



**Mobile Broadband Group**  
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**New media and the creative industries – written evidence to the Culture Media and Sport Committee from the Mobile Broadband Group**

The Mobile Broadband Group (“MBG”, whose members are O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes both the Committee’s timely inquiry into new media and the creative industries and the opportunity to submit written evidence.

**Summary**

- The creative industries today already derive a significant amount of revenue from content delivered to mobile phones. In recent years the market has grown strongly, to the point where the retail value of mobile content services in the UK is approximately £1 billion.
- The mobile operators have invested heavily, through handset subsidies and very competitive pricing, to ensure that their services are available to all social groups. There is no ‘digital divide’ in mobile.
- Furthermore, looking forward, as mobile networks and handset capabilities increase – so too is the likely breadth of content that consumers will be able to choose from whilst they are on the move. For example, initial trials for broadcast mobile TV have been successful. Early indications are that this service will be very popular with consumers and that it will be principally complementary to existing broadcast services. The mobile environment is potentially a very exciting source of new revenue and opportunity for the creative industries.
- With respect to content ‘regulation’ and protection of rights on the mobile platform and new media platforms generally, much work has already been done. For example:
  - On content regulation, the industry has established the self-regulatory Independent Mobile Classification Body that sets a framework for adult content. This has been established for over a year and functions well.
  - The mobile operators, in co-operation with ICSTIS, have developed self/co-regulatory codes to stamp out misuse of premium rate services and all mobile operators block access to illegal child abuse content, based on the list supplied by the Internet Watch Foundation.

- On copyright protection, operators have every incentive to ensure that content delivered to mobiles cannot be illegally copied. All operators have a comprehensive strategy for digital rights management based upon open standards agreed within the Open Mobile Alliance (OMA).
- However, a number of issues remain:
  - There are issues with the review of the Television without Frontiers Directive (TVwF), availability of spectrum for mobile TV and 'new media rights' for the distribution of television programmes on non traditional platforms.
  - On TVwF, the mobile operators support the Commission's intention to relax some of the rules on broadcasting. This is realistic and practical. However, we share the concerns of industry participants, Ofcom and the UK Government that the proposed approach to the regulation of new media platforms is misguided.
  - On spectrum, there is considerable uncertainty as to whether adequate spectrum will be made available for mobile TV. Other European Member States have allocated spectrum now for mobile broadcast TV. There is a danger that UK plc will suffer if Ofcom cannot accelerate the availability of suitable UHF frequencies before 2013. Many other member states will have thriving mobile broadcasting sectors. Indeed, the UK may be the one place in Europe where the London Olympics might not be viewable on a DVB-H or similar device. Availability of spectrum must be accelerated and allocated on an equitable basis.
  - There needs to be greater clarity over who holds the primary rights for TV content, commissioned by public service broadcasters, that is to be distributed over new media platforms such as mobile networks.
- In summary, with respect to regulation of new content and the protection of intellectual property much has already been done in the mobile industry to take account of the changing circumstances. Nevertheless, industry, regulators, the Government and Parliament still have work to do to ensure that there is an appropriate regulatory regime across all the new media platforms that meets consumer needs and at the same time promotes creativity and innovation in the UK. We look forward to working with all stakeholders to achieve the right regulatory regime.

## **Background**

1. The first cellular mobile networks were launched by Vodafone and Cellnet (now O2) just over 20 years ago. At that time, it was expected that a fully mature network would have approximately 250,000 [mostly business] customers. The only use that could be made of the network was to make a basic voice call and the telephones cost about £2,000. At first, there was not even a voicemail facility.
2. Since that early mis-forecast, the mobile sector has continuously exceeded expectations many, many times over.
3. Today there are more than 60 million mobile devices in use in the UK. Over 80% of the population carry at least one and an increasing number have two or even

three. Mobile telephony accounts for 2.3% of GDP in the UK, the third largest market sector (after Constructions and Hotels/restaurants).

