GSME comments on EC Public Consultation on

Content Online in the Single Market

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Introduction

GSM Europe is the European interest group of the GSM Association, the operator-led trade association representing the global mobile industry. GSM Europe represents around 147 operators in 50 countries/areas in Europe and counts around 588 million subscribers**.**

Types of content online

GSME member companies are at the forefront in developing new content services for their customers. Mobile content is already an established market and for some types of content (for example, music downloads) it is becoming one of the main distribution methods. Initially, mobile content was mainly in the form of 'personalisation': ring tones and screen savers. Games also proved a popular genre. With the launch of GPRS and then 3G networks the scope for mobile content has increased.

Content services that GSME members typically offer include:

- Mobile television, whether recasting established broadcast television channels or dedicated mobile channels. This is typically distributed over 3G networks, but increasingly operators are conducting trials of other transmission technologies (e.g. MBMS). In Italy, commercial DVB-H services have already been launched.

- On-demand videos, such as clips of goals scored in football games, news bulletins updated several times a day, or "mobisodes" of both existing TV drama series (Lost, 24…) or new series produced specifically for mobile.

- Games

- Information services

- User generated content is proving to be an increasingly popular service for many operators.

- As indicated above, full-length music downloads over mobiles have become one of the main distribution channels for newly release music singles.

Consumption, creation and diversity of online content

Over-regulation can have an inhibiting effect on consumption. For example, the imposition of taxes on emerging on-line content services - see the obligation imposed on VOD providers in France since July 2004 to contribute 2% of the price paid for every download to a cinematographic fund.

As regards cultural diversity, an obvious benefit of online services generally, as compared to traditional means of distributing content, is that it is relatively inexpensive to offer services that might only have a niche demand. In this way, cultural diversity is fostered online. For example, there is evidence to show that ethnic minorities use the Internet more because it provides specific

content for them. Also with the emergence of user generated content, cultural and linguistic diversity is further enhanced in the online environment.

On the question of encouraging people to share such user-generated content, industry-led initiatives are key. In France, for example, one operator has launched a programme called "Jeunes Talents", where "undiscovered" musicians are encouraged to send their MP3 recordings to a web/WAP site. Each month, the recordings receiving the most votes are made available to the public through the operator's music-downloading platform. Initiatives such as these, which suit both operator and content-provider, are far more effective than regulation.

Cross border content services

A significant barrier to cross-border content is **the availability of rights**. The process for obtaining multi-territory rights to show films or sports events, for example, or to play songs is too difficult and expensive to make for a viable business case. Rights are currently sold for a single country and obtaining multi-territory rights, where it is possible, incurs high transaction costs.

Competitiveness of European online content industry

As far as mobile services and mobile content services are concerned, Europe has until recently been a global leader. This is largely because of the support the Commission gave to the GSM standard. This single Europe standard went on to became the global standard with currently in excess of 2 billion users worldwide. European industry and the European economy in general has benefited hugely from this.

However, Europe is now falling behind, especially relative to the Far East. Just as there was with GSM, there is now a need to promote a large single European market. This means promoting a single interoperable technology with harmonised spectrum and harmonised rules.

Payment and pricing systems

The growth of the market for mobile content has been assisted by the development of innovative payment 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, for example, 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

Licensing remains, at times, a hindrance to offering content services, which makes it difficult to obtain valuable content. Not all content providers are willing to allow their content on mobile devices. Sometimes the lack of rights, or certainty about the availability of such rights, is a problem. Television broadcasters may have the right to broadcast films, but they often will not have the mobile rights. This can lead to certain programmes being 'blacked-out'. This clearly reduces the quality of the service to customers and is detrimental to consumers.

Collecting societies remain a hurdle. Their monopoly position on national markets means they can be inflexible, which is a problem when other parties, including mobile operators, are trying to develop new services and are innovating to offer new content services and ways to distribute content. The solution is to **end the monopoly position of collecting societies** and to introduce greater transparency into their activities. GSME supports the efforts by the Commission to introduce greater transparency into collecting societies, notably the 2005 Recommendation on cross-border licensing.

