



ASSOTELECOMUNICAZIONI
ASSTEL

ADERENTE A
CONFINDUSTRIA SERVIZI
INNOVATIVI E TECNOLOGICI

**Reflection Document of DG INFSO and DG MARKT about
“Creative Content in a European Digital Single Market: Challenges for the
Future”**

**A contribution to the DG INFSO and DG MARKT reflection by
Assotelecomunicazioni – ASSTEL**

Rome, January 2010

**Position paper on the Reflection Document of DG INFSO and DG MARKT about
“Creative Content in a European Digital Single Market: Challenges for the Future”**

What is ASSTEL

Assotelecomunicazioni-ASSTEL is the business association of Italian telecom operators, a member of Confindustria Servizi Innovativi e tecnologici and thus of Confindustria, the main employers' association in Italy.

ASSTEL has 41 associates, and it covers the whole value chain of telecommunication network services, ranging from equipment suppliers, as the Italian branch of Ericsson or Nokia, to network operators. Among the telecom operators, ASSTEL membership goes from the incumbent Telecom Italia, to international players (like Vodafone, BT, Wind Telecommunications and Hutchinson), to national players (like Tiscali), funded with both international or domestic equity (Fastweb, Wind, 3, Colt...), to call-center operators (like Almoviva or E-care).

President of the association is mr. Stefano Parisi – ceo Fastweb – and the general manager is mr. Raffaele Nardacchione.

Italian Telecommunications market in pills

Italian telecommunication market has been worth 45 billion € in the year 2008; in the same year, employees in the telecommunications industry in Italy have been 120.000 units.

ASSTEL Position on the Commission’s Reflection Document

ASSTEL interest for the issues of the Reflection Document

ASSTEL has a strong interest in the telecommunications and ICT markets development and this is the reason why we greatly appreciate the Commission initiative about stimulating an unprecedented, deep and transparent debate on the way content issues must be dealt with in the virtual environment, for the future.

The importance of market development and the participation of all the stakeholders

We think that only a virtuous cycle between network infrastructure and services and content creation can really boost growth for all the stakeholders, in the knowledge based economy Europe wants to become according to the Lisbon agenda.

An effective virtual environment can be a crucial competitive advantage for the European economic system, but its development is a complex issue, with many actors.

We welcome the Reflection Document by DG INFSO and DG MARKT because it gives a common

ground for discussion to these actors, paving the way for a coherent rethinking of business models, in the framework of guarantees for intellectual property rights and individual freedom rights that is at the core of the European way of thinking.

The reflection called-for by the Commission document aims at “creating in Europe a modern, pro-competitive, and consumer friendly legal framework for a genuine single market for creative content on line”.

How to build an effective European digital single market for content on-line

ASSTEL thinks this objective to be of the utmost importance and thinks that, to be sustainable, the market must satisfy each category of players. The challenge is to strike the right balance between interests of all the stakeholders, from the telecommunication and information technology industry to communication players and media, to content creators. These actors come from different experiences, they all are now facing a new market, due to technological innovation and the Internet revolution.

The reflection document by the Commission adopts the right approach, because it recalls the cornerstone of European cultural heritage in the copyright protection and enlightens the reason why it needs to be updated to the digital age. We think that a well-functioning and effective market for creative content on-line is the best way to protect each actor's rights: content creators' as well as consumers' and ICT operators'.

A conservative or – worse – repressive approach is costly, in the short run, and losing, in the long one: due to many reasons concerning technological innovation's potential and timing, and competition between countries, Commission's concern about European inaction eventually leaving the way for a residual role of the Union in the on-line markets is shared by ASSTEL.

Such a result would be detrimental not only for the European single digital market but for the whole European economy and also for those guarantees for copyright we want to confirm in the digital environment.

If the market doesn't work, the system goes to piracy and other illegal behaviours that raise problems for every actor of the value chain: content creators suffer losses, but lack of legal content hinders bandwidth appraisal for consumers, thus penalising infrastructure development; telecommunications and access operators suffer also from extemporary attempts by national authorities (government, parliament) to limit piracy locally, sometimes recurring to technically inefficient and expensive solutions.

