

Response from The Publishers Association to the House of Lords Select Committee on the European Union's Internal Market Sub-Committee on Online Platforms and the EU Digital Single Market

1. The Publishers Association ("The PA") welcomes the opportunity to contribute to this inquiry into online platforms and the EU Digital Single Market.
2. The PA is the leading representative voice and trade organisation in the UK for book, journal and electronic publishers. Our membership of over 100 companies includes publishing companies in the academic, educational and trade sectors and comprises small and medium enterprises through to global companies.
3. Publishing is both a digital and international business with 35% of our combined revenues now coming from digital sources and over 40% from international trade. Publishers, therefore, fully support a digital single market and welcome any measures which can be shown to improve such a market, whether in the EU or the rest of the world.

Consultation questions

4. We do not intend to answer all of the questions posed as many are not relevant to our business, but we appreciate this opportunity to highlight two areas in which online platforms have the potential to create a negative impact in our sector: copyright infringement and the market dominance of established online players. Both of these issues either are restricting, or have the potential to restrict, innovation and growth in the publishing sector and stifle the contribution we make to the economy and the UK's cultural heritage.

Copyright infringement

5. The ability of the author to choose how they present and disseminate their work is paramount and a robust, enforceable, copyright framework is central to this. It allows authors to be recognised and rewarded for their work while incentivising publishers who invest in them and give them the means to support new talent.
6. By draining revenues from this eco-system, copyright infringement is a significant threat to the publishing industry. There are two main online sources for infringing content: websites specifically created to facilitate access to infringing material and those sites, many of them online platforms, which are legal, legitimate businesses yet via which illegal material can be promoted, identified and accessed.
7. Both can be tackled through existing legislation which requires site operators, where they have actual knowledge of infringement, to remove the content, and the ability of users to link to it. This is generally known as the "notice and takedown" process. Since March 1st 2015 The Publishers Association, via its bespoke Copyright Infringement Portal, have sent on behalf of its member companies and other users over 300,000 notices to infringing websites requesting them to take down material which infringes the rights of our members – over three million since the portal was launched in 2009. This same period has seen over one and half million requests to Google to delist infringing material.
8. While we appreciate pirate sites are outside the scope of this inquiry, it is clear that legitimate online platforms could and should do far more to protect users and creators from copyright infringement.

9. Search engines remain the first port of call for a significant number of people when looking for content online, and while not directly responsible for piracy, have the potential to play a significant role in reducing online copyright infringement. Research commissioned by the Motion Picture Association¹ found that 74% of people accessing pirate sites for the first time did so via a search engine. Similarly, the increase of social networks as a means to discover and access content is creating further challenges for the publishing industry in its attempts to protect its authors' works.

10. The publishing industry therefore believes that:

- Search engines should be required to delist sites which are the recipients of multiple take down requests.
- Search engines should also be required to block access to sites which have been the subject of Section 97A blocking orders. These sites have been found by the High Court to be facilitating access to illegal content on a substantial scale and therefore search engines should also be required to block access by their users.
- Similarly, sites which the Police Intellectual Property Crime Unit (PIPCU), after careful consideration of the evidence presented to them, have deemed to be infringing on such a scale as to warrant inclusion on its Infringing Website List should be excluded from search results.
- Google should be requested to stop its continuing practice of directing people to the ChillingEffects.org website when links to infringing content have had to be removed. Stopping criminals from making money is not a 'chilling effect'. It is vital if we are able to have a thriving creative content sector where authors receive payment for their work.
- Online platform providers who have received a notice should not only take down infringing material but also have a duty to ensure that the infringing content stays down and does not get uploaded immediately with a slightly changed URL.
- Social networks need to be far more transparent as to their policies regarding the promotion of illegal content via their services and far more robust in the enforcement of these policies. The PA issues numerous take down requests to Facebook in relation to infringing books being offered on the site. While these requests may only relate to 30% of the content on one group's page, they relate to 100% on another. Individual infringing posts are removed but any sanctions against the wider group, which can be focused solely in making infringing content available, are rarely seen.

11. We also welcome the focus the Commission gave to the need to combat illegal content on the Internet in its Communication on the Digital Single Market, published at the start of the summer. Alongside a commitment to analyse new measures to tackle online infringement the Commission questions whether online intermediaries should be required to "*exercise greater responsibility and due diligence in the way they manage their networks and systems – a duty of care*". The Commission clearly believes that platforms should be doing more than many currently do to ensure that they are free of infringing material, and that a plea of ignorance is insufficient defence. Too often, online platform businesses hide behind the "safe harbour" provisions of the E-Commerce Directive which they argue limits their liability, and the requirement set out in Recital 46 that they only need to act upon receipt of "*actual knowledge or awareness of illegal activities*".

12. Given the scope and importance of their businesses, they should be required to take a far more proactive role in ensuring their users are not being directed to infringing material, as provided

¹ <http://www.mpa.org/wp-content/uploads/2014/03/Understanding-the-role-of-search-in-online-piracy.pdf>

for in Recital 59 of the Information Society Directive (*“In the digital environment, in particular, the services of intermediaries may increasingly be used by third parties for infringing activities. In many cases such intermediaries are best placed to bring such infringing activities to an end”*).

Dominance of established online players

13. The book retail market in the UK suffers from a chronic and debilitating imbalance for authors, publishers and booksellers. The routes to market for ebooks are too narrow and too few, and the online market for print books is similarly restricted creating a potential for adverse effect on competition within both markets, and ultimately restricting consumers’ choice of retail opportunities.
14. Our *Publishing for Britain* manifesto² published last autumn called on the UK government to initiate an inquiry, which would acknowledge that the market definition of ebooks is separate to that of books in general, into the online-physical and ebook sectors in the UK; paying particular attention to the impact on authors, small publishers and independent retailers of the prevailing market conditions.
15. We welcome the European Commission’s antitrust investigation into certain practices by Amazon in the distribution of ebooks. It is particularly welcome that this investigation will encompass certain clauses included in Amazon’s contracts with publishers which require publishers to offer Amazon the same terms as they offer other ebook retailers. Such ‘most favoured nation’ clauses can have the effect of stifling competition, innovation and act as a barrier to new entrants into the market and their impact needs to be considered. Our members are individually assisting the Commission with this investigation.
16. This potential abuse of market power is also being considered by the Commission in its proposals for the completion of a Digital Single Market. The Communication, rightly acknowledges the way in which online platforms are playing ever more central roles in our social and economic lives, but notes way in which some have moved from being merely ‘platforms’ to become players competing in many sectors of the economy. The Commission believes “the way they use their market power raises a number of issues that warrant further analysis beyond the application of competition law in specific cases”.
17. We encourage the Committee to ensure that UK government supports the European Commission in both of these endeavours to ensure the online market place, for both ebooks and physical books, works to the benefit of all.
18. If the Committee requires additional written evidence or would appreciate the opportunity to talk directly to publishers on these matters please do not hesitate to get in touch. We would also be available to provide oral evidence if so required.

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² <http://www.publishers.org.uk/policy-and-news/policy-and-parliament/>