EBU Response to the European Commission's consultation on Content Online in Europe's Single Market

GENERAL INFORMATION

About EBU

The European Blind Union (EBU) is a non-governmental and non profit-making European organisation. It is one of the six regional bodies of the World Blind Union, and it is the only organisation representing the interests of blind or partially sighted people in Europe. EBU aims to protect and promote the interests of blind or partially sighted people in Europe. EBU currently has 44 member countries, each represented by a national delegation.

Right to access online content

Visually impaired people have the right to access the same content as everyone else, on the same terms and at the same time. They should be able to do so without the need for excessive amounts of additional skill and they should not need to spend vast amounts of money on extra software, hardware or training in order to access online content.

Recent advances in technology have the potential to significantly facilitate the exercise of that right. Online content and new technology in general create new opportunities for all people, including blind and partially sighted people. However, there is a need to make sure that this technology is accessible. To do so not only meets the rights of

blind and partially sighted people, but also increases the market for online content at a time when the European population is ageing and increasing numbers of EU citizens have age-related sight problems. Our responses below therefore concentrate on the issue of accessibility, and we have responded only to those questions which are of relevance to our constituency.

Because of the importance to people with sight loss of accessing written or graphical information, we naturally tend to focus on issues around electronic publishing. However, any on-line content can be barred to a potential user with sight loss if the interface is poorly or inappropriately designed. Thus music on line, films delivered via a cable or satellite on-demand service, e-mail via mobile phone, online applications (e.g. the Writely word processor), aggregation tools (e.g. NetVibes), collaboratively created and edited information resources (wikis), discussion forums or any number of other services must also be subject to scrutiny and audit by the European institutions in respect of their accessibility to people with sight loss.

QUESTIONNAIRE
TYPES OF CREATIVE CONTENT AND SERVICES ONLINE
For the preparation of this consultation, the Commission has identified the following types of creative content and services:
– **Audiovisual media online**
– film, television programmes, documentaries, news and blogs/vlogs, videocasts, series
online, sports online, etc.;
– Music online (music downloads, ring tones, video clips etc.);
– Radio online (for instance podcasting, radio programmes, news, sport, etc.);
– **Games online** (such as Massively Multi-player Online Role Playing Games);
– **Online publishing** (‘printed’ material/books/newspapers online, etc.);
– **Educational content**;
– **Other creative online services** (cultural information, etc.).

QUESTIONS

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:? Lack of interoperability between devices?

We do not believe there is yet enough demonstrable interoperability amongst delivery systems. This is especially important for people who have to use assistive technology. It is even less realistic for such people to use more than one access device or system. Equally, a product is not truly interoperable if it cannot be downloaded from, say, a PC to a specialist device such as a laptop with braille display.

There appears to be no legal obligation on retailers to indicate the accessibility status or security levels of e-books. Thus customers with reading related disabilities cannot know in advance of purchase whether they will be able to access the product.

Nor is there yet legislation to ensure that hardware such as digital television receivers or set-top boxes accommodate audio description or offer non-visual access to electronic programme guides or interactive services.

The European legislative framework can be slow to react to innovations, so that services run ahead of regulation. One example is that of new voice services using Internet protocols. These services are rapidly gaining popularity among both business and domestic customers, because of the savings they can offer. Yet they are not bound by the universal service obligations to which more conventional telecommunications services are subject. This means that they are not obliged to provide access to emergency services or directory information services, for instance. This may not matter where they remain an ancillary communications system, but as they replace other systems these issues gain much greater significance.

EBU welcomes the fact that, in the last few years, the EU has become a strong advocate for inclusion in the realm of ICT. Section 4 of the i2010 Communication deals with inclusion, and proposes a European Initiative on e-Inclusion for 2008.

The Commission's 2005 eAccessibility communication called for ICT to be made more accessible to disabled people. The June 2006 Riga Ministerial Declaration built on this further, recognizing the large "digital divide" whereby older people and those with disabilities are far less likely to use the Internet. The Declaration places particular emphasis on the accessibility needs of people with disabilities. It calls for a "coherent eInclusion approach within the i2010 framework" and for compliance with W3C web accessibility standards.

