ABOUT INTELLECT

Intellect is the UK trade association for the technology industry. We are formed by 780 Small to Medium Sized Enterprises (SMEs) and multinational member companies operating in the UK's information technology, software, electronics and telecommunications industries. The industries we represent account for 8% of UK GDP and employ 1.2m people. We are not for profit and are owned and operated by our member companies.

SUMMARY

There is a role for government in supporting and developing digital communications infrastructure so that opportunities for social mobility, education, wealth-generation and entrepreneurship are maximised. This role is specifically around supporting the activities of the private sector in areas where return on investment are not clear, promoting the use of technical solutions that are tailored to different areas and situations on a neutral basis, and ensuring resources crucial for digital communications, such as radio spectrum, are in adequate supply. Similarly, government has a role in creating the right environment for UK Technology businesses to thrive. In considering this bill, policy-makers need to take into account that:

- Illicit downloading and wilful piracy on the internet need to be addressed. Educating the consumer on copyright, encouraging business models which allow legal downloading, and truly working towards a pan-European solution to this issue should be paramount. Technical measures are only a small part of the solution. If they are implemented, there is a need to ensure proper judicial oversight and that the burden of enforcement fits with the concept of "beneficiary pays", which applies in other industries, and encourages the development of new business models. Similarly, the right of a Secretary of State to unilaterally amend intellectual property legislation is unprecedented and has at no stage been consulted on in the process leading up to this bill. Any amendment should be subject to statutory instrument at the very least.

- The UK Digital Audio Broadcast (DAB) sector leads the world. DAB technology is designed here. The leading global manufacturers are here. We buy more DAB Radios than anywhere else. This advantage needs to be maintained. DAB is a real success story for the UK. 20% of its capacity is currently reserved for delivery of further innovative services. The momentum towards switchover from FM Radio to DAB must be maintained if we are to make the most of our global leadership role in this area.

- Regulators, and the regulated, need to work in partnership for the benefit of the UK as a whole, and it should be the role of the regulator to protect both consumers *and* create the right investment climate for the infrastructure that industry needs to produce to deliver high-quality products and services. Creating an explicit and additional statutory duty of this nature will give Ofcom greater latitude to consider the potential impacts of its decisions on both the interests of consumers and suppliers of communications services. These interests are not mutually exclusive.

- There is a role for government in directly managing crucial national resources for the benefit of consumers and the economy where the market, and in this case the regulator, have through no fault of their own not been able to resolve disagreements over their best use and allocation. Radio-Spectrum is a crucial national resource and intervention to ensure efficient use is appropriate, as long as that the nature of that intervention promotes competition and innovation in the market place.

WHY ARE DIGITAL COMMUNICATIONS IMPORTANT?

In 2007, The UK Technology Sector generated some £96 billion in gross value added and employed 1.2 million people. This represents around 8% of total UK GDP and 4% of total UK employment[1]. Digital communications networks are increasingly the new roads, railways, airports and shipping lanes of the UK economy and

[1] Impact Assessment on *Proposals to give Ofcom additional Statutory Duties* (Department for Business, Innovation & Skills, 2009)

society. Without a modern, fit for purpose, underlying communications and broadcasting infrastructure, the rest of the UK economy simply could not do business with the rest of the world or foster its growing creative industries. UK Citizens would be less well educated. Our emergency services, who uniquely in the world can all communicate seamlessly with each other, would save fewer lives. Our hospitals would be less effective at diagnosis and providing care. Our private lives, our prosperity and our culture and are now indelibly linked to the unique capabilities that wireless, broadband and satellite communications afford.

WHAT MATTERS TO THE DIGITAL COMMUNICATIONS SECTOR?

PROTECTING INTELLECTUAL PROPERTY

Illicit downloading and wilful piracy on the internet need to be addressed. Encouraging the development of attractive business models for legal downloading, educating the consumer and working towards a single market for content should be paramount.

Technical measures are not the best way to deal with online infringement. The proposal is flawed and will not achieve the desired results. Wilful infringers will soon be able to find ways to hide their IP address thereby limiting action that can be taken against them. **Many innocent citizens could be wrongly caught up in measures for example, family members and those in multi-person dwellings**.

To protect both the citizen and the ISP, any decision to restrict open access to digital communications networks should be a matter for the courts together with a proper right of appeal. Such decisions should not be the choice of the Secretary of State. Legislators in Germany[2] and Sweden[3] have already considered the option of mandatory internet disconnection to combat illegal downloading and rejected it. Countries which have introduced it, such as New Zealand, have seen substantial concerns raised around effective judicial oversight, proportionality, and standards of evidence.

