

i2010 High Level Group

Issue paper on Content and Convergence

Executive Summary

This paper identifies the major trends for changes that convergence is bringing about. It outlines the main economic and cultural challenges arising from these changes and points to ways of addressing these challenges that bring benefits in term of European competitiveness, cultural diversity and users' interest. The challenges identified are:

- **Access to content and circulation of rights:** While stakeholders can be expected to find innovative and collaborative solutions to exploit content online, policy makers can accelerate the content sector digital shift by supporting self-regulation or cross industry agreements to maximise the circulation and exploitation of content online.
- **DRMs supporting competition and consumer choice:** It is crucial to support DRM standardisation projects and to favour open standards as the best option for true cross-platform interoperability. The evolution of DRM should also be closely monitored, to ensure that they do not hamper competition and consumer choice in the online content market.
- **Community wide licensing mechanisms:** Such licensing mechanisms should be promoted to favour the development of Pan-European content services, and the circulation of European works in the Single Information Space.
- **Digital shift of European creative SMEs:** It is crucial to address the specific financial, technological and skills challenges faced by European creative SMEs to make their content available in the Single Information Space.
- **Online exploitation of orphan works:** Solutions should be explored to allow exploitation of orphan works at community level, in order to favour the online exploitation of the European cultural heritage in the digital environment.
- **Consumer protection:** Specific consumer protection measures may be necessary to ensure better consumer information on the actual price of content services, personal data protection, the use of DRM and the way it affects interoperability and the usability of content.
- **User created content:** The future economic and cultural implications of user-created content and the rise of "semi-professional" content should be assessed to envision appropriate policy measures if needed.

Discussions at the i2010 High Level Group should aim at developing a common understanding on the perspectives and challenges that convergence is raising for the content sector and at considering how to address these challenges in the context of the forthcoming Communication on "Content online" and in the i2010 mid term review.

Introduction

The i2010 Austrian presidency event on "Content for competitiveness"¹ identified creativity as an important source of competitiveness in a knowledge-based society, and technological convergence as a driving force for growth and innovation in both the content and ICT sectors. In this context, it recommended analysing the economic and cultural implications of convergence for the content and creative industries.

The i2010 strategy seeks to make the most of the opportunities that convergence is bringing about. It sets as a first objective, the creation of a Single European Information Space, offering increased legal and economic certainty for rich and diverse content to develop and circulate in Europe. Ultimately, this will create a sound market basis for the European content sector to distribute its great variety of content on a European and global scale.

The online content market is growing fast. A European Commission study on "Interactive Content and Convergence"² foresees that by 2010, revenues from online content will reach €8.3 billion, a growth of over 400% in 5 years. However, technological, economic and legal challenges need to be overcome for Europe to develop a Single Information Space and realise faster market uptake. The study on "Interactive Content and Convergence" and the results of the public consultation on "Content Online"³ provide a solid analytical basis on the existing and forthcoming challenges to be addressed.

The purpose of this paper is to outline the main economic and cultural challenges arising from convergence, and point to ways of addressing them that bring benefit in terms of European competitiveness, cultural diversity and users' interests.

I. Content and Convergence: The opportunities for change

In just a few years, convergence has initiated a transformation process of the traditional content distribution value chains, paving the way for a new phase of growth and innovation in both the content and the ICT sectors. The spread of broadband and the massive adoption of digital devices are now creating the market basis for a first generation of online content services to emerge. If the market for online content is still emerging, it is one of the most dynamic, innovative and fastest growing parts of the content sector (see table below).

¹ Content for Competitiveness: Strengthening the European content industry in light of the i2010 strategy, 2-3 March 2006, Vienna.

² http://europa.eu.int/information_society/eeurope/i2010/studies/index_en.htm#interactive

³ http://ec.europa.eu/comm/avpolicy/other_actions/content_online/index_en.htm#consultation

Uptake of digital distribution/exploitation of content in Europe – Key figures ⁴

	2005		2010	
	€m*	%**	€m	%
Music (online and mobile)	196.3	2.0	1,794	20.4
Movies (VOD)	30	0	1,269	7
Games (online, mobile)	699	11.2	2,302	33.4
TV programmes (VOD and digital advertising)	4.5	na	689	na
Publishing	849	2	2,001	5.4
Radio	15	0.3	250	4.8
Total	1,793		8,303	

* Market size in terms of revenues.

