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The Scottish Government
Riaghaltas na h-Alba

European Commission Communication on Creative Content
By email: avpolicy@ec.europa.eu

Ur faidhle/Your ref: 5279/08
Ar faidhle/Our ref: B1964713
28 February 2008

EUROPEAN COMMISSION COMMUNICATION ON CREATIVE CONTENT ONLINE

I am responding on behalf of the Scottish Government to this communication. The Scottish Government has recently highlighted that the creative industries are a key sector in its Economic Strategy. It is therefore important to the Scottish Government to ensure that that creative industries, including those creating online content, be given opportunities to grow and protection from exploitation of intellectual property and products. The Scottish Government funds Scottish Screen, the national development agency for the screen industries and Government advisor, and backs the Scottish Screen response to the communication.

The Scottish Government would highlight the following specific areas of the Scottish Screen response as of most significance:

- We have a keen interest in the potential opportunities provided by the development of true video-on-demand (VOD) for recently-released films and games and other interactive content;
- We are concerned that the infrastructure may be unable to keep pace with the increasing demands and expectations of consumers of content online, and in particular the specific challenges faced by parts of Scotland in this respect;
- We are concerned over certain aspects of the draft Audiovisual Media Services Directive, which could potentially disadvantage the screen industries in Scotland, which are characterised by a large number of SMEs and freelance operators and would be disproportionately disadvantaged by a premature and unnecessary extension of regulatory requirements; the effect would be to favour larger incumbents and to discourage innovation in these still developing markets;
- While we agree that piracy should be discouraged, we also share the view expressed by some industry experts that the main threat to UK films is obscurity rather than piracy and that there are dangers associated with paying too much attention to piracy issues;

- Public interventions need to be particularly careful to strike the correct balance between ensuring the creative endeavours of producers are adequately rewarded and at the same time recognising the public's entitlement to benefit from access to content.

A copy of the Scottish Screen response is attached at Annex A.

Yours sincerely

Anne Dagg

cc. Stewart Kemsley, Department for Culture, Media and Sport, UK Government

Scottish Screen Response to EC Consultation on Online Content in the Single Market

Executive Summary

Scottish Screen is responsible for developing all aspects of screen culture and industry across Scotland, which it addresses through six key areas of activity:

- Education;
- Archive;
- Enterprise and Skills;
- Inward Investment and Communications;
- Market Development; and
- Talent and Creativity.

Scottish Screen's response to the Consultation on Online Content is therefore shaped by the need to support both:

- A cultural agenda - for example, improving access to screen product for consumers, promoting media literacy and enhancing access to and usage of Scotland's extensive screen archive; and also
- An industrial agenda - for example, improving access to market for producers, promoting growth in the scale of Scotland's screen industries and attracting inward investment.

Reflecting this twin agenda, Scottish Screen fully supports the Commission's stated objective of promoting investment and competition, while preserving public interest objectives and ensuring the protection of consumer interests. Scottish Screen's comments in this response are focused on those issues which are most pertinent to its remit, rather than addressing all the questions raised in this wide-ranging consultation.

The main issues we raise are:

- We have a keen interest in the potential opportunities provided by the development of true video-on-demand (VOD) for recently-released films and games and other interactive content;
- We are concerned that the infrastructure may be unable to keep pace with the increasing demands and expectations of consumers of content online, and in particular the specific challenges faced by parts of Scotland in this respect;
- We are concerned over certain aspects of the draft Audiovisual Media Services Directive, which could potentially disadvantage the screen industries in Scotland, which are characterised by a large number of SMEs and freelance operators and would be disproportionately disadvantaged by a premature and unnecessary extension of regulatory requirements; the effect would be to favour larger incumbents and to discourage innovation in these still developing markets;
- While we agree that piracy should be discouraged, we also share the view expressed by some industry experts that the main threat to UK films is obscurity rather than piracy and that there are dangers associated with paying too much attention to piracy issues;

- Public interventions need to be particularly careful to strike the correct balance between ensuring the creative endeavours of producers are adequately rewarded and at the same time recognising the public's entitlement to benefit from access to content.

Background - Scottish Screen's Involvement in Online Content

Scottish Screen welcomes the opportunity to respond to the current EC Consultation on Online Content in the Single Market and supports the Commission's stated objective of promoting investment and competition, while preserving public interest objectives and ensuring the protection of consumer interests.

Scottish Screen is the national screen agency for Scotland with responsibility for developing all aspects of screen culture and industry across the country. Established in 1997, the agency is working to drive an integrated screen policy across Scotland, and across the screen industries through its role as:

- An advisor to government;
- An advocate for the industry;
- A development agency; and
- A strategic investor.

