

# **Green Paper on the Online Distribution of Audiovisual Works in the European Union: Opportunities and Challenges towards a Digital Single Market**

## **INTRODUCTION**

Channel 4 welcomes the opportunity to respond to the European Commission's Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market.

Channel 4 is a publicly-owned, commercially-funded UK public service broadcaster, with a statutory remit to be innovative, experimental and distinctive. Channel 4's not-for-profit status ensures that the maximum amount of its revenues are reinvested in the delivery of its public service remit.

The Channel 4 publisher-broadcaster model (under which Channel 4 does not make its own programmes but sources its commissioned programming from the independent sector) gives it a unique perspective on the IP debate. As both a rights-holder and commercial user of rights, Channel 4 has to maintain a balanced perspective on how the copyright system operates in the UK and the European Union.

In 2010, Channel 4 invested over £360 million in originated UK content across all its portfolio of services. Channel 4 also worked with over 350 suppliers across all parts of the UK – many of them being small and medium sized enterprises (SMEs). This investment in original content, and relationship with independent production companies, is underpinned by an effective IP framework.

Channel 4's investment in original content has a catalytic impact on the UK's creative economy. A recent report from Oxford Economics showed Channel 4's activities generate £1.1 billion for the UK economy each year and support 28,000 jobs across the UK.

Channel 4 has been at the forefront of seizing the opportunities offered by technological developments to provide viewers with content on multiple platforms. Channel 4 has led the way amongst broadcasters in the UK in embracing the digital age – by recognising the impact of technology and fast evolving consumer trends in consumption of digital content. Channel 4 was the first broadcaster in the UK to make its content available on an on-demand basis with the launch of 4oD on channel4.com in December 2006. To date, 4oD has served over 1 billion views of full-length Channel 4 programmes initiated across TV platforms and online. 4oD is available on third party TV based platforms such as Virgin Media and BT Vision, as well as a stand alone PC application.

As part of its 4oD syndication strategy, in 2009 Channel 4 signed a pioneering content deal with Google which allowed YouTube users access to Channel 4's originally commissioned programmes shortly after television transmission—available on demand, in full and free-of-charge for consumers in the UK. These programmes include series which have already proved popular with online audiences such as *Skins*, *Hollyoaks*, *The Inbetweeners*, and *Peep Show*. YouTube users also have access to around 6,000 hours of full length programming from the Channel 4 archive at any given time. Channel 4 is also a joint venture partner in the internet TV consortium YouView. The aim of YouView is to provide a subscription-free internet

connected TV service which seamlessly brings digital TV combined with the last 7 days' catch-up TV, on demand services and interactive applications straight to the television set.

### Channel 4 – International Rights

As a UK based public service broadcaster, our content is primarily aimed at UK audiences and the Republic of Ireland. However, for our production partners, international programme sales and format rights are extremely important.

The principles by which UK public service broadcasters commission programmes from the independent production sector in the UK are known as “terms of trade” and are overseen by the UK regulator Ofcom. Under this regulated framework, the international rights to programmes commissioned by Channel 4 are held by independent producers, who are responsible for exploiting them internationally, including in the single market.

The content commissioned by Channel 4 has been recognised around the world by the international creative community. For example, Channel 4 programmes have won five international *Emmys* in the past two years, in genres ranging from arts (**Mona Lisa Curse**), documentary (**The Ascent of Money**), digital programming (**Battlefront**) and current affairs (**Dispatches**). In film, Film4-backed productions have won 12 Oscars in the last five years, including eight time Oscar-winner **Slumdog Millionaire**.

According to the UK Television Exports Survey published in October 2011, international sales of TV and related content increased by 13% in 2010, from £1,257m in 2009 to £1,418 m in 2010. Sales of digital rights grew significantly by 48% annually to £10 million.

### **CHANNEL 4's VIEWS ON THE GREEN PAPER AND IP FRAMEWORK**

Channel 4 recognises that the aim of the Green Paper is to start a debate on the policy options which would help the European Commission develop a framework for the European audiovisual industry and help consumers to benefit from the economies of scale offered by the digital single market, in particular the development of multi-territorial and pan-European services.

- Channel 4 supports the launch of this debate. However Channel 4 believes that it is vital to retain a key principle—that broadcasters, right holders and their representatives should be free to contractually negotiate the scope of their licences, be it national and/or cross border.
- Moreover, Channel 4 believes it is vital that any policy proposals emanating from the Green Paper consultation do not undermine the ability of broadcasters to continue to invest in original European content.

