

RESPONSE OF THE NEWSPAPER SOCIETY
TO THE AUDIOVISUAL AND MEDIA POLICIES UNIT OF THE
DIRECTORATE-GENERAL FOR INFORMATION SOCIETY AND MEDIA
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ANSWER TO QUESTIONNAIRE
TYPES OF CREATIVE CONTENT AND SERVICES ONLINE

For the preparation of this consultation, the Commission has identified the following types of creative content and services:

- Audiovisual media online
 - film, television programmes, documentaries, news and blogs/vlogs, videocasts, series online, sports online, etc.;
 - Music online (music downloads, ring tones, video clips etc.);
 - Radio online (for instance podcasting, radio programmes, news, sport, etc.);
- Games online (such as Massively Multi-player Online Role Playing Games);
- Online publishing ('printed' material/books/newspapers online, etc.);
- Educational content;
- Other creative online services (cultural information, etc.).

ANSWER TO QUESTIONS

Executive summary

The Newspaper Society represents the regional newspaper industry. Its members publish online content and services, as well as newspapers, throughout the United Kingdom.

The UK regional newspaper industry is developing creative content and services online. The market is changing and evolving rapidly and at the moment we see no pressing need for any new EU initiatives. The industry, through the European Newspaper Publishers Association, is in direct contact with the Commission on a range of its existing initiatives and newspaper publishers' concerns relating to their potential impact upon their online content and services.

In the UK, the regional newspaper industry's evolution has benefited from UK intellectual property law; absence of special controls over internet content over and above the already rigorous law, the UK model of voluntary self-regulation, the liberalisation of the UK media ownership regime governing newspaper and cross-media ownership and the continuation of VAT zero-rating on its print publications. The development and growth of its creative content and services online are also underpinned by these national provisions and so it is important that EU activity does not force any change to the UK's legal regime in such areas.

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? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?**
- 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.**

The Newspaper Society represents the regional newspaper industry. Its member newspaper companies are extending their audience reach beyond their 1300 print titles, paid for and free, across a range of websites and online services, broadcast channels and publications. Their development of these multi-media portfolios means that their readers are now able to obtain local news, information, entertainment and advertising from the regional press, in the way that suits their changing lifestyle, using their choice of the traditional and new media services available.

For avoidance of doubt, in answer to (2), in describing the types of services now available online from the regional press, the Newspaper Society is not advocating that these or other types of content and services should form the basis for any further EU action at this stage, nor that they should be included in the scope of a future Communication of unknown content.

In addition to the industry's 1,300 regional newspaper titles, read by over 83% of the adult British population, the latest NS Annual Industry Survey has shown that the number of regional press websites increased from 509 in 2004 to 828 in 2005, the number of stand-alone magazines and niche publications grew from 400 to nearly 600 and the number of regional press who owned radio stations grew from 20 to 28. Some publishers have expanded into local television, such as Channel M in Manchester. There were 16 launches of new regional newspaper titles. E-editions, websites, podcasts, mobile phones and related services allow people to access news and entertainment on the move, whilst blogging enables readers to get directly involved with their newspaper.

Publishers now offer online advertising and associated services in conjunction with their individual titles and their websites, but have also established joint ventures online with other regional newspaper publishers and other partners.

New revenue streams are being generated. Very substantial revenue (£millions) is derived from licensing the reproduction and distribution of press cuttings in hard copy and digitally. Electronic publishing and online archives generate revenue from access and from services such as family history research.

The new media services encourage interactivity. Regional newspapers have established or fostered online forums of all kinds for their local communities and local organisations. Audiovisual material generated by the newspapers' own journalists, readers, advertisers, news agencies and others are increasingly part of the media mix offered by newspaper websites and other new media services. This can add a new dimension for campaigning activities - such as DVD and video adding immediacy to

hard hitting editorial in the newspaper. Video streaming is used by an increasing number of publishers, to provide news, sport and local information.

