To: Audiovisual and Media Policies Unit
        DG Information Society and Media
        The European Commission
        B-1000 Brussels

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PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET

Skype Communications S.a.r.L. (hereafter 'Skype') is an EU-based provider of peer-to-peer software applications that enable Skype users to communicate with other Skype users, and enabling, optionally and where possible, certain forms of communication with the subscribers of electronic communications networks and services.

Skype is grateful to the Commission for the opportunity to provide input to the consultation. Skype restricts itself to providing some general comments and answering only those questions which we believe are of direct or indirect concern to the company.

Questions

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 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.

Skype believes the present environment is developing sufficiently well for consumers to have confidence in taking up new content services online. However, there are practical issues which are hindering the development of new, innovative online services. One such issue is the pace at which broadband networks are being deployed across the EU. While some Member States have made excellent strides, others have been slow to foster sufficient competition in the market place, leaving no incentive for the incumbent operator to improve service to consumers. Similarly, while network speeds are increasing, they are not increasing quickly enough to keep pace with developments outside of Europe. More thought needs to be given to the ways in which policy can help facilitate the faster rollout of higher speed networks and foster greater competition at retail access and network levels.

Privacy concerns are well addressed by reputable online companies and robust, trustworthy payment systems, such as PayPal, are widely available. The problems lie elsewhere and they are two-fold.

First, there is, as the question suggests, insufficient harmonisation in the Single Market when it comes to obtaining rights for protected content. For smaller online companies in particular, it is difficult if not impossible to secure pan-European rights in an economically viable way. An additional factor – and one which contributes to complicated or uncompetitive price systems – is that rights secured often have narrow and unnecessarily restricted usage conditions attached, hindering innovative ways of presenting and selling the content to consumers.

The recently agreed Services Directive represents a truncated step forward in the development of the Internal Market for Services. It is to be regretted that much of the Commission's original Proposal did not make it into the final version.

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are users rights taken into account in the country you live / operate in?

EU citizens enjoy a high degree of privacy protection under EU and Member State law; probably the highest anywhere in the world. The Commission's work in this area is to be applauded. For individuals or companies who choose not to respect such laws, a range of civil and criminal sanctions exist to punish them. The online environment is no different to the offline in this regard. What is needed, perhaps, is better enforcement of existing laws.

An area where users' rights do need to be better protected is in the area of access to information. The current Communications Regulatory Framework sets out in vague terms – appropriate at the time of drafting, no doubt - to protect such rights. However, times have changed. In the face of increasing threats by some network operators to close off sections of the Internet, or provide privileged carriage to own-brand content and services at the expense of often smaller, European competitors, it is time for the Commission to examine how best to protect the neutrality of the Internet for all users. It must be for consumers to pick winners and losers in the Internet space, not network operators. Such safeguards can be simply built into the regulatory framework, as Skype has already suggested in its response to the Commission's Call for Input into the review of the framework back in January 2006[1].

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 Internet, far from being the harbinger of monoglottal, uniform doom for Europe, as once predicted, has in fact proved to be an engine for the promotion of cultural and linguistic diversity and simultaneously provided a platform for otherwise marginalised members of society to air their views, share their creative content and learn more about others' views and cultures. Cultural diversity online is not just self-sustaining, it is flourishing. Commercial, non-commercial and citizens' own content is equally accessible to all and can be added to by anyone. The Internet is the first truly democratic medium as far as access to information and services and the free exchange of views is concerned. The temptation to alter or control this thriving, open universe would be misplaced.

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? Please give examples.

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[1] Available on the Commission's website:
http://europa.eu.int/information_society/policy/ecomm/doc/info_centre/public_consult/review/comments/skype_31_1_06.pdf , see Section 2

The online content industry's strengths mirror those of Europe's strengths more generally and lie in several areas: rich cultural diversity, technologically advanced infrastructure, a tradition of creative skills, and well educated, affluent citizens. These conditions have created a strong base for the creation, production and distribution of high-quality content – online and offline. At the same time, the strength of diversity also has the effect of creating the weakness of small, discreet markets, each with its own legal and regulatory peculiarities. The Internet has created a border-free environment in technological terms; regulation has to adapt.

The completion of a proper, functioning internal market for online services in Europe is one of the strategically most important tasks facing the EU today. Examples of areas of regulatory non-harmonisation (lack of mutual recognition) include: copyright/IPR, consumer protection, rules on company establishment, labour laws, taxation, etc. A good commercial example would be in the area of online music, where the archaic copyright and licensing regime in Europe slowed development of legal online music businesses here, while those in the US and Asia (and illegal sites) thrived. Still today, prices are generally higher in Europe than elsewhere in the world for the identical product, due to an artificially segmented marketplace.

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, 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?

Skype is a global company, headquartered in the EU. We do not currently tailor content or services for a particular market. We do, however, offer our products and services in 27 languages. It makes no sense for us to restrict artificially the offering of products and services to a national level. Skype uses a peer-to-peer (P2P) architecture, which is both efficient and low-cost. For these reasons, we expect to see more P2P-based applications for content distribution and service provision appear in coming years.

14. Would creative businesses benefit from Europe-wide or multi-territority 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?

