

Consultation response

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Digital Britain: The Interim Report

Submission by Which?

1.0 Introduction

1.1 Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, books and online subscriptions.

1.2 Which? welcomes the recent publication of the *Digital Britain* report as a serious attempt to engage with important issues that will have important implications for UK consumers.

1.3 This response will concentrate on three specific areas discussed in the report: digital networks, universal connectivity and privacy. We will utilise our own research as evidence with the intention of adding to the evidence base for the '*...implementation and execution*'¹ stage of the *Digital Britain* work.

¹ DCMS (2009). '*Digital Britain - Interim Report*', pub: The Stationery Office: London.



Specific Questions

2.0 Digital Networks

2.1 In the *Digital Britain* report there is a brief discussion of the issue of 'net neutrality'². It describes that, while the issue has been raised in the UK in the past, it has not been at the forefront of the discourse around the internet and public policy. The report unfortunately does not take the topic beyond brief remarks about the arguments for and against 'net neutrality'. A more comprehensive debate over the issue and a more prominent place for it in the final report would be welcome as the matter should form an important part of any considerations on the future of the regulatory regime in the UK.

2.2 As the report acknowledges, the existence of 'net neutrality', or not, has important implications for the future of the sector in terms of how the market will evolve, including future business models and the competitive structure more widely. Consequently there are important implications for consumers from this issue, whether the *status quo* remains or not.

2.3 The arguments against 'net neutrality' essentially revolve around the socially beneficial nature of the incentives facing firms of not having a 'net neutrality' obligation in place. These incentives manifest themselves in the form of revenue streams earned from the capability of companies to differentiate their products. The revenue would then be expected to drive '*...investment in higher-speed access network*'³ and thus deliver greater utility for consumers.

2.4 Which? does not agree with this position. At its heart the argument feels protectionist. It is an argument that will potentially mean reduced value for money for consumers of broadband services with no guarantee that the revenue earned by the firms concerned will be used to drive forward investment in better products and services.

2.5 The fact is, without 'net neutrality' companies can easily raise barriers to entry for new entrants and stifle switching; reducing competitive pressures on firms and diluting the impetus for innovation. In essence, without a 'net neutrality' obligation the controller of the network can effectively decide who and what operates across the infrastructure that it provides and what can be accessed

² The concept of 'net neutrality' requires those managing a network to refrain from taking action to 'manage' traffic on that network.

³ DCMS (2009). '*Digital Britain - Interim Report*', pub: The Stationery Office: London.



through it⁴. In a market where it appears there may be a trend towards greater concentration of supply, net 'non-neutrality' and market concentration combine to put a powerful anti-competitive tool in the hands of existing industry players. 'Net neutrality' will help ensure that the playing field stays level for entrants and switchers, driving companies to genuinely compete.

2.6 There are already examples of this type of anti-competitive behaviour in countries around the world that are not under a 'net neutrality' obligation:

- > American telecommunications company, *Madison River Communications*, blocked its customers from using VoIP⁵ services, which would have competed with its telephony provision⁶.
- > Another example from the US is *Comcast*, a major ISP, who in addition provide a cable TV service. They sent false data down its cable network to prevent customers from accessing a range of applications⁷.

2.7 Which? believe that current measures to try and improve the situation, such as the action last year to amend the *Universal Services Directive* to require that companies disclose their network management practices, are insufficient to solve the problems⁸. Which? do not believe that the provision of information is a sufficiently robust solution to this problem.

2.8 We would like to see recognition, promotion and support for the principles of net neutrality. As part of the government's recognition of the need for a regulatory framework that is supportive of investment and that balances the latter with competition, we would like to see a greater emphasis on understanding the potential market power issues inherent in the current - technology enabled - industry structure and how this could potentially damage the consumer's interests. To support this, we would urge the Government to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications or devices.

⁴ Providers '...may include content, applications or devices that compete with the provider's own interests'. Source: TACD (2008). 'Resolution on Net Neutrality', pub: Transatlantic Consumer Dialogue: London.

⁵ Voice over IP services.

⁶ TACD (2008). 'Resolution on Net Neutrality', pub: Transatlantic Consumer Dialogue: London.

⁷ TACD (2008). 'Resolution on Net Neutrality', pub: Transatlantic Consumer Dialogue: London.