The Internet has brought convergence between technologies (telecom, IT) and content, and the Internet is global; the challenge is at the international level and ASSTEL thinks that the best level to deal with this issue is at the European level.

Principles must be defined at the European level in order to let the single digital market for content on-line develop enough to deliver value for its actors: it is not possible without legal offers.

The importance of availability of legal offers

The European regulatory framework must be coherent and flexible, in order to permit legal offer of on-line content, in a pro-competitive way. In such a framework, new business models will continue to be experimented, so as to find the best affordable solution for consumers'; right owners can be compensated for their work under various schemes. The rules at European level must be flexible enough to support trials of commercial offers, with the right time-to-market that is also a crucial issue.

ASSTEL appreciates Commission's reference to user created content and interactive services. This kind of content is gaining importance and it is somehow an innovation, breaking the old paradigm of IT being used on media content. The content is now created through IT by consumer: some of the old options – such as the private copies levies – are difficult to understand in this case.

A coherent system for digital market

A coherent approach should build on sound economics to create an effective digital single market: first of all, what is traded in the market should be easily defined. With the current set of copyright law and authors' rights legal access to content is a very complex issue, sometimes too complicated to be attractive for operators who want to launch new offers, that thus are hindered. ASSTEL thinks that the whole system should be simplified: a streamlined multiterritorial or pan European licensing process is necessary and at least those licences needed to manage content on-line (covering performance and reproduction rights) should be unified.

Dealing with market rules, the policy maker intervention should in general be desirable only if justified by market failure. What are possible market failures in the digital single market of content on-line? The market is at an infant state yet, so that is hard to say, but the question must be kept in mind. ASSTEL thinks the rationale for the European regulatory framework for electronic communications should apply also in this case: market analysis should be the economic base for rules and analysis needs figures and information.

An on-line data base for ownership and licences information

The Commission proposal for a data base on ownership and licences of authors' rights is welcome, because information is at the core of every decision, even more in infant industries. Moreover, increasing information circulation can be healthy in itself for market functioning, limiting the need for public intervention beyond a sound regulatory framework.

Alternative forms of remuneration for copyright

The Commission explicitly seeks views on alternative forms of remuneration at EU level. ASSTEL thinks that the regulatory framework should be flexible enough to let market players test different business models, thus fostering innovation on forms of remuneration by competition; it should also avoid to charge operators with unnecessary burdens, as it would be a general subscription fee. ASSTEL agrees with the Commission's opinion that the sharing out of proceeds from subscription fees can be a problem.

ASSTEL most of all thinks that such a fee would be incoherent in a system that uses licensing schemes also.

Indeed, licensing agreements set remuneration for copyright and authors' right at the beginning of the value chain, in a deal between access operators and rights' owners; a subscription fee on on-line usage, arguably on consumers', would lead to a double counting phenomenon for remuneration of authors' rights.

The difference between remuneration of authors' rights and compensation for piracy

The subscription fee model seems to be a compensation for piracy more than a market remuneration for authors' rights: ASSTEL disagrees on this approach.

Piracy is an illegal phenomenon and must be fought with firm belief, recurring to judicial and police authorities when necessary, but it cannot be mistaken for the normal functioning of digital market for content on-line, as well as ISP and access operators in general cannot be charged with consumers' misbehaviour.

Conclusions

In general, ASSTEL appreciates Commission's effort to "put in place balanced and durable foundations for an innovative and competitive market place across Europe" and shares both the rationale of Commission's analysis illustrated in the reflection document and its suggestions for the need for a proportionate but comprehensive reshaping of European rules on digital single market for content on-line.

ASSTEL agrees with the Commission's aim to find the right balance between market players' interests and since it is a challenging task, ASSTEL hopes that the Commission will go on with the approach of consulting all the stakeholders in view of reflections that can further arise and new rules that can be proposed on these issues.