

Our Ref: SO/C5c

1 May 2002

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Department of Trade & Industry
151 Buckingham Palace Road
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Dear Sirs

The Electronic Commerce (EC Directive) Regulations 2002

We are grateful for this opportunity to offer our comments on certain aspects of the draft Regulations. As you may be aware, the Newspaper Society is the association of publishers of the regional and local press. Our member newspapers publish over 1300 newspaper titles, dailies and weeklies, circulating throughout the United Kingdom. The Newspaper Society responded to the DTI's initial consultation on implementation of the Ecommerce Directive (see our letter of 30 October 2001).

Country of Origin

In common with other UK industry sectors, during the passage of the Directive the Newspaper Society supported a "country of origin" regime – that information society service providers should be required to comply with the law of the Member State in which they were located, and not to be burdened by having to comply with 15 different sets of national rules. There does however now seem to be some confusion on the part of businesses as to the precise practical effect of Regulation 7 and we feel that further clarification would be helpful – including the application (or not) of other Member States criminal and civil laws and regulations. We trust that the DTI is liaising with the Lord Chancellor's Department in relation to the ongoing negotiations on Rome II. The current Law Commission study into the application of the law of defamation to online publication is also examining issues which are of relevance to the question of applicability of foreign or domestic law. We would suggest that given the general uncertainty and concern over this issue, and the various initiatives currently underway which could affect it, that a separate and fuller guidance on this issue would be very welcome – perhaps a joint DTI/LCD paper could be considered.

Notice and Takedown

We continue of the opinion that the only appropriate mechanism in which to address notice and takedown is through genuinely self-regulatory codes of practice. We are pleased to note that the Government shares this view. We would also have concerns in relation to any proposals for co-regulation, or quasi-statutory codes. We believe the matter is and will continue to be best addressed through voluntary self-regulatory

codes, and probably on a vertical sector by sector basis, to take into account issues outside the scope of the Regulations (again, the current Law Commission study is relevant).

General Information to be Provided (Regulations 8,9,10,11)

We note that failure to comply with these provisions is to be actionable as a breach of statutory duty. We are concerned that the Regulations do not appear to provide any exceptions to the right of action, or indeed any defences to such a suit, even for technical breach (but where the service provider had nonetheless fully honoured its contractual obligation to the customer), or one beyond the control of the service provider (e.g. technology failure or act or omission of a third party).

Sanctions should be proportionate: minor infringements, such as the omission of certain information, should not give rise to criminal or civil penalties where the consumer may have suffered no harm and have received the goods or services ordered. Similarly, there should not be liability where the infringement arose through no fault of the service provider.

We look forward to hearing from you, and would greatly welcome the opportunity to comment further on any revision to the Regulations following the closure of this consultation.

Yours sincerely

SUE OAKE
Solicitor