

Alex Lambert
ADDRESS

Helen Southworth MP
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4th February 2009

Dear Helen Southworth,

I have recently taken time to read the recent Digital Britain interim report. I would like to congratulate the government on investigating the importance of digital technology and our society. I also note that you are concerned over the universal access commitments for all sectors of the community – especially those children in disadvantaged areas. However, I have some concerns over some other parts of the content and suggestions made in the report.

- I welcome the call for “Next Generation Access” broadband, however the idea that we should stand by and allow net neutrality to fall behind is very worrying.
- Again, I recognise the difficulties faced in civil prosecution of individuals however, I have concerns over any process which places the burden on consumers to prove their innocence against industries claims. I am also concerned about the suggestion of an industry-only 'rights agency' to co-ordinate efforts to look into these sorts of measures.
- I am concerned by the report's reliance on DRM technology “properly applied” to protect rights. It has been shown time and again that DRM not only can be broken, but will be broken. DRM also tends to penalise those of us who chose not to use Windows or Mac OS X.

'Net Neutrality'

The internet has proven to be a massively important communication tool. The current set up which delivers all content equally allows for unparalleled access by all content providers – from individuals to major corporations. This concept has become known as net neutrality. Whilst the report doesn't come out in favour of losing net neutrality, it does make it clear that it sees it as a reasonable sacrifice to bring us 'Next Generation Access' [Action 2].

The report mentions that the “debate over possible legislation in pursuit of [net neutrality] has been stronger in the US than in the UK.” It's time we stepped up this debate and I hope you will share my concerns over the threat to this ideal.

Net neutrality is an important cornerstone of how the internet operates. It not only allows all content to be treated equally, it also allows all to become content providers. It also allows all to flourish equally. Without net neutrality, start-ups, charities and individuals with little funding will not be able to compete in the same way as 'big content'. Start ups and innovators such as eBay (online auction site), Groklaw (a very specialised blog) and Twitter (a microblogging service) would be restricted to the low bandwidth scheme. For those examples with text and images, high bandwidth at the user end may not be necessary however, before it was brought by Google, YouTube (pioneering online video site) would have suffered.

These sites did not start from large corporations. Start-ups requiring high bandwidth will have to find funding for high bandwidth costs on the customers' end as well as their own. They could also

find themselves negotiating with several ISPs who may have differing agreements with other content providers who may request exclusivity over certain areas. It will also risk pricing individuals and minority or specialist podcasters, vidcasters and adopters of new technology out of the market.

If net neutrality were to be abandoned two types of service would be available: a net neutral service and a non-net neutral service. The non-net neutral service is likely to be vigorously promoted as being able to better deliver high quality bandwidth for cheaper than its net neutral counterpart as the customer is subsidised by the content providers (in much the same way that BT is spinning its partnership with Phorm¹). Poorer consumers may have no choice but to accept a non-net neutral service or a service which is comparable to today's offerings rather than the Next Generation access the report wants us to be able to access. I understand from your question in the House of Commons on the report's release that enabling young people to access the internet safely, but in addition to this you should also consider the importance of being able to access it without commercial interests dictating what they can and cannot access.

The report advises that OFCOM's current belief is that "provided consumers are properly informed, such new business models could be an important part of the investment case for Next Generation Access". Given recent examples such as broadband speed and BT's spin on Phorm I am not convinced that consumers will be properly informed.

Rights Agency and Prosecuting

The report suggests the formation of a Rights Agency to discuss:

- "provid[ing] incentives for legal use of copyright material"
- "prevent[ing] unlawful use by consumers which infringes civil copyright law"
- "enabl[ing] technical copyright-support solutions that work for both consumers and content creators"

Several reports suggest that far from young people fostering a "resistance to paying for content", the internet enables them to take advantage of a 'try before you buy' philosophy. With more popular musicians choosing to forego record labels and self release, young people are becoming increasingly aware that the share of money that artists actually receive from the sales of their work is pitifully small in comparison to what the record labels take. Along with a more negative view record companies due to America's RIAA prosecutions, industry's attempts with DRM and other targeting of new uses of content there is a desire for more focussed support direct to artists.

