

**REPLY OF THE
EUROPEAN PUBLISHERS COUNCIL
(EPC)**

**Public Consultation on the Review of
EU Regulatory Framework for Electronic Communications
Networks and Services**

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COVER SHEET**Public consultation on the review of****EU regulatory framework for electronic communications network and services**

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A. General comments

In this section, respondents are invited to express below their general comments on the Review of the EU Regulatory Framework for electronic communications networks and services.

The European Publishers Council (EPC)

EPC is a high level group of Chairmen and Chief Executives of leading European media corporations whose interests span newspapers, magazines, books, journals, online database and internet publishing as well as in many cases significant interests in private television and radio. A full list of EPC's members is attached.

We welcome this opportunity to contribute to the important work being undertaken by this Review of the EU Regulatory Framework ("the Review") for electronic communications networks and services. In its June 2006 Communication on the Review, the Commission identified several areas for change. Many of these areas are not relevant to EPC's members in so far as they are not electronic communications network operators or Internet Service Providers ("ISPs"). In our submission, we have only commented on those areas which have the potential to impact on the businesses of EPC's members.

The Review highlights the need to strengthen consumer protection and user rights which can affect EPC's members as consumers themselves or their customers as network users or service subscribers. We discuss these implications under Part 4 "Strengthening Consumer Protection and Users' Rights".

Security is identified in i2010 as one the four challenges for the creation of a Single European Information Space. In particular, the Review proposes to extend and strengthen existing provisions on security and network integrity, currently found in the e-Privacy Directive and the Universal Service Directive. The tightening up of these provisions may indirectly affect EPC's members, should such changes cause network operators or ISPs to alter the way in which they deliver their services. We discuss these issues under Part 5 "Improving Security".

In addition, the Review might propose the tightening up of security measures under Article 4 of the e-Privacy Directive which could lead to further restrictions for data-controllers under Article 13. These changes would directly affect the marketing and general commercial activities of EPC's members. We discuss this issue under Section D "Other Comments".

Finally, EPC would add that one of the objectives of the Review is to ensure that the regulatory framework facilitates the development of new markets and services. We believe that the existing 2002 package provided for an effective framework and as such we would ask the Commission first and foremost to concentrate on comprehensive implementation of the original regulations. As such, we would be very concerned if any emerging services (e.g, web-based publishing and other on demand services) which are not currently subject to

regulation by an NRA found themselves within such regulatory scope as a result of this Review.

B. Position on proposed changes

4. Strengthening Consumer Protection and User Rights

EPC shares the Commission's aim of strengthening consumer protection and thereby building their trust in using electronic communication networks and services. This is a crucial element in maintaining a secure and progressive electronic market. As consumers themselves and through their customers, EPC's members are wary of the threats, originating from privacy issues, identified by the Commission such as cyber crime, spam and malware/spyware.

In addition we would ask the Commission also to consider the other main threats to our businesses on electronic communications networks such as copyright violations across the sector from text based to fully audiovisual content, including digital television signals. In particular it is essential that network and service providers are subject to clear rules which establish their responsibilities in the making available of our content so that they cooperate fully in removing copyright infringing or other illegal content including the suspension or termination of contracts with subscribers who repeatedly violate copyright and other laws.

EPC acknowledges the role network operators and ISPs should play in helping to tackle these areas. As these organisations deliver and provide these services, they should take responsibility in ensuring the development of a safer electronic environment and this continued co-operation should be encouraged.

Therefore, EPC would like to support the proposals put forward by the CMBA (Creative Media Business Alliance) of which we are a Member in making the following substantive proposals:

- Article 18 of the "Framework Directive" (2002/21/EC) should reflect the ongoing digital switchover taking place in the field of interactive television services by including a fourth reference – beside "free flow of information", "media pluralism" and "cultural diversity" – to include the protection of digital television signals against unauthorised retransmission ("signal theft").
- The "Authorisation" Directive (2002/29/EC) – which enumerates in its annex a series of specific conditions that may be attached to the general authorisation that providers of electronic communications networks and services need to obtain – should be amended to include specific references to Directive 2004/48/EC (i.e. the so-called "Enforcement" Directive) and Directive 2001/29/EC (i.e. the so-called "Copyright" Directive).
- The "Universal Service" Directive (2002/22/EC) should be amended by introducing in Article 20 (e) – which lists certain specific provisions that are always required to appear in consumers' subscriber contracts, in particular the conditions for termination of services – the obligation to respect intellectual property rights subject to suspension or termination of

contracts for repeat infringers. There should also be a general provision linking universal service obligations to a general requirement to respect the law. Suspension or termination for repeat infringement should also be treated within the framework of the above-mentioned “Authorisation” Directive

- The “Access Directive” (2002/19/EC) should be amended by introducing in Article 12 (obligations of access to and use of, specific network facilities), the obligation for operators to enforce contractual conditions requesting subscribers to respect legal provisions and in particular relevant intellectual property rights.
- The “Privacy and Electronic Communications Directive” (2002/58/EC) should be amended to reflect the notion that an individual communicating electronically with, potentially, the whole world (e.g. through a website or a peer-to-peer file-sharing service) cannot expect his/her act of communication to be treated with the same degree of privacy protection as, say, private correspondence such as phone calls or e-mails. Different options can be envisaged to make sure that data privacy rules do not have unintended consequences on legitimate enforcement efforts. The CMBA would, as one possible option, suggest that a new article be added to the Directive confirming and detailing the conditions for lawful processing of personal data in the electronic communications sector, with specific reference to data processing required in the case of illegal activities carried out online.

