October 13th, 2006

ONO response to the Public Consultation on Content Online in the Single Market

ONO is the leading communications and entertainment cable operator in Spain. We offer direct access telecommunications, cable television and high speed internet access to more than 1.8 million residential customers who contract more than 3 million services over our own infrastructure of modern, digital, fibre-rich networks. ONO has invested over €8 billion in creating this high capacity which extends deep into our franchise areas: Andalucía, Aragón, Canarias, Castilla-La Mancha, Castilla y León, Cataluña, Valencia, La Rioja, Mallorca, Navarra and Murcia. These franchise areas provide us with a target market of over 85% of the Spanish population.

In the business sector, ONO has more than 105.000 customers contracting advanced value-added voice, broadband and data services and applications across the whole of Spain.

Since the inception of the Company in 1998, ONO has been supported by a stable group of leading national and international companies who were committed to providing a strong financial backing. This shareholder group includes Banco Santander, Grupo Multitel, Caisse de Dépôt et Placement du Quebec and General Electric.

In November 2005, as a part of the acquisition of Auna Tlc, four new major international shareholders joined ONO: Providence Equity Partners, Quadrangle Capital Partners, JP Morgan Partners and Thomas H. Lee Partners.

We are pleased to comment on the Public Consultation on Content Online in the Single Market. ONO is also willing to clarify or elaborate those issues on which the European Commission should seek further explanation.

All the opinions and responses stated by ONO in the present document are made taking into account, among other factors, the current situation of the market, the state of the art of the industry and our internal circumstances.

Executive Summary

This Executive Summary tries to answer the different debates discussed in the Public Hearing on content on line in the single market celebrated last October 11th in the European Commission.

1.- New business models and transition of traditional ones into de digital world / Complementing commercial offers with non commercial services

- The scope of the public consultation should include other interactive platforms such as cable digital television services.

- Currently it is not possible to predict the future of this market or to forecast which business model will be successful.

- ONO believes that the development of content online (in its broad meaning) will be a market driven process. At the time being, there is no need for public intervention to encourage market development

2.- Licensing, release windows, rights clearance, rightholders' remuneration

- A new "All-Rights Included, Central Licensing" system would foster the development of the market.

3.- Consumer issues / Rating or classification of content

- Consumers' rights are ensured in the online world with the legislation currently in force.

4.- Cultural diversity

- The market by itself will foster cultural diversity.

- Any regulatory measure should avoid the imposition of burdens on operators.

5.- Piracy and unauthorised uploading and downloading of copyright protected works.

- The most efficient way to fight against piracy is education.

- Lack of responsibility of network operators if the conditions in force by Law are accomplished.

- Usefulness of agreements on notification of irregular activities.

6. Digital Rights Management Systems

- A secure and controlled exploitation environment through which legal copying and re-use of content is facilitated and right holders remunerated.

7.- Networks (including network neutrality) and payment and pricing issues

- Cable operators have always efficiently managed the different offerings over their network, so as to guarantee the best possible quality for all.

- The market dynamics will regulate this matter.

8.- Legal or regulatory barriers.

- Barriers to the construction of alternative networks

- Barriers to access content

- Levies on digital equipment or broadband connections

- Customs tariffs

- Other aspects

Issues for consultation

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.)?

ONO offers triple play services since the very first day of operations. Together with telephony services, ONO commercializes multi-channel digital cable television services, with several segmented bouquets, which have been defined taking into account the habits of the Spanish consumers. ONO both distributes third parties channels and produces its own content.

The EPG provides information about the different channels and it is the way to access the near video on demand services that ONO commercializes since April 2003. It is also the way to use OJO, our real video on demand services launched in December 2005. OJO allows access to very varied content at the moment our clients wish and whenever they wish. Content includes films, documentaries, series or educational content. OJO libraries contain free content, subscription VoD services and pay per view events.

Additionally ONO provides several digital radio channels.

