

Contribution of France Telecom Orange Group to the Public Consultation on Content Online in the Single Market October 2006

Executive Summary

France Telecom Orange Group operates in content online and considers this area as a key segment of its strategy “Content Everywhere” to promote editors and energise the presence of content providers of all kinds.

So, we would have expected notably a clear direction given through this consultation with at least a clarification of the scope instead of the ambiguous use of the term “content” as an all-encompassing notion which is a real matter of concerns at this stage. Especially, this consultation is supposed to feed a Communication expected for December, a very tight deadline.

This area is characterised by emerging trends with a great eruptive potential.

France Telecom Orange Group as a new player in these markets, would support the following actions:

- to ensure the access to legitimate digital content/ channels and fluidity of rights, by putting real pressures on major traditional and/or local monopolistic content players,
- to grant a maximum of flexibility for the new stakeholders in the markets of digital media platforms in order for them to be able to invest in a fair and comprehensive legal environment – the proposed extension of regulation to non-linear content is unnecessary and disproportionate and could stifle innovation in the development of new services in general and new business models linked to advertising in particular,
- to leave the question of interoperability to the market in combination with a stringent application of competition law,
- to prevent national authorities from extending copyright levies or any new type of levy to digital equipment and media.

Introduction:

France Telecom Orange Group welcomes the consultation on content online but would like to raise several questions as an introduction to its contribution. First, we would like to remind that the France Telecom Orange Group has been active in this area for some time and believes this area of business to be a key segment of its strategy. Its strategy is to promote editors and energise the presence of content providers of all kinds supplying to our customers the services they are looking for.

We have some concerns with the use of the term “content” as the notion is too all-encompassing while being at the time rather vague. There is still a major difference to be maintained between say edited commercial contents and various mode of interpersonal communications (exchange of speeches, images, sound...). Although we understand that the two may overlap some time and the distinction may become blurred (for instance with self produced “contents”), it is important to still make the difference as the two aspects require different policy approaches. It is all the more important as the success of the new forms of distribution will rely on a specific balance between the two that is most likely to yield innovative business models.

We would have expected some accompanying material to clarify the scope and the questions. The consultation process lacks a vision. We understand that the consultation will feed a coming communication and that it is already taking into account some earlier debates and events sponsored by the Commission or the EU Presidency, however it would have benefited from some relevant working papers. This is in contrast with the Convergence Green Paper or even the public debate launched for the Review of the Television without Frontiers Directive.

Just to name a few emerging trends, according to the IPTS (Institute for Prospective Technological Studies), with a great eruptive potential:

- Search engines
- Blogs: world total estimated 50M Total number doubling/5 months
- Podcasting growth estimates for podcast usage: reach between 20 million and 80 million users by 2010 (eMarketer, Feb2006) .
- P2P: the fastest growing distribution protocol ever representing over 60% of Internet traffic now
- Games : growth mainly due to massive multiplayer online games
- Wifi sharing: the FON phenomenon, expected to be the largest « free » hotspot provider by the end of 2006
- Web based “social networking “: deep impact of social networking with many different purposes: community websites (e.g. MySpace), social bookmarking (e.g. del.icio.us), experience sharing, like photos (e.g. Flickr), business connections (e.g. LinkedIn)... or dating... Sites like MySpace, Bebo and MSN dominate the teenage market.
- Taste sharing
- Collaborative content : Wikipedia, Ohmynews (South Korea)...
- RSS : new distribution mechanism for information from web sites.

All these these trends are creating the conditions for a new experience in content creation, consumption, and distribution: sharing content interpersonal communications, personal channels: (My own TV, YouTube...). The user is becoming the supplier: « prosumer »:

- of content (blog, wiki, Flickr),
- of taste/emotion (Amazon, Delicious),
- of goods (eBay),
- of contacts (myplace)
- of relevance (Google pagerank),
- of reputation and feedback (eBay, Tripadvisor),
- of storage and server capacity (P2P),
- of connectivity (wifi sharing, mesh networks)

These changes are accompanied by low entry barriers and thereby promoting new and viable business models (e.g because of Google ads). It will help brand new players to enter the market.

