



Attn: European Commission
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**Subject: Response of the WCA to the to the European Commission paper:
“Creative Content in a European Digital Single Market: Challenges for the Future”.
A Reflection Document of DG INFSO and DG MARKT.**

We would like to respond to your consultation on creative content online (22.10.2009) which seeks to find an equitable solution that meets the needs and concerns of rights holders, consumers, users of copyright material and creators.

The World Cinema Alliance (WCA) represents creators like film directors, screenwriters and authors of the musical score of films and TV programmes. Indeed, it is these creators who generate the films and TV [programmes on which the commerce of modern cultural product is founded](#). Consequently, the WCA would like to focus on audio-visual products like films and TV programmes like dramas and documentaries which can be up-loaded, watched or downloaded.

The development of online digital viewing and downloading is of tremendous concern to creators and to everyone involved in the production and distribution of films and TV programmes. Unlike music or books, TV programmes and in particular films, have production costs that can easily exceed millions of Euros. Online piracy is therefore a **serious threat to future film and TV production**. Adequate compensation to filmmakers and audio-visual creators **is essential in order that the industry develops in the digital age**. As creators the members of the WCA are very keen in seeing an equitable solution to the current piracy problem which is holding back the development of content online. We would therefore like to make the following remarks:

[On the Need for Pan-European Licenses](#)

Your document mentions in considerable detail the merits as well as the difficulties in developing pan-European licenses. For example, who should manage them, how would they be implemented and if they meet the needs of all stakeholders. From the point of creators of audio-visual works, the most important element needed in ensuring a proper pan-European license is making sure that the contractual agreement between the creator(s) of the audio-visual work with the producer is fair. The contract should state

that the creator(s) would be remunerated and get a royalty for every exploitation of their work whether it is distributed in cinemas, on DVDs, on mobiles, on TV and on the Internet. But unfortunately, the sector is cursed with unfair contracts whereby creators are bullied by producers, who are themselves bullied by broadcasters, to sign 'buy-out' clauses, whereby the creator agrees to assign his/her **author's rights, and especially moral rights**. Such practices make it very difficult, if not impossible, for creators, especially young creators just starting their careers, in earning any royalty from their work. It is therefore vital that any model to develop an equitable online business environment takes into account the need for creators to be able to negotiate fair contracts with minimum terms on royalties and on the use of their work¹ so that the creators can be fairly remunerated for their efforts. Such a level playing field is actually in the interest of producers. Once producers have clearly understanding and have it written down in a contract with the creators the conditions on remuneration and royalties, it is possible for them to negotiate better deals with distributors like broadcasters, and now internet service providers (telecoms) and companies like search engines that wish to use content online and would be interested in buy the license.

At the present point in time, few if any pan-European licenses exist for audio-visual works. They do exist for music due in large part to the European Commission's recommendation² on online music services. However, this recommendation is controversial for it has not taken into account the needs and interests of small repertoires, lesser known musicians and musicians from smaller member states. The Commission should learn from the experience of the recommendation and understand that any pan-European license must be negotiated in a fair and equitable manner between creators and industry.

The WCA advises that the European Commission should consider the suggestion in the Final Report on the Content Online Platform (May 2009) that any move towards more multi-territorial licenses should be supported by a European database for creative content that would help to identify rights holders and deliver all necessary information for licensing and rights management. The VERDI project under Info 2000 programm was a first attempt.

In order for creators to negotiate fair contracts with producers it is absolutely vital that they are allowed to negotiate at national or in the future even at European level a collective agreement. Without a proper level playing field between creator and producer it is not possible to have fair licensing agreements. Without fair contractual agreement, any license would ultimately be only of benefit to other rights holders like producers and broadcasters and now Internet Service Providers (ISPs), to the detriment of creators, who would be pushed out.

The importance of CMOs (Copyright Management Organisations)

Copyright management organisations (CMOs), which are often referred to as collecting societies or authors' societies, are vital in ensuring that the copyrights of rights holders is safeguarded. CMOs need to be more transparent about their activities and how they

¹ For example the moral rights of authors should be respected, meaning that permission should be sought from creators before advertisement spots are inserted in their work or their work is unofficially censored.

² Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC)
(http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_276/l_27620051021en00540057.pdf)

distribute the money they collect. However, they are a vitally important component to the well being of creators because the CMOs can help to implement the laws on copyright and ensure that creators and other rights holders who are members of the CMOs are compensated from the exploitation of their works. CMOs have traditionally operated at national level. With the coming of the Internet and of content online, CMOs have embarked on a series of reciprocal agreements. Due to the recent CISAC case (July 2008) which ruled against CISAC's collecting operations in favour of a more open and competitive environment, there is now a real possibility that rather than focus on simply collecting royalties on behalf of their members, CMOs will start behaving like commercial entities and start 'competing' for members. This is a dangerous development, especially for creators in smaller countries and for countries where the repertoire of films and TV programmes meets the needs for small national audiences whose native languages are unlikely to be spoken widely beyond their borders, with the exception of expatriate communities. The development of a future business model to encourage creative content online must take into account the needs of all rights-holders, in small as well as large countries, in countries with small repertoires, and can take into account the needs of small audiences. The European Commission should re-examine its decision of 2008 relating to CISAC and should re-consider its attitude towards reciprocal agreements.

A possible solution is to encourage the development of pan-European licenses as already mentioned above, but in the principle of 'fairness' and to encourage a 'level playing field'. It ought to be possible to draft into agreements specific safeguards enshrined in law allowing that creators and rights holders with residence in any country would be entitled to fair compensation from any exploitation of their work regardless of where they reside under an European control' body.

On Levies

Levies were invented in the 1960s to compensate rights holders and creators from unlicensed private copying of their work. Levies have been **highly** effective in decriminalising unlicensed private copying and in strengthening consumer confidence. However, now that analogue technology of the 1960s is less and less in demand due to the switch-over to digital, arguments have appeared from broadcasters and ISPs that levies are no longer needed.

Indeed, the WCA is of the view that levies should be **an integral** part of the business model for creative content online. Like advertising, which is increasingly migrating away from analogue services and going to online digital services, levies should likewise migrate to digital. Levies have been an important source of income for creators. Many CMOs collect the bulk of the royalties for the members from levies. Ideally a levy on the turnover of digital distributors **such as satellite, cable and ISPs** should be negotiated.

A levy would also be of enormous benefit to consumers. It would reduce point of sales, allow in a clear way which part of content to be distributed freely, and protect them from accusations of illegally downloading content. One must be clear that the Internet is not free; the consumer must pay an ISP for access to the Internet, often as a flat fee each month or year. It is therefore reasonable to expect that the financial beneficiaries of the internet and those who benefit most from consumer demand for copyright content compensate the creators and the rights holders for making their work available on the

internet and from making money by charging consumers download and access fees or sending them telecommunication bills.

At this point it is important to be mindful that levies are not a replacement to licenses, but can complement them and provide a broader recovery model.

Levies and Online Piracy

There are many suggestions on how to deal with online piracy. These include information and education campaigns to persuade consumers to respect copyright and moves to identify pirates and to issue warnings to stop illegal activities. These suggestions, especially the education campaigns have their merits. However, in the view of audio-visual creators, the larger the audience that sees the work the better – the problem is getting the audience to pay. As stated earlier, a film can cost several millions of Euros to produce; it must recoup its costs and cannot simply be given away free. But a generation of Internet users have grown up enjoying free if illegal access to content, albeit of a quality significantly reduced by compression technologies such as MP3 (audio) and MP4 (video), and hold the widespread and self-serving belief that conventional IP owners and distributors over-price their products and care little for the artists who produce it. At the same time, advances in encryption and private networking will make it harder and harder to declare war on everyone who indulges in illegal downloading of content and still balance freedom of access to information in a general sense; increasingly it will be only the young and the foolish that will be caught.

The WCA proposes that a possible solution to piracy is to focus wholly on pirates whose motives are profit and who up-load and disseminate content through illegal websites in order to generate cash for themselves. Pirates like these can and should be prosecuted. As an alternative to the blanket legislation and prosecution proposed by the largest IP holders, very low cost, low quality (compressed) digital content should be made available online on specific websites that have paid a license to distribute the work and efforts should be made to convince the consumer that it is worth paying for the better-quality reproductions of audio-visual material. Bear in mind that there is a short window in which to change the views of the current and future Internet generations before high-speed Internet makes the downloading of high-quality content such as Bluray as fast as the highly compressed digital copies being downloaded illegally today.

In Conclusion

Any future business model for content online should:

- ensure that there is a fair negotiating position between creators and producers, and likewise between producers and the online users of content like search engines and ISPs.
- the role of CMOs should be recognised, but they should be more transparent regarding how they distribute the royalties.
- the system of levies on digital content should become universal throughout Europe.

We hope that the European Commission will consider our remarks and continues to consult all the stakeholders on this issue, especially creators.

Yours sincerely,

Joao Correa