

Public Consultation on Content Online in the Single Market **A response by RadioCentre**

RadioCentre formed in July 2006 from the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA). Its members consist of the overwhelming majority of UK Commercial Radio stations, who fund the organisation. The role of RadioCentre is to maintain and build a strong and successful UK Commercial Radio industry, both in terms of listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance for the industry through the Radio Advertising Clearance Centre (RACC).

General remarks

The questions posed in the July questionnaire are answered here on behalf of commercially funded radio services that do not enjoy any form of public subsidy. **All new communication ventures require investment in skills, technology and content in addition to that which is already utilised to provide traditional broadcast or simulcast services.** In this context, "simulcast" means 'made available on one or more communication platforms, in addition to the primary analogue or digital transmission, at the same time as the primary broadcast without significant alteration to the content'.

Commercially funded radio-based ventures have to swiftly find ways of making a financial return from new services, whether on-line or not, because they are risking shareholders' funds. Publicly funded broadcasters are able to exploit new opportunities without risk. Those with particularly heavy public subsidies at their disposal are able to sterilise new markets by offering content for free making any existing or subsequent commercial offer more difficult. **Thus, too heavy a public intervention into these new markets may reduce choice and plurality over time, leaving the State as the principal provider of news and entertainment in some Member States.**

Radio is a ubiquitous, portable and mobile medium which needs to be accessible on all available platforms. Commercial Radio broadcasters are under inescapable pressure in the digital environment, and consequently they are increasingly seeking to make their content available to listeners via new transmission modes such as cable, satellite and the internet. Online services such as internet simulcasting, webcasting, podcasting and track downloads are undoubtedly growing in popularity amongst consumers. **As such, radio broadcasters are faced with an expensive and complex situation in which they must seek to stabilise their positions and defend revenues in order to pay for the technological, rights and content investments required in the online world.** This change is taking place in an environment where competition from powerful new entrants and for advertising revenues is fierce and where some of the regulatory, rights and technological issues remain unresolved.

As important rights users in the analogue, digital and online environments, Commercial Radio broadcasters absolutely support the need for fair and equitable remuneration for rights owners and are already working with rights owners to play a part in the fight against piracy. There is concern, however, that the licensing systems currently in place are making radio's development in the online world difficult. UK Commercial Radio is mostly targeted at local, regional or national audiences and due to language barriers, demand is primarily limited to English speaking populations. Stations wishing to operate outside their country of origin (e.g. via the internet) are faced with the territoriality difficulties associated with the different rules and tariffs applying to other Member States. Consequently, we support the move towards a one-stop-shop model to cover European, or global, music rights whether analogue or digital, on-line or off-line.

RadioCentre applauds the Commission's plans for a Communication on Content Online which will explore added-value actions that could be taken at European level to improve the competitiveness of the European online content production and distribution industry. It is, however, not in favour of public intervention in new media where this takes the form of content regulation or public funding for State owned communication ventures.

Not all European Commercial Radio stations provide all the services alluded below.

Questions and Answers

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? **Yes, podcasts, 'listen again' opportunities, music retail of the "hear it, buy it, burn it" kind via both DAB transmissions and the internet, simulcasts and informational and entertainment led web sites.**

Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)? **Yes, save for simulcasts. Analogue radio has no opportunity for text or pictures. Internet radio, DAB digital radio, podcasts and websites do.**

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. **There are opportunities for a wide number of interactive, gaming and retail services.**

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? **Yes. The two keys to success are reliable, reasonably priced, user friendly technology and appealing content. These matters should be left to the market: that is to say, providers and users. Governments should confine themselves to fair provision of spectrum, careful, light regulation of gatekeepers and open infrastructures.**

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? **Yes – in the main and accepting that this is still developing technology. How are user rights taken into account in the country you live / operate in? The Internet Watch Foundation in the UK self regulates with strong Government support in defence of children. Other Member States have similar arrangements. Consumer protection and fair trading standards apply, provided the citizen takes reasonable care, as do laws of libel. All UK websites (are supposed to) abide by the Data Protection Act and the similar EU regulations. However, where personal data is taken outside the EU, different rules can apply.**

5. How important for you is the possibility to access and use all online content on several, different devices? **Radio is a portable, mobile medium. It needs to be on all devices. What are the advantages and / or risks of such interoperability between content and devices in the online environment? The main advantage is consumer access regardless of place and time; the disadvantage is the difficulty of securing copyright content. (See question 14 for the difficulties in securing copyrighted content.) What is your opinion on the current legal framework in that respect? This is mainly a technical rather than a legal problem in countries where the European Copyright Directive applies.**

6. How far is cultural diversity self-sustaining online? **Radio is primarily a medium of the spoken word. The vibrant, different languages of the EU ensure cultural diversity in radio and on-line audio services.**

Should cultural diversity specifically be further fostered online? **No**. How can more people be enabled to share and circulate their own creative works? **Education and peer group pressure**. Is enough done to respect and enhance linguistic diversity? **Yes**.

