

**Response  
from Compact Media Group**

**to**

**Creative Content in a European Digital  
Single Market:  
Challenges for the Future**

**A Reflection Document  
of DG INFOSOC and DG MARKT**



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## **1. Introduction**

Compact Collections (part of the Compact Media Group) was established in 1995, after identifying the need for an independent agent to work with film and television companies to administer and collect royalties from secondary exploitation of films and other audio-visual copyright works. This secondary exploitation generates payments which are becoming increasingly important to film producers in the digital environment.

Royalties are collected by the company relating to:-

- (a) exercise of simultaneous cable/satellite retransmission rights;
- (b) rights to claim blank tape and other equipment and/or media levies and in particular levies providing for fair compensation for non commercial private use;
- (c) rights to claim licence fee for educational copying of client's works;
- (d) rental rights;
- (e) theatrical box office;
- (f) public performance levies.

The company ensures that collecting societies around the world are provided with the data concerning the works owned by its clients, managing registration requirements and accessing, securing payment and providing for the distribution of royalties to client companies against quarterly statements.

Compact Media Group also provides services in relation to music publishing rights owned by clients and Collection Account Management services.

The company represents over 300 international rights-holders of films and television programmes and administers rights in a significant number of audio-visual works on their behalf.

The company is a representative on the board of AGICOA (The central collection society that administers and collects simultaneous cable and satellite retransmission income) and as associate member of Eurocopya (European association of Audiovisual & Film Producers' collective management societies).

Compact therefore welcomes the opportunity to respond to the Reflection Document.

In view of the interest of our members in film and audiovisual production we shall refer to the aspects of the Reflection Paper which address the audiovisual sector. We shall also address the "Possible Actions" outlined in Section 5.

## **2. Executive Summary**

### **2.1 Secondary payments are of increasing importance to film owners in the digital online world.**

(a) Contractual obligations operate alongside collective management obligations to provide for rights owners, other than film producers, to share in the profits from film exploitation.

(b) Film producers should also be entitled to share in revenues from collective management of their secondary rights when individual administration becomes increasingly difficult in a world of multiple non exclusive online services offering access to a film at any one time.

### **2.2 Collective management has been proved to work for the benefit of film owners.**

Moves from exclusive release windows for exploitation of a film on particular platforms to much wider video on demand distribution, enabling non-exclusive access to a film on multiple platforms, should be supported by collective management for the licensing of film rights when appropriate.

### **2.3 The principle of exhaustion should continue to apply only to tangible goods sold within the EU.**

(a) Copyright, particularly the right of communication to the public, must apply to enable payments linked to use of film online to be made in ways that reflect not only the permission for a film to be included within a particular service, but also levels of use within a particular service, and value to those who choose to retransmit such services for the benefit of consumers.

(b) The study commissioned by the Commission to assess options relating to the licensing of audiovisual works is welcome. However assumptions over the need for legislative innovation, before new online video on demand markets have had time to develop, may be premature.

(c) It is impossible to predict relative value for the inclusion of a film within different online services at the time of first inclusion within a service. It will be to the benefit of both rights owners and consumers if the option of different price levels for different types of online access can be preserved, reflecting other market forces such as levels of use and linked value added services.

### **2.4 The EU Cable and Satellite Directive has provided support for territorial licensing of rights whilst also enabling cross border retransmission to benefit from collective management.**

(a) The valuable work of AGICOA in providing for such collective licensing, with the support of companies such as Compact, is well established. It is to be hoped that the value of this work is fully assessed and taken into account within the Commission's current review of the audiovisual sector.

(b) Collective management of cable retransmission rights already supports extended collective licensing of film rights. Compact welcomes recognition of the benefits of extended collective licensing in certain cases.

**2.5.1 Licensing of orphan works will benefit from extended collective licensing. However safeguards to ensure that works are genuinely “orphan” and that diligent searches for rights owners take place before a work can be licensed as “orphan” , must be put in place.**

A suitable system to support extended collective licensing of “orphan” films (and any “orphan works included within them) may be particularly important to facilitate use of older works within the film and audiovisual sectors.

(b) Clear checks and balances will be needed when developing any system for extended collective licensing of orphan works. This will include establishing a clear definition of when a film amounts to an “orphan work” and a fair system to ensure that “diligent search” for the possible owner of a work thought to be “orphan” is properly undertaken.

(c) The work already undertaken by the High Level Expert Group – Copyright Subgroup – film is value and will hopefully be taken into account for the purposes of developing any future licensing proposals.

**2.6 Copyright Exceptions and Limitations**

(a) Compact welcomes the finding in the Reflection Paper that a “nuanced” (or flexible) approach to application of copyright exceptions and limitations may bring greater benefits for rights-holders and consumers than a strict programme of harmonising any exceptions or limitations.

