



ISPA RESPONSE TO THE OPEN LETTER – A COMMUNICATIONS REVIEW FOR THE DIGITAL AGE

ISPA welcomes the opportunity to respond to the open letter on the Communications Review for the Digital Age. We look forward to engaging closely with Government and other stakeholders in order to develop a regulatory framework for the communications sector that delivers sustainable, long-term economic growth in both the sector and the wider UK economy.

We are aware that the open letter is only the first step towards adopting a new Communications Bill and are still in the process of finalising our position on some of the areas raised in the open letter. We are particularly consulting our small members on the areas of deregulation and spectrum and hope that we will be able to share our views on these areas at a later stage.

We appreciate the open manner of the letter and generally believe that this is a good way to initiate a widespread review process. However, we feel that the focus of the open letter is to some extent both too narrow and too wide. It is too narrow in a sense that it only looks at three issues in a fairly isolated way, with a mixture of very specific and narrow questions, without taking the wider regulatory framework into account. It is too wide because each of these three issues relate to matters with broad ramifications for the whole UK economy, citizens and consumers with complex underlying questions and issues which need to be addressed to optimise policy choices.

We would welcome further information on how the issues raised in the letter fit into the wider policy context both in the UK and the EU. For example, how does Government intend to ensure coherence with EU policy-making processes and which policy issues with relevance to the digital age will be tackled by the review and which will be left to be dealt with separately, e.g. by regulators and other Government Departments?

THE INTERNET AS A CENTRAL BUILDING BLOCK OF THE UK ECONOMY

“The communications sector underpins everything we do as an economy and society, to a degree few could have imagined even a quarter of a century ago.”¹

As a horizontal and general purpose technology the Internet is the core building block of a modern (and increasingly digital) UK economy and contributed an estimated £100 billion or 7.2% of GDP to the UK economy in 2009.² More importantly, however, the “significance of the Internet to the UK economy is actually greater than these numbers suggest because important economic activities of

¹ BIS. 2009. Digital Britain, Final Report, p. 7.

² The Boston Consulting Group. 2011. The Connected Kingdom. How the Internet is transforming the UK Economy. p.5.



both consumers and business are not directly captured by GDP.”³ The Internet contributes through consumer and business economic impacts (e.g. B2B and B2C e-Commerce, cost savings for consumers), productivity impacts (e.g. lower transaction costs through e-procurement, lower costs of production, development cycles, order fulfilment, marketing) and broader social impacts (e.g. social networking).

The Internet further creates economic opportunities across all the regions of the UK and helps to diversify the UK economy beyond the City and large companies. A significant number of ISPA members are themselves small and medium sized companies that offer highly specialised and often innovative solutions that connect businesses across the UK to the Internet economy, thereby enabling businesses in rural areas to compete with companies based in London or abroad.

ISPA feels that recent policy-making initiatives such as the Digital Economy Act have tended to focus on the unintended consequences of the digital age. We urge the Government to re-direct its focus and put at its core more rigorous assessment of the direct and indirect benefits that the Internet offers to businesses and consumers when reviewing the regulatory framework for the communications sector and developing policy options.

GROWTH, INNOVATION AND DEREGULATION

Historically, the UK has adopted a light-touch approach to regulating the Internet. This has been fundamental in ensuring that the UK already has one of the healthiest and most competitive communications markets as it provided the industry with room to compete and adopt effective best practice models and self-regulatory initiatives. ISPA urges the Government maintain this facilitative rather than interventionist approach to policy-making in order to safeguard the vibrant development of the digital economy. We further encourage the Government to future-proof the communications framework as far as possible by enshrining principles rather than too detailed rules in the new Communications Act.

As outlined in our [Roadmap for the Internet](#), we envisage a digital economy where users are able to access high speed broadband and where no one is digitally excluded; the digital economy is an effective, secure place to do business and communicate; users can access content online through a variety of licensed services where all parts of the value chain are rewarded; companies will be investing in innovative new online models backed by a clear legal framework helping to provide certainty; users are more aware of how their data is being used online with legislative safeguards existing to protect personal data; and a partnership approach to online safety has produced more confident, savvy Internet users.

³ The Boston Consulting Group. 2011. p.5



On a more practical level, ISPA urges the Government to ensure that ISPs retain their limitations to liabilities. Contrary to the Government's economic regulatory principles of predictability and coherence, the e-Commerce Regulation have not been given prospective effect and only apply to UK legislation passed before the 30th July 2002. This creates legal uncertainty and constitutes an unnecessary regulatory burden as it presents ISPs of all sizes with a real risk of liability each time a new piece of legislation is passed. ISPA believes that effective and reliable limitations to liability combined with the education, encouragement and empowerment of Internet users and the effective notice and takedown procedures put in place by UK ISPs are the best way to ensure that the UK reaps the maximum benefits offered by the digital age. The risks of the present Government approach are to divert resources away from the rollout of broadband and to create potentially negative effects on innovation and freedom of expression online.

