



Submission to the Communications Review for the Digital Age
June 2011

Google welcomes this opportunity to respond to the Government's open letter to those who work in the communications industries and associated sectors. Google provides millions of people across the world with tools to help them access online content - from Google Search to YouTube to Android on mobile devices. Our tools enable internet users to enjoy, benefit, learn from and contribute to the vast amount of creative content that now resides online.

Our products have also delivered, and will continue to deliver, enormous benefits to creators and the underlying economy. Last year, Google paid to web site publishers globally \$5.72b from ad revenue generated by our AdSense programme. We send news publishers more than 4 billion clicks per month, delivering eyeballs and opportunities to generate revenue directly to news publishers' websites. And on YouTube, there are over 20,000 partners spread across 21 countries to whom YouTube pays out millions of dollars a year. From our own experience, we can see that the internet provides opportunities, not simply to internet users but to creative content makers too.

We believe, however, that we are just at the beginning of the internet age. Google strives to innovate in developing new partnerships with content providers in exploring new models for the distribution of content. In the past few months, we have launched an ebooks programme in partnership with book publishers and the 'OnePass' programme in partnership with newspaper publishers. In the UK, Google and the British Library recently announced a programme to digitise 250,000 out-of-copyright books from their Library archives. In the US, we have just started to provide a pay-per-view services on YouTube in conjunction with film studios. All these services enable users to get greater access to creative content - and the content creators to stimulate fresh cultural interest and generate new revenue streams.

Ten principles for legislation

Because of the potential breadth and complexity of a new Communications Bill, we have chosen simply to set out a number of key principles we believe could help steer the debate ahead. These principles are outlined below and explained in context throughout this response.

- 1. Think global** - we need a Communications Bill that enables the UK communications sectors to be competitive internationally
- 2. Avoid futurology**
- 3. Do not assume a role** - healthy markets may not require intervention
- 4. Accept change** - competitive, innovative markets involve businesses failing as well as succeeding, which Government should not feel threatened by
- 5. Regulating horizontal networks is different** - we can't just transfer across old regulatory tools to the new internet networks
- 6. Demand is a blessing, not a curse** - the booming UK consumer demand for data is a good thing and industry should compete to meet it

7. Leave the door open for innovation
8. Protect free speech
9. Educate users to increase digital literacy - give people the power to be their own regulator
10. Go with the citizen

Growth, innovation and deregulation

Q1. What could a healthier communications market look like? How can the right balance be achieved between investment, competition and services in a changing technological environment?

The UK's most significant growth opportunities come, we believe, from helping British companies to use the tools offered by the Internet as a way to expand their markets, both at home and abroad. The internet already contributes over 7% of GDP and is expected to grow at 10% pa. In the current economic climate, this potential should be championed and nurtured by the Government. The kinds of companies that will drive this growth range across the economy - from high street retailers using ecommerce to tech innovators launching new music services - but what they share in common is their reliance upon an open internet to build their business.

Through unlimited capacity, low costs to entry and open standards, the internet has removed many of the bottlenecks to starting a business that characterised the offline media markets of the past. As a result, we have seen an explosion in competition where old business models have been challenged and new ones flourish. In the Internet market, the consumer really is king: there is enormous choice and consumers are able to move between products and providers at little or no cost. As a result, innovation within this new Internet environment is being driven by the consumer. We believe that this is the healthiest kind of market and one that can ensure competition and consumer benefit in the long term without the need for heavy handed regulatory intervention.

We therefore strongly endorse the view that ensuring competition in communications markets should be the main aim of communications regulation in the UK. It is, we believe, the best way to achieve innovation and, in turn, growth.

1. Think global: The UK is well placed to benefit from the globalisation of the communications markets: our communications companies are renowned for being creative and have benefited from the fact that English remains the global language. But as communications markets become less and less localised only robust, market hardened players will be able to withstand the competition that comes from overseas entrants. Rather than seeking to grow our economy through protectionist or regulatory interventions, the Government should embrace competition as the best way to help UK companies thrive for the long term in a global market.

Q2. What action can be taken to facilitate greater innovation and growth across the wider competition regime, and how can deregulation help achieve this?

