



**The European Commission's consultation  
on Content Online in the Single Market**

**July/October 2006**

**Comments of Vodafone**

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Vodafone welcomes DG Information Society's consultation on Content Online in the Single Market aiming at identifying '*added-value actions that could be taken at European level to improve the competitiveness of the European online content production and distribution industry*'.

Vodafone is today serving more than 180 million mobile customers worldwide<sup>1</sup>, over 100 million of which are in the European Union, enabling them to enjoy online content on their mobiles and at home in a personal, safe and dependable way. We cooperate with a growing number of content providers in the development and distribution of content and have now become a partner of choice for the creative community.

This consultation is extremely broad and touches upon a wide-ranging number of online content issues already scrutinized by DG Internal Market, which Vodafone has had the opportunity to comment on<sup>2</sup>. Some issues are, on the other hand, under the direct remit of DG Information Society. We take the opportunity to reiterate our main recommendations and identify the priority areas where we believe the Commission's actions would provide most added-value for the Single Online Content Market:

- i) We urge the Commission to accelerate its reform in the area of **Spectrum**;
- ii) **Copyright Management**, both in relation to collective management and levies, now requires Commission intervention to create the conditions for competition to develop in the content rights market;
- iii) We support the adoption of the **Payment Directive** and the inclusion of the e-money Directive in this new legal instrument;
- iv) The current **Regulatory Framework for Electronic Communications** with its underlying competition law principle is the right approach to foster competition in the information society, including many aspects of the online content market.

The completion of these policy initiatives will create the right conditions for competition to develop and will contribute to the development of a vibrant market for online content, where creative content and service providers will compete, innovate and create for the benefit of European customers and greatly enhance EU success in the global market.

- v) Regulatory intervention to meet other public policy objectives, such as **consumer protection and cultural diversity**, should result from a rigorous impact assessment and remedies be relevant and proportionate.
- vi) Consumer protection models should favor **self-regulation** may be developed in framework form at a European level, but should then be implemented at national level.

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<sup>1</sup> Calculated on a proportionate basis in accordance with the Company's percentage interest in these ventures. By 30 June 2006.

<sup>2</sup> On Payment regulation (and e-money), on Copyright management (collective management and levies), on DRM systems, on Safe Access to the Internet for Children, ...

## 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.)?**

Vodafone offers on-line content to its mobile customers such as music, video, video, TV programs, games. This content can be accessed on Vodafone live! (Vodafone portal), as well as on the Internet.

Vodafone does not offer off-line content.

**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.**

No. The consultation describes well the types of content available online, including on mobile.

However it does not always distinguish between the type of content and the type of distribution (i.e. it differentiates a radio program from a podcast). Also it could state that this content can be commercial or not, copyright protected or not. This has different regulatory implications.

## 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.**

The present environment seems generally conducive of developing trust but it could be further improved by avoiding to solely place the burden on end-customer facing undertakings and instead ensuring that all stakeholders involved in the content online communication chain should step up their efforts. For instance,

- device manufacturers should deliver tamper-proof equipment;
- regulators should allow operators to withhold payment to third parties upon suspicion of fraud and these measures should be standard within all European interconnection and interoperability agreements;
- content providers should rate their content against national norms in other media and ensure that it is sold in accordance with this rating.

**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?**

The protection of public interests must be adequate to the type of risks involved in the particular environment. The current regime for online content seems adequate to the mobile environment.

**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?**

Vodafone considers interoperability as an essential objective, which can best be delivered by market forces. We spend considerable resources and efforts in leading and participating to standardization organizations work (i.e. OMA, 3GPP...).

Our research indicates that customers want to be able to consume content on different devices, which is why, for instance, we have worked on OMA DMR v.2.0 on the concept of 'domain', which enables a user to define the different devices on which his/her content will be available. See our response to question 29.

**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?**

Online distribution of content provides an additional and extremely efficient means to provide content to a high number of customers. It is particularly value-adding for small providers and creators who can disseminate their work in a fashion which is not achievable offline. This new, effective and independent distribution means will create competition to the established channels. This lowering of market entry should contribute to enhancing cultural diversity. This can be seen in practice through the development of social and video networking sites on the internet.

#### **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.**

To some extent the use of a single language by large numbers of potential customers inevitably assists mass market content development in certain other regions and will always be an issue for Europe. However, new distribution routes should ensure that niche interest and content in the rich variety of European languages is more viable than has been the case with traditional media.

#### **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?**

Super-distribution of commercial copyright protected content on mobile platforms should contribute to the development of a legitimate content market at the same time as enabling users to continue to share their content online, which has proven to be a popular distribution and consumption mode. This model allows copyright protected content to be forwarded by users and makes it easy for the recipient to acquire the rights to use that content.

This would require however the emergence of a competitive market for right management in Europe.

