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## Digital Britain – Does it Herald a Revolution? Or is it Just a Pipe Dream?

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*In June 2009, the UK government published the Digital Britain Report, setting out an ambitious set of plans intended to secure the UK's position as a leader in the global digital economy. Nearly four months after publication, work is already underway to implement the various proposals, but will they ever see the light of day? In this article, we provide a brief overview of those proposals set out in the Digital Britain Report that are likely to be of interest to businesses in the technology sector.*

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### What is “Digital Britain”?

In October 2008, the UK government launched an initiative called “Digital Britain” to survey and analyse the current state of the UK’s digital communication and economy, and to ascertain what the UK needed to do in order to retain a competitive edge in those areas. This initiative culminated in the “Digital Britain – Final Report”, which was published in June 2009 (the “**Digital Britain Report**”).

The Digital Britain Report addresses a broad range of issues relating to the state of the UK’s digital economy and the communications infrastructure that underpins it. In recognition of the fact that digital technology, as well as services based on digital technology, is becoming an essential facility for businesses and individuals alike, the Digital Britain Report makes a broad range of recommendations for changes that are “*intended to improve social mobility, promote UK business competitiveness and to improve our everyday lives from our education system to the businesses we run, from career to how we participate in a modern democratic society*”.

## What are the plans set out in Digital Britain?

Of the numerous recommendations outlined within the Digital Britain Report, those likely to be of interest to businesses in the technology sector can be summarised as follows:

- **A commitment to make high-speed broadband at 2Mbps per second universally available in the UK by 2012 (“Universal Services Commitment”).**

The Universal Services Commitment will be coupled with various forms of support to promote an increased level of participation in the digital economy and minimise the so-called “digital divide” (i.e., the gap between those who have access to the Internet and those who don’t).

The Universal Service Commitment essentially seeks to deliver 2Mbps access to approximately 11% of homes in the UK (ca. 2.75 million), which are currently said to lack ready access to a 2Mbps or higher broadband service. It will be publicly funded and is expected to be delivered by a mixture of technological solution, including satellite and mobile phones.

It is worth noting that, whilst the Universal Service Commitment outlined in the Digital Britain Report surpasses the universal service obligation currently imposed on all EU Member States,<sup>[1]</sup> it is likely that the EU Commission will seek to mandate universal broadband access in the EU in the near future.<sup>[2]</sup>

- **A proposal to deliver at least 90% coverage of next-generation fibre-optics based broadband for homes and businesses by 2017.**

The Digital Britain Report expects investment in fibre-optics led by the industry (e.g., BT and Virgin Media) will eventually deliver next-generation broadband access to approximately two-thirds of the UK, but recognises that the industry on its own is unable to deliver such access to the remaining one-third of the UK and proposes to impose a levy of 50p per month on all current fixed lines, to be collected by the fixed-line operators.<sup>[3]</sup>

- **Proposals to make OFCOM responsible for: (a) encouraging investment in communications infrastructure; and (b) alerting the UK government of material and sudden change affecting the communications infrastructure, and assessing the UK’s communications infrastructure every two years.**

OFCOM (Office of Communications), the regulator of the UK’s communications sector, currently has two principal statutory duties. These are the furtherance of “*the interests of citizens in relation to communications matters*” and “*the interests of consumers in relevant markets, where appropriate by promoting competition*”.<sup>[4]</sup> OFCOM also has certain specific statutory duties that supplement these principal duties.<sup>[5]</sup>

The proposals set out in the Digital Britain Report will broaden these statutory duties of OFCOM. Public consultations by the Department of Business Innovation & Skills (“BIS”) regarding these proposals are already underway.<sup>[6]</sup>

- **A proposal to promote transition to the next generation of high-speed mobile broadband and universal 3G coverage by modernising the mobile**

## **communications infrastructure.**

This proposal includes a package of measures designed to modernise the frequency spectrum, e.g., the liberalisation of the 2G spectrum, the release of WiMAX-suitable spectrum, re-balancing of spectrum holding by network operators, etc. Public consultations regarding some of these measures are already underway (see for example the OFCOM consultation regarding the way in which the use of 872-876 MHz frequency band paired with 917-921 MHz ought to be regulated.<sup>[7]</sup>)

- **A proposal to upgrade the UK's radio broadcasting services from FM to DAB and from MW to FM by the end of 2015.**

This proposal is accompanied by other related proposals such as partnership between BBC and commercial multiplex, review of multiplex licensing regime, etc. The Digital Britain Report indicates that Profile 1 of World DMB Profile<sup>[8]</sup> is likely to become the standard to be met by digital radio receivers sold in the UK.

