

European Commission public consultation on Content Online in the Single Market

Introduction to Reuters:

Founded in London in 1851, Reuters is the world's leading provider of news and financial information to the global financial markets and media organisations, both print and television. Reuters is a UK listed company with over 2,300 editorial staff around the world across 196 bureaux that produce news that is seen by more than 1 billion people every day.

In 2004, Reuters filed over two and a half million news items, including 440,000 alerts, from 209 countries around the world published in 18 languages. We also provide real-time data on 5.5 million financial records and maintained more than 200 million data records.

General comments:

Reuters welcomes the renewed focus of the European Union, through the i2010 programme, to promote "*rich and diverse content.*" If the EU is to meet its goal of being "*the most competitive and knowledge-based economy in the world by 2010*", it is particularly important to get the regulatory framework right for online content services, particularly given the importance of the content sector to the European economy. As the Commission paper notes:

"Western European online content-sharing frameworks and markets are expected to triple by 2008 (with the user/creator part growing tenfold). These developments are expected to multiply across the sector, already accounting for 8% of EU GDP today. However, the impact of digital convergence will be felt globally and will lead to increased worldwide competition" (pg 2)

Reuters supports the view of the Commission that competition has a positive effect on the online market and believes this should be further enhanced by a light touch regulatory regime that does not overburden European online publishers and/or disadvantage them in relation to non-EU competitors. Furthermore, the EU should ensure European publishers can compete effectively with their international rivals, particularly in the United States, by having a suitable variety of bandwidth and communications services available for the online content sector. This is particularly important in Reuters principal business area -- the provision of content to the global financial markets -- where market participants rely on effective communications to receive information on a real-time basis. Overpriced and unreliable communications would undermine the competitiveness of the EU's financial markets, as would any over-regulation of these markets. Whilst it is true that European bandwidth costs for business have decreased in recent years, we note that tariffs are falling swiftly in other major centres, such as India and China. Continued downward pressure on European telecommunications costs is therefore necessary if the EU is to maintain a globally competitive environment for content providers and other bandwidth users.

Reuters believes that the paper's current scope is sufficient and does not need to be extended to include other categories.

Consumption, creation and diversity of online content:

Question 3: "*Do you think the present environment (legal, technical, and business) 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? Insufficient harmonisation in the Single Market etc?"

- **Liability of content aggregators for third party content:**

On-line content aggregation is now routine, with few suppliers having sufficient content of their own to create saleable products. In the case of Reuters, we aggregate immense volumes of third party content, always (where required) with the permission of the copyright owner. As with ISPs, the massive volume of content we carry makes it impossible for us to verify whether any of the third party content is in some way problematic until we are put on notice that it is. Such problems may relate to content that is harmful in some way, or is in breach of copyright.

In the United States, the Digital Millennium Copyright Act and the Communications Decency Act, and subsequent case law, establish that content aggregators have no liability for third party content they aggregate until aware of its presence on their services. Unfortunately, the EU's E-Commerce Directive does not provide similar protection for European content aggregators. The E-Commerce Directive protects media owners against liability for content provided by the "recipient" of the service (i.e. the user) but it offers no protection against liability arising out of any third party material aggregated by the media owner but obtained from a party other than a recipient of the service. Reuters would like to see the EU align its liability regime for online content aggregators with that in the United States so that content aggregators in Europe benefit from the same degree of protection from legal exposure as their counterparts in the United States, and ISPs in Europe.

Protection of Privacy, Copyright and other Interests:

Question 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?"*

Reuters is both a major producer and a user of content. We therefore have a strong interest in maintaining a reasonable balance between proprietary rights and the protection of public interests. We believe, as shown by the recent cases on copyright in the UK, as well as the ECHR cases on privacy, that there are adequate protections with regard to protecting an individual's rights in the areas of right to information and privacy. However, the law can be strengthened to address occasions where proprietary content is taken and exploited for commercial purposes without consent. For example, Reuters makes available its news content on the web for everyone to read provided they do so for their own private use. But there have been cases where third parties commercialise such content by deep-linking to individual stories on the website, bypassing the homepage, aggregating other third party content with Reuters content, and then on-selling the resulting product without our authorisation or agreement in clear breach of the website terms of use as well as copyright law. However, there is a great deal of controversy and misunderstanding surrounding this issue and we suggest that the Commission carries out a detailed study to assess the nature and full extent of the issue, and recommend actions.

