Consumer Focus
Campaigning for a fair deal

Response to Digital Britain Interim Report

March 2009

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INTRODUCTION

Consumer Focus champions the needs of consumers across the UK. We operate across the whole of the economy, persuading businesses and public services to put consumers at the heart of what they do. We take action where markets fail consumers and ensure a fair deal for all – especially vulnerable and disadvantaged people. We want to see consumers central to business and government decision making, and to this end we also work at EU level and internationally contributing to the debate and the formulation of strategy.

Consumer Focus wants to see a digital economy characterised by competitive, dynamic and innovative markets to which consumers have meaningful access and in which they are empowered to make informed choices.

We welcome the Digital Britain Interim Report (the Interim Report thereafter) and its objectives, which signal an intention to consolidate the ongoing work on digital issues across Government departments.[1] The Interim Report identifies the following five objectives for Digital Britain:

- **Upgrading and modernising our digital networks – wired, wireless and broadband – so that Britain has an infrastructure that enables it to remain globally competitive in the digital world.**
- **A dynamic investment climate for UK digital content, applications and services, that makes the UK an attractive place for both domestic and inward investment in our digital economy.**
- **UK content for UK users: content of quality and scale that serves the interests, experiences and needs of all UK citizens, in particular impartial news, comment and analysis:**
- **Universal availability coupled with the skills and digital literacy to enable near-universal participation in the digital economy and digital society; and**
- **Developing the infrastructure, skills and take-up to enable the widespread online delivery of public services and business interface with Government.[2]**

[1] E.g. Department for Communities and Local Government “Delivering Digital Inclusion, An Action Plan for Consultation”, October 2008 and Power of Information Taskforce Report, February 2009, the Scottish Government’s “Broadband for Scotland” , “Broadband Reach” and “Digital Inclusion Strategy 2006”

[2] Interim report, p.7

The Interim Report however disappoints with a lack of vision and tangible strategy to achieve these five objectives. Realising these objectives will require consultation, co-ordinated action, and improved clarity about the respective roles and responsibilities of central and devolved Governments, Ofcom, digital industries, ISPs, regional development agencies and local authorities. Recognition of the distinct and overlapping roles of the devolved nations and the work of the EU and incorporation of these particular interests into a comprehensive plan is necessary.

The Interim Report is overly industry-focused, being at times technical without necessarily being practical. Consumer Focus looks forward to the final Digital Britain report focusing on the other part of the market equation, the consumer, and setting out a clear strategy with timelines, targets and responsibilities. We also anticipate the final report will expand on what is described as "emerging findings" and how Digital Britain will support the Low Carbon Economy and the next generation delivery of public service online. The digital economy and society is developing at breathtaking speed and we would like the Government to commit to regular reviews and consultations so that the Digital Britain implementation strategy stays in step.

The Government has a central role in the promotion and regulation, where appropriate, of fair and open digital markets. It is right and proper that Government takes a lead in encouraging the democratisation of our digital future. The Government will need to take responsibility for steering and seeding Digital Britain by supporting new business models that are able to harness as well as develop new digital technologies. Other European governments, notably Denmark,[3] Norway[4] and Switzerland[5] have already taken decisive steps and their experience indicates that the benefits are immediate as well as long-term. Digital technology represents a unique economic and social opportunity in the current economic climate and beyond.

Digital technology has the potential to alleviate entrenched problems of social exclusion and inequalities and we support the Government in its intent to establish an updated universal service obligation. However we take the position that this obligation needs to go beyond physical access to high speed broadband to address other significant barriers to access in order to achieve Digital Britain's object of fairness and access for all. A decisive investment in digital consumers, existing and future, will be needed to support a dynamic demand and supply cycle that will allow digital industries to make infrastructure investments and develop new quality content.

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[3] See Danish Ministry of Science, Technology and Innovation, ICT strategy http://en.vtu.dk/information-and-communication-technology

[4] See Norwegian of Transport and Communication, "The Norwegian Way to the Information Society" http://www.regjeringen.no/en/dep/sd/Ryddemappe/sd/english/doc/reports/The-Norwegian-Way-to-the-Information-Society-Bit-by-Bit.html?id=436885

[5] See The Federal Administration's ICT-Strategy 2007-2011 http://www.isb.admin.ch/themen/strategien/00070/index.html?lang=en &
Swiss Government, Geneva State http://www.ge.ch/telecom2009/ict.asp#texte

Consumer Focus welcomes the opportunity to be involved in the shaping of the future Digital Britain, drawing on a long track record of our predecessor organisations and in particular, the National Consumer Council (NCC). The realisation of a free and open digital market will require consumer confidence and to this end we encourage the final Digital Britain report to commit to enabling and protecting consumer rights. Working together with consumer advocates from across Europe the NCC helped to establish the following essential "digital rights":

1. **Right to access neutral networks**
2. **Right to access digital media and information**
3. **Right to access secure networks and services**
4. **Right to privacy and data protection**
5. **Right to software and interoperability**
6. **Right to barrier free access and equality**
7. **Right to pluralistic media**[6]

Consumer Focus is fully committed to these digital rights and we ask the Government to consult on a framework for the protection of these rights as part of a strategy to further the five Digital Britain objectives.

Consumer Focus has identified digital issues as a priority and we will undertake significant work in this area over the next period. We have provided or will be providing further detailed input into the UK's digital strategy and in particular the Digital Inclusion Action Plan, "The Future: developing a copyright agenda for the 21st Century", the Power of Information Taskforce Report, and the European Telecommunications Package review. We also refer you to the submission by Consumer Focus Scotland which outlines the particular challenges Scotland faces in fully engaging with a digital future.

We have organised this response in line with the objectives identified in the Digital Britain report and have focused on the objectives of Fairness and Access for all, UK content for UK users and Developing infrastructure, skills and take-up. We have also added a section on possible ways forward in the regulatory environment to address the needs of consumers.

[6] Trans-Atlantic Consumer Dialogue "Charter of Consumer Rights in the Digital World", March 2008.

RECOMMENDATIONS

RECOMMENDATION 1

A universal service commitment to access should be adopted by Government, with support and participation of industry, which would include the achievement of measurable and progressive targets in relation to all of the following to be effective by 2012:

- Network/broadband access and speed
- Removal of discriminatory barriers and prioritising of access to those who are currently disadvantaged in the digital market
- Competence in, and understanding of, digital products
- Usability
- Access to responsive and interactive public services

RECOMMENDATION 2

The universal service commitment for a minimum level of broadband service should be based on the following factors identified in the Digital Britain report:

- "The levels of broadband speeds most commonly subscribed to in the population as a whole;
- The sorts of online services which consumers want and expect;
- The public services, such as education or remote health, for which delivery depends on a certain speed
- the likely evolution of technology and the market".[7]

The suggested broadband targets in Action 17 need to be updated in accordance with the above criteria and targets going forward to 2012 need to reviewed on an annual basis.

