



European Commission Consultation

CONTENT ONLINE

13 October 2006

The SCBG is the trade association for independent satellite and cable programme providers. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide consumers with programmes and services across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. They make and show programmes for children and young people, and for ethnic minorities in their own languages. Together they have a combined audience share approaching 20% of all UK television viewing.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

Executive Summary

The Satellite and Cable Broadcasters' Group welcomes the opportunity to contribute to this important task of the Commission to encourage the development and take-up of online services. Our main issues in the consultation document are the following:

- As a general remark we would ask that DG Information Society and Media ensures that any Communication resulting from this questionnaire takes account of parallel processes, including the preparation of the Audiovisual Media Services Directive, and current legislation, such as the E-Commerce Directive, in order to avoid regulatory uncertainty.
- SCBG members use a range of online business models and have pioneered the development of online branded areas, with brands based either on channel identities or on brands and characters associated with those channels. They are also at the forefront of licensing their brands and content for distribution across all available platforms.
- We believe that the regulatory burden must be minimal in order to foster innovation into these nascent services and a competitive environment between new market entrants and incumbent operators must be the aim.
- Piracy is a serious problem facing this industry and we believe that although the industry should develop its own anti-piracy measures, the Commission has an important role to play in guiding the development of these technologies, and providing an objective overview for content providers of their individual merits.
- Consumer take-up of this content is instrumental and therefore the commercial sector is worried about the consumer expectation to get this content for free. The early market entry by the state funded public service broadcasters has conditioned consumers to expect high quality content for free and this expectation creates an entry barrier for commercial content suppliers.
- Interoperability is an important issue that we thoroughly support, but we would advise against any kind of regulatory intervention that would only stifle the market.
- Holdbacks of content by public broadcasters should be avoided in order for this content to be made available through other delivery means by commercial operators.

Introduction

The SCBG welcomes this opportunity to contribute to the thinking of DG Information Society and Media on the nascent online content production and distribution markets in Europe. Whilst we appreciate that developments in these markets have implications for policy making across the media and telecommunications industries, we would ask that DG Information Society and Media ensures that any Communication resulting from this questionnaire take account of parallel processes, including the preparation of the Audiovisual Media Services Directive, and current legislation, such as the E-Commerce Directive, so as to avoid regulatory uncertainty at a time where companies, such as those represented by the SCBG, are making critical investment decisions. We also ask that the forthcoming Communication respect and recognise where national policy makers take primacy through subsidiarity to avoid additional and unnecessary regulatory uncertainty.

Rather than seek to answer all of the questions posed, our response will instead focus on those issues where SCBG members can contribute most constructively.

1. What types of creative content does your company offer online?

SCBG members use a range of online business models, from streamed clips of programmes to electronic sell through (download to own) of whole programmes and purchasing of goods online. Many members have pioneered the development of online branded areas, with brands based either on channel identities or on brands and characters associated with those channels. SCBG members are at the forefront of licensing their brands and content for distribution across all available platforms, including mobile and broadband Internet, and have actively participated in the trialling of new technologies, such as wireless (DVB-H) in several EU Member States.

The diverse membership of the SCBG means that its members offer online distribution across all genres of content, from children's animation on mobile handsets to the delivery of non-linear news services. Also user generated content has gained popularity. The online medium offers valuable opportunities for many members to extend their brand beyond conventional content distribution with ancillary services, such as branded games and podcasting. Members also provide consumers with opportunities to interact with each other, and to feedback directly to the channels, through chat rooms and e-mail. Some are also offering business-to-business services, such as financial news, which is likely to represent a significant amount of the market for paid for content.

2. Is the present legal, regulatory, technical and business environment conducive to developing such services?

There are a number of important points that the SCBG wishes to make concerning the regulatory environment and its impact on the incentives on companies to invest in the online space.

Minimisation of regulatory burdens

As the development of online is very much at the nascent stage it is vitally important to avoid seeking to pre-empt the market with regulatory burdens. In particular, the difference between the heavily regulated TV sector and the more lightly regulated online environment provides a significant incentive for SCBG members to invest in the growth of online business models.

