

**Department of Culture, Media and Sport
Consultation on the Revision of the Television without Frontiers Directive:
CBI Submission**

Introduction

The CBI welcomes the opportunity to respond to the Department of Culture, Media and Sports's consultation on the review of the Television without Frontiers Directive (TVWF). We appreciate the Government's extensive consultation and dialogue with industry. It has allowed for a fuller and more frank discussion of the issues involved, building a stronger position for UK stakeholders to take into the European debate.

As the UK's leading business organisation, the CBI represents over 240,000 businesses employing around a third of the private sector workforce. The effects of TVWF, whilst crucially important for the converging technology, media and telecoms sectors, will be felt throughout the whole of Europe by businesses who are increasingly relying on digital content and services to add value to their business processes and to market and advertise their products. The creative industries that supply these services are major drivers for economic growth and a key asset for the competitiveness of knowledge-based economies.

The review of the TVWF Directive (Audiovisual Media Services Directive) was introduced as part of the Commission's i2010 programme for jobs and growth in Europe. However, we do not believe that the proposals (as currently formulated) help drive forward the objectives of i2010 as they adopt an overly complex approach to the regulation of online services. Whilst the deregulatory aspects proposed for the traditional broadcast sector are applauded, we have yet to see a compelling case for extending regulation to online services. This is particularly relevant as digital content and services become increasingly important for UK business competitiveness in a global economy characterised by growing competitive pressures from low-cost overseas rivals.

What would be the costs and benefits, both direct and indirect, to the UK generally and across the various audio-visual services? (Q 3)

If the TVWF Directive were extended to add only mass-media video-on-demand services of the kind currently available - so excluding all other forms of 'non-linear', on-demand services - what would the costs and benefits be? (Q 7)

Costs and benefits – the need for regulatory clarity

In the face of competition from low-cost overseas rivals, UK businesses are developing higher value services and greater customer loyalty through building more sophisticated online services. A CBI conducted survey in 2005¹ showed 68% of companies engaged with their customers online, with increased investment in functions and applications like customer relationship and information management systems - this compared with 50% in 2002. In order

¹ "E-Value Matters: Transforming Business Online" CBI, 2005



for this investment to be worthwhile, integration of back and front-office IT functions is needed, with digital content and services forming the interactive graphical interface between customers and companies' backend systems.

By investing in and developing more varied and compelling content that takes advantage of broadband connections, companies drive up the value of their online customer engagement, increase 'stickiness' and the likelihood of a return visit or sale. Ensuring that the different content formats and modules in such services work seamlessly requires integration at both the front-end of the user experience and in back-end IT functions. Thus, for instance, after having watched an entertainment or information video of a car being driven at night in a mountainous environment on a company website or digital TV channel, a customer ordering a car might then click on another part of the website or TV picture to determine headlight design specifications through an interactive applet, with stock availability and delivery options being provided through real-time links to back-office IT systems.

Recently, new and more fundamental versions of such customer service engagement are emerging under the moniker of 'Web 2.0,' with key business processes like marketing and product development being transformed through customers becoming more closely involved in determining the development and use of a particular product or service. Through social networking sites and user-generated content, consumers share their positive and negative experiences of a particular product or service that companies engage with to modify and enhance product development. Product development thus changes from a largely in-house activity - with marketing of products and services very much an arms-length process - to one in which consumers are involved much further back in the definition and development stages.

Both these developments are needed to maintain the competitiveness of UK and European business through building customer value in the face of low-cost overseas competition. We are concerned that the Directive will damage this capability taking an overly simplistic view of such services as either linear or non-linear. Companies are more likely to provide a mix of linear and non-linear content in services offered on their websites or via digital TV in order to enhance the customer experience. So it is questionable whether any service will be purely linear or purely non-linear in their operation, unclear how they would be regulated and difficult for companies to anticipate this in the design of their graphical interfaces with customers.

For businesses investing in, developing and operating online services, legislation should provide clarity as to how their commercial offering will be regulated. All online services are of course currently regulated by existing laws such as the eCommerce Directive and national laws on taste, decency, consumer protection, etc. The linear and non-linear dichotomy created by the Commission, in adding a new layer of regulation, does not provide increased clarity for many of the businesses involved in the digital value chain. Concise economic and technological differentiation of what does or does not comprise each service category would help provide clarity for business - something lacking from the Commission's initial regulatory impact assessment and later publications.

The proposals recently tabled by the UK in the European Council do go a long way towards resolving this by tightening the definitions of linear and non-linear. However, as explained below, whilst the Directive is technology-neutral in terms of delivery platform, we see value in introducing an element of technological specificity in terms of the definition of the content's format. Clearly much thought and effort has been put into the UK's proposed amendments. However, introducing an element of technological definition in terms of the content format (as opposed to the delivery platform) would help delimit the scope of the non-linear side to 'TV-like' services. We believe this would not contradict the principle of

technological neutrality - as the Commission outlines in the Directive: “the set of applicable rules shall no longer depend on the delivery platform but on the nature of a service.”²

In the transmission of ‘TV-like’ content (i.e. video on demand), there has to be a sequential ordering of the frames being shown unlike, for instance, in computer games where frames are independent of the other. As sequential frames are displayed, there is a logical ordering of the programme’s transmission for the content to be viewable. In addition, the user is unable to alter the content that is being shown, such as could happen in an interactive audiovisual service such as a product demonstration and ordering applet on a website or an interactive service on digital television. Linking the non-linear definition to the technical format of the content would help tighten the scope of the eventual Directive and create a *de facto* sunset clause for the current Directive as new media formats stay exempt from the Directive and the older regulated formats become rendered obsolete by the advance of technology.

