



**DTI CONSULTATION DOCUMENT
ON THE ELECTRONIC COMMERCE
DIRECTIVE: THE LIABILITY OF
HYPERLINKERS, LOCATION TOOL
SERVICES AND CONTENT
AGGREGATORS**

JUNE 2005



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK.

We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Summary

The Department of Trade and Industry (DTI) is seeking the views of UK business, consumers and other organisations on whether Articles 12 to 14 of the Electronic Commerce Directive¹, (which limit the liability of intermediary service providers where they act as mere conduits, caches or hosts of information), and which were transposed into UK law by the Electronic Commerce (EC Directive) Regulations 2002, should now be extended to providers of hyperlinks, location tool² and content aggregation services.

DTI in response to the public consultation on the Electronic Commerce (EC Directive) Regulations 2002 stated that it did not propose to limit the liability of providers of hyperlinks, location tool and content aggregation services, but to review at a later date to see if they needed the liability limitation provisions extended to them. We are now seeking views on:

- a) whether the current law creates problems for providers of hyperlinking, location tools or content aggregation services,
- b) if it does, the nature of those problems,
- c) whether the extension of the limitations on liability in Articles 12 and 14 of the Electronic Commerce Directive to providers of these services is an appropriate remedy for the problems identified,
- d) if it is, how this should be achieved, and
- e) if by doing so, there would be adverse impacts on any other business sectors.

It would therefore be very helpful if you were able to provide us with your views, together with supporting evidence, to enable us to determine whether to extend Articles 12 to 14 of the Electronic Commerce Directive or not.

¹Directive 2000/31/EC

²Location tool providers refer to both automated search engines and human compiled search tools such as an index or directory

Issued: 8 June 2005

Respond by: 9 September 2005

Enquiries to: Nigel Hickson
Assistant Director
Europe & International
Business Relations,
Bay 202,
151 Buckingham Palace Road
London
SW1W 9SS

Telephone: 020 7215 1548
Nigel.hickson@dti.gsi.gov.uk

Paul Redwin
Senior Policy Adviser
Europe & International
Business Relations,
Bay 202,
151 Buckingham Palace Road
London
SW1W 9SS

Telephone: 020 7215 1853
paul.redwin@dti.gsi.gov.uk



Contents

Chapter 1.	Executive Summary and Summary of Questions How to respond Confidentiality Help with queries Summary of questions	4 - 8
Chapter 2.	Background Information Introduction to E-Commerce Directive European Commission First Report on the Application of the Directive purpose of the consultation	9 - 11
Chapter 3.	Current Intermediary Service Providers Liability under the Electronic Commerce (EC Directive) Regulations 2002 Mere conduit Caching Hosting	12 - 13
Chapter 4.	Analysis of Member States that have extended liability scope of intermediary service providers Austria Hungary Liechtenstein Portugal Spain	14 - 15
Chapter 5.	Issues surrounding Hyperlinkers and Location Tool Services Hyperlinkers/ Location Tool Services	16 - 22
Chapter 6.	Limitation of liability for Content Aggregators Content Aggregators	23 - 26
Chapter 7.	Partial Regulatory Impact Assessment	27
Annex I	Regulation 17 to 19 of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)	28 - 30
Annex II	Member States legislation that have extended the liability limitaton scope of intermediary service providers to cover hyperlinkers and search engines	31 - 41
Annex III	Partial Regulatory Impact Assessment	42 - 47
Annex IV	Code of Practice on Cosultations	48



Chapter 1 Executive Summary

1.1 Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 on certain legal aspects of information services, in particular electronic commerce, in the Internal Market ("the Directive")³ limits the liability of intermediary service providers where they act as mere conduits, caches or hosts of information. In its response to the public consultation on the Electronic Commerce (EC Directive) Regulations 2002 (that is, the principal regulations that implement the Directive) DTI said that it did not propose to limit the liability of categories of intermediary beyond the requirements of Articles 12 to 14 of the Directive. However, the Department did say that it would review with stakeholders whether problems existed in law in the provision of hyperlinks, location tool services and content aggregation to determine whether there was a need to extend these protections to providers of these services.

1.2 The aims of this consultation is to see:

- (a) whether the current law creates problems for providers of hyperlinking, location tool or content aggregation services;
- (b) if it does, the nature of those problems;
- (c) whether the extension of the limitations on liability in Articles 12 and 14 of the Directive to providers of these services is an appropriate remedy for the problems identified;
- (d) If it is, how these protections should be extended; and
- (e) If by doing so, there are adverse impacts on any other business sectors.

1.3 If as a result of this consultation it is decided to effectively extend Article 12 or 14 to content aggregation service providers, it may not be possible to do so by means of the secondary legislation made under the European Communities Act 1972, if this is the case primary legislation may be necessary.

What happens next?

1.4 The Government will use the responses received to help inform its decision on whether the current law creates problems for providers of hyperlinks, location tool or content aggregation services, and if so, what action will need to be undertaken to rectify the problem.

1.5 Decisions taken in light of the consultation will be published along with a summary of responses received later in the year.

³Directive 2000/31/EC (The Electronic Commerce Directive)



How to respond

1.6 When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and where applicable, how the views of members were assembled.

1.7 The deadline for responses to the consultation is **9 September 2005**.

1.8 Additional information on the UK implementation of the Electronic Commerce Directive can be obtained from the DTI website:

www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html

1.9 Your response should be submitted by letter or e-mail to:

Rob Walcott

Europe & International Business Relations

Department of Trade and Industry

Bay 202, 151 Buckingham Palace Road

London, SW1W 9SS

Tel: 020 7215 1807

E-mail: ecom@dti.gsi.gov.uk

Confidentiality and Data Protection

1.10 Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please mention this in your response. If this were the case it would be helpful if you would also provide a non-confidential version or indicate whether only the summary may be published. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to the information in your response for which confidentiality has been requested.

1.11 Access to information held by or on behalf of DTI is governed by the Freedom of Information Act 2000. Any requests for information received by the DTI in relation to this consultation will be administered accordingly. We will handle any personal data you provide in accordance with the Data Protection Act 1998.

Help with queries

1.12 Questions about the policy issues raised in the document can be addressed to:

Nigel Hickson or Paul Redwin

Europe & International Business Relations

Department of Trade and Industry

Bay 202, 151 Buckingham Palace Road

London, SW1W 9SS

Tel: 020 7215 1548 or 1853

Fax: 020 7215 4161

E-mail: ecom@dti.gsi.gov.uk

1.13 Our Code of Practice on Consultation is attached at Annex IV.



1.14 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Nick Van Benschoten
Consultation Co-ordinator
Department of Trade and Industry
Room 723
1 Victoria Street
London, SW1H 0ET
Tel: 020 7215 6206
E-mail: nick.vanbenschoten@dti.gsi.gov.uk

1.15 **Additional Copies**

Further copies of this document are available from:

DTI Publications Orderline
ADMAIL 528
London, SW1W 8YT

Tel: 0845 015 0010
Fax: 0845 015 0020
Mincom: 0845 015 0030
www.dti.gov.uk/publications; or

An electronic version is available at: www.dti.gov.uk/consultations.

Summary of Questions

Question 1 – Do you agree with the EU Commission conclusions in their ‘First Report’ on the application of the Directive concerning Articles 12 to 14? Please give your reasons for your answer.

Question 2 - In your experience what are the advantages and/ or disadvantages of the transpositions of the Member States that have already included the liability limitation cover for hyperlinks, location tool and content aggregation services? I.e. what has been the impact for service providers, rights-holders and individuals alike with regard to their transpositions?

Question 3 –With other Member States transpositions in mind, which of the liability limitations in Articles 12 to 14 (if any) should apply to each of the following intermediary service providers if the UK were to go ahead and provide legislative cover?

- i) Hyperlinkers;
- ii) Location tool providers; and
- iii) Content aggregation providers.



Please give your reasons behind your answer.

Question 4 - Do you think that providers of hyperlinks and location tool services need the extension of any of Articles 12 to 14? If so, what liabilities would be limited? And how significant are the problems currently caused by the lack of this extension? Please explain your reasons, examples would be helpful.

Question 5 - Alternatively, would an extension of any of Articles 12 to 14 of the Directive be detrimental to rights-holders and individuals? Please explain your reasons with examples if possible.

Question 6 – If you think there is a need to extend limitations on liability to hyperlinkers and location tool providers should this be achieved by an extension of Article 12 or by Article 14 ?

Question 7 –Is there any action that would give providers of hyperlinks and location tool services the protection they seek, other than through the extension of Article 12 to 14 to these services? Please explain your answer.

Question 8 – What (if any) would be the detrimental consequences caused by the extension of Articles 12 - 14 to providers of hyperlinks and location tool services? I.e. would it seriously impact on your profits/ viability or provide a major irritation? Please explain your reasons with examples if possible.

Question 9 – Do providers of content aggregation services agree with the assumption that if they are to be covered under Article 12 – 14, then the legislative vehicle will need to be primary rather than secondary? Please explain your reasons for your answer.

Question 10 – If you think there is a need to extend limitations on liability to content aggregation services, should this be achieved by an extension of Article 14 of the Directive? Please explain your reasons for your answer.

