



## ***Gowers Review of Intellectual Property Call for evidence***

### ***Response from Yahoo!***

#### **Introduction**

Yahoo! welcomes the Government's commitment to review the UK's intellectual property framework in a single, comprehensive exercise. This will be an important contribution to the European and global debate on IP policy and reform. Yahoo! welcomes this opportunity to respond to the call for evidence.

In general, we believe the UK intellectual property system is a reasonably efficient and effective system relative to others around the world. We feel that there is nevertheless scope for positive and targeted improvements in certain areas. We detail below some aspects of our experience with the UK intellectual property protection system, both in itself and as it relates to obtaining broad protection globally.

#### **General questions**

##### **1. How IP is awarded**

Are there barriers to obtaining IP rights due to system complexity? What would you do to improve the situation? Are there specific barriers to obtaining rights in your sector?

##### *Patent awards*

Yahoo! has broad experience with a wide range of patent registration systems globally. Generally speaking, the international system for obtaining patents is time-consuming and expensive. It can take a number of years for an application to be successfully processed. We can see how costs could be prohibitively expensive for smaller businesses. Even for a company of Yahoo!'s size, the costs of obtaining patents is a significant concern. Another significant concern is the time and administrative complexity involved in obtaining patents. In a fast-moving sector such as ours, a complex and lengthy patent procurement process is a disincentive to file patent applications in some countries. The proposed European Community Patent, which would confer unitary patent rights throughout the European Union, aims to address these concerns and would be very helpful.

Our experience of the UK patent registration system specifically has been mixed. The process for the examination and review of patentability is thorough and in our view works well. Filing and maintenance costs are reasonable compared to other countries outside the US. We have a great deal of trust in the UK system but there are shortcomings in the framework, most notably with respect to the consistency of examination quality. The fact that many Yahoo! inventions are in the field of software and relate to implementing

business methods over the Internet is also a limitation to filing certain patent applications in the UK.

### *Trade mark registration*

Unless a new mark is only planned for UK use or we are already aware of conflicts in other EU countries which would preclude us obtaining a Community Trademark (CTM) registration, we would generally file for European-level protection in the first instance. The UK process by comparison is more straightforward and less expensive than the CTM. However, the CTM confers a breadth of coverage and protection to global concerns like Yahoo! and the benefits do outweigh the greater time and expense this process entails.

In our experience, the UK trademark system is fairly efficient. The main advantages are that it has a thorough and efficient examination; registration can be obtained in five months if things go smoothly (as compared to 12-18 months for the CTM). In addition, use of a registered trademark is a defence to infringement of another UK-registered trademark under the provisions of the UK Trade Marks Act. This is not a defence afforded by CTM registration. Another significant difference is that the CTM system does not require an *intention* to use a mark which may lead to inappropriate “stockpiling” of marks by either large or small companies in order to extort money from famous mark holders.

These benefits of UK registration aside, the CTM is usually the best and most cost-effective way of obtaining trademark protection for our purposes throughout Europe. It offers a number of significant advantages such as the possibility of pan-European injunctions in certain circumstances and the fact that a CTM registration can be maintained on the basis of use in any one member state’s jurisdiction.

### *Other tools*

There is lack of predictability and consistency in patent processes generally such that we rely on the full range of other tools outlined in the call for evidence.

## **2. How IP is used**

What types of IP does your organisation use and why? To what extent do you seek multiple overlapping forms of IP protection? To what extent are these decisions influenced by sector-specific considerations?

Yahoo! makes use of a wide range of IP protection – trademark, patent, copyright and trade secret – and we actively seek multiple forms of IP protection to protect different inventive or creative aspects of our technology (e.g.: patents to protect the underlying technology, trademarks to protect our brand equity, and copyright protection of creative content or software). These decisions are influenced by sector-specific considerations; we operate at the interface of a number of different industries and we actively develop and maintain our patent portfolio in relation to other players in our sector in order to retain our competitive position. In our view, each type of intellectual property protection provides a unique contribution to adequately protecting the fruits of corporate investment in research and development, and bringing valuable and innovative products to consumers.

