



European Coordination of Independent Producers  
Co-ordination Européenne des Producteurs Indépendants

*Klaus Hansen*  
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**Response to the European Commission consultation on Creative Content Online**

*Johannes Kreile*  
**BVDP / Germany**

The European Coordination of Independent Producers (CEPI) was founded in 1989, to organise and represent the interests of independent cinema and television producers in Europe.

*Andries Overste*  
**OTP / The Netherlands**

Today the Coordination represents approximately 4000 independent production companies in Europe, equivalent to 95 % of the entire European audiovisual production industry. All together, our members supply over 16000 hours of new programming each year to broadcasters in Europe, ranging from single documentaries and special event programming, to game shows, light entertainment and high-cost drama serials. As the producers form the basic support of the audiovisual industry, it is necessary to articulate the interests of those producers within a unique European organisation.

*Satu Harkke*  
**SATU/Finland**

Before responding to the questions included in the consultation, there are quite a few issues that are critical to the European Independent production industry and relate to the issue of availability of Content Online but are not addressed in the questions in the consultation.

*Roberto Levi*  
**APT/Italy**

Cultural Diversity is typical of European content. Cultural and European diversity can be self-sustaining if European content is widely available. This is best guaranteed in an open program supply market. Independent production companies are instrumental to guarantee a variety of content that is representative of the diversity of Europe, its regions and its Member States. If European content is not widely available but concentrated in the hands of a few major players in the market, as is currently the case with many European Broadcasters, then new media platforms will buy cheap and readily available US content.

**Honorary President**  
*Claus Hardt*

The new media environment **must** contribute to the promotion of diversity as guarantees for innovation and creativity. Independent production companies would like to use all the services/ platforms of online content distribution to disseminate their exclusive and often perpetual property. The intention is to make the content available to as large an audience as possible. The consumer should be able to access content. However, the current regime for negotiating new-media rights across most countries in Europe means that the rights for the exploitation of independent content in new media platforms will remain the exclusive and perpetual property of the commissioning terrestrial broadcaster (without the independent production company being compensated for the exploitation of those rights). This level of concentration in the content supply market is contrary to the interests of a sound economic environment where new services can thrive and is contrary to the interests of European consumers of content. More than any other link in the market chain, producers have a vested interest in exploiting the content that they produce across a range of different platforms. As long as there is a demand for content, producers will continue to produce content.

**Secretary General**  
*Siada El Ramly*

The broadcaster community can be an obstacle to the dissemination of content by independent production companies. There is a high risk of 'warehousing' of content due to the bundling of new media rights and primary rights. There should be stricter

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limitations on broadcasters to either use the content or lose the right to exploit it online. This could be done using time limitations, e.g. should the broadcaster not exploit the new media rights of certain content in X amount of time, then the new media rights are automatically transferred back to the producer to exploit.

We believe that the concept of independence must be directly linked to the concept of secondary rights' retention. In a market environment characterized by vertical integration and considerable concentration of market power in the hands of a few major players (the terrestrial broadcasters), the power exercised by these players in the acquisition of rights (especially new media rights) already means that independent production companies are unable to fully exploit new forms of content distribution. Unable to retain rights, independent production companies are unable to attract capital investment and grow. They remain heavily under funded and with limited power to invest in new quality content. The entire media sector misses out on the possibilities of attracting capital investment that will be used to invest in new quality content.

This level of concentration stifles innovation and growth. It is a vicious circle that has only been broken in countries where measures to promote the ability of production companies to hold on to and exploit their secondary rights have been taken. In short we find that there are numerous business obstacles in making online creative content available, namely:

- Difficulty in defining categories of rights of exploitation in new on-demand platforms means that these new media rights are often bundled with other rights jeopardizing future revenues from the exploitation of those rights.
- Bundling of new media rights with primary rights of audiovisual content will potentially create excessive concentration in the content supply market, thus affecting the availability of quality content that can help sustain / grow new services.
- Lack of certitude on future business models for new services: consumer funded/funded by advertising derive from different models
- Difficulty to attract investment into new services due to the lack of certitude of business models
- The complexity to clear rights with all the right holders.

Now to address some of the questions that were included in the consultation document, we will address the DRM issue and its link to copyright protection first. It is CEPI's position that DRM is definitely a means of protection of content in the online arena, however it is not now and probably will never be secure enough to be the only means of protection of content and compensation for copying of content. DRM should therefore continue to be complemented with traditional means of compensation for copying such as the copyright levies system – where applicable.

As for the issue of multi-territory rights licensing and clearance, this might provide a practical solution for some stakeholders. However it is CEPI's belief that it should be regarded as a business choice. Such licensing/clearance is sometimes too costly for some stakeholders and thus not a viable solution.

CEPI would like to take this opportunity to thank the Commission for its efforts in the area of creative content online and would like to express its eagerness in collaborating with the Commission in providing the industry position in preparation for the upcoming Recommendation on Creative Content Online especially in the area of innovative licensing regimes in the area of audiovisual works. We would also like to express our interest in collaborating with the Commission in the Content Online Platform to "encourage 'win-win' deals and cross-industry agreements in the framework of the new Content Online Platform" (Creative Content Online Communication, page 5).