RECOMMENDATION 3

The Government should prepare an assessment of the competition effects of any model it proposes for the delivery of broadband USO prior to a final decision. This assessment could be completed with the involvement of the relevant competition

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[7] pp 55 - 56

authorities. If there is an indication of a potential loss of competition that could be to the detriment of consumers, then we recommend that Government should only proceed if it is willing to pursue a formal waiver of competition rules in a clear and transparent way.

RECOMMENDATION 4

The coordination and monitoring of access/digital inclusion work needs to be placed in the hands of one Government body with the ability to direct resources. In line with the Department for Communities and Local Government (CLG) report on Delivering Digital Inclusion, baseline measures need to be adopted to monitor progress towards digital inclusion and the success of various programmes. Objective means of measuring gaps and obstacles need to be established in order to target excluded areas as a priority.

RECOMMENDATION 5

The Government should outline a strategy for providing digital life, education and work skills in all educational institutions and workplaces and other public institutions supplemented by community outreach programmes.

RECOMMENDATION 6

Public/community access to wireless internet and digital facilities should be expanded. In particular, exploring free WIFI in city and town centres and utilising government/public offices throughout the UK to provide facilities and equipment for free public access.

RECOMMENDATION 7

A strategy should be developed with consumers for an interactive and responsive online public service delivery that meets the following needs of consumers:

- Provides information you can understand
- Listens to views on how things can work better
- Acts on feedback
- Provides a flexible service
- Makes you feel part of the community

- Engenders trust[8]

RECOMMENDATION 8

The Government should recognise and promote the value of user-generated content and consider other ways of monitoring and supporting independent and diverse content.

RECOMMENDATION 9

The Government should develop initiatives to support the creation of non-commercial digital content for children.

RECOMMENDATION 10

The Government should abandon the graduated response and ensure that measures to enforce civil copyright law are proportionate.

RECOMMENDATION 11

The Government should immediately implement the recommendations of the Gowers Review relating to the reform of the law in relation to exceptions in copyright.

RECOMMENDATION 12

The Government should clarify the legal framework governing data sharing in the public and private sector and enhance the role of the Information Commissioner's Office in policing data sharing. Private and public bodies should be required to provide information to consumers about how to protect and control their own data and provide information about the form, collection and processing of data held. Data should only be collected, processed and used with the express and voluntary permission of consumers freely given and not because provision of goods and services in conditional on the supply of personal information.

RECOMMENDATION 13

Privacy Impact Assessments should be introduced in relation to any product or service that collects and stores personal data.

[8] "Delivering Public Services, Service users' experience of the third sector by the National Consumer Council", National Consumer Council 2007, http://collections.europarchive.org/tna/20080804145057/http://www.ncc.org.uk/nccpdf/poldocs/NCC162pd_delivering_public_services.pdf

RECOMMENDATION 14

We ask the Government to commit to net neutrality in terms of open access to digital content and inter-operability of digital technology.

RECOMMENDATION 15

Ofcom should give consideration to requiring comparable pricing information against standard measures for digital services.

RECOMMENDATION 16

Anti-competitive practices such as high penalties for ending contracts, lack of interoperability and difficulty in switching products need to be investigated by the appropriate bodies (eg Ofcom or the Office of Fair Trading) because of their potential adverse effects on the market.

RECOMMENDATION 17

Industry standards should be adopted in relation to

- clarity of contractual terms, particularly who you are contracting with and what you are contracting over;
- post-sale issues of reliability/durability of equipment, warranties and after sale service;
- appropriate back-up facilities with default back-up provision;
- security and virus protection that are incorporated into online products, services and networks free of charge.
- security standards for online payments and internet banking mandated at a higher level.
- equipment usability, design of web interfaces as well as the use of a range of formats which will enable better utilisation by the consumer
- open access and inter-operability of digital technology.

RECOMMENDATION 18

Compliance with the standards, commitment to accessibility and consumer best practice should be rewarded with appropriate endorsement such as the kitemark or European trust mark scheme or accreditation from Ofcom, thereby adding value to sustainable and fair operators within the market.

RECOMMENDATION 19

Information should be provided by all providers in relation to personal information, use and storage and sharing of material prior to completion of any contract or use of any service. Clauses relating to use of personal information should be opt in only and should not be a condition of contract completion. Consideration needs to be given to a “do not track” registry along the lines of those already operating to prevent cold calling and unsolicited mail.

RECOMMENDATION 20

It is important that the proposed charter of rights is adopted initially as a set of aspirations and subsequently forms the basis of a regulatory environment which facilitates digital engagement and effective and efficient means to seek redress.

RECOMMENDATION 21

The Government should map current redress mechanisms for availability, affordability and effectiveness and mechanisms for alternative dispute resolution or arbitration should be established in relation to digital transactions. Given the potential for unfair online dealing to effect large numbers of consumers, collective mechanisms for redress need to be developed. We call upon central Government to initiate pro-active co-operation with the devolved administrations and at an international level to achieve a better harmonisation of regulatory practices and codes.

1. FAIRNESS AND ACCESS FOR ALL: UNIVERSAL AVAILABILITY

"...coupled with the skills and digital literacy to enable near-universal participation in the digital economy and digital society."9

We have assumed that in order to achieve a functioning market place, to prevent social exclusion, to enhance social and economic market participation and to aid the delivery of efficient and effective public services into the future, that access is a cornerstone for development.

Currently only 20% of the population can be described as engaged with digital television, internet and mobile phones. Significant sections of the population are specifically limited by costs (8%) with others being limited by lack of knowledge/understanding (31%), or resisting engagement completely (9%). Those with limited or no engagement are mainly not working, in semi-skilled or unskilled manual jobs, and predominately in the lower socio-economic categories.[10]

We welcome the proposal to develop plans for a digital Universal Service Commitment in broadband. However this alone will not achieve the stated objective of fairness and access for all. Universal availability of broadband will not overcome other barriers to access such as competence in using computers and their applications, being able to afford the equipment, understanding the conditions and what you are getting, overcoming fears and barriers, and knowing how to resolve problems if they arise. We support an overarching universal service commitment that enables all British people, regardless of where they live, their age, their literacy levels and their incomes, to access digital services when they need by 2012.

Consumer Focus will be publishing a discussion paper in the spring outlining the consumer perspective on digital inclusion and access.

1.1 BROADBAND ACCESS

As a lead country in the European Union it is to be expected that the UK will also lead the charge in the commitment to ensure adequate participation in the information society. Government initiatives, progressive targets and incentives that influence the major investors are moves which are likely to have positive flow-on effects throughout Europe and globally. We already have a head-start in above

[9] Interim Report, pg.7
[10] Ofcom, Media Literacy Audit, Report on UK Adult's Media Literacy, May 2008

average take-up of broadband connections (60% of households[11]) and should be well placed technologically to do so.