How well does the UK IP system promote innovation?

The exclusion of, or extreme difficulty involved in, patenting inventions implemented using software (or, for that matter, business method-related inventions) is in our view an inherent weakness of the European approach to patents. In practice, hardware and other patents can cover software elements. Given the growing importance of software-based technological developments to business today, however, we are concerned that an overly restrictive approach to software and business method-related patents will ultimately be an impediment to the promotion of innovation in the UK.

Have you encountered patents or other IP rights being used defensively, i.e.: obtained not to develop products but only to prevent others from doing so? Under what circumstances do you consider this acceptable?

We recognise that computer and Internet companies with diverse and cutting-edge interests may initially invest in a wide range of ideas and associated IP relating to its products, but later choose not to commercialise some of those ideas. In such cases, it is reasonable for a company to maintain these IP rights to help preserve the company's freedom to operate by keeping open the possibility of using those patented technologies in the future. However, there is a trend in investment funds and other entities acquiring and warehousing patents specifically to extract fees from third parties rather than to conduct research or develop new products. The aggressive expansion of this business model has the potential to disincentivise innovation and undermine market confidence.

A similar phenomenon occurs in the field of trade marks in countries where the trademark holder does not have to demonstrate use. For example, the absence of a requirement to demonstrate use – or intention to use – from the CTM system in order to gain registration permits a fast-moving applicant who files a CTM application before the legitimate trademark owner to prevent use of marks or extort licensing fees. We believe that UK law should discourage the misuse of patents or trademarks by investment entities that do not innovate or produce products, and intend to use patent or trademark rights solely to extract royalties from innovative companies that produce products.

### **3. How IP is licensed and exchanged**

We find ourselves on both sides of this issue – as a rightsholder and licensee. We agree licences with third parties to use our patented technology and we negotiate with rightsholders to licence a range of content, including music and games.

Are there specific barriers to licensing in the main forms of IP currently used: patents, copyright, trade marks and designs?

Our response to this question is covered in our answer below.

Are there specific barriers to licensing IP in your sector?

#### *Copyright licensing*

As a copyright licensee, we experience most difficulties with the licensing of authors' and composers' rights in Europe. As an international business, with six properties in Europe,

it is our preference to negotiate pan-European licences for our music services. This is by far the most time- and cost-efficient way of building and growing a comprehensive repertoire. In practice, we face a number of barriers in this area.

Music authors' rights have traditionally been licensed through national collecting societies which have the sole right to licence music within a particular territory. With only limited exceptions, this is the model which prevails today. It requires licensees to negotiate rights deals in each individual territory for the same music rather than negotiate a single, multi-territory license under a single contract and at a price which reflects the going rate on the open market. This mechanism is inherently inefficient and has resulted in a rigid market, impressively resistant to the usual effects of market forces. This is in spite of clear evidence that consumers are very intolerant of barriers to the availability of content on new platforms to the extent that they are willing to acquire it via other (usually unlawful) channels.

The European Commission recently adopted a Recommendation on collective cross-border management of copyright and related rights for legitimate online music services. This Recommendation aims reform collecting societies in Europe in order to meet the demands of online distribution and better reflect the principles of the EU single market. The staff working paper which preceded the Recommendation certainly went further than earlier attempts to force change in collective rights management and this is to be commended but the policy options outlined in the Recommendation were disappointing to most online distributors.