As well as having a tightened definition of non-linear services, there is a need not to regulate emerging services under new regulation until such time as they are well established with a defined market structure and profitable business models. Whilst some of these services may eventually be regulated under the current non-linear definition in the Directive, fettering emerging media services in a complex regulatory framework could slow or even skew their growth and might cause investment capital to move outside the European Union. We see the need for a set of key milestones in terms of market development to be established before regulation under TVWF kicks-in.

Any extension of new broadcast regulation onto online service providers that introduces, for example, a licensing system would be unnecessary and inappropriate in an online environment and could hinder the development of European digital content and services. Whilst this is explicitly denied in the Recital 12 of the proposed Directive, the language used within current Article 3 could mandate the creation of such a system.

Socially responsible businesses have worked with each other, regulatory agencies and with government under self and co-regulatory systems over the long-term to educate and protect consumers who might be unaware of the risks associated with the Internet. However, the proposed Directive fails to recognise the increased level of individual responsibility in the online environment and the value of media literacy as a tool for upskilling individuals, an area in which Ofcom has been making significant progress. We strongly support the Government’s proposed amendments to incorporate media literacy into the Directive.

The UK is rightly proud of the self and co-regulatory systems we have in place, the result of much hard work between industry and government. We would be very concerned if the proposed Directive forced a complete overhaul of the well-established systems in the UK. Yet the definitions of self and co-regulation provided by the Inter-Institutional Agreement referenced by the Directive in Recital 25 could reduce the flexibility required by self and co-regulatory bodies to react and respond to the transformations taking place within the technological environment. Furthermore, we see no need for new and existing self and co-regulatory schemes to have to be given a ‘green-light’ by Brussels to operate - as they have a purely national remit, it should be a matter for discussion with relevant national authorities.

Advertising (Questions 14, 15, 18, 19)

OFCOM have consulted on the possibility of allowing product placement on TV services within the UK if the EU – as a result of this draft Directive – removes the current implicit EU-wide prohibition of it. But the UK will retain its discretion not to allow product placement in programming made by and for UK broadcasters whatever

² COM(2005) 646 pg. 10

the outcome of the EU discussion. If the UK were to continue not to allow product placement, but the EU allowed it, what practical impact would that have for UK broadcasters, UK programme makers, and the UK advertising industry? (Q 19)

The CBI supports the proposed deregulation of advertising restrictions for the broadcast sector. As the Internet continues to transform the media sector and related consumption patterns (particularly within the 16-24 year old age group³) broadcasters should be allowed more commercial flexibility to seek new ways to achieve a return on investment in content production and distribution, and in new revenue streams in place of declining advertising revenues. European content producers and broadcasters have been at a disadvantage in relation to their international competitors due to product placement restrictions and we believe allowing this form of advertising reflects the current commercial reality that the broadcast sector now exists in.

However, we oppose the extension of advertising regulation taken from the broadcasting environment to online services. Online advertising is the fastest growing form of advertising, with spending up 62.3% in the UK in 2005 relative to an overall increase of 0.6% in total spend,⁴ a clear indication that the current light-touch regulatory framework (underpinned by national laws) has allowed the market to flourish – providing vital funds for the growth and development of numerous online services. For example, 99% of Google's revenue comes from online advertising,⁵ an online service that has revolutionised the way people are able to acquire information online or offline.

The proposed Directive fails to recognise the innovative developments in online advertising, for example in companies pursuing viral marketing and developing interactive communities of interest for their customers and which fall outside the traditional easy distinction between editorial and advertising content. These sites are changing the nature of product development from a largely in-house activity - with marketing of products and services as very much an arms-length process - to one in which consumers are involved much further back in the definition and development stages. Limiting the scope of the non-linear definition to 'TV-like' services will reduce the risk of the current Directive restricting the growth of online advertising through burdensome regulation.

Looking forwards

The CBI is still optimistic that we can achieve a net positive result for the EU through the review of TVWF. We have recently seen signs from some of the Parliamentary Rapporteurs that they intend to clarify many of the issues we have described above. Both in the Parliament and the Council, the key to achieving a positive outcome will be clarification of definitions and a clarification (and limitation) of scope.

The development of digital content and services is socially, economically and culturally vital to the EU. We do not view these areas as being mutually exclusive and look forward to working with DCMS to develop the best result for the UK out of the upcoming Parliamentary and Council debates. We are hosting a joint OECD-BIAC workshop on 29 September 2006 that will examine policy issues for online audiovisual services, film and video which aims to feed into many of the issues discussed above and provide business input for OECD papers on the issues involved. We would be happy to discuss how the OECD's work on this area might illuminate some of the discussions taking place in Brussels on TVWF.

³ Ofcom 2005 Communications Market Review

⁴ Association of Online Publishers - <http://www.ukaop.org.uk/cgi-bin/go.pl/research/article.html?uid=1039>

⁵ <http://investor.google.com/releases/2006Q2.html>