We hope that the future communication will bring an EU vision of these new developments and that it will also provide some consistency with some other EU's initiatives, especially the planned review of the e-commerce and copyright directives. What is needed is a legislation that should accommodate the changes of the e-communications market. The EU's approach to media regulation must promote diversity and competition and facilitate the transition to any digital modes of delivery. In the fast-moving market of online services, self-regulation can provide a more efficient way of achieving policy objectives than regulatory intervention, giving market players the necessary flexibility to develop the most appropriate solutions to issues as they arise. It is vital that these innovative markets are allowed to develop freely, and that they do not become stifled by the imposition of burdensome and inappropriate regulation designed for traditional modes of content distribution. Any issues arising should be dealt with through, for example, competition law or general consumer protection legislation.

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.)?

Today France Telecom Orange Group acts as a distributor of content for the residential markets (also for European business) and provides a dynamic and innovative outlet for both commercial and self-generated content in Europe (mainly France, the United Kingdom, Spain and Poland) via its fixed and mobile networks.

Notably, France Telecom Orange Group offers TV and VOD services online and on mobile networks, knowing TV over mobile services are at a relatively early stage and are evolving rapidly.

At the moment, the type of content available is:

- Audiovisual media online such as:
 - o Film, television programmes, documentaries, news and blogs/vlogs, videocasts, series online, sports online, etc.;
 - o Music online (music downloads, ring tones, video clips etc.);
- Games online such as Massively Multi-player, Online Role Playing Games);
- Other creative online services (cultural information, etc.).

But one must keep in mind that an increasingly wide range of content – and means of accessing it – will become available over the coming years.

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.

The purpose is not to keep the scope of a future Communication growing without actually knowing what the Communication will involve.

As stated in our introduction, we are already worried by the growing use of the term “content” as a pretty all-encompassing notion, when there is still a major difference to be maintained from a regulatory perspective between say edited commercial contents and various mode of interpersonal communications (exchange of speeches, images, sound...).

So any concrete answer to this question would be both totally unrealistic considering the innovations currently at stake and in breach of the principle of minimum/ better regulation as promoted by the Commission.

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.

If there is a problem in the take-up of new creative content services online, it comes from the availability of legitimate digital content, which is directly linked to the lack of fluidity of new media rights and certainly not from the online nature of our services.

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?

The user rights are fully taken into account by the Data Protection and Privacy legislation which is implemented locally through Europe.

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?

The possibility to access and use all online content on several/different devices is very important to France Telecom Orange Group. Our strategy as regards the distribution of content services can be sum up by “Content Everywhere” or “Entertainment Everywhere” that is to say a strategy based on offering its customers access to a growing number of contents available on any platforms (ADSL, PC, mobile phone) and on any networks (fixed and mobile broadband networks).

However, taking the full advantage of the different platforms of distribution does not mean ignoring their specificities and the regulatory implications:

- Specificity of mobile platforms (UMTS, DVB-H, etc) :
 - the mobile consumption of creative contents – and in particular of audiovisual contents (films on line but also TV channels) – is characterized by an average length of viewing shorter than the one observed on fixed platforms,
 - the small screen size available
- ⇒ It means that the mobile phone is unlikely ever to become a substitute for viewing TV programmes on a “conventional” TV set. One is therefore entitled to conclude that mobile distribution of creative contents is complementary to the traditional modes of audiovisual distribution. The business model to be found for these services is specific and will probably in the long run remain so.
- Specificity of the on-demand services:
 - Control user : the consumer chooses the content and chooses the moment he wishes to view this content.
- ⇒ Before extending any existing obligations a thorough assessment is needed to consider whether the type of regulation applied to traditional “push” forms of content distribution are applicable to the on-demand “pull” environment where the customer increasingly determines his own choice of viewing., and when he views this content. The viewer therefore exerts a considerable degree of control.

Interoperability is the right answer to customers’ expectations in terms of:

- service continuity through different platforms,
- service complementarity between different platforms and,
- service individualization from a specific platform.

This is the reason why France Telecom Orange Group has always advocated an open model for all players, notably in terms of access control which is based on the idea of optimal interoperability among distributed services and competing access platforms.

We believe then the question of interoperability has to be left to the market in combination with a stringent application of competition law.

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?

The goal of fostering cultural diversity is a major one and remains valid notwithstanding the technology changes. However, it remains to be seen whether under changing circumstances the means to achieve this goal should not also be reviewed.