In the context of a rapidly evolving communications landscape, the government must aim to

sustain innovation by maintaining open standards and protecting the free flow of information. The ability to innovate without permission is paramount for continued technological change and innovation across the full range of content delivery platforms, not to mention the myriad benefits that it brings to content creators, distributors, and consumers alike.

In practice, this means:

- **2: Avoid futurology.** Although it is tempting for Government to seek to develop legislation that anticipates and copes with future technological developments, this should be avoided. For example, even before this new Bill passes into law, the UK's mobile communications platform will have radically evolved with the introduction of widespread 4G technology: all we know for certain about the implications of widespread superfast mobile broadband is that it will reshape the entire communications industry in ways that we cannot anticipate. Legislation that seeks to predict the future risks shaping that development in unnatural directions and creating a market that is ultimately unsustainable. That is not to say that we believe that nothing can be done. Quite the opposite - we believe that when action is required it should be effective and so it must not be arbitrary or outdated. Instead we believe it is better to create de minimus legislation that can be built on by non-legislative interventions that can respond rapidly to technical and consumer change.
- **3: Do not assume a role.** Healthy markets do not require Governments or regulators to intervene. There has been a history - demonstrated within the recent Digital Economy Act - to add responsibilities and oversights into OFCOM's remit 'just in case' they need to step in in the future. This approach should be discouraged. New regulatory responsibilities should only be allocated where there is a demonstrated need for intervention.
- **4: Accept change.** Innovative markets are characterised by the rapid rise - and fall - of competitors. The natural flux can be uncomfortable for established corporations and Government alike. But it is an inevitable feature and one that Governments should not seek to control through protectionist trade policies or state subsidy. Only the pressure of competition can force businesses that previously enjoyed high profits to innovate and experiment with new business models and therefore have a chance of flourishing in this new, global market.

Q3. Is regulatory convergence across different platforms desirable and, if so, what are the potential issues to implementation?

When discussing the policy and regulatory framework for converged networks, it is important to remember that we are going from a world with a number of different, vertically integrated networks with unique regulations to horizontally integrated platforms where all types of media can be accessed through a single network or pipe. It is paramount that legislators really take a step back and ask how new legislation for this horizontal network is best designed from scratch.

Content Layer (eg. content providers, such as BBC or Channel 4)
Applications Layer (eg. platforms, such as YouTube or iPlayer)

Logical Layer (eg. operating systems and browsers)
Physical Layer (eg. network infrastructure)

In the horizontally integrated network such as the Internet, different layers should be separated out when discussing appropriate regulatory tools: for example, content owners such as Channel 4 will use applications such as YouTube to distribute their material on the Internet, but their roles are fundamentally different and the regulatory tools that might be applied to each layer are similarly different. In considering the new regulatory framework to suit the converging communications media, Government should not simply be reevaluating *what* their policy objective should be but *how* it should be achieved, because traditional, vertical regulatory tools are no longer effective or efficient in the new environment.

5: Regulating horizontal networks is different: issues to do with content are best dealt with at the content layer, whereas issues to do with infrastructure are best dealt with at the physical layer. Attempts to deal with an issue by trying to throw a blanket over several layers - or the wrong layer - will be less effective and much more vulnerable to serious and unintended consequences to our competitiveness and the UK's internet economy. If Governments really need to intervene with regulation, it should be as narrowly drawn and as targeted at the source of the problem as possible to minimise the risk of unintended consequences.

A communications infrastructure that provides the foundations for growth

Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

Although it is understandable that the Government would seek to separate out discussion about infrastructure policy from that of content policy, we believe the success of the two are intimately linked. Much debate has been had around the current and growing pressures being placed upon the UK's fixed line and mobile infrastructure through new, high bandwidth services such as video on demand or telemedicine. The dependency of new content services upon efficient, fast infrastructure providers is well understood. This debate rarely acknowledges, however, the constructive role that new content services are playing in driving the take up of fast broadband and facilitating its roll out. As much of the marketing of broadband packages emphasises, new innovative web applications and services are why consumers sign up to fast broadband packages: this is a mutually beneficial relationship.

