

i2010 High Level Group

User and Consumer Perspective in the context of Convergence

One of the novelties of i2010 was to introduce a strong focus on the user through the pillar on inclusion, better public services and quality of life. However new policy priorities are emerging from recent developments. With the current take-up of new services and applications and the potential for content and services to be commercialised in such a way as to reach a mass-market level, **the consumer's issues are raising concern. In addition the explosion of user created content is adding a new dimension to the role of users in the information society. There is therefore a need to review the user's perspective of the i2010 initiative.**

ISSUES

1) Consumer and users trust issues

Today there is evidence that some customers are reluctant to use ICT based products and services because of a lack of trust and confidence. For instance, while 27 % of EU citizens indicate, in a survey on consumer protection (Eurobarometer 252), that they have used the Internet to buy goods or services, only 6 % of them made cross-border transactions, when 23 % purchased domestically. A large share of EU citizens still completely rejects the option of online transactions, for reasons linked to concerns on delivery and payment. **A lack of consumer confidence, but also companies' reluctance to make cross-border offers to consumers, restricts the extent to which consumers could benefit from the Internal Market** (Eurobarometer 186 of December 2006).

Protection of consumers is necessary in general to counteract structural imbalance inhibiting consumers' ability to act in their own interests and/or reducing their power in the marketplace. While the internet is generally perceived as an effective tool to empower the consumers, increasing consumer's choices, more transparency and information on markets, trends towards increasing complexity and diversity of products and services are making it more difficult for consumers to judge the quality of a market offer. Recent consumer protection cases¹ and also complaints on broadband connectivity services demonstrate a need for further clarity on consumer rights. In some of the thriving areas such as online music or film services, there is a risk to see an escalation of litigation (consumers for their rights, rightholders/content providers to preserve their intellectual property rights) between stakeholders.

The main identified gaps related to the protection of users in the digital environment are the following:

- *The need to ensure that the rules currently protecting consumers apply to new services:* such rules are not always easily transferable to the online sales of products and services. The quality of the terms and conditions of contracts and licenses (EULAs - End users licence agreement) applying to new online services could often be improved, as well as the transparency of prices and information provided to consumers

End users licence agreements for software downloads or on line content services have many weaknesses: they are complex, often poorly translated from English into national languages; they shift the legal uncertainty to the consumer, using terms of contracts such as: "In some legal orders this clause is invalid". Other examples of identified failure are mobile services. M-commerce, though limited, has given rise to specific concerns linked to the inability of the screens of the handsets to display the information to be provided to the consumers. The lack of price transparency on mobile services is also perceived as a key factor slowing down the take up of 3G services.

- *The enforcement of users' rights:* while in some areas such as intellectual property rights, rightholders can benefit from stringent enforcement legislation, redress and compensation for consumers, which could increase their trust, are often not easy to achieve.

In the area of liability and guarantees, consumers acquiring online software can be faced with non negotiable terms and condition which limits these liabilities and guarantees (the same occurs also in the off line world). For instance, EULAS for the purchase of software may contain disclaimers avoiding responsibility for faulty products, or/and allowing unilateral changes to the license agreement and further clauses without prior notification.

¹ The Norwegian Ombudsman decision -and joint statements by the French, German and Finnish consumer associations- on iTunes contractual terms being contrary to consumer law and lack of interoperability in the use of DRM, the decision by a French court against Sony in relation to its obligation to state the limits of the use of its online music on devices and the need for readability of music acquired on any devices

- *The need to achieve the appropriate level of interoperability, in order to create a competitive environment and ensure consumer acceptance.*

The demand for interoperability of DRM has been increasing to ensure that content purchased on line can be transferred to other platforms. Although online music is the visible service for which a demand for interoperability arises, interoperability and transferability of other documents are increasingly important for users. A similar phenomenon of lock-in happens with software: it is not unusual for consumers to find that the particular operating system or piece of software they purchased is not compatible with other applications. They might lose considerable investments in money and time and in some cases, documents and work might even get lost.

- *The need to preserve European citizens and consumers' privacy and data protection rights:* strong concerns are being expressed regarding the capabilities for monitoring content and services used by technologies like DRMs or RFID and for profiling of customers without due respect for data protection rights.

- *The need to protect minors and human dignity in a converging environment:* protection of minors in the digital environment is a real concern, since minors are heavy and active users of online content and services. There are challenges to face regarding unwanted access to unsuitable, extreme, adult or harmful content and to risky communications. There is also a need to clarify the conditions for minors to purchase on line: on the one hand the lack of micro-payment systems prevents minors from using on line services; on the other hand, minors will have increasing access to mobile services and the related mobile payment facilities.