⁸ TACD (2008). 'Resolution on Net Neutrality', pub: Transatlantic Consumer Dialogue: London.



3.0 Universal Connectivity

3.1 The second issue Which? would like to respond to is that discussed in section 4 of the *Digital Britain* report: universal connectivity and specifically Actions 17 and 18.

3.2 Which? believes that enabling more consumers to get online would, *prima facie*, be a beneficial development. It would allow those households currently unable to access the benefits that can be derived from the internet to do so. The consumption benefits of having access to the internet include both the wider choice of products and services available to those who consume online as well as the price benefits of online purchasing. Therefore, Which? can understand why some form of universal service obligation has been suggested, following the examples of other countries, as highlighted in the report.

3.3 Rolling out this commitment poses some risks however and we would like to highlight our concern over these and suggest that all the issues must be thoroughly thought through before any final plan is put into action.

3.4 The report, in recognition of the difficulties of deciding on a universal connectivity obligation, sets out a series of factors that have to be taken into account. Which? would like to echo our agreement with them as principles and would like to draw to the attention of the authors some of our own research, providing evidence which may inform the 'implementation and execution' stage of the report.

3.5 The principles outlined in the report suggest that any minimum service will have to take account of:

- > The level of broadband most commonly subscribed to in the population as a whole.
- > The sorts of services which consumers want.
- > The public services, for which delivery depends on a certain speed.
- > The point at which a level of service can be delivered ubiquitously at proportionate and reasonable cost.

The report also rightly highlights the danger of locking the UK into a minimum level that can become, very quickly, out dated.

3.6 Which? research can help boost the evidence base with regards to this issue in particular with specific reference to the first two factors.



3.7 The report argues that the level of broadband most commonly used by the population should be one of the factors influencing the final decision in this area. The report itself illustrates that over 50% of the population have a very high speed broadband connection. Which?'s latest research shows that only 24% of people have a connection speed of less than 8mbps, with the number of people with a 2mbps connection at 14%⁹.

3.8 Research from previous surveys by Which? shows that there is a downward trend in those purchasing broadband with speeds of below 8mbps¹⁰. Over the year since February 2008 the numbers purchasing broadband of below 8mbps has fallen by 7% to 24%.

3.9 Evidently the trend is towards faster broadband connections. As the broadband speed commonly subscribed to in the population as a whole is substantially faster than the 2mbps minimum connection suggested in the report, it already seems that consumers are leaving the proposal behind.

3.10 Further evidence of the 2mbps broadband speed becoming a relatively slow and outdated comes from the ISPs themselves e.g. Virgin, are offering free upgrades to their customers from 2mbps to 10mbps, having ceased to operate a 2mbps service¹¹.

3.11 On Action 18, the proposal to devise detailed proposals for the '*....design and operation of a new, more broadly based scheme to fund the Universal Service Commitment for the fully digital age...*', we want to highlight certain considerations that we believe should take a prominent place in the devising of any system for delivering the Universal Service Commitment. These are potential effects that any scheme will have on the functioning of the market in this sector and that have to be considered carefully in any system design. We are keen to stress the potential distortion effects of any proposal and want to alert the authors to the danger of creating a system that allows the abuse of market power such as providing opportunities for rent seeking behaviour. Specific problems that might arise include:

- > The potential damage of cross subsidy to prices for all consumers, with some obligated to effectively subsidise others.

⁹ Source: Which? (2009). '*ISPs Survey Report - Final*', pub: Which?: London.

¹⁰ Research shows that 27% of Which? members had broadband connections of less than 8mbps in August 2008 and 34% had a connection speed of less than 8mbps in February 2008. Source: Which? (2008). '*ISPs Survey Report*', pub: Which?: London.