ONO also offers broadband Internet access and manages a broadband portal, ONO.COM. ONO.COM contains content that has been specifically developed for broadband portals. Games are available and demand is high. The broadband portal users may watch some of the digital television channels that are included in the digital television services at the very same moment that this content is being broadcast. OJO is also available through the broadband portal. Of course, on-line digital video and radio streaming are offered.

As the Commission may conclude, ONO incorporates creative content that is offered via its own fibre rich cable network. When using these services, users are not browsing the Internet. On the other side, when accessing to the Internet via our cable modem broadband service, users may browse through the Internet and access to content that is not controlled by ONO.

In 2007 ONO will commercialise HD Set Top Boxes including PVR functions and Nework PVR. ONO will also enhance OJO´s functionalities.

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.

ONO would like to point out its concerns about the scope of this public consultation. Online content seems to refer to the Internet environment without taking into account other interactive platforms such as cable digital television services.

This market is growing with extraordinary speed. New products or services are daily launched and different major deals appear in press these days. This situation leads to the conclusion that, currently it is not possible to predict the future of this market or to forecast which business model will be successful.

ONO believes that the development of content online (in its broad meaning) will be a market driven process. At the time being, a debate which seeks opinions from the widest possible group of stakeholders is necessary, but there is no need for public intervention to encourage market development. Indeed, since there is not a predictable environment, regulatory actions may produce counterproductive consequences.

These considerations do not mean that ONO is opposed to a European Union role with regards to content online. However, taking into account the characteristics and multiple uncertainties of the industry, it is important that any action or interventions are based on the evidence, proportionate in consistent with existing policy initiatives.

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.

As previously stated, ONO considers that the business environment is adequate and conducting to developing trust in and take-up of new creative content services online.

Equally, ONO believes that, although in general terms, the legal and technical frameworks are positive, there are some aspects of concern:

- The most relevant issue is the need for supporting the deployment of alternative broadband infrastructure. These new services require modern fibre rich networks that provide a real alternative to incumbents across the Member States. Alternative networks, like the one that ONO is constructing since 1998, promote consumers’ choice and enhance competition. Some of the most frequent inconveniences encountered by the operators are:

1. Local authorities hinder investment. Each Municipality and Autonomous Community in Spain define the conditions that operators are compelled to accomplish in order to obtain the permits prior to the effective start of construction.

2. Local authorities tend to regulate the electronic communications sector, based on its capacities on urbanism, environment or health.

3. Additionally, there is not an adequate solution that allows the deployment of cable infrastructure in buildings that were built before the regulation on common infrastructure for telecommunications came into force in Spain.

4. From the regulatory perspective, ONO believes that excessive access regulation and other ex ante measures adopted by some NRAs under the NRF are counterproductive and do not promote the technology race among infrastructures. Access regulation should promote and not impede investment in infrastructure.

5. Lastly, and although the European Commission seems to have changed its direction in the Communication on Bridging the Broadband Gap, public funding for the construction of alternative broadband networks has not been promoted.

- Access to content is another major issue. Access to attractive content is key for the development of new content on line services. In Spain, as it happens in other countries in Europe, competition in pay television has not been achieved since the incumbent monopolises on a long-term basis and under exclusive agreements most of the essential content.

  This situation has become a major bottleneck to the detriment of competition in pay-tv markets, damaging the development of new television business models (VoD Subscription channels) and to the detriment of the development of Broadband and the Information Society.

- The imposition of levies on digital equipment or current initiatives from DG TAXAU to reclassify certain products, namely digital television sep-top boxes, which have been treated as ITA (Information Technology Agreement) products since at least 1999. Such measures increase the costs of equipment and consequently, hampers the development of the market.

- Lack of information of consumers is another issue to be tackled. There is still reluctance from the consumer to purchase online or use credit cards for e-commerce payments. Also consumers show concern about their privacy.