As identified in Europe by Commissioner Kroes as part of the Digital Agenda, ISPA would further call on Government to reduce the barriers to a single digital market to boost licensed online content distribution. In this context we also welcome the recommendations made by the Hargreaves Review, particularly making licensing easier through a digital copyright exchange and pursuing an integrated approach to intellectual property protection based upon enforcement, education and, crucially, measures to strengthen and grow legitimate markets in copyright and other IP protected fields.

ISPA believes that regulatory convergence is generally desirable. Convergence, however, should be achieved across similar types of activities, behaviour or types of media rather than platforms. Activities that are illegal online should be (and generally already are) illegal offline and vice versa. The underlying platform that is used to carry out those activities, however, may necessitate adopting a targeted approach to regulation in order to avoid unintended consequences. In the area of defamation, for example, targeted rules are necessary to provide online publishers with the same protections as their offline counterparts."

As stated above, we are still consulting with members to adopt a view on issues such as how best to balance investment and competition. On a general level, however, we would like to urge the Government and to certain extent Ofcom to take into account the full range of service providers and pay particular attention to the smaller ISPs who often provide services in rural communities or specialised services to business customers.

A COMMUNICATIONS INFRASTRUCTURE THAT PROVIDES THE FOUNDATIONS FOR GROWTH

Government needs to take a clear approach to superfast broadband to ensure that the UK's digital capability remains competitive and is able to help deliver growth in the digital age. ISPA is encouraged by the Government's ambition for the UK to have the fastest broadband in Europe by



2015. The market is, and will continue, to lead the way in the superfast broadband deployment but ISPA also welcomes initiatives such as Race Online that strengthen the demand side of the broadband value chain.

A number of ISPA members are already rolling out superfast broadband in local areas in innovative ways thereby boosting local economies and bridging the digital divide. In order to further encourage the wider take up of superfast broadband, ISPA feels that the smaller and medium sized providers should not be put at a competitive disadvantage by being asked to pay comparatively higher tax rates on dark fibre. To encourage the growth of small scale projects ISPA recommends that this is reviewed rather than requiring individual providers to engage in individual negotiations with Valuation Office Agency. ISPA further encourages the Government and Ofcom to put in place fair and effective policies on infrastructure sharing.⁴

ISPA believes that the Government will only achieve their ambition to have the best broadband in Europe if both small and large providers can effectively compete. While keeping this in mind, Government should ensure that there are as few regulatory obstacles as possible and by maintaining Ofcom's role of promoting competition based on clear evidence.

CREATING THE RIGHT ENVIRONMENT FOR THE CONTENT INDUSTRY TO THRIVE

When looking at the content industry it is important to keep in mind that the digital age offers both challenges and opportunities. While traditional content industries like newspapers, music or film are still in the process of coming to terms with the online world, the development of new businesses and businesses models would not have been possible without it. The digital age both disrupts and facilitates business models in the content industry but the responsibility for this lies primarily with the users and businesses rather than the infrastructure and access providers.

In relation to the music industry, Prof Hargreaves reported that “[n]o one doubts that a great deal of copyright piracy is taking place, but reliable data about scale and trends is surprisingly scarce.”⁵ It is for this reason that ISPA encourages the Government to follow Prof Hargreaves' recommendation and “ensure that development of the IP System is driven as far as possible by objective evidence.” Both the benefits and advantages of widespread online access as well as unintended consequences need to be taken into account before heavy-handed enforcement action is put into place.

ISPA feels that self-regulation is generally the most appropriate approach to regulating fast moving and nimble industries such as the Internet, particular when taking into account that the UK has a

⁴ This paragraph reflects the views of the majority of ISPA members. BT, however, does not support this view.

⁵ Hargreaves, Ian. 2011. Digital Opportunity. A Review of Intellectual Property and Growth. p.6



competitive broadband market that provides customers with a wide range of alternative suppliers, products and services. The Internet Watch Foundation is a particularly well working and established example of self-regulation and benefits from being targeted at solving an unquestionably illegal and clear-cut issue. ISPA members are also in the process of developing self-regulatory codes on traffic management and parental controls and we believe that these will prove to be effective as they are essentially about codifying responsible industry behaviour, improving transparency and enabling better customer choice.

However, whilst preferable, ISPA recognises that there may be limits to self-regulation, as it could be less effective and inappropriate when aimed at replacing due legal processes or when the industry is asked to make a complex legal decision.

Conclusion

The Internet economy is forecasted to reach 10 per cent of UK GDP by the end of the current parliament.⁶ Achieving this, however, will require a concerted effort of all those who are involved in it. Internet Service Providers need to offer fast and effective services and empower their customers to act responsibly; businesses need to embrace the opportunities and overcome the challenges of moving their business online and consumers need to develop the skills that are necessary to responsibly and confidently engage with the online world. The review of the Communications Act is an opportunity to adopt a regulatory framework that is flexible enough to keep pace with the rapidly and constantly changing digital age and ensure all these aspects are taken into account so that the digital economy in the UK continues to grow and innovate.

⁶ Boston Consulting Group. 2011.