

COMMISSION STAFF WORKING PAPER ON
STRENGTHENING THE COMPETITIVENESS OF THE EU PUBLISHING SECTOR



Response from the Association of Online Publishers (AOP)

November 2005

About AOP

The UK Association of Online Publishers (AOP) is an industry body that formed in 2002, representing online publishing companies that create original, branded, quality content. AOP champions the interests of approximately 160 publishing companies from diverse backgrounds including newspaper and magazine publishing, TV and radio broadcasting, and pure online media. Together they publish around 1,150 products and their websites attract more than five billion page impressions per month.

AOP presents a unified voice to industry and Government, specifically to address issues and concerns relating to all areas of online publishing. AOP publishes original research, hosts forums, awards and conferences, covering a range of topics from paid-for-content, subscription models and data protection, through to copyright, content management, new technologies and audience measurement.

Members include Associated New Media, BBC, BSkyB, Capital Radio Group, CNET Networks, Channel 4, Dennis Interactive, The Economist Group, Emap, FT.com, Future Publishing, Guardian Unlimited, Haymarket Publishing, Independent Digital, IPC Media, ITV Online, News International, Reed Business Information, Reuters, Telegraph Group Limited and Which?. In addition, AOPi (Periodical Publishers Association Interactive) retains a corporate seat on AOP board: representing the interests of magazine publishers online. www.ukaop.org.uk.

Summary

AOP welcomes the Commission's intent to review the competitiveness of the publishing sector.

The Commission Working Paper contains data which is up to five years old. AOP suggests there would be value in a new and updated report, reflecting a far more mature electronic publishing market than in 2000.

There must be greater recognition of the importance of intellectual property rights and copyright in the publishing sector, and there is a need to develop sound DRM systems to protect investment in creativity, reward creators, and allow commercial management of information for the benefit of European Community growth.

Due account must be taken of new legislation and removal of existing legislation, in many cases this is likely to have a negative impact on the publishing sector. The proposal to remove the Database Right, recently postponed following considerable industry response, is one such example.

The benefits of self-regulation, in the UK a model for growth which has delivered flexibility with accountability, need to be properly taken into account. Where intervention is necessary and proportionate, this form of self-regulation is the most appropriate way forward to embrace the speed of change of new media, and to encourage competition between emerging businesses whilst continuing to protect consumers.

A fully integrated media policy does not appear to be a desirable outcome. For the foreseeable future, the differences between what are considerably diverse publishing media will remain. In order to avoid discriminating in favour of one media over another, and to allow new media to develop properly without the hindrance of inappropriate and historic regulation, a reactive approach is necessary, reflecting particular concerns in a proportionate manner. Far from driving greater competitiveness, a proactive, one-size-fits-all approach, that fails to recognise existing and future differences, will stifle rather than benefit a European publishing industry that is currently competitive in world markets.

The staff working paper

With regard to the specific questions posed in the Staff Working Paper, AOP would make the following comments:

- (1) *Does this paper accurately describe the main indicators for competitiveness across different publishing segments?*

The opportunity to collate data on the publishing industry is clearly helpful in informing debate on individual publishing media and specifically within sectors.

However, the staff working paper adopts too general a response across the whole of the publishing industry, resulting in odd conclusions that do not sit properly within sub-sectors such as magazines and online.

The paper also appears to reflect an industry of some five or more years ago, rather than the present day - at least in the UK and other major Member States. By way of examples, the Executive Summary contains statements that "Publishers have not yet been able to build the business models necessary to exploit online distribution..."; "Publishers tend to be...less adept at...more radical change."; "...publishing is not heavily exposed to international competition...", none of which is borne out by the reality of intense internet competition today, often from companies based outside the UK (predominantly the US).

Media Policy for the publishing sector must increasingly take into account the way in which the industry interacts with those sectors providing other information society services. This in turn will support the publishing sector's ability to continue to compete against the background of developing EU media policy as a whole, and any future research must properly take this into account.

