

Comments of

The McGraw-Hill Companies

in response to

*Public Consultation on Content Online in the Single Market*

The European Commission  
Information Society and Digital Media Directorate  
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Submitted  
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## Executive Summary

The McGraw-Hill Companies has a substantial and growing information services business in Europe and see prospects as high for expansion in the EU market, including increasing demand for online content.

Content is the most crucial component in enabling knowledge and establishing a knowledge-based economy. We would encourage the Commission to keep this fact foremost in mind when considering new initiatives to expand digital delivery and use of information, including content offered online. The publishing sector facilitates the spread of knowledge through the products and services it provides to individuals, institutions of learning, government and business.

In general, government can aid the development of this market best by helping maintain a competitive and innovative online environment for content and by assuring continued incentives for those who create and produce information. Chief among policies that will assure stability in the marketplace are laws protecting intellectual property, mechanisms to restrain unfair trading, and workable (for both provider and user) uniform licensing guidelines.

One of government's most important roles in this environment is to encourage collaboration among stakeholders within the framework of existing laws before determining whether it is necessary to impose new rules and behaviors on the marketplace.

McGraw-Hill is concerned about piracy of content – both offline and online – but we believe a combination of educating customers and employees about the harmful effects of piracy, development of systems to track and stop piracy, and sound policies assuring content owners the rights to determine when and how to pursue piracy lawfully will give sufficient assurance to growth of the online information marketplace.

McGraw-Hill does believe there are some areas in which greater government activity should occur.

- Helping assure a level playing field among information marketplace segments, by guarding against discriminatory practices.
- Safeguarding consumer protections and privacy, including increased education efforts.
- Encouraging collaboration among stakeholders and fostering even more research and development in the field of information technology, especially development of interoperable DRM technologies and platforms.
- Adjusting the VAT, or instituting a moratorium on taxes for Internet transaction, so that materials delivered online are not automatically disadvantaged in the marketplace because of higher charges beyond the provider's control.

## Introduction

The McGraw-Hill Companies, Inc. (“McGraw-Hill”) respectfully submits the following comments to Directorate-General Information Society and Media in response to the Commission of the European Union’s *Public Consultation on Content Online in a Single Market*. (“Consultation”). McGraw-Hill commends the Commission for undertaking this effort and believes that development of a market that encourages a safe and effective environment for the distribution of content online – including content originally created in offline formats – is crucial to establishing a knowledge-based economy across the Union.

***Content is the most crucial component in enabling knowledge and establishing a knowledge-based economy. We would encourage the Commission to keep this fact foremost in mind when considering new initiatives to expand digital delivery and use of information, including content offered online. The publishing sector facilitates the spread of knowledge through the products and services it provides to individuals, institutions of learning, government and business.*** Each of these customer segments has varying demands and needs for information – whether in terms of subject matter, format, access or level of customization – and each will adopt high-speed Internet capabilities at their own pace. Content service providers like McGraw-Hill are skilled at meeting such needs and have proven abilities to adapt and innovate as technology, society and customer requirements evolve.

In general, government can aid the development of this market best by helping maintain a competitive and innovative online environment for content and by assuring continued incentives for those who create and produce information. Chief among policies that will assure stability in the marketplace are laws protecting intellectual property, mechanisms to restrain unfair trading, and workable (for both provider and user) uniform licensing guidelines. ***McGraw-Hill would encourage the Commission to reinforce this balance of beneficial policies as it determines how best to encourage the development of online content distribution systems for the future.***

At the same time, our experience demonstrates that neither content providers nor infrastructure developers nor government can readily propel the market for information content services before the market is ready adopt changes. Information content providers are growing increasingly adept at analyzing new technologies and keeping pace with new means of digital creation and delivery of content across the broad range of private sector, government, nonprofit, and individual actors participating in the digital environment. However, online content providers have to be determined to meet their customers’ needs without sacrificing or endangering the very assets that their customers value so greatly. ***One of government’s most important roles in this environment is to encourage collaboration among stakeholders within the framework of existing laws before determining whether it is necessary to impose new rules and behaviors on the marketplace.***