** Percentage of the total sector revenues.

Source: Screen Digest, Goldmedia, Rightscom

The convergence of broadband networks, content services and electronic devices is bringing about three major trends:

- **Creating new delivery channels for traditional content and opening the path to the development of interactive content and services**

Convergence results in the emergence of new distribution platforms, new business and distribution models, or new forms of content. While some content sectors are more advanced than others in reaping the benefits of convergence, it offers opportunities for all content sectors to be innovative, to develop new business models and to add value to existing products or open up new sources of revenues.

- **Bringing down technical and geographical barriers to the distribution of content**

Convergence is also making it technically possible for a broad range of content to be accessible across the European Single Market. By bringing down technical and geographical barriers to the distribution of content, convergence offers opportunities for the European content sector to reach new audiences, develop niche markets, or distribute its great diversity of content on a European or global scale.

- **Empowering users with regard to content selection and creation**

Technological changes and convergence are also leading to users' empowerment and a major shift in users' habit, from passive media consumption to active content selection and creation. The rise of user-created content has taken major proportions in recent years and freely available user-created content is now starting to compete with content produced by established providers, both in term of audience and share of advertising revenues.

⁴ Study on "Interactive content and convergence; implications for the Information Society" - 2006, p.13.

II. The Challenges of convergence for the content and creative sectors

Making the most of these three major trends for change means **realising three related objectives**:

- Ensure that content achieves its full potential in contributing to European competitiveness.
- Promote the availability of the great diversity of European content creation and cultural heritage.
- Foster users' active role in content selection, distribution and creation.

The development of the Single Information Space aims to realise these objectives by providing a sound market basis for online content services to develop in Europe.

A. Ensure that content achieves its full potential in contributing to European competitiveness

The emergence of online content services has a disruptive effect on the content market, with new distribution channels and new entrants competing with more established market players for access to content and distribution platforms. **Limits on access to content and lack of circulation of rights** remain major obstacles for the development of online content services. Since online content is a nascent market, the value of the new forms of distribution is sometimes still unknown. This results in difficulties in settling the terms of trade for online content exploitation. Furthermore new digital platforms do not always have the scale to produce enough income for right holders to make up for the devaluation of content to the established platforms. As a result, some right holders are reluctant to exploit their rights or let them go to third parties, and tend to protect existing revenue streams. Licensing of content for online exploitation is also hampered by uncertainties about possible conflicts with rights already granted for other forms of exploitation.

Policy implications: Most of these difficulties are inherent in the emergence of a new market. Stakeholders can be expected to find innovative and collaborative solutions to exploit content online and prevent or remedy bundling, exclusivity or non-use of media rights. Policy makers can accelerate the content sector shift to digital and avoid these issues becoming stumbling blocks, by supporting self-regulation or cross industry agreements to maximise the circulation and exploitation of content online.

There are many recent developments concerning Digital Rights Management (DRM), mainly in the field of music. For instance, the Consumer Ombudsman in Norway ruled that Apple's DRM violated Norwegian law by forcing consumers to play music downloaded from iTunes online music store on iPod music player. Shortly after, Apple's CEO, called on the major record labels to allow online music sales unfettered by DRM.

However, DRM remains a key enabling technology for the content sector's digital shift, and the development of innovative business models. It offers a possible alternative for certain right holders to enforce and manage their rights in the digital environment. To be successful, **DRMs must not restrict competition and consumer choice in the digital environment**. Interoperability of DRM systems can foster competition necessary to the development and uptake of online content services. Content producers or content aggregators must not be

locked into one distribution channel that forms a gatekeeper to the marketplace. Consumer must be able to choose different devices and use them to access a great diversity of content services, and must be properly informed about what they can and cannot do with the digital content they purchase.

Policy implications: It is crucial to support DRM standardisation projects and to favour open standards as the best option for true cross-platform interoperability. The evolution of DRM should also be closely monitored, to ensure that they do not hamper competition in the online content market. According to the vast majority of stakeholders, the market would automatically fix the problems of DRM interoperability, depending on the market success or failure of the technological solutions and business models proposed. Providing consumers with clear information on interoperability of DRM protected content and platforms, allowing them to make informed choice, should contribute to help to this process (See section C).

B. Promote the availability of the great diversity of European content creation and cultural heritage

Another major market change resulting from convergence is the faculty for a content service provider to reach new audiences by making content available on new platforms at European or even global level. This in turn increases choice and accessibility for the public. However, as a result of copyright territoriality, a content service provider has to obtain the right to do so in each Member State. The costs incurred, may have a detrimental effect on the exploitation of a vast majority of European cultural works outside their national markets.

