



## **Missing Opportunities** **in Digital Britain**

January 2010

### **UK inaction is providing second class rights for first class films and television programming.**

Increasingly valuable secondary revenue streams for the reuse or further consumption of films and audiovisual programming are being denied to UK film and television producers and distributors. This is reducing opportunities for rights owners to get paid for the use for their work in cases where others benefit from such use. This is particularly important given the changing landscape between broadcaster, producer/distributor & audience via different consumption patterns enabled by technology.

The missing rights, and the resulting missing millions of pounds, have not been fully assessed either following publication of the Gowers Review of Intellectual Property or in the more recent studies that led to publication of the Digital Britain Final Report.

**The issues have been raised in the Reflection Document of DG INFOSO and DG MARKT : Creative Content in a European Digital Single Market: Challenges for the Future.**

**They are challenges being recognised at European Union Level. They are challenges which must be addressed.**

**More action is needed.  
It is needed sooner, rather than later.**

In the Digital Britain Report, recognition was given to the € 568 million generated in 2004 within the 22 EU Member States that already provide for reuse fees. However, rather than acting to provide for payments to rights owners within the UK, undertakings were given to keep the issue of reuse fees under review.

We hope that this report will be used to drive forward such a review and ensure that UK film and television producers start to receive important new revenue streams. Revenue streams which will help maintain investment in industries where the UK has traditionally showed international leadership

### **Introduction**

During my time as C.E.O. of Compact, I and the senior team have always made it a point to talk to our clients about their business. We constantly assess how we can improve what Compact delivers for its clients.

**We see how distribution models are changing in the digital world.** To reach optimum audiences, a single programme now needs to be available over multiple platforms within a single territory.

Smaller licence fees from multiple licensees are replacing the major exclusive television licensing deals of the past. Such changes highlight the increasing importance of secondary rights in films and audiovisual programming of all kinds as it is delivered over new digital platforms.

These secondary rights include payments linked to rights which are statutorily required to be paid to film owners in many EU Member States; but not the UK.

**The UK produces and distributes some of the finest and most highly sought after films and audiovisual programmes shown around the globe. Government claims to recognise the value of such programming to the UK economy.**

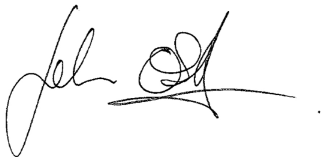
**Despite this, millions of pounds are being lost to UK rights owners as a result of UK government inaction and a failure to apply a level playing field for statutory secondary rights payments within the EU.**

This failure loses producers increasingly vital secondary payments. Payments that will help support investment in new films and programming in the digital age.

Action to address reuse fees, supported by statute, should not be claimed as “too difficult”. Digital technologies do not just enable new ways to transmit films. They also support micro payment and digital accounting systems which will become as much a part of future access to films as the more traditional television and video licensing deals.

These systems can, and should, support payments for reuse fees in new ways within the United Kingdom.

Further review of the issues has been promised. Further action is needed.



John O'Sullivan  
C.E.O. Compact Media Group

## **ABOUT COMPACT:**

Compact started in 1995 as a joint venture with PACT. Now representing over 300 companies including BBC Worldwide, DRG, ITV Global Entertainment, Lakeshore, Icon, FremantleMedia, Tiger Aspect Productions and All3Media, Compact is the leading independent global rights administrator and distributor of royalties arising from secondary exploitation in the Film & TV industries.

In addition to the core business, Compact has evolved to include Collection Account Management (CAM) services and Music Publishing & Neighbouring Rights (Compact Music Services) collection on behalf of their international client base.

Compact Capital manages an acquisition fund on behalf of a international fund and actively looks to acquire IP catalogues across the breadth of the creative industries. Compact Media Group is based in London with offices in Los Angeles, Amsterdam, Sydney & Paris.

## **Executive Brief**

The UK produces and distributes some of the finest and highly sought after films and television programmes anywhere on the world. In contrast we operate a second class system for collection of statutorily recognised secondary rights.

1. When statutory reuse fees for producers apply in many part of the EU, why should the UK lose out?
2. The Digital Britain Report <sup>1</sup> advocates that the UK remains a source of innovation in content and applications disproportionate to the relative global size of its overall economy. This is dependent upon the UK retaining the financial capability to finance innovation and this capability is now challenged by the weakening of traditional business models.

The Digital Britain Review the Government invited views on possible alternative funding mechanisms for content in the digital age. This is critically important given the creative industries face increasing demand for high quality IP across multiple delivery formats yet have to contend with decreasing budgets leading to a deficit that requires financing at additional risk.

