

## 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

#### 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.)?

**A: Yes, we offer certain services such as on demand TV service, email, ecommerce applications.**

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.

**A: No.**

#### 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.

**A: The main concern regards lack of interoperability (i.e. set top boxes )**

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?

**A: Yes, user rights are well protected by existing national regulation.**

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?

To favour a better distribution of digital contents, alternative platforms should not be discriminated when content is allocated to distributors, and exclusivity rights should not apply for premium contents so as to enhance the competition between infrastructures not relying on monopolists position on content rights.

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?

### **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.

Convergence has generated a number of new issues:

#### **Open vs. closed relationship between networks and content providers:**

An open network model, enabled by interoperability, shows clear advantages:

- Customers can choose independently the best network and the best content;
- Separation between content production and network operations allows telecoms and media to focus on their respective core skills;
- Reduced barriers to entry allow for more pluralism in television and content offer.

But collides against established oligopolistic interests:

- Broadcasters may perceive a dilution risk on their audiences (e.g. on demand + PVR) and block the distribution of their content on new technological platforms.
- Incumbents may use exclusive agreements with important content providers as new barriers to entry against new telecom operators.

### **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?

We have a national scope of activities and currently we do not plan to deliver European wide services. In any case, current protection of contents does not seem to favour wider than national distribution.

#### **Digital vs. Traditional distribution of content:**

The power of digital distribution has just started (e.g. iTunes) to be recognised in the interest of the consumers, the majors and the telecom operators. Nevertheless, important barriers still persist:

- Unfavourable time windows vs. traditional distribution which perpetuate inefficiencies;
- Most favoured nation clauses;
- Multi-platform exclusivities;
- Holdback clauses against digital distribution in favour of traditional distribution;
- Content remuneration, which is not proportionate to customer base and usage patterns of new platforms.

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

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

Main concern regards lack of full interoperability of devices: that might strengthen the position of incumbent operators, thus jeopardising better and wider distribution and innovation.

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?

Cost to acquire contents' rights should be related to customers enjoying the final service and not be set as a barrier to entry for alternative players. To secure revenue stream a regulation on the rights owner could be set to forbid discrimination and predatory practices.

### **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?

Post-paid, based on billing and invoicing.

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

Subscription fees, pay-per-event (view, play, etc.).

### **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?

Wider geographical scope could further empower the dominant players, as it would require stronger financial capacity to acquire rights, thus excluding new comers, alternative players, specially where this might happen lacking a strong promotion of competition and ex ante measures on rights owners.

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?

We need a “One stop Shopping solution” for copyright licensing

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.)?

**A: We believe that revenue sharing seems an appropriate method for compensating rights owner, at the same time, we fear that incumbent operators might enjoy a too strong purchasing power**

### **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?

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

### **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?

Yes, we suffer the application of release windows to deliver service to our customers, and this situation seriously hinders the possibility to compete for the distribution of products with other platforms. We believe that no windows method should be applicable in distribution of contents, so as to favour new media development.

### **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?

We are strongly against any discrimination of contents on networks.

The market will not autonomously generate a competitive system that allows non-discriminatory access to content.

A regulatory framework is thus needed to grant non-discriminatory access to content during the transition to a full convergence:

- No discrimination between platforms, such as different time windows for equivalent services or different price for the same performance on different *bearers*.
- Introduction of the principle of must offer for free-to-air television coupled with must carry, especially in those countries where cable TV is not very developed, in order to encourage the development of the new broadband networks.
- No exclusivity or holdback or other equivalent clauses such as the imposition of very high minimum guarantee which correspond to a plain refusal to deal.
- Proportionate content remuneration.

### **Piracy and unauthorised uploading and downloading of copyright protected works**

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?

We believe that piracy is reducing as lawful content distribution grows.

Fastweb adopted these actions in order to block piracy and unauthorized uploading:

1. Based on e-commerce EU Directive and Italian law decree 70/2003 provides for, adopt all activities aimed at blocking abusive electronic distribution of illicit material so that a secure digital environment is created; In particular, pursuant article 17, par. 2, of d. lgs. n. 70/2003, the ISP must promptly inform public authorities of any allegedly infringement of copyrights by its clients, but it is not entitled to terminate the contract upon request of the copyrights owner.
2. Define termination or suspension clauses in the contract, which can be applied in cases of ascertained copyright violation; Fastweb has inserted in the contract with final clients a clause according to which any time a criminal procedure towards a client for copyright infringement is decided by the Judge according to article 429 of Italian criminal procedure code, Internet service will be suspended until a final statement will be adopted by the Court. Italian Internet service providers are allowed by law to terminate contracts entered into with the clients and/or to suspend them only if (and subject to) a copyright infringement has been ascertained from a penal Court or at least a precautionary injunction has been issued from a judiciary authority

In the light of the above, it is our opinion that, according to Italian law, internet providers are not entitled to terminate internet service providing to its clients before a judicial deed stating that a copyright infringement is occurred.

However, in order to anticipate the final statement, FW could decide (and promise WB) to suspend the service at least when a criminal procedure vis a vis its client is confirmed by a deed of Giudice delle Indagini Preliminari (GIP) pursuant article 429 of Italian Criminal Procedure Code (“decreto di rinvio a giudizio”).

The “decreto di rinvio a giudizio” can be considered a kind of “measure coming from judiciary authorities” for the purposes of article 6, par. 2, of the Sanremo Agreement. Therefore, the Internet Service provider could lawfully insert in the contract with final clients a clause according to which any time a criminal procedure towards a client for copyright infringement is decided by the Judge according to article 429 of Italian criminal procedure code, Internet service will be suspended until a final statement will be adopted by the Court.

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?

We believe that piracy can be defeated matching the niche demand for certain contents at certain (low) costs. Information campaign are useful to the extent they also inform final users of the lawful possibilities to access the demanded contents.

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?

Depends ultimately on the specific technology adopted. In principle, yes.

### **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 **No**, rating help player to ensure its customers are protected from unwanted material and it helps maintaining a high quality of service for final users.

### **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?

Yes, we adopt DRM technologies to ensure the contents delivered on our network are protected.

The question arises when distribution of contents is conditioned to the adoption of several different DRM systems, and imply high costs borne on distribution.

When licencing a content, the adoption of an appropriate DRM solution should be a responsibility of the licensee.

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?

**A: Yes.**

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?

Yes, DRM is needed to provide VOD and the systems have no impact at all on the user experience.

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?

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

There is a lack of interoperability. Every major request different DRM.

### **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?

Not applicable.

### **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.)?

### **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.)?

NRAs should ensure that dominant players and copyright owner do not discriminate among platforms and ensure a fair and competitive environment to promote infrastructure competition and not the reassertion of dominant positions or the risk of extending dominant positions in emerging markets.

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?

A: Specific regulation should ensure that no emerging/alternative platform is discriminated .