Because of the huge demand for Google services from British broadband users, we have built an extensive cloud capacity of data centres and caches. And in order to ensure that the consumer experiences these in the best possible manner we try to connect our facilities as close to the user as possible, which also has the impact of substantially reducing the costs of international connectivity for broadband providers

When considering future policy on broadband and spectrum, we believe that the following principles should apply:

- **6: Demand should be embraced as a blessing, not a curse.** The consumer appeal of services such as YouTube and the iplayer are helping to create a market for super fast broadband and therefore driving the growth of broadband providers. It is easy to fall into the trap of thinking that the booming consumer demand for data is an unwelcome burden upon the fixed and mobile network. But most sectors of the British economy would welcome the injection of demand that the likes of Apple and Android have put into the data subscriptions market. Policymakers should recognise this demand as a spur for innovation and competition. The mobile and fixed operators will need to revise their business models and that will not be easy but because demand is high and will continue to grow there is real opportunity for those businesses that get it right. It is highly likely that valuable new mobile data markets will emerge and it is vital for consumers and the UK economy that Ofcom ensure not just competition and choice but the availability of services to consumers.
- **7: Leave the door open for innovation.** As with other communications regulation, we believe that the regulatory framework for the UK's delivery infrastructure should avoid crushing innovation. It is telling that since the last chunk of spectrum was handed out in 2003, it is the licence-exempt spectrum has proved to be the most fertile grounds for innovation. For example, operating in the licence-exempt bands at 2.4 GHz and 5 GHz, it is WiFi (and not the licenced spectrum used by mobile operators) that has been most responsive to the growth of demand in smartphones: Ofcom's own figures show that WiFi penetration has almost doubled in the UK since the launch of the iPhone in 2007, and is increasingly relied upon by the mobile operators to meet the demands of consumers for data. WiFi has also been innovative at providing services in places where licensed spectrum has failed to reach (from moving trains to country pubs and village libraries). The greatest innovation has occurred not in the licensed space but in the unlicensed space. In addition, opportunities exist within the spectrum, for example in the 'white spaces' that are unused or underutilized, for new innovations to flourish. Finally, efficiency is also critical: some fixed and mobile operators demonstrate incredible efficiency with data within their networks and by being more efficient in the way they carry data they can make it easier for themselves to meet demand.

Creating the right environment for the content industry to thrive

Q10. Are there disproportionate regulatory barriers to investment in content? If so, what are they and how can increased investment in UK content production be encouraged?

Communications regulations of the past have focussed on ensuring broadcasting companies invest in the creation and broadcast of UK original content. It has been a world where 'sticks' are as important as 'carrots'. But the internet has lowered the barriers to entry for new content providers. Production is being made more efficient by the creation of more sophisticated and cheaper digital technologies. And companies like Google - in investing in creating content distribution platforms that creators are able to use for free - have generated a whole new opportunity for artists to self publish and retain control over their rights. As a result, it is easier to

produce creative content than ever before - and the financial rewards for artists are potentially greater. The open internet enables these creators to reach a global audience within ten minutes of having set up a YouTube account. They do not have to wait until an agent or a label has discovered them: they have the tools of distribution in their own hands. In this environment, ordinary people are no longer simply consumers of content but creators too.

These new opportunities to self publish creative content are increasing investment in UK content. On YouTube, for example, there are 20,000 partners who are earning money from the advertising that runs alongside their content. The partners who take a share in YouTube advertising revenues range from individual artists to existing broadcasters, including Channel 4, Channel 5, Turner and Disney and there are hundreds of partners who are earning six figure sums from YouTube advertising. This phenomena is in its infancy: last year, the revenues earned by UK content creators from advertising on YouTube grew by 154%.

This is new content investment generated by the Internet and should be recognised as a fantastic boon for British creative opportunities. Great care should be taken when developing the new legislation, not to create barriers to its growth. The key factor enabling this new investment in UK content is technological innovation in platforms. The new legislation should ensure intermediaries and platforms are able to remain as open as possible by carrying the principles of limited liability for intermediaries that are embodied in the ECommerce Directive into UK Communications legislation. Without a legal framework that protects the open internet, platforms such as YouTube would struggle to survive and the new opportunities for content creators would wither away.

Q13. Where has self- and co-regulation worked successfully and what can be learnt from specific approaches? Where specific approaches haven't worked, how can the framework of content regulation be made sufficiently coherent and not create barriers to growth, but at the same time protect citizens and enable consumer confidence

The consequence of having open internet platforms that enables any citizen to be a creator is that this content is not the same as that available on television. Unlike the BBC, where every television broadcast or radio show has been pre-vetted to ensure common editorial and quality standards are met, content on YouTube is not pre-vetted at all. With 48 hours of content being uploaded *every minute*, it is not even clear that such pre-vetting would be possible.