Competitiveness of European online content industry

7. If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? **Weakness - too much public intervention which has led to the expectation that new media is available free of charge**. Please give examples. **The BBC websites and new media services are excellent but have reduced the ability of privately financed ventures to compete because their content cannot be provided 'free of charge'**.

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. **We already stream online, but are only licensed to do so within the United Kingdom. Subscription radio is a possibility depending on the size and resource of the public provision**.

Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles? **National and local. Language limits the cross-border appeal of radio services. We therefore have services that seek to appeal to other English language speaking populations**.

9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available. **Currently 2.2% of UK Radio listening is via the internet – this is double the 1.1% recorded in 2004¹. The percentage of UK adults (15+) claiming to have listened to radio via the internet at least once a week has increased from 2.6% in 2002 to 12.6% in 2006². The UK's BBC Radio Player (which offers on demand listening of broadcast content) accounts for over 6 million hours of listening each month. The recent and rapid increase in household broadband penetration has undoubtedly led to significant increases in internet usage, and in turn demand for online content. The growth of usage of websites will also grow online radio, particularly with regard to on-demand content. Some UK radio stations are already seeing hundreds of thousands of podcast downloads every month**.

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? **Yes but, save for the provision of spectrum on a fair basis, there is nothing that the Commission should do about them. The matter can be left to the market**.

11. What kind of difficulties do you encounter in securing revenue streams? **Finding programme and information concepts that the public sector does not already deliver for "free" thanks to Government subsidy**. What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online? **Establish the environment for the creation of a value chain by reducing Government subsidy to the publicly funded players**.

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? **Mainly via credit card and reverse-charge text messaging where commercial airtime or sponsorship is not the financing model**.

¹ RAJAR Platform Survey 2006 on Q2 2006

² RAJAR Q2 2002/Q2 2006

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

Licensing, rights clearance, right holders remuneration

14. Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? **Most UK radio programmes are targeted at local, regional or national audiences and are not generally listened to outside of the radio station's terrestrial reach just because they are available over the internet³. A few UK based commercially funded radio services have aspirations overseas but mainly in English language speaking territories.**

One of the problems associated with convergence is that rights are granted on a Member State level, not on an EU or global level, and different rules apply within each Member State. For example, there are no internet broadcasting licences available in Spain, while the pricing policies of Germany and parts of Scandinavia differ wildly from the UK. This inhibits the formation of a level playing field within Europe. Differing rights are also available from record companies - streaming radio on mobile phones is on a blanket arrangement in Germany, while unavailable except by dealing with record companies directly within the UK. The music industry is increasingly trying to introduce a "country of reception" rule and impose "pay per play/rate per track per stream" to internet simulcasting. This amounts to unsustainable double payments and possibly different territorial scopes and criteria for the same content – whether analogue, on-line, off-line or digital, and thus different legislations for the clearance of music rights. A European or worldwide music collection agency would benefit those businesses wishing to operate outside their country of origin.

If so, what would be the appropriate way to deal with this? **Currently, stations need to seek licences from the Collecting Societies in the territories concerned, however there are disparities amongst Member States (see above). Ultimately, a rights user should be allowed to purchase whatever rights he requires, for whatever purpose wherever he wishes to exercise them, from any Collecting Society in the EU against clear, published tariffs. There should be competing one-stop-shops for all music rights whether for analogue or digital, on-line or off-line platforms. Broadcasters would then be able to choose which society they deal with based on the most favourable terms. This would introduce competition between societies – in terms of overheads, efficiency and service delivery. It is essential that these are genuine one-stop-shops for all parties (rights owners and rights users) guaranteeing all respective rights, regardless of individual label or Collecting Society affiliation of the various right owners.**

What economic and legal challenges do you identify in that respect? **Despite liberalisation in broadcasting and other sectors, the collective rights management system remains characterised by territorial restrictions, lack of transparency and efficiency, monopoly power, and, in some markets, lack of appropriate arbitration and/or conflict resolution systems. Most of the solutions will have to be found at national level but some will need a European approach.**

15. Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? **Collecting Societies representing record companies seek more money from digitisation believing that all digital exploitation somehow reduces their members' retail opportunities. Collecting Societies looking after the interests of authors and publishers seek more money because they think they can. Both seek more money from their secured revenue sources - those "forced customers" such as broadcasters who depend on the use of music rights in order to produce their programmes – so as to make up for lost income due to shrinking record sales and increasing piracy (although there is, of course, no link to broadcasters). We believe this is short-sighted and know that in**

³ In the main, listening outside of the station's TSA (total survey area i.e. reach) e.g. via the internet is of little interest to the advertiser.

the early stages new opportunities do not, overall, make more money for radio stations. New technological developments should not encourage some rights holders to extract unjustifiable new revenues from radio broadcasters, as this is likely to result in the limiting of free choice for listeners with respect to the means of reception for their chosen broadcast.

