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**EFCA's Answer to the Consultation on Policy and regulatory issues in  
relation to the Communication on Creative Content Online  
EXECUTIVE SUMMARY**

Brussels, 28<sup>th</sup> February 2008

The European Film Companies Alliance (EFCA, [www.efcasite.org](http://www.efcasite.org)), founded in Brussels in September 1995, is a non-profit organisation aiming to bring together European entrepreneurs active in film production and distribution. EFCA welcomes the *Communication on Content Online in the Single Market*. It is a useful follow-up to the *Online Film Charter*.

Although it is expected to grow by 2010, the digital film market is at the moment still at a nascent stage and the VOD business is not yet seen as a profitable one. However, the internet offers a clear advantage over traditional film distribution channel as it gives the tool to the European film industry to develop new economic and growth opportunities. European film makers have now the potential to reach new consumers at international level ("Long tail" theory) and to address market access issue characterised by strong dominance of a few players at traditional distribution level whether theatrical, television or retail.

However, online distribution brings about several challenges:

1. Piracy: Piracy is seriously harming creative industries economy. An attractive legal offer of online European films need thus to be quickly set up in order to fight efficiently against piracy.
2. Lack of preparation of the European film industry to the VOD: Fragmentation of the market along national and linguistic frontiers; lack of resources to master the technology and its potential, lack of vertical structure; dependence on large broadcasters which want to control VOD rights to comfort their position at national level and maintain traditional windows.

EFCA wishes to call the Commission's attention on the following which we consider as being priorities:

- DRMs are a means to control the use of a protected work, both to monetise the work but also to protect it against piracy. Interoperability should be encouraged, although not at the expense of security. The content industry should have its say on that. Consumers need to be properly informed; this should be made through appropriate labelling on a self-regulatory approach. Information exchange between technologies companies and audiovisual SMEs on the costs and opportunities entailed to DRMs systems should be encouraged by the Commission.
- Public policy in general and the European Commission should support innovative business models by encouraging collaboration with the technology sector ( in particular via the FP7 programme), by promoting initiatives that tend to overcome market fragmentation, by encouraging national VOD initiatives to work together and by promoting copyright protection amongst consumer groups. The Commission should explicitly recognised that the absence of proper business model is today a deterrent to the development of a legal offer of films online. Support mechanisms at national level act as a brake to innovation and new business models and should be put on the agenda.
- The main question remains how to make the licensing (or availability) of European films for international VOD exploitation easier considering the rights fragmentation issue. The licensing of rights should be encouraged and facilitated for online content as licensing rights are key to the film industry to generate value from their catalogue, however it should not be imposed under any form of compulsory licensing. Territory by territory licence will continue, it is up to the rightsholders to make the acquisition of licence easier for ISPs. This should be encouraged: by ensuring a fair access to delivery platforms on non discriminatory terms (important role of EC competition law); by the MEDIA programme which should support initiatives aiming at making the licensing of VOD rights on an international basis an easier proposition; by devising on the status of VOD rights; and by envisaging system of compensation to help film producers holding on their VOD rights
- The fight against piracy and the support of ISPs and telecoms to take their share in ensuring that content distribution is being rewarded. The availability of films through uncontrolled peer-to-peer networks as a serious impediment to investment in films. The issue of ISPs and telecoms liability needs to be addressed in this context and the recommendations of the Olivennes report should be closely followed. In that respect, the Communication must more clearly articulate the links with other areas of EU policies (e-commerce Directive, the Copyright Directive and the Telecom Package).