## The McGraw-Hill Companies in Europe

Based in the United States, McGraw-Hill is a leading global information services provider serving the financial services, education and business information markets through a wide range of information products and services. Other markets we serve include energy, construction, and aerospace and defense. Our operations consist of three business segments: McGraw-Hill Education, Financial Services, and Information and Media Services. The products and services we provide – whether in print or online – all deliver “actionable information” tailored to our customers’ needs.

We can state affirmatively that delivery of online content is a growing market across all our business lines in Europe – as it is globally – although customer demand for digital content services varies greatly according to geographic location and customer segment. For example, in countries where the digital infrastructure is less developed, delivery of online information is naturally more limited. Similarly, some customer segments are more demanding of and comfortable using digital resources, a trend we and others see particularly among younger customers.<sup>1</sup>

Our experience has also proven that actionable information is particularly in demand as social and cultural trends identified in the Lisbon 2000 Agreement come to fruition. The availability of quality, reliable online and digital content will be key in helping individuals, enterprises and government create a strengthened Union, both economically and culturally.

McGraw-Hill provides products and services customized for the European market from a number of our business segments, including *AviationWeek*, *BusinessWeek*, J.D. Power and Associates, McGraw-Hill Education and McGraw-Hill Professional Publishing Group, *Platts*, and Standard & Poor’s. The digital and online products they provide to EU customers range from general business news and sector-specific statistical and reporting services in the aerospace, defense and energy markets; customer satisfaction studies for a broad range of industries; quality learning and testing materials for students and professionals; and credit ratings and analysis, equity research, leading indices and benchmarks and a wide range of financial data and information.

Nearly 1700 McGraw-Hill employees, representing approximately 9% of the Corporation’s global workforce of 19,000, are located in twelve member states of the European Union. Our EU operations comprised 13% of our overall revenues of \$6.0 billion in 2005, accounting for some 58% of McGraw-Hill’s non-US revenues. We

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<sup>1</sup> According to published reports, Jupiter Research has determined that Europeans are now spending an average of 4 hours per week online, compared with just 2 hours in 2003. This compares to an average of 3 hours spent on print newspapers and magazines per week. Two key factors, according to the research are age of users and access to broadband services. “Younger consumers exhibit a propensity to consume media online whereas older consumers lean more towards traditional print media.” See: “Europeans Prefer Web to Print Media,” *Siliconrepublic.com*, October 16, 2006 [[www.siliconrepublic.com](http://www.siliconrepublic.com)].

produce information in traditional print-on-paper, as well as digital, formats. Our divisions deliver content materials through the mail in the form of books, magazines and CDs, as well as through Internet access or transmissions to desktops and portable communications devices. Our products and services are marketed and delivered to individuals, businesses, libraries, public and private sector research and educational institutions, and government agencies.

McGraw-Hill's EU operations have grown steadily since we established our first European office over a century ago. Our suite of digital products and online content has increased manifold in the last decade in response to customer needs and we anticipate continued growth and investment in the European information content sector, including digital and online content.

### Responses to Selected Questions Posed in the Consultation

#### **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.)?**

McGraw-Hill offers a wide variety of content and services online. Those visiting the websites of each of our business units can access both no-fee content and paid services. In addition, we deliver information directly to users' desktops through dedicated feeds provided under licensing agreements, email delivery of PDFs and text to customers, and interactive web services. In recognition of more recent customer demand and capabilities, we also deliver materials to portable devices that have Internet connectivity.

Our websites increasingly offer multimedia presentations, forums for discussion and comment among customers, as well as between customers and our subject experts. We offer many services that provide users options to customize their information and content delivery needs to assure they obtain the most timely and effective information possible.

