

**Comments from AOL UK on the
draft Electronic Commerce (EC Directive) Regulations 2002**

AOL UK previously submitted its comments on how the Directive should be implemented in to UK law in response to the DTI consultation document. AOL UK has now reviewed the draft regulations: 2 key issues remain.

Country of Origin (Regulation 7 - Internal Market)

AOL UK supported the enshrinement of the country of origin principle, including the exhaustive derogations (in particular in relation to copyright and industrial property rights). However, AOL UK does not believe that the wording of Regulation 7 achieves the intended result. As worded the Regulation requires enforcement authorities to enforce UK law against a service provider established in the UK. The Regulation fails to place a direct obligation on service providers to comply with the law of the UK if they are established in the UK, even if their services are provided in to other countries. We refer to the wording of the German implementing legislation, which clearly subjects service providers to national law:

"Service providers established in the Federal Republic of Germany and the teleservices thereof shall be subject to the requirements of German law even if the teleservices are offered or rendered commercially in another state within the scope of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, p. 1"

AOL UK proposes similar wording for the UK implementing legislation.

Regulations 17-19 Mere Conduit/Caching/Hosting

In AOL UK's response to the DTI consultation we raised our concerns about the trigger for liability in the provisions on caching and hosting. The fundamental unanswered question is what constitutes "actual knowledge" and what type of notice could give rise to actual knowledge.

AOL UK supported the introduction of self-regulatory processes, in particular notice and take down procedures where workable and appropriate. In particular AOL UK supported the use of notice and take down procedures as currently in use in the UK

for child pornography and administered by the IWF and in the US under the Digital Millennium Copyright Act (DMCA). AOL UK does not support a "horizontal" application of notice and take down procedures to all types of illegal content and welcomes the Government's view that a uniform "horizontal" notice and take down procedure would not be appropriate (A guide for Business, Section 6.9).

However, the current wording of the Regulations make no provision for notice and take down procedures in any sector. AOL UK believes that Government must provide the impetus for all stakeholders to work on and agree industry codes of conduct in particular for dealing with material which infringes intellectual property rights and must continue to support the IWF notice and take down procedure for child pornography. AOL UK therefore suggests that the DTI should as a matter of priority create a working group to establish a draft code of conduct for notice and take down of copyright infringing material. Failure to do so will mean that the UK provides less certainty to service providers on liability than other EU countries, some of which are implementing either statutory or voluntary codes of conduct, and than the US where service providers benefit from Section 230 of the Communications Decency Act and where a detailed notice and take down procedure was established under the DMCA.

For more information please contact:

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