**9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.**

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**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.**

The market for online content creation and distribution would be much more efficient and see increased growth with the reform of spectrum; one example being the urgent need to enable the refarming of 900 Mhz frequencies to be used for 3G services. This would at once bring about greater geographical coverage of 3G services, increasing broadband access. While the Commission has engaged in spectrum reform, we urge that it is accelerated.

**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?**

The conditions for competition to develop are not always present in the market for online content. This is the case for instance in relation to rights management. We recognize the great merit of a one-stop-shop solution as it enables to reduce transactions costs, but we consider it should not preclude the creation of a competitive market for rights and the choice of alternative solutions enabled by new online technologies.

Once the conditions for a competitive market are created, revenue streams will then reflect the creation of added value for users and their demand for content.

<b>Payment and price systems</b>
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**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?**

For all the services offered by Vodafone and in cooperation with its commercial content partners, we charge our customers according to the method of their choice, that is on a prepaid or a postpaid (subscription) basis. This is not different from any other business.

For third party services, Vodafone has developed the service MPAY, which is used in the UK and Germany at the moment.

The development of mobile based payment services has not been facilitated by the European regulatory framework, which is not adequate for the mobile business model and not implemented in a consistent way across Europe. Vodafone therefore welcomes the new Payment Directive, currently under adoption and also supports the proposal of the Commission to integrate in this new Directive some provisions related to e-money. These measures should create a proportionate regulatory framework enabling mobile but also online payment services to develop.

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

The mobile industry has innovated early with the creation of prepaid offers, which have greatly contributed to the adoption of mobile services by large number of users, as its affordability and access reduced the adoption threshold.

Prepaid offers enable our customers a good control of their consumption. It complements barring options, spending warnings and advice of charge mechanisms which are designed to meet customer demand for consumption management.

<b>Licensing, rights clearance, right holders remuneration</b>
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**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?**

Europe-wide or multi-territory licensing and clearance would be beneficial – not only to the creative businesses - but is not a reality today. We see the main reason for this in the lack of competition between collecting societies to meet users' demand for multi-repertoire, multi-territory licences. It has adverse effects on the licensing market and prevents such users from obtaining benefits that could be passed through to consumers.

While we support the principle of a one-stop-shop, it should not exclude competition in the licensing market. We do not question the existence of collecting societies which provide a wide range of services to their members, but the regime under which they operate distorts the market for online content rights.

Vodafone considers that the Commission should step up its effort to create the conditions for competition to develop in the European market for licensing online content rights. A Recommendation was issued in October 2005: while it is a step in the right direction, we have not

observed many improvements, for instance in relation to dispute resolution (see question 15). Our view is that a formal Directive should now be the way forward.

**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?**

In addition to the above, a Group company – such as Vodafone Group - is often not considered by collecting societies to be an “appropriate licensee” of the rights.

Combined with the territoriality constraints, we end up facing a highly fragmented market – per Member State - in contrast to a number of other markets in which Vodafone purchases products or services as a single entity (i.e. handset procurement). It increases Vodafone’s transaction costs and the price to end consumers and makes the business case for providing mobile music services unpredictable and therefore unattractive.

The lack of any or adequate dispute resolution mechanisms in most Member States is problematic.

**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.)?**

Remuneration schemes such as levies are meant to compensate for the copies allowed in the framework of the private copy exemption: copies made for private consumption from legally acquired works. They are not meant to compensate for illegal copies or piracy in general. These latter threats should be addressed by enforcing the existing framework for protection of intellectual property rights.

With DRM systems it is possible to manage each copy made and therefore each copy can be charged for. Levies are much less efficient and inequitable because indirectly they make all users pay, even those who do not make copies. DRM systems provide an innovative and economically efficient way to manage remuneration and maximize consumption. They make the management of usage and copies, including private copies, possible by ensuring a fair remuneration to authors and other right holders.

It is therefore in the utmost interest of right holders not to rely on levies but to ensure that their copyright content is offered in a DRM enabled form so that they can benefit not only from the protection but also the higher economic performance of the DRM systems now made available to them.

<b>Legal or regulatory barriers</b>
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**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?**

Vodafone currently faces two main legal/regulatory barriers: spectrum reform needs to be addressed urgently and so does the collective management regime of copyright and related rights.

The lack of a proportionate regime for mobile payment regulation is another concern.

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

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#### 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?**

The use of release windows should be a commercial decision for content owners. It would seem harder to justify this in an on-line environment than for traditional media. One proactive method to combat piracy is to ensure that legal content is distributed using the most effective and timely routes so as to maximize the opportunities for commercial sales.

#### 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?**

The statement that the Internet is currently based on the principle of ‘network neutrality’ is not correct. It is more accurate to say that it has evolved with a combination of technical and commercial characteristics into the entity it is today. This technical and commercial evolution has been unconstrained by regulatory shaping (other than the overall Competition Law framework) and this should be allowed to continue.