Government, or the regulator Ofcom, has a legitimate role in guiding the delivery of a universal service obligation and ensuring it is delivered equitably and in a way that, in a fast moving technological and commercial context, does not prevent competition or entrench the market position of the current major players to the detriment of new entrants. The cost to the consumer needs to be foremost in any delivery model.

The aim should be for minimum speeds necessary to maintain basic multi-purpose usage and in particular support high definition video and audio sites, video conferencing, voice and data services and proper interactive use of new generation public services. The Interim report itself sets out the criteria for the desired level of minimum service, which includes average speeds, usage of services and access to public services as well as taking account of the likely evolution of technology and the market. We believe that a target broadband speed should be set on the basis of these criteria and then costed with the object of developing strategies to fund the desirable speed rather than compromising on this. We encourage review of the broadband speed target on an annual basis to ensure relevance.

The Interim Report has suggested consideration of options up to 2 Mbps as the speed likely by 2012 to be in step with standard broadband usage. Current usage indicates that this figure is already inadequate. Ofcom reports as at January 2009 current average broadband speeds of 3.6Mbps[12]. It is expected that "between now and 2012 demand for average speeds of 20 Mbps is likely."[13] It is clear that 2 Mbps will not support innovation and development nor keep pace with average usage.

We welcome Ofcom's recent announcement of the go-ahead for super fast broadband. It is estimated that this will deliver speeds up to 10 times faster than current broadband speeds with providers already announcing services of up to 50Mbs.[14] Superfast broadband will support a range of simultaneous and high bandwidth services at the same time. The announcement, however, highlights the increasing likelihood of a digital divide if realistic minimum broadband speeds are not set as part of the Universal service obligation.

We would also like to encourage the Government specifically to consider the role of mobile broadband in delivering the Universal Broadband Service Commitment. Mobile broadband (3G) is developing rapidly and has the potential to provide cost effective broadband access to areas where the installation of fibre optic networks might be financially unviable.

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[11] "The Consumer Experience 2008, Research Report" Ofcom, November 2008
[12] www.ofcom.org.uk/medi/features/bguidefeb
[13] Interim report, p.20.
[14] http://www.ofcom.org.uk/media/features/ngaonex

1.2 ADDRESSING DISCRIMINATORY BARRIERS TO ACCESS

Recent research suggests that citizens are increasingly seeing access to the internet as a ‘right’ in the same way as access to utilities. Consequently there is an expectation that the Government needs to ensure that access is possible and affordable for all.[15]

Digital media has an important role to play in dealing with inequalities. For example providing opportunities for micro-business or creative output irrespective of who or where you are; possibilities for channeling and changing media for those with disabilities; public service access for those who are geographically or physically isolated; sourcing cheaper or specialist products; opening up bigger markets; and providing mobile and flexible information and education. It has the potential to open doors that were previously closed; if, that is, there is real access.

Current barriers to digital access and use include:

- cost, income, socio-economic status,
- gender,
- age,
- geography/region,
- disability,
- level of social and economic participation, literacy levels and understanding
- usability
- anti-competitive practices/significant market power (such as interoperability and inability to switch).

It is clear that any measure of universal access needs to be more complex than a target saturation point, but rather should target gaps and need and address the issues involved with limited take up. There is already a European Ministerial commitment to halving the gaps in digital literacy and competence by 2010.[16] The Digital Inclusion Action Plan[17] refers to the correlation between social and digital exclusion and recommends a focus on the individual needs of participants and on specific targeted benefits for the most excluded and resistant. We would propose

[15] Communications Consumer Panel Research Report “no-one should miss out: consumers say what they want form the digital future”, February 2009, p.21.
[16] Ministerial Declaration of Ministers of European Union Member States, 11 June 2006, Riga, Latvia.
[17] “Delivering Digital Inclusion, An Action Plan for Consultation”, Communities and Local Government, October 2008, 9.

the roll-out of a service minimum broadband product to areas of disadvantage in the first instance, with consideration given to mandating greater guaranteed speeds to reflect geographic isolation (eg if not within 20 kms/half hour public transport of bank/post office/council office/DWP/hospital), or other specific disability/mobility issues.[18]

Cost is a significant barrier. The medium for access also needs to be considered in the light of Ofcom's research on home access and ownership of PCs/laptops. The overall figure for ownership of PCs/laptops in the home for the UK is 70%. There is low ownership amongst age groups over 65 and amongst low income levels and the lower socio-economic groups (the profile is very similar for broadband access).[19] However mobile service take-up stands at 121 per 100 head of population.[20] Given the universality of mobile ownership, the delivery of broadband access via mobiles, and in particular addressing the high costs of this delivery, would seem an important strategy for moving forward on the universal service commitment.

However, there are still areas where there is ether no network coverage or only one operator[21] and alternative options need to be provided until commitments to universal coverage and competition can be delivered. We welcome initiatives such as the Computers for Pupils and the Home Access programmes in getting school aged children and their parents on line. UK Online centres, libraries and community groups have played a lead role in many areas. Public and community access, by for example the increased availability of WiFi zones and public internet sites, needs to be expanded. Just as some banks and other commercial operations make these facilities available in their reception area so that consumers can take advantage of online product provision, a similar facility could be rolled out in Government offices and council buildings.

Overcoming the barriers requires Government co-ordination, systemic intervention and leadership. Differential results will persist if universal access is simply left to the market or to a range of programmes and initiatives that are largely uncoordinated and variously evaluated.

[18] A price limited minimum product has assumed greater significance given the recent announcement that Broadband charges are set to rise by £30 in the next 3 years; http://www.dailymail.co.uk/news/article-1160654 , March 2009.

[19] For example, broadband take-up in Glasgow is at 32% households compared with 60% across the UK.

[20] Ofcom, "The Consumer Experience 2008, Research Report, November 2008.

[21] Scottish Consumer Council, Making markets work for consumers in Scotland – everyone benefits, consumer switching behaviour and attitudes in key markets, May 2008

1.3 COMPETENCE, UNDERSTANDING AND USABILITY

We welcome the Interim Report's recognition of the need for appropriate education, skills and literacy programmes to underline the universal access initiatives and its commitment to a new definition and ambition for a National Media Literacy Plan[22]. It is important however to emphasise that consumers are not perfect consumers all the time, even with the required knowledge, skills and equipment. They make decisions on rational, emotional, principled, loyalty and spontaneous grounds, depending on their circumstances. And consumers are, like all of us, time poor, and when faced with a bewildering range of options or reams of small print, will make convenience decisions.

We support the mapping activity that Ofcom is currently doing in relation to media literacy. However, there is a need for co-ordination across this work and for the planned assessment of its overall effectiveness and the gaps or overlaps that are occurring. The accompanying evaluation work needs to be utilised to direct activity, to target gaps and to meet targets for universal delivery of baseline competencies. Lead responsibility and resource capability needs to be clearly defined with the ability to draw on or shift resources on the basis of regular review and evaluation work.

