

DIGITAL INTEROPERABILITY FORUM COMMENTS ON THE EUROPEAN COMMISSION CONSULTATION ON THE FUTURE OF ELECTRONIC COMMERCE IN THE INTERNAL MARKET AND THE IMPLEMENTATION OF THE DIRECTIVE ON ELECTRONIC COMMERCE (DIRECTIVE 2000/31/EC)

15 October

2010

The Digital Interoperability Forum (DIF) is pleased to have the opportunity to comment on the Commission's consultation on e-commerce and the e-commerce Directive. The Digital Interoperability Forum (DIF) members represent all parts of the broadcasting, communications and multimedia paid-for content value chain, including transmission, hardware, software, middleware, platform operation and content provision. DIF members have a strong interest in the continuing success of digital TV and information society services in Europe.

A number of DIF members will be responding to this consultation individually or through other trade associations, such as the ACT and Cable Europe. Accordingly DIF confines its comments here to the following questions. DIF would be pleased to discuss any matter in more detail with the Commission.

As a general point DIF understands that this consultation takes place, inter alia, in the context of a study which concluded that online sales accounted for a low percentage of retail sales in the EU. The implication drawn from this study could be that certain barriers and impediments, legal or otherwise, may exist to online commerce and, as such, further legislation and regulatory intervention may be contemplated. DIF encourages the Commission to be very careful in drawing such conclusions from the study, if it is minded to do so. The value of online sales depends on many factors, including whether the level of consumer interest in purchasing online is sufficient to make an online commerce business proposition commercially attractive.

¹ The Digital Interoperability Forum (DIF) membership includes *BSkyB, Deutsche Telekom, Groupe Canal+, Irdeto, Liberty Global, Microsoft, Nagravision, NDS, Pace, Sky Deutschland, Qualcomm, Sky Italia, Viaccess, and ZetaCast.*

In this context the purpose of legislation is to facilitate e-commerce (as well as consumer protection, etc.). As with audiovisual media services, the existence of legislation cannot guarantee the delivery of e-commerce services in the absence of viable business model.

Q 35. Have you practiced or been subject to discrimination on the basis of nationality or place of establishment or residence, or are you aware of such discriminations? If so, please indicate the information society services affected and the reasons given to justify this discrimination.

In relation to their business activities and the products and services which they supply, DIF members have not experienced any discrimination on the basis of nationality or place of establishment.

Q37. In your view, are there other rules or practices which hinder the provision or take-up of cross-border or online services? If so, which?

DIF members are not aware of any such provisions. However, DIF notes that effective, harmonised implementation of the Directive contributes to greater certainty for business when taking decisions whether to make cross-border or online services available.

DIF is aware that some stakeholders may argue that there is a lack of interoperability, e.g., between platforms and devices, which hinders the take-up of online services. DIF maintains that interoperability is achieved where the technical and business rationale to do so exists. There are no impediments to interoperability which require legislative intervention.

Q63. Do you think that a lack of investment in law enforcement with regard to the internet is one reason for the counterfeiting and piracy problem?

DIF members are concerned to ensure that the full arsenal of means to address piracy remains available to them. With greater digitalization, piracy is an increasing, more geographically dispersed, problem and new forms of piracy emerge. The internet is increasingly the source of piracy and counterfeiting in the fields in which DIF members operate.

It is fundamentally important, therefore, that any EU legislation is implemented properly by Member States and adequate resource is given to its enforcement to tackle effectively both commercial and non-commercial piracy. The pattern of implementation and enforcement across the EU varies from Member State to Member State, a situation which creates “safe havens”.

DIF acknowledges, however, that tackling piracy on the internet is difficult for any Member State, or indeed the EU, in isolation. DIF would encourage the Commission to work globally to achieve consistent and effective measures to address piracy and counterfeiting.