The position papers of the European Digital Media Association (EDiMA)<sup>1</sup> exhaustively show how the Recommendation will not achieve its objective of removing barriers to flexible licensing and allowing more market-based negotiation on price. It is clear, in our view, that the Recommendation will not meet its goals. Indeed all the options outlined by the Commission are flawed to some degree. A more effective solution would be based on the following principles:

- Freedom for rightsholders to choose (and switch) between collecting societies for the licensing and enforcement of rights to their repertoire, eliminating current territorial restrictions
- A genuine one-stop-shop for licensees to acquire multi-national, multi-repertoire rights with a country of origin principle
- Effective competition between collecting societies for both repertoire and licensing customers
- Bilateral agreements between collecting societies in different territories (either by negotiation or mandation) to licence each others' repertoire
- Effective arbitration mechanisms to resolve disputes where the parties have failed to agree a royalty rate by commercial negotiation

This framework would establish a clear link between licensing terms and market conditions, and create incentives for greater efficiency. It will also encourage the development of novel licensing models which allow distributors to develop innovative, new services for alternative platforms. This framework would also stimulate the market and incentivise more content to be made available to alternative distributors. As the Recommendation is unlikely to bring about the intended change in the market for rights,

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<sup>1</sup> See <http://www.europeandigitalmediaassociation.org/popa.html>

we would advocate member states taking a stronger position in favour of more meaningful reform which rebalances the commercial relationship between rightsholders and licensees while also supporting the growth of new media services.

#### *Patent licensing*

Patent licence negotiations are inherently difficult and complex. The unique features of patents make licence discussions different from usual commercial negotiations. Buyers cannot shop around for a better deal elsewhere and it can be hard to value patent rights. For the rightsholder, a patent does not confer a right of use; it only confers the right to deny use. However, we do not generally find these characteristics a barrier to agreeing licenses with third parties. As a publicly quoted company, we are incentivised to maximise the value of our patent portfolio.

#### *Trademark licensing*

Our business model depends on partnership with content providers, service providers and advertisers. As a result, we are engaged in a range of co-branding and other trademark licensing negotiations with third parties. Our business model and relationships with our partners are such that we are incentivised to reach commercially-negotiated agreements. Since the trend with many of our co-branding or other trademark licensing agreements is to cover regional or global territories, as opposed to individual countries, the CTM registration system streamlines what we need to enter such agreements.

### **4. How IP is challenged and enforced**

Are there specific problems with enforcing the main different forms of IP: patents, copyright, trade marks and designs?

The main challenge to enforcing IP rights is the quality of the enforcement framework and associated processes. Frameworks and processes which are robust and predictable in terms of cost, time and outcome will best support our investment in a particular market. Conversely, there is a clear impact on investment decisions if a country has little or no meaningful enforcement mechanism.

As an intermediary, we find there are similar issues with regard to copyright enforcement mechanisms. We discuss these in more detail below.

Are there barriers to challenging infringement and enforcing your IP rights on grounds of cost? What drives these costs?

Cost is always a consideration. There are cases where the cost to pursue an offensive IP claim outweighs the potential for recovery. In such cases there is little incentive to pursue a claim. Conversely, there are cases where it is important to pursue a case in order to establish a legal principle. Like other rightsholders, we consider these on a case-by-case basis and our decisions reflect the strategic importance of each case to our business.

To what extent does your organisation make use of other methods than litigation to resolve IP infringement cases?

Where appropriate, we would use alternative dispute resolution (ADR). Schemes vary from country to country and are most appealing where procedures are clear and predictable.

We have positive experience of ADR in cases of IP abuse involving domain names. We have, for example, successfully used Nominet's arbitration process in the UK to resolve cybersquatting disputes on the .co.uk domain. It is a reasonably priced and efficient process relative to those in other countries.

ADR frameworks for copyright licensing disputes are also helpful but, unfortunately, less common globally. We have recently had recourse to the Copyright Tribunal in the UK but our case is on-going so we are not in a position to comment on our experience in any detail. However, we would observe that, while the framework is welcome, the process is costly and time-consuming and creates a degree of uncertainty in a fast-moving sector such as ours where new business models develop quickly. The Patent Office has announced a separate review of the Copyright Tribunal and how it might be improved. We would strongly encourage this review to consider how the framework can be streamlined to make outcomes more timely and cost-effective. We would also encourage the UK to advocate the creation of similar structures in other EU countries in order to offer a cheaper and more timely alternative to court action and support the transition of copyright licensing to new business models.