- (2) *Are there any further issues you would add in respect of publishing, notably with regard to the policy approaches set out in the Commission's recent i2010 communication?*

The vital importance of maintaining an effective legal framework for the protection, licensing and enforcement of intellectual property in the global online marketplace needs more detailed attention if the competitiveness issues that the study hopes to address are to be properly considered.

Digital rights management (DRM) is included within the paper, but given the apparent low-level concern exhibited at the DTI i2010 event from some sectors of the media, further work is urgently required to properly identify the risks to creativity and future content generation, and ensure buy-in from all areas of the creative industries. This would reflect the position adopted by online content creators that this is a high priority issue requiring urgent attention. Thus the perceived importance of intellectual property must be increased across the content marketplace, and in this paper in particular.

There is no mention of either broadband or mobile delivery within the paper, reflecting the apparent age of the study.

The approach to trade openness in the Commission paper does not reflect the reality of current online opportunities. It is suggested that "national publishing industries in the EU are not very exposed to competition from abroad, nor are they strongly export-orientated". Yet the paper acknowledges that in 2002 the EU exported publishing goods worth 5 times more than the US.

In the online world, publishing companies find themselves competing (for example, for advertising spend) with a variety of new players from the UK and overseas. For example, approximately 80 per cent of online advertising spend in the UK currently goes to four or five (US based) dotcom companies: AOL, Google, MSN, Yahoo and Wanadoo.

The paper does not cover emerging legislation, most notably Rome II and TVWF, both of which could, in a number of recently proposed forms, stifle creativity, hinder freedom of expression, and impact upon the growth potential of the sector. These, and other relevant existing and proposed legislation, such as the Services and E-Commerce Directives, should be included.

Also omitted, other than side-references, is self-regulation. In the UK, self-regulation has been a model for growth, delivering flexibility with accountability. Where intervention is necessary and proportionate, this form of self-regulation - as could be implied through Commission suggestions to extend the scope of TVWF - is the most appropriate way forward to embrace the speed of change of new media, and to encourage competition between emerging businesses whilst continuing to protect consumers.

- (3) *Are current industry structures across all segments likely to survive the transition to electronic value chains? What are the major barriers and threats to publishers during the transition? What are the opportunities for publishers arising from new information and communications technologies?*

For many publishers, online services are providing added-value to their traditional media products, both in terms of created editorial content and interactive feedback which helps to shape future content. For others, online is the primary medium, with paper absent or only providing support. For some, they are only just considering the opportunities to add brand value through non-traditional media.

However, industry structures have already begun the transition, and many publishers are already operating in differing ways to the traditional print publishing model, reflecting their offering and marketplace. The future will see an increasing diversity of publishing models, rather than the historic limitations of advertising and circulation-based approaches.

There is a recognition that the publishing sector is already adapting to improve the services that it is able to offer the public as a result of new digital technologies. Erosion of the value of intellectual property, and a lack of ability for such property to be effectively licensed and authorised for use by means of electronic storage, reproduction and transmission, would pose a major threat to the publishing sector.

One such recent threat is the proposed removal of the Database Right. New services require more sophisticated data management and customer interaction to maintain interest and usage levels. This requires increasing investment in database development, and any threat to erode existing rights will lead to uncertainty, reduced investment, and ultimately could undermine a European industry and offer opportunities to other non-European players.

- (4) *How will business models evolve and how far will Digital Rights Management systems be essential for their successful implementation?*

DRM is essential to protect the longer-term investment in creative industries using electronic means of distribution. Intellectual Property misuse and theft impacts return on investment, but even more critically affects content creators, resulting in the need

for either more expensive initial rights contracts that will discourage growth, or drive those creators away from creative industries completely as the rewards would no longer match the net worth of the original content.

This issue, given the recent improvements in scanning technologies, is not solely limited to the digital media, but increasingly will affect print-based publishing. Thus its importance must be reflected in both public and private sector investment in crime prevention, detection, and recognition by authorities in applying appropriate levels of punishment that reflect the commercial damage to both the industry and individuals.