The EU must match these fine words with action.

For example, currently, the Television Without Frontiers Directive (also known as the AMS directive) is being revised. The Commission's eAccessibility communication refers to the need for digital television to be made accessible for disabled people, and there have been calls from disability organisations and the European Parliament to incorporate this need into the AMS directive. Despite this, the December 2005 Commission proposal to revise this directive omitted any reference to the access needs of disabled people.

It is important for the Commission to seize the practical opportunities it has as an initiator of EU level legislation if the aspirations it expresses in its Communications are to have any practical value.

The Commission should also continue to fund projects aimed at improving accessibility. The EUAIN project, based on partnership between publishers, industry, academia and service providers is a good example of positive funding support. The project will come to an end in April 2007 but the need for further work will remain.

exceptions to copyright protection to facilitate access to protected materials by visually impaired people.

The "Information Society Directive" (2001/29/EC) sought to harmonise certain aspects of copyright in the digital environment, but in fact failed to harmonise exceptions. We believe that there should be a mandatory requirement for exceptions to the rights of production, of communication to the public and of distribution which guarantee equitable access to published works by people with a reading related disability.

We have also already recommended to the Commission that the Database Directive be amended so that exceptions of this sort (optional or mandatory) can be extended to databases.

Arrangements or amendments to legislation also need to be made to ensure that material rendered accessible under a copyright exception in one jurisdiction can be transferred to other jurisdictions with comparable exceptions of their own. This is now recommended by the World Intellectual Property Organisation (WIPO) but as yet is not reflected in national legislation.

A second shortcoming with international law is the fact that the measures taken to counter circumvention of technical protection measures introduced by the WIPO copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 1996 are not matched by any provision to accommodate legitimate exceptions to copyright protection. The European Union Copyright Directive does address this issue in article 6.4.1 but gives no indication how the conflict is to be resolved; nor does it require resolution of the conflict for content made available via interactive digital services.

Hence, 25 solutions have been adopted by the 25 member states, with no trace of harmonization. Many of the legislative solutions have not yet been put to the test. The single market cannot operate properly if there is such uncertainty and inconsistency around the rights of readers with a disability and the responsibilities of publishers and content creators.

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?

Blind and partially sighted people are as interested as the rest of society in accessing new creative content services.

"For me being online is everything. It's my hi-fi, my source of income, my supermarket, my telephone. It's my way in."

Lynn Holdsworth, screen reader user, Web Developer and Programmer

The key issue for blind and partially sighted people is for online content to be accessible. Online content is often inaccessible due to a lack of understanding and application of the accessibility technologies and standards which are already in existence. This is evidenced both in the general lack of application of website accessibility standards and in the limited understanding on the part of some publishers as to how best to structure digital content files for efficient conversion into accessible formats.

The Web Accessibility Initiative (WAI) guidelines help to make the Web accessible to people with disabilities. EBU urges the Commission to do more in this field at European level to adopt the WAI standards and thus make online content more accessible. As the June 11th 2006 Riga Ministerial Declaration states, currently, only 3% of public websites in the EU are accessible. Private websites do not fare any better. With such low levels of access to websites, blind and partially sighted people cannot "take-up" these services to the same extent as their sighted peers.

One of the key determinants of accessibility is the tools used to create and publish online content. For example, most web pages are created by Content Management System (CMS) software that puts the page together by combining a page template with some content created by the content author. If the CMS uses inaccessible templates or outputs inaccessible or non-compliant HTML code, the resulting pages will be inaccessible. If the CMS does not prompt, or even worse, does not allow the author to provide accessible information, such as alternative text for images and other non-text

content, the resulting pages will be inaccessible. The CMS is therefore a major determinant of accessibility. Most digital content publishing uses similar tools. For example, eLearning systems are created using an eLearning CMS such as Moodle. Discussion forums are created using forum creation and management tools such as phpBB. Most blogs are created using a blogging tool such as Blogger. Many podcasts are created using podcasting tools such as Odeo. It is vitally important that these tools are capable of producing accessible content and that they support content authors in doing so.

