



**Response to the CMA's new digital
markets competition regime guidance
[Non-Confidential]**

September 2024

Introduction

Sky welcomes the CMA's consultation on the implementation of the wider measures that have been brought forward by the passage of the Digital Markets, Competition and Consumers (DMCC) Act.

We consider that the overall shape of the proposed digital markets regime, based on specific, enforceable codes of conduct applied to firms designated as having 'strategic market status' is a sensible, pragmatic and justifiable approach to regulation in this area.

Our comments are therefore limited to a small number of issues related to the draft guidance section on Conduct Requirements (CRs). We consider they should be used to target practices by SMS platforms that at present enable piracy. We welcome the constructive engagement we have had with the CMA to discuss this issue in further detail.

Conduct requirements

Scope

We welcome the broad scope of the CRs as set out in the CMA's consultation, and the aims of the DMCC Act, which will be set in line with the statutory objective of ensuring fair dealing, open choices and trust and transparency in digital markets.

As set out in paragraph 3.7a of the draft guidance, CRs will be set (among other things) to ensure that SMS firms trade on fair and reasonable terms, and to prevent SMS firms from "carrying on activities other than the relevant digital activity in a way that is likely to increase the undertaking's market power materially, or bolster the strategic significance of its position, in relation to the relevant digital activity."

SMS firms' role in enabling piracy

The creative sector in this country is well positioned as a global hub that can boost the UK's economic growth. In 2021, the UK's creative industries contributed £108 billion to the economy¹, with independent modelling finding that, within this broader sector, the UK media and entertainment sectors have the potential to be worth an additional £10 billion a year by 2033 – rising from £43 billion in 2021 to £53 billion in 2033².

Intellectual property (IP) is the lifeblood of the creative industries' success. However, tech platforms, including large social media platforms, video platforms and online marketplaces, are enablers of piracy that infringes upon rights holders' IP. These platforms are used by suppliers of pirate software, hardware, and content to advertise, legitimise and educate consumers on pirate services.

¹ Creative Sector Vision 2023 (accessible here: [Creative Industries Sector Vision](#))

² Sky's economic impact in 2022, carried out by Public First and Oxford Economics (accessible here: [Economic-Impact-Report-2022-Web.pdf](#))

The number of consumers who access content directly or indirectly via these platforms is substantial and has significant impacts on rights owners. Almost one in three consumers in the UK say they have pirated content in the last 12 months, with little action taken by major firms which we anticipate will be designated as holding SMS.

Search engines and social media are the primary channels through which consumers discover pirated content. Search engines, such as Google Search, provide a quick and easy route for consumers to find a wide range of pirated materials, including tutorials and advertisements for piracy sites.

Meanwhile, large social media platforms, such as Facebook, facilitate real-time word-of-mouth link sharing, direct access to infringing content, and surface ads for devices and services used to access pirated content.

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New CRs that underpin the SMS regime present a real opportunity to curtail harmful business practices by large platforms that enable piracy and cause harm to the public, the economy, and innovation in the UK's thriving content sector.

Remedies

In line with the new CRs' "permitted purposes", we consider the following high-level solutions should prevent the proliferation of piracy due to SMS firms' market power. As we have indicated to the CMA in past submissions, we believe 3 core remedies could be included within the CRs given the significant impact their introduction would have on reducing levels of piracy:

1. Know Your Customer (KYC) requirements

It is currently too easy for suppliers of pirated material to hide behind the veil of anonymity when carrying out their illicit activities. Increasing the burden of proof at the point of application and submission reduces the chance that platforms allow pirate streams and apps onto their platforms.

In practice, where details are provided by someone who misuses the service, a well-designed and enforced KYC policy would allow platforms and rights owners to be able to identify quickly who is behind the infringement and act accordingly.

KYC is also important from a serial abuse perspective – if the platform knows who the user is, it can prevent them spinning up further accounts in the same name once the first one is banned.

If it is properly applied at the point of account application (with identification and verification requirements included) it will discourage pirates from using the platform and oblige platforms to prevent pirates spinning up multiple accounts in response to bans. This concept has been introduced in the EU by the Digital Services Act (DSA)³ in relation to online marketplaces; we see no reason that the concept should not be carried across in the context of other services supplied by SMS firms.

³ Accessible here: [Europe fit for the Digital Age: New online rules for businesses - European Commission](#)

2. Effective use of anti-piracy technology in relation to infringing content

Too often, platforms' anti-piracy technology falls short, struggling to keep pace with evolving evasion techniques. However, these platforms have the capability to use machine learning to stop the same or similar pirate content, services, devices and adverts appearing on their platforms.

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We would encourage the introduction of CRs on SMS firms to ensure platforms are obliged to use these existing capabilities across their platforms to significantly reduce piracy of content.

3. Explicit and more transparent suspension and termination rules

Many platforms' policies are opaque, and it is hard for rights holders to understand what criteria must be met to remove infringing accounts and content.

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This lack of transparency makes rights owners' anti-piracy efforts even harder as it is impossible to know when accounts should be banned under platform rules, and subsequently cannot ensure that platforms are adhering to their own rules.

Platforms should be required to clearly set out in their terms and conditions the circumstances in which account suspension, termination and reactivation apply, to make terminating accounts that publish infringing content as simple as possible.

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Obligations to publish clear policies on these matters, and to conduct an annual audit, have been imposed on the platforms under the DSA. Given SMS firms will likely already be adhering to these obligations in the EU, we consider that it is logical to transpose similar CRs in the UK.⁴

A chance for reform

Measures such as those discussed above have already been implemented in other jurisdictions. The EU Copyright Directive (2019) establishes that large online platforms are liable for the copyright infringements of their users, while the DSA requires platforms to implement accessible and transparent notice and takedown procedures for removing illegal content and puts greater onus on platforms to prevent customers from actively supplying pirated content.

We urge the CMA to ensure that the opportunity to use the tools provided by the DMCC makes a positive contribution to combatting digital piracy in the UK, in turn ensuring fair dealing, open choices, and trust and transparency in UK digital markets.

Sky

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⁴ Accessible here: [A Europe fit for the digital age: new online rules for users - European Commission](#)