Further, freedom of information, and the making available by the public sector of material hitherto only available as paid-for content, is undermining the consumer view of information as a value-based commodity. The music industry has worked hard to counter a similar position brought about by other private sector businesses seeking to make commercial gain. A corresponding campaign to alter consumer perceptions of the value of information is also necessary, supported directly by the Commission and by the DTI and DCMS in the UK.

Improving public perception of what Digital Rights Management actually means will be important. The perception that somehow DRM is something which "takes away" or negates rights which people have to use material, rather than tools which facilitate and make access more effective for the benefit of all, must be countered.

The nature of the link between diversity of ownership and diversity of content

- (5) *How far is there tension between the need for open outcomes in economic terms at a time of rapid technological change and the political desire to support democratic values including diversity?*

There is, and will continue to be, tension between increasingly rapid developments in media form and delivery, fuelled by demand from technologically aware consumers, and the need to protect emerging technologies from market-dominating businesses in order to foster competition with reasonable margins. At the same time, there is a need to balance the protection of consumers through proportionate regulatory response, developing appropriate self-regulatory regimes, and through maintaining effective levels of competition by keeping prices low and service standards high.

To this end, the recent proposal to extend the regulatory scope of TVWF does not seem proportionate, nor does the desire to move away from a Country of Origin principle for Rome II given that this would be expected to reduce rather than encourage interstate trade, as well as the likely chilling impact on freedom of expression.

- (6) *How far is diversity of content and ownership likely to be self-sustaining in fully electronic markets, given for instance lower entry barriers to citizens' direct participation (e.g. blogs)?*

The implied view that the expected outcome will be 'fully electronic markets' misses the point that the market will develop in a hybrid fashion. Some sectors, in response to user demand, will proceed quickly to solely electronic media, whilst others will continue in the mid and even longer-term to offer both paper and electronic formats. Variants will arise to achieve change of pace, and to reflect the particular benefits for the type of content in one media over another, such as photography in print and interactivity online.

The importance of ensuring respect for the intellectual property law regime, and the careful checks and balances which have been developed to provide for approved copyright exceptions and limitations must not be forgotten in developing media policy for the publishing sector.

- (7) *In converging markets, from the perspective of publishing, what approaches would you suggest for co-existence between the two different traditions of regulated, licensed broadcast media and unlicensed press?*

Co-existence, rather than "an assumption of submersion in a converging environment" will be vital for the future of the publishing sector, if the vital underlying principles of freedom of expression and press freedom are to be maintained.

There remain sufficient differences in traditional media, between push content such as public service broadcasting, and pull media such as newspapers, magazines and websites, to support the continued separation between licensed and unlicensed (though self-regulated) broadcast and print-based industries respectively.

Where convergence is most evident, in the provision of online content, the overriding requirement is that there should be a single regime.

Advertising; integrated media policy

- (8) *In relation to advertising regulation, what are your reasoned preferences in relation to the different instruments available, voluntary self-regulation, coregulation and statute law?*

Aside from clearly separate broadcast regulation for advertising, AOP has proposed that there could be an extension of existing national non-broadcast codes to online, in the UK this would result in the self-regulatory CAP non-broadcast code remit being clearly extended to cover all online advertising content.

- (9) *From the perspective of publishing, what are the main issues that an integrated media policy – i.e. one that covers all media sectors - should address?*

A fully integrated media policy does not appear to be a desirable outcome. For the foreseeable future, the differences between what are considerably diverse publishing media will remain. In order to avoid discriminating in favour of one media over another, and to allow new media to develop properly without the hindrance of inappropriate and historic regulation, a reactive approach is necessary, reflecting particular concerns in a proportionate manner. Far from driving greater competitiveness, a proactive, one-size-fits-all approach, that fails to recognise existing and future differences, will stifle rather than benefit a European publishing industry that is currently competitive in world markets.

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