



24 October 2006

CABLE EUROPE response to the Public Consultation on Content Online in the Single Market

Cable Europe (The European Cable Communications Association) is an association of cable operators and their national associations active in Europe. Its main objective is to foster co-operation between cable operators and to promote and represent their interests in European, national and international fora. Cable Europe members have more than 55 million subscribers. They offer a variety of services including digital TV, interactive services, VoIP, and on- and near on-demand video services in addition to their more traditional analogue TV offer. Cable Europe therefore welcomes the Commission's consultation on Content Online in the Single Market.

As a general remark, Cable Europe would like to stress its concerns about the scope of this exercise. Online seems to refer to the internet environment (IP technology) exclusively without taking into account other interactive platforms, in particular Interactive Digital Television (iDTV) services offered over cable networks based on DVB technology. Content services offered over other interactive platforms are in direct competition with content services offered over the internet. The challenges and problems faced by these platforms are similar if not identical.

This is why Cable Europe requests that the Commission clearly states that "online" is used in a technology neutral manner.

Below are Cable Europe's answers to questions that are relevant for the cable industry business:

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.)?

Cable operators offer a variety of services online to their subscribers. The depth and breadth of cable services vary across countries. In general, cable operators can offer:

- Interactive Digital TV (iDTV): On demand TV, On demand movies downloads, Games, ringtones, photo albums, music, Live sports, TV guide
- Broadband Internet services via PC:
 - Streaming linear broadcast channels similar/substitutive to analogue and digital TV services;





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- TV on demand (PCTV), and on demand movies: these products are online rental services offered by the cable operators including films, series, music concerts, radio- and television programs.

One important difference with the offline offer is that the customer has the right to watch the rented movie unlimitedly within a particular timeframe (the rental period).

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.

Yes, with reference to our general remark above, Cable Europe believes that content services based on DVB technology should also be included within the scope of the Communication. User Generated Content should also be included.

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, the present environment is in general conducive to developing trust in and take-up of new creative content services online:

From the operator point of view, key to the take-up of new content services online is of course the consumer experience:

- The objective of these services is to be adopted by the masses: There should be an easy way to browse, to order and to consume the offered content on the big screen. This "easy way" by preference should be operated by a "simple" remote control;
- The quality of service needs to be guaranteed;
- The library of content has to be very large; one should be able to offer virtually every movie.

Concerns:





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- The low Broadband penetration in some countries holds back the development of broadband content due to the small size of the market;
- There is still reluctance, although slowly getting better, from the consumer to purchase online and to use credit cards;
- The speed of the development of these services is sometimes too fast for the mass market consumers and they can feel overwhelmed by the variety of choices;
- Some content owners are reluctant to make their content available due to concerns about possible piracy (examples include live sports rights and certain movie download rights), which also results in lower overall take-up from consumers;
- There is an issue of liability for intermediaries: cable operators offer pure bundling, transmission or reselling of content for which third parties bear the editorial responsibility. This cannot result in any liability on intermediaries such as cable operators given they have no influence on and therefore no control over such content.

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?

We do not believe a privacy issue is at stake and legislation on data protection, user rights are well observed.

With the new services, consumers have a wider choice not only with respect to the timing they will access the content but also with respect to the variety of content offered. Obviously, access to information has increased with the roll-out of new services.

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?





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The advent of broadband access as a mass market technology provided through multiple and competing open platforms is creating opportunities for new multimedia and content revenue-generating services, thus adding value to the current business models often limited to selling broadband connectivity. It is foreseen that a much broader range of applications and services will become available as the market matures and broadband connection speeds increase.

However, the full potential of the IP platform is just starting to be realized by cable operators with the offering of IP based TV services. Using the IP platform enables cable operators to offer a whole new range of interactive TV services. In the upcoming years, the importance of IP based TV (IPTV) technologies is expected to gain ground compared to classic TV distribution platforms, not only for DSL operators but also for cable operators. By the end of 2010, fully integrated, IP based network platforms are expected to establish themselves as the market standard. However, IPTV also exposes cable operators to a new competitive environment and shifted dynamics, which will be explained in detail in the next section.