Question 11 - Do you think that there is any course of action that would give providers of content aggregation services the protections they seek, other than through the extension of Article 14 to these services? Please explain your answer.

Question 12 - Do providers of content aggregation services believe they are primary or secondary publishers? Please explain your reasons for your answer.

Question 13 – Would parties most affected by these proposals provide in their reply to this consultation, facts and figures that illustrate the benefits and costs that you/ your sector would incur if the UK Government either went ahead (or not) with a legislative measure to cover the liability of providers of hyperlinks, location tool and content aggregation services.



Question 14 –Would service providers who provide hyperlinking, location tool or content aggregation services, please indicate the number of notices/ claims of illegal content that they have received from August 2002 to February 2005? Of these, were there any settled in a UK Court of law? If not, did the out of court settlements reached cause any major detriment to your business turnover? Please would providers give examples to show the scale of the problem for your business.

Question 15 – Do you know of any jurisprudence in Member States of the European Economic Area on the liability of Internet service providers since August 2002, that has a direct impact on providers of hyperlinks, location tool or content aggregation services established in the UK?

Question 16 – Are there any other issues the UK Government should take into account when considering its policy on liability cover for providers of hyperlinks, location tool and content aggregations services?



Chapter 2. Background Information

Electronic Commerce Directive

2.1 The Electronic Commerce Directive⁴ (referred to in this Consultation Paper as "the Directive") was adopted on the 8 June 2000 and published in the Official Journal of the European Communities on the 17 July 2000. The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) ("referred to in this paper as "the Regulations") transposed into UK law the majority of the provisions of the Directive (except areas relating to financial e-services, which HM Treasury implemented separately). It should also be noted that the UK implementing Regulations of the Directive do not currently have 'prospective effect', therefore legislation passed after 30 July 2002 has to be made consistent with the Directive on a case by case basis. More information on the UK implementation of the Directive can be found on the links below:

Information on the UK implementation of the Directive and general e-Commerce issues can be found on the DTI website at:

http://www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html

or

Issues on e-financial services can be found on HM Treasury website at:

<http://www.hmtreasury.gov.uk>

2.2 The Directive's main objective is to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States⁵. This consultation document is concerned only with the limitations upon the liability of intermediary service providers contained in Articles 12 to 14 of the Directive and the merits of extending these limitations to providers of hyperlinks, location tool services and content aggregators.

History to the consultation

2.3 During the 2002 consultation conducted by the DTI on the implementation of the Directive, which can be viewed at,

http://www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html a number of providers of information society services and others made a

⁴Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000, P. 1).

⁵See Article 1.1. The Directive extends to EEA States.



strong plea that the provision of hyperlinking and location tool services should also benefit from the exemptions from liability set out in Articles 12 –14 of the Directive, and they argued that such a provision could be legitimately incorporated into the Regulations. Some providers of content aggregation services made a similar case for the extension of Articles 12 to 14 to the services they provide.

2.4 In its response to consultation the Department stated that, whilst it was sympathetic to these arguments, the arguments were not compelling enough to require the delay that would result from the amendment of the Regulations to contain such provisions. However, the Department stated its intention to discuss the matter further with key stakeholders before deciding whether further legislation was warranted.

European Commission's First Report on the Application of the Electronic Commerce Directive

2.5 The Directive does not explicitly address the liability of the providers of hyperlinks, location tool services or content aggregation. The consensus reached in the negotiations on the Directive was that the limitations on liability should deal only with, at that time, the most general and problematic barriers to online business, and should not expressly deal with these additional aspects of intermediary liability.

2.6 The European Commission was required to submit a report on the application of the Directive, accompanied, where necessary, with proposals for its adaptation, to the European Parliament the Council and the Economic and Social Committee by 17 July 2003, and is required to submit such a report every two years thereafter⁶. The Commission is required by Article 21.2 to address the need for proposals concerning the liability of hyperlinkers and location tool service providers in its proposals for adaptation in these reports.

2.7 The European Commission published its first report in accordance with these requirements in November 2003. In its assessment of the liability of Internet intermediaries the Commission stated that some Member States had decided to provide for limitations on the liability of providers of hyperlinks and location tool services in their implementation of the Directive motivated "by the wish to create incentives in investment and innovation and to enhance the development of e-commerce by providing additional legal clarity for service providers".

2.8 The Commission commented that, whilst it was not necessary for Member States to extend the provisions of Articles 12 to 14 of the Directive to cover hyperlinks and location tool services to correctly implement the Directive, the Commission encouraged Member States to further develop legal security by so doing.

2.9 This Commission report did not specifically address the need to extend Articles 12-14 to other information society service providers; this issue has been postponed until 2006.

⁶See Article 21 of the Directive



However in the 2003 Report the Commission undertook to continue to monitor and rigorously analyse new developments, including national legislation, case-law and administrative practices related to intermediary liability and to examine any future need to adapt the present framework of the directive in the light of these developments. The Commission also expressed the opinion that case law in Member States recognised the importance of hyperlinking and search engines to the functions of the Internet and appears in general in line with the internal market objective of ensuring the provision of basic intermediary services.

2.10 The Commission first report can be viewed on the DTI website at www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html, or alternatively on the Commissions website at <http://europa.eu.int>.

Question 1- Do you agree with the EU Commission conclusions in their 'First Report' on the application of the Directive concerning Articles 12 to 14? Give your reasons for your answer.



Chapter 3 Current intermediary service providers liability under the Electronic Commerce Directive

3.1 Articles 12 to 14 of the Directive contain limitations on the liability of providers of information society services where they act either as a mere conduit, in caching information or in hosting information. These articles are principally implemented in the United Kingdom by regulations 17 – 22 of the Regulations. The remainder of this chapter explains the implementation in more detail.

Mere conduit

3.2 Article 12 contains limitations on the liability of a service provider, which acts as a mere conduit and is implemented by Regulation 17(1). The regulation provides that where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service (i.e. the service provider plays a passive role as a conduit of information for content providers) or the provision of access to a communication network, the service provider (if he otherwise would) is not liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission, provided that the service provider did not initiate the transmission (i.e. he did not make the decision to carry out the transmission); did not select the receiver of the transmission; and did not select or modify the information contained in the transmission.

3.3 Regulation 17(2) provides that the acts of transmission and of provision of access referred to in Regulation 17(1) include the automatic, intermediate and transient storage of the information transmitted where this takes place for the sole purpose of carrying out the transmission in the communication network; and the information is not stored for any period longer than is reasonably necessary for the transmission.

Caching

3.4 Article 13 of the Directive limits the liability of service providers in respect of caching information and is principally implemented by Regulation 18. This regulation provides that where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) is not liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission, provided that the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request. In addition, to benefit from the limitation on liability, the service provider must not modify the information (i.e. he must not compromise its integrity), must comply with conditions



on access to the information (i.e. if access is dependent on payment of a fee or provision of a password or other information, the service provider must also meet those conditions and permit access by other recipients only in accordance with those conditions) and must comply with rules regarding the updating of the information, specified in a manner widely recognised and used by industry.

3.5 Finally the service provider must not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and must act expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, access to it has been disabled or a court or an administrative authority has ordered such removal or disablement.

Hosting

3.6 Article 14 contains the limitations on liability for those providers of information society services that store information provided by a third party and is principally implemented by Regulation 19. This regulation provides that where an information society service is provided which consists of the storage of information provided by a recipient of the service (e.g. the provision of server space for a website or newsgroup), the service provider (if he otherwise would) is not liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage provided that the service provider does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information. The limitation on liability is not available if the recipient of the service was acting under the authority or the control of the service provider.

3.7 The limitations in Regulations 17, 18 or 19 do not prevent a person agreeing different contractual terms and do not affect the rights of any party to apply to a court for relief to prevent or stop infringement of any rights. In addition any power of an administrative authority to prevent or stop infringement of any rights continues to apply notwithstanding Regulations 17, 18 and 19.

3.8 There are further provisions, which determine the burden of proof and partially define what constitutes an action notice.

3.9 You can find the full UK implementing text to these articles in Annex I to this document. You can also view the DTI guidance to the UK implementing Regulations to the Directive at

http://www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_031ec.html



Chapter 4 Analysis of Member States that have extended the liability scope of intermediary service providers

4.1 Four Member States⁷ and Liechtenstein have extended in some form the scope of liability limitation in Articles 12 and 14 to those that provide hyperlinking, location tool services and content aggregation in their respective transpositions of the Directive. The UK Government has discussed with each of the four Member States their reasoning and experiences so far.

4.2 The Austrian authorities reason for the extension of the scope was the uncertain legal situation for hyperlinkers in Austria. The Austrian High Court had determined that a service provider could be liable for the information or activity of a third party, which contravened competition law. The Court expressed the view that a service provider may be liable on the same basis in tort and under penal provisions. The Austrian authorities considered that the effect of these decisions was to disturb the general principles and aims of the Electronic Commerce Directive. The authorities also considered that the legal status of location tool providers was not made clear. As a result, the Austrian Electronic Commerce Act, which implements the Directive, was amended to extend the protections in Article 12 to providers of location tool services, as the authorities considered these services were similar to the services of a mere conduit. Article 14 is extended to providers of hyperlinks. The authorities said that they received strong opposition to this provision, especially from the music industry. So far the Austrian authorities say that no court decisions concerning section 14 to 17 of the Electronic Commerce Act (which implements Articles 12 to 14 of the Directive), have been published.