The Report recognised that three credible approaches had already been put forward by industry concerning:

1. Retransmission: the removal of section 73 of the Copyright, Designs and Patents Act (CDPA);
2. Reuse: charge consumers for the right to copy using recording equipment: and
3. Micropayments: pay-per-view charges for on-demand audio-visual content.

3. The scope of the issues addressed in the Digital Britain Report meant that little time could be spent on analysis of vital revenue generation opportunities from reuse of work and the administration of micro-payments to recognise such use in the digital environment. The Report recognised that further work was required to assess the future application of micropayments <sup>2</sup>.

Compact Collections already administers and distributes multiple payments to the companies that it represents. It is therefore well placed to participate in future work by bodies such as the Technology Strategy Board as they assess the feasibility of a micropayments billing system for on demand content. Such systems are already operated by collecting societies around Europe for the collection and distribution of statutory secondary payments.

4. The Digital Britain Report itself recognised that Government intended to invite Ofcom to keep the issue of reuse fees under review and will invite Ofcom to assess the cost/benefit and framework required for the introduction of “re-use” fess for private copying and format shifting.

Compact would ask that the issues and background evidence prepared linked to this report is considered in the context of the Ofcom Review.

5. Compact would also seek a commitment from Government that the scope of the review is broadened to address the issue of how statutory reuse fees could deliver collective secondary retransmission payments for film owners.

This should include, but not be limited to:-

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<sup>1</sup> Building Britain's Future - Digital Britain – Final Report June 2009 – BIS and DCMS

<sup>2</sup> Digital Britain Report – Impact assessment – June 2009 page 150.

- (a) a full commercial impact study on the current and projected effects of maintaining section 73 CDPA in its current form;
- (b) deficiencies in the current references to “re-transmission by cable” within section 73 CDPA (taking into account the way in which the expression “cable programme service” has been superseded by other amendments to the CDPA); and
- (c) the level to which section 144A CDPA currently enables rights owners to secure payments from the cable-retransmission right under UK law, when compared with the payments being made for the exercise of such right as a result of statutory provisions adopted within other EU Member States.

**6. Secondary rights are increasingly economically important in the digital age. Access anywhere and anyhow must involve secondary use. Why should UK producers fail to benefit from statutorily recognised reuse in the UK, if other countries of the world take a different view?**

The Digital Britain Report<sup>3</sup> recognised :-

- (a) In our creative content industries Britain has for many years punched above its weight generally.
- (b) One third of television format sales around the world originate with British production companies<sup>4</sup>.
- (c) The transition to digital is however overturning old business models much faster than new ones take their place.

The increasingly easy and perfect digital replication of content makes it harder to monetise creative rights<sup>5</sup>.

**7. Reuse of programmes has an increasing value within the digital world.**

New aggregators are developing delivery and transmission systems that facilitate access to programmes in new ways.

These new ways of presentation and use of programmes should benefit producers.

**8. Incidental reuse may have value which cannot reasonably be anticipated at the time when an original transmission was approved.**

Structures already exist in many EU Member States for rights owners (including producers of films and television and radio programmes) to receive payment for such incidental reuse under statute.

This is not a replacement for exclusive rights. It is complimentary recognition in law that additional fees provide fair remuneration for rights owners within certain secondary fields.

**9. The traditional boundaries between retransmission by “cable programme services” and “satellite television services” on the one hand and other forms of electronic retransmission on the other are becoming increasingly blurred.**

This should not prevent rights owners from being entitled to remuneration from recognition of the “retransmission right”.

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<sup>3</sup> Digital Britain Final Report published in June 2009 by Department for Culture Media and Sport and Department for Business, Innovation and Skills is one of the central commitments in the Government’s Building Britain’s Future plan and draft legislative programme.

<sup>4</sup> Paragraph 42 – Digital Britain Report.

<sup>5</sup> Paragraph 43 – Digital Britain Report.

## **Context for recommendations – United Kingdom**

One of the central tenets of Lord Carter's Digital Britain review was the need for industry and government to provide a favourable climate for investment and innovation in digital content, applications and services; as the broadband infrastructure develops.

In this context, the Digital Britain Report also investigates the means to respond to the declining capacity of audiovisual sector incumbents to continue to fund the commissioning of new originated content in the face of momentous shifts in technology and revenue generation from business models.

The Report points to the severe challenges facing an audiovisual economy in transition, in continuing to finance research and development for and production of the high quality content that has given the UK's audiovisual output its competitive edge at home and in the world at large.