4. The mobile operators have invested heavily, through handset subsidies and very competitive pricing, to ensure that their services are available to all social groups. There is no 'digital divide' in mobile.
5. The UK is the birth place of the text message. The first commercial transmission occurred in 1992 and in 2005, British customers sent more than 32 billion text messages.
6. As well as the mobile networks and the mobile phone retailers, the UK is host to a vast array of companies creating value added services for the mobile market. It is a very important segment for the UK both domestically and for UK plc's place as one of the leading economies in the world.
7. In recent years, the amount of content purchased for mobiles (e.g games, music and information and entertainment services) has grown very strongly. The mobile has also played a key role in the growth of interactive television, where text messaging has been used extensively in association with new TV shows (to answer questions, register votes, submit views etc.) In less than five years the mobile Premium Rate industry (currently the most popular method of paying for mobile content) has grown to £1 billion.
8. In the future, as 3G high speed mobile networks are more widely deployed and handsets achieve longer battery life, mobile content is expected to become even more sophisticated. Mobile will be used more extensively to browse the Internet while on the move (for example, to book theatre and travel tickets, to get maps and directions, to find information about the immediate locality), to take part in multi-player games and to pull down all sorts of audio visual content such as sports highlights, music videos and short audio visual clips.
9. In addition to 'pull' type content, where the customer determines the time at which content is viewed, mobile is increasingly entering the more traditional 'push' type broadcast content. At present this is delivered over 3G networks and live content is streamed directly to the customer's handset. However, this approach takes up a lot of network capacity and is not particularly efficient.
10. In the future, it is expected that TV content will be broadcast to mobile devices in the same way that terrestrial television is now delivered to domestic TVs through a network of transmitters. Regional trials are currently being undertaken by Orange in France, BT & Virgin Mobile in London and O2 in Oxford. Initial indications are that this type of service will be very popular with consumers.
11. This is intuitively logical. Consumers are increasingly using portable entertainment devices (e.g. mobile phones, iPods, portable Playstations, digital FM radios) to consume audio and audio-visual content. The main blockage to all these being combined into one are memory and battery life. But battery power has tended to follow its own version of Moore's law (computer processing power doubling every 24 months) and these problems will be overcome. The mobile phone is well placed, yet again, to exceed expectations.
12. All in all, with a 60m customer base in the UK, sophisticated connected devices, portability, location awareness and untapped potential – the mobile phone sector

offers the most exciting prospects to the creative industries for new sources of revenue.

13. Moreover, those creative industries that make a success of developing compelling new content for the UK mobile market will be very well placed to take advantage of similar opportunities arising in overseas markets and thus reinforce the UK's position as a leader in the field.
14. With respect to regulation of new content and the protection of intellectual property much has already been done in the mobile industry to take account of the changing circumstances. Nevertheless, industry, regulators, the Government and Parliament still have work to do to ensure that there is an appropriate regulatory regime across all the new media platforms that meets consumer needs and at the same time promotes creativity and innovation in the UK.

### **Copyright protection on mobiles**

15. Mobile operators are generally happy with the policy framework that has been developed for copyright protection on mobile phones.
16. The operators have every incentive to ensure that content is properly protected. It is not possible to sustain a business model for the distribution of commercial content on mobiles, unless it is.
17. The European Commission has sensibly allowed operators some flexibility in the format to be used for copyright protection and the Open Mobile Alliance (OMA), a coalition of the world's largest operators has created effective open standards for Digital Rights Management (DRM).
18. Commercial companies have developed products based on the open specifications that allow operators to distribute securely multiple content formats such as music tracks and videos. Operators also work with handset manufacturers to ensure end to end compatibility of the DRM systems.
19. Analysts expect data traffic and premium content revenues on mobiles to grow to \$40billion world wide in 2007, based on viable DRM infrastructures. The UK can expect to create and consume a significant portion of this total.

### **Dealing with the 'New Media Rights' for TV content originally commissioned by broadcasters**

20. One area of uncertainty that is holding back the development of the content industry in the UK, is the issue of who owns the rights to content originally commissioned for TV broadcast and who can sell those rights for distribution over the new platforms such as the Internet and mobile phones.
21. At present, there is rather a patchwork matrix of TV rights structures and arrangements that does not generally explicitly deal with rights over new distribution platforms. This frustrates delivering content over new platforms, for example, a mobile operator may find that in seeking to simulcast a particular channel, some of the programmes are not cleared for mobile transmission – hence leading to individual programmes being blocked out. We need to move to

a rights framework which delivers a clear, consistent and timely rights regime for all platforms. New media rights must be “business as usual” rather than remain an afterthought.