4.3 The Spanish legislation contains provisions that limit the liability of the providers of location tool services, hyperlinks and content aggregation services. The Spanish authorities consider that these services are analogous to hosting services because the service provider has in all cases a lack of control over the content. There has been no jurisprudence on interpretation of the implementing legislation, apart from Article 17 being invoked in their first instance courts.

4.4 The Portuguese authorities advised that their legislation extends the limitation on liability contained in Article 14 of the Directive to providers of hyperlinks, location tool services and content aggregation services to give these sectors some legal certainty.

4.5 The Hungarian authorities said that their legislation extends the limitation contained in Article 14 to location tool providers. The Hungarian legislation does not extend Articles 12 to 14 of the Directive to providers of hyperlinks.

⁷Austria, Spain, Portugal, and Hungary



4.6 The Liechtenstein legislation extends the limitation on liability contained in Article 12 to providers of hyperlinks and Article 14 to providers of location tool services.

4.7 As can be seen, these Member States have not taken a consistent approach in the extension of the liability limitations in Article 12 to 14 to providers of hyperlinks, location tool services and content aggregation services. All except Austria and Liechtenstein have extended Article 14 to the services on which they are conferring protection. In contrast, Austria and Liechtenstein have treated location tool services as analogous to mere conduits and extended the protections contained in Article 12. This raises the question of how the UK should extend the protection in Article 12 and 14 to providers of hyperlinks, location tool services and content aggregation services, if it is accepted that such extension is desirable.

4.8 The full transposition text regarding the extension of liability limitation to providers of hyperlinking and search engines of the four Member States can be found at Annex II.

Question 2 – In your experience what are the advantages and/ or disadvantages of the transpositions of those Member States that have already included the liability limitation cover for hyperlinker’s, location tool and content aggregation services? I.e. what has been the impact for service providers, rights holders and individuals alike with regard to their transpositions?

Question 3 – With other Member States transpositions in mind, what liability limitations should apply to each of the following intermediary service providers if the UK were to go ahead and provider legislative cover?

- i. Hyperlinkers;
- ii. Location tool providers; and
- iii. Content aggregation providers.

Please give your reasons behind your answer.



Chapter 5 Issues surrounding Hyperlinkers and Location Tool Services

Background

5.1 In their response to the Government consultation on the implementation of the Directive, providers of hyperlinks and location tool services raised concerns that the failure to extend the limitations of liability in Articles 12 to 14 to the services they provide would create legal uncertainty and would stunt the growth of electronic commerce. They argued that small and medium sized enterprises with an online presence would be particularly hard hit as they lack the financial and legal infrastructure to cover operational risks that result from this uncertainty. In addition it was argued that UK established service providers would be at a disadvantage to those established in a Member State that had extended these protections to hyperlinkers and location tool providers.

What are hyperlinks and location tool services?

5.2 The Directive does not contain any definition of either a hyperlink or a location tool service.

Hyperlinks

5.3 In this consultation we have assumed that a hyperlink is a line of text or image on a webpage that is linked to another webpage, either on the same site or in another website. Clicking on the link will take the user to another webpage, or to another place on the same page. Words or phrases that serve as links are underlined, or appear in a different colour, or both. Images that serve as links have a border around them, or they change the cursor to a little hand as it passes over them. There are three types of hyperlink:

"Linking" which takes you to a home page of a particular website e.g. www.dti.gov.uk

"Deep linking" is a link that takes you directly to a specific page (or part of a page) of a website e.g.

www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html,
or

"Framing", occurs where a webpage is linked to what appears in a "frame" of the original website visited and the Uniform Resource Locator (URL) remains that of the original website.

Location tools

5.4 In this consultation, a location tool service refers to both an automated search



engine and a human compiled search tool such as an index or a directory. These services are developed to enable a person surfing the Internet to find sites of interest.

5.5 The first location tool services were created by individuals surfing the Internet and compiling indexes or directories, which provided a focused method of accessing information. This type of service is now uncommon as the method of compilation is resource intensive.

5.6 The majority of location tool services are now fully automated; the web is searched using an algorithmic functionality and the information identified is then referenced using ranking and relevancy criteria. The software used by providers of automated search engines employs "spiders" (that is, computer robot programmes, referred to sometimes as crawlers or knowledge-bots) that roam websites and databases searching for key words in the URL and metatags in the URL registration of the sites it scans. These location tool services take the information gathered by their spiders and use it to create a searchable index of the Internet. Due to the automated way that these spiders search and gather information, providers of these automated search engines are literally unsuspected as to the information that is trawled each time and thus contained in their searchable indexes.

5.7 Some providers of location tool services also have a sponsored search facility incorporated within their service. Companies selling products or services bid for the ranking of their advertisements in the results to a search on a key word or phrase. The sponsored search results are often incorporated either at the top or bottom or to one side of the normal search results. The sponsored search technology is a hybrid of the algorithmic functionality that is found in automated search engines. The advertiser usually writes the listing, which is then reviewed by a search engine employee. The ranking system is based on the highest bid by the advertiser; that is the highest bid gets the best listing on the sponsored search. This sponsored search facility generates revenue for the provider of the location tool service, and is a service that is popular with consumers and advertisers alike. It also brings in extra revenue to these services providers and benefits the advertising industry by allowing them to place advertisements and links around a particular search result.

Why is Internet service providers vulnerable?

5.8 Articles 12 to 14 of the Directive protect information society service providers from liability in circumstances where another party is responsible for the act that gives rise to the cause of action. It is arguable that there is no need to extend any of the limits on liability in Articles 12 to 14 of the Directive to providers of hyperlinks and location tool services as the person seeking redress will almost always pursue the party responsible, not the service provider.

5.9 However, providers of these services have indicated that whilst they are not directly responsible for the damage which give rise to the cause of action, they are often pursued



in situations where the person responsible is either difficult to locate or has limited resources to satisfy any judgement delivered against him, or both.

What problems in law exist in the provision of hyperlink and location tool services?

5.10 Following discussions with providers of hyperlinks and location tool services, we understand that they consider that they are vulnerable to actions for copyright infringement, defamation and contempt. There may also be other actions to which service providers are vulnerable and we would be grateful for comments on this point.

Copyright infringement

5.11 Where a hyperlink or location tool service provides a link to copyright material the provider of service will not be reproducing the copyright material itself. However, the link will entitle individuals using the Internet to connect to sites containing copyright material and so potentially will enable those users, via the link to copy the material without authorisation.

5.12 As a person can infringe copyright in a work by authorising another to do an act without the permission of the copyright owner, it is arguable that the provision of the link may itself be copyright infringement.

5.13 Earlier case law concerning the sale of machines that could be used to tape copyright recordings determined that the makers of those machines did not infringe copyright by placing their products on the market. This was because it was possible for the recorders to be used in ways that did not infringe copyright and the manufacturers had no control over the use to which the machines were put by those who purchased them⁸. By analogy it is arguable that the provision of a link to copyright material does not necessarily result in the person using the link (infringing copyright) and so there is no infringement by the provider.

5.14 This argument is consistent with the view that anyone who posts information on the Internet must assume that others will provide links to it and implicitly consents to such linking. That is, there is an implied licence from the owner of content on a website to the provider of hyperlinks to that site and no copyright is infringed by the provision of any such link. Indeed article 5(1) of the Copyright in an Information Society Directive⁹ exempts transient copying from liability and the US provision on which it is based exempts certain specified types of liability for the placing of hypertext links. exempts certain specified types of liability for the placing of hypertext links.

5.15 There are limitations to this argument. Copyright notices on a site may operate to negate any such implied licence and where the hyperlink or location tool service circumvents passwords or other protections to provide the link there may be liability under articles 6 and 7 of the Copyright in an Information Society Directive as well as for copyright infringement.

⁸CBS Songs Limited V Amstrad Consumer Electronics PLC [1988] A.C. 10132

⁹2001/29/EC O.J. L167, 22.6.01, P 11-19



5.16 Further, the decision in *Sony Music Entertainment (UK) Limited and others v Easyinternet Café Limited*¹⁰ last year suggests that any person that has a role in the infringement of copyright may be liable.

5.17 In cases in the Netherlands, and Belgium¹¹, the courts have accepted that the provision of a hyperlink to a site containing copyright material does not in itself constitute infringement of copyright, as infringement only occurs where the material is copied by a person using the link. However, this protection may be lost if the hyperlink provider is aware that there is a risk of infringement by providing a link to a site and fails to take adequate measures to prevent it.

5.18 The Copyright Designs and Patents Act 1988¹² provides that a person who infringes copyright is only liable to damages once he knows that infringement has been committed or has reason to believe that copyright subsists in the work to which the action relates (see section 97(1)¹³). So, in the case of liability for damages, it can be argued that the extension of the protections in Article 12-14 would not give any greater protection to hyperlinkers, location tool and content aggregation service providers than they have at present.