Two of our web-based offerings from McGraw-Hill Education demonstrate well how online content can differ significantly from offline material. AccessMedicine is a prime example of online content intended to take the user beyond the experience of reading medical texts. Taxonomic search capability and multimedia presentations of content are just two aspects of AccessMedicine that enhance the user's experience. Considerable content from AccessMedicine is accessible free of charge, but the business model is subscription-based premium services for institutions and individuals.

AccessScience is another example of how online services enhance the user experience dramatically. The twenty-volume print version of McGraw-Hill's *Encyclopedia of Science and Technology* has been transformed into a continuously growing portal of scientific knowledge made available primarily to educational institutions on a subscription basis. As with AccessMedicine, considerable content is accessible free of charge.

**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.**

McGraw-Hill believes the current environment is generally favorable for engendering trust on both the provider and customer sides of the information content marketplace. Developing and maintaining that trust is crucial to our business. That is the case in the offline market and is certainly the case in the online market, although there has been and always will be tension between suppliers and users in any vibrant and evolving market like that for information content.

If our paying customers, or even those who access the increasing amount of no-fee information we provide, do not view our information as authoritative, knowledge-enhancing and timely, they will quickly find other information content providers. *As stated before, we believe a sound policy framework that provides assurances and incentives to creators of information content is essential to encourage the further proliferation of content, and the EU has adopted a number of laws that serve that purpose well.*<sup>2</sup>

We do not find network security or reliability to be of particular concern in Europe, unlike other, lesser developed markets, although some improvements – as discussed immediately below – would be welcome. In terms of network speed, we share the belief that even faster roll-out of new technologies, particularly highspeed infrastructure, is an important aspect of increasing the amount of content offered and consumed online. *At the same time, we would caution that direct government intervention in this area is far less preferable than allowing supply and demand to determine the pace of innovation and enhanced services.*

McGraw-Hill *would respectfully suggest that focus be placed instead on addressing current barriers to fully realizing the advantages of current technologies before starting down new paths.* A good example is the continuing problem with interoperability among digital rights management (“DRM”) systems, particularly in regard to e-books. Even though sales of e-books in the higher education field has been growing, we estimate penetration of the higher education market is still only about 5%. In addition to publishers’ concerns of how easily e-books can be pirated without adaptable DRM technologies to control use and re-use, there has been lagging interest among consumers and institutions in using e-book devices.

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<sup>2</sup> *Directive 96/9/EC on the legal protection of databases and Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society are particularly noteworthy.*

Nevertheless, some changes in the market are occurring. McGraw-Hill Education has devoted considerable resources to development of its Primis program that makes downloadable and customized e-books for the college textbook market. We use a consumer-friendly DRM technology that seems to have been acceptable to users in the market, but again market penetration is very low. McGraw-Hill and other publishers would be able to offer even more content, however, if our partners and distributors could agree on a common file format.

**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?**

McGraw-Hill began developing customer privacy protection guidelines and mechanisms many years ago. We believe that maintaining customer privacy, particularly in the online environment, is paramount to establishing customer trust and conducting business online responsibly.

Numerous privacy laws and regulations have been instituted in the United States and Europe in recent years that have set in place adequate mechanisms to assure protection of individual privacy, particularly in the online environment. Like other legitimate businesses, McGraw-Hill has devoted considerable time and resources to assure compliance with these new legal requirements and has taken even more steps than are required under law to ensure that personal information is kept confidential and handled with the proper security.

One particular area of concern for consumers in the United States that can be addressed through better enforcement mechanisms is spam email. Not only are unsolicited emails intrusive to the user, but they can often contain spyware or other viruses or deceive users into accessing sites with high security threats. The United States now has in place the *CAN-SPAM Act*, centered on online marketing practices,<sup>3</sup> and similar laws exist in the EU. To the extent that spam continues to plague EU online users, we would respectfully suggest that better enforcement of current laws – rather than new ones – would be a best first step to addressing the issue. Enforcement is particularly warranted against organizations that flagrantly ignore or intentionally and repeatedly violate them.