For instance, “quotas” were designed to promote cultural diversity but also as some kind of mandatory investment obligations for an undercapitalised/ heavily fragmented audiovisual industry. The question to raise now is: are such obligations still needed in a digital environment where the barriers to entry have significantly lowered, where new forms of creation and production are emerging and where not less significantly new powerful players are committed to invest to supply the content their customers expect?

And the answer is: no, the market should be allowed to work – a huge range of diverse material is now available for customers to choose from, to cater for differing interests and linguistic needs; and this market is constantly growing – so the artificial imposition of quotas would be likely to distort this market.

The legacy broadcasting model may not supply any further the adequate reference. The most frequently quoted “long tail theory” is bringing some arguments in the same direction. Besides, quantitative / time limits make little sense for on demand services and should not be considered an option.

In so far as content distributors can have access to the rights of audiovisual contents (films, series, documentaries, sports games, etc) – new contents but also back catalogue contents (such as library films) - France Telecom Orange Group considers that cultural diversity will be self-sustaining online.

As regards the circulation of self-produced contents, the high competition at work in the online world will be the best incentive for content distributors to answer their clients’ need for various means/channels to exchange their own creative contents (cf the present success of video blogs where contents are produced by European citizens and made available on services like MySpace or videoblogs). France Telecom Orange Group considers that a regulation of these services would certainly hinder the development of such activities, which are very important to the development and spreading of European culture and the support of cultural diversity.

As regards linguistic diversity, we feel that it is closely linked to both the availability of European works on national platforms and the possibility granted to content distributors to develop European platforms.

As a conclusion self-regulation appears sufficient to achieve cultural diversity online in so far as the European contents are available. So the only regulation that could be considered as appropriate would therefore be a legislation in favour of the lifting/the removal of the barriers in terms of content rights to ensure their fluidity and legitimate availability.

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.

If strengths and weaknesses of an industry have to be compared worldwide, the framework of this consultation is not the most appropriate. Actually, the consultation should have been focused then simply on the European content industry.

So, the online nature in addition of the European content matter doesn't bring any clarity but much confusion when looking at its worldwide competitiveness.

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?

Opportunities will be market-driven and we are constantly evolving our offering to meet the needs of the market, rather than listing the type of services we are launching now. As a company investing in emerging markets such as new media platforms, we request a maximum of flexibility in terms of regulation. And in this new area, we are currently facing difficulties to get access to attractive contents because of the behaviour of traditional media players.

For instance, in order to maximize profit, the broadcasters chose to develop their control over content distribution in general and are prone to negotiate TV rights globally. These rights are acquired directly or indirectly via the subsidiaries or societies they have control over.

The risk is therefore great that these traditional media players/actors may take advantage of their global dominance over content distribution to prevent the development of independent platforms. So, this behaviour may hinder the development of the new digital platforms (TV on ADSL, mobile TV, VoD).

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

Not 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.

One major issue is whether standards will arise. However, we consider that the market can produce the necessary desirable standards.

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?

France Telecom Orange Group is a new entrant in this area and as such wants to be able to develop new media platforms in the most appropriate way for all the stakeholders. So at this stage, we are not looking for a securisation of existing revenue streams but we request a fair, flexible and certain legal environment to secure our investments.

Payment and price systems

France Telecom Orange Group will answer questions 12 to 13 collectively.

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?

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

France Telecom Orange Group would like here to express its views starting from its expertise especially in mobile area.

Actually, the development of the market for mobile content has been assisted by the operators through the development of innovative solutions – allowing customers to pay for digital and online services delivered on their mobile handsets via their monthly mobile bills or prepaid cards. As new services are now emerging, such as “virtual tickets” sent to handsets permitting entry to e.g. pop concerts or galleries, new solutions will be needed in terms of mobile payment.

However, new proposals for legislation at EU level on payment services and e-money now risk jeopardising the development of this innovative market, by extending the burdensome requirements applicable to the banking sector to the very different environment of mobile services and payments. It is vital that operators have legal certainty in terms of their obligations in this area if the take-up of innovative payment methods is not to be slowed down.