The European TV and electronic communications market is on the brink of a radical transformation. Major technological changes such as the increased digitization of TV and the emergence of integrated IP platforms contribute heavily to the development of new business models. The role of the cable operator shifts from being a basic infrastructure provider towards being an integrated supplier of TV, Internet and telephony services (Triple Play). The internationalization of cable operators will increase the industry's ability to reach a critical mass of subscribers. New competitors, such as DSL providers, are emerging and offering comparable product bundles. Differentiation amongst our competitors will create large and diverse content offerings. To stay competitive, cable operators will invest heavily in the creation of new platforms, especially IPTV over cable (PCTV). Within the next five years, a total investment of 20 billion € is to be expected solely within western European cable markets.¹

To be able to offer a range of new and innovative broadband services such as digital TV thereby creating new global opportunities for Europe, cable operators need to invest in order to effectively compete with other infrastructures platforms. Their investments in new services should therefore be encouraged by adequate regulation based on a technology neutral approach.

Cable Europe and its members are involved in the deployment of set-top-boxes (STBs) and set-top-boxes with a hard disc (STBs-HD) or Personal Video Recorders (PVRs) that have been manufactured both inside and outside the EU. Applying levies to new multi-function devices such as STBs with embedded PVRs, to cable,

¹ Based on Solon calculation and Euromedia numbers, Solon Management Consulting, "Economic Impact of Copyright for Cable Operators in Europe", May 2006





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and potentially to broadband access products would significantly increase the purchase price of these products and impede the further take up of digital TV.

Cable operators see a wealth of opportunity to develop new content services in the changing technology environment. For example, cable operators are key facilitators of Over the Top Services (OTTS) and these services are open to all cable customers.

At the same time cable operators need to look for opportunities to cooperate with OTTS providers and also to develop their own offers. Key areas of interest for cable own offers are live sports, movies (both streaming and on demand), multi-media teleshopping services, user-generated content and multi-media propositions around music and children's content. Our members believe they should concentrate on multiple platform content, which offers consumers the possibility to subscribe to certain content and to access it through different media (internet, mobile, TV, car navigation systems).

With respect to the question of internationalisation, the decision to offer services at national level or at broader scope is based on a business initiative. However, several barriers have been noted by our members e.g. for PCTV to expand from a home market to "Europe": linguistic barriers (cost of translating); different legal frameworks; regional organisation of content licensing.

This hampers the establishment and functioning of the internal market for content services;

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 approach of the European Commission to encourage availability and take-up of broadband allowing consumer to access new kinds of creative content everywhere and at any time, demands strong requirements to the enabling technology platforms. Broadband cable systems already today support fundamental challenges for convergence as defined by the Commission such as speed, rich and diverse content transport capabilities, interoperability, and security. Although there does not seem to be real barriers for the consumption of content online via cable technologies, the full implementation of new business models will require cable operators to evolve further and to continue to invest heavily in their network architecture.

Cable customers are able to consume very sophisticated and creative online services at cable enabled locations. To extend the services to everywhere, other transport media have to be integrated into cable systems. Technology convergence has to proceed for instance between cable and wireless networks at various network and application layers as well as in the back office





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etc. Initiatives focusing on related developments are in progress. With the general acceptance of the Internet Protocol as the underlying transport protocol, various other protocols are in the process of being harmonized for convergence purposes such as SIP (Session Initiation Protocol) and IMS (IP Multimedia subsystem).

However, cable network capability might still need to adapt to increasing demands from content providers.

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?

Always, the right balance needs to be found between the cost of securing content and the price consumers are willing to pay. The main difficulty in securing revenue is that the same content can be available for free elsewhere. Release windows can also have an impact on securing content. Cable Europe considers that the release windows are a major barrier in limiting the commercial appeal of cable services versus the upstream legal and illicit retail options (see question 17).

Furthermore, it is essential that cable operators retain the relationships between end users and e-commerce providers, such as OTTS operators. There is a risk that if cable operators only store the content provided by e-commerce or OTTS providers, the transaction will be between this provider and the end-user and cable operators will not get revenues at all.

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?

Cable operators already use different payment systems such as telephone/SMS payments, buying credits, billing, credit cards, debit cards and specialist Internet payments such as Ideal. The cable industry considers that such payment systems could be improved:

- By generally improving confidence of the consumer in the security of payment systems;
- By a broader take-up of specialist internet payment systems;
- By increasing the maximum fee allowed for SMS and premium rate telephony;
- In this context, the SEPA (Single European Payment) proposal from the Commission addresses many of these issues and is welcomed by the cable industry as a strong positive proposal in support of liberalising payment mechanisms and injecting much needed competition to the traditional banking sector for the provision of e-money services. As the number of





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channels for remote electronic sales proliferates as the convergence effect continues to be felt, increasingly competing payment provider options will be integrated into these new platforms. These payment options will need to benefit from pan European licensing and accreditation if content is to be consumed and paid for across a range of platforms;

- Whilst we recognise the need to ensure consumer confidence in the security of all available online payments options, it is vital that the principle of technology neutrality applied in the context of the SEPA proposal does not place onerous and intrusive consumer information requirements so as to render their introduction more complex and burdensome than necessary. The principle of technology neutrality must be applied in the correct manner.