The process for a company to obtain European/multi-territory licenses and clearance needs to be made simpler. It makes no economic sense for a small or medium-sized enterprise to have to negotiate with every national rights administration body on an individual basis. Faced with 25 bodies (considerably more in the case of areas like music), it is nigh-on impossible for an SME to obtain the necessary licences to provide a pan-EU service. Some progress has been made, for example via reciprocal agreements among national administration bodies, but the rates and conditions of the licences have changed little. The Commission should investigate (as DG COMP and DG MARKT have already done to an extent) how to introduce greater competition among national rights administration bodies to offer similar pan-EU licences to any EU-based company (not just those based in that national administration body's territory). A single market for rights would enable start-ups to focus on innovation and value creation, rather than have to put all their energy and resources into obtaining clearance for rights according to a regime created almost a century ago when the content industry looked very different and was indeed principally nationally focused.

19. Are "release windows" applicable to your business model? If so, how 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?

Release windows are a relic of national markets. Perhaps they can still be appropriate for certain offline content which is hard to obtain cross-border? In the online context, they create an artificial barrier to consumer value and choice and encourage illegal activity. Global online releases would appear to be an effective tool to help combat piracy as well as maximise consumer choice and convenience.

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?

If speed and quality of service were to be based solely on the ability of a content provider to pay the network operator an additional premium, we would see a consolidation of power in the hands of a few, large, predominantly non-European content providers and the incumbent network operators. Smaller content and service providers would not be able to compete financially and so would have to offer (inferior, lower bandwidth) services across non-prioritised networks. Such services would be nature be lower tech and less engaging for consumers.

Such a scenario would depress vibrant local creative industries and discourage new investment and innovation at the start-up level of business. As a result, investment capital would likely move out of Europe to the US or Asia.

As already stated, Skype believes full and open access to the Internet is a user right. It should be up to users, not network operators, to decide which companies succeed or fail in the Internet space. Network Neutrality should be considered as an issue relating to the fundamental rights of citizens to hold opinions and to receive and impart information and ideas without interference and regardless of frontiers.

Additionally, unrestricted Internet access is also a necessity for the preservation of the effectiveness of European and national policies designed to combat social exclusion, promote education, training, employment, etc.

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 (P2P) is a mere technology. To use it as a pejorative term is unhelpful. It is also unfair to those companies using P2P legitimately and creatively for the good of European consumers and the European economy. Indeed, some P2P-based business models do not even have content provision or distribution as a component. Skype, for example, uses P2P

architecture to provide free voice, video and chat communications on the Internet. Examples of secure P2P-based content distribution platforms are already entering the market.

In the case of non-copyrighted or non-commercial content, P2P technology can provide a flexible, low-cost and highly scalable solution for content distribution. It is likely that new business models utilising the inherent advantages of P2P will grow in number, to the benefit of consumers and content creators alike.

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

In principle, government-owned content, paid for by the public purse, should be made available to all citizens in as many formats, on as many platforms and at as low cost as is reasonably possible. Restrictions should focus solely on legitimate national security, public safety and health grounds. The remainder of the content should be available free, or at cost, to any commercial or non-commercial entity wishing to distribute it.

For commercial companies, revenue generation would come from charging consumers for aggregating and presenting the content in ways that consumers found useful (e.g. time saving or money saving). As the content would also be available elsewhere for free (eg on government or non-profit sites), there would be no compulsion for the consumer to use the – potentially, more innovative and helpful – commercial, paid-for offerings.

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

National governments and regional entities perform a supporting (but crucial) role. It is their task to set the legal and regulatory framework within which commercial and non-commercial entities can start-up, grow, operate and prosper. It is most important that general, horizontal regulation – concerning, for example, the process of establishing a company, finding seed capital and hiring employees – is as unbureaucratic and simple as possible. Many start-up companies fail at an early stage due to the volume of regulatory tape which envelopes them from the outset. Entrepreneurs should be able to focus on innovating and developing valuable new products and services for consumers and citizens.

At the same time, core issues of public policy, such as the roll out of an efficient and competition-based broadband market and the promotion of media literacy among the whole of society, should remain with governments and other bodies able to coordinate on a national or regional basis.

Direct intervention by national governments and regional entities to foster new business models, or shore up old decrepit ones, does not have a good track record, generally speaking. Direct subsidies – for new or old business models - tend to skew the market in the short-term in favour those receiving the funds, but damage competition in the market place longer-term, to the detriment of entrepreneurs and consumers alike and the economy as a whole.

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 proposal in this respect?

We encourage the European Commission and Council to continue to try to invigorate the Lisbon Strategy and, in particular in this context, we look forward to the fruits of the Commission's ambitious i2010 initiative. Efforts should be stepped up to ensure the completion of the Internal Market for (online) services, while reducing the amount of bureaucratic red tape faced by new companies operating in the online space to the absolute minimum necessary for public health and safety. Skype's specific comments on the review of the communications framework, as already mentioned above, are available on the Commission's website.

Should you have questions pertaining to the above comments, please do not hesitate to contact me by email at stephen.collins@skype.net, or via Skype at scollins40

Yours faithfully,

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