

## **content online consultation**

### **Answer of Magyar Telekom to the questionnaire.**

#### **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.)?

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.

*User generated content and content sharing services have been left out from the listing: these should be included in the Communication.*

#### **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.

*The present regulation is adequate and does not prevent the development of consumers' trust with regards to new online content services. On the other hand, the insufficient reliability of certain service providers generates some concern from the perspective of users: Hungarian users do not receive goods ordered via internet or they are delivered with significant delays in about 20% of the transactions. The misuse of users' personal data and unsolicited content (spam, splog, aggressive unwelcome advertisements) are also problems, although these could be resolved through the efficient application of the present regulations. The lack of cross-border consumer protection is a problem yet to be resolved: in the aforementioned cases of misconduct, users have nowhere to turn to in order to enforce their rights and seek legal remedies. (BEUC: Campaign for Digital Rights for consumers)*

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 regulatory framework is in place to ensure efficient protection although there are some insufficiencies regarding implementation: the authority does not take strong actions against spam and unsolicited content. The lack of cross-border consumer protection also raises problems; this could be improved through cooperation between the consumer protection agencies of the countries.*

*In certain cases the inadequacy of the legal regulatory background raises problems. In Hungary, based on Government Decree 15/1989, e-commerce with home delivery service (online stores) is considered as mail order activity. Although the principle of the EU Directive on electronic commerce is to exclude prior authorization for electronic commerce, in order for an online store to conduct business with mail order activity legally it has to acquire, in addition to vast administration, the same operating license as a "real" store. In case of*

*“real” shops e.g. parking places have to be ensured and maintained in addition to authorization from fire department and the National Public Health and Medical Officer Service. If the online store does not comply with the above requirements, the consumer protection agency may impose penalties of HUF hundred thousands which could result in the closing of these stores. The legislators have tried to resolve this problem by excluding mail order activity from the definition of internet commerce in the new Act on Commerce. As the definitions in the new Act are logically inconsistent, the consumer protection authority still imposes penalties on “non-real” online stores which considerably hinders the take up of e-commerce in Hungary.*

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?

*Access to online content on several different devices would be important, interoperability being a key issue. The availability of this may support the increase of content volume which indirectly contributes to the demand for content and access.*

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?

*There is no need to further foster cultural diversity by means of special tools; the present self-sustaining process is adequate, creation of new content could be supported through tenders. Currently we are operating a number of services that enable the development of cultural diversity, e.g. [www.iwiw.hu](http://www.iwiw.hu), the largest on-line community site in Hungary counting more than 1 million users registered with real data and [www.vidya.hu](http://www.vidya.hu), one of the first sites in Hungary offering users the upload of videos.*

### **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.

*Competitiveness should be examined from the aspect of e-commerce and services independent of language. As the internet market is global there are no physical barriers, hence the American market players, being faster movers and possessing greater capital strength, have acquired dominance on the European market also. Additionally, English is the business language in the US market and the common language in Europe, hence the dominant service providers from the Far East are less able to enter the market as a consequence of the language barrier. Another reason is that users are accessing most e-commerce opportunities through search engines, of which the two major ones – Google and Yahoo - are American, hence top search results are predominantly US online stores. In case of Internet the only practical barrier to trade is the language barrier as Europe is quite diverse in this respect. Although the shipping costs of goods ordered by European users from the US are higher, prices of inter-European traffic are not significantly lower. Additionally, the price of goods available from US online stores are usually cheaper due to greater supplies, hence products ordered from the US are not necessarily more expensive in the end. E-commerce in Scandinavia is more successful compared to other EU countries because they are highly price competitive with the off-line market. In some cases language barriers are not a disadvantage, e.g. the*

*German language is an advantage on the German/Austrian markets.*

## **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?

*IPTV, subscription based music and movie download, and enhanced social network services are among the new opportunities. Services are offered in Hungary only primarily owing to language-based isolation and the difficulties in establishing agreements with multinational content proprietors (majors) and the limitations set by them (rights are granted by countries)*

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. *Network technical barriers may arise in addition to the barriers deriving from the country's size. Many regions can only be handled internationally and several market-leading multinational companies do not enter the Hungarian market due to the relatively small market size and low solvent demand. In addition, it would be necessary to translate the content into Hungarian (e.g. many international mapping services make their maps available upto Austria). The lack of interoperability could also be a problem (e.g. Ipod cannot play DRM). Unfortunately the inferior level of foreign language skills is also a problem in Hungary.*

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?

*The value chains become too long whereas internet would enable the shortening thereof (e.g. mobile operators charge extremely high commission for mobile payments hence it's not very beneficial despite its practical aspects. There is no payment system similar to PayPal in Hungary which could be used by smaller content providers, hence they cannot enter the market with competitive prices). Payment of royalties in case of copyrighted material is also problematic: it is not sufficient that the foreign content provider pays the authors and artists in their country, royalties have to be paid after use in Hungary, therefore it is essential that content providers enter into contract with the agencies representing the rights of artists (collecting societies). This generates a lot of administration, data provisioning, and is time consuming not to mention the increase of the content price. In many cases the authors' and artists' royalties are paid double. Internet would enable authors to license the use of their copyrighted material directly to users, thereby shortening the value chain, lowering the price of content, and accelerating the process. The Creative Commons (CC) movement, introduced in Hungary in 2005, is also aiming the establishment of direct relation between authors and users. The CC enables various types of use — recognized also by search engines — whereby the authors can directly license the use of their material to users.*

## **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?

*SMS, M-commerce, credit cards, and payment via internet access account. The establishment of virtual POS for credit card payments is unrealistic for smaller content providers. The cost of other payment methods, like premium rate SM,) are also unrealistic and could reach 40-50% of the revenues; there is no payment system similar to PayPal in place.*

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

### **Licensing, rights clearance, right holders remuneration**

14 Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic and legal challenges do you identify in that respect?

