



European Commission

Communication on Creative Content Online in the Single Market

Submission by the Satellite and Cable Broadcasters' Group

29 February 2008

The SCBG is the trade association for satellite and cable programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels are available in almost 50% of UK homes.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and – with a couple of notable exceptions – do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

SCBG welcomes this opportunity to comment on the European Commission's consultation on Creative Content Online. Our members already offer a vast amount of audiovisual content on online platforms across Europe and are actively exploiting new platforms in order to maximise the take-up of their content and services.

This response focuses on multi-territorial licensing, which is an area of great concern to all content providers in our group. Although SCBG understands the Commission's desire to encourage content to be made available on new platforms at a pan-European or even global level, it is important to strike the correct balance between this objective and the business interests and rights of content providers. Changing the current regime based on commercial freedom and exclusive licensing would damage existing business models, and undermine investment confidence in what is rapidly changing and uncertain business environment. The Commission needs to provide further analysis of the consequences of its proposal before recommending it as a model going forward.

In its Communication, the Commission asks whether the issue of multi-territory rights licensing must be addressed by means of a Recommendation of the European Parliament and the Council. SCBG feels very strongly that there is no clear evidence to suggest that EU consumers are unable to gain access to a wide range of online content, or are expecting a huge increase in the provision of such content. European consumers want and are used to getting localised content and can already now access a plethora of services provided by various content providers.

Discovery, MTV, Time Warner, Universal and Disney, for example, all offer channels, on-demand programming and other services online to consumers across the EU. These services are often based on the same or similar content, which has been localized to appeal to the national market in which it is offered. In these circumstances such companies are delivering content on a pan-European basis, while at the same time exercising effective control over their rights in line with business objectives and realities.

We therefore do not agree that the European Union needs to regulate an area that is based on commercial freedom to license.

More specifically, the Commission is asking what would be the most efficient way of fostering multi-territory rights licensing in the area of audiovisual works and whether we agree that a model of online licences based on the distinction between a primary and a secondary multi-territory market can facilitate EU-wide or multi-territory licensing for creative content.

We think that there are several issues that need to be considered when envisaging a model by which right holders would be encouraged to grant, next to the main licence, a second multi-territory licence that would improve circulation of audiovisual content.

Firstly, as already pointed out above, content providers have the right to a commercial freedom in licensing their content in markets of their choice and according to their particular business strategies. Regulators should not have the power to dictate to right holders how they should license their content. Such an approach would risk forcing providers into deals which they do not want and cannot control, and undermining the value of other previously completed rights deals. If a particular right has been assigned to a distributor in a single territory at a particular price, for example, then the assignment of the same right to a pan-European distributor will automatically

impact the value of the right under the initial deal. Indeed, it is very likely that the introduction of compulsory international licensing arrangements would force the renegotiation of most existing rights deals.

Content providers prefer exclusive licensing deals with carefully selected and trusted content distributors that can maximize the revenue and to cover investment costs. A secondary licence would by default be non-exclusive and would therefore certainly undermine the exclusivity deal with the main buyer and thus by default devalue the content. Having two separate licenses for the same content would also create confusion in the market.

Moreover, piracy is a continuing threat to business, and regulators must do their utmost to protect companies' rights and other investments. The best way of securing IP protection is to work with trusted distributors that allow close monitor and scrutiny of the use of content. Entering into a licence with a pan-European operator is unlikely to afford the same level of protection, given the wider territory covered.

This said, it is possible that some rights owners would wish to license on a multi-territorial or even pan-European level based on their commercial freedom to choose to do so, but may experience practical problems in doing so due to the territoriality of the collecting societies. We believe that the only way to effectively licence for several territories would be to introduce a one-stop shop system whereby a collecting society can grant one licence that would cover the desired areas, rather than having to go to multiple collecting societies to get the area covered.

We hope that we can continue to discuss this issue with the European Commission in more detail in the near future and would welcome an invitation to participate in the Content Online Platform.

London, 29 February 2008