22. Ofcom is currently undertaking a consultation on the public service television production sector. The mobile operators are very pleased to see the Codes of Practice, which govern the relationships between the broadcasters and the independent producers, are to be reviewed.
23. A major objective for Ofcom is to achieve greater consistency and clarity in the approach and ownership and control of the rights for the distribution of TV programmes on the mobile and other new media platforms.
24. The relevant rights categories might include: simulcast distribution, time shifted distribution, on-demand services (pay per view) for short clips and re-purposed content (i.e adapted for consumption on a different platform), including looped content and ancillary products such as games and ring tones.
25. Evidence from trials of mobile TV and studies carried out by competition authorities have strongly indicated that content consumption on mobile and consumption on traditional TV are not close substitutes. For both social and technical reasons, subscribers use the services in completely different ways –for filling in brief moments of vacant time or quickly catching up on news; Mobile TV is a complementary service. As a consequence, mobile rights represent the potential for significant additional sources of revenue to the rights owners.
26. Mobile operators are very keen to see some strong principles emerge from the review:
  - that there is clarity and transparency over who owns what rights and who has a say in how they are exploited (which can be different to ownership)
  - that the market for alternative platforms is not foreclosed by rights holders being able to negotiate excessive ‘holdback’ periods (i.e, the duration of the primary rights package before the producer can sell any secondary exploitation of a programme)
  - holdback periods for mobile content should be set at a minimum.
  - there should be plenty of scope for producers to find new ways of exploiting rights and expanding the market where possible.

### **Spectrum for mobile TV**

27. As explained above, the mobile sector is already delivering significant revenues to the creative industries. A further potential source for high growth is from mobile TV.
28. The revenue derived will be mostly additional to rather than a substitute for revenue derived from traditional TV. The trials have shown that customers use their phones to watch mobile TV in all sorts of different situations where normal TV is not available. They also consume content that is ‘re-purposed’ (i.e. specially

adapted for mobile) – shorter programming, different camera angles etc. – thus deriving added value from the same material.

29. A significant inhibitor of market development in the UK is the availability of radio spectrum.
30. It is essential that in the next few years, we can see a clear path to obtaining more spectrum for this service. Ofcom must give this matter a high priority.
31. Other European Member States have allocated spectrum now for mobile broadcast TV. There is a danger that UK plc will suffer if Ofcom cannot accelerate the availability of suitable UHF frequencies before 2013. Many other member states will have thriving mobile broadcasting sectors. Indeed, the UK may be the one place in Europe where the London Olympics might not be viewable on a DVB-H or similar device. Availability of spectrum must be accelerated and allocated on an equitable basis.
32. In the 2008-2012 time frame, the analogue TV service will be switched off and 46 new channels in Band IV & V will be freed up. 32 of these are committed to digital terrestrial television, to improve coverage and signal quality.
33. In allocating the remainder, Ofcom, in respecting its move to liberalise spectrum markets, must ensure that the mobile sector is given fair access to the spectrum that becomes available.

### **Content in the mobile sector**

34. Content delivered to mobile devices is regulated through a combination of self-regulation and formal regulation by Ofcom and co-regulation with the premium rate regulator (ICSTIS).
35. In January 2004, the mobile operators published a Code of Practice for the self-regulation of commercial visual and audio-visual content on mobiles. In outline, an independent body has been appointed (The Independent Mobile Classification Body - IMCB) to provide a classification framework against which content providers can self-classify their content as either **18** or unrestricted.
36. The framework is broadly consistent with standards used in other media and treats as 18, content that would receive a similar classification for the equivalent material in, for example, magazines, films, videos and computer games.
37. Content that is classified as 18 is only made available to those customers that have satisfied the mobile operators, through a process of age verification, that they are at least 18.
38. The IMCB is able to resolve disputes as to whether an item of content should be classified as 18 or not.
39. In addition to the measures taken for commercial content (i.e that content where the mobile operator has some editorial control over what is delivered to the customer), the mobile operators provide filters for content accessible from a

mobile over the Internet. In this way, parents can have some measure of control over what content children get access to.

40. All the mobile networks also block access to sites that the Internet Watch Foundation has identified as carrying images of child abuse and child pornography.
41. Since the operator's Content Code has been in force, despite reasonable growth in the availability of adult type material, the age verification and content blocking mechanisms have worked well to keep adult content out of the hands of children.