We do not believe, however, that the Communications Act is the right place to try and address the regulation of all types of Internet content. With illegal online content - such as that which incites terrorism, child sexual abuse imagery or copyright infringing material - there are separate pieces of legislation that set out clear rules for law enforcement. In the case of child sexual abuse imagery, there are also widely used and successful self regulatory guidelines created by the industry-funded Internet Watch Foundation that ensure this content is very hard to find. Should the Government wish to make changes to the way illegal activities are policed online, we would recommend that this is done through revising existing terrorist, child protection and copyright legislation, so bringing in the expertise of sector specific professionals, rather than in a Communications Act. Such a debate is currently underway, for example, with libel legislation

and we would support this approach in other areas too.

There is a separate debate to be had around access to audiovisual content that - whilst not illegal - maybe felt to be inappropriate for certain parts of society and especially children. We all have different interpretations of what should be classed as 'inappropriate' content within the context of our own personal circumstances and it is essential that law makers engage the wider population in these important discussions. We do not believe, however, that Governments should seek to set a single standard for what is appropriate for every family. Whereas access to videos supporting students taking A-level biology maybe an important benefit of the Internet to one family, it might be seen as 'pornographic' and inappropriate for another. The role of Government, lawmakers and industry is to ensure that individual parents have the tools they need and want to act on the standards that they want to set within their own homes.

Taking this as the backdrop, we do not believe that the UK Government should assume that regulation of internet content for taste and decency is necessarily the right or only way to protect children online. Statutory, co and self regulation are all 'top down' tools, exercised by an authority such as the Government, courts or companies. Neither statutory, co nor self regulation is designed to actively engage users. As a result, all three approaches are flawed for the internet age where users have significant voice, choice and power to create a personalised service appropriate for their individual needs. These new digital citizens needs the tools and skills to empower them to navigate emerging communications and media markets rather than top-down control. Consumer empowerment is one of the great advantages of the Internet age - policymakers should make every effort to ensure that policy frameworks preserve this level of engagement, consumer content choices, and rights to access content rather than erode them.

An example of a tool that works very successfully in helping users to protect themselves from inappropriate content online is YouTube's 'Community Guidelines'. YouTube relies upon its users to 'flag' content that breaks the Community Guidelines and takes such content down when informed of its existence. This approach is neither state regulation nor self regulation but instead community regulation. It empowers people rather than trying to control them and uses the unique attributes of the Internet (ie millions of users as guardians) to ensure it can be enforced.

- **8: Protect free speech**

It is very easy in a liberal democracy to ignore the threat to free speech posed by well meaning intent. But it should always be part of the discussion. National laws to filter or block content can seem appealing because they create a sense of safety and control by enabling a few individuals or companies to exercise some level of perceived restraint over users. In reality, the evolution of content online makes such laws quickly irrelevant and perhaps even dangerous, with parents wrongly believing their children are protected and therefore absolving their own responsibilities to monitor and advise their children on using the internet safely. A situation can also arise where Governments who pursue these tools quickly fall down a slippery slope, adding more and more types of content to the 'banned' list. In a world where parents can readily download filters for their own home computers, we believe that laws mandating Internet filtering are at best

unnecessary and at worst, a dangerous policy path to embark upon.

- **9: Educate users to increase digital literacy**

Education is much more effective than any attempt by the state to regulate individual behavior. Community education about safety and security online must be a top priority, and policymakers should consider new approaches such as establishing competitive grants for creating and distributing educational materials and literature. Industry, governments, and nonprofits should work together to define and deliver a national plan for educating teachers, parents, and students alike. Studies show that grassroots engagement, not local regulation, is the key factor in promoting digital citizenship.

- **10: Go with the citizen.** Rather than seeing new online platforms as a threat to social norms, policy makers should consider how the technology can evolve to solve problems. For every engineering breakthrough that disrupts the old power models of top down, controlled distribution of content there is another that enables citizens to enjoy, share and create content in a way that the old models just did not allow. Policy makers should not try and impose the old models upon this new world but look to learn from new models - user controls, community guidelines, user forums - to find ways to enable the Internet to grow and remain a positive force for society.