This is not to say that there is no scope for improvements in the regulatory framework. One of the key principles of TV regulation, the Country of Origin principle, should remain a cornerstone for broadcasting and information society services, but the ability of Member States to derogate from this principle should ideally be curtailed to increased certainty for providers of online services that they will not be subject to divergent national laws.

Whilst SCBG shares the Commission's preference for self and co-regulation of online content distribution it believes that a system of mutual recognition of self and co-regulatory bodies should be at the heart of the proposed Audiovisual Media Services Directive. Absent such recognition the EU could develop into a land of digital "haves and have nots" as service providers decline to launch new services in those territories where the cost of regulatory compliance would outweigh the revenue potential from the potential service. The borderless nature of the online environment makes such a system of mutual recognition critical for the delivery of regulatory certainty.

Plurality and competition

SCBG members, as content providers, are neutral towards the means they use to provide their content to customers. The greater the number of distributors, and diversity of ownership and levels of competition amongst these, the easier and more economic it becomes for content providers to access their customers.

It is therefore important for the development of online content businesses that the Commission does all that it can to encourage such diversity and competition. Online businesses are relatively portable and excessive and unfavourable regulation could drive these businesses to establish themselves outside the EU or encourage consumers to use non-EU businesses. A concrete example is the safe-harbour rules and more lax fair dealing defences available in the US which certainly give US based online providers an advantage in certain areas.

It is also an undesirable market outcome for the means of access to online markets to become too concentrated in the hands of a few powerful companies, particularly where those companies have significant interests in competing cable and DTH networks.

The Commission should be aware that the strong market position of existing cable and DTH distributors can act as a barrier to the development of new online services through their ability to impose significant restrictions on the services that content providers may offer on alternative platforms.

Public service broadcasters

SCBG is concerned at the tendency within Europe to regulate in favour of incumbent business models and, in particular, public service broadcasters. The leveraging of the purchasing power of the incumbent broadcasters into the online content markets raises entry barriers for innovative new service providers who may have the strongest incentive to drive the penetration of online services.

In April 2006, for example, the BBC's *Creative Future* announcement outlined the BBC's new media plans, with a specific focus on on-demand broadband services. One of the core proposals is to create 'easy access points for audiences via broadband portals around key content areas like sport, music, knowledge building, health and science'. The plans, if carried out, would position the BBC as a significant

broadband player, and major competitor to other online content providers. Furthermore, in September 2006, the BBC submitted its proposals for the approval of the BBC *iPlayer*, a free internet and cable-based on-demand service for UK viewers offering a 7-day catch-up window for BBC programmes, plus internet simulcasts of its linear channels. Such announcements are sufficient on their own to deter potential investors from entering the broadband market, let alone the services themselves, and it is vital that clear and rigorous boundaries are drawn around PSB online services to ensure business confidence.

Despite there being little evidence that the extension to the PSBs' remit serves the wider public interest or creates a more competitive market for European producers, policy makers seem unwilling to tackle the issue. Protectionist approaches are unlikely to stimulate investment and competition in online content and may see potential investment bypass the EU and move to more rewarding and inviting environments.

Security

There must be few providers of video content that do not suffer as a result of piracy. SCBG has no specific figures for TV, but press reports explain the rapid growth of TV piracy in the UK. In recent years the pirating of TV shows has increased by more than either movies or music, albeit from a lower base, according to reports. TV shows are shorter than blockbuster movies, so can easily and quickly be downloaded, even on dial-up connections. Moreover, whereas consumers increasingly understand that movies and music are covered by certain copyrights the consumer perception is less strong for TV shows.

The threat of piracy diminishes business confidence in certain online business models, and therefore the value that they can extract from their content online. Some SCBG members, for example, only offer streamed content and avoid 'download to own' models which are harder to protect against piracy. While it is ultimately the responsibility of industry to come up with systems which protect content from unlawful exploitation, SCBG believes that the Commission has an important role to play in guiding the development of these technologies, and providing an objective overview for content providers of their individual merits. Without such guidance and objectivity, SCBG believes that effective counter-piracy solutions will take longer to emerge.