To what extent do you use IP litigation insurance? How effective is it?

It is generally not possible to acquire indemnity insurance on the open market at a reasonable price. In our experience, these matters tend to be addressed contractually.

To what extent is the risk of litigation a factor in your organisation's investment in innovation?

The risk of litigation is definitely a factor to consider and must be weighed against potential benefits. A greater legal risk and potential exposure, coupled with a lower expected return, may deter a particular path of innovation.

What are the barriers to efficient and successful challenge and enforcement internationally?

#### *Offensive claims*

The most significant barrier internationally is the cost of litigation and the lack of effective enforcement frameworks in some jurisdictions. In particular, patent enforcement in Europe can be more daunting than in the US because of the various member state jurisdictions that must be taken into consideration. Since litigation of European patents is dealt with under national law before national courts, litigation across multiple jurisdictions is not uncommon. This can result in inconsistent judgments, forum shopping between national courts with varying strengths and weaknesses, differing applications and interpretations of the patent laws, and, ultimately, increased costs.

The European Patent Litigation Agreement (EPLA) proposed by the European Commission aims to address many of these concerns through the establishment of an integrated European Patent Court, which would have jurisdiction over infringement and revocation actions for all European patents. We support the principle of an EPLA, as we believe that a specialised patent court can bring more certainty and predictability to the laws regarding patentability, infringement, validity, and damages. A European Patent Court could also provide a more efficient and less costly alternative to the current judicial landscape.

As mentioned above, there are also special challenges in the context of enforcing trademark rights violated by domain name abuse or *cybersquatting*. The relatively low cost and ease in obtaining domain names coupled with the frequency with which fraudulent contact information is provided to registrars makes infringement all too easy to commit, but hard to trace or stop.

A trademark enforcement challenge specific to the UK (and CTM system) is the somewhat limited protection of well-known or famous marks. The UK system (based on Article 9 of the EU Trademark Directive) protects trademarks "with a reputation" against use of a similar mark on similar or dissimilar goods or services where the use takes "unfair advantage of" or is "detrimental to the distinctive character of" the mark. A showing of confusion is not required. In theory, this language would seem to encompass both blurring and tarnishing of a well-known mark. However, in both the UK and CTM systems, tarnishing cases seem to be more successful than blurring cases, despite the fact that blurring, or the simple drawing to mind of another mark (without necessarily an accompanying assumption that there is an economic link between the marks), can be as damaging over time to a well-known mark as tarnishing. Accordingly, we would support clarification of this area of the law to protect well-known marks from diluting uses that *either* blur the mark's distinctiveness *or* tarnish its reputation.

#### *Defensive claims*

The most significant barrier in this respect is process, particularly with regard to copyright. We have an effective EC legal framework to limit the liability of intermediaries for infringements of hosted or cached content and it strikes an appropriate balance between the interests of rightholders and intermediaries. This is based on the liability provisions agreed in the WIPO treaties and provides similar protection to the Digital Millennium Copyright Act (DMCA) in the US. However, while the DMCA defines a clear notice and take down process for rightholders and a *safe harbour* for intermediaries, there is no equivalent process in the UK. In our experience, the DMCA process has much to commend it and merits consideration as part of this Review.

At present the EC framework limits the liability of an intermediary for copyright infringements but places an obligation on the intermediary to act if he has "actual knowledge" that an infringement has occurred. The challenge for the intermediary is to *know* that the content *actually* breaches copyright law. In practice, intermediaries are not well-placed to make such decisions but are nevertheless required to be both judge and jury on a notice. A clear process and so-called *safe-harbour* for intermediaries who follow the process has many benefits. It places the burden on the parties best placed to assess ownership of copyright and resolve the dispute – i.e.: the rightholder and the infringer. A rightholder is fully liable for the admissibility of his claim such that counter

claims against notices issued under the DMCA process are rare. The process requires an investment on the part of Yahoo! in terms of staffing and training but we find that this investment is more than rewarded by the legal certainty and clarity we gain.