These multi-media platforms are proving increasingly popular with regional press consumers. The extension of the trusted local title's brand through all and any communications platforms is important to maintenance of the relationship with its audience, readers and advertisers.

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? 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? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.**

Regional newspapers concentrate upon local content, enabled by their investment in local journalism and marketing services to and for the local community. Research consistently confirms the regional press is the most trusted, most read and most advertised in media (after television). Its localness and accessibility is the industry's unique strength, and why its print and online services are valued, trusted and acted upon by their readers in their local communities. This trust is not just confined to editorial content. NS research has demonstrated how readers not only want local advertising as an integral part of their local newspaper, but act upon it. Regional and local newspaper companies are able to build upon these strengths to increase their readership and audience through use of the new media. This is vital to their advertising revenue, which underpins both paid for and free newspapers as well as online services. UK regional newspapers are independent of state funding or subsidy in order to maintain their editorial independence from state controls.

Regional newspapers have engaged in constructive dialogue at national level with the UK government, which has helped to shape the complex regulatory framework that governs the media. This has helped to secure UK legislation that encourages rather than restrains industry development.

For example:

- The UK government recognised that media and technological developments, the multiplicity of editorial and advertising outlets available, the intense competition for readers and advertisers justified the updating and the liberalisation of media ownership rules governing acquisition and transfer of newspaper titles and newspaper/broadcasting cross-media ownership; no state licence is required by newspapers and online publishers – this is a fundamental premise of press freedom and freedom of expression in the UK.
- UK intellectual property law provides that newspapers should be treated in the same way as any other employer under UK law and be the first owners of the copyright in their employees' work; it also provided appropriate exemptions and

defences to infringement of copyright or moral rights in intellectual property legislation to enable current affairs reporting and media publication; (see below);

- The UK government accepted that there must be specific protection of publishers' economic interests on legal deposit of print and electronic publications, including restrictions on access to and use of deposited material, to prevent libraries from undermining the economic and business basis of commercial publishers and content providers (see below);
- The UK government ensured the exclusion of the Internet from special regulation in the Communications Act 2003, although there is a multitude of legal restrictions under the civil and criminal law which restrict editorial, advertising, sales and marketing activities;
- To date in the UK voluntary press self regulation has been maintained and developed in preference to imposition of rigid state control of press and online content. The industry voluntarily agrees to bind itself by stricter rules of its own devising which can evolve, adapt and change quickly in response to new developments and audience and has funded an independent, free and fast system to deal with complaints. Freedom of expression, press freedom, protection of privacy, freedom of information, are the subject of interaction between the civil and criminal law, statute, common law, influenced by human rights legislation and voluntary self- regulation. Media companies are used to different controls applying to different media platforms. The development of new media suggests that any review of existing controls should result in liberalisation and removal of regulation, rather than extension. Regional newspapers' print and online content and services are primarily aimed at a local and regional audience and readership, rather than an international audience or cross- border transactions. It is therefore vital that the regulatory framework reflect the national cultural attitudes, so that media matters including content controls can be determined at national rather than EU level and national law prevail;
- Similarly the UK has developed a sophisticated system of self-regulation of advertising, sales promotion and direct marketing in the print and online media, enabling some deregulation of broadcast regulation;
- The UK government has also recognised the importance of VAT zero rating on the printed word, including newspapers. The newspaper industry considers this vital.

Intellectual property

The preservation of strong copyright protection for publishers, together with effective means of enforcement, is vital under the EU and global intellectual property regime. In order to maintain their role as a primary conduit for the free flow of information and comment newspapers must operate in a legal landscape permitting flexibility and immediate business decisions to be made. Newspaper companies must be sure that their economic investment is underpinned by effective legal protection, so that they can be confident of their ability to use and disseminate the works created by them and their employees in any appropriate way, allowing the freedom to innovate and develop. We consider that the framework provided by Directive 2001/29/EC on the

harmonization of certain aspects of copyright and related rights in the information society is adequate and we would strongly oppose any changes to the current legislative landscape.