More generally, content services such as TV are increasingly likely to be at least partially funded by advertising in future, allowing customers to access these services at lower cost or even free of charge. It is therefore important that policymakers allow maximum flexibility in payment systems for the emergence of new advertising models rather than imposing restrictive limits on advertising such as those in the current proposal for an Audiovisual Media Services Directive.

Licensing, rights clearance, right holders remuneration

France Telecom Orange Group will answer questions 14 to 17 collectively.

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.)?

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?

It is necessary to split answers depending on whether the “content” is related to an audiovisual work or music.

- For audiovisual works, France Telecom Orange Group deems it appropriate to improve accessibility of VoD and mobile rights.

Today, the issues are:

- absence of definition of rights/windows
- obsolescence of existing contracts
- lack of clarity in the ownership of rights for the distribution of programmes on VoD and mobile platforms.

Hence the difficulties in getting licences from content owners and clearance from underlying rights-holders.

Broadcasters should have incentives to identify/isolate the VoD and mobile rights of their back catalogue programmes when the VoD and mobile rights are not specified in the initial contracts (a lot of contracts of library films do not indeed isolate those rights for the sole reason that they did not exist at the period those license contracts were signed).

France Telecom Orange Group considers that measures that would facilitate the access to the back catalogue of European works would be indeed a way to foster the exposition of European works.

- For music, France Telecom Orange Group considers in order to achieve an effective pan-European mechanism of cross-border collective rights management, it is important to eliminate the inefficiencies in the process of obtaining music licenses covering the European territory. There is also a need for greater efficiency in the operations of collecting societies.

France Telecom Orange Group believes that the EU should address the monopolistic nature of the national provision of territorial licensing in the internal market. The current regime should be changed by a way more appropriate than a recommendation and as followed:

- Rights holders should be allowed to change collecting societies
- Reciprocal agreements between collecting societies should be mandated
- Licensing rates should be set by the collecting society from which the user gets their pan-European license.
- Users should be able to roll out a service once they have entered into negotiations with a collecting society.

With regard to the question of levies and right holders’ remuneration, France Telecom Orange Group believes in a converging market for digital content where technology is evolving at a rapid pace, the systems of copyright levies operated by a number of EU Member States are increasingly outdated and not suited to the digital environment. They cannot compete with

efficient DRM systems which allow customers to pay only for the digital content they wish to use and which allow rights holders to be correctly remunerated.

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

The French government has just launched a revision of the 1986 law¹ that regulates the audiovisual sector in order to encourage the development of “future television” : HDTV (High-Definition television) and Mobile Television on public sector networks/frequencies (DTT Digital Terrestrial Television for HDTV and DVB-H for Mobile Television).

The bill is to be discussed in the French Parliament this autumn 2006.

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?

The main priority of the regulation should be to ensure the access to the VOD and mobile rights by new digital platforms:

- The VOD window needs to be a separate, non-exclusive window that producers must be able to sell.
- The VOD window must not close as soon as the PPV window starts (or even the Pay TV window).
- The VOD window must have enough duration to properly exploit it and give it enough exposure to attract consumers.

There could be some controls to check *a posteriori* that windows are truly separated, independent from one another and paid for individually (separate contracts or at least identification of the VoD and mobile licenses, etc).

However it remains to be seen if such an arrangement is sustainable and still relevant in the long run in an on-line environment. Consumers and some artists are already paving the way distributing self-produced content directly. These new models would have to be taken into account.

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?

From a technological viewpoint, it is not correct to state that “all data moving around the system are treated equally”, various forms of “traffic shaping” have been around for quite some time (see the April 2006 OECD, working document on “Network neutrality: a Policy Overview” for an independent description of the technical procedures). Neither is it to refer to

¹ Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication

the rather vague notion of “net neutrality”. The basic principle of the Internet is the “end-to-end principle” combined with its openness.

First of all, the debate about network neutrality is highly confused and confusing and cannot be exported from the United States without some care. The right approach is to look at what’s really happening in markets to find the evidence needed for any substantive change in the EU policy, as already acknowledged by the Commission in its Communication on the Review.

France Telecom Orange Group’s vision of the market can be summed up as followed:

- Customers will benefit from a wide range of network services, applications or contents as numerous competing business models should and will appear,
- Such diversity must be promoted and is needed in order to deal with:
 - o The heterogeneity of customer needs and therefore the necessity of a broad choice,
 - o The high investments in access networks,
 - o The cost of bandwidth and of quality of service.
- Fostering the growth of smart networks is a key as illustrated by the new issue coming from the provision of services such as IPTV.