The burden of enforcement should fit with the concept of "beneficiary pays", as is practised situations such as when law enforcement agencies or rights holders seeking disclosure orders through a Court oblige ISPs to supply data and take technical measures.

The right of a Secretary of State to unilaterally amend intellectual property legislation, in this case the Copyright Act (1988), without reference to parliament is unprecedented. No Stakeholders were consulted in the course developing this element of the legislation and no-one can predict, with real certainty, the nature of the way that Technology might evolve in the course of time. If implemented, these provisions could irrevocably damage the investment climate for the UK technology sector, which relies on certainty of protection of Intellectual Property through the Copyright Act (1988). **Any amendment of the Copyright Act (1988) should be subject to parliamentary approval through primary legislation or statutory instrument.**

PROMOTION OF INVESTMENT IN INFRASTRUCTURE

Ofcom has done a very good job of promoting competition in the UK market. The UK enjoys the second lowest prices for broadband in Western Europe. More broadly, the price of communication services available in the UK has fallen by 5% since 2004. Household spend on them has also been slowing for three years consecutively[4]. However, the highly complex regulatory regime that the digital communications sector is

[2] After initially considering it, The German Government have now stated that they will not introduce mandatory internet disconnections for copyright infringements in their legislative programme published in October 2009: *WACHSTUM. BILDUNG. ZUSAMMENHALT. Koalitionsvertrag zwischen CDU, CSU und FDP*

[3] The recently introduced The Intellectual Property Rights Enforcement Directive (IPRED) has contributed to a significant fall in illegal filesharing in Sweden and an 18% rise in legal digital downloads. It does not include any provision for mandatory internet disconnection.

[4] The *Digital Britain* Report

currently subject to poses a significant barrier for further investment in next generation access networks on the part of existing operators of fixed, mobile and satellite networks. Regulation that forces prices down[5] for consumers also disincentivises network operators to invest in new networks as they have less prospect of a return on an investment. These factors need to be in balance if the market is to function correctly. Ofcom is already required to ensure that consumer's interests are paramount in the provision of communications services. This duty implies that they must also ensure that citizens have access to as broad a range of innovative and beneficial communications services as possible.. The degree to which UK citizens can access and benefit from such services is dependent on the level of investment that is afforded to the infrastructure that can support them. **Government needs to ensure that the regulator (as well as the regulated) is clearly focused on the creating the right environment for investment in next generation access networks if citizens and the UK economy are to fully enjoy their benefits.**

RADIO SPECTRUM

There are a range of differing mechanisms for delivering broadband. These include satellite, wireless and cable. Each technology 'platform' has different capabilities and advantages. Similarly, differing solutions are suitable for different geographical areas**.** There is no 'one size fits all' approach to delivering broadband. **Government needs to ensure that each possible solution for broadband delivery is considered on an equal and cost/benefit basis**

Large numbers of consumers access the internet through mobile phones or 'dongles' attached to laptops. Access to radio-spectrum in the correct quantities and of the right properties is necessary to facilitate this. There is currently a shortage of such access, which prevents the widespread deployment of 'next generation' broadband access via such mobile devices[6] in the long term, and may well prevent the extension of 'adequate' broadband speed levels using wireless to all UK citizens in the short term. **Government needs to ensure that radio spectrum is made available for new and innovative wireless broadband applications as soon as possible and intervene directly if necessary.**

DIGITAL AUDIO BROADCAST (DAB) RADIO

Over 30% of UK homes have a DAB Radio. By the end of the year, there will be 10m in use[7]. The UK is a world leader in digital radio. Our international competitors look to us for an example, and our consumers enjoy a richer listening experience than anywhere else. Most of the electronics (or 'chips') that made DAB possible, and continue to improve it, are developed in the UK. Both the worlds' major DAB radio manufacturers are British. A commitment to migrate to Digital Radio by 2015 provides the leadership and clarity that both industry and listeners need. We know that over 20% of radio listening takes place in the car[8]. Industry is working to ensure that in-car digital radios become standard. The technology is now available to create a harmonised European market for DAB. These economies of scale and increased competition will benefit UK consumers. DAB is a true example of how clarity of direction on technology policy can lead to real practical results. We need to consolidate and support what is a leading edge industry by **supporting the migration from FM Radio to DAB broadcast through promoting new digital-only content, and encouraging the manufacture of DAB enabled vehicles in the UK.**

[5] Ofcom directly regulates the prices paid by consumers to access consumer networks as a means of encouraging them to cut costs.
[6] Ciao Review: *The Next Phase of Broadband UK: Action now for long term competitiveness* (2008)
[7] Radio Joint Audience Research (RAJAR) 2009
[8] Digital Radio Development Bureau