Finally, while laws and enforcement efforts are necessary, they should be combined with greater education campaigns, and government can play a large role in this regard. Such a concerted effort by agencies, for example, the EU's Directorate-General for Justice, Freedom and Security, would help immensely in establishing greater trust for providers and users of online content.

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<sup>3</sup> *Controlling the Assault of Non-Solicited Pornography and Marketing Act* Public Law 108-187, December 16, 2003 [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_public\\_laws&docid=f:publ187.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ187.108.pdf)].

In an online environment, however, those who violate the privacy and protection of information tend to be others with a different agenda, more likely a criminal agenda. As a result, the Commission should further enhance this privacy framework by instituting better mechanisms to apprehend and take action against those that do not ensure adequate privacy of information.

**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?**

Digital technologies enable copying and distributing exact duplicates of content, and increasingly those technologies are being used to make copies of printed matters never intended or envisioned by the publisher or author as a digital work. That such unauthorized behavior occurs and is increasing are indisputable facts, and such behavior is not limited to any one nation or set of users.<sup>4</sup>

Despite such concerns, however, we remain confident that online content providers can and will adjust business models to meet growing customer demand for interoperability between content and devices. From our viewpoint, nothing in the current policy framework prevents content owners from providing such services. Indeed, the flexibility provided to content owners under intellectual property laws and licensing procedures allows for the provision of a wide variety of services and service agreements between providers and their customers. The system of licensing various uses and adjusting prices to reflect varying demand has long been an effective tool that facilitates the secure introduction of new products and services into the marketplace.

In terms of the online content market, policymakers should keep in mind that despite the seemingly rapid pace of technological advance, consumers do not adopt all technologies, and certainly not at the same pace. Content providers have remained skilled at adjusting business models to meet customer needs, once deployment affects market behavior.

What has become clear in the online world is that information services providers must be able to control downloading and further uploading of content or risk further piracy of their property. DRM and other technologies allow digital content owners easier means to identify and prevent unauthorized uses that violate their intellectual property rights, that threaten their brand and reputation, or that cause them market harm. They can also offer content providers the means to assure that our customers do not suffer degradation of content through device transfers. ***McGraw-Hill supports efforts to bring together content owners, device manufacturers and online service providers to work more***

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<sup>4</sup> See generally: *2006 Special 301 Report*, Office of the U.S. Trade Representative [[http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2006/2006\\_Special\\_301\\_Review/asset\\_upload\\_file473\\_9336.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file473_9336.pdf)].



*closely in developing and deploying technologies that satisfy consumer demand within the framework of intellectual property protections and licensing rights. We would encourage government to facilitate more such discussions.*

**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.**

McGraw-Hill operates in many different segments of the information marketplace on a global basis, and we find the EU market to be robust and competitive. The adoption of technologies enabling delivery and use of online content is growing, and customer demand for products from our business lines is strong. Penetration of broadband and other high-speed access infrastructures is progressing, and deployment of high-speed access is particularly strong among corporate and education customers.

A recent report sponsored by the Federal Ministry of Economics and Policy in Germany confirms these trends for that member state,<sup>5</sup> and many others in the Union are also experiencing similar developments. From our viewpoint, the system of laws and regulations currently in place are working well. Government at the EU and national levels can assure the continued proliferation of technologies that enable delivery and use of online content through several means: policies that provide incentives for developers to invest more in research and development; initiatives, including grants, that speed adoption of technologies, particularly in schools and libraries; expansion of network infrastructures through eliminating state monopolies and assuring that new entrants in the market compete on a level playing field.

**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?**

McGraw-Hill sees many opportunities for new content creation and distribution. On a global basis, much of our information is already provided under both general licenses and tailored agreements to large groups of customers in corporate and academic settings. We also offer numerous, customized information sources online – both at no-cost to the user and through subscriptions – offering unique content for various business sectors and geographic regions.