A further area of concern is that **valuable mobile content may not be available**. The Commission's sports sector inquiry was welcome and timely, but GSME considers that the Commission should ensure that mobile sports rights are made available in an unbundled way.

Concerning rights holders remuneration GSME recognises the importance of proper compensation for rights holders and prevention of unauthorised distribution. In a converging market for digital content GSME believes that 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 for that content are the way forward. GSME believes that systems of copyright levies operated by a number of EU Member States are increasingly outdated and not suited to the online digital environment. The copyright levy system requires customers to purchase recording devices and other hardware to pay the levy, whether or not they actually use that equipment to make copies of content. GSME opposes any additional impositions on the purchase of mobile handsets. This would increase the price of mobile handsets and raise customers' costs of access to online content.

Legal or regulatory barriers

The EU is not yet a single harmonised market for content services. Whilst cultural and linguistic differences play a part, the regulatory environment is also not yet sufficiently harmonised to support seamless cross-border services. This requires **harmonisation of legislation, technologies and spectrum**. This harmonisation is also important to create a sufficiently large market to secure the success of European technologies, services and content.

The Commission is currently reviewing the management of spectrum. Whilst market mechanisms have a role to play, the Commission needs to consider to what extent it is prepared to see 25 fragmented markets or whether there are steps it could take to ensure a degree of harmonisation. It is notable that for mobile TV spectrum the Commission has identified a need for interoperable technologies and some harmonised spectrum to be made available. Mobile TV is not the only service that requires harmonisation to function across borders.

GSME believes that market mechanisms have a role to play and any future management or allocation of spectrum should be done in such way that there are no unnecessary restrictions in

licences to free up spectrum for new multimedia services, whilst ensuring that appropriate regulation is maintained to minimise interference.

Networks

GSME agrees that operators should be entitled to offer preferential services to certain service providers, if the parties concerned wish to make such an arrangement. It is not appropriate to impose network neutrality at the service level.

Piracy and unauthorised uploading and downloading of copyright protected works

The current EU legal framework, notably the e-commerce directive and the Directive on IPR enforcement are adequate safeguards of copyright infringement. GSME member companies are committed to their responsibilities under this framework and respect rights holders interests. Piracy is not a widespread problem on mobile networks. The key differences compared to the fixed Internet are (i) that mobile operators and content owners were quicker to make available legal content offers, thus satisfying the demand that might otherwise have sought illegal content; and (ii) mobile operators are investing in digital rights management systems. GSME believes that the combination of these two factors will ensure piracy does not become a major problem on mobile networks. Unless there is clear evidence to the contrary, this is not an area that needs the attention of policy makers.

Digital Rights Management systems (DRMs)

GSME members support the development and deployment of DRM systems. DRM systems are deployed to offer a high level of protection to rights holders against unauthorised distribution of their copyright protected content and to enable them to offer right access management. DRM systems prevent unlicensed copying and allow customers to consume on demand the content they download. Many GSME members use DRM systems to secure that protected content remains so, and, for valuable content, content owners typically require DRM protection of a certain standard.

The more advanced DRM systems being developed for use on mobile devices offer greater protection for content. They also offer much more flexibility over the way content is distributed. For example, they allow superdistribution (that is, remunerated peer-to-peer distribution) of copyright protected content. This greater flexibility will enable a wide range of new business models, such as content that the user can play a limited number of times or that expires after 1 or 2 weeks. This grows the overall market for content creators.

Complementing commercial offers with non-commercial services

There is an important role for non-commercial content in introducing consumers to the services that are available and allowing them to explore and experiment. Of course, this needs the agreement of content owners, which is not always forthcoming.

Classification

The fundamental shifts and rapid developments that are taking place in the market mean that all sectors involved in developing and distributing online content (and many who are considering entering this market) are having to consider how best to rate and/or classify online content if appropriate. We are not aware of differences in national practices causing problems for the free

movement of content, and neither is it clear that a harmonised content rating or classification system would be desirable, given cultural diversity across the internal market.

In principle, content classification must be done at a national level to be meaningful. Furthermore it should not add unnecessary or excessive cost to the business and a simple classification framework can be very successful. For this reason we would not endorse any mandatory requirement on labeling.