcome these obstacles, there is strong consensus that the market, in the first instance, should be allowed time to develop its own solutions. It is also important to bear in mind that while this consultation process will produce a useful snapshot of the market, this is a market that is evolving at lightning speed. Many of the problems that will be cited may well prove to be transitory and will be resolved as part of the normal process of innovation and development – after all it is as much a commercial imperative, as a public policy one, to find a way through.

The dangers of prematurely formulating central policies and regulation, rather than allowing them to develop organically from within the marketplace, are serious. Not only will it deter and distract industry from developing its own solutions, but the risks of imposing inappropriate solutions onto a market in rapid flux are high – any intervention is likely to shape the market and potentially cause distortions with long-lasting and undesired consequences.

2. Policy, review and initiative overlap – the need for better regulation

As the breadth of the consultation document demonstrates, the issues pertaining to the online content market are inter-related and wide-ranging, and so it is essential to consider EU policy implications in the round. However, we are aware that many of the questions raised in the Content Online document are already being addressed or reviewed elsewhere, both at EU and member state level. At present, the following EU activities have a bearing on the online content industries:

- Review of the Television without Frontiers Directive
- Review of the EU Regulatory Framework for electronic communications networks and services
- Review of the Copyright Acquis
- Review of the E-money Directive
- New Framework for Payments Directive
- Imminent review of the eCommerce Directive
- Potential review of Satellite and Cable Directive
- Public consultation on child safety and mobile phone services
- Commission recommendation on collective cross-border management of copyright and related rights for legitimate online music services

On top of EU initiatives, member state activities must be added. In the UK, the Gowers Review is in the process of a fundamental review of the UK intellectual property framework, for example.

The digital revolution has forced stakeholders to reassess the political and regulatory approach to the converging industries and means that the debates surrounding these policy and legislative processes are complex and the outcomes particularly significant. The majority of these activities are yet to be completed, and the effects they will have on industry are, in the main, unknown. With the principle of Better Regulation in mind and in order to avoid confusion and duplication, we therefore advise that DG InfoSoc allows existing activities to complete and monitors their effects before considering taking further measures.

3. National vs single market solutions

The consultation document seeks to establish where the EU can take added-value actions in this area, but we would like to question the assumption that challenges facing the online content industry ‘can be best addressed at European level’ and believe instead that the principle of subsidiarity be applied.

Firstly, where obstacles do exist, there is little evidence to suggest that they result primarily from an inability to take advantage of the single market. As illustrated in point one, they are largely as a result of the rapid changes taking place at industry level, and therefore single market interventions may be inappropriate.

Secondly, it is not clear that EU level solutions are necessarily desirable or practical in each case. While a pan-European (as well as global) market for online content clearly exists, the factors determining the competitive success of the online content market – including infrastructure, cultural tastes and mores – are national in the first instance, meaning that issues such as content rating are most appropriately dealt with as close to the citizen as possible, at Member State level. Attempting to find one-size EU level solutions to national problems may prove at best ineffective or at worst damaging.

We therefore recommend that in attempting to add-value, DG InfoSoc looks first to supporting the resolution of barriers to progress at a Member State level, before considering whether a European level remedies are is appropriate.

Summary

In summary we strongly welcome the Commission's interest in this vitally important and rapidly developing market, and endorse the engagement with industry, through consultation. As we have outlined, the rapid evolution of the online content market means that a large number of obstacles to progress and issues are likely to exist. However, we strongly advise against DG InfoSoc taking new, additional actions to attempt to address these issues while activity within the marketplace and by member states and other parts of the EU is underway. Instead, we recommend that DG InfoSoc continue to monitor and maintain a dialogue with industry in order to understand the marketplace as it undergoes these fundamental developments.

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