Basic skills programmes would be able to be run through schools and other educational institutions, employers, prisons, homes for the elderly, job centres and libraries. Some work is already being done but there is a need to ensure wider participation and standard levels of competency. Outreach programmes for those who are not institutionally integrated and ongoing help and information to support continued use is needed. We understand that a support and information service is being developed by Ofcom that will be web-based and provide a source of additional support. There also needs to be a physical means to access support or information such as face to face, phone services or TV programmes.

Understanding and skills acquisition can also be assisted by the design of equipment, services and products so that they are easy to use and follow certain standards. Consumers, particularly older consumers, are confused by the range of equipment, programmes, software and other options available or necessary to operate in the digital world. For many the experience is a bit like when your car breaks down; because of lack of technical knowledge you are completely at the mercy of the service provider. It does not need to be this difficult and some consistency and basic standards would assist in getting over some of the barriers for new entrants.

[22] Action 22

1.4 COST, SAVINGS AND DELIVERY

We welcome the development of proposals for design and operation of a new more broadly-based scheme to fund the Universal Service Commitment.[23] We urge the Government to consider creative ways of funding a meaningful commitment rather than the commitment to access being circumscribed by a magic figure. Any measures addressing social exclusion and disadvantage and providing public services in new and more effective and efficient ways will result in substantial benefits, that, although difficult to quantify, are likely to be long term and sustainable.

"Economic benefits of digital inclusion: building the evidence" suggests non-monetary benefits include:

- "¼ GCSE grade value added per learner, per subject through e-learning
- 3 – 10% wage premium for jobs involving computer use
- Up to 60% decline in missed hospital appointments per year with NHS Choose and Book (estimated value at £140m per year)
- 1.14 to 1.54% increase in UK GDP 2008 – 2010 due to public spending on e-government and digital literacy programmes." [24]

Action 4 proposes consideration of the need for public incentives in enabling broadband deployment. We believe there is a role for incentives and public funding in both broadband development and addressing equity issues of digital inclusion in order to prevent a market led entrenchment of disadvantage. The USA, France, Ireland, Finland and Australia have all committed to substantial injections of funding in order to meet targets of inclusion and raise levels of broadband access speed.

Schools and workplaces are pivotal in reaching large proportions of the population and should be required to provide access to equipment, services and basic media literacy models for their community. We have mentioned the work of the Computers for Pupils and Home Access programmes and recognise that some employer/union partnership projects on digital literacy are being run with the assistance of the Union Learning Fund, but they are not universal or consistent. Employers could be encouraged by the use of incentives to provide digital training in each workplace.[25]

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[23] Action 18
[24] UK online centres, Fresh Minds, April 2008, 32

[25] For example, the Training Guarantee Legislation that was introduced in Australia in the early 1990s to increase the range of skills in the labour force, particularly in the areas of high technology, in order to promote economic growth and improve Australia's international competitiveness. The Act required employees to contribute a proportion of their annual total payroll, up to 1.5%, to training programmes

Community projects have filled gaps in many areas on the basis of limited resources. Their key role needs to be recognised and supported. It is vital that Government explore partnership with community organisations in areas of low access and take - up because of their greater capacity to respond to specific needs.[26]

It is clear that industry will have to play a role. Widening access and imparting knowledge that will change consumer behaviour and open up markets has significant commercial value to existing industry as well as creating an environment for the development of new business. Promotion and distribution costs have been significantly reduced and the market has been opened up to many new players because start-up costs are low. Sharing, collaborating and recycling possibilities all add value.

Ofcom reports that the communications industry revenue is up by by 4.2% to 51.2 billion [27] despite the bleak picture being painted in the rest of the economy. Ronan Dunne, the CEO of 02 UK, is quoted as saying that the "Deployment of next-generation information and communications technology could create 2 million jobs across Europe and generate $ 950bn." [28]

All industry players should be expected to commit to targets under the USO which could include minimum broadband speeds and penetration and prioritisation of access to some areas, products that deliver minimum service at limited prices,that supplement media literacy initiatives and enable improved access by disabled or disadvantaged users. Additional funding could be raised through licensing fees, and opening up of spectrum. Universal Service Obligation goals could be furthered through applying conditions to these grants of licence and spectrum. Similar roll out obligations were imposed on 2G/GSM operators via licences previously and we suggest the 3G roll out should do the same.

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for their employees. If the money was not spent the shortfall was payable in tax. As a result of the legislation and supporting measures employer provided training showed significant increases.

[26] For example, the excellent work of Project Access in Cumbria, funded by the North West Development Agency in enabling broadband wireless access in Cumbria in a region where broadband capability was previously limited because of high installation costs.
[27] The Communications Market 2008, Research Report, August 2008
[28] "Disputes threaten UK's broadband progress" The Independent, 23 February 2009 at http://license.icopyright.net/user/viewFreeUse.act?fuid+Mjc2NjI5Mg%3D%3D

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2. PUBLIC SERVICE PROVISION

"Developing the infrastructure, skills and take-up to enable the widespread online delivery of public services and business interface with the Government."[30]

Service delivery is increasingly enhanced by digital media. Researching expertise, sourcing local service providers, specialist products and services, price comparison, reviews, can all be done over the internet. In order for basic citizenship rights to be delivered appropriately and efficiently there needs to be further engagement with electronic information provision and delivery. If choice in delivery continues to be a mantra then people have to have the means to exercise that choice.

The Interim Report commits to a Public Service Delivery Plan that will ensure that "public services online are designed for ease of use by the widest range of citizens, taking advantage of the widespread uptake of broadband to offer an improved customer experience and encourage the shift to online channels in delivery and service support.[31]

The Power of Information Taskforce Report envisages also envisages delivery of public services fully utilising new technology.[32] It is acknowledged that "Two-way video services could transform the delivery of those public services which require true, information-rich interaction between the citizen and the provider, health and education are good examples."[33] However, new services, such as telepresence, network computing, iTunes film and distance health and education require minimum network capacity and speed and a degree of knowledge and understanding. The proposals in the Interim Report fall short of a plan for equipping all citizens with the ability to access and interact with these services. If this is the way forward for delivery of public services then the issues of access need to be addressed otherwise there is a real risk of compounding disadvantage and denying basic rights.

There is a particular opportunity here to use technology not just to deliver information via a different medium, but to build a different type of relationship with citizens, involving them in policy development, service design, participation in and direction of content, incorporating a responsive two-way interactive model and personalisation options that would engage people more and improve public service outcomes.

[30] The Interim Report, p.7.
[31] Action 21
[32] February 2009.
[33] The Interim Report, p.16

Consumers have a valuable contribution to make in improving outcomes for their community. Sites that support communities such as www.netmums.com show that people are very comfortable supporting each other with advice and encouragement, bypassing traditional services such as visiting clinics, reading official information or seeing a health visitor.