Defamation

5.19 The Law Commission considered the law relating to defamation and its application to the Internet in a scoping study published in December 2002¹⁴. The main areas studied were the liability of Internet service providers (ISPs) for other people's material; the application of the limitation period to online archives; the exposure of Internet publishers to liability in other jurisdictions; and the risk of prosecution for contempt of court. In this consultation paper we refer to the study conclusions on the liability of ISPs in the context of the Directive. The Department for Constitutional Affairs is considering the wider issues raised by the Law Commission in relation to the liability of ISPs and its conclusions on online archives, with a view to a consultation in due course.

5.20 A provider of a hyperlink or location tool service will only be potentially liable for defamation if it publishes the defamatory statement, or is involved in its dissemination. It is unclear whether the provision of a link to a site containing a defamatory statement either through a hyperlink or via a location tool service does in fact amount to secondary publication. If it does not, there is no potential liability for providers and the extension of

¹⁰ 2003 EWHC 62

¹¹ *Church of Spiritual Technology v Dataweb* [2000] E.C.D.R 83, and *IFPI v Belgacom Skynet NV* [2000] E.C.D.R 239

¹² 1988 Copyright Patents Design Act was amended in 2003 by regulations (SI 2003 No.2498) implementing the Copyright Directive 2001/29/EC.

¹³ Section 97(1) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.

¹⁴ *Defamation and the Internet, A preliminary investigation Scoping Study 2,*



any of the limits on liability in Articles 12 – 14 would be irrelevant. However, an early case on defamation¹⁵ suggests (by analogy) that the hyperlinker may be regarded as acting as a secondary publisher.

5.21 The Law Commission expressed the view that, following the decision in *Godfrey v Demon Internet Limited*¹⁶, it is unclear whether Article 14 of the Directive, as implemented by the Regulations, gives any greater protection to ISPs than the protection for secondary publishers contained in section 1 of the Defamation Act 1996. If this were the case, the extension of the Regulations, insofar as they implement Article 14, would not in practice have any impact on the potential liability of ISPs in relation to actions for defamation.

5.22 The Law Commission concluded that where an ISP disseminates defamatory material without any editorial control it would be regarded as a secondary, rather than as a primary publisher for the purposes of the Defamation Act 1996, and accordingly the defence in section 1(1) of the Act would be available. In brief, this section provides that the ISP would have a defence if it could demonstrate that (a) it took reasonable care in relation to the defamatory statement's publication and (b) it did not know, and had no reason to believe, that what it did caused or contributed to the publication of the defamatory statement.

Criminal liability for contempt of court

5.23 Providers of hyperlinks and search engines have expressed concern that they have a high risk of liability for contempt of court. They are concerned that the English law of contempt operates to prevent the publication of material in the jurisdiction, which can legitimately be published elsewhere. Liability may arise where a person in the UK uses a search engine or hyperlink to link to a non-UK website that contains material which breaches English law. This issue was discussed at length in Part V of the Law Commission's scoping study, which can be obtained at <http://www.lawcom.gov.uk>.

Why should the limitation of liability be extended?

5.24 Providers of hyperlink and location tool services consider that their position is analogous to that of a service provider hosting a website. In all cases the provider of the service has no control over the content of the site to which the link is made. With location tool services that are computer generated there is no check upon the content of the site linked. Where the services are compiled by individuals, the person making the decision to include the site does so on the basis of a very limited scan of the contents – there is no audit of the full contents of the site and in any event the content is frequently updated so a more thorough check will not avoid this problem. The impossibility of conducting any monitoring exercise is demonstrated by the vast amount of webpages that can be accessed by some location tool services - Google has approximately 7 billion and Yahoo! over 4 billion webpages.

¹⁵*Hird v Wood* 918940 38 SJ 234

¹⁶[1999] 4 All ER 342.



5.25 As in most cases there is no contractual link between the provider of the hyperlink or location tool service and the provider of the site which is linked via the service, it is thus not possible for the service provider to obtain an indemnity from the website provider to limit its liability for any loss sustained by the Internet service provider as a result of illegal material placed upon the site. Whilst it is possible for a service provider to limit its liability to any person using the hyperlink or location tool service by means of a disclaimer, and to limit its liability through contract to companies which advertise on sponsored search sites, in the cases discussed above, these limitations would not apply to all potential claimants.

5.26 There is also a public interest argument for extending the relevant liability limitation Articles to providers of hyperlinks and location tool services in that the Internet would not operate if there were no navigation links. If providers of those links are subject to large and unlimited liability in providing those services, they may not continue to do so in such a wide fashion, with the corresponding loss in attractiveness of these services.

5.27 Some service providers have argued that a failure to extend the protections in Articles 12 to 14 of the Directive will impact the willingness of ISPs to continue to provide these services, or to provide them in their current form. If this perceived danger is real, the extension of the protections may be necessary to ensure that the Internet continues to properly function.

Are there reasons for maintaining the status quo?

5.28 Location tool service providers earn good revenue streams especially from their sponsored links and it is arguable that they should also take on the inherent risks that go with supplying data via their search portal mechanisms. These service providers are potentially able to limit their liability to advertisers on the sponsored links through contract and can require an indemnity against loss that they incur as a result of hosting sponsored link advertisements.

5.29 The extension of the limitations on liability for location tool services is controversial in circumstances where the service links into copyright material in a manner that makes the service similar to that provided by a content aggregator. For example, it is possible to access news services via a location tool service that usually provides no editorial content; the service is provided wholly through links to webpages. It is arguable that in such circumstances the provider of such a location tool service is aware that the links will result in accessing copyright material without consent and that Articles 12 to 14 of the Directive should have no application.

5.30 The lack of reported cases on the liability of hyperlink and location tool service providers in the United Kingdom also raises the question as to whether there is a need to legislate in this area. That is, it is unclear whether the failure to extend the protections available for information services providers under Articles 12 -14 of the Electronic Commerce Directive to hyperlinkers and location tool service providers creates confusion and uncertainty for those businesses. Therefore views are sought on whether the



limitations on liability in the Directive should be extended at a time when UK case law (and the jurisprudence of other Member States) determining their potential liability is still developing.

Question 4 - Do you think that providers of hyperlinks and location tool services need the extension of any of Articles 12 to 14? If so, what liabilities would be limited? And how significant are the problems currently caused by the lack of this extension? Please explain your reasons, examples would be helpful.

Question 5- Alternatively, would an extension of any of Articles 12 to 14 of the Directive be detrimental to rights-holders and individuals? Please explain your reasons, with examples if possible.

Question 6 – If you think there is a need to extend limitations on liability to hyperlinkers and location tool providers, should this be achieved by an extension of Article 12 or Article?

Question 7 – Is there any action that would give providers of hyperlinks and location tool services the protections they seek, other than through the extension of Article 12 to 14 to these services? Please explain your answer.

Question 8 – What (if any) would be the detrimental consequences caused by the extension of Articles 12 - 14 to providers of hyperlinks and location tool services? I.e. would it seriously impact on your profits/ viability or provide a major irritation? Please explain your reasons, with examples if possible.



Chapter 6 Limitation of liability for Content Aggregators

Content Aggregators

6.1 Content aggregators provide subscription services that give access to information, which the aggregators have obtained via agreements with publishers and other providers of that information. Some of the content is placed into the service directly by the publisher, or provider, such that the content aggregator has no control over the information that the subscriber accesses. An example would be share price information provided directly by a stock exchange onto a subscription service. Some of the multiple functions performed by content aggregators may constitute hosting and so be subject to the limitations of liability contained in Article 14 of the Directive.

6.2 However, as some responses to the 2002 consultation pointed out, Article 14 only extends the exemption from liability for third party content where such content is provided by "a recipient of the service", as defined in the Directive¹⁷. This will not be the case where the material is selected by the content aggregator and then made available to subscribers, even though the practical difficulties posed by both are similar to those of "hosters" in terms of the unwitting transmission of illegal information.

6.3 As mentioned in the executive summary of this document, if it is deemed necessary to extend Articles 12 –14 of the Directive to include providers of content aggregation services it will not be possible to do this by regulations made under section 2(2) of the European Communities Act 1972. This is because content aggregation, unlike hyperlinks and location tool services, is not mentioned in Article 21 of the Directive.

Why are content aggregators vulnerable?

6.4. Like hyperlinkers and location tool service providers, content aggregators consider that they are vulnerable to claims because they are more able to satisfy any judgement made against them than some of the providers of the information. In addition, content aggregators have a contractual relationship with their subscribers and will be liable if they provide a service that breaches the terms of that contract. This also has the advantage, that the aggregators are able to limit their liability to subscribers through these contracts. We discuss below (paragraphs 6.5 to 6.9) the rights of action that content aggregators consider they are most vulnerable to. We would be interested to know whether you think that we have correctly identified the principal risks for these service providers and whether they are vulnerable to other claims.

¹⁷"recipient of the services" [means] any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible" : article 2



6.5 It is therefore possible for the aggregators to impose contractual requirements that the material provided does not infringe copyright or any other rights and to require the provider to indemnify the aggregator in the event of that this requirement is breached and the aggregator incurs loss as a result. The defects in this method of limiting liability are discussed in paragraph 5.15.