(b) Any harmonisation must continue to recognise that copyright exceptions and limitations are linked to rights and are not “rights” in themselves. As such, provision of fair compensation for rights holders linked to private copying is important to avoid any exception operating in ways which either conflict with normal exploitation of a work nor unreasonably prejudice the legitimate rights of a film owner.

**2.7 Introducing a “European Copyright Law” will not assist in providing a unified legal framework whilst national laws linked to International copyright treaties continue to exist.**

The concept of a new European Copyright Law would need to introduce a new layer of legal obligations at Community level operating between International Treaty obligations and national rules. As such, the new law would be likely to introduce new rules with which both rights-holders and consumers would need to comply. This would potentially increase the complexity of copyright rules, reducing transparency for users just at the time when greater clarity and practical harmonisation of rules where possible is the stated aim of the Commission.

**2.8 User-created content may be playing a new role in the digital world. However it must be wrong to deprive the creators of such work with the freedom to choose whether or not to assign, waive or exercise the copyright that exists in new work.**

If all new work starts with the same rights, owners can make their own choices over how to deal with such rights. Creating new barriers for a creator to establish “professional status” or “commercial intent” before being entitled to authorise to the of rights in their work, based upon the principles of copyright, will not encourage creativity and innovation in the future. Instead it will create a division within society that will ultimately make copyright more “exclusive” rather than copyright works being made more available through transparent licensing regimes.

### 3. Additional comments

- 3.1 Whilst film producers usually benefit from a transfer of rights involved in a film this does not mean that a producer has no ongoing responsibilities to contributors linked to exploitation of a film.
- 3.2 Collective bargaining agreements underlying the contracts by which artists and musicians are engaged increasingly recognise obligations for additional payments to be made linked to new forms of exploitation of a film. In addition, inalienable rights of contributors support payment of secondary revenue in addition to payments linked to the collective management of rights recognised in paragraph 2.3 of the Reflection Paper.
- 3.3 The Reflection Paper suggests that collective management plays a less important part in the exploitation of films than is the case for other types of copyright work. However, the work recently undertaken by Compact to assess the current imbalance between the sources of secondary revenues for film within different EU Member States highlights the significant levels of the revenue involved<sup>1</sup>.
- 3.4 Millions of Euros derived from secondary exploitation is of increasing importance to film owners in the digital age. This reflects the likely increase in the number of digital services through which an individual film is likely to be available for viewing on an increasingly non-exclusive basis in the on-line environment.
- 3.5 The Reflection Paper suggests that “release windows for VOD can act as a barrier to the availability of content on digital platforms across borders, because of time lapse between VOD and other releases”. In reality different types of VOD service are being developed which allow choice for consumers in terms of :-
  - (a) how they access a film (streamed/ progressive stream/ download);and
  - (b) where they access film (various sources for reception of service using fixed and mobile devices).
- 3.6 Compact Media Group has responded to a number of earlier Commission and UK Government consultations on the issue of possible harmonisation of exceptions and limitations. Central to regularly expressed concerns is recognition for film owners to be entitled to receive fair compensation from private copying of films in circumstances where other licensing arrangements fail to deliver such compensation. The position of UK rights-holders is particularly difficult, because the copyright law applicable within England, Wales, Scotland and Northern Ireland fails to provide for the collection of private copying levies in the ways recognised by other Member States.
- 3.7 Compact has welcomed recent publication of the Paper “ © the way ahead - A strategy for Copyright in the Digital Age” by the UK Intellectual Property Office and Department for Business Innovation and Skills. This Paper properly recognises the way in which copyright levies potentially offer benefits to rights holders and authors, both in terms of increased revenue and (as a consequence) greater attractiveness to investors<sup>2</sup>.
- 3.8 Rather than pursuing the introduction of any new private copying format shift exception without provision for payment of fair compensation to rights-holders, the Paper now recognises (in paragraph 79 on page 36 of the Paper) that “A transparent, harmonised system across the EU that did not place additional unwarranted burdens on business and was fair to rights holders and consumers could merit further examination as a means of fair compensation”.

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<sup>1</sup> Missing Opportunities in Digital Britain – Compact Media Group (supplementary to this submission

<sup>2</sup> The Paper recognises that Euro 568 million was raised from levies within the EU in 2004 (R. Andrews “Private Copying Levy: Hardware Makers Ready For Europe-Wide “iPod Tax”?” – Paid Content: UK 27 May 2008.

- 3.9 Compact would submit that the levies already being distributed to film owners from the EU Member States who provide for such payments show that distribution systems can be put in place to satisfy the goal outlined in the recent UK Paper.

Further information

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