

## **Creative Content in a European Digital Single Market: Challenges for the Future A Reflection Document of DG Infso and DG Markt**

Channel 4 welcomes the opportunity to comment on the European Commission Reflection Document on "Creative Content in a European Single Market: Challenges for the Future" published on 22 October 2009.

Channel 4 plays a leading role in the provision of public service content in the UK. It is a commercially funded Public Service Broadcaster. The status of Channel 4 as a publicly owned corporation ensures that its priority is the delivery of its public remit and purposes. The remit of Channel 4 – enshrined in statute and its licence to broadcast – is to innovate, take risks and provide diversity.

Channel 4 has led the way amongst broadcasters in the UK in embracing the digital age - by recognising the impact of technology and the fast evolving consumer trends in consumption of digital content. We were the first broadcaster in the UK to make its content available on an on-demand basis with the launch of 4oD in December 2006. Since its launch, over 365 million programmes of long form content have been made available on 4oD, making it the UK's leading commercial long-form VOD platform.

Furthermore, in November 2009, we signed a pioneering content deal with Google, which will make Channel 4's original programmes available on demand, in full and free-of-charge via YouTube in the UK in 2010.

Under the terms of the deal, Channel 4 will make its 4oD video on demand "catch-up" service of new programmes available via YouTube shortly after television transmission, including series that have already proved particularly popular with online audiences such as **Skins, Hollyoaks, The Inbetweeners** and **Peep Show**. YouTube users will also be able to access around 3,000 hours of full length programming from the Channel 4 archive at any given time.

European broadcasters, in particular public service broadcasters, are by far the largest investors in the production of original European content. In 2008, Channel 4 invested £430m on UK and European originated content across all our channels and services. We believe broadcasters will continue to play a key role in the evolving market for digital content as long as key obstacles such as burdensome licensing processes for acquiring rights are alleviated.

Channel 4 recognises that copyright is one of the key foundations on which the success of the creative economy in the European Union has been built. We welcome the Commission's recognition that illegal downloads can jeopardise the development of a viable market for digital content and that it is essential for legal offers to evolve to meet consumer demand.

Channel 4 supports the EU objective of creating a simple, consumer friendly legal framework for accessing digital content in Europe's single market whilst ensuring, at the same time, fair remuneration for creators.

We would, however, encourage the Commission to ensure that any proposals emanating from the Reflection Paper are "evidence based" and do not undermine a vibrant European audiovisual and creative sector, which is currently facing structural

and technological challenges. Any EU policy proposals should also take into account the sustainability of future investment in original European content.

## **Overview**

Channel 4 welcomes the initiative by the European Commission in launching a broad debate with the objective of creating in Europe a modern, pro-competitive, and consumer friendly legal framework for a genuine Single Market for Creative Content Online.

We welcome the Commission's approach in the Reflection Paper, and the recognition that different parts of the audiovisual sector face different trends and challenges, depending on the type of the digital content in question.

Channel 4 believes that complexity regarding clearing rights for mass use by broadcasters and other media service providers needs to be tackled by both national governments and by the EU if the ambition of creating a genuine single market for creative content online is to be accomplished.

We have limited our comments to the key issues from our point of view:

## **Extended Collecting Licensing**

Channel 4 believes that extended collective licensing is essential in the digital age. We welcome the Commission's acknowledgement that an extended collective licensing system may help facilitate access to orphan works.

However, we believe the Reflection Paper overlooks the role that an extended collecting licensing system could play in addressing the complexity faced by commercial users in relation to mass use and exploitation of numerous rights for licensing of online services.

This has been recently recognised by the UK government<sup>1</sup>. Channel 4 warmly welcomes the intention by the UK government to simplify and improve the efficiency of licensing of works for users and rightsholders by implementing a system of extended collective licensing. This will enable a collecting society or other organisation in the UK with significant representation in a particular category of right to apply for permission from the Government to licence all works in that category including on behalf of rightsholders who have not specifically signed up to that society or organisation, subject to appropriate safeguards including an opt-out for rights holders.

Channel 4 believes that the EU should strongly encourage Member States to adopt a similar extended collecting licensing system as advocated by the UK government and already implemented by a number of Nordic countries.

We believe an extended licensing system can lead to gains for users, rights-holders and consumers of digital content.

The advantages for users include a potential reduction in the average cost of obtaining a licence, enhanced legal certainty, as well as access to a broader

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<sup>1</sup> © the way ahead: A Copyright Strategy for the Digital Age 2009

repertoire of works. Nordic rights holders also seemed to have benefited from the system. Figures for 2004 demonstrate that the revenue raised by collecting societies in the Nordic market with a population of around 25 million amounted to around €450 million or 5% of estimated global revenue<sup>2</sup>.

Viewers and consumers benefit in being able to access legal offers of digital content. In 2002, legislation introduced by the Danish government establishing a special extended collective licence for archives subsequently led to an agreement between the Danish public service broadcaster DR and the relevant collecting society Copydan. The agreement allows DR; the right to use its archive productions for on demand streaming, to use archived clips in new productions, and to launch an internet service called *bonanza* which provides access to a wide range of television and radio programmes from its archives.

Adopting an extended collecting licensing system will not only benefit current industry operators but it is also likely to benefit new entrants into the industry thus increasing innovation and competition in the market, and at the same time enhancing cultural diversity.

### **Extension of Cable and Satellite Directive**

Channel 4 looks forward to engaging with the European Commission and other stakeholders on the possibility of extending the scope of the Cable and Satellite Directive to services on the Internet. We believe it is important that copyright law develops in a technologically neutral way rather than always playing catch up with technological developments, and thus never meeting the needs of users or consumers on the one hand, or providing any certainty for investors or rights holders on the other.

### **Collecting Societies**

Channel 4 believes that collecting societies will continue to play an essential role in the digital world. It is important that EU policies do not hinder the ability for users to have easy access to global repertoire for music from a single collecting society in the EU. Any hindering of access to global repertoire will raise costs and complexity for online licensing. Furthermore, it may also have an impact on the freedom of the creative community by impinging on their ability to choose the best piece of music for a work and thus resulting in a loss in cultural diversity.

Channel 4 would welcome EU measures which enhance the governance and transparency of collecting societies.

### **Exceptions and Limitations**

We agree with the European Commission that a broad debate between stakeholders and a rather more “nuanced approach” to exceptions might be in order in the medium term. Channel 4 believes that further harmonisation of EU copyright law in relation to the different and optional exceptions, such as parody, could be beneficial to the EU creative economy.

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<sup>2</sup> See pp 38 © the way ahead: A Copyright Strategy for the Digital Age 2009

## **Financial Incentives**

The EU may want to consider kick starting the market for creative digital content in the single market by establishing a level playing field in relation to non-digital and digital cultural goods. Currently, the EU VAT regime is discriminatory regarding the VAT levied on digital cultural goods in contrast to the possibility for Member States to levy a reduced VAT on non-digital cultural goods. This is particularly surprising as these are regarded as substitute goods.

**Channel 4**  
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