Defamation

6.6 The Law Commission scoping study concluded that the aggregation of information could possibly be categorised as primary publishing for the purposes of the Defamation Act 1996. If this were the case the consequence would be that the defence of innocent dissemination under section 1(2) of the Defamation Act 1996 would not be available to the aggregator in any action for defamation. The extension of the limitations on liability contained in Article 14 of the Directive would in that case result in a change in the legal position of aggregators, who would be treated as more akin to secondary publishers.

Liability for economic loss

6.7 Whilst the content aggregators obtain the material through contractual arrangements with the providers of that information, the speed at which some of that information is made available to the subscribers is such that it is impossible for the aggregator to check the accuracy of the information. This is the case, for example, where the information consists of prices of stocks or shares, or currency rates. In some cases there are regulatory constraints on any delay in the release of that information making verification impossible.

6.8 Content aggregators have voiced concern that they may find themselves the subject of legal action in circumstances where the information posted is wrong and a subscriber has sustained loss as a result.

Criminal liability for contempt of court

6.9 The concerns that content aggregators may be unwittingly publishing information in contempt of court are identical to that of the providers of hyperlinks and location tool services (see paragraph 5.23).

Should the limitation of liability be extended?

6.10 There are conflicting views amongst content aggregators as to whether Article 14 of the Directive should be extended to cover these services. Some providers of content aggregation services asked the UK Government (in their responses to the 2002 consultation) to ensure that they were not liable for hosting problematic content until notified of its presence on their servers, by extending the liability concession to all content from any third party however it is obtained. The providers that argue in favour of the extension of Article 14 have pointed out that, although they have agreements with their sources of information, they could not operate commercially if they routinely inserted indemnity clauses in contracts with suppliers of content.



6.11 They point out that indemnities are ineffective, especially in cases of criminal liability, this being an ever-present concern for businesses that aggregate large quantities of investor relevant information sourced from third party investment banks and brokers. They argue that it is not the practice for dominant content owners such as major newspapers, stock markets, Government Departments and central European institutions to supply indemnities. Large institutions such as the European Community do not grant indemnities in relation to their databases that they licence to content aggregators. Without data from these content owners, aggregation products would often not be commercially viable.

6.12 Conversely, where the provider is a small company, it may be prepared to give an indemnity to the content aggregator but this may have little value as the provider has insufficient assets to meet obligations, which may arise. The practical consequence is that an aggregator may decide not to use the content owner's material in its services because it is unwilling to accept the exposure to liability. It is argued that the ineffectiveness and unavailability of indemnities from content providers exposes content aggregators to full liability, both civil and criminal for much of the content that they aggregate. This is despite the fact that in many instances they do not originate, cannot control and are not aware of the content that they aggregate.

6.13 The sheer scale and volume of the service offered by large content aggregators to their client base makes it impossible for them to monitor new material placed on their systems by third party providers. Content is increasingly added and coded automatically on a computer-to-computer connection between the content owner and the aggregating service without manual intervention in the process. In any event, any monitoring has to comply with the requirements of Article 15 of the Directive.

6.14 Other providers of content aggregation services have argued that they have contracts with all bodies that supply information to them, which stipulate what information can be used and how widely, as well as stipulating liability and giving assurances on indemnification. These aggregators considered that accepting information from monopolistic information suppliers like stock exchanges and other centralised institutions, who did not give any indemnities on the information that they provided, was a business risk. They argued that they do not place a contract with any content supplier that does not have the correct indemnification to cover any liability issues.

6.15 This gets to the heart of the issue in defining what constitutes a content aggregation service i.e. is it an instant non-edited service like a mere conduit or is it a value added service? Many content aggregators seem to know who they are linking to, and have contracts with most of these respective suppliers. Their concern is that they do not always edit the content that is processed by their computer systems. Reuters have pointed out that for the financial information services that they and certain other content aggregators provide; the Financial Services Authority (FSA) regard them not as mere conduits of information, but as a service provider of value added information. However, some providers of content aggregation services liken themselves to both mere conduits



(i.e. they do not initiate nor select the receiver of the transmission and do not modify the information contained in the transmission), and hosters (i.e. the information's stored at the request of the recipient of the service).

6.16 Portugal and Spain in their respective implementing legislation have included content aggregation services. The Portuguese legislation extends Article 14 to providers of content aggregation services. The Spanish legislation extends the protection in Article 14 to content aggregation services as well as providers of links and search engines.

Question 9 – Do providers of content aggregation services agree with the assumption that if they are to be covered under Articles 12 to 14, then the legislative vehicle will need to be primary rather than secondary? Please explain your reasons for your answer?

Question 10 – If you think there is a need to extend limitations on liability to content aggregation services, should this be achieved by an extension of Article 14 of the Directive? Please explain your reasons for your answer.

Question 11 - Do you think that there is any course of action that would give providers of content aggregation services the protections they seek, other than through the extension of Article 14 to these services? Please explain your answer.

Question 12 – Do providers of content aggregation services believe they are primary or secondary publishers? Please explain your reasons for your answer.



Chapter 7 Partial Regulatory Impact Assessment

7.1 The Partial Regulatory Impact Assessment on this measure can be found at Annex III to this consultation document.

7.2 A full Regulatory Impact Assessment was produced on the UK transposition of the Electronic Commerce Directive in July 2002, which included intermediary service provider liability. This Regulatory Impact Assessment can be found on the DTI website at http://www.dti.gov.uk/industries/ecomunications/electronic_commerce_directive_0031ec.html

Question 13 – Would parties most affected by these proposals provide in their reply to this consultation facts and figures that illustrate the benefits and costs that you/ your sector would incur if the UK Government either went ahead (or not) with a legislative measure to cover the liability of providers of hyperlinks, location tools or content aggregation services¹⁸.

Question 14 - Would service providers who provide either hyperlinking, location tool or content aggregation services, please indicate the number of notices/ claims of illegal content that they have received from August 2002 to February 2005? Of these, were there any settled in a UK court of law? If not, did the out of court settlements reached cause any major detriment to your business turnover? Please would providers give examples to show the scale of the problem for your business¹⁹.

Question 15 – Do you know of any jurisprudence in Member States of the European Economic Area on the liability of Internet Service Providers since August 2002, that has a direct impact on providers of hyperlinks, location tool or content aggregation services established in the UK?

Question 16 – Are there any other issues the UK Government should take into account when considering its policy on liability cover for providers of hyperlinks, location tool and content aggregation services?

¹⁸Information received for this question will be treated on a confidential basis with anonymous aggregated figures being published in the final Regulatory Impact Assessment document.

¹⁹Information received for this question will be treated on a confidential basis with anonymous aggregated figures being published in the final Regulatory Impact Assessment document.



Annex I Regulation 17 to 19 of The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013)

Mere Conduit

Article 12 of the Directive was implemented in the UK by Regulation 17 of the Electronic Commerce (EC Directive) Regulations 2002. Regulation 17(1) provides that where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service (i.e. the service provider plays a passive role as a conduit of information for content providers) or the provision of access to a communications network, the service provider (if he otherwise would) is not liable for damages or for any other pecuniary remedy or for any criminal sanctions as a result of that transmission provided that the service provider:

- i. did not initiate the transmission (i.e. he did not make the decision to carry out the transmission). The fact that a service provider automatically initiated a transmission at the request of a recipient of the service does not mean that he initiated the transmission in this sense;
- ii. did not select the receiver of the transmission. This does not imply that service providers cannot benefit from the limitation of liability if they select receivers as an automatic response to a request from the person initiating the transmission (e.g. a user's request to have an e-mail forwarded to a mailing list broker); and
- iii. did not select or modify the information contained in the transmission. Manipulations of a technical nature that take place in the course of the transmission (e.g. the automatic adding of headers) and the automated removal of viruses from e-mails do not fail this test if they do not alter the integrity of the information contained in the transmission.

Regulation 17(2) provides that the acts of transmission and the provision of access referred to in the Regulation 17(1) include the automatic, intermediate and transient storage of the information transmitted where:

- i. this takes place for the sole purpose of carrying out the transmission in the communication network, and
- ii. the information is not stored for any period longer than is reasonably necessary for the information.

The requirement for the storage to be "automatic" will be met if it occurs through the ordinary operation of the technology, for it to be "intermediate" if it is made in the course



of the transmission.

Caching

Article 13 of the Directive was implemented in the UK by Regulation 18 of the Electronic Commerce (EC Directive) Regulations 2002. Regulation 18 provides that where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) is not liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission provided that:

- i. the information is the subject of automatic, intermediate and temporary storage where the storage is for the sole purpose of making more efficient onward transmission of the information to the recipients of the service upon their request; and

the service provider:

- a) does not modify the information (i.e. he does not alter its integrity, as for Regulation 17(1)(c));
- b) complies with conditions on access to the information (i.e. if access is dependent on payment of a fee or provision of a password or other information, the service provider must also meet those conditions and permit access by other recipients only in accordance with those conditions);
- c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, access to it has been disabled or a court or an administrative authority has ordered such removal or disablement.

The Regulations do not specify what is meant by either "expeditiously" or "actual knowledge".