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

Cable operators are using pay per view or monthly subscriptions, payment by event or through monthly bill.. We do not consider that these systems need to be improved.

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?

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 growing complexity and multi-territory nature of the European cable business does not sit comfortably alongside today's Regulation on Copyright and Collective Management. The actual clearance system as provided by the 1993 Satellite and Cable Directive (SATCAB) is still organised according to the old market situation where cable only retransmitted analogue TV services.

Under the SATCAB Directive, broadcasters who choose to distribute their channels across national borders within the internal market can clear the rights for satellite distribution or distribution on the public internet either directly with the producers or with the musical rights society in their home country. However, if those same





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broadcasters also want to have their channels distributed via cable in different Member States, they need to clear the rights in every single Member State.

This kind of discriminatory treatment should be avoided in regard to new markets in which platform operators, using different technologies, but all offering on demand services to consumers, compete with each other.

Given all these elements of discriminatory treatment, the cable industry is urging the Commission to review the SATCAB Directive and the general framework for collective management.

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?

Cable Europe considers that many issues raised in the Content Online debate are also being addressed or reviewed elsewhere, e.g in the framework of the review of the Television without Frontiers Directive, the review of the Regulatory Framework for electronic communications services, the imminent review of the e-Commerce Directive, the potential review of the Satellite and Cable Directive and in the Commission Recommendation on cross-border collective management. We would urge the Commission to take advantage of this opportunity to use the Content Online initiative to bring greater coherence to these ongoing legislative review processes.

- Cable Europe considers that the current Collective Management system is one of the most important impediments to the development of creative online content and services (cfr. Supra). Cable operators would like to see more efficient rights clearance systems involving the least possible number of transactions. This means that providers of content services need to clear all rights (they know which rights they are going to use and consequently, which rights need to be cleared and what the value of those rights is) before the services are transported to the end-customer via a platform operator. This is already the case today for satellite operators.
- Cable Europe members feel a real threat in the access to premium content. Many countries face strong vertically integrated content editors/providers willing to oust them from the content distribution business be it offline or online. In France, since the merger of Canal+ and TPS, the group Canal+ owns 75% of the channels and the premium programmes. This leads to a weakened bargaining power of independent operators, such as cable, when purchasing content, and in turn creates an economic dependence on 'must have' content. For example, in France, Canal + refused to conclude a





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distribution agreement for its new Channel Foot+ with UPC Broadband and Foot + is now only distributed via satellite and ADSL. There is a similar commercial situation with respect to the HDTV programmes of Canal+, TF1 or M6 all of which are not provided on a transparent and non-discriminatory manner to all distributors, but rather on an exclusive basis to their own integrated distributors (CanalSatellite and TPS) and this via the satellite and ADSL technology. Cable Europe would suggest the Commission to consider ex ante regulation to allow all platforms to get access to premium content.

- Cable Europe also has some difficulty in agreeing with the Commission's assessment that new audiovisual media services need specific regulation to aid their market entry. Moreover, it should be made clear that pure bundling, transmission or reselling of content offers for which third parties bear the editorial responsibility as media service providers can not be included in the scope of any future revision of the television without frontiers Directive. As cable operators have no influence on and therefore no control over such content such a clarification is necessary. Cable Europe considers that such a new regulation would constitute a great barrier to the development of nascent content online services.
- Cable Europe's members are investing massively in the upgrade of networks and in the construction of new digital fibre networks so as to be able to offer a suite of new and innovative broadband services such as digital TV and are convinced that these developments will create new global opportunities for Europe. A decision relating to the classification of set top boxes resulting in higher levels of custom tariffs is clearly not supporting the above mentioned EU ambition. This could mean a significant extra increase in purchase price of these products necessary for the take up of digital TV.
- Lastly, Cable Europe fears that imposing a copyright levy on digital equipment and/or on broadband and infrastructure providers could delay the transition to digital television and slow down Cable Europe' massive investments in new services (cfr. Below). Cable Europe also considers that in general, no more levies should be imposed where effective digital rights management systems already exist.

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?