The Internet has exacerbated the problem of the theft of copyright material, our members' principal IP asset. It is becoming increasingly incumbent upon newspaper publishers to protect and promote their commercial interests against the free exploitation of editorial and advertising content by search engines such as Google and portals such as Yahoo. These behemoths of the World Wide Web are attempting to build a business model - which competes with our own industry - on the back of newspaper editorial and sales investments, with no direct financial recognition or recompense for our publications.

Advertising is currently one of the most important sources of revenue for newspaper web operations, and search and indexing services are important in generating traffic to members' sites. News aggregation services, however, can only build their services with others' content; investing in quality journalism and the creation of high value content is expensive but this is a cost that aggregator and portal sites have sidestepped, taking content for free to build their own news franchises. The fact that a newspaper site might allow 'robots' and 'spiders' to index its content in no way legitimises the parasitic actions of the search engine companies in repackaging content in aggregated form, nor does it mean that this content should not be paid for through licensing, revenue-sharing or other means. Arguments about 'fair use' and social value simply cannot apply when dealing with clearly commercial operations. There must be financial recognition and recompense for the significant investment that newspapers make in creating and delivering content.

On 5 September the Belgian Court of First Instance ordered Google Inc to stop publishing content from Belgian newspapers on Google News, ruling that the way in which it operates "causes the publishers of the daily press to lose control of their websites and their contents". It said that Google's activities circumvented publishers' advertising and "short-circuited" many other elements, such as references to the publisher, protection of copyright and ways in which data may be used. The Court considered that the service jeopardised publishers' income from the electronic sale of press articles and advertising. It found Google to be in violation of laws related to copyright and ancillary rights, and the law on databases.

Google's grandiose stated aim to "organise the world's information" is increasingly bringing it into conflict with media owners as it expands into new areas. It currently faces a concerted lobby from the publishing industry against its plans to digitise copyrighted books without permission. The current legal proceedings between Agence France Presse and Google are of interest for all content publishers in beginning to formulate guidelines of what may or may not constitute 'compensatable' copyright, particularly on the fair use of photographs, headlines and story leads. Other wire services and news agencies have had some success in challenging and being compensated for the use of their copyright, notably the successful legal challenge and settlement by Deutsche Presse Agentur (DPA) in Germany in 2003, a deal signed between the New-York based Associated Press and Google, and discussions between Google and the Press Association in the UK.

WAN (the World Association of Newspapers), ENPA (the European Newspaper Publishers Association), EPC (the European Publishers Council) and the IPA (International Publishers Association) are currently launching a global industry pilot project - ACAP (Automated Content Access Protocol) – aimed at removing rights conflicts between publishers and search engines. The system will enable content providers systematically to convey permissions information for access and use in a form that search engines’ crawlers can be taught to understand. Gavin O’Reilly, Chairman of WAN, describes ACAP as “an enabling solution that will encourage publication of increasing amounts of high-value content online”.

- 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?**
- 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?**
- 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?**

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? Please give examples.**

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. Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles?**

The regional newspaper industry is developing a portfolio of multi-media activities, across all available media platforms for the content that it creates and distributes, with audiences for its online services expanding (see above). The industry is exploring revenue streams. At the moment, there appears to be no need for EU or state intervention into commercial publishers’ business strategies. However, the industry does require the continuation of publishers’ strong intellectual property rights and the ability to enforce such rights against any others who reproduce and/or distribute their content without their consent.

- 9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.**
- 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? If so, please identify them.**
- 11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?**

See response to Question 3 re unauthorised use of content by search engines and the ACAP initiative.

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

The industry is developing its payment and pricing systems with reference to the local markets within which it operates.