I share the concern of the Open Rights Group² that the make up of this agency includes content creators and distributors but not consumers. This part of the report seems heavily biased in favour of rights holders over consumers and paints us as frustrated wrong-doers throughout. Allowing this bias in the representation of this agency will not create the consumer trust any such body would find necessary to be accepted by the public – especially if they are to have "the power to act to ensure that enforcement measures are effective and proportionate".

The unskippable FACT anti-piracy adverts at the start of some DVDs are another source of anger and mis-trust directed at the content industry. These adverts feature on DVDs which have been

1 See <http://www.openrightsgroup.org/2008/03/12/the-phorm-storm/>

2 See <http://www.openrightsgroup.org/2009/01/29/digital-britain-leaving-consumers-out-of-the-picture/>

properly and legally purchased but, rather than thanking us for buying proper copies, instead threaten us over piracy and treat us as the criminals. Pirated copies of these DVDs would likely have these adverts stripped before copying therefore creating an incentive to pirate and avoid these adverts and other DRM restrictions. These 'educational' adverts are therefore targeting only those who are already acting appropriately whilst not reaching those who do pirate and rather than being educational are threatening and accusatory.

DRM

Industry has tried a series of technological measures to limit our ability to copy content. These measures are known by the umbrella term “Digital Rights Management”. Unfortunately, in so doing they have also severely limited what we can actually do with the content we buy. This leads to consumers preferring the easier to use pirated material to the sanctioned but unruly DRM encumbered official media. This has been recognised by Apple who, unlike the suggestion in the report has recently announced they will be dropping, rather than embracing, DRM³.

A typical use of DRM is to restrict the devices that the content can be viewed on. For example, a book may be read anywhere, a CD can be played on any player. A DRM encumbered music file may only be allowed to play on one device meaning that to be able to listen to a song on both your computer and your MP3 player you must buy it twice. To watch a film on your Video iPod or the newer, DVD-less netbook you would have to pay additionally for the download of the movie you already own on DVD. This level of control - having to buy multiple copies of the same content for multiple viewing methods – is not fair to consumers.

DVDs come with region encoding which prevents, for example, American DVD releases being played on British DVD players. A DVD player has a key which it uses to unlock the content of the disc. Without such a key the content cannot be played. These keys require manufacturers to sign up to certain conditions and pay licensing fees. These fees cannot be raised within the non-propriety free software world. The conditions are also an anathema to the principles of free software. This would leave the free software community with no way to watch DVDs which they had legally bought and paid for.

DRM can also present a single point of failure which prevents people from using their purchases within mainstream legal usage. Recently the PC version of the Gears of War 4 computer game fell foul of this problem⁴. The DRM solution they used relied on a security certificate with an expiration date of late January 2009 (only a few months after release). When this certificate became out of date and therefore seen by the DRM solution as unreliable, the PC gamers were left unable to play their game.

It is also worth mentioning the recent trouble Sony got into when it's DRM solution involved an insecure programme being installed on the consumers computer without consent⁵. This programme allowed viruses, spyware and rootkits to be installed remotely.

DRM is not the solution to piracy. It treats all consumers as potential criminals without any form of proof, locks consumers out if they make unusual choices, presents major problems when it goes wrong and it fosters resentment of content producers.

I hope you can take these concerns forward to the appropriate minister and that a more balanced final report will be forthcoming.

3 See <http://www.guardian.co.uk/technology/2009/jan/06/apple-drops-itunes-copy-protection>

4 See <http://arstechnica.com/gaming/news/2009/01/pc-gears-of-war-drm-causes-title-to-shut-down-starting-today.ars>

5 See http://en.wikipedia.org/wiki/2005_Sony_BMG_CD_copy_protection_scandal

Yours sincerely,

Alex Lambert