



EQUITY RESPONSE TO THE EC COMMUNICATION ON CREATIVE CONTENT ONLINE

INTRODUCTION

1. Equity is a trade union representing 37,000 performers and creative personnel in the UK, who work across the whole spectrum of entertainment. The work of Equity members features in many of the types of creative content identified by the Commission, including audiovisual work and sound recordings, video games and educational work.
2. Equity is a member of the European group of the International Federation of Actors (FIA). In addition Equity works closely with British Equity Collecting Society (BECS), the only UK-based collective management organisation for audiovisual performers. Equity has had sight of the response provided by BECS to this consultation and would fully endorse the points made. However we believe that it is also important for the Commission to be aware of the work of Equity in this area, and our principal concerns.
3. Equity welcomes the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Creative Content Online in the Single Market (COM (2007) 836 final) and the proposals for setting-up a “Content Online Platform”.
4. This response does not attempt to address every question raised by the Commission in the consultation. Nevertheless, it provides a number of comments on the broad issues raised.

CONTENT ONLINE PLATFORM

5. Equity believes that it is vital that representatives of audiovisual performers are invited to participate in the “Content Online Platform” discussions. These performers have a direct interest in some of the key challenges identified by the Commission, particularly in relation to the arrangements for making creative content available and the development of multi-territory licensing for creative content.
6. The involvement of representatives of audiovisual performers will be able to assist the Commission by demonstrating the different and flexible approaches to paying performers for the use of their material in the digital age across different EU member states. In particular, it is important to understand that there are a range of different models that exist, from contractual payments based on exclusive rights, to statutory “equitable remuneration”, as well as other forms of collective licensing.

7. The evidence available suggests that there can be no “one-size-fits-all” approach for securing payments to audiovisual performers, and that the flexibility of current options is necessary and helpful. This is especially true in a world where the “long-tail” of audiovisual programming can cast doubt over the value and description of primary and secondary markets.
8. In the UK, Equity’s main focus continues to be on licensing exclusive rights through negotiating collective agreements, which secures significant payment for secondary use – including £15.8 million from one broadcaster alone between 2004 and 2005. However, considerable sums have also been agreed using collective management of small payments, which Equity has secured by exercising exclusive rights for the secondary use of performances on new media. These payments have then been distributed by BECS acting as the appointed distribution agent for Equity.
9. The Content Online Platform should take these flexible approaches into account when considering ways to enable effective and efficient methods of remuneration from the licensing of performers’ rights in future.

DIGITAL RIGHTS MANAGEMENT (DRM)

10. Technical protection measures and DRMs are an important component in the development of new business models that are able to offer audiovisual work. Consequently Equity believes that they are necessary in order to retain the flexibility to offer a diverse range of products. Indeed many of the new ways in which audiovisual work is being made available depend upon the use of such measures, including the BBC i-player and subscription based video-on-demand services such as that operated by Channel 4.
11. However, the Commission is right to raise the issues of transparency and interoperability regarding the use of technological measures. In particular greater interoperability is an admirable goal, which should continue to be pursued, although this should not be enforced by means of regulation.
12. In addition, steps to improve the transparency in the use of technical protection measures would be welcome. This would go some way to meeting consumer concerns over the clarity of limitations on the use copyright material legitimately imposed by rights owners whilst promoting a better understanding of the conditions under which material is made available.
13. It is clear from the way in which protection measures are applied to certain subscription television services and new video-on-demand offerings (including those mentioned above), that such measures can be used without generating adverse reaction from consumers, if they are explained properly and understood fully.
14. The labelling of digital products and services could form part of this approach. This could assist both in the development of greater understanding by consumers, and has the potential to improve tracking of

audiovisual material and its usage. For example, greater standardisation and use of voluntary numbering systems could help identify contributors to audiovisual work – and avoid under-reporting – when it is broadcast and distributed. Therefore the recent launch of ISAN (International Standard Audiovisual Numbers) in the UK is a welcome development.

MULTI-TERRITORY RIGHTS LICENSING

15. Equity believes that rights holders and their representatives must have the opportunity to consider and evolve practical industry responses to the implications of multi-territory rights licensing. Therefore the Commission should *not* seek to propose a Recommendation to the European Parliament and Council on the issue.
16. There is currently no evidence within the audio visual market place that diverse business models and varied consumer demands for different kinds of audio visual content across the EU will be best served by a harmonised approach to licensing. Indeed it is more likely that different approaches will continue to be appropriate in different territories.
17. For example, it will remain vital for performers and their representatives to be able to retain the option to manage their exclusive rights and exercise them through collective agreements. This is the basis of much of the licensing of audiovisual work in the UK. Until now this system has been to the advantage of consumers, broadcaster and performers, as it has enabled sufficient flexibility and availability of work for appropriate payment.
18. Moreover, the UK does not apply the same systems for securing the payment of equitable remuneration for audiovisual performers as much of the EU. The UK government has consistently opposed imposing private copy levies as measures for fair compensation (although we are pleased that this issue is once again in the spotlight due to consultation over the introduction of a possible “format shift” exception for private personal use in the UK). In view of this sort of approach it has been all the more necessary for rights owners to develop a system of appropriate payment for secondary use.
19. While this is clearly not the only model in use in the EU, it also forms the basis of similar arrangements in a number of Nordic countries. However, this model is not always seen as preferable. Consequently the practice in a number of other EU member states will tend towards a buy-out of exclusive rights, backed up statutory remuneration rights for secondary use.
20. Therefore it seems reasonably clear from the developments outlined above (and our experience of dealing with new technology in the UK) that a one-size-fits-all approach to licensing across the EU should be avoided. Instead a flexible approach is required which is able to take into account the licensing of exclusive rights through collective agreements; exercising exclusive rights for secondary uses; the potential for collective management of revenue secured by collective agreements negotiated by trade unions;

and the benefits of collecting societies in administering equitable remuneration.

21. When considering these approaches the Commission must also reflect on the extent to which the new business models are actually becoming replacement technologies for the viewing of audiovisual material. Video-on-demand and catch-up television services are currently an addition to linear broadcasts, but are increasingly likely to become the alternative choice for many viewers, to both broadcasts and video/ DVD. This means that need for flexible approaches to licensing and payment are even more important.
22. Finally, Equity would reject the concept of a model of online licences based on a distinction between primary and secondary market, as a basis for multi-territory licensing. This is because it is not practical to draw a fixed line between what primary and secondary, based on an arbitrary length of time such as two years.
23. This is partly due to the opportunities available in the online world through the potential for “long-tail” exploitation, as well as the variable length of time that different genres of work can hold a high value. For example, Equity recently renegotiated a contractual arrangement based on exclusive rights for the use of the children’s television programme, *The Tweenies*, which is over 7 years old. This provided for use in a range of media, including terrestrial, secondary channels, online and video/ DVD and secured income for the performers of well over £1½m pounds.

LEGAL OFFERS AND PIRACY

24. Equity supports improvements in education and awareness amongst consumers and service providers as the key for improving respect for copyright in the online environment.
25. The ISPs also have a responsibility to limit unauthorised exploitation of copyright material on their networks. Therefore a memorandum of understanding or an appropriate code of practice may be a helpful tool in combating this problem. However, the formal legislative approach being discussed by the UK government may ultimately be a more effective way of dealing with these issues.

25 February 2008

For further information contact:

Matthew Payton
Research and Parliamentary Officer
Equity
Guild House
Upper St Martin’s Lane
London
WC2H 9EG
020 7670 0260
mpayton@equity.org.uk