An example from Ireland of practice that must be avoided is the Mobhaile website CMS developed by the Local Government Computer Services Board (LGCSB). The LGCSB are promoting this tool through local authorities for the creation of community or school websites and other online content. However, Mobhaile does not currently produce accessible websites, so none of the community and school websites being produced using it are accessible. Further, the Government have made it a condition of funding under the Enhancing Disabilities Services fund that any services presented online must use the Mobhaile CMS. This is ironic, since the recipients of these services are people with disabilities and the online content will be inaccessible.

Where the Commission or the governments of member states, either directly or indirectly, promote or support the creation of online content, they should stipulate or provide tools that are capable of producing accessible content. Where they undertake their own online activities, they should use such tools themselves. Where they fund online activities, the use of accessible tools and the creation of accessible content should be a condition of funding.

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)?

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. 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?

See response to question 27

27. Are the DRM systems used user-friendly?

A major problem with protection measures within DRM systems is that they do not only " *help to prevent unauthorised use*" as stated in the preamble to Question 25. They also help to prevent authorised use.

Blind, partially sighted and other print disabled people read electronic material by modifying the way in which it is presented, without modifying the content. They may do this through magnification, transformation into synthetic audio, or the use of a temporary, or "refreshable" braille display. In some instances the software with which to make these changes is incorporated in mainstream packages, but the most flexible and adaptable solutions are achieved via dedicated "screen reader" software. The term "assistive technology" is often used to refer to this form of access.

Digital rights management schemes, or the technological protection measures within them, can react to assistive technology as if it was an illicit operation. Thus, the DRM systems applied to e-Books and e-Documents can prevent access by people who use assistive technology to read the screen or to control the computer.

In those circumstances, the blind user is prevented from achieving the same degree of access as his sighted counterpart, or indeed any access at all.

A second problem can be the "disabling" of speech functions in a particular publication. While e-book readers may have the facility to reproduce synthetic speech, the rights holder can apply a level of security which prevents this from working. A person with sight loss can thus buy a book but find herself unable to read it.

EBU has been contacted by several people who have purchased e-Books from both major retailer and small publishers, only to find that they are unable to read them because of the way that the DRM has been applied.

For example, Lynn from London bought a Bible from Amazon, and found that the content was locked in such a way that she could not read it with her screen reader. She contacted Amazon who advised her to contact the publisher. Having taken this extraordinary step, she was told "there is nothing we can do about it".

EBU views this as discriminatory practice, as publishers are erecting barriers to access, however unwittingly. We do not believe there are commercial or technical reasons for this to continue.

This situation is in fact deeply ironic, since an e-Book can be a great way to make publications accessible to people who cannot read print. It is unsatisfactory and unnecessary because technology companies such as Adobe have actually taken steps to ensure that content can be protected and yet access still provided to disabled customers.

On a related note, security systems that control access by applying an automated Turing Test can also work to exclude people with vision impairments by imposing a visual exam which they cannot pass. These tests, known as captchas, are an increasingly common part of the registration procedure for online services and are included in order to block spambots and other malicious software agents from gaining entry by posing as human users. The test is often a visual one. The problem is that they assume that real humans will possess abilities such as full sight, so vision impaired people end up in the same category as software robots and access is denied.

Please see annex 1 at the end of this response for a more detailed technical analysis of the issues.

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 can be a problem for blind and partially sighted users who might wish to make an accessible copy for personal use of a legally acquired publication. We have elaborated on this in response to Question 27 above.

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

It has so far proved impractical to establish widespread standards in this field, either obligatory or even optional. It would be desirable to achieve more on this front.

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.)?

From our perspective, it is crucial for equipment manufacturers to adopt a "design for all" approach to equipment design, and to engineer accessibility into their products at their inception. Reengineering accessibility is both costly and time-consuming. A well-designed piece of software which incorporates accessibility considerations combined with accessible online content facilitates access for blind and partially sighted people. Accessible design also increases the size of the commercial market for online products.

