

European Commission's public consultation on Content Online in the Single Market : Telecom Italia considerations

Telecom Italia welcomes the Commission's consultation on content-online: indeed, it is of fundamental importance that public authorities, and the Commission in particular, have all elements to understand the fast-moving nature and the inherent diversity of the European market for online content before deciding any intervention which may have unpredictable consequences.

Telecom Italia operates in the market for content online: in particular, for PC user through Rosso Alice it offers films online (PPV and Subscription streaming VoD), music (downloads, music videos, music tones, ring tones), video games, sport events, information and vanity videos. TI also offers a Set Top Box based IPTV service with linear TV contents and VOD services. On mobile it offers Over The Air ring-tones and full tracks music download to phones by WAP (TIM iMusicStore), Mobile TV over GPRS/EDGE/UMTS services, (TIM Maxxi TV) broadcast mobile TV services over DVB-H (TIM TV). Moreover, MTV Italia (a joint venture between Telecom Italia and MTV Networks) offers broadband-based services for downloading and streaming of music videos, ring-tones and music tracks for mobile phones and PCs (Overdrive di Telecom Italia Media) as well as a mixed broadcast TV and Internet service of user generated content within an innovative TV format called Flux TV.

It is worth stressing that the market for on line content is still in its infancy and as far as broadband network is concerned, its development also depends on the penetration of PCs, which in Italy remains lower than the EU average.

In order for the European market for on line content to take up, some basic principles should be promoted and implemented:

- **availability of content on any platform:** circulation of content (both premium and non-premium) should not be hampered by different treatment (commercial or otherwise) of technologically different content delivery platforms. As an example, it still is a common practice that the new distribution platforms are discriminated vis-à-vis the traditional ones by the fact that content owners apply to them business conditions that may be justified only in the case of consolidated platforms. This is the case of minimum guarantee fees often asked for the licensing of movies on new media. In this sense, non-neutrality as regards availability of content may strongly preclude the growth of new media through artificially generated scarcity of content. The possibility to access and use all online content on several, different devices is essential. This aspect could be better addressed by competition law. Concerning the circulation of premium content, the European Commission has recognized the need for "adequate instruments to resolve the competition concerns raised in respect of access [...] as regards access to premium contents and in respect of illegitimate exercise of market power" (NewsCorp Decision of 2003).
- **Availability of content at EU or global scale:** the current fragmentation of the markets heavily limits the possibility for users to consume content throughout Europe. Indeed, rights are managed and sold at local level. As an operator active in different EU member States, Telecom Italia supports the Commission in its effort of promoting the European licensing scheme. In this context, collecting societies may have an important role if they effectively implement the EU licensing and operate in a new competitive environment, as stressed for by the recent Commission's Recommendation.
- **Interoperability of DRM:** the existence of several robust DRM systems ensure the proper and legal management and distribution of copyrighted products on line. Since DRM systems provide for a proper remuneration of rightholders, no duplication of levies should be

introduced via other means. In order to enable users to consume content on the device of their choice, DRM's interoperability among platforms needs to be ensured. DRM interoperability is also essential for non discrimination against local contents, cultural minorities and smaller editors that might otherwise be kept out of larger commercial delivery systems (see next item).

- **Transparency for users:** in order for end users to accept them, DRMs must be user-friendly and information-transparent.
- **Protection of cultural diversity:** The EU should facilitate the work of media producers who aggregate the response to Europe-wide demand for quality content. This would help overcome, also through the use of the Internet, the current market fragmentation for cultural products. Internet-based commercial models for the online distribution of content may not fully protect cultural diversity, as they tend to propose "hits" rather than reputedly less attractive content. However, as the theory of the "long tail" of distribution implies, the Internet may facilitate the protection of cultural diversity, based on the complementarity between popular "hits" and niche films that are in low but constant demand. In this sense, online films and documentaries may be a great opportunity for consumers as well, who may have a wider choice and may better preserve their cultural diversity and the roots of their national cultures. More specifically, Video-on-Demand could help reach the media pluralism the TVWF directive tried to create in Europe. As an example, VoD distribution is far more conducive to preservation of cultural diversity than traditional distribution, the latter being constrained by physical limits (space, time) or by scarcity of returns on production investments. In this sense, the European film industry and the individual national film industries of Member states will only benefit from the new online distribution/outlet opportunities.
- **Overcoming of cultural barriers:** Telecom Italia believes that the role of an operator is to follow the consumers' demand. In this sense, a great attention should be given to the current trend for inclusion and participation on the Internet through User-Generated content, as the new models may greatly help overcome cultural barriers. However, as we said before, interoperability can be a much more significant issue.
- **Respect of copyright:** Telecom Italia believes that the current EU rules provide a sufficiently balanced framework to address this fundamental requirement for the proper development of the digital market (both physical and online). We also believe in awareness-raising actions, as emerges from the subscription of the European Film on Line Charter, and from the Sanremo self-regulation Italian charter for the connectivity providers. It should be noted that this pact is not fully implemented yet, due to content owners' reluctance to fulfill their obligations.

Concerning the issue of network neutrality, Telecom Italia considers this issue as already covered by the on-going discussions on the Review 2006. In any case, we are of the opinion that carriers/Internet service providers must continue to be allowed to offer paid Quality of Service to their end user as well as to their corporate customers.

In conclusion, we propose **some guidelines** for Commission intervention in the Content online field.

As the area is fraught with unintended consequences, the Commission should carry on a proper test on the adequateness of its intervention.

Four principles, that are widely shared, should be respected:

- safeguard the equitable remuneration of authors and other rights holders
- safeguard the rights of the users (private copy exemption, privacy,...)

- safeguard cultural diversity, as seen from the user point of view (the possibility to access a large and varied offering), as well as from the production point of view (maintaining the possibility to continue to have this wide choice)
- safeguard freedom to negotiate and to contract

Three objectives, which are generally accepted, should be promoted:

- develop the European dimension of the market. Europe-wide offering should become the norm rather than the exception, but without prohibiting agreements a more limited territorial or linguistic level
- support “technological neutrality” by insuring a level playing field between all distribution channels, whether electronic or physical
- find solutions so as not to prohibit or limit the emergence of the new “intermediate” social spaces (between public and private) not yet considered by existing regulation, such as those being created over P2P networks or on user generated content sites.

As a final consideration, we would like to stress that the market is the user, and the touchstone is the changes in user behaviour.

TI believes that what the user aims for, in the end, is “any content, any time, any where, on any device”: any regulatory intervention should be there to allow this to happen, without letting antiquated visions of the markets block the evolution, if this be the choice of the user.