Public services are also held up to increasing scrutiny and comment from sites such as www.patientopinion.org.uk and www.iwantgreatcare.org who more often than not offer suggestions for change. The Power of Information Taskforce held a competition called www.showusabetterway.org.uk that asked everyone was asked to come up with new and innovative ways to cross-reference public data. These valuable insights into consumer needs should be incorporated into plans for delivery.

We know that people care deeply about public services want to be engaged in public services (80% of consumers want to get involved in the design, delivery and scrutiny of their services[34]) and we know from these intiatives that people are more than happy to engage digitally. This engagement and these initiatives need to be encouraged, supported and developed as part of an overall delivery approach.

Consumer Focus will be responding further to the issues contained in the Power of Information Taskforce Report.

RECOMMENDATION 7

A strategy should be developed with consumers for an interactive and responsive online public service delivery that meets the following needs of consumers:

- Provides information you can understand
- Listens to views on how things can work better
- Acts on feedback
- Provides a flexible service
- Makes you feel part of the community
- Engenders trust[35]

[34] "Putting People in Public Services – better regulation and inspection" , National Consumer Council 2008, http://collections.europarchive.org/tna/20080804145057/http://www.ncc.org.uk/nccpdf/poldocs/NCC206pd_better_regulation_and_inspection.pdf

[35] "Delivering Public Services, Service users' experience of the third sector by the National Consumer Council", National Consumer Council 2007, http://collections.europarchive.org/tna/20080804145057/http://www.ncc.org.uk/nccpdf/poldocs/NCC162pd_delivering_public_services.pdf

3. CONTENT

"Content of quality and scale that serves the interests, experiences and needs of all UK citizens, in particular impartial news, comment and analysis."[36]

3.1 ENCOURAGING CREATIVE DIGITAL CONTENT

"Content is not just an economic asset, content is culture, it is the currency through which we build the sense of who we are. There is a democratic imperative to give people the ability to contest, remake and critique it." [37]

Consumer Focus is encouraged by the Interim Report's intent to explore how to support digital content creation in the UK and for UK consumers[38]. The government has a significant role to play in encouraging innovation by fostering digital entrepreneurship in the UK via, for example, tax incentive schemes, creation of ICT clusters, investment in adult education and help for IT start ups and small and medium enterprises. But there is also a role to play in supporting collaboration and evolution of content and responding to the wider possibilities of new technology rather relying on old creative rights models.

The digital age changes the relationship between consumers and businesses, with digital companies often providing merely a platform to their consumers to do their own business and create their own content (for example E-Bay or Facebook).The rise of user-generated content and blogs means that digital content is not only about moving existing content online (such as books or news), but also about user participation in creating and developing the new media, which has been demonstrated by the guardian.co.uk.[39]

We look forward to the Digital Britain report embracing the consumer as creator, supporting new business models and recognising the central role of user-generated content in providing diverse news, comment and analysis and adding economic value.

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[36] Interim Report, pg.7
[37] Celia Hannon, Peter Bradwell, Charlie Tims, "Video Republic", DEMOS, 2008, p.50, http://www.demos.co.uk/files/Video%20republic%20-%20web.pdf
[38] Action 10
[39] The guardian.co.uk site provides a growing number of opportunities for readers to discuss published content, or debate more generally, as well as publishing blogs. Based on their experience the guardian.co.uk has established "10 guidelines". See Community standards and participation guidelines, http://www.guardian.co.uk/talkpolicy

3.2 DIGITAL CONTENT FOR UK CONSUMERS

The Interim Report recognises the need for investment in original UK content and for a publicly funded plurality of impartial news sources at regional and national levels.[40] The BBC has been a pioneer with initiatives such as Backstage and the BBC iPlayer. Further encouragement needs to be given to public, private and non-profit institutions such as museums, libraries, and research institutions in providing UK citizens with digital access to their collections and archives. The British Library[41] and the London Philharmonic Orchestra[42] have whole heartedly embraced digital opportunities to provide UK consumers with relevant content, and initiatives such as Google Books[43] have highlighted that a huge treasure of knowledge and works can be made publicly accessible at low cost.

Whilst the internet provides a forum for broad participation and greater access to different perspectives, it is important to avoid dominance by large media organisations who will want to preserve and enhance their stake in the market. We recommend that the Government monitor concentration of ownership and the potential that this has to narrow the range of voices heard and products and services available.

3.3 YOUNG DIGITAL CONSUMERS

The Interim report emphasises the need for "plural public service provision of original children's production, especially for the over 10s".[44]Young consumers are often the early adopters of new digital products and services – making them prime digital consumers. This is especially evident in the rise of social networking sites and user-generated content platforms, many of which finance the operations with online advertisement and third party applications. Digital media provides an important social space for children as well as providing beneficial informal digital training. The NCC's work on online advertisement has documented the progressive commercialisation of the digital space many children have created for themselves and the issue of deliberate targeting of children by online advertisement remains a concern[45]. Initiatives such as the CBBC iPlayer[46] highlight the potential value of supporting the

[40] p.46
[41] See for example the British Library Online Gallery, http://www.bl.uk/onlinegallery/index.html
[42] See for example the London Philharmonic Orchestra Sound Exchange, http://www.philharmonia.co.uk/thesoundexchange
[43] See Google Books, http://books.google.com/
[44] p.48
[45] "Fair Game? Assessing commercial activity on children's favourite websites and online environments", NCC, 2007, http://collections.europarchive.org/tna/20080804145057/http://www.ncc.org.uk/nccpdf/poldocs/NCC182rr_fair_game.pdf
[46] see the CBBCiplayer, http://www.bbc.co.uk/iplayer/cbbc/

creation of non-commercial, educational and fun digital content for children, which spend an ever increasing amount of time online.[47]

The issue of controlling content and developing a competence in consumers to exert controls over content and block harmful content is particularly relevant to issues of protection for children. Consumer Focus is encouraged that child protection issues raised by the Byron review[48] will be considered within the newly established UK Council for Child Internet Safety. However, we would like the government to ensure that digital industries take greater responsibility in establishment of transparent and independently monitored codes of practice as well as improving access to parental control software.

RECOMMENDATION 8

The Government should recognise and promote the value of user-generated content and consider other ways of monitoring and supporting independent and diverse content.

RECOMMENDATION 9

The Government should develop initiatives to support the creation of non-commercial digital content for children.

[47] The average British child now spends 18 minutes per day on the internet, 24 minutes on a games console and 36 minutes watching television.
"Children spending half as much time in class as they do looking at screens" The Times, Jan 2009, http://www.timesonline.co.uk/tol/life_and_style/education/article5555797.ece
[48] Dr Tanya Byron, Safer Children in a Digital World, The Report of the Byron Review, March 2008 http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf

4. A DYNAMIC INVESTMENT CLIMATE – THE CONSUMER PERSPECTIVE

"A dynamic investment climate for UK digital content, applications and services that makes the UK an attractive place for both domestic and inward investment in our digital economy." [49]

4.1 DEMAND AND SUPPLY CYCLE

The Interim report seems to limit the rights focus to what people can't do rather than responding to new technology by embracing what people are enabled to do and what are the possibilities.