- **A proposal to make OFCOM responsible for taking steps to reduce copyright infringement by imposing certain specific conditions on ISPs and by giving enforcement powers to OFCOM.**

Under the current proposal, OFCOM will ultimately have the power to force ISPs to take specific technical measures against repeat infringers, e.g., block sites/ports/protocols, cap bandwidth/volume of data traffic, etc. A public consultation regarding this proposal is already underway.<sup>[9]</sup>

- **A proposal to enable regulated, commercial exploitation of those works the copyright-owner of which cannot be identified or found ("Orphan Works").**

Currently, the use of Orphan Works on a commercial scale carries the risk of civil as well as criminal sanctions. If this proposal is realised, it will result in a scheme whereby Orphan Works (including not just books but also photographs/images and video footages) can be exploited commercially without the copyright-owner's consent.

- **A proposal to introduce a statutory maximum fine of £50,000 that can be imposed by the magistrates' courts for copyright infringement and other IP-related offences.<sup>[10]</sup>**

Currently, criminal penalties that attach to copyright infringement can vary depending on whether or not the infringement is committed physically, or online, and the maximum fine that can be imposed by magistrates' courts is limited to £5,000.<sup>[11]</sup> This proposal will effectively align the financial penalties for online infringements with that which is applicable to physical infringements.

- **A proposal to set up a number of 'Digital Test Beds' that function as a forum to develop and trial end-to-end online products and services.**

These Digital Test Beds are intended to provide e-commerce businesses with a proving ground to try out new business models in order to fill the gap in market-led research and experiments, and they are to be used with multiple platforms of delivery, including fixed-line and wireless Internet access, as well as interactive televisions and mobile devices.

- **A package of measures to secure the UK's position as a leader in animation, CGI, electronic games, and other interactive digital media applications.**

As part of such measures, the UK government will be considering the possibility of introducing “*a tax relief to promote the sustainable production for online or physical sale of culturally British video games*”, similar to cultural tax credit schemes currently enjoyed by the UK's film industry.

- **Support for the continuation of IGF for a further five year term as an independent platform for discussion of Internet-related issues, and support for the continuation of ICANN as the organisation responsible for the domain name system.**

It is also worth noting that the Digital Britain Report indicates that in the future, OFCOM may be given the power to regulate the way in which domain names are distributed in the UK, possibly by imposing conditions and codes of conduct with which the industry would need to comply.

- **A package of proposals to enhance online security.**

These proposals include, among others, the proposal to enable OFCOM to impose greater financial penalties on those who flout licensing conditions or commit other breaches of the Communications Act 2003, as well as the proposal to adopt the enhanced PEGI system for classification of video games.

It is also worth noting that the Digital Britain Report endorses the plan of the Information Commissioner's Office (or “**ICO**”, the UK's privacy and data protection watchdog) to develop a new code of practice that addresses the manner in which personal information may be collected online.<sup>[12]</sup>

- **A proposal to deliver a greater proportion of the UK public services online.**

Encouraged by the success of existing online public services portals such as “Directgov” and “businesslink.gov”, the Digital Britain Report proposes that a greater amount of public services should be delivered online. As part of such shift to online delivery of the public services in the UK, the Digital Britain Report also proposes to modernise the way in which public procurement of ICT services are conducted.

Specifically, the Digital Britain Report recommends that a simplified, fast-track procurement process be made available to the smaller, innovative businesses that currently face a barrier to entry due to the complexity and scale of the public procurement process which, by its very nature, tends to favour large incumbent providers. The aim of this recommendation is to allow such smaller businesses “*to participate at the main contractor level rather than seeking sub-contractor status with incumbent bidders who may not wish to fit the particular innovation into their wider procurement bid*”.

Additionally, the Digital Britain Report notes that in order to achieve a smarter, shared procurement, the UK government has to adopt cloud computing technology and states that “[subject to the establishment of the appropriate business case] *G-Cloud will be a priority for Government investment to secure efficiencies, even within the very constrained framework for public expenditure, over the next 3 years*”. In the meantime,

the Digital Britain Report recommends that ICT services be procured by the UK government on “*a scalable, cloud basis such that other public bodies can benefit from the new capability*”.

Other issues addressed by the Digital Britain Report include the way in which contents for public broadcasting service are developed, as well as the way in which research, education, and skills training are undertaken in the UK.