Under the guise of “network neutrality” a lot of attention is often given to access competition and on how to remedy potential market failures. However, access issues have been dealt with by regulators for quite some time in the EU where these markets are heavily regulated. NRAs appear to be monitoring the situation. Besides non-discrimination is a pretty well established regulatory principle enshrined in most OECD countries regulation.

It is worth noting that the Japanese approach combines the willingness to protect the consumers, a core principle which enshrines the notion of “net neutrality” in the US approach (the FCC’s statement of principles: a follow up of former FCC Chairman Michael Powell for “Internet Freedoms”) with the notion of “equitable cost distribution of networks”. The Japanese government recognises the need to upgrade the telecommunications network to cope with rapid increase in IP traffic as well as for a neutral cost-sharing model (see the draft Report of the Study Group in a Framework for Competition Rules to Address the Transition to IP-Based Networks, “New Competition Promotion Program 2010” of July 2006, Ministry of Internal Affairs and Communications).

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?

France Telecom Orange Group’s business in the field of new digital platforms is based on paid content offers – legal, secure and respectful of the authors’ rights. It is clear therefore that France Telecom Orange Group’s business model suffers from piracy, and in particular from online piracy through peer- to-peer networks.

France Telecom Orange Group has been an active player in the fight against piracy:

- In France, it played a pre-eminent role in the drafting of a common Charter in between content providers and distributors – Charter that promoted graduated/scalable response to piracy from warnings, to a fine and then criminal suit.
The setting up of this “graduated response” was too complex on the technical, legal and doubtless legislative field.
- On the European level, it has participated in the elaboration of the Charter “Film on Line” initiated by the Commissioner Viviane Reding. This charter allowed players to agree on ways to curb piracy.

As a conclusion, efforts should be made to fight against lucrative piracy and releaser pirates. Lucrative piracy is the engineering and reselling of CD or DVD on the basis of data downloaded from peer-to-peer networks. Releaser groups are the pirate groups who are competing to release any content before its commercial exploitation. According to internal study, for the movie industry, less than 100 groups across the world are responsible for 80% of the release of pirated movies. **The fight against lucrative pirates and release groups is out of the scope of telecom or Internet operators as they require criminal investigation.**

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?

Awareness campaigns should be reinforced to explain to customers that the use of peer-to-peer software is considered as an act of piracy even if they are not sharing any content and they are not reselling the downloaded content.

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?

Peer-to-peer in itself is just a technology that is per se “neutral”.

What happened with file sharing is a clear indication of a strong demand for online digital content. So the new business models will have to make it digital, and legitimate online in order to respond to this growing demand on the one hand and abide it by the copyright legislation on the other hand.

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)?

France Telecom Orange Group attaches the utmost importance to rating or classification of content in keeping with the protection of minors and supports classification frameworks for commercial content based on national societal standards across other media. Cultural values vary from country to country and a national approach to content classification is therefore most appropriate.

The industry has committed itself to this approach as in such a fast-moving environment, regulation risks becoming rapidly overtaken by developments, so the industry is best able to adapt quickly to deal with issues as they arise.

In that respect, France Telecom Orange Group committed itself to implement on all its online platforms, for services on demand that are not regulated by European or national legislation, the self-regulation procedures designed by the industry locally.

So, France Telecom Orange Group believes that the protection of minors is best dealt with at national, rather than EU level and that at EU level, the E-commerce Directive provides appropriate safeguards against the provision of access to inappropriate content to minors.

We suggest then just adopting the principles at the European level and leaving the implementation to the Member States.

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?

France Telecom Orange Group already implements a number of content protection technologies to secure the distribution of content over its networks, with the help of its subsidiary Viaccess, European leader on the content protection market for:

- Conditional Access Systems (CAS) for TV over ADSL service that was first launched in 2003 in France, and that will be deployed in many other European countries where France Telecom Orange Group is present. Protected content services include linear TV as well as VoD;
- Digital Rights Management (DRM) for music or video files (persistent content protection), downloaded or streamed.