POLICY RESPONSE

In the creation of an accessible and trustworthy information society for all, as supported by the i2010 strategy, the interest of consumers is one of the major preoccupations of several policy actions undertaken at EU level. Some examples reflect the extent of this dimension:

- the proposed revision of the TV without Frontiers Directive provides for an EU wide minimum standard of protection in respect of protection of minors, incitement to racial hatred and surreptitious advertising;
- the Communication on Spam addresses the protection of consumer from malware threats;
- the review of the regulatory framework for electronic communications will improve the actual rules in order to reinforce the rights for all the consumers, such as transparency and information on prices and services;
- the review of the scope of universal service will improve access to networks and service quality;
- the proposed action on roaming has been launched to eliminate unjustified charges on consumers.

Though the legal framework for the protection of consumers is already well developed (a set of 8 directives including Distance contracts directive, Distance marketing of consumer financial services Directive, Unfair commercial practices Directive) the existing EU consumer protection rules are too fragmented and are not well fitted to address recent ICT services. **The Commission adopted in early February a Green Paper in order to initiate the process of review of the Consumer Acquis**². The Green Paper opens a discussion on whether the rules need to be adapted to the digital environment. However the Green Paper does not address all the service segment of the market for ICT services.

The interest in a **Charter** clarifying the rights of citizens in the digital environment is growing. The idea already mentioned during the work of the DRM High Level Group chaired by Commissioner Reding in 2005, was reiterated by the BEUC in 2006, with the launch of a campaign in favour of consumers' rights in the digital environment and this was recalled in a topic-paper of the ICT Task Force. More recently some national consumers' organisations such as the Norwegian Consumer Council issued a charter on consumer rights for digital services while the TACD (Transatlantic Consumer Dialogue) asked the EU and the US governments to endorse 10 principles on consumers' rights and DRM. The German Presidency has also adopted a Charter with a broad coverage on "Consumer sovereignty in the digital world";

The European Parliament called for a Charter to be adopted by the public sector in its opinion on the i2010 strategy and is about to confirm its view that the Commission should engage in a European charter of users' rights that would clarify the current rights and obligations of information society actors (**MEP Z. Roithova's (EPP) "own initiative" report on Consumer confidence in the digital environment** to be adopted in June).

² http://www.ec.europa.eu/consumers/cons_int/safe_shop/acquis/green-paper_cons_acquis_en.pdf

As a starting point to respond to the challenge of increasing trust and confidence of consumers/users, some *key principles* for a soft law approach such as a Charter already enshrined (or partially) in legislation could be highlighted : Consumer / Users rights, principle of transparency, principle of fairness, principle of quality, including safety and security, principle of privacy, principle of redress, right of access, principle of interoperability of services, principle of technology compliance with existing rights

2) User driven innovation

The traditional innovation model tends to focus mainly on the innovation system involving research, industry and government. However, the contribution of users to the innovation process is growing steadily larger as a result of continuing advances in ICT, with the result that new models are developing, leaving more room for users to play an active role in the innovation processes. This already applies to online media, with new applications building on the capacity of ICT to involve users in content creation and distribution, or to software with users' collaborative process.

The diversification of models for innovation and creation also applies to the development of actual physical products. The Internet provides for direct customization and tools for modification of the design of product and services, which in turn may effect the next generation of a product. While this creates an opportunity for suppliers to improve their products and develop loyalty on their users, the latter also benefit from better products and customer services.

POLICY RESPONSE:

The greatest participation of the user in innovation and creation with user created content and customisation of product and services, is an emerging trend in the on line world. Therefore policy implications cannot be fully grasped at this early stage. One of the issues which has already been identified as calling for a policy response is the issue of rights and obligations: To what extent will a contributor be given rights to his contribution to a product or service, and to what extent will he/she be held liable for its later use?

Issues for discussion - The Commission invites the i2010 High Level Group to reflect upon:

- the relevance of the issues outlined in the paper;
- the need to take an initiative at the EU level to increase consumer's confidence and protection and to avoid fragmentation of rules applying to ICT services;
- the extent to which new services should be integrated in the existing legal framework when reviewing the "*acquis communautaire*";
- the possibility to opt for a soft law approach like the Consumer Charter proposed by several stakeholders. In this context, the relevance of the key principles
- are there policy responses to consider to address user-driven innovation? Should such issues be treated together with user-created content issues?