

Mobile Entertainment Forum (MEF) response to the Public Consultation on Content Online in the Single Market

Introduction to MEF

Founded in 2001, MEF is a global trade association representing all participants in the mobile entertainment value chain. Our members are interested in driving the mobile entertainment industry's evolution and commercial potential through collaboration, consultation and promotional activities. We are committed to reducing the barriers to entry into the innovative mobile entertainment market, thereby encouraging entry by new businesses and increasing competition and growth to the benefit of all industry players and consumers. Our global membership is composed of the best thought leaders and mobile entertainment players throughout Europe, the Americas and Asia and we currently have over 120 members¹.

Consultation response – A summary

This response contains answers to a selection of questions posed by the consultation and a broad introduction to the MEF as well as a summary of some of the initiatives we are undertaking. For example, we have ongoing projects² dealing specifically with issues such as Mobile DRM and user generated content. We would like to be closely involved with the development on the Communication on Content Online to be published and adopted by the European Commission later this year. We believe that our members will be able to contribute in a positive way to help stimulate the growth of a true EU single market for online digital content, such as films, music, games and mobile television. MEF is keen to encourage the development of innovative business models and to promote the cross-border delivery of diverse online content services. We are also keen to ascertain how European technologies and devices can be successful in growing creative online content markets. To this end, we would welcome meetings with the European Commission to ensure the continued success of mobile entertainment services.

Consultation response – specific questions

Please note that this response only answers selected questions posed by the consultation based on specific responses received from our members and generally industry perspectives.

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.)?

Our members provide a huge range of content and services online using the mobile phone as the device providing access. The content and the range of services provided by our members include:

- the provision of ringtones, wallpapers, animations and logos
- music/films/sports/news clips/TV programmes/streaming content
- video content
- facilitation of user generated content

¹ A full list of our members and an industry map (so you can see how the various parties interact) can be found at <http://www.m-e-f.org/clusters-public.html>.

² A full list of our initiatives can be viewed at: <http://www.m-e-f.org/activities-initiatives.html#11>

- off-hand set purchase of content (where the service or product is consumed away from the handset but purchased using the mobile handset such as e-tickets)
- chat/dating services
- publishing services
- software solutions/enabling technologies and billing platforms

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.

We do not propose any further types of content to be included as yet. The rapid rate of innovation and advances in technology mean that there may be new services on the horizon that have as yet not been anticipated. We would like to see more specific recognition of mobile activity and the increasing role that mobiles play in the delivery of content and products to consumers.

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?

The regulatory framework in which businesses operate is a key factor of their competitiveness, growth and employment performance. Therefore, a key objective of the European Union's policy must be to ensure that the regulatory environment is simple to understand straightforward to implement. Regulations must at all times be proportionate, consistently applied, transparent and targeted at specific harms. Currently our members are subject to a wide array of legislation – both European and national. In the mobile world, the legal environment can be confusing and, at times, seemingly contradictory particularly amongst different European members. There are a number of European Regulations and Directives as well as national legislation that could or do have an impact on the services provided by our members. A non-exhaustive list of EU legislation includes:

- The E-commerce Directive
- The E-money Directive
- New Legal Framework for Payments (Payments Directive)
- AMSD (Television without frontiers Directive)

In each EU Member State, there is also national legislation that can directly affect the services offered by our Members. So, the same services can have different rules applied to them in different territories. This means that the providers involved in the promotion, content, delivery and billing of the mobile service need to be familiar with each relevant national legislation in each of the Member States in which they operate.

MEF would like to work closely with the European Commission to promote and design applications of regulation at the EU level, notably in so far as impact assessments and simplification are concerned. We want to actively engage with the European Commission to ensure that better regulation principles are applied consistently throughout the EU by all regulators. Action at EU level alone will not be enough: the transposition of EU legislation by the Member States and national regulatory initiatives has a direct effect as well, not just on national administrations and on citizens but also on businesses, particularly SMEs, from across the Union.

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?

Privacy can be described as the power to control what others can come to know about you and to determine the entry rules for your own private space. Technological possibilities to collect, store, analyse and distribute information about virtually every aspect of an individual's life have become almost unlimited. Especially in today's public communication networks, that include not only fixed telephone networks but also mobile networks and the Internet, personal information can be transferred with great ease and even largely invisibly. The Directive on Privacy and Electronic Communications sets out rules for the protection of privacy and of personal data processed in relation to communications over public communication networks.