*A European level licensing regime and the cessation of mandatory licensing procedures through the member states' copyright agencies (collecting societies) would facilitate the creation and commerce of copyrighted material. This would enable content producers and users to select the method of acquiring/granting user's licenses. On the other hand, the expansion of TWF regulations on so-called non-linear services is not timely or justified as the relevant regulations for fulfilling the principles are provided for in the Directive on Electronic Commerce (implementation thereof in member states and general regulations: Advertisement Law, Civil Code, Criminal Code). In addition and with consideration to the fulfillment of the objectives, self-regulations is a more efficient tool.*

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?

*See Sections 11 and 14*

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.)?

*See Sections 11 and 14*

### **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?

*See Sections 11 and 14*

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

*There were some special programs (tenders) aimed at the development of the content industry in Hungary. Two relevant tenders were open from 2004 to August 2006, financed from the Structural Funds of the EU and Hungarian state funds, at the value of 2.3 billion HUF. The subject of tenders was business content development for SMEs and public content development. The budget is now completely reserved, so the tenders have been rather popular.*

## 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 are also affected with the release windows model in case of VOD and IPTV services. The cycles in the release windows model are continuously on the decrease, a few years ago they were measured in years. This tendency is likely to continue with the take up of the online world. Day-date release would be ideal in our opinion, with the simultaneous opening of theater, DVD, and VoD rights. The problem with the current regime – at least from our perspective – is that the DVD release window precedes VoD. This is a problem because the DVD release is followed by intensive pirate traffic and distribution on the internet as the free grab softwares enable the copying, conversion, etc. of DVD contents. By the time the content reaches our VoD service it has been in circulation on the internet. This problem would be reduced considerably with the VoD preceding the DVD release as the copy protection of VoD is much better in comparison to DVD with distribution on a closed subscriber network with DRM protection.*

## 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?

*The fact that network operators provide preferential high-quality service to certain service providers is not of recent origin: this system has been working well now for some time. There are certain competition law instruments that allow for effective actions against potential detrimental content discrimination, hence there is no need for separate regulation.*

## 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?

*Piracy is the obstacle of legal music download, not only because it's free but also because it's simpler and more user-friendly as there are no barriers set by the major content producers (e.g. plays MP3, practically unlimited supply is accessible). Closing agreements with the numerous small publishers may be time consuming and a service provider in a small country may not be able to reach an agreement with the major record companies as in most cases small countries such as Hungary are not regarded as relevant markets by these companies. (Hence a lot of music is not accessible in Hungary.) Competition is created not only by P2Ps but also Russian sites offering decent quality music for pennies. Their advantage over the P2Ps is that they provide music with guaranteed quality.*

*Major multinational content producers (e.g. American film studios and record companies) could fight more effectively against piracy by selling their content to ISPs or content providers for distribution only with very strict contractual conditions to abolish illegal*



*downloading. This could even mean that the ISPs agreeing to these conditions would limit or terminate the internet subscription contract of those users who are downloading the materials of multinational content producers. The ISPs would be forced to agree to these terms and conditions if they wanted to sell music or films on VOD basis as the VOD service cannot operate profitably without the content of the aforementioned companies.*

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?

*Self-regulation is better than regulation. The publication of effective regulations may prove helpful: there is data to support the reduction in breach of law following notice announcements.*

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?

*The technical basis of the P2P model may be used in case of the subscription based and the all you can eat model but the precondition of this is the common agreement of the different market players (e.g. major companies, ISPs, common rights agencies, etc.)*

### **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)?

*Classification could only be possible in the framework of self-regulation. With the expansion of web 2.0 (web 2.0. is the new trend in internet where contents developed by users make up the majority of available content) classification will have an increased role – this will allow tracking and finding of different content types for 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 use these systems. We consider it appropriate from the aspect of protection, but it is detrimental from the aspect of user-friendliness, especially with consideration to interoperability.*

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?

*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?

*No, DRM is not widely used in Hungary.*

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?

*Yes, these are in place.*

*E.g. the contents on one of the collecting society supported sites are available much cheaper as the collecting society charges different fees as opposed to the fees charged to other market players (which is controversial) and they are using “watermark technology” in lieu of DRM which is cheaper but also more insecure.*

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

*Major music and film studios insist on the use of Microsoft DRM which is not compatible with most commonly used players, hence making legal downloading non-competitive with P2P, dominant European service providers (e.g. itunes emusic), and cheap Russian download sites.*

### **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?

*We do not have any relevant experience.*

### **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.)?

*It would be enough to seize legal barriers and establish consumer protection agreements between the countries (e.g. catalog order problems, gambling, joint copyright management agencies, etc.).*

*In addition, governments could foster the mass use of internet through the expansion of e-government services. We propose self-regulation in lieu of regulation, the consistent application of existing regulations could be the right direction.*

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?

*See Sections 11 and 14. In addition, it would be very important to establish the legal background for the operation of online gambling sites across borders in the EU and stop member states from prohibiting the operation and advertising of gambling sites which is a practice contrary to the free flow of services, an essential principle in the EU.*