



Interactive Advertising Bureau

Supporting interactive advertising, electronic commerce and online marketing in the digital age.

Mr. Matthew Conway
Communications and Information Industries Directorate
Department of Trade and Industry
151 Buckingham Palace Road
LONDON SW1W 9SS

30th April 2002

Dear Mr Conway

IMPLEMENTATION OF THE E-COMMERCE DIRECTIVE

The IAB is a member of the UK Advertising Association and as such we fully support their full and detailed response to the UK's consultation on the implementing Regulations. The IAB is also a member of the UK's Digital Content Forum and we fully support their response in particular with regard to the sections relating to liability for content and proposed procedures for Notice and Take Down. In this letter I would like to highlight our concern about the UK's approach to the country of origin principle.

Country of Origin

In our letter to you of 27th October 2001 we said that the IAB would like to see as wide an interpretation of the country of origin principle as possible and in particular for it to be clearly stated in the regulations that operators based in the UK (as defined in the directive) are subject only to the laws of this country. For online publishers, Internet service providers and e-commerce sites, it is essential that we derive legal security from this directive and it is our view that the original intention of the directive was to provide such security through mutual recognition based on the country of origin principle.

Regulation 5 and 7

The way in which the UK has approached implementation through Regulation 7 in conjunction with Regulation 5 is to reduce the country of origin principle to a matter of enforcement only. There is no intention to state explicitly that information society services established in the UK will be subject to the laws of the UK. Therefore, companies such as our members who are established in the UK seeking to do business outside the UK will be subject to the rules of Private International Law (see point 3.6 in the Guide for Business). This exposes UK companies to untold legal insecurity when seeking to do business outside the UK.

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At the meeting which we both attended at the Advertising Association on 15th March 2002, you said that the UK was entirely in line with other member states in seeking to adopt only a "restrictions test". You argued that the directive in its final adopted form did not in fact require a full country of origin approach. I told you at the time that I was surprised by this and undertook to investigate further. At the time of our meeting it would seem that Austria and Germany may still have been considering a similar approach but have since adopted laws which implement the country of origin principle as originally intended by the Directive. German law applies in all areas not covered by the derogations in the Annex. The Austrian law, is even more straightforward providing that the law of the country of establishment should apply. This has been mirrored in Luxembourg too which has already completed implementation. In France, Spain, Denmark, Sweden, Finland, Belgium, Ireland and Portugal their draft laws all follow the principle that the law applicable to information society service providers is that of the place of establishment or that a Member States' own national laws shall apply.

It is very hard therefore for the UK to continue to go out on a limb, which would not only be inconsistent with the Directive, and other member states' laws, but most importantly would disadvantage UK operators which is contrary to the UK's stated political objectives in the field of e-commerce development.

Unless it is clearly stated in the regulations that operators based in the UK (as defined in the directive) are subject only to the laws of this country we shall not benefit from the free circulation provisions which will apply in other member states and which exist already for broadcasters under the Broadcasting Directive. Although the wording is slightly different in the Broadcasting directive, the intention in the e-commerce directive is identical. Only the consistent application of country of origin control can ensure that the internal market functions effectively and that consumers are able to benefit from the extended choice and opportunities presented by true freedom of movement for goods and services.

Yours sincerely



ANGELA C MILLS WADE
External Affairs Director