### **Will the plans set out in Digital Britain Report be implemented?**

The Digital Britain Report itself contains a timetable outlining when the key proposals set out in the report will be actioned, and who will be responsible for such actions. This was followed by a formal implementation plan published on 14 August 2009.<sup>[13]</sup> As noted above, various public consultations regarding the key proposals are already underway.

However, the Digital Britain Report has met a mixed response from the industry/consumers and has not been universally welcomed by all.<sup>[14]</sup> If a new government is formed after the UK general election, which is looming in 2010, some of the proposals could well be axed. Therefore, the fate of the proposals set out in the Digital Britain Report is shrouded in a degree of uncertainty. There are those who already speculate that the proposal to impose the 50p levy to fund the next-generation network will be shelved until after the general election.<sup>[15]</sup>

Be that as it may, at least those proposals in respect of which public consultations have already begun (e.g., the proposal to make OFCOM responsible for taking steps to reduce copyright infringement) still have the potential to become formally legislated, and one would do well to keep an eye on the development of such proposals. Whilst the Digital Britain Report may not necessarily herald a digital revolution, it still has the potential to affect the way in which businesses in the technology sector operate.

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### **Footnotes**

<sup>[1]</sup> Under Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

<sup>[2]</sup> Viviane Reding, the EU's Commissioner for Telecoms and Media, has made it clear that the EU's policy target was “*to have internet broadband for all Europeans by 2010. And high-speed internet broadband for all Europeans by 2013*” (SPEECH/09/339, 9 July 2009). Also see the Opinion of the Committee of the Regions on Universal Service in Electronic Communications and Future Networks and the Internet (Official Journal of the European Union, OJEU C 120/41, 28 May 2009) and the Opinion of the European Economic and Social Committee on ‘High-Speed Access for All: Development of the Scope of Universal Service for Electronic Communications’ (Official Journal of the European Union, OJEU C 175/8, 28 July 2009).

<sup>[3]</sup> Including business and residential copper-based analogue telephone lines, ISDN lines, and cable-based telephone lines. The Digital Britain Report considers such levy to be

reasonable in light of the significant savings in the network charges achieved in the UK in the past.

[4] See Section 3(1) of the Communications Act 2002.

[5] *E.g.*, ensuring the availability throughout the UK of “a wide range of electronic communications services” (including high-speed broadband services) and “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests”; see Section 3(2) of the Communications Act 2002.

[6] See <http://www.berr.gov.uk/files/file52538.pdf> and <http://www.berr.gov.uk/files/file52744.pdf>.

[7] See [http://www.ofcom.org.uk/consult/condocs/872\\_876\\_mhz/872\\_condoc.pdf](http://www.ofcom.org.uk/consult/condocs/872_876_mhz/872_condoc.pdf).

[8] See the World DMB Forum Digital Radio Receiver Profiles, issued 12 September 2008, which is available at [http://www.worlddab.org/public\\_documents/WorldDMB\\_Digital\\_Radio\\_Receiver\\_Profiles.pdf](http://www.worlddab.org/public_documents/WorldDMB_Digital_Radio_Receiver_Profiles.pdf).

[9] See <http://www.berr.gov.uk/files/file52658.pdf> and <http://www.berr.gov.uk/files/file51703.pdf>.

[10] Note that this proposal is based on an earlier public consultation undertaken by the UK's Intellectual Property Office; see <http://www.ipo.gov.uk/consult-gowers36.pdf>.

[11] Compare Section 107(4A) of Copyright, Designs and Patents Act 1988 against Sections 107(4) and 107(5) of the same Act.

[12] According to the ICO, this new code of practice will provide comprehensive, accessible guidance on operation of a privacy-friendly website, rights and protections for individuals, privacy choices, and default settings, as well as cyberspace and territoriality. The ICO intends to publish this new code in May 2010, following a public consultation exercise – see [http://www.ico.gov.uk/about\\_us/consultations/our\\_consultations.aspx](http://www.ico.gov.uk/about_us/consultations/our_consultations.aspx).

[13] See [http://www.culture.gov.uk/reference\\_library/publications/6310.aspx](http://www.culture.gov.uk/reference_library/publications/6310.aspx).

[14] See for example <http://www.guardian.co.uk/media/2009/jan/29/digital-britain-media-industry-reaction> and <http://news.bbc.co.uk/2/hi/technology/8102797.stm>;

[15] See for example <http://www.computing.co.uk/computing/news/2248022/digital-britain-broadband-tax>