Policy implications: Promoting the development of **community wide licensing mechanisms** has the potential to favour the development of Pan-European content services, and the circulation of European works in the Single Information Space.

Digitisation of content and/or of the content production processes, as well as adaptation of content and business models for use on different platforms require both financial resources and appropriate technological and creative skills⁵. This implies significant investments for the creative industry to adapt, and constitute a major challenge for European creative SMEs to benefit from access to new platforms, audiences and related markets.

Policy implications: For the **content sector digital shift** to fully benefit to the European content diversity and competitiveness, it is crucial to address the financial, technological and skills challenges faced by European creative SMEs to make their content available in the Single Information Space.

Exploiting the European cultural heritage in the digital environment is also a major challenge. While the i2010 "Digital Libraries" initiative is intended to deal with the question of archiving and public lending of copyright protected material⁶, some of the issues arising from commercial exploitation of European cultural heritage remain to be addressed. The clearance of rights for digital exploitation of **orphan works** – i.e. works under copyright for which one or some of the right holders cannot be identified or located – is among the most acute

⁵ Study on "Interactive content and convergence; implications for the Information Society" - 2006, p.295.

⁶ COM(2005) 465 final

problems hampering the supply of digitised works, and the availability of a great variety of European works⁷.

Policy implications: Solutions should be explored to allow exploitation of orphan works at community level, while preserving the interest of right holders.

C. Foster users' active role in content selection, distribution and creation

A range of new content services, allowing users to play a more active role in content selection are currently emerging, supported by business models such as "pay per download", subscriptions, or "free offers" financed by advertising. The uptake of these services depends on their acceptance by consumers, making trust and confidence a key element of the progressive changes in content consumption patterns. It is essential that concerns regarding consumer protection in respect of these new business models, as well as new marketing or advertising practices resulting from convergence, are properly taken into account.

With DRM protected content, the use of content is governed by licensing agreements and enforced by technical means. As a result consumers are increasingly confronted to complex contractual terms when purchasing music or film online, and are not necessarily fully aware of the usage restrictions applying or the use of their personal data⁸. DRM may also affect interoperability, i.e. restrict the faculty for consumers to access certain content services, or to use the DRM protected content on certain platforms. Any cost-benefit analysis of the use of DRMs must take into account all relevant elements, from the point of view of all stakeholders, in particular content providers, equipment manufacturers and consumers.

Increasing access to content services leads to a potential increase in consumers' exposure to advertising. While advertising in itself is not an issue, ICT based advertising practices could raise specific concerns. New forms of advertising such as techniques based on consumer' profiling or location are raising concerns with regard to privacy and data protection.

Furthermore, new services, charge plans and business models also raise issues about complexity, contracts/End User Licence Agreements and price transparency. In the mobile arena, pricing of certain content services, or misleading marketing practices are reportedly affecting consumers' perception of such services⁹.

Policy implications: Specific consumer protection measures may be necessary to **ensure better consumer information** on the actual price of content services, personal data protection, the use of DRM and the way it affects interoperability and the usability of content¹⁰. Taking into account the need to ensure consumer protection in the Single Information Space, such measures should be taken at EU level, in the context of the Revision of the consumer *acquis* and/or by supporting targeted self or co-regulation initiatives.

Another major trend resulting from convergence is the development of new applications building on the capacity of ICT to involve users in content creation and distribution. Social

⁷ Gowers Review of Intellectual Property, December 2006, p. 69: "The British Library estimates 40 percent of all print works are orphan works"

⁸ Working document on data protection issues related to intellectual property rights – January 2005.

⁹ Study on "Interactive content and convergence; implications for the Information Society" - 2006, p.297 - 298.

¹⁰ European Consumer law group; Copyright law and consumer protection, ECLG/035/05 – February 2005

computing applications such as blogs, podcasts, wiki, or video sharing, enable users easily to create and share text, videos or pictures. The **rise of user-created content** is creating opportunities for a more participative Information Society, and an enormous potential for creativity and new content. The development of "semi-professional" content in the online environment clearly illustrates this potential. However, this also poses a number of challenges to public policies in very diverse fields, such as copyright, media, trust and security or culture. As for copyright, while proper room and protection must be allowed for user-created content to develop, it is also crucial to make sure that it does not infringe existing rights.

Policy implications: Further analysis is required to assess the future economic and cultural implications of user-created content and the rise of "semi-professional" content, and design appropriate policy measures if needed.