Its work includes:

- Production Company growth;
- Short and feature film development and production;
- Freelancer and company skills development;
- Experimental, alternative and interactive digital screen content, formats and platforms;
- The development and production of television drama pilot; and
- Audience and market development and distribution initiatives.

Scottish Screen's involvement in online creative content and services spans six key areas:

<u>1. Education</u>
True literacy in the 21st century should include moving image media literacy, yet moving image education remains largely undeveloped within Scotland's school curriculum. Scottish Screen wishes to ensure that people of all ages and backgrounds are inspired and equipped to analyse, appreciate, explore, create and share screen media and aims to achieve this through:

- Incorporation of moving image education into the heart of the schools curriculum;
- Increased media literacy among teachers;
- Improved moving image education pedagogy in schools;
- Incorporation of moving image education into adult learning programmes
- (especially literacy);
- Improved media literacy among disadvantaged groups;
- Enhanced use of screen media in tertiary education for teaching and research; and
- Close working relationships with national partners in education and with local authorities.

<u>2. Archive</u>

The Scottish Screen Archive, which holds Scotland's screen heritage, comprises 32,000 items of documentary, newsreel and shorts, along with educational, advertising and promotional films. There is a major opportunity to continue to develop the Archive's collection, enabling conservation and preservation and to further enhance its access and education activities. (Although the Archive is being transferred to the National Library of Scotland, this in no way diminishes Scottish Screen's commitment to the Archive and its collection.)

<u>3. Enterprise and Skills</u>
There needs to be sufficient volume of economic activity within the screen industries to create an environment that will allow a wider range of product to be produced. Beyond the two main broadcasters (BBC Scotland and stv), the sector in Scotland is dominated by small and micro-businesses or sole traders and freelancers. For Scotland to succeed (in seizing regulatory and public policy opportunities), it needs a greater scale of economic activity. This will only be possible through significantly growing the capacity and size of indigenous businesses, creating and attracting new businesses, and in ensuring that the right levels of skills are available across the sector. It is therefore essential that the industry and its workforce is the best skilled, best qualified and best able to exploit commercial and cultural opportunities. This will be achieved through the development of a range of models and support structures for developing and strengthening the supply and value chains of Scotland's screen industries, with the aims of:

- Developing a critical mass of effective businesses and skills across the screen industries' supply chain;
- Encouraging and supporting the development of the skills and expertise required by the screen industries;
- Stimulating product and process innovation through the development of cross sector partnerships; and
- Researching and developing new and expanding markets for screen businesses.

<u>4. Inward Investment and Communications</u>
As discussed above, Scotland needs a greater scale of economic activity. Whilst supporting indigenous producers is still a priority, it also means that Scotland has to be proactive in attracting business and talent into the country. Scottish Screen therefore aims to position Scotland in an international context as a good place to do business for all aspects of the screen industries, including increasing the turnover and share of mobile screen activity attracted to Scotland, through:

- Ensuring a harmonised presentation of Scotland on an international stage;
- Ensuring skills levels are appropriate in quality and quantity;
- Ensuring strategic investment routes are harmonised;
- Ensuring effective monitoring and analysis of the economic benefits; and
- Developing and implementing integrated marketing and promotional plans covering key industry sectors – broadcast, film and interactive – including festival and market presence.

<u>5. Market Development</u>
The market for moving image product continues to expand and diversify. It is no longer restricted to cinema and television, with satellite, cable, broadband and portable and mobile delivery routes becoming ever more popular. The challenge is in ensuring that a diversity of product continues to be created, distributed, consumed and appreciated by a diversity of audiences across a range of formats and platforms. Scottish Screen therefore aims to

develop, increase and improve access to market for both producers and consumers of creative screen content, ensuring that the widest range of product reaches and is appreciated by the widest range of audiences, through:

- Stimulating innovation in production, distribution and consumption business models;
- Improved access to screen media in home, public and commercial environments, for all sectors of Scotland's diverse population;
- Identifying appropriate infrastructure and resource requirements (including capital, skills, technology and investment); and
- Close working relationships with public, private and voluntary partners across Scotland.

6. Talent and Creativity

Talent and creativity underpin the screen industries in Scotland and yet the best creative, business and technical talent often choose to leave. Scotland needs to ensure that the best talent is nurtured and supported not just in its early new entrant stages, but also as careers progress. The nurturing and support of talent and creativity applies not just to production and not just to film and television, and should be seen across a range of formats and platforms. The objective is to ensure that Scotland's creative, technical and business talent is nurtured and supported at appropriate levels in appropriate ways, through:

- Developing a clear ladder of opportunity – from new entrants to established professionals – with responsibilities for support and intervention identified and agreed;
- Identifying and addressing barriers to entry and progression;
- Identifying and addressing talent development needs and opportunities within and across the film, broadcast and interactive sectors;
- Raising the profile and increasing the value of talent in the UK and international marketplaces; and
- Ensuring that investment in product delivers clear benefits to indigenous talent.