- Other aspects that need to be analysed are:

    1. Some content owners are reluctant to make content available.
    2. Lack of interoperability of different devices
    3. Complexity of some DRM solutions.

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?

Yes, ONO considers that users' rights are taken into account.

In Spain, several Laws, Royal Decrees, Decrees and other legal instruments deal with user rights, personal data protection, and quality issues.

Consumers have access to information about their rights, since central, autonomous and local administrations provide information services all over the country. Private consumer associations are also very active.

A clear regulation on the procedure to claim and defend users' rights has been enforced for several years.

The referred solutions and mechanisms are also ensured in the online environment.

6. How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?

The future online content market will enhance consumers' choice, both in terms of the quantity and variety of content that they will be able to access. That is to say, the market by itself will foster cultural diversity.

In case the EU considered there is a need for public intervention, the regulatory institutions should focus in measures that do not impose burdens on operators.

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?

As explained above, ONO already commercializes some of the services mentioned in the question such as streaming, PPV, VoD or Subscription VoD. The market evolves rapidly and cable operators, as well as other agents in the industry must focus in consumers' demands in order to present attractive solutions covering such needs.

We should also look at our past. Experiences in different countries may conclude that some initiatives, like T-Administration when offering interactive digital television services, have not been well accepted. The industry should concentrate on new services already requested: enhanced TV, information services, interactive advertising or simple games over digital TV or more sophisticated games when using other platforms.

In any case, the decision on whether to offer services at a national level or at higher scale is a business decision influenced by multiple reasons.

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

Again, ONO must stress the fact that this is an unpredictable market. Consumer habits and needs will be key in the evolution of this sector, which, we must recall is growing at a considerable speed.

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.

ONO offers telephony, broadband internet access and digital television services, which include interactive services. To do so, ONO is deploying a last generation network which supports these and other services demanding high network capacity.

As an electronic communication network operator, ONO does not consider there is a technological barrier in the networks that transport content online or host content online services.

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?

There is a need to increase the willingness of consumers to pay for content which is sometimes found free online. The right balance needs to be found between cost of securing content and the price charged to consumers at which consumer purchase will take place.

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?

Cable operators in Spain use different payment systems, being the most usual ones billing, telephone/SMS payments or Internet payments.

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

Namely, ONO invoices its clients on a monthly subscription basis. When watching pay per view events our clients pay for that specific event, which is detailed in the invoice.

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?

15. Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?

16. How should the distribution of creative content online be taken into account in the remuneration of the right holders? What should be the consequences of convergence in terms of right holders' remuneration (levy systems, new forms of compensation for authorised / unauthorised private copy, etc.)?

The collective management of copyrights and related rights relating to the retransmission of works and other protected subject-matter is strongly based on a territorial structure. As a result, cable distributors may only obtain the applicable licences through the collecting societies established in the territory in which the cable distributors operate. Therefore, cable distributors cannot enter into agreements with collecting societies domiciled in other Member

States. Regarding the reproduction right, phonogram producers may obtain the licence for the entire EU territory from the collecting society of the Member State of their choice. A similar situation takes place with regard to the making available of phonograms. However, regarding the cable distribution, the EU territory is divided so that cable distributors can only negotiate with the collecting societies of their territory or Member State. This situation creates an unjustified privilege for collecting societies which is contrary to the development of the Internal Market.

In practice, collecting societies only collect and manage the rights of the authors represented in their repertoire and exclusively for the acts of communication which take place in Spain.

Therefore, cable operators are obliged to obtain the applicable authorisations and to pay the relevant tariff in each Member State.

ONO fully support the new technology neutral clearance system proposed by Cable Europe, association of which ONO is an active member.

This clearance system is mainly based on two pillars: an all-rights included package for cable companies, and a central licensing framework for all copyright users. This system would lead to an increased market efficiency and effectiveness, to competition between the collecting societies and to a fair market value of copyright prices. This system would be beneficial for all parties involved.