Hosting

Article 14 of the Directive was implemented in the UK by Regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002. Regulation 19 provides that where an information society service is provided which consists of the storage of information provided by a recipient of the service (e.g. the provision of server space for a website or newsgroup), the service provider (if he otherwise would) is not liable for damages or for



any other pecuniary remedy of for any criminal sanction as a result of that storage provided that:

the service provider:

- i. does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or
- ii. upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information; and
- iii. the recipient of the service was not acting under the authority or the control of the service provider.

Again, the Regulations do not specify how "actual knowledge" or "awareness" is obtained by the service provider. It is expected that the onus will be on the party alleging that liability has arisen to demonstrate that a service provider had actual knowledge or awareness but did not act upon it appropriately.

Regulation 22 provides that in determining whether a service provider has actual knowledge for the purposes of Regulations 18(b)(v) and 19(a)(i), a court shall take into account all matters, which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to:

- i. Whether a service provider has received a notice through means of contact made available in accordance with Regulation 6(1)(c); and
- ii. The extent to which any notice includes:
 - the full name and address of the sender of the notice;
 - details of the location of the information in question; and
 - details of the unlawful nature of the activity or information in question.



Annex II

Austria - (Federal Act with which certain legal aspects of electronic commercial and legal transactions are to be regulated (E-Commerce Act))

Part 5 – Responsibility of service providers

Section 13 – Exclusion of responsibility for transmission

S 13. (1) A service provider which transmits information input by a user in a communication network or provides access to a communications network shall not be responsible for the transmitted information, provided the service provider:

does not initiate the transmission;

does not select the receiver of the transmitted information; and

does not select or modify the transmitted information.

(2) The transmission of information and provision of access in the terms of paragraph 1 shall include the automatic, intermediate and transient storage of the transmitted information, provided such storage takes place for the sole purpose of carrying out the transmission in the communication network and provided the information is not stored any longer than is normally necessary for the transmission.

Section 14 – Exclusion of responsibility for search engines

S 14. (1) A service provider which provides users with a search engine or other electronic aids to search for third-party information shall not be responsible for the information retrieved, provided the service provider:

does not initiate the transmission of the retrieved information;

does not select the receiver of the retrieved information; and does not select or modify the retrieved information.

(2) Paragraph 1 shall not be applicable if the person from whom the retrieved information stems is subordinate to or supervised by the service provider.

Section 15 – Exclusion of responsibility for caching

S 15. (1) A service provider which transfers information input by a user in a communication network shall not be responsible for any automatic, intermediate and temporary storage for the sole purpose of rendering more efficient the transmission of information to other users when called up, provided the service provider:



does not modify the information;

complies with the terms and conditions on accessing the information;

complies with rules regarding the updating of the information as specified in standards generally accepted and by industry;

does not interfere with the admissible use of technologies, which have been determined in standards generally accepted and used by industry, to obtain data on the use of the information; and

acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Section 16 – Exclusion of responsibility for storage of third-party content (hosting)

S 16. (1) A service provider which stores information input by users shall not be responsible for the information stored on behalf of a user, provided the service provider:

does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

Section 17 – Exclusion of responsibility for links

S 17. (1) A service provider which provides access to third-party information by means of an electronic link shall not be responsible for such information, provided the service provider:

does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

Upon obtaining such knowledge or awareness, acts expeditiously to remove the electronic link.

(2) Paragraph 1 shall not be applicable if the person from whom the information stems is subordinate to or supervised by the service provider or if the service provider presents the third-party information as its own.



Section 18 – Scope of duties of service providers

S 18. (1) The service providers mentioned in section 13 to 17 shall not be obligated to monitor in a general fashion the information stored, transmitted or made available by them or to actively research circumstances indicating illegal activity.

(2) At the order of any domestic court authorised by law for this purpose, the service providers mentioned in section 13 to 16 must transmit to such court all information based on which the users of their services with whom they have concluded agreements concerning the transmission or storage of information can be investigated in order to prevent, investigate, clarify or prosecute legally punishable acts.

(3) Based on any order from the administrative authority, the service providers mentioned in section 16 must transmit to such authority the names and addresses of the users of their services with whom they have concluded agreements concerning the storage of information, provided knowledge of such information constitutes a material prerequisite for realising the duties assigned to the authority.

(4) The service providers mentioned in section 16 must transmit the names and addresses of any user of their services with whom they have concluded agreements concerning the storage of information at the request of third parties, provided such third parties have an overriding legal interest in determining the identity of the user or any particular illegal state of affairs, and furthermore substantiate that knowledge of such information constitutes a material prerequisite for legal prosecution.

(5) No other duties of the service providers to provide information to and co-operate with authorities or courts shall be prejudiced hereby.

Section 19 – Further provisions

S 19. (1) Sections 13 to 18 shall not prejudice any legal provisions in accordance with which a court or administrative authority may order a service provider to desist from, remedy or prevent any legal violation.

(2) Paragraph 1 as well as section 13 to 18 is also to be applied to providers, which provide electronic services free of charge.



Hungary – (ACT CVIII of 2001 on certain aspects of electronic commerce services related to the information society)

Section 2 – Definitions

For the purposes of the present Act:

- a) Electronic Commerce Service: a service related to the information society, the purpose of which is the sale, purchase and exchange of goods and services on a business basis;
- b) Electronic means: use of cable, radio optical or other electro-magnetic devices which serve to process, store and/or transmit data electronically;
- c) Service rendered from the territory of the Member States of the European Union: a service related to the information society which is rendered by a service provider engaged in actual activities related to services in connection with the given information society at its head office, branch office or place of residence situated in the territory of any Member State of the European Union;
- d) Recipient of the service: a private individual, legal entity or unincorporated organisation who/which uses services related to the information society;
- e) Information: any data, signal or image which may be processed, stored and transmitted electronically, regardless of whether the contents thereof are subject to legal protection;
- f) Service related to the information society: a service normally provided for consideration, at a distance, by electronic means and at the individual request of a recipient of services;
- g) Service aimed at the territory of the Republic of Hungary: all services with respect to which it may be assumed on the basis of the language used, the currency quoted and other circumstances that they are intended to be made accessible to users in Hungary;
- h) Services rendered from the territory of the Republic of Hungary: a service related to the information society which is rendered by a service provider engaged in actual activities related to services in connection with the given information society at its head office, branch office or place of residence situated in the territory of the Republic of Hungary;
- i) Regulated profession: the profession determined in Section 25, subsection (4) of Act X of 2001 on the Recognition of Foreign Certificates of Education and Degrees;
- j) Consideration: an obligation related to the use of services in connection with the information society which lies with the user and is to be met in the form of money



or in any other form;

- k) Service provider: a private individual, legal entity or unincorporated organisation rendering services which are related to the information society;
- l) Intermediary service provider: a service provider rendering services related to the information society which:
 - la) transmits the information provided by a recipient of the service in a communication network or provides access to a communication network (mere conduit and access provisions);
 - lb) transmits the information provided by the recipient of the service in a communication network and fundamentally serves to render the transmission of the information at the initiative of other users more effective (caching);
 - lc) stores the information provided by the user (hosting);
 - ld) provides tools facilitating information search for the recipient of the service (search engine);
- m) Private communication: a voluntary and mutual exchange of messages via electronic mail or an equivalent service, including any contracts entered into by way of such exchange of messages, and any information published through the use of services related to the information society if such information is not published in connection with any business, economic, commercial or public utility activities or the fulfilment of public responsibilities.

Section 7 – Liability of Service Provider and Intermediary Service Provider

7(1) The Service provider shall be responsible for any legal injury or loss caused through any information made available by it, the contents of which are in breach of any rule of law.

(2) An intermediary service provider shall not be responsible for any legal injury or loss caused to a third party through any information made available by another party and transmitted, stored or made accessible via any service related to the information society rendered by the intermediary service provider, the contents of which are in breach of any rule of law if it satisfies the conditions set out in Sections 8 to 11 and proceeds as may be expected in general in the given situation.

(3) In the event of the breach of law specified in Section 13, subsection (1) – (notification of unlawful services related to the information society), in addition to the cases mentioned in subsection (2), the intermediary service provider defined in Section 2, paragraphs lb)-ld) shall not be responsible for any legal injury or loss caused to a third party through any information made available by another party and transmitted, stored or made accessible via any service related to the information society rendered by the



intermediary service provider, the contents of which are in breach of any rule of law if it conducts the proceedings set out in Section 13 and proceeds as may be expected in general in the given situation.

(4) The exemption of the intermediary service provider under subsection (2) and (3) shall not prevent the person who sustained such injury by virtue of any information, the contents of which are in breach of any rule of law from also enforcing its claims aimed at the prevention or abandonment of such breach of law, from among its claims arising from the breach of law, against the intermediary service provider, in addition to the defaulting party, before a court or authority. If the intermediary service provider loses the lawsuit, it may not be obliged to reimburse the legal costs of the winner of the lawsuit, it may be obliged to reimburse the legal costs of the winner of the lawsuit, and the legal costs of the intermediary service provider losing the lawsuit shall be reimbursed by the defaulting party which is also a losing party to the lawsuit.