¹¹ ISP Review (2009). '*Virgin Media Upgrades 2mbps Broadband Users to 10Mbps*', pub: 24 Feb 2009, ISPReview.co.uk: London, accessed at <http://www.ispreview.co.uk/news/EkFVuyVklZqaAlyULZ.html>



- > Confusion about which companies will bear the burden. As the *Digital Britain* report points out the market for broadband is substantially different to the telephone market at the time of privatisation where BT had a monopoly. A range of companies provide the infrastructure for broadband. The dynamic nature of the market opens up the possibility that, over a relatively short period of time, any distribution of the burden could become outdated.
- > The obligation to provide a broadband service may give the companies providing the Universal Service Obligation and who are already in a strong position, such as BT, an opportunity to 'capture' the newly opened up customer base.
- > Those who are likely to be accessing this minimum universal connection are some of the least engaged with the technology and therefore least motivated to switch and thus becoming the victims of inertia.

3.12 These are not unique problems. Indeed, they are the kinds of issues that can potentially befall any sector, and especially any sector that has become essentially a utility. It may be that the relatively low marginal cost of adding additional people to the existing network makes the burden of this Service not very onerous. However, before any detailed final proposals are made with regards to the framework for delivering the Universal Service Obligation are produced Which? would urge careful study by *Ofcom* across the whole range of implications for competition.

4.0 Privacy

4.1 The third issue Which? would like to respond to is in section 5.3, which talks about online safeguards. The topic of privacy is one of interest to Which? as it has a particular bearing on consumers.

4.2 A range of developments in the market have developed that have meant that privacy has become an important public policy issue. These include:

- > The increasing number of electronic transactions
- > The open nature of the internet
- > The myriad of communications carriers and service providers and
- > The dramatic cheapening in the costs of collecting, storing, accessing, matching and redistributing information.
- > An increase in the value of information to business.

4.3 The emergence of these has allowed several specific issues to arise, for example:

- > Organisations collecting and storing data about transactions and personal circumstances.



- > The capability of organisations to track the online behaviour of individuals and store the information¹².
- > New marketing techniques
- > The development of a market for data.

4.4 As data has become more highly valued it has led to the emergence of numerous companies operating whose sole mission is to collect and distribute this private information once solely controlled by the owner.

4.5 The issue of privacy can only become more important as internet activity grows through more consumers conducting commerce online and even greater proportions of the population moving online through the universal connectivity proposal¹³. This will mean that ever greater amounts of information about larger numbers of the population will become available.

4.6 The *Digital Britain* report suggests that the role of user confidence is crucial in helping the UK develop into a country at the forefront of the 'digital age'. It suggests that a lack of confidence can lead to below socially optimal levels of internet usage. This would seem to derive, in part at least, at peoples' uncertainty over what information is being collected, how it is being used and by whom. In other words consumers experience a general sense of disempowerment through the lack of privacy as other individuals and organisations potentially generate income from its existence.

4.7 The report appears to acknowledge that this uncertainty over privacy is important because, in the draft '*Supporting Guidelines*' section on page 70 of the report, it suggests that one of the draft guidelines that should inform the three draft public policy principles should be that individuals have '*...clear information on how personal data is collected, how it is used and where it is shared*'¹⁴.

4.8 Which? believes that there are clear indicators of potential detriment around personal information security. We therefore support the *Digital Britain* report in taking the issue seriously and developing a draft guideline around the issue, informing the three draft public policy principles. However, it is an area where further research is clearly needed to understand more robustly the kind of

¹² A recent article in Which? magazine has highlighted how BT, Talk Talk and Virgin have signed agreements with Phorm to evaluate the Webwise service it offers. Source: Which? (2009). '*Online privacy matters*', pub: Which? magazine, March 2009: London.

¹³ The role of consumption is at the heart of the privacy issue. Not only does online consumption provide an opportunity for the collection of information about individuals and households but it is often the objective of those companies who purchase and use the information e.g. marketing firms use the information to target potential customers.

¹⁴ DCMS (2009). '*Digital Britain - Interim Report*', pub: The Stationery Office: London.



detriment the high level surveys suggest consumers experience from their concerns and uncertainty over privacy. In the light of further research the draft guideline may have to be made more robust, which may in turn imply policy action further down the line. This may particularly be the case when it is seen through the prism of the first two draft principles of 'protection for children' and 'empowerment for adults'. As outlined above there is already some suggestion that the uncertainty and concern over privacy leads to disempowerment for adults and by extension inevitably leads to even more disempowered, and thus less well protected, children.

4.9 Which? is currently undertaking research into consumer attitudes towards online monitoring and information sharing. We would be happy to share this research once it has been concluded.