Consumer Focus does not condone the sharing of content in violation of copyright, but we see the rise of sites such as The Pirate Bay as an inevitable consequence of the digital market failing to meet consumer demands and needs. A dynamic demand and supply cycle has already driven some players within the digital content industry to take first steps towards filling the supply vacuum currently taken advantage of by the informal market. No company or industry can expect to maintain profitability by maintaining the same business model for 30 years, and the government should refrain from criminalising entire technologies or indeed large numbers of consumers. Legal MP3 online stores and EMI's innovative digital release of the latest Coldplay album[50] demonstrate that the digital content industry is seeking to re-engage with the consumer and technology in ways that legitimise standard interactions.

Consumer Focus disagrees with the Interim Report's assertion that "…if digital distribution and copying costs are lower so too are digital revenues."[51] Low digital distribution and copying costs mean that more consumers can be reached at lower cost. Many digital consumers are aware that the cost of burning DVDs is very low, hence if consumers purchase a DVD they do so for the content, not for the DVD. The lowering of distribution costs has had many positive effects for consumers, making numerous products more accessible and affordable. Digital technologies have helped to connect specialist business with interested consumers, allowing businesses of all sizes to source and/or provide cheaper or highly specialist products, opening up markets that were previously unprofitable.

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[49] Interim Report, p.7
[50] Viva la Coldplay as EMI raises the stakes on British band's new album, Times Online, http://business.timesonline.co.uk/tol/business/industry_sectors/media/article4123554.ece
[51] p.37

Consumer Focus believes that efficiency delivers many benefits to consumers and to sustainable businesses. This includes static efficiency, i.e. when the industry brings down the cost of a product by making the production process more efficient, as well as dynamic efficiency, i.e. the gains that result from entirely new ways of doing business. The future Digital Britain needs competition which leads to decisive cost or quality advantage, not just etching out profit margins within existing businesses. The UK can not hope to compete in the global digital market place if it only relies on static efficiency, but instead has to encourage innovation in product design and business models. The rise of digital technologies is the story of new products and business models and we ask the government to encourage a spirit of digital entrepreneurship that will form the backbone of the future Digital Britain.

4.2 THE COPYRIGHT DEBATE

The Interim Report seeks to highlight the issue of copyright violation in the digital sphere and talks in particular about "illegal file sharing" and "technological forms of piracy". File-sharing is a legitimate and entirely legal technology which offers many digital content distribution benefits; indeed the BBC iPlayer uses p2p technology to make its content available to a new audience on the net.[52] However the area is confused and it is specifically the issue of non-lawful digital content distribution which should be the focus for concern.

The digital genie will not go back into the bottle and there is currently no technical solution to the widespread sharing of digital content in violation of copyright or what is termed "the sea of unlawful activity" in the Interim Report – the only solution is a dynamic supply and demand cycle. As the Interim Report rightly states:
"We need to support rights holders as they adapt their way of thinking and working."

Copyright violation takes place in a multiplicity of ways, ranging from teenagers mashing-up a 30 second sample of a Lily Allen song with their own digital home video and posting it on YouTube to share with friends, through to organised criminals using high quality digital copies of popular blockbusters, such as "Sex and the City", to burn thousands of DVDs which are then sold by foot soldiers in pubs and bars. Surely the concept of proportionality dictates that the Government takes an appropriate approach to different kinds of copyright violations.

We ask the government to push ahead with implementing recommendations of the Gowers Review of Intellectual Property published in December 2006.[53] Thus far

[52] BBCiplayer, What is peer-to-peer?
http://iplayerhelp.external.bbc.co.uk/help/download_programmes/peer2peer
[53] Our concerns have been submitted to the Intellectual Property Office Consultation, "The Future: developing a copyright agenda for the 21st Century, February 2009.

about half of the recommendations have been implemented, mainly in relation to enforcement. We would like to see further progress in implementing the recommendations relating to the reform of intellectual property law so that government departments do not find themselves in the position of having to enforce an intellectual property regime that has lost legitimacy.

New business models are developing to reflect what consumers want, e.g. sites that stream music, such as Spotify[54] and Last.fm[55], offering consumers free access to millions of music tracks legally and providing a source of revenue for the rights holders. Consumer Focus agrees with rights holder Jamie Cullum that:

"You can't prosecute a 12-year-old boy for illegally downloading a record. You just have to make it easier for him not to." [56]

4.3 "RIGHTS AGENCY"

The Interim report proposes a new approach to civil enforcement of copyright, via a rights agency, to facilitate and co-ordinate an industry response.[57] The Government is moving towards what has been termed the "graduated response", where consumers are disconnected from the internet after repeat warnings in an attempt to stop copyright violations. A number of European countries have by now seen the unilateral industry implementation of the graduated response and in both the Netherlands and Spain the approach has been struck down by local courts because it raises significant issues with regards to due process, privacy and proportionality.[58] We believe that such a response is unnecessary and disproportionate and likely to be challenged as a possible violation of human rights.

Consumer Focus also urges the Government to step back from the Interim Report's proposition of a "Rights Agency" with the following remit:

"to bring industry together to agree how to provide incentives for legal use of copyright material; work together to prevent unlawful use by consumers which infringes civil copyright law; and enable technical copyright-support solutions that work for both consumers and content creators."[59]

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[54] See www.spotify.com/en/
[55] See for example: Last FM http://www.last.fm/music/Jamie+Cullum
[56] http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/music/article5786408.ece
[57] Actions 11 and 12
[58] Jacqueline Klosek and Tamar Gubins, *United States: Combating Piracy And Protecting Privacy: A European Perspective,* Goodwin Procter http://www.mondaq.com/article.asp?articleid=67534&login=true&nogo=1
[59] Action 11

In a free and fair market it appears anti-competitive for any industry to come together under the banner of a Government endorsed agency with the purpose to "agree" new business models across the industry. Instead digital content providers should re-engage with their customers and re-establish themselves as innovative and competitive businesses.

In the same vein Consumer Focus warns against placing too much hope in silver bullets such as "technical copyright-support solutions". The progressive and ongoing demise of Digital Rights Management technologies illustrates that any technical solution created to protect an outdated business model and/or enforce a copyright regime that has lost legitimacy is likely to be ineffective in the digital context, mainly because it will be shunned by customers and/or cracked by digitally savvy youth.[60]

It is unreasonable and inappropriate for the Government to expect the ISPs to act as enforcers and interpreters of the law as envisaged in Action 13. The enforcement of intellectual property law is the responsibility of the judiciary. Rights owners have the right to bring proceedings for infringement and the EU IP Enforcement Directive requires Member States to provide fair and equitable remedies which must be "effective, proportionate and dissuasive". In England and Wales civil proceedings for the enforcement of copyright have traditionally been brought in the Chancery Division of the High Court and in 1989 a Patents County Court was established in London to deal with copyright and other intellectual property issues. This court was specifically created to provide a less expensive and prompt remedy to violations of civil copyright law[61] and it is not clear from the Interim Report why the Patent County Court is considered inappropriate to deal with civil copyright violations in the digital sphere.