(5) The intermediary service provider shall have no obligation to check the contents of the information transmitted, stored or made accessible by it and shall have no obligation to check the contents of the information transmitted, stored or made accessible by it and shall have no obligation to seek any facts or circumstances which may refer to engagement in any unlawful activities.

(6) The intermediary service provider shall not be responsible for any loss incurred through the removal of or non-accessibility of the information it proceeds pursuant to Sections 7 to 11 or Section 13.

Section 8

1) The intermediary service provider defined in Section 2, paragraph 1a) shall not be responsible for any loss caused through the contents of the information transmitted if

- a) it is not the service provider that initiates the transmission of the information
- b) it is not the service provider that selects the receiver of transmission; and
- c) the information transmitted is not selected or modified by the service provider.

(2) The transmission of information and the provision of access under subsection (1) shall also include the interim and temporary automatic storage of the information transmitted if this only serves to implement the transmission of information and the information is not stored for any longer than is necessary for transmission.

Section 9

The intermediary service provider defined in Section 2, paragraph 1b) shall not be responsible for any loss caused through the interim and temporary storage of information if

- a) the service provider does not modify the information;



- b) access to the information stored complies with conditions on access to the information;
- c) the updating of the information in interim storage is in conformity with the widely recognised and used practice of information updating;
- d) such interim storage does not interfere with the lawful use of the widely recognised and applied technology which serves to retrieve data for the utilisation of the information; and
- e) the service provider removes the information stored by it without delay or ceases to provide access thereto as soon as it comes to its attention that the information has been removed from the network at the original initial point of data transmission or the provision of access thereto has been terminated or a court or another authority has ordered the removal thereof or the prohibition of access thereto.

Section 10

The intermediary service provider defined in Section 2, paragraph 1c) shall not be responsible for any loss caused through the contents of any information supplied by the user if

- a) it is not aware of any illegal activity in connection with the information or of the fact that the information violates anybody's right or lawful interests;
- b) it is not aware of any fact or circumstance which leads to the possible conclusion that the practice related to the information is unlawful or of the fact that the information violates anybody's right or lawful interests;
- c) as soon as it becomes aware of any fact referred to in paragraphs a) and b), it initiates measures without delay for the removal of the information or ceases to provide access thereto.

Section 11

The intermediary service provider defined in Section 2, paragraph 1d) shall not be responsible for any loss caused through making any information available under Section 2, paragraph 1d) if

- a) it is not aware of any illegal activity in connection with the information or of the fact that the information violates anybody's right or lawful interests;
- b) it is not aware of any fact or circumstance which leads to the possible conclusion that the practice related to the information is unlawful or of the fact that the information violates anybody's right to lawful interests;



- c) as soon as it becomes aware of any fact referred to in paragraphs a) and b), it initiates measures without delay for the removal of the access information or the prohibition of access.

Section 12

Based on the provisions of Section 10 and 11, the service provider shall not be exempt from liability if the user proceeds on behalf of or on the basis of the instructions of the service provider.

Liechtenstein E-Commerce Law

Article 14 – Exemption from liability in the case of search engines

A service provider who provides recipients with a search engine or other electronic tools to search for foreign information is not liable for the information retrieved, on condition that the provider;

does not initiate the transmission of the information retrieved;

does not select the receiver of the information retrieved; and

does not select or modify the information retrieved.

Paragraph 1 shall not apply if the person from whom the retrieved information originates is acting under the authority or control of the service provider.

Article 17 – Exemption from liability in the case of links

A service provider who provides access to foreign information through an electronic cross-reference is not liable for this information, on condition that the provider:

does not have actual knowledge of the illegal activity or information and, as regards claims for damages is not aware of facts or circumstances from which the illegal activity or information is apparent; or

upon obtaining such knowledge or awareness, acts expeditiously to remove the electronic cross-reference.

Paragraph 1 shall not apply if the person from whom the information originates is acting under the authority or control of the service provider or if the service provider presents the foreign information as their own.



Portugal – (Decree Law no. 7/2004 of 7 January 2004)

Article 11 (Principle of assimilation)

The liability of online service providers is subject to the common regime, namely in the case of content aggregation, with the specifications arising from the following articles.

Article 12 (Absence of a general obligation to monitor on the part of intermediary service providers)

Online intermediary service providers are not under the general obligation to monitor the information that they transmit or store, nor to investigate possible offences practised within their scope.

Article 13 (Common duties of intermediary service providers)

The following obligations towards the competent authorities fall upon intermediary service providers:

- a). to inform them promptly when becoming aware of illegal activities undertaken via services rendered;
- b). to meet requests for the identification of recipients of their services with whom they have entered into storage agreements;
- c). to comply promptly with the instructions aiming to terminate or prevent an offence, namely to remove or disable access to a given information;
- d). to supply lists of owners of hosted websites, where requested.

Article 14 (Mere Conduits)

Where the intermediary service provider only pursues an activity that consists of the transmission of information in a communications network, or the provision of access to a communication network, not having initiated the transmission, nor modified the contents of the messages transmitted, nor selected either the information or the receivers, he shall not be liable for the information transmitted.

The common regime of liability shall apply, nevertheless, where the provider does not comply with the usual rules of the sector regarding:

- a). the updating of the information; and
- b). the use of technology, to obtain data on the use of the information.

The Common rules shall also apply where the provider has obtained actual knowledge of the fact that the information has been removed from its initial source or access to it has been disabled, or that a court or an administrative authority with powers upon the



provider who has originated the information has ordered an immediate enforcement action towards such removal or access disablement, and the provider does not act expeditiously to remove or disable access to the information.

Article 16 (Hosting)

The intermediary provider of the server storage service shall only be liable for the information stored, under the common rules, where he has knowledge of an obviously illegal activity or information and does not act expeditiously to remove or disable access to such information.

The service provider shall be civilly liable where, faced with his knowledge of circumstances, he is or should be aware of the illegal nature of the information.

The common rules on liability shall apply where the recipient of the service is acting under the authority or the control of the provider.

Article 17 (Liability of intermediary providers of content aggregation services)

Intermediary providers of network content aggregation services, by means of search engines, hyperlinks or similar procedures that allow access to illegal contents, shall be subject to the liability regime that corresponds to that established in the preceding article.

Article 18 (Preliminary dispute settlement)

In the case provided for in articles 16 and 17, the intermediary service provider is not bound to remove the disputed contents or to disable access to the information on the grounds of a claim made by an interested party, where the illegality is not obvious.

In the cases provided for in the preceding paragraph, any interested party may appeal to the relevant supervisory entity, that shall present a preliminary settlement within forty-eight hours and notify it immediately to all those involved by electronic means.

Whoever has a legal interest in maintaining that content online is likewise entitled to appeal to the supervisory entity against a decision of the provider to remove or disable the access to that content, in order to obtain a preliminary dispute settlement.

The procedure before the supervisory entity shall be the object of further specific regulation.

The supervisory entity may alter at any time the preliminary settlement of the dispute.

Whatever the decision may be, the supervisory entity shall not be held liable; likewise, the intermediary service provider shall not be liable for having or not having removed the contents or disabled the access based on a mere request, where the illegality is not obvious.

The final dispute settlement shall be carried out via the common procedures.

The recourse to these procedures is without prejudice to the use by interested parties, at the same time, of the common judicial means.



Article 19 (Relationship with the right to information)

Content aggregation shall not be deemed irregular on the grounds that there are illegal contents in the destination website, despite the awareness of this fact by the provider.

The link is legal if performed with objectivity and remoteness, and represents a way of exercising the right to information; notwithstanding, it shall be illegal vvvvwhere it consists of a way of adopting the illegal content being linked to one's own.

The assessment shall be made having regard to the circumstances of the case, namely:

- a). the possible confusion of the contents of the origin and destination websites;
- b). the automatic or intentional character of the link;
- c). the area of the destination website to which the link is made.

Spain – (Law 34/2002)

Article 17 – Liability of service providers that provide links to content or search engines.

A provider of information society services that provides links to other content or includes content in its own directories or search engines shall not be liable for the information to which it directs the recipients of its services, on condition that:

it does not have actual knowledge that the activity or the information that it recommends or to which it provides a link is unlawful or that it infringes a third party goods or rights of a third party that could give rise to claims of damages; or

upon obtaining such knowledge, it acts with diligence to delete or disable the link in question.

The service provider shall be deemed to have the actual knowledge referred to in subparagraph (a) above when a competent body has declared that the information is unlawful or ordered that it be removed or that access to it be disabled, or the existence of the infringement has been declared, and the provider has become aware of that decision, without prejudice to any procedures with respect to the detection and removal of content that providers may apply under voluntary agreements or any other means of gaining actual knowledge that may be established.

The exemption from liability established in the foregoing paragraph 1 shall not apply when the recipient of the service is acting under the direction, authority or control of the provider that is facilitating the locating of the content.



Annex III

PARTIAL REGULATORY IMPACT ASSESSMENT

The Issue & Objective

The Electronic Commerce Directive contain limitations on the liability of providers of information society services where they act either as a mere conduit (i.e. the service provider plays a passive role as a conduit of information for content providers), in caching information (i.e. where an information society service is provided that consists of the transmission in a communications network of information provided by the recipient of the service), or hosting information (i.e. service providers that store information provided by a third party).