In the UK, the Information Commissioner's Office (ICO) exists to help consumers understand what data protection, freedom of information and other related issues mean. They can advise on everything from how to protect your personal information to gaining access to official records. The ICO is the UK's independent public body set up to protect personal information and promote public access to official information. It is our understanding that each of Member States has an equivalent enforcement body. As a consequence, we believe that adequate protections are afforded.

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?

As the consultation document recognises, the increasing possibilities to access creative content and services anywhere and at anytime is critical for the development of new opportunities for growth. For consumers, the ability to access and, partly, to influence creative content available on worldwide networks such as the internet, both from home and on mobile devices is essential.

New creative services and content available online are diverse: music, films and other forms of audiovisual works, blogs, newspapers and magazines, books, games, educational content, etc. An important element of the online creative economy is the growing level of interactivity between the content provider and the consumers, with the consumer able to become a content creator (user-generated content). We believe that the advantages of having access and use of the same content services on different devices are clear.

We do not believe that the current legal framework adequately takes into account or deals effectively with interoperability. With the emergence of new devices, networks and services, content and network operators, right holders, consumers, governments and independent regulators have to address new challenges such as the issue of mobile content roaming. We welcome open dialogue with the European Commission. We believe that discussion should include legislative or regulatory actions, recommendations promoting best practices, co-regulation, research and financial support. Furthermore, self regulation must keep playing a key role in the mobile environment.

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?

There is considerable scope for growth for new content and services accessible via the mobile phone device. This is not just in the EU but worldwide. Almost every service type that can be accessed on other platforms will be accessible on the mobile phone. This will include subscription based models, online communities, streaming content as well as digital video broadcasting – handheld (DVBH).

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?

Mobile entertainment services are paid for in a variety of different ways. They can be paid for as part of the monthly subscription the consumer pays to their mobile operator, using credit/debit cards, premium rate numbers or they can be charged at normal mobile rates (usually the cost of sending a standard text message). Clearly there are issues as to how the consumer understands how they are going to be billed for the content and whether, for example, there will be additional data charges involved. The most important thing is that the consumer knows the exact cost of engaging in any service. The average consumer may not yet still understand the multitude of tariffs available or understand how data charges can affect the cost of a service. One of the areas the Commission could greatly help with is helping with increasing the amount of information available to consumers to help them understand how services operate and how they are charged.

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?

There is a clear rationale for reducing the administrative burden that regulations impose on business. Complying with the information requirements of UK regulations is estimated to cost some £20-40 billion p.a.³. This can hamper business, channelling resources away from more efficient uses and act as a constraint on innovation, productivity and growth. The cost of complying with the multitude of regulations is high. Before any licensing regime is seriously considered, MEF would want to see a clear rationale for introducing any such scheme. Who would the regime apply to? Would it be regulatory licensing or IP licensing? What are the harms that the scheme would be trying to prevent? There needs to be a feasibility study that clearly identifies a need and then clearly identifies the cost of putting such a scheme in place. Our initial view is that such schemes are costly both in terms of money and resources for little benefit. Overall, we believe that the European Commission should start looking at:

- Deregulation - removing regulations - leading to greater liberalisation of previously over regulated regimes.
- Consolidation - bringing together different regulations into a more manageable form and restating the law more clearly. By improving transparency and understanding, it should reduce compliance costs and will still provide excellent levels of consumer protections.

We welcome further discussion in this area.

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 of content is done in different ways throughout the world in relation to mobile entertainment services. For example, in January 2004, the mobile operators in the UK published a Code of Practice for the self-regulation of new forms of content on mobiles. One of the commitments in the Code was that the mobile operators would appoint an independent classification body to provide a framework for classifying commercial content that is unsuitable for customers under the age of 18. The Independent Mobile Classification Body (IMCB)⁴ performs this function. Because the Framework rates content that is suitable for those consumers aged 18, all other content is not classified. The Framework strives to be consistent with standards used in other media and only treat as 18 content that would receive an 18 classification for the equivalent material in, for example, magazines, films, videos and computer games. The Framework covers new types of content, such as still, video and audio/visual material and mobile gaming. The development of such Codes clearly shows the responsible approach the industry takes to ensure that services are accessed by those for whom they are appropriate. It may not be possible to apply the same Code in different countries – each country has a different perception of what is deemed suitable. As a result, the MEF believes that self regulation is the best way forward.