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.)?

There are various things that governments can do to strengthen inclusion. Requiring that all publicly procured ICT products be accessible for disabled people stimulates the market in accessible ICT products and improves the accessibility of publicly available ICT and websites. National and regional governments can also promote the use of WAI and accessibility technology. In all cases governments should consult and work with technical experts from disabled people's organisations to ensure that the needs of disabled people themselves are reflected in the end products.

Anti-discrimination legislation also has a role to play. For example, treating disabled people less favourably by refusing to design your web site in accordance with basic accessibility guidelines is clearly discriminatory and should be addressed ultimately through the law.

National governments can also foster new business models by funding feasibility studies and pilot projects. In the UK, for example, publishers and the voluntary sector are working together on the feasibility of new business models which could bring about a marked increase in the number of titles readily and promptly available in accessible formats. This work could proceed much more rapidly if the Government would fund it. Otherwise, the work will remain indefinitely at an exploratory stage.

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?

Annex 1

The information below is drawn largely from "Accessing and Protecting Content", by Garnett, White and Mann, a report prepared during 2005 by EBU within the European Accessible Information Network Project, www.euain.org, funded by the European

Commission. The information was, to the best of our knowledge, accurate at the time of writing, mid-2005.

Both Adobe Security and Adobe DRM can be configured to restrict the use of access tools such as screen readers. Typically, a commercial document or e-book in PDF format will have all accessibility features disabled. This is not the default position but is easily and most often selected by commercial publishers.

Microsoft e-book reader sells most of its titles with an "owner exclusive" level of security. In addition to having this "anti-piracy" function, the Owner Exclusive book also has use restrictions that apply to the legitimate owner of the e-book. In particular the text-to-speech capability that is built into Microsoft Reader for accessibility purposes is disabled. Similarly, "Owner Exclusive " limits use of the product to one device, which prevents a visually impaired user from downloading from a desktop PC to a more congenial device such as a lap top braille notetaker.

The objective of applying DRM to a piece of content is to define and implement the rules for the access to and use of that content. To achieve this, the DRM system has to operate in a controlled and trusted environment in which it is able to control all the options available to a user of the content.

This control requirement extends to accessibility tools – and explains the problems which have arisen in a conflict between DRM and accessibility. The Microsoft text to speech (TTS) synthesis tool has a broad functionality which is also incorporated in the Adobe Acrobat Reader. As a tool it is considered to pose a threat to DRM controlled content because of its broad functionality and because it does not connect in a trusted manner with the DRM system.

This is why the DRM system in the Microsoft e-Book Reader application blocks the use of the TTS tool when the DRM is configured to manage the rights in premium (commercial) content. This was originally the default position with the Adobe Reader.

There are essentially two ways in which this problem can be addressed. The first is to set up a system where the DRM mechanism

is able to recognise a trusted accessibility tool and then unblock access to content for that tool. The second way is by devising instructions, expressed through the rights expression language, which are available to authorised users of trusted access tools.

Adobe has already initiated a program incorporating the first approach. The DRM system used in the Adobe reader is now able to recognise and establish a trusted relationship with at least 2 accessibility tools (Window-Eyes and Jaws screen readers). Allowing access to DRM protected by content is now reportedly the default position of the reader.

The effect of this trusted relationship between the Reader and the accessibility tools is that access (including text to speech) can be facilitated without in any way derogating from the security level applied to the content generally (e.g. no printing, no altering, no saving to alternate formats).

To achieve this relationship, third party applications are submitted to Adobe for testing the security and compatibility issues. To quote from Adobe's Loretta Guarino Reid, in a response to an enquiry from the EBU "Techies" e-mail list dated 15th December, 2005: "Our solution depends on a special mechanism that vendors can use to identify themselves as trusted clients. To implement this properly really requires suitable operating system support to provide a secure channel to trusted client programs, and a good mechanism for validating the identity of the client program."

Thus the feasibility of access to Adobe DRM through assistive technology has been established, but effective realisation remains protracted and by no means universally rolled out.