Channel 4 welcomes the recognition in the Green Paper of the important contribution made by cultural industries including the audiovisual sector to the EU economy. In the case of the UK, this is supported by the findings of the recent study

*Creative UK: The Audiovisual Sector and Economic Success*<sup>1</sup>, which found that the UK audiovisual sector generates around £4 billion direct investment in original production annually and supports 132,000 direct jobs. The study also underlines the important role played by the intellectual property framework in helping create the economic environment for the success of the UK audiovisual sector.

The internet and digital media offer the audiovisual sector opportunities to develop its potential further, particularly by creating new markets for content and opening up additional revenue sources. Many of these opportunities are already being exploited by Channel 4 and the wider audiovisual industry, examples include:

- Online catch-up services – Channel 4oD service, BBC iPlayer, France Television pluzz.fr
- Mobile and smart phone services and applications – Channel 4 News app, BBC iPlayer app
- Hybrid broadcast and internet services – HBB TV in France and Germany. YouView which will be launched in the UK in early 2012.

### **Multi-territory and Pan-European Services**

Channel 4 believes that multi-territorial and pan-European services will become more prevalent in future, due to increasing broadband penetration in the European Union, companies evolving their business models, and the adoption of policies to promote easier national and cross border rights clearance.

This is exemplified by the launch of the international BBC iPlayer app on commercial terms in 11 European countries in July 2011 and Channel4.com making selected programmes with high public service value such as “Sri Lanka’s Killing Fields” and the series “Unreported World” available to worldwide audiences.

The Green Paper implies that the lack of proliferation of pan-European services has led to European audiences being denied access to audiovisual content. Channel 4 does not consider that there is any robust evidence to indicate this in relation to British audiovisual content and formats.

Channel 4 believes the Green Paper also does not sufficiently recognise the global nature of the audiovisual market. In particular, the Green Paper does not appear to take into account the international sales of TV programmes and formats, which allows audiences access to cross frontier programming from their national broadcaster or content provider, with customisation to make it more accessible, allowing for example, subtitling or dubbing.

Furthermore, investment in original European programming is also increasingly underpinned by coproduction and international content syndication deals resulting in audiences in different Member States having access to a greater choice of content than ever before.

If the content is particularly compelling or has an international appeal, there is no economic rationale why a broadcaster or rights holders would not want to exploit the content to maximise revenue or reach.

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<sup>1</sup> Creative UK: The Audiovisual Sector & Economic Success. A Report by Robin Foster and Tom Broughton commissioned by Channel 4, ITV, PACT and Sky

## EU IP Framework

Channel 4 believes the EU IP Framework is a key component of the incentives which underpin the economics of the television industry and broadcasters' investment in original European content.

The policy reforms advocated below by Channel 4 focus primarily on reducing the transaction costs of clearing rights – national and cross border. They do not seek to diminish returns to rights owners. Channel 4 believes that some of the policy changes will benefit not only broadcasters but also the wider creative economy including other content providers, and in particular SMEs.

### Collective licensing

As a commissioner and distributor of content, collective licensing remains vital for Channel 4 in the digital age. As a mass user of copyrighted works using a number of different distribution platforms, including on-demand services, Channel 4 believes that collective licensing is the only effective way to clear rights for programmes.

Broadcasters particularly rely on blanket licensing for music which ensures access to the global repertoire for music. Channel 4 believes there is a vital need to maintain continued access to 100% of the global repertoire and a “one-stop-shop” blanket licence for mass use of music to ensure creative and editorial freedom.

The complexity of music rights clearance for broadcasting is shown by the work undertaken by Channel 4's Rights Team. In 2010, Channel 4 cleared and reported 82 million seconds of music across its portfolio of channels and online service 4oD. Rights clearance of this magnitude can only be achieved through collective licensing.

However, there is a danger that an unintended outcome of the 2005 EU Music Online Recommendation and the European Commission Decision on CISAC could prevent UK collecting societies from providing a blanket licence for broadcasters on this scale for the use of music for linear and on demand services in the future.

Channel 4 believes that a loss of broadcasters' ability to obtain a blanket licence will hinder creativity of European programme makers and also lead to greater transaction costs for acquiring licences. Transaction costs for broadcasters will increase as they will have to establish multiple reporting systems. It is also likely that increasing administrative costs will have a negative impact on the total amount of royalties received by artists/rights holders as broadcasters would seek to recover negotiation and administration costs for multiple deals. Broadcasters currently pay a premium for single blanket licences and simple reporting obligations which guarantee access to 100% of the global repertoire.