5. Improving Security

EPC acknowledges the improvement of security as one of the major drivers to developing a safe and successful electronic market. It welcomes the Commission’s goal of improving security through the e-Privacy Directive and under the framework of the Review.

In so far as EPC’s members are not network operators or ISPs, tightening of security measures under Article 4 of the e-Privacy Directive would not directly affect them. However, as users of these services and as suppliers to customers who use these services, increased security practices may indirectly impact on their businesses. This may also directly affect EPC’s members (see Section D: Other Comments.)

Therefore, EPC’s members are particular concerned about heightened security measures which have the result of disrupting or altering the way in which they or their customers receives these services. Furthermore, EPC would consider restrictions which prevent or impinge on legitimate business practices as disproportionate and not within the framework of the Review.

EPC would like to make the following substantive submissions, where it feels there are specific circumstances where its members will be indirectly affected by the proposed changes.

1. Right of Action Against Spammers

While blocking actual spam is in the best interests of all legitimate users of the Internet, including EPC members, there is a risk that increased sanctions in relation to spamming may lead to service providers blocking all traffic which appears to be spam – even though their customers may have actually consented to email communications. This would significantly affect EPC's members legitimate business concerns and would also amount to an interference with freedom of expression and freedom of information. Consideration needs to be given as to whether it is technically possible to distinguish legitimate email communications from spam. Also consideration could be given for a right of action by senders of legitimate email communications in the cases where their legitimate emails have (without good reason) been treated as spam by service providers.

2. Clarification of requirement for “appropriate technical and organisation measures”

Increased security measures are in the interests of all users of the internet, including EPC members, however there is a concern that increased security could delay or even block communication to critical information to EPC customers. Obligations to adopt increase security measures should be balanced with an obligation to ensure that such security measures are proportionate to the perceived risk and that consumers do not experience any unreasonable delays in delivery of communications. Failure to achieve this would interfere with freedoms of expression or information.

EPC should have the opportunity to be involved in any consultations which take place with the Commission / NRAs with regard to security recommendations.

3. Require notification of security breaches by network operators and ISPs

Any proposal to issue “blanket” notifications of security breaches could result in unnecessary public concern and could significantly affect EPC's members' interests – not simply in relation to customer databases but also potentially in relation to “news” subject data which is legitimately held by EPC's members.

For example, EPC members may rely on service providers to host / maintain databases and those databases may contain information relating to data subjects falling into two categories: customers / subscribers for on-line information services and subjects of press “stories” for the purposes of substantiating news / other journalistic pieces etc. It needs to be explored whether in the case of a security breach affecting such hosted database by a service provider whether that service provider would notify just EPC's members or the data subjects themselves – clearly the latter would potentially be highly detrimental to EPC's members and could result in individuals refusing to allow such data being retained – this would ultimately restrict press freedom and freedom of information / expression.

In the case where a service provider is providing to notify a security breach and the customer or data subject of a third party is affected then there should be an

obligation for those service providers to fully co-operate with that third party so that the situation can be managed in a reasonable manner.

There could also be consideration to different levels of security breach – it may not in all cases be in the best public interest to notify all instances.

D. Other comments

Respondents wishing to address any additional issues/topics in relation with the Review of the EU Regulatory Framework for electronic communications networks and services are invited to express their views below.

Please keep responses short and concise.

In addition to those set out in Part 5, EPC would also like indicate the potential concerns about tightening security measures under Article 4 of the e-Privacy Directive.

Increased security measures which fall within the framework of the Review, may lead to the evaluation of current measures in relation to unsolicited communications which in turn could result in stricter controls and greater restrictions. Increased measures in this area, will directly impact on EPC's members and indeed have wide repercussions for any organisations looking to use legitimately held contact information.

EPC feels that any additional restrictions would severely disrupt the way in which its members market their organisations and carry out general business. EPC considers that the current restrictions, under Article 13 of the e-Privacy Directive, adequately safeguard this area and that no additional measures are required. Furthermore, EPC would consider any changes to these current restrictions would be disproportionate and prevent its members from carrying out legitimate business practices.

On behalf of the Members of the European Publishers Council
27th October 2006

List of Members at Annex 1



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