Interoperability between content and devices in the online environment:

Question 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?"*

Reuters aims to provide a variety of data to financial markets professionals on a number of different devices -- from PCs to mobile phones to PDAs. We believe that the market itself must be left to determine the question of interoperability between content and devices in the online environment. It is also becoming increasingly difficult to distinguish between different media due to technological convergence, which makes any successful and lasting regulatory intervention extraordinarily hard to achieve.

Already, for many people, there is no difference in browsing a web using a laptop with a wireless connection or via a handheld device. What is important is that upstream providers in monopolistic positions cannot prohibit or exclude certain content for different types of devices.

Legal or regulatory barriers:

Question 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?*”

- **Financial markets regulation as a barrier to on-line content services**

We would like to draw the Commission’s attention to the report on “improving the competitiveness of publishing industries in EU and candidate countries” it commissioned in 2000 which recorded that:

*“...differences in...rules regarding financial information, investment advice, and financial services in Member States reduce the desire of publishers to export some published materials to other nations. This is currently a problem with physical copies of publications but is even more of a problem with on-line publications and information accessed from any Member States.”*¹

New examples of this problem are unfortunately now arising in the national implementations of the Transparency Obligations Directive (TOD) and Markets in Financial Instruments Directive (MiFID). Under both TOD and MiFID, the European Union intended to create competitive information markets for the collection and pan-European dissemination of financial information. TOD relates to collecting and disseminating price sensitive information published by listed European companies; MiFID to market price information originating from markets participants. In both these areas, the on-line content market has been categorised up to now in many member states as restricted and/or monopolistic. Opening up this area to full competition is therefore very welcome and can be expected to result in an improvement in the quality and choice of information services for investors and markets participants.

Unfortunately, certain Member States are proposing national accreditation schemes which would require on-line content companies to obtain accreditation before providing services containing these types of information. National accreditation schemes of this kind will act as barriers to the single market and impede the development of pan-European financial information services. Neither of the two directives envisages the establishment of national accreditation schemes for financial information services. Furthermore, it seems likely that the imposition of such a requirement as a pre-condition for carrying out this activity would be inconsistent with the E-Commerce Directive.

¹ Report on improving the competitiveness of publishing industries in EU and candidate countries carried out for the European Commission by the Turku School of Economics and Business Administration (Finland)
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- **Rome II:**

Reuters believes that the Commission proposal for a Council Regulation on the law applicable to non-contractual obligations (“Rome II”) could impact negatively on the functioning of the Internal Market for real-time on-line news services. It is not practicable for any publisher (even a well-resourced multinational) to check and apply the laws of all the countries where it publishes with regard to its content. This is particularly true for a real-time global news agency such as Reuters. We believe that “country of origin” or “country of editorial control” are the only practicable solutions for online media whose audience is a global one.

Please also see our comments under Question 7 above regarding interoperability of content and devices.

- **Contempt of Court rules in the United Kingdom:**

Outdated and ineffective restrictions in the UK on news reporting criminal trials cause disproportionate problems for UK-based international online publishers like Reuters. They also have a negative impact that can be EU-wide. For example, an online media company reporting a UK criminal case concerning (say) an Italian defendant would not be able to report fully the trial for subscribers in Italy, or elsewhere, because the same content would also be available in the UK where it would breach the UK contempt of court rules. In our opinion, to the extent the UK’s contempt of court rules prevent on-line publishers from making the content available to Europe as a whole, it is clearly disproportionate and in breach of the European Convention on Human Rights. The same effect can be achieved more proportionately and effectively by a judge instructing jurors not to carry out online research during the course of a trial. As a practical matter, it is also a great deal more likely that jurors will take notice of such a direction than the media as a whole, and bloggers and chat rooms would of a no publication restriction. We would ask the European Commission to encourage the British Government to reform this area. The current regime has self-evidently passed its sell-by date.

Networks/Network neutrality:

Question 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?”*

Reuters supports the principle of network neutrality. Networks are not yet sufficiently competitive to avoid the risk of monopoly behaviour if the principle is not upheld.

Public authorities’ role:

Question 32: *“What could be the role of national governments/regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc)?*

The public sector produces a huge volume of data that private sector publishers can use to create on-line services. Reuters therefore welcomed the Commission’s actions to reform national regimes on public sector data, but we were disappointed that resistance from some Member States limited those reforms. We would urge the Commission to revive this dossier and to examine if further reform may now be possible.

On another matter, we would encourage the Commission to maintain vigilance on state funding of the media, and the market distortions that this causes.

We hope these comments are useful.

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