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<sup>5</sup> *Monitoring the Information Economy, 9th Factual Report 2006, 6th Trend Report 2006, Management Summary, Factual Report and Trend Report*, Research study conducted by TNS Infratest Forschung GmbH and Institute for Information Economics, Munich, April 2006.

*BusinessWeek*, one of our premiere publications, adopted a new online content strategy last year that has proven most successful. Europeans can now access the magazine online with custom information that addresses directly their interests. Traffic to the site has increased dramatically, and in the last fiscal quarter accounted for more than 13% of *BusinessWeek*'s total advertising revenue. In response to customer demands, the publication has recently started a mobile edition that users can access through their portable devices.

McGraw-Hill Education has also dramatically increased its online offerings. That division already offers web-based courses rich in multimedia and designed to enhance the online learning experience by replacing the traditional classroom and face-to-face lectures. We see a significant, potential market for providing similar multimedia learning tools to personal digital assistants, as well. To support measurement of academic achievements, McGraw-Hill Education is also developing products using online technology to grade homework and to improve the delivery and measurement of academic tests within customer-specified platforms.

We have the capability to provide these types of services in all markets. Before we can implement these and other services effectively, however, users must have the technology necessary to access them. ***Further, providing digital materials in any market depends on the existence of laws that provide effective and enforceable intellectual property protection regimes, as well as the freedom to license.*** Finally, we favor operating in markets where government intervenes seldom and with clear purpose and does not compete directly with the private sector content industry. Again, we see no major impediments in the current legal framework within the European Union to expanding our online offerings in that market.

**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.**

As mentioned previously, further progress on interoperability of platforms and DRM is needed. In addition, more ergonomically effective reading devices and screens would greatly enhance the adoption of portable devices beyond uses for entertainment and would thereby increase opportunities to deliver even greater amounts and variety of online information content.

**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?**

Consistent and widely adopted contract and licensing guidelines would be most helpful in facilitating the provision of online content across the Union. At the same time, such rules must not preclude the ability of content owners to adjust their licensing practices to

address user needs or to include terms and conditions that help assure that their property rights are respected and enforceable. ***Government – including the courts and legislature – should encourage the use of licensing, particularly in the online and digital content markets, and should restrict practices only when they clearly violate fundamental public policy priorities*** (e.g., in the area of consumer protections or unwarranted restriction of speech) ***or where they are unconscionable***. Otherwise, the parties to the contract should freely determine licensing terms and conditions. In regard to mass market licenses, users maintain the option to accept or reject the terms and conditions as part of the bargain, and in our experience very few mass market licensees find such agreements unworkable. These practices have become enshrined in the online environment and have allowed content providers like McGraw-Hill to address customer needs for a wide variety of information products and services delivered to schools, libraries, corporations, government agencies and individuals.

Whether the European Union can adopt a uniform set of licensing rules remains questionable. Several years ago, much effort was put into a similar effort in the United States, where the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) proposed adoption of the Uniform Computer Information Transactions Act. (“UCITA”).<sup>6</sup> A multi-year effort to craft and seek adoption of UCITA ended with only two of the 50 states adopting versions of the law. Although information content providers and others offering computer information strongly supported the legislation, opponents successfully thwarted further debate and consideration. From the viewpoint of information content providers, many of the opponents’ demands would have resulted in fundamental changes in practices already widely accepted in the marketplace and upheld but courts. In the long run, The McGraw-Hill Companies and other information providers determined that current statutory and common law, even with some variances between jurisdictions, was preferable to risking new rules that would imperil their ability to customize terms and agreements in a manner that threatened their proprietary interests.