Channel 4 believes the forthcoming EU Framework Directive on Collective Rights Management should legislate to ensure for the possibility that rights holders and collecting societies are able to re-aggregate the 100% of global repertoire for music as part of a blanket licensing system for broadcasters. Blanket licences for broadcasters should provide rights to broadcasters' linear and on-demand services.

## Governance of collecting societies

Collecting societies have a duty to be transparent and fair in their dealings that comes with their monopoly power to licence a wide range of rights. UK collecting societies are rightly highly regarded within the European Union, and Channel 4 supports greater transparency and supervision of collecting societies.

Channel 4 believes the reputation of collecting societies across the EU will be further enhanced amongst creative economy stakeholders if they adhere to minimum standards of: accounting; transparency in relation to management costs; transparency of tariffs; and the treatment of members and users.

## Extended collective licensing

Channel 4 believes that rights holders and collecting societies should be free and unfettered to negotiate the best possible commercial deals for the market, particularly in the area of music. We support extending collective licensing initiatives in areas where there is no collective licensing solutions for instance stills, photography and audio-visual archive clips.

Extended collective licensing is widely used in the Nordic countries and is regarded as an effective tool in reducing the complexity of clearing rights for broadcasters.

Introducing extended collective licensing will enable a collecting society or another organisation 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 rights holders who have not specifically signed up to that society or organisation, subject to appropriate safeguards including an opt-out for rights holders.

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

Adopting an extended collecting licensing system will make it easier for new content providers to enter the market, as well as allowing existing industry operators to provide a wider range of services, leading to increased innovation and competition in the market.

Channel 4 believes that the European Commission should, in the forthcoming Directive on Collective Rights Management, promote extended collective licensing for Member States to adopt in order to simplify rights clearance.

## **Extension of the Cable and Satellite Directive—“country of origin”**

Channel 4 looks forward to engaging with the European Commission and other stakeholders on the possibility of extending the principle of “country of origin” and all other relevant rules as applied to satellite broadcasting to cross border online audiovisual media services in relation to rights clearance.

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.

## **Rights Holders' Remuneration for Online Exploitation of Audiovisual Works**

Channel 4 strongly believes that right holders should be remunerated for online exploitation of audiovisual works. Channel 4 has national agreements with representatives of authors (e.g. The Writers' Guild, DUK, MCPS, PRS) and performers (including the actors' union Equity, British Equity's Collecting Society, The Musicians' Union, PPL, VPL) regarding their exclusive rights. These collective agreements ensure that rights holders receive fair and appropriate royalties for online exploitation, and Channel 4 pays over a substantial sum each year through these different deals.

Channel 4 does not believe there is any need for EU legislative actions to harmonise remuneration rights for online uses for authors and performers at a European level. As outlined in the Green Paper, such legislative action could lead to complexity and challenges in agreeing on demand licences, particularly cross-border.

## **Accessibility of Online Audiovisual Works in the European Union**

Channel 4 is fully committed to making its content accessible to the audio-visually impaired.

As a licensed public service broadcaster, Channel 4 provides access services – subtitling, signing and audio description – across its linear TV channels, both on the main Channel 4 service and across its digital channel portfolio, including E4, More4, Film4 and “+1” channels. In addition to meeting its regulated access services quotas, Channel 4 has made additional voluntary commitments to increase the availability of access services on its TV services. This includes a voluntary commitment to provide subtitling on 100% of programmes across the digital channel portfolio and to provide audio description on 20% of programmes on each of the channels. Channel 4 also meets its obligations in relation to signing, providing sign interpreted programming on Channel 4 and E4 and through support of the British Sign Language Broadcasting Trust (BSLBT). Last year Channel 4 also agreed to provide a ‘window’ on Film4 to broadcast the BSLBT Sign Zone to ensure its availability on DTT.

## **Access to on Demand Services**

Channel 4 believes that as on demand services become increasingly popular it is important that content can be accessed and enjoyed by as wide an audience as possible.

Channel 4 has taken the decision that, where technically possible and practicable, it will seek to provide access services across its on demand services. In relation to 4oD on channel4.com, Channel 4 is committed to mirroring the provision of subtitles on linear TV. Therefore, Channel 4 is seeking where possible to ensure that 100% of its catch up content is provided with subtitles on 4oD in line with its linear TV output.

Channel 4 also supplies on demand content to third party platforms. At present, most of the third party platforms to which Channel 4 supplies content do not support access services and therefore, on these platforms, Channel 4's content is not provided with subtitles.

Channel 4 believes it is possible for content providers to improve accessibility services without the need to revise the EU copyright framework. Channel 4 would be willing to share its experience in the area of accessibility services with the European Commission and the wider industry.

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