4.4 PRIVACY AND SECURITY

The democratisation of Facebook's Terms and Conditions[62] demonstrates that digital technologies not only change the way business interact with their customers but it also highlights ongoing consumer concerns with regards to privacy and data security – more specifically the way personal data is stored, processed, amalgamated and shared. Research undertaken by the Information Commissioner's office indicates that 94 percent of the population thought that "protecting people's personal

[60] BBC News, *Q&A: What is DRM?,* http://news.bbc.co.uk/1/hi/technology/6337781.stm
[61] Cornish & LLewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied* Rights, 6th Ediction, Sweet & Maxwell, London, pg.57-58

[62] http://news.bbc.co.uk/1/hi/technology/7913289.stm

information was a major concern, ranking as the most important social concern along with preventing crime."[63]

The NCC has undertaken significant work in the area of data security and privacy, including the publication of a book entitled *The Glass Consumer*. Despite the media frequently invoking the Orwellian image of Big Brother to characterise a digital society and economy where our lives and movement is increasingly documented, it is more accurate to speak of a society of *little brothers*. Digital connectivity means that Britain is moving towards increasing informational transparency that is not necessarily top-down, but to some extend democratised, giving rise to citizen surveillance and the inability to establish which personal information is held by who. We renew the NCC's call for consumer involvement in decision making on information risks otherwise a consumer backlash will arise against new developments. We call upon the government to undertake Privacy Impact Assessments (PIAs) for any private or public product or service that will store private data. In 2005 the Canadian government became the first jurisdiction to make PIAs mandatory for digital government programmes and services[64] and we would encourage the Government to extend such requirements to the private sector.

Consumer Focus would like the Government to clarify and simplify the legal framework governing data sharing in the public and private sector, as well as enhancing the role of the Information Commissioner's Office in policing data sharing. Consumers' continuous willingness to provide personal data will depend on whether or not they have confidence in the way data sharing and use is regulated. This confidence is fundamental to the future Digital Britain - as Lord Carter has recently stated:

"In future all content will be paid for either by people's attention spans or their personal data."[65]

RECOMMENDATION 10

The Government should abandon the graduated response and ensure that measures to enforce civil copyright law are proportionate.

RECOMMENDATION 11

The Government should immediately implement the recommendations of the Gowers Review relating to the reform of the law in relation to exceptions in copyright.

[63] Report on the Findings of the Information Commissioner's Office, Annual Track 2008, 4.1
[64] Ed. Susanne Lace, *The Glass Consumer: Life in a surveillance society*, National Consumer Council, 2005, pg.210- http://www.amazon.co.uk/gp/reader/1861347359/ref=sib_dp_pt#reader-link
[65] http://news.bbc.co.uk/1/hi/technology/7907529.stm

RECOMMENDATION 12

The Government should clarify the legal framework governing data sharing in the public and private sector and enhance the role of the Information Commissioner's Office in policing data sharing. Private and public bodies should be required to provide information to consumers about how to protect and control their own data and provide information about the form, collection and processing of data held. Data should only be collected, processed and used with the express and voluntary permission of consumers freely given and not because provision of goods and services in conditional on the supply of personal information.

RECOMMENDATION 13

Privacy Impact Assessments should be introduced in relation to any product or service that collects and stores personal data.

5. UPGRADING AND MODERNISING DIGITAL NETWORKS

"so that Britain has an infrastructure that enables it to remain globally competitive in the digital world."[66]

5.1 NET NEUTRALITY

Consumer Focus is encouraged to see that the Interim Report acknowledges the importance of net neutrality. In the report it is defined as requiring "those managing a network to refrain from taking action to manage traffic on that network"[67].

The principle is that the network should be neutral in terms of not restricting content, platforms or equipment that may be attached to the network beyond necessary traffic management.

Consumer Focus strongly supports the principle of net neutrality because it not only ensures that the internet and digital technologies more generally maintain their current vibrancy, but it also ensures a free and fair digital market and encourages new entrants to invest in the market. Hence we call upon the government to commit to net neutrality and ensure that broadband providers (fixed and mobile) maintain a neutral network, i.e. they refrain from blocking internet applications and content beyond necessary traffic management and assisting in the prevention of grave criminal conduct (such as child pornography). In the absence of net neutrality broadband providers may block the content of competitors or prioritise and edit available content.

We also call upon the government to guarantee net neutrality in terms of inter-compatibility and inter-operability of digital technologies. It is unacceptable that consumers already face the situation where digital technologies and applications are not compatible beyond what may be termed expected technical difficulties. For example, consumers legitimately expect a MP3 they have purchased legally to play on any MP3 audio player, regardless of who the manufacturer is – in the same way any vinyl record purchased can be played on any record player. However this is currently not universally the case. Similarly DVD region code restriction, used to enforce price discrimination on a global level, means that consumers may not be able to play the DVD they have legally purchased on a DVD player with a different

[66] The Interim Report, p.7
[67] p.22

region code and/or view it in another region.[68] Lack of compatibility in digital technologies and DRM technology may be deliberately employed for anti-competitive ends and thus cripple the open and free digital market. We would like the final Digital Britain report to commit to standards of net neutrality and interoperability to facilitate competition in the digital market.

5.2 CONVERGENCE AND OVERSIGHT

Action 18 of the Interim Report indicates that the Government will put forward detailed plans for a new governance and accountability structure to support Digital Britain. We would like to point to a 2008 OECD policy brief entitled *The Future of the Internet Economy* which states that:

"As convergence takes place and investment in next generation networks (NGN) begins, the role of very fast optical fibre networks "to the home" becomes increasingly important given that emerging applications, such as high-definition television and video-on-demand, require increasing amounts of bandwidth. The regulatory challenges associated with convergence are significant. With migration to Internet Protocol-based networks, one network can handle many types of converged services."[69]

Consumer Focus would like to encourage the Government to commit to an updating of the current regulatory regime, which appears increasingly outdated as internet, telephone, mobile, radio and TV converge. Clarity in strategy and regulation will have the added benefit of allowing businesses to undertake long term investments in Digital Britain.

RECOMMENDATION 14

We ask the Government to commit to net neutrality in terms of open access to digital content and inter-operability of digital technology.