There is a debate in the US about ‘network neutrality’ which is relevant to the US fixed communications regulatory environment. Vodafone supports the views expressed by the Commission in its Communication on the NRF review, that competition provides the best safeguards for customers and hence that concerns about discrimination in an IP environment are simply a restatement of traditional concerns about leveraging which are already adequately addressed by the NRF’s existing SMP framework.



## 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?**

Vodafone is investing consequently into DRM systems, which is the most appropriate business response to the development of piracy, as it enables the development of attractive commercial online content propositions for consumers.

**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?**

Such campaigns certainly have a role to play, alongside the development of user friendly attractive commercial offers of online content.

**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?**

Super-distribution of commercial copyright protected content on mobile platforms can contribute to the development of a legitimate content market at the same time as enabling users to continue to share their content online, which has proven to be a popular distribution and consumption mode. This model allows copyright protected content to be forwarded by users and makes it easy for the recipient to acquire the rights to use that content. Super-distribution is enabled by DRM systems.

## 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)?**

Vodafone considers that rating and classification of content is essential to ensure that consumers who need protection, such as children, can be adequately protected according to their own societal and cultural standards.

Vodafone is actively engaged in the markets in which it operates and with the European mobile industry in self-regulation activities in that space. We support the creation of a classification framework for commercial content based on national approaches in other media – consisting of at least two categories: content which is suitable only for adults and other content. This framework should be subject to external confirmation, for example, by an independent body or through

periodic benchmarking against established media. We would expect that such a basic national framework will evolve over time.

To support these efforts, we expect that content providers rate their content in order to enable the adequate classification of these rated content in the different local market in which that content is made available.

#### **Digital Rights Management systems (DRMs)**

**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?**

Vodafone has invested considerable time and resources in developing and implementing DRM systems over the last 6 years. 100% of Vodafone live! handsets have been OMA DRM enabled since January 2005 . In June 2006, 70% of the total Vodafone live! customers carried OMA DRM enabled handsets.

The introduction of DRM systems helps right holders and those wishing to deliver digital content to customers on their behalf, to better control the distribution and usage – including the copying - of their work and enable them to manage their rights accordingly. DRM systems should be a major facilitator of legal digital content services and a major safeguard of rights income. Regulation should recognize the role of DRM systems and encourage their take-up.

**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?**

Yes, we have access to robust DRM systems which are implemented in the mobile handsets we resell.

**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?**

There is considerable evidence about the wide availability of such DRM systems in the mobile environment. While DRM systems were not ubiquitously available on mobile handsets two years ago, this has now changed. There are over 420 OMA DRM enabled handsets types available in the mobile market today.

**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?**

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**29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?**

Vodafone is concerned that the development of the market for mobile devices implementing DRM systems, and thus the market for high quality digital content in mobile, will be hampered if collective management tools such as remuneration schemes and levies are applied. Levies would increase the already high cost of the technologically advanced devices, which are not primarily meant to copy works protected by copyrights.

We are however confident that the current market developments will make interoperability between DRM systems on and across different platforms a reality in the near future. By way of example Vodafone is actively working on PC & mobile centric DRM solutions to provide the best user experience, where customers will be able to seamlessly purchase, playback and transfer music tracks to/from PC and mobile.

This work includes an active participation in OMA, which started with a focus on mobile but has subsequently expanded its scope to address interoperability between mobile and other platforms. OMA DRM v2.0 has improved security, export functions to other platforms and personal domain. It complements another open, standard based DRM-technology - Marlin - which is specifically designed to allow protected content to be used across multiple consumer electronics devices, including mobile handsets.

Like most of the other stakeholders in the DRM value chain, Vodafone has strong incentives to deliver interoperability. The industry shares a common interest in creating a larger addressable market for digital content: interoperability is for instance an essential element to support 'super distribution', which will enable legitimate content sharing and further growth in the legitimate digital content market.

The Commission should encourage all stakeholders in the digital content market (i) to participate in standardisation efforts and (ii) to make any existing proprietary DRM systems interoperable with DRM standards such as for instance, OMA and Marlin.

#### **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?**

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#### **What role for equipment and software manufacturers?**

**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.)?**

Vodafone is a buyer of communications equipment and software; we have no doubt that manufacturers of equipment and software are taking full advantage of the creation and distribution of creative content and services online.

We warn against over-emphasizing the importance of technology and creating too much 'hype' around certain technology developments. The focus should instead be on the customer experience and providing users with devices and equipments which are fully developed and mature. Our experience suggests that it was not the case with 3G and we fear it may happen again around certain transmission technologies for Mobile TV.

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

A clear role for national governments and the European Commission would be to remove existing barriers to further broadband deployment, and accelerate the spectrum reform.

In addition, national and local governments should consider the question of access by citizens to the information under state control and how this could be improved to stimulate its wider use and the more effective engagement of citizens with the state.

**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?**

Spectrum reform needs to be addressed as a matter of urgency. We ask the Commission to accelerate its policy in that respect.

We have also mentioned above the need to step up efforts in relation to copyright management.