**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?**

Even in the offline world, there has been growing concern on how information content providers and users could be certain of who owned copyright in a particular work for which they sought permission to use. The problem of clearing rights for these so-called “orphan works” has become even more problematic as development of digital information capabilities increased the demand for access, even to works that were no longer readily available on the market or were available only in print format.

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<sup>6</sup> For a copy of UCITA, see: <http://www.law.upenn.edu/bll/ulc/ucita/2002final.htm>.

The U.S. Copyright Office has proposed legislation to help facilitate the clearance of rights for orphan works, and McGraw-Hill remains supportive of that process. Although Congress is not expected to enact the latest version of the legislation<sup>7</sup> this year, we expect further consideration in the next year or two.

The orphan works legislation strikes a fair balance between the interests of users and the rights of owners. It maintains the important concept that the user assumes the burden of determining the owner of any particular work and of seeking permission before making use of that work. In exchange, those who use content without knowing the identity of the rights owner – once they have undertaken a diligent and good faith search – are subject to far fewer, or in some cases no, penalties than would otherwise be granted against infringers.

Similar problems with orphan works exist in nearly every country and region. We believe the U.S. approach establishes workable groundrules acceptable to a broad spectrum of the content provider and user communities. To the extent the EU determines a need to address this issue, we would recommend the U.S. model as one worthy of consideration.

**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?**

We comment generally in other portions of this submission on a number of legal regimes, but McGraw-Hill does have a specific concern in respect of the EU taxation of printed and digital matter. Currently in most EU countries, printed matter – usually books and magazines – are subject to much lower rates of VAT than electronic products. In the UK the rate is zero, in France it is around 5.5% for books and 2.1% for magazines. A good portion of our books sales in Europe are to students in institutions of higher education, a customer segment increasingly interested in accessing information online or in other digital formats.

*Because of the discrepancy between VAT rates for printed and digital content, a student who wishes to purchase a digital version of one of our textbooks sees an automatic increase in the price of the digital product over the print version of the same product by at least 12% in France and 14% in the UK.* The higher prices that we and other digital education publishers must charge students for materials produced and delivered digitally puts a very real brake on that market's ability and willingness to use digital offerings.

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<sup>7</sup> See: *Orphan Works Act of 2006*, H.R. 5439, 109<sup>th</sup> Congress, 2<sup>nd</sup> Session.  
[\[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:h5439ih.txt.pdf\]](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:h5439ih.txt.pdf)

*We believe that the EU and its Member Nations should consider instituting a moratorium on taxes for transactions occurring on the Internet. At least as a test project, the Commission could measure whether elimination of such taxes spurs further expansion of the online marketplace. Short of establishing a moratorium on Internet taxes, the EU should give serious consideration to no VAT or a drastically reduced VAT rate for educational material supplied electronically.*

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

From our experience, nations that avoid over-regulation of the market are where online content and services proliferate most rapidly. That is not to say that government should have no oversight or regulatory role. For example, government should maintain a watchful eye in terms of protecting consumers from fraud, assuring that privacy rights are respected, and enforcing laws to prevent unfair competition. Government also has enormous legislative and fiscal powers to encourage investment in and use of technology, e.g., by providing incentives through tax restructuring to encourage private sector research and development or by direct funding of worthy nonprofit and government experimentation. Finally, as stated before, government should also enact sound intellectual property laws and provide enforcement mechanisms – both private and public.

**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?**

*McGraw-Hill strongly supports network neutrality and believes that infrastructure providers – particularly those who are creating content or partnering with others for the provision of content – should not be allowed to discriminate in the delivery and use of lawful content or devices dependent on their network.* Non-discrimination rules applicable to both service quality and pricing have worked well in assuring fair play and competition in the communications marketplace, and serious consideration should be given to applying them to the new infrastructure.

Often ignored in the debate on network neutrality is that content owners already invest heavily to connect to the Internet to assure that the full panoply of our online content – designed to meet customer demands – is delivered quickly and securely to our users. Public statements by executives in major telecommunications and cable organizations indicate that one of their strategies for financing rapid expansion of highspeed networks is to extract additional fees from content providers over and above those we already pay.