Currently providers of hyperlinks, location tools²⁰ and content aggregation services²¹, are not included in the scope of the UK implementing Regulations of the Electronic Commerce Directive, and the UK Government is currently consulting to see if businesses in these sectors need the legal certainty as those already enjoyed by intermediary service providers who act as a mere conduit, cache or host information by virtue of Regulation 17 to 19 of the Electronic Commerce (EC Directive) Regulations 2002.

Currently only four Member States have extended the liability limitations found in the Electronic Commerce Directive to either/ all providers of hyperlinks, location tools or content aggregation services, they being Austria, Hungary, Portugal and Spain. Liechtenstein, who is a member of the European Economic Area, has also extended the liability limitations to providers of hyperlinks and location tools.

Background

The Electronic Commerce Directive was implemented into UK law by SI 2002 No. 2013 in July 2002. The aim of the Directive and thus the Electronic Commerce (EC Directive) Regulations 2002 is to ensure that business done electronically throughout the European Economic Area benefits from the Internal Market. For electronic commerce this means applying the "Country of Origin" rule, which ensures that businesses only have to adhere to their country of establishment laws when conducting business electronically across the European Economic Area, instead of potentially adhering to 28 different set of national laws. There are derogations to the country of origin principle, which allow a Member State to cut across this process, on public policy, public security, public health or the protection of consumer grounds.

²⁰An explanation of what a provider of hyperlinking and location tool services do can be found in Chapter 5 of the Consultation document accompanying this Regulatory Impact Assessment.

²¹An explanation of what a provider of content aggregation services does can be found in Chapter 6 of the Consultation document accompanying this Regulatory Impact Assessment.



The Directive obliges intermediary service providers to provide contact and other general information on their website. The Directive also states the processes a service provider should adhere to when concluding a contract by electronic means.

Lastly, the Directive, which this document is solely concerned about, ensures that intermediary service providers will not be liable for damages or any other pecuniary remedy or for any criminal sanction where they can prove that they were acting within the definitions of a mere conduit, caching or hosting, and where they act expeditiously to remove or disable access to that information where required to do so. It is up to the prosecution to prove beyond reasonable doubt that the service provider had actual knowledge of the content and did not act expeditiously to take down the disputed material or block access to it from its servers.

Risk Assessment

If providers of hyperlinks, location tools and content aggregation services are not included in the protection offered to those acting as caches, hosts and conduits, their economic competitiveness may be impacted upon, resulting in them becoming less willing to provide certain services or imposing access conditions to their services. This could have a potential knock-on effect on the wider ICT sector that use the services and products from these providers by them being restricted in what information is made available to them.

On the other hand, if these service providers are given the protections that they seek there could be a risk of it lessening legitimate protections against content, which might be deemed illegal and/ or abuses a rights owner's²² complete enjoyment of their property. This may cause possible losses to rights holders of printed, audio, visual materials, due to the automatic feeds of location tools appropriating them.

Identification of options

Three principal options have been identified so far:

Option 1 – do nothing;

Option 2 – give providers of hyperlinks and the location tool services similar protection given to hosts, caches and conduits; or

Option 3 – give providers of hyperlinks, location tools and content aggregation services the protection given to hosts, caches and conduits.

²²Rights owner can be defined as either an owner of copyrighted material or an owner of Intellectual Property Rights.



Identification of the benefits

Option 1- This would keep the status quo, but this option would have zero benefits, and would continue legal uncertainty for several UK players.

Option 2 – This would allow providers of hyperlinks and location tool services to obtain the legal certainty that they have indicated that they need without being caught in the possible lengthy primary legislative processes of giving content aggregators the same legal protection. This option probably could be taken forward under secondary legislation using the European Communities Act 1972 or by a Regulatory Reform Order.

Option 3 – Apart from providers of hyperlinks and location tools, this option would also give providers of content aggregation services the same legal protection without the need to do it piece-meal. However, opting for this option would probably mean finding other legislative avenues other than by secondary legislation via the European Communities Act 1972, which would have an impact on how soon covering legislation could be put in place in the United Kingdom.

Quantifying and Valuing the benefits

Option 1 – This has the benefit that there will be no extra cost to Government, business and consumers alike. Intermediary service providers that act as a mere conduit, cache or host information would continue to benefit from current levels of protection.

Option 2 - This has the benefit of reducing the legal restrictions on providers of hyperlinks and location tools services that do business in the European Economic Area (EEA) i.e. this should lessen the legal costs that these service providers are currently exposed to. This would also benefit the wider ICT sector and consumers alike who use their services and products, as providers of hyperlinks and location tools will be encouraged with the legal certainty to continue and increase innovative products for their respective EU customer base.

Option 3 - This has the benefit of including providers of content aggregation services into the legal protection given to providers of hyperlinks and location tools in option 2 above. It will also encourage providers of content aggregation services to provide more innovative products to the financial sector and it will also cement the UK has a leader in supplying the world's financial markets and news media with the widest range of electronic information and trading support products.

Compliance costs for business and consumers

Any future proposed amendment legislation should not increase the compliance costs for either businesses or consumers alike that they do not already incur in this sector, as any proposed legislation would provide the necessary legal cover that these providers do not enjoy currently.



Economic Costs

There is a possibility that any proposed legislation could have an economic cost to rights holders of printed, audio, visual and works of art, who may have their material appropriated by the automated feeds of location tool portals without their prior permission being given and a fee agreed for such use by a third party.

There are also possible future employment costs if service providers are not given legal cover for their services and products in the UK i.e. they may consider due to the technological mobility of the services and products they convey, moving their operations outside the UK/ European Union to another third country where they may feel they have more legal and economic certainty.

These scenarios would obviously have a knock on effect to future economic growth in the UK within these sectors.

Consultation with small business: the Small Firms' Impact Test

Any proposed legislative measure should have minimum effect on small firms as most providers of hyperlinks; location tools and content aggregation services are classed as being either medium or larger businesses (i.e. employing 50 or more staff).

Businesses in these sectors who employ 49 or less staff will still benefit from any legislative cover from both criminal and civil actions, which they currently do not enjoy.

Competition Assessment

Any proposed legislative measures will probably not affect any particular market, as its aim will be to lessen a provider of hyperlinks, location tools and content aggregation services liability fresh-hold. However, as previously mentioned giving such providers legal cover both criminal and civil may have an impact on the publishing, audio and visual markets whose property may be used without their consent and without them receiving copyright fees.

Equality and Fairness Test

In general, the benefits and costs are expected to fall on providers of hyperlinks, location tools and content aggregation services. However, rights holders of copyrighted material and those with intellectual property rights may also be affected, along with individuals who may seek legal address for information that they feel damage their reputation, which these service providers carry on their portal/ software systems.



Options	Benefits	Costs
Option 1 - Status quo	Zero additional benefits.	Zero additional costs.
Option 2 - give providers of hyperlinks and location tool legislative liability limitation cover	<p>This option will give providers of hyperlinks and location tool services the legal certainty that they have asked for without the need to get caught up in possible lengthy primary legislative processes, which may be the case if content aggregation service providers are included in any proposed legislative measure.</p> <p>This option may also (as a result of such legal certainty) increase the provision of services by UK companies.</p>	<p>This option may exacerbate any possible economic loss that rights holders of printed, audio, visual materials could incur, due to the automatic feeds of location tools appropriating them without the rights holder prior permission and hence loss of any fee for use of the material by a third party.</p> <p>Also possible future employment and economic growth costs if businesses in these sectors decided to move away from the UK to a third country where they deem it to give them more legal and economic certainty.</p> <p>Individuals who feel that their reputation has been damaged may find that service providers with legal cover may decide not to take down material expeditiously.</p>
Option 3 – give providers of hyperlinks, location tool and content aggregation services legislative liability limitation cover.	<p>This option would give all three-service providers including content aggregators the legal certainty for the information that they carry on their systems, as well as the economic benefits noted above.</p> <p>Also would cement the UK as a leader in supplying the world’s financial markets with specialist electronic information and trading support products.</p>	<p>Apart from the costs highlighted in Option 2, this option would also possibly give providers of content aggregators cover in the event of them being subject to legal action as a result of them providing wrong information to clients where they sustain loss as a result.</p>



Results of the Consultation

[Await end of consultation process]

Summary of Recommendations

[Await end of consultation process]

Declaration

[Await end of consultation process]

I have read the Regulatory Impact Assessment and I am satisfied that the cost and benefit is the right one in the circumstances.

Signed by the Minister

.....

(Minister for Industry and the Regions)

Date:

Contact: Paul Redwin
Europe & International Business Relations
Department of Trade & Industry
Bay 202
151 Buckingham Palace Road
London, SW1W 9SS

Annex IV – The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designed consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Nick Van Benschoten, DTI Consultation Co-ordinator, Room 723, 1 Victoria Street, London, SW1H 0ET or telephone him on 020 7215 6206 or email to:

nick.vanbenschoten@dti.gov.uk.





Printed in the UK on recycled paper with a minimum HMSO score of 75.
First published June 2005. Department of Trade and Industry.
© Crown Copyright. www.dti.gov.uk/
DTI/Pub 000000k/04/05/NP.
URN 05/1245