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[68] In response to the development of DVD players that allowed consumers to play any DVD regardless of region code (known as region code 0) some digital content companies have responded by selling DVDs that can not be viewed at all in region code 0 DVD players.
[69] http://www.oecd.org/dataoecd/20/41/40789235.pdf pg.3

6. CONSUMER CONFIDENCE/RIGHTS AND RESPONSIBILITIES OF SUPPLIERS AND CONSUMERS

“Effective competition in a market depends on the active engagement and participation of consumers. That means consumers knowing what services, providers and technologies are available; consumers comparing services in terms of price and quality; and consumers actively seeking out new services and technologies.” [70]

Confidence in utilising new ways of operating stems from a knowledge base that is underlined by accessibility and competence, but ultimately confidence is built through the perception that the market is fair, has clear rules of operating, and there are reasonable and accessible avenues of redress. To this end we call for a charter on consumer rights to be adopted containing the following basic rights:

1. Right to access neutral networks
2. Right to access digital media and information
3. Right to access secure networks and services
4. Right to Privacy and data protection
5. Right to software and interoperability
6. Right to barrier free access and equality.
7. Right to pluralistic media[71]

We propose that the digital rights are enabled by way of consumer empowerment, regulation and mechanisms for redress, and Government initiatives and incentives to business.

6.1 CONSUMER EMPOWERMENT - TRANSPARENCY AND CHOICE

Ofcom research indicates that 29% of consumers of internet services believe it is difficult to make cost comparisons. [72] in order to properly exercise choice the consumer needs to be able to compare services and products, know what they are contracting for, and who they are contracting with. Often digital services are bundled (phone and broadband, television and film downloads) and prices quoted are for different services (different broadband speeds, times of access, length of contract

[70] “The Consumer Experience, Policy Evaluation 08, Ofcom
[71] “Charter of Consumer Rights in the Digital World”, TACD, March 2008.
[72] “The Consumer Experience 2008, Research Report, November 2008, Table 6.5, p.104

etc), making comparison difficult. Standard measures and debundling of the elements of the offer would provide a mechanism for consumers to compare.

Long term contracts, restrictions on switching and interoperability of software all impede choice and constitute anti-competitive practices that skew the operation of the market. Consideration needs to be given to making switching easier after certain minimum contract periods and to promoting open source standards to overcome these problems.

In relation to commercial transactions, it is imperative that the consumer know who they are dealing with and, in particular, that they are aware of the end supplier. Redirection from a vendor's website to other websites without the consumer being warned causes difficulty in identifying who is the actual supplier and potential security problems. Clear statements about who is the vendor and who is therefore responsible for the supply of a service or product are basic contractual principles that need to be applied in the digital world.

6.2 REGULATION AND REDRESS

We welcome the Interim Report's commitment to industrial activism to ensure the UK benefits from the digital economy.[73] The consumer rights we propose are essentially those rights that already operate within a regulatory framework governing what we will call "conventional" transactions, with some new rights necessary to respond to new technology and ways of operating.

Extension of consumer law to the digital area should be non-controversial but is needed to deal with consumers perceptions about the anonymity of digital transactions and concerns about where to go for redress. There may be questions about adaptability but where business models are changing with new technology consumer policy should be responsive to the changes. Basic protections such as cooling-off periods, guarantees, rights of return, standard contract clauses, and fair, clear and comprehensible terms and conditions that are available in advance and can be easily physically accessed and saved are minimum conditions under which an existing market place already operates and the digital market place should operate.

In addition, standard clauses need to be developed for security of information, content control mechanisms, regarding personal information use and storage and sharing of material. Clauses relating to use of personal information should be opt in only and should not be a condition of contract completion. Consideration needs to be given to a "do not track" registry along the lines of those already operating to prevent

[73] p.4

cold calling and unsolicited mail. Disclosure and information obligations need to rest with content providers and ISPs.

The Internet is a global activity and international management of the Internet requires full involvement and co-operation between Governments, industry and consumers. There are particular challenges in relation to cross-border commerce and it is important that clear understandings are developed between States about how to deal with jurisdictional issues and provide a right of redress to consumers in their place of residence and/or at the place of entering into the contract, by way of local remedies.

The EU telecommunications package is expected to go to second reading in spring 2009 and, if the proposed measures are passed, would both set up a EU telecom market authority to ensure fairness and consumer protection across all 27 EU countries and logically form the basis for the review of the Communications Act 2003 to ensure a functioning and fair market place. The measures include:

- Transparency of contracts and simplifying price comparisons
- more consumer choice by reinforcing competition between operators and making switching easier
- strengthening the independence of national watchdogs
- better supervision of deregulated markets where EU-driven market opening has already led to competition
- making communication networks more reliable and secure, especially to withstand viruses and other cyber-attacks. .

We recommend the proposed measures as a basic model on which to move forward.

6.3 INCENTIVES TO BUSINESS

With the increased accessibility to the digital market and the availability of review and feedback mechanisms and collective online action there are already incentives and pressures to business to provide good product and content.

Compliance with uniform standards, commitment to accessibility and consumer best practice should be rewarded with appropriate endorsement such as the kitemark or European trust mark scheme or accreditation from Ofcom, thereby adding value to sustainable and fair operators within the market.

The Government should also use its purchasing power through procurement guidelines that prefer operators that take initiatives in line with the universal service commitment to access and uphold minimum standards.

RECOMMENDATION 15

Ofcom should give consideration to requiring comparable pricing information against standard measures for digital services.

RECOMMENDATION 16

Anti-competitive practices such as high penalties for ending contracts, lack of interoperability and difficulty in switching products need to be investigated by the appropriate bodies (e.g. Ofcom or the Office of Fair Trading) because of their potential adverse effects on the market.

RECOMMENDATION 17

Industry standards should be adopted in relation to

- clarity of contractual terms, particularly who you are contracting with and what you are contracting over;
- post-sale issues of reliability/durability of equipment, warranties and after sale service;
- appropriate back-up facilities with default back-up provision;
- security and virus protection that are incorporated into online products, services and networks free of charge.
- security standards for online payments and internet banking mandated at a higher level.
- equipment usability, design of web interfaces as well as the use of a range of formats which will enable better utilisation by the consumer
- open access and inter-operability of digital technology.

RECOMMENDATION 18

Compliance with the standards, commitment to accessibility and consumer best practice should be rewarded with appropriate endorsement such as the kitemark or European trust mark scheme or accreditation from Ofcom, thereby adding value to sustainable and fair operators within the market.

RECOMMENDATION 19

Information should be provided by all providers in relation to personal information, use and storage and sharing of material prior to completion of any contract or use of any service. Clauses relating to use of personal information should be opt in only and should not be a condition of contract completion. Consideration needs to be given to a “do not track” registry along the lines of those already operating to prevent cold calling and unsolicited mail. .

RECOMMENDATION 20

It is important that the proposed charter of rights is adopted initially as a set of aspirations and subsequently forms the basis of a regulatory environment which facilitates digital engagement and effective and efficient means to seek redress.

RECOMMENDATION 21

The Government should map current redress mechanisms for availability, affordability and effectiveness and mechanisms for alternative dispute resolution or arbitration should be established in relation to digital transactions. Given the potential for unfair online dealing to effect large numbers of consumers, collective mechanisms for redress need to be developed. We call upon the central Government to initiate pro-active co-operation with the devolved Governments and at an international level to achieve a better harmonisation of regulatory practices and codes.