### **Specific questions**

We have answered selected questions in this section which we have direct experience of or which most impact our business and our sector.

### **Copyright exceptions – fair use/fair dealing**

What are your views on the current exceptions in copyright law? Could more be done to clarify the various exceptions? Are there other areas where copyright exceptions should apply? Are the current exceptions in need of updating to reflect technological change?

Yahoo! relies on fair use principles in search products which provide users with limited portions of copyrighted third-party content as links or references which, in turn, drive significant value to the rightsholder. The consequent benefits to consumers are significant; they can better navigate the immense volume of internet content, make more informed purchasing decisions, and so on. For example, when a user searches Yahoo!'s index for news articles, Yahoo! relies on fair use to return the opening words or sentences of each article along with a link to the article in order to assist the user in better pinpointing relevant content within the search results. This also drives traffic to the content provider's website.

By availing itself of fair use exemptions, Yahoo! serves not only the information seeker's interests but also those of the online content developer. Such exemptions are essential to the many small-scale website operators that populate the online world – whether small businesses, non-profit organisations, bloggers or other content providers – in order for them to find an audience and for their audience to find them. Without a legal framework which allows search providers to surface pieces of site content and target these sites to other users, neither market nor audience would present itself.

Many copyright doctrines are awkwardly applied to the digital realm. The interpretation of fair use exemptions is subject to particular uncertainty at present and subject to legal challenge in some specific instances. The volume of sites available on the internet is growing at an astonishing rate. User-generated content in particular is adding millions of new URLs to the world wide web every week. If users are to find the content they seek, the concept of fair use with respect to search results is a critical concept to preserve and clarify.

### **Copyright – digital rights management**

Do you have a view on how the use of digital rights management technologies should be regulated?

DRM plays an important role in the commercial activities of content aggregators such as Yahoo!. We currently use DRMs in our download and subscription music services (not yet available in the UK) and download games service. Content owners usually require DRM solutions which are capable of both tracking and enforcing licence terms. The

aggregation business model depends on a degree of flexibility in the content licence and DRM technology to allow the development of innovative services and an enhanced consumer experience. This requires a sensitive balance to be struck between guaranteeing a robust system of rights protection and promoting creativity in service provision.

A rights management framework which achieves this difficult balance has the following characteristics:

- Flexibility:
  - In order to create innovative and competitive services, aggregators need to be able to perform experience-enhancing operations to acquired content. Simple, clear and sensible usage rules in the licence and DRM solution are required to support continued innovation.
  - Similarly, aggregators require flexibility in DRM solutions to support a range of business models including subscription, payment-free (advertising-funded) or ownership.
- Compatibility:
  - Different elements of a DRM system, such as encoding formats and DRM solutions, must be compatible with each other. Licensing restrictions may also prohibit the use of one technology with another. This adds cost to content management systems arising from, for example, manual encoding or additional customer support.
  - Compatibility with the consumer's own software, computer and other devices is also crucial. Users should have low accessibility barriers to online media experiences across various locations and contexts. For example, they want to be able to experience a seamless subscription and download online music offering regardless of what operating system they are running.
  - Compatibility with users' media player and formats is an important element of technical compatibility. An on-line content service will generally choose the technology with the widest installed base.
- Interoperability:
  - Platform interoperability is critical where content is acquired from multiple sources and individual licensors either determine the choice of DRM solution for their works or deliver content fully-packaged with DRM.
  - Interoperability at the device level is also crucial as it can determine the size of the addressable market for a content service. A DRM system which can play on more devices permits as wide a consumer base as possible to access the service.
- Customer experience:
  - DRM technology should not interfere with the sound or visual quality of the content experienced by the end user.
  - It is also important that the technology allows users to consume content on multiple devices.