Licensing, rights clearance, right holders remuneration

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

There are no specific barriers to licensing IP in our sector, although the policing of licences can be very difficult. We would strenuously oppose the introduction of any legislative initiatives which unduly constrained the ability of parties to negotiate contractual terms in the market place. Some NS members use the UK's Newspaper Licensing Agency which was set up in 1996 to offer a one-stop shop for a licence to copy, for internal management use, from all of the UK's national newspapers and many regional and foreign titles. To date the NLA has been mandated to act for them by some 1,000 regional newspapers. However, we would strongly resist the introduction of compulsory licensing provisions in the UK.

From our perspective there are no particular barriers to the trade and exchange of IP internationally. However, NS members experience a considerable amount of petty abuse of copyright internationally; difficulties of enforcement in foreign jurisdictions mean that there is often little incentive for overseas users to seek licences from the copyright owner.

15. **Are there any problems concerning licensing and/or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?**
16. **How should the distribution of creative content online be taken into account in the remuneration of the right holders? 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.)?**

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?**
18. **How does the country you mainly operate in encourage the development of creative online content and services?**

Fiscal

We have outlined above the importance to UK newspaper publishers of the UK's retention of zero rate VAT on their printed products and it is important that this can be retained by the UK in the future EU VAT regime.

Intellectual property

The UK's strong intellectual property framework and in particular employers' ownership of the copyright in their employees' work has helped the newspaper industry to develop its creative online content and services

Copyright ownership of employed journalists' works (see section 11(2) of the UK's Copyright Designs & Patents Act 1988) has been very important. It is significant to our members both from an operational standpoint and from a commercial one, and reflects the legal risk assumed by newspaper companies in respect of published content. Other pertinent provisions are the various exceptions to the 'paternity' and 'integrity' rights which apply where a work is produced in the course of employment for publication in a newspaper, magazine or similar periodical or for the purpose of reporting current events. These are all practical measures which recognise the exigencies and unique characteristics of the newspaper business. These include the role of the editor; the volume and diversity of content; constraints on space; and the multi-contributor nature of newspapers. The application of moral rights in the field of newspaper publishing could severely inhibit the provision of a rapid and responsive news service. In Continental Europe the endorsement of the moral rights of the originator (e.g. author, journalist, illustrator) has led to serious constraints on the ability of media companies to adapt products to new digital channels.

Release windows

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

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?**

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)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? 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?**

The speed and universality of electronic distribution has greatly augmented the opportunities for IP piracy, with consequent damage occasioned to content producers.

See response to Question 3 re unauthorised use of content by search engines and the ACAP initiative.

- 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? Do you have specific proposals in this respect?**

A combination of effective law enforcement, technological measures and public education can help to curtail copyright infringement. The work of the UK's Creative Industries Forum on Intellectual Property, on which the Newspaper Society is represented, has helped to gain recognition from government of the importance of leading people, both users and creators, to respect the value of intellectual property as fundamental to the future health of the creative industries. Education will assist in maintaining the right balance between the rights of creators and the expectations of consumers in the digital environment. There remains a reticence among users to pay for online content; the Educational Working Group within the Forum has highlighted the fact that IP rights are "an intangible concept that is difficult to grasp and generally very poorly understood". The Group believes that "improving the communications and educational messages, and the way they are targeted at specific audiences, as the way to improve understanding, are therefore central to the whole IP agenda".

- 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?**

Rating or classification

- 24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?**

Classification or rating of content is not currently required and therefore is not an issue for the regional press. Any attempt to impose compulsory rating or classification of news sites could be problematic and could create obstacles to the dissemination of news and information.

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? 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?**
- 26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?**
- 27. In the sector and in the country or countries you operate in, are DRMs widely used? Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?**
- 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?**
- 29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?**

At present DRM technologies are not widely used in respect of online newspapers, which are generally available free to readers. This is largely because such systems are expensive; they might be employed in the future depending on both affordability and the willingness of readers and other users to pay for content. Online editions are recognised by publishers as one model for generating revenue that might become well more important in the future.