3. Is interoperability important when accessing online content?

Interoperability of content services across consumer devices is a laudable and commercially desirable objective. The cost to content companies of supporting multiple DRM solutions, for example, could be prohibitive for many smaller content players, who would then be forced to restrict the distribution of their services to devices with larger market shares. Ultimately, consumer pressure for greater flexibility will create market opportunities for service providers to offer interoperability. Although we support interoperability we would oppose any regulatory intervention in this area that would stifle development of these systems.

4. What opportunities for new online content do you see in the future (VOD, P2P etc)?

In the online future the consumer, rather than the content, will be king. Ultimately, the business models of SCBG members will be driven by the shifting demands of

consumers. The content models which will survive are those which are best able to exploit the functionalities of the underlying infrastructure. Just as movies and sport benefited from the ability to extract willingness to pay in the digital and pay TV environments, content that exploits large bandwidth and interactivity will appeal to consumers in the world of Next Generation Networks. We expect that business models will exist along a spectrum from linear scheduled content to user generated content and from business-to-business to purely consumer focussed. Game services will compete with user generated content and more conventional fare, including movies and sports. As content companies learn to commercialise new platforms, such as P2P and podcasting, then new services will be launched to compete with and to complement existing pirate and user generated content services.

5. Are there difficulties in securing revenue streams?

Securing revenues in online content distribution is critical for supporting future investments. At this stage in the market, SCBG members, like many other players, are experimenting with a range of models, such as advertising funded, licensing, subscription, pay per view and electronic sell through. The market may tip in favour of a smaller number of models, but there is no sign of that happening yet. A major barrier is that consumer expectation is that content delivered online must be free at the point of consumption. As noted above, the scale of online piracy and the early market entry by the state funded public service broadcasters has conditioned consumers to expect high quality content for free. This expectation creates an entry barrier for commercial content suppliers.

6. Are release windows a problem?

Release windows are burdensome to the extent that smaller cable and satellite channels have to watch value being removed from rights earlier in the release cycle as a result of increased multi-platform exploitation by terrestrial broadcasters and larger pay TV service providers. In addition, piracy means that holdback periods are no longer “dead” time designed to protect the value of the underlying content, as consumers simply switch their demand to illegal sources during these periods. In short, by the time that many rights are acquired by smaller cable and satellite channels most of their value has been exploited. SCBG understands that many rights owners are looking to concertina the windowing system to reduce the demand for pirate copy and to safeguard demand for legitimate product down the value chain. We can only urge that support is given to such efforts and point to the worrying proposed introduction of holdbacks in new media distribution of independently produced content in the UK, when it is commissioned by the public service broadcasters. This may safeguard the investments being made by the PSBs, but is likely to undermine investment in independent production from new entrants, including ISPs and smaller channel suppliers.

7. What should be the role of public authorities be to foster new business models?

We believe that public authorities should:

- Focus on the identification of barriers to entry at all stages in the value chain.
- Ensure plurality of, and competition between, online access providers.
- Guard against the market power of incumbent platforms.

- Undertake a first principles exercise in assessing any market failure before approving the extension of the scope of public services into new markets, such as online.
- Provide a framework for industry self and co-regulatory initiatives.
- Maintain the pressure for competitive telecoms markets.
- Empower intermediaries to cooperate with other stakeholders in efficiently and expeditiously promoting legal access to content, including by giving its explicit approval to intermediaries forwarding warning notices in cases of illegal access to content and ultimately suspending or terminating repeat offenders, without prejudice to more severe options for victims of illegal behaviour to bring criminal or civil actions.
- Co-ordinate and objectively assess industry-led counter-piracy solutions.

SCBG hopes that these comments will be seriously considered in any Commission online strategies going forward and we are willing to discuss these more in detail if considered necessary.

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