Generally speaking, market forces and commercial negotiation have gone a long way towards achieving this balance. In other respects, however, the market remains challenging for us. We have already outlined above the difficulties associated with securing pan-European music licences from authors and composers through national

collective societies. From an end-user perspective, our customers continue to be frustrated that certain devices are not compatible with the most commonly used DRMs and prevent them from transferring content acquired from our download and subscription services to these devices. Given our position in the supply chain and our proximity to the end user, we find ourselves bearing the brunt of this frustration. To an extent, limits in interoperability also narrow the addressable market for our content services.

In spite of these frustrations, we do not advocate regulatory intervention in this area. We consider it more crucial that governments support effective industry-led dialogue to develop interoperable DRM solutions at both device and platform level to ensure that consumers experience low access barriers to on-line media and have the freedom to consume content in various locations and contexts as they wish. It is also vital that national authorities rigorously apply competition law in this area, for example by reviewing mergers and acquisitions in this space and securing undertakings to off-set the risk of anti-competitive behaviour.

### **Patents – utility models**

Do you have a view on some sort of second tier patent systems?

The utility model is an interesting tool for IP protection but the practical use of it, were the UK to adopt it, would depend largely on what rights it would confer, the ease of enforcement of those rights and the level of review performed by the issuing body.

The German model is limited in scope and only protects products, rather than software or business processes, so is of limited interest to companies such as Yahoo!. It is also weakened by more limited *prior art* considerations and the absence of a substantive review framework which characterises first tier processes. This means that the process is less likely to provide an accurate review of what is truly innovative and is flawed by potentially conferring IP rights on products which would not merit them under the first tier process.

While a utility model could make it more difficult to obtain patents if it is viewed as an additional form of prior art, this could benefit the first tier process by necessitating a more thorough examination of inventions in light of the additional prior art. This raises the possibility of whether a utility model might be used effectively to introduce additional prior art into the first tier process. However, there is also a risk of the utility model being exploited as a vehicle to subject companies to more IP threats, depending on the rights conferred by the utility model.

Has your organisation encountered problems protecting its IP internationally where such systems exist?

We have no specific experience of utility models but are concerned that the widespread use (and abuse) of such models would add a layer of complexity to existing patent frameworks and could act as a disincentive to innovate.

## **Trade marks – international issues**

To what extent does your organisation register its trade marks at the European rather than national level?

As mentioned above, we usually seek CTM registration in the first instance because of the breadth of protection it offers. Although it is a more lengthy and costly process, this is outweighed by the benefits it gives a global company and brand such as Yahoo!

Could the UK trade mark system be improved to work better alongside the European system?

The systems are already fairly harmonious, as the UK Trade Marks Act 1994 and Community Trade Mark Regulation No. 40/94 (the main legislative instruments governing the two systems) are both based on the same harmonising trade marks Directive. The main challenges we find in the UK system arise more from protection by definition being geographically restricted to the UK, rather than any procedural or substantive differences with the CTM. If anything, the UK's relative grounds examination of applications and the requirement of use/intent to use are preferable to the CTM equivalents (or lack thereof).

## **Legal sanctions on IP infringement**

Are you aware of any inconsistencies or inadequacies in the way the law applies legal sanctions to infringement of different forms of IP or to different circumstances? For example, should criminal sanctions on online infringement be the same as those relating to physical infringement?

We do not consider there to be inadequacies or inconsistencies in the way the law applies legal sanctions to the infringement of IP. We feel the current framework strikes an appropriate balance between the civil remedies available to rightsholders for infringements of copyright and the limited circumstances in which criminal sanctions apply to infringements, for example with respect to organised crime or for significant commercial gain.