In short, this new "All-Rights Included, Central Licensing" system would be organised against the following principles:

- Broadcasters to clear all rights necessary for communication to the public

- Broadcasters thereby to offer fully cleared packages

- Broadcasters and content providers to have the opportunity to clear all their relevant rights at one organisation of choice at European level

- Competition between collecting societies to support the development of fair market prices

- Clearing mechanisms to be established to guarantee fair distribution of fees

In this proposed system, content creators would benefit from a better leverage of content rights due to easier cross-boarder collective management. Local and foreign content creators could then be treated on the same level.

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?

Some of the barriers have been mention in the answer to question number 3, which should also be taken into account in the answer to this question.

ONO would also point out that pure bundling, transmission or reselling of content offers for which third parties bear the editorial responsibility as media service providers can not be included in the scope of any future Directive. As providers, cable operators have no influence on and therefore no control over such content. New regulation in any other sense would constitute a great barrier to the development of nascent content online services.

ONO has also detected that some collecting societies pretend to impose a copyright levy not only on digital equipment but also on broadband and infrastructure providers. Such measures would surely delay down cable operators massive investments in new services.

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?

On this issue, ONO refers to the comments with regards to difficulties when trying to access content in question number 3.

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?

ONO believes that this issue has been formulated in a misleading way. The Internet is not based on the principle of net neutrality as defined in the question. Nowadays network operators are already allowed to offer preferential, high quality service to some service providers and it is a fact that some services consume more network capacity than others.

The net neutrality question is already being discussed as part of the 2006 Review of the EU E-Communications Framework. The opening of a separate debate elsewhere risks creating uncertainty for all the economic actors involved. Notwithstanding the above, ONO would like to stress that cable operators have always efficiently managed the different offerings over their network, so as to guarantee the best possible quality for all. ONO believes that the market dynamics will regulate this matter since the appropriate incentives exist on both the content and distribution side of the value chain.

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?

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?

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?

ONO would like to point out that there are different piracy models other than the unauthorised uploading and downloading of copyright protected works. For instance, digital television services need conditional access systems in order to assure that content is accessed only by those clients that have the adequate rights. These conditional access systems may be hacked too.

ONO believes that the most efficient way to fight against piracy is education. Both Public Administration and copyright holders or their representatives should promote actions that inform consumers on the benefits of the proper use of content. Also, the digitisation of content should be promoted.

Cable operators will always cooperate in the fight against piracy but they cannot be responsible for the transmission or hosting of illegal content. Actually the Law on Information Society in Spain, which implements the EU Directive on this subject matter exempt responsibility of network operators if the terms and conditions already established in the said Law are accomplished.

Cable operators can not either be asked to control the activities carried out by their clients. In this sense, agreements between collecting societies and cable operators on notification of incorrect activities could be useful.

Digital Rights Management systems (DRMs)

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?

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?

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?

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?

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

In Spain, effective DRM systems are deployed. ONO believes that these solutions are increasingly providing a secure and controlled exploitation environment through which legal copying and re-use of content is facilitated and right holders remunerated. But still there is much to be improved, being in our view, the most important issues the lack of interoperability and the fact that these systems are not in general, users-friendly.

ONO would like to stress that if levies were imposed on top of these DRM systems, any other digital equipment or the broadband access as such the roll out and provision of new content services would be influenced.

Furthermore, the success of new content services will heavily depend on the price the consumer has to pay for it. Any additional cost factor might therefore risk the acceptance of such new services by the consumer.

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.)?

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?

As mentioned in this document, ONO believes that no new regulation is necessary to foster this market, since it is not possible to foresee its evolution.

Nevertheless, ONO firmly believes that there there are two different initiatives that if carried out at European level would effectively foster the development of the Information Society:

- Funding of alternative network construction and I+D research programs.

- Transposition of the "ex ante" regulation system in the electronic communications framework to the audiovisual world that would include market identification, SMP operator designation and imposition of remedies.