How could these problems be solved? **Better sense, understanding, partnership and compromise, taking into account that broadcasters are among the most important rights users and thus should be considered the customers of rights owners. Changing the attitudes of rights holders - new platforms don't automatically equate to an opportunity to extract more money - platform neutral licences are crucial in today's increasingly digital environment. Short term licences feel like the way forward through uncertain developments.**

16. How should the distribution of creative content online be taken into account in the remuneration of the right holders? **Fairly. Distribution information must be easier to obtain in the digital age. No multiple remuneration for the same use (e.g. by combinations of levy, collective rights management and DRM).**

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.)? **Provided that rights are made sufficiently available, rights holders should receive appropriate remuneration from broadcasters.**

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? **None that cannot be overcome with good sense.**

18. How does the country you mainly operate in encourage the development of creative online content and services? **As far as broadcasting is concerned, by over-funding the state sector which produces rich content but from one main source.**

Release windows

19. Are "release windows" applicable to your business model? If so, how do you assess the functioning of the system? **No, this mainly relates to film distribution.**

Do you have proposals to improve it where necessary?

Do you think release windows still make sense in the online environment? **Release windows may still be possible, however the time lapse surely has to come down. Online will inevitably start to effect release windows for feature films. There is the possibility of a new model e.g. when does the online release start to become more profitable than the DVD?**

Would other models be appropriate?

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? **Network neutrality is a fundamental part of the internet, and as content providers, we are committed to upholding this principle. A neutral communications medium is fundamental to our society - giving every internet company an equal and fair chance to provide great content, and giving every user equal access to this content. Eradicating network neutrality would essentially undermine the principles of freedom and innovation which have hitherto defined the internet as it would force people to get permission from, and pay special fees to, internet companies and broadband carriers.**

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)? **Early days, but so far the effects are negligible. We have reached agreements on metadata transmission with the IFPI. We completely support record companies' rights and the need to protect them. However, we insist that the right to broadcast protected works, performances and recordings (accompanied by fair remuneration) remains unhindered by means of protection against piracy (such as DRM).**

What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? **See above. Appropriate action needs to be technical as opposed to legislative.**

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? **Ideally, all law breakers should be pursued with equal vigour but one has to be practical and therefore selective.**

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? **The UK Government Patent Office and the relevant minister go through periods of publicising the negative effects of IP piracy. Rights users could do more if their discussions with owners were not always merely negotiations about price.**

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 technologies can be used to swap DRM'd material, providing the recipients pay for a licence, and therefore can provide a new business model (where consumers, not copyright holders, provide a distribution method). However, the Commercial Radio industry does not normally produce a vast amount of paid-for material that it retains the rights to in this way.**

Rating or classification

24. Is rating or classification of content an issue for your business? **The UK has self regulatory arrangements. We are not aware of difficulties.**

Digital Rights Management systems (DRMs)

Digital Rights Management systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.

25. Do you use Digital Rights Management systems (DRMs) or intend to do so? **Yes to both. Sometimes, for example with podcasts, we accept the limitation of providing only edited versions of tracks so that they are less attractive to those looking for free downloadable music.** If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment? **Yes, provided that DRMs do not hinder or prevent authorised use, or lead to multiple remuneration of rights holders for the same use.**

26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? **Technology has someway to go and each development is swiftly challenged by those with piratical intent.** If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system? **It holds back the development of new media services.**

27. In the sector and in the country or countries you operate in, are DRMs widely used? **Early days but reasonably so.**

Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly? **DRM systems are confusing to the public, and are sometimes not transparent. For example, Apple's DRM system is not available to any third-party, therefore we are unable to produce DRM'd material that can be made available on iPods without reaching agreement with Apple's monopolistic iTunes system. This differs with Microsoft, which has a robust and open DRM system. Furthermore, see question 25 (risk of multiple remuneration for same use).**

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? **See question 21.**

29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability? **Interoperability is an important area for the future of DRM'd material; it is important to allow consumers as much freedom to change MP3 player etc, without having to totally re-purchase all their material.**

Complementing commercial offers with non-commercial services

30. In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in? **Good non-commercial services close the door on commercial services.**

What role for equipment and software manufacturers?

31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs,etc.)? **Include DAB/DMB/DVBH/DRM capable chips in their devices but the Commission has remained resolutely technological neutral through the global digital development so far.**

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.)? **Make spectrum available.**

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? **No.**

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