***McGraw-Hill believes that instituting such a system will stifle innovation in the online content industry. In short, the funds expended on assuring quality transmissions of our online materials will diminish what we can spend to fulfill our mission of “focusing on content, services and being a solutions provider.”***

McGraw-Hill urges the Commission to undertake careful consideration of the many issues that arise in the debate about network neutrality before establishing policies. We would only restate our conviction that non-discrimination and fair competition must remain cornerstones in this segment of the highspeed, digital marketplace.

**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 losses are difficult to quantify, and the content industry has been generally slower to focus on this problem than have our colleagues in the entertainment and software industries. One estimate by the U.S.-based Association of American Publishers is that U.S. book and journal publishers lost over \$500 million last year due to piracy.<sup>8</sup>

Nevertheless, unauthorized use and distribution of proprietary, digital materials is real and affects market development. Technology is not the problem. Rather, the problem is the widespread attitude among many online users – and even some Internet service and infrastructure providers – that copyright impedes, rather than encourages, creativity and innovation in the content market. ***As noted above, sound intellectual property protections help assure that information content providers have the incentive – both creative and economic – to continue innovating.*** That system has worked well for centuries, and the problems with unauthorized copying and distribution have plagued the industry continuously. Digital and online content, as is well recognized, is even more threatened by piracy since perfect copies can be made in a matter of moments and distributed instantaneously around the world. McGraw-Hill acknowledges the efforts that the EU and its member nations have undertaken to strike a balance between provider and user needs through adoption of various directives, and we encourage you to keep those laws in force.

Apart from the importance of adequate intellectual property protections and licensing rights, content providers have many opportunities to discover and combat piracy. McGraw-Hill has long worked closely with its trade associations to stop large-scale piratical activities, particularly in emerging markets.

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<sup>8</sup> <http://www.publishers.org/antipiracy/index.cfm>

In the long run, however, the best means of combating piracy is proactive engagement, and for that reason McGraw-Hill has recently formed an Anti-Piracy Steering Committee. Its charge is to develop educational campaigns for our employees and customers, to explore technologies and systems that aid in detection and prevention of piracy, and focus on policy developments that affect our ability to continue producing innovative products and services.

For the moment, we have not determined the level of threat from “small,” as opposed to “big,” pirates. We note, however, that “small” infringements have an enormous impact if repeated numerous times. Similarly, we have not ranked the level of threats from downloading and uploading of materials online. All piracy is potentially problematic for content providers. McGraw-Hill believes that targeting the types of piracy to combat should be made in regard to the infringer’s intent and the actual or potential harm to the market for the particular product or service being used illegally. Moreover, determination of harm should remain a right reserved for rightsholders in the first instance, for they are most knowledgeable about the value of, and the current or potential markets, for their content.

**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?**

Education campaigns are of the greatest importance. We actively support the efforts undertaken by our trade associations to inform end-users and the general public about intellectual property laws and the harmful effects of piracy for users and providers. Two associations that have been particularly active in this area are the Association of American Publishers ([www.publishers.org](http://www.publishers.org)) and the Software & Information Industry Association ([www.siaa.net](http://www.siaa.net)). Similar efforts are undertaken by the Publishers Association in the United Kingdom (<http://www.publishers.org.uk/paweb/paweb.nsf/pubframe!Open>). We also applaud the numerous education campaigns sponsored by nonprofit organizations, universities, libraries, and governments. We would encourage greater collaboration by all stakeholders in developing messages and communication tools to help stop piracy and believe such efforts can only benefit all market participants in the long run.

**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 (“P2P”) technologies *per se* do not pose a threat to protection of our intellectual property rights. Rather, the threat comes from the behavior of those who

abuse P2P to offer and sell pirated materials. Organizations that host P2P sites involved in illegal behavior rarely cooperate in combating piracy. McGraw-Hill realizes that we and other online content providers will continue to face blatant pirates and will need to rely on stronger measures to assure that piracy is stopped.