New business models and transition of traditional ones into the digital world

Question 8:

Scottish Screen sees vast potential for an expansion of online content creation and distribution for Scotland's screen industries. For example, we are particularly interested in the opportunities provided by the development of true video-on-demand (VOD) for:

1. recently-released films, in view of the significant numbers of people in Scotland who do have ready access to cinemas; and
2. games and other interactive content, given the potential importance in providing new distribution opportunities for Scotland's nascent computer games/interactive leisure industry.

Question 10:

We are concerned that the infrastructure may be unable to keep pace with the increasing demands and expectations of consumers of content online. The specific concerns of Scotland in this area are referred to in Ofcom's Communications Market Research Report on Scotland, published earlier this year (on the Ofcom website at http://www.ofcom.org.uk/research/cm/nations/scotland/), which observes that "Scotland has unique geographic, linguistic, and socio-demographic features which influence and shape its communications services." In its findings, the Ofcom report also comments that:

- Due to its geography, certain parts of Scotland, particularly the Highlands and Islands, experience lower levels of availability, including some mobile phone black spots, satellite coverage and lower speed broadband;
- Broadband cable availability is lower than UK average (37% compared to 45%);
- 36% of adults living in Scotland say they have taken-up three of the main communications platforms of mobile phone, digital TV and the internet at home, compared to 43% for the UK as a whole;
- People in Scotland spend less on communications services than the UK as a whole, £14.50 a week against £15.20 a week for the UK. However, as a percentage of average weekly disposable income, people in Scotland spend a larger proportion of their income on communications at 3.4% against the UK average of 3.2%.

Legal or regulatory barriers

Question 17:
We are concerned over certain aspects of the draft Audiovisual Media Services Directive, as it currently stands. In particular, we believe that:

- The extension of the scope of the Directive to cover all Audiovisual Media Services is too extensive and unclear in definition;
- Any amendment or qualification to the country of origin principle should require very careful evaluation in such globally competitive markets; and
- Self- and co-regulation should be encouraged.

The screen industries in Scotland, which are characterised by a large number of SMEs and freelance operators, would be disproportionately disadvantaged by a premature and unnecessary extension of regulatory requirements. The effect would be to favour larger incumbents and to discourage innovation in these still developing markets.

Piracy and unauthorised uploading and downloading of copyright protected works

Question 21:
While we agree that piracy should be discouraged, we also share the view expressed by some industry experts that the main threat to UK films is obscurity rather than piracy and that there are dangers associated with paying too much attention to piracy issues. For example, we are concerned over reports that Hollywood studios are attempting to ban specialist search engines which target moving images. If true, these developments could prove damaging to indie film production.

The recently announced purchase of YouTube by Google has also drawn attention to the increasing complexity of determining ownership of intellectual property in online content and thus of assessing whether piracy has occurred. YouTube's intellectual property resides in its brand value and its system architecture, but undoubtedly also in both its amateur user generated content and also in the clips where artists have originally been paid to create the content. An argument could be made that a proportion of the reported $1.6 billion purchase price for YouTube represents the value of content owned by others, who are not being satisfactorily recompensed.

What role for public authorities?

Question 32:

Scottish Screen's focus in this wide-ranging consultation is shaped by its Scotland-wide responsibility for developing all aspects of screen culture and industry (defined as all 'time-based audiovisual media' and thus including all the types of online creative content identified by the Commission other than Online publishing). As described above, its objectives cover both industrial and cultural agendas, through six key areas of activity:

- Education;
- Archive;
- Enterprise and Skills;
- Inward Investment and Communications;
- Market Development; and
- Talent and Creativity.

Indeed, one of the distinctive features of the screen industries, in particular of film and television, is that they play a key role in national cultural life in addition to their economic importance. Reflecting this dual role, the screen industries in the UK are characterised by significant levels of public sector intervention, including such measures as the recently announced new UK film tax measures and the raft of regulatory measures to support public service broadcasting which are policed by Ofcom to support the interests of the UK "citizen-consumer." These interventions impose a range of public obligations as well as providing benefits for the film production companies and television broadcasters involved.

The screen industries' mix of rapid technological change and a very substantial public interest dimension are highly distinctive and give rise to a number of sector-specific Intellectual Property (IP) considerations, for example the need to strike an appropriate balance between ensuring the creative endeavours of independent producers are adequately rewarded and at the same time recognising the public's entitlement to benefit from public service broadcasting. Public interventions need to be particularly careful to strike the correct balance.

MK