The European Commission has considered this matter recently and published a draft Framework Decision in IP crime enforcement in mid-2005 which aimed at aligning national criminal law. This proposal would have criminalised infringements carried out with intent and on a commercial scale. It also would have covered attempting, inciting or aiding and abetting an infringement. This proposal was subsequently withdrawn by the European Commission. This reflects the complexities of the issue and the risks associated with changing the current balance. As both an owner and licensee of IP, we feel that the current UK framework strikes a good balance and gives rightsholders more than adequate civil remedies to pursue the infringement of an economic right. Criminal sanctions should not be applied to all wilful infringements, but rather, if at all, should be limited to the most egregious cases of counterfeiting and piracy.

## Coherence between competition policy and IP policy

Has your organisation experienced any activity linked to IP rights that you regarded as unfair competition? How do you feel about this problem?

As outlined above, we have expressed concerns about the treatment of new media distributors of works and the availability and pricing of licences to exploit content, particularly music, on non-traditional platforms. Concerns have also been raised regarding instances of discrimination between licence fees charged for new forms of exploitation compared with equivalent traditional media (e.g.: Internet radio tariffs vs. terrestrial radio tariffs). This market behaviour has been detrimental to the development of online services. Consumers have been quick to embrace the prospect of more innovative services made possible by new distribution platforms but the lack of innovation in licensing models and unfair pricing has held back the market. Consumers have shown themselves very intolerant of the slow pace of change and as a result content has found alternative (often unlawful) channels to market. After the pain of wide-scale piracy, the online music market is now growing but the licensing and pricing framework still discriminates unfairly between distribution platforms and there is no competition between licensors (and consequently no effective price competition).

We feel there is still significant potential for growth in this market but only if the market is allowed to function freely. Online media offers the prospect of a new and significantly larger market than traditional media with a larger number of customers and potential sellers. The addition of algorithmic and social search tools means a vast range of content can quickly find its audience, including long-forgotten back catalogue (the so-called 'long tail' content). The rewards are great but the market continues to fall short of its full potential and consumers miss out on innovative new services. The licensing and management of rights act as a bottleneck to growth.

Likewise, there is a competition policy dimension to the development of the underlying technologies on which content services rely. The lack of interoperability in a particular technology, for example, could allow a company to leverage a dominant position and effectively 'lock in' the consumer to its offerings elsewhere in the value chain. This can undermine innovation in the market as customers must abandon access to previously acquired content in order to take advantage of content services with demonstrably superior service attributes developed by another supplier. Consumer behaviour shows that they are unwilling to do this and remain frustrated by the lack of flexibility they have.

Was competition law effective in controlling this behaviour? Should competition law have a greater role to play in regulating IP? How would you see this system working?

The Review team will be aware that the European Commission's DG Competition has considered a number of cases relating to certain arrangements for the collective management of copyright. Yahoo! has followed these cases closely and considers these interventions to be a helpful tool in regulating the management of IP. Competition law has the potential to be an effective route to addressing shortcomings in market structures, abuse of dominance and matters of price- and non-price discrimination.

However, the procedure for examination and review of cases is lengthy and generally not suited to the fast pace of change in the new media world. The cases opened against the Barcelona and Santiago Agreements, for example, began in 2001 but have not yet

reached a conclusion. Much value has been lost from the market in the meantime and the development of new services has been restricted. We feel that competition law is crucial to setting the tone for future EU policy in this area but, if it is to be truly effective and meet the needs of the new media market, it requires expedited procedures and adequate resourcing (both in terms of funding and expertise).

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### **About Yahoo! UK & Ireland**

Yahoo! UK & Ireland is a subsidiary of Yahoo! Inc., a leading global internet brand and one of the most trafficked internet destinations worldwide. Yahoo! seeks to provide online products and services essential to users' lives, and offers a full range of tools and marketing solutions for businesses to connect with internet users around the world. Yahoo! is headquartered in Sunnyvale, California. Yahoo!'s global network includes 25 world properties and is available in 13 languages

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