France Telecom Orange Group believes that, in order for content protection technologies to play their roles as key enablers in a legitimate digital content distribution model, they must remain respectful of:

- the consumer's preferences (consumption modes, privacy etc...),
- the content owners' rights and business (through robust and adaptable solutions),
- the service providers demand for flexible implementations and rich commercialization modes (on-demand purchase or subscription to a catalogue).

While already enabling a diversity of consumption modes for digital music or video files, DRM technology deployment is still hampered by a lack of interoperability between the existing solutions: though currently optimized for a specific media format, distribution mode (streaming vs. download) or consumer appliance (PC, set-top box (STB) or mobile phone), we believe that DRM technologies would largely benefit from a subscriber-centric rights management approach – namely enabling the end user to consume his/her legally acquired content on any device or network.

The adoption of open standards, such as OMA DRM, may provide an efficient answer to the interoperability issue, while confirming the advance of European technology in a booming and highly competitive industry.

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?

As mentioned before, France Telecom Orange Group currently implements different content protection techniques, with the help of its subsidiary Viaccess.

Viaccess has been developing and deploying robust and flexible state-of-the-art content protection solutions for over 10 years, to the full satisfaction of content owners and of over 80 customers (service providers, broadcasters...) worldwide.

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?

In the different markets where France Telecom Orange Group operates, DRM solutions are generally available for streamed or downloaded digital content, and widely used by the end users on their different appliances (PC, mobile phone, STB).

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?

For distribution to PCs, copy protection measures that are built-in into the latest versions of Microsoft DRM may be used.

For distribution to STB, the Viaccess system that is used by France Telecom Orange Group also supports the secure delivery of copy protection flags such as Macrovision parameters.

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

While fully supportive of the demand for greater interoperability between the different DRM systems, France Telecom Orange Group believes that a right balance should be found between the interoperability needs on the one hand, and the security/robustness needs on the other hand. To be effective, a service provider's content protection strategy should cover the different distribution modes and media types, and enable the renewability of security techniques - in the event of attacks on the systems.

France Telecom Orange Group therefore advocates a differentiated approach, using :

- optimized CAS and content protection systems for live and VoD content protection to STBs or dedicated mobile TV handsets,
- standard DRM technologies for digital file protection downloaded or streamed to PCs or general purpose mobile handsets,

with the ultimate goal of achieving a consumer-centric rights management approach through unified head end rights management platforms.

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?

The growing digitalization of programmes and the ever-increased capacity of the fixed and mobile broadband in terms of distribution (number of programmes delivered) make it possible for distributors of new digital platforms to offer a very vast set of creative contents and services.

Therefore, France Telecom Orange Group endeavours to offer its subscribers/clients the largest variety/diversity of contents on its platforms and that does include non-commercial services.

Among these services, user-produced contents are a major lever for take-up. Other non-commercial services could indeed complement efficiently the commercial services we offer our clients, for instance, services that use extracts from broadcast archives would surely appeal to our clients.

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.)?

The development of new mobile content and services online will undoubtedly entail great opportunities for handsets manufacturers who will need to provide the users with always more advanced services and functionalities (additional memory capacity, new applications, ...); they will for sure benefit from increased handset renewal that these evolutions will imply.

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.)?

The role of national governments could be:

- ✓ to stimulate demand by allowing access to public content
- ✓ to reduce the digital gap without favouring a network to the detriment of another (principle of technological neutrality).

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?

At EU level, France Telecom Orange Group would summarize the proper actions to be taken as followed:

- ✓ to stimulate digitalization of content - Media Plus Program,

- ✓ to ensure the access to legitimate content/ channels and fluidity of rights, by putting real pressures on major traditional and/or local monopolistic content players (collecting societies, broadcasters, etc.),
- ✓ to prevent national authorities from extending copyright levies or any new type of levy to digital equipment and media,
- ✓ to grant a maximum of flexibility for the new stakeholders in the markets of digital media platforms in order for them to be able to invest in a fair and comprehensive legal environment – the proposed extension of regulation to non-linear content is unnecessary and disproportionate and could stifle innovation in the development of new services and new business models linked to advertising.
- ✓ to leave the question of interoperability to the market in combination with a stringent application of competition law in order to find the most appropriate balance between the legitimate request for the security of content and the standardization.