The freedom of publishers to be able to choose whether or not to employ DRM must be respected. There are situations in which a publisher may not necessarily need to use a DRM system. For example, in the B2B arena the position will be governed by

contract. DRM can encourage tailor-made solutions to be put in place through license terms offering numerous benefits to customers, including a greater choice in content selection, flexibility, speed, ease of access and price precision. DRM could play a role in educating the user about copyright in general and in particular on the convenience of digital delivery and the long-term ill-effects of unrestricted copying and redistribution. Even in the analogue environment publishers favour usage-related individual agreements or voluntary collective licensing over the flat fee approach of a levy. We would not support any legislative intervention in this field as it could inhibit freedom of choice for publishers.

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? What role for equipment and software manufacturers?

Many of our members maintain archives in both digital and analogue format and these are frequently consulted for the resources they contain, particularly with respect to genealogical research and historic local events. For an increasing number of NS members, archives are economically highly significant. One company, for example, reports annual revenue of around £250k per annum generated via agencies such as Lexis-Nexis, ft.com and Factiva. Licensing of press cuttings in hard copy and digital form yield very substantial annual revenues (£millions) for the UK national and regional newspaper industry.

Newspaper companies wish to retain control over whether or not their content (whether current or archival) is made available to third parties. We have concerns over legal deposit issues and European proposals in respect of digital libraries; the Commission clearly views digital libraries as a key aspect of i2010 and has set out its strategy for digitisation, online accessibility and digital preservation. The Newspaper Society submitted a response to the Consultation on this topic, emphasising that these activities must be carried out in a way that is compatible with the commercial interests and sustainability of the publishing industry.

Digitisation has a valuable part to play in the preservation of fragile analogue material and publishers are happy to participate in facilitating the dissemination of knowledge. However, a multitude of strategic, technical and legal issues surrounding the deposit of online content have yet to be addressed. During the passage of the UK's Legal Deposit Libraries Act 2003 particular concerns were voiced by newspaper publishers centring on access to electronic publications, and risk management in relation to defamation, contempt and copyright piracy. The UK Government agreed that it was important not to introduce legislation that would undermine the commercial viability of publishing organisations. Section 11 of the 2003 Act now goes some way towards safeguarding publishers' economic interests by providing that no Regulations can be made unless the Secretary of State considers (a) "that the costs likely to be incurred as a result of the regulations by [publishers]...are not disproportionate to the benefit to the public arising from the delivery of copies of such works"; and (b) that the regulations "do not unreasonably prejudice the interests" of publishers.

- 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.)?**

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.)?**
- 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?**

Government and other public bodies, including public service broadcasters, must avoid any publicly funded or commercial activity which could result in the distortion of the local, regional and national markets in any way that disadvantages their commercial competitors. Content providers, including newspaper companies, are in fierce competition for audience and advertisers. It is vital that public funded bodies do not launch their own services in nascent and evolving markets in ways which lead to fragmentation of audiences, or deter commercial competitors from entering such markets or their development of online services. The UK regional newspaper industry is engaged in national dialogue with the UK government on the BBC Charter review, the BBC's online and ultra- local television activities, public authorities' online and print activities, which fragment audience and advertisers.

The UK regional newspaper industry is not seeking EU legislative intervention on any issues and we have referred to some of the areas where we think it is vital that EU action does not jeopardise the industry by forcing change upon the UK regime. You will be aware of our concerns about the extension of scope of the audiovisual media directive beyond broadcasting, although we welcome the Commission's support for an exemption for newspaper websites, and the need for amendment to allow preservation of true voluntary self-regulation in the UK tradition; the need to avoid any unnecessary restrictions upon freedom of expression and press freedom; and issues such as preservation of UK intellectual property rights and preservation of VAT zero-rating upon the printed word in the UK.

Public bodies willingness to conduct discussions when contemplating any initiative, comprehensive studies to assess whether there is any need for action, rigorous impact assessments, detailed consultation and the fostering and continuation of constructive dialogue with industry at EU, national, regional and local level are very helpful.

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