#### Proposed amendments to the Television Without Frontiers Directive

42. The new media landscape will offer consumers increasing choice of content and control over how, where and when they watch and consume content. It is essential that the regulatory regime is fit for purpose for this age – and the MBG agrees that existing TV rules on such matters as production quotas, advertising and product placement all need changing to reflect the realities of the new media landscape.
43. We anticipate that this landscape will drive a fundamental change in the way that content is “regulated” in the UK – away from a tendency for the ‘command and control’ model where the content consumed is determined by broadcaster and regulator, towards an environment of personal preference, where the consumer decides what to view based on informed choice – coupled of course with appropriate tools and measures to protect children from inappropriate content.
44. Ofcom, ahead of its European counterparts (and many people in the UK), is thinking along these lines. The mobile operators have taken significant steps to introduce self-regulatory measures for the new environment (as described above). However, we are very concerned with the European Commission's proposals to amend the TVwF Directive.
45. We agree that amendment of the Directive is required. However, we believe that in a number of areas, the proposed changes to the Directive are ill conceived, impractical and likely to have counter productive effects.
46. With respect to what is defined in the Directive as ‘**Linear**’ (i.e. real time broadcasting), the Directive is seeking to impose quotas for European works, independent productions and advertising spots across all linear [broadcast] platforms without any real assessment as to whether the public policy concerns of the past are really any longer relevant to the new media age.
47. We are not seeking to avoid regulation on new platforms but we are seeking to ensure that any rules are flexible and proportionate for the emerging and innovative markets such as mobile TV. It is disproportionate that the same rules should be applied to new, complementary, markets as to those that have been established for many years.
48. Accordingly there must be flexibility to defer extending any traditional TV regulation until there is greater clarity over which business models are successful

and commercially viable services are established – and whether new services are substitutes for traditional TV or rather complementary (as trials indicate to date). Otherwise innovative and nascent markets could be strangled. The principles of “Better Regulation” must be followed before any new regulation is introduced.

49. Such an approach would also be equitable, as quotas were, for example, originally phased in for traditional broadcasters when the TVwF Directive was first introduced.
50. With respect to **non-linear services**, the MBG, along with the UK Government and Ofcom, does not agree with the European Commission’s proposal to extend the scope of the Directive to content that is consumed on demand, such as that delivered over the Internet, through video-on-demand or the mobile phone.
51. The Commissions proposals are not well thought through and a Directive is not an appropriate vehicle for tackling the problems they are seeking to address.
52. First of all, there is no logic in applying a Directive which seeks to promote a single European market to a market that is already global and where there are virtually no barriers to entry.
53. Secondly, the Commission is seeking to impose regulation on all ‘media service providers’ within their jurisdiction and to require the national regulatory authority to enforce the rules. There is no attempt by the Commission to assess what this might involve. Ofcom believes that a regulator ten times its present size would be overwhelmed by the task.
54. In the Internet age, a ‘media service provider’ can be anything from a multi-national company to a single person operating from home with a web-cam. It is not at all clear what Ofcom is expected to do to regulate this diverse producer group.
55. There are also considerable difficulties involved in defining an ‘audio visual media service’, which is *intended* to cover all [economic] audio-visual mass-media services. It is not intended to cover ‘purely private websites’. A private website, unless password protected, is a contradiction in terms and private individuals are becoming increasingly sophisticated at commercialising (and building audiences for) their websites, with advertising and pay per view content (often of an ‘adult’ nature). In any event, non-commercial web sites may present an equal risk profile and so it is not clear as to what end the Commission makes this distinction.
56. The MBG does not disagree with the Commission’s motives – to promote European culture and to protect minors; nobody is against the protection of children. But we do disagree with their methods. We share Ofcom’s view that what the Commission is attempting (which amounts to trying to regulate content providers on the Internet) is futile, expensive and counter-productive.
57. Regulation of content providers within the EU could drive economic activity outside its jurisdiction and thus reduce the prevalence of European content.
58. And even if Ofcom were successful in regulating all UK ‘media service providers’, it would only account for content produced within the EU. Anything produced outside the EU, which is equally available to consumers, would be unaffected.

59. The MBG argues Ofcom should not be forced to waste resources in this way. Money would be much better spent in educating consumers how best to protect themselves on the new media platforms and to work in partnership with internet service providers, mobile operators, advertisers and other interested parties to develop appropriate self-regulatory models.
60. The mobile operators with their package (content controls for commercial content, filters for Internet browsing and blocking of illegal sites) have shown that self regulation can offer a much swifter and more effective approach.

Any questions relating to this submission can be directed to Hamish MacLeod

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