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Cable Europe considers that exploitation windows still make sense. It does not support geographical or language windows. However, exploitation windows could be simplified and standardized across the EU:

- Three windows would be sufficient: 1) cinema - 2) DVD, PPV, online, VOD, SVOD - 3) free to air;
- They could be standardized with fixed intervals between windows for all releases.

Indeed, eg in France, there is still a difference for films distribution between video rental and video on demand. The release window is 6 months after the theatrical release for DVD/Video retail rental and 7.5 months for video on demand.

Cable Europe considers that the TV windows in Europe, which is still lagging considerably behind the US, are a major barrier in limiting the commercial appeal of cable services versus the upstream legal and illicit retail options.

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?

In today's European market, there are a growing range of content offerings which need high quality and network distribution services, a business opportunity both network operators and service providers have a clear stake in. For its part, Cable Europe believes it is important to stress that cable operators have always efficiently managed different offerings over their network, so as to guarantee the best possible quality for all. Cable Europe is therefore confident that market dynamics will regulate this matter in a good way as the appropriate incentives exist on both the content and distribution side of the value chain.

Digital Rights Management systems (DRMs)

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

Effective DRM systems are widely deployed in almost all European countries and are increasingly providing a secure and controlled exploitation environment through which legal copying and re-use of content is facilitated and rights holders remunerated. However, Cable Europe considers that if levies would be imposed on





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top of these existing DRM systems, any legal user would have to pay for other users who act illegally; the price to access fast Internet technologies would increase to the disadvantage of the European consumer and this would hamper the development of new services as targeted in the Lisbon Agenda.

It is important to recall that levies were designed for pre-digital environment and to compensate for the private copying of single function devices such as cassette recorders and cassette decks, and were designed to be limited in time. Therefore, it is our opinion that levies are to be phased out in function of the availability of technical measures on the market place (i.e., not in function of actual use, but in function to the availability of the required technical measures). In our view, technological protection measures are 'available' if and to the extent that they can be realistically, and legally, applied in the market place.

Today's multi-function devices, including set-top-boxes (STBs), perform a much broader range of tasks and are the gateway for consumers to exploit the digital economy's potential. Hampering the roll out of these devices with levies designed for a simpler technology environment is an inappropriate policy response to copyright remuneration issues that are adequately dealt with via DRM technologies.

Furthermore, the introduction of a 'broadband levy' as being discussed in several Members States would pose a serious threat to the considerable investment cable network operators are undertaking to digitalise their networks. In particular we believe such new levies would hamper the penetration of broadband in particular in those countries which have a low cable broadband penetration in comparison with alternative infrastructures.

Given the above, the prejudice to the right holders of the activities of broadband cable operators is minimal, while at the same time, the imposition of a levy on broadband cable distribution would seriously hamper the penetration of broadband in Europe. We believe that it would be disproportionate and even unjustifiable given the above circumstances, to impose a levy on broadband cable systems.

In conclusion, any levy on either digital equipment or the broadband access as such would influence the roll out and provision of new content services. Furthermore, the success of new content services will heavily depend on the price the consumer has to pay. Any additional cost factor might therefore risk the acceptance of such new services by the consumer, in particular in those member states with a broad range of so called free TV services, i.e. where there is already a general reluctance to pay for any additional new services. Cable Europe is therefore logically in favour of a phasing out of levies.





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

A neutral organization that labels / qualifies the different DRM-systems would be a facilitator. Without such an organization, smaller developers of DRM systems have almost no opportunity to prove themselves.

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.)?

Public authorities should play the role of a facilitator; they should create an enabling environment for content online distribution and promote the development of more efficient rights clearance mechanisms.

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?

Cable Europe considers that many issues raised in the Content Online debate are also being addressed or reviewed elsewhere, e.g in the framework of the review of the Television without Frontiers Directive, the review of the Regulatory Framework for electronic Communications services, the imminent review of the e-Commerce Directive, the potential review of the Satellite and Cable Directive and in the Commission Recommendation on cross-border collective management). We would urge the Commission to take advantage of this opportunity to use the Content Online initiative to bring more coherence in the above regulatory instruments. (see above question 17).

Cable Europe would therefore suggest that the Commission conducts an impact assessment on all these directives assessing in particular their effect on the content online development.

This would allow the Commission to:

1. conclude whether these instruments are still adapted to the current market or not
and
2. provide a legal analysis on the coherence of these directives with each other (eg: why are different words and definitions used in these different directives to address the same issue: online/offline, linear/non-linear, communication to the public/making available to the public?)

Cable Europe would welcome if the Commission would share this impact assessment with all interested stakeholders.