New business models may well arise from P2P file-sharing, particularly in the corporate and education markets. Before online content providers exploit the technology fully, however, systems for permissioning and compensation of materials delivered through P2P networks must be accepted in the P2P culture. Key will be the willingness of P2P network operators to support such systems and technological protections. Unfortunately, our experience to date demonstrates that many P2P site operators make no effort to inform and educate participants about copyright and openly flaunt themselves as a community to “free” information for general consumption.

**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?**

McGraw-Hill employs a variety of DRM technologies across the broad range of digital content we supply. For example, in the European education market, our Primis online system allows customers to create customized education materials based on virtually all our local higher education material and other licensed material.

*Although we use DRM technologies, they are but one tool to help manage delivery and use of online content.* Problems with interoperability, particularly on portable devices, continue to stymie wider adoption. Many users complain the technology can be intrusive, and indeed some providers have deployed DRM technology in ways that threaten user security and privacy. Until these issues can be resolved, we are doubtful that DRM technologies will reach their full potential as an aid in managing and securing content.

**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?**

National and regional governments can play a large role in assisting development of the market for online content. We have referenced several such activities already, but the Bologna Process is one ongoing project in Europe deserving of special attention and might be viewed as a model for other initiatives.

The Bologna Process is a collaborative effort among 40 European education ministers and will greatly improve the education system and lifelong learning opportunities across the continent. Consensus-building around a common framework of degree standards will help bring transparency to the education process in Europe through quality assurance.



Addressing those challenges in an increasingly mobile society will require evolving solutions that both anticipate and react to changing needs of students, educators and administrators.

All this effort is being done for the most part without enacting new law. Instead, experts from all segments of the education field are focused on finding best solutions to achieve the common goal of creating a workforce that will contribute to and thrive in a knowledge-based economy. Thus far, the Bologna Process is a promising example of what harmonization can achieve.

***From McGraw-Hill's perspective, the Bologna Process also promises new opportunities for development of online education content.*** Continued momentum towards harmonizing education standards will drive the demand for digital content, particularly in the area of online course materials and assessment tools. Fulfilling that demand will also require that equipment manufacturers and infrastructure suppliers work toward interoperable platforms. Hopefully, such technologies will also be adaptable to other information market segments, e.g., business and government, particularly as students enter the workforce.

### Conclusion

The McGraw-Hill Companies sees a robust market for online content in Europe, both today and in the future. Certain key policies – strong intellectual property protections, the freedom to license, and protections against unfair competition – facilitate a legal framework in which content providers feel secure innovate. Growing acceptance and deployment of technologies among institutions and consumers is propelling demand for new products and services that can only accelerate progress of Europe's knowledge-based economy.

As tempting as it may be for government to direct market development, we would caution that intervention through regulation and policy can also lead to market disruption, particularly if policies propel providers and consumers down paths that they cannot or are unwilling to explore. If the online content industry is to thrive, government must maintain incentives for information services providers to meet customer demand.

There are some areas in which greater government activity should occur. Chief among these include:

- Helping assure a level playing field among information marketplace segments, by guarding against discriminatory practices.
- Safeguarding consumer protections and privacy, including increased education efforts.

- Encouraging collaboration among stakeholders and fostering even more research and development in the field of information technology, especially development of interoperable DRM technologies and platforms.
- Adjusting the VAT, or instituting a moratorium on taxes for Internet transaction, so that materials delivered online are not automatically disadvantaged in the marketplace because of higher charges beyond the provider's control.

McGraw-Hill appreciates the opportunity to offer comments in response to the Consultation. We look forward to a continuing dialogue with EU officials on the wide range of issues that will continue to affect development of the information content marketplace in Europe.