MEF brings together industry leaders via a programme of initiatives to collectively progress industry opportunities, track trends and tackle industry challenges. MEF currently has an ongoing 'community initiative'. The purpose of the initiative is to raise visibility of community applications within the sphere of mobile entertainment. The initiative see communities in two broad camps: either as end-user generated such as blogs or chat services, or content centric such as artist sites. We are in the process of issuing a members 'white paper' with Informa Telecoms and Media which highlights the issue of moderation for chat services. We believe that moderation is paramount for maintaining consumer confidence. Discussions on what form moderation should take and how it should take place are currently ongoing. The industry has already undertaken efforts at self-regulation through moderated services.

³ Better Regulation Commission 2005: http://www.brc.gov.uk/downloads/pdf/lessismore_exec-summary.pdf. The figure represents estimated costs to all businesses in the UK – not just those that provide content online.

⁴ More details on the IMCB can be found at: www.imcb.org.uk.

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?

One of MEF's initiatives tackles the issue of Mobile DRM (mDRM). The scope of the mDRM initiative⁵ is to drive the adoption of open standards for DRM in order to secure the development of a healthy mobile content industry for all players. Over 15 MEF members have contributed to the initiative.

In May 2006, MEF called on the industry to end revenue leakage and protect content rights by delivering an open and interoperable mDRM solution based on a clear open standard. mDRM is core to every mobile transaction – every time a ringtone, music track or game is downloaded royalties must be sourced back to the content provider, producers and/or artists. With the mobile industry attracting global media giants it is vital that illegal file transfer is eradicated to ensure that mobile entertainment reaches its full potential. According to one of the industry's top analyst firms Frost & Sullivan, around 80% of mobile phone content has been hacked or downloaded onto mobile phones, illegally from websites, or through the use of Bluetooth, memory cards and other storage devices. Mechanisms using MMS or premium SMS to deliver content to mobile devices are again susceptible to fraudulent practices, including temporarily switching off the network so as not to be billed. Combined, these activities are predicted to cost the mobile entertainment industry around €2.7 billion this year alone.

An additional €800 million is missed due to the lack of widespread interoperability for content across PCs, mobiles and MP3 players. In total a staggering €3.5 billion⁶ of revenue will not be realised, which is in excess of half the income from the entire European mobile entertainment industry.

Ideally, MEF wants the value of content to be protected through mDRM while ensuring that the ability to share content is not restricted through proprietary solutions.

MEF also has an initiative on 'sideloading'. This is the unauthorised copying of ringtone clips and represents a threat to one of the most profitable sectors of the industry. The initiative seeks to highlight the issue, quantify the potential industry loss and deliver a code of best practice. This is currently an ongoing project.

We would welcome discussion with the European Commission around mDRM issues.

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?

MEF is looking at a number of research projects worldwide in support of its initiatives. Some of them relate to consumer needs and what they want from services while others are about increasing the industry understanding of certain issues. There are a number of issues that will need to be examined over the coming months. We would be willing to carry out a comprehensive project examining of all regulatory instruments and practices relating to mobile online content in the Union. We would welcome the involvement of the European Commission on a number of these projects. We also believe that a comprehensive plan must be put in place to educate consumers about the types of services that are available, how they can interact with them and how they have to pay for them. At the moment any educational plans happen on a national basis. An example of a national plan is AFOM (French Association of Mobile Operators) which has been putting together a guide for parents educating them on what the mobile phone is and the types of services they and their children can access. ICSTIS in the UK provides something similar. We believe that an EU plan is required to educate parents, children and those in positions of responsibility.

⁵ The MEF guide to Mobile DRM can be found at: http://www.m-e-f.org/pdf/mDRM_WP_execsumm.pdf

⁶ The link to the MEF press release is: <http://www.m-e-f.org/news050806.html>

www.m-e-f.org