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Re: The Draft Statutory Instrument aimed at implementing Directive 2000/31/EC ('the E-Commerce Directive') in the United Kingdom

The Motion Picture Association (MPA) is a trade association representing the interests of seven major international producers and distributors of films, television programs, home video and DVDs¹. The MPA welcomes the DTI's second consultation on the draft statutory instrument aimed at implementing the E-Commerce Directive in the United Kingdom. We also appreciate the DTI's publication of a summary of the comments received during the first consultation process.

The MPA believes that the legal certainty will encourage the development of electronic commerce in Europe and our member companies support the balance struck by the E-Commerce Directive. We also believe it is essential to encourage co-operation between content and service providers in order to prevent the dissemination of illegal material on the Internet.

Limitations on Liability

The E-Commerce Directive expressly specifies the conditions, which Internet service providers (ISPs) must meet in order to benefit from the limitations on liability for certain activities (hosting, caching and mere conduit) set forth in the Directive. The Directive also envisions the establishment of notice and takedown procedures through self-regulation. The main objectives of the liability provisions in the E-Commerce Directive are to provide legal certainty, to encourage content providers and ISPs to work together to fight piracy and other illicit conduct, and to accelerate enforcement procedures. Co-operation between ISPs and content providers is an essential part of the fight against the widespread propagation of infringing material on the Internet.

As mentioned in our first submission, the Directive achieved a carefully balanced compromise regarding the ISP liability. In order to preserve this balance, we strongly encourage *verbatim* implementation of the E-Commerce Directive's pre-conditions for the limitations on ISP liability. It is particularly essential to implement properly the knowledge standards in Article 14 (hosting). This provision is an essential basis for co-operation between ISPs and content providers as well as the development of notice and takedown procedures.

¹ MPA's members include Buena Vista International, Inc. (Disney); Sony Pictures Entertainment Inc; Metro-Goldwyn-Mayer Studios Inc; Paramount Pictures Corporation; Twentieth Century Fox International Corporation; Universal Studios, Inc; and Warner Bros International Theatrical Distribution, a division of Time Warner Entertainment Company, L.P.

We note that the proposed implementation of Article 14 of the E-Commerce Directive is spread over Regulations 19 and 21. As a result, the scope of the limitation on liability in Regulation 19 lacks clarity. As noted above, we strongly advise *verbatim* implementation of Article 14 so that all parties are in a position to clearly understand and meet their obligations.

Regulation 20 stresses that nothing in Regulations 17, 18, 19, shall affect the rights of any party to apply to a court for relief to prevent or stop infringement of any rights. We encourage UK authorities to recognise expressly that this procedure should be rapid and available on an *ex-parte* basis.

Country of origin

In its first submission, the MPA underlined that the country of origin principle must be implemented in accordance with the letter and spirit of the Directive.

Regulation 7 refers to “an enforcement authority with responsibility in relation to any enactment or other requirement”. The role of this authority and the point at which point it will intervene is unclear. Moreover, the wording of Regulation 7 is confusing. It does not establish a pure ‘country of origin’ principle and would appear to run counter to the interests of companies established in the UK as it does not clearly recognise that UK companies should be subject to UK law for their e-commerce activities. The current wording leaves open the question of which law applies to those activities and does not provide legal certainty. Other EU countries, which have implemented the Directive (Germany, Austria, and Luxembourg) have properly implemented the country of origin principle. It is essential for the UK to do so, in order to create a single market, to ensure a level playing field for UK companies and to enhance on-line trade. The UK Government should not depart from this principle and should recognise that service providers established in the EU should respect the law of the country of their establishment.

The E-Commerce Directive clearly specifies the exceptions to the country of origin principle. In particular, the exception for copyright is essential to preserve copyright owners’ rights and remedies in accordance with principles commonly agreed in international fora.