In particular, the Digital Britain Report highlights the tension within the Public Sector Broadcasting system fostered by the combination of a sharp decline in advertising revenue in commercial television (from around 80% of total in 2002 against two thirds in 2007), and the maintenance of substantial obligations for these broadcasters (ITV, Channel 4, Channel 5) to commission a high proportion of new originated programming.

Chapter 4 of the Digital Britain Report purports to address "protecting due reward for creativity in the digital world, meeting the interests of creators, aggregators, distributors and consumers".

Maintaining this tradition is dependent on Britain retaining the financial capability to finance innovation and this capability is now challenged by the weakening of traditional business models.

In view of this Compact would argue that real benefits for industry will ensue from :-

- (a) lifting the legal "carve-out" which currently exempts UK cable operators from paying out any rights clearance for the programmes carried in the broadcast signals of the "qualifying" PSB channels they re-transmit to their subscribers; and
- (b) introducing a "reuse" fee on consumer blank recording media and equipment to account for PVRs and other devices enabling the private reuse of films through the home recording and subsequent repeat viewing of content accessed as part of the reception of broadcast signals. Remuneration for rights owners to reflect such home copying is already generated in 20 European countries.

These two options were also explored in a study commissioned as part of the Digital Britain Interim Report process and published in April 2009 under the title Digital Britain – Assessing the Policy Framework for Public Service Rights<sup>6</sup>. Independent research was also commissioned to the Institute of Public Policy Research (ippr) by the British audiovisual workers' union BECTU and the National Union of Journalist (N.U.J)<sup>7</sup>. Both reports make a documented case for resolving the UK's increasing audiovisual content funding gap by developing those two sources of non-subsidy income.

It is to be hoped that an Ofcom review will revisit this existing work.

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<sup>6</sup> By Perspective Associates, London

<sup>7</sup> Mind The Funding Gap – The Potential of Industry levies for Continued Funding of Public Service Broadcasting. An ippr report for BECTU and the NUJ – March 2009.

## **Additional context for the recommendations – links to Creative Content in a European Digital Single Market: Challenges for the Future.**

**Lifting the legal “carve-out” which currently exempts UK cable operators from paying out any rights clearance for the programmes carried in the broadcast signals of the “qualifying” PSB channels when they re-transmit to their subscribers, will be an important step to improved harmonisation within the European Union.**

1. S. 73 Copyright, Designs and Patent Act 1988 effectively exempts UK cable broadcasters from copyright liability when they re-transmit an original broadcast signal, “to the extent that the broadcast is made for reception in the area in which the cable programme service is provided” .

2. International Treaty obligations ratified by the European Community and the United Kingdom support recognition of exclusive rights for authors of literary and artistic works to enjoy exclusive rights linked to **any** communication to the public or rebroadcasting of the broadcast of a work.

Article 11bis (1) (ii) of the Berne Convention provides:

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorising

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organisation other than the original one.

Article 8 of the WIPO Copyright Treaty 1996 provides that the exclusive right of authors of literary and artistic works to enjoy the exclusive right to authorise communication to the public of their works Under that Treaty shall apply without prejudice to the provisions of Article 11 bis (1) (ii) of the Berne Convention<sup>8</sup>.

Article 14 of the TRIPS Agreement<sup>9</sup> supports broadcasting organisations also having the right to prohibit “the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. The Article goes on to make it clear that where signatories to the Agreement do not grant rights to broadcasting organisation, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the rebroadcasting of broadcasts, subject to the provisions of the Berne Convention 1971.

3. The arguments in favour of maintaining the UK exemption from recognition of retransmissions are outdated and need urgent review. This review is all the more important in the light of the recent Reflection Paper published by DG INFOSOC and DG Markt.

4. When section 73 was enacted the provision reflected the early stages of the cable roll out when cable services within the United Kingdom tended to be a mere technological device to extend the reach of broadcast terrestrial signals into areas of poor reception, in order to improve the picture quality of the original broadcast. Since those days, the cable industry has evolved to become a packager of basic and premium programme services. Operators now retransmit the broadcasts of others alongside making initial broadcasts of new programming.

They are no longer acting as mere technical conduit for a scarce number of broadcast channels.

5. Carriage of public sector broadcast channels (PSB channels) by satellite pay-TV rather than cable is subject to the same principle of technological neutrality present in Article 11 bis of the Berne Convention. In other European countries, some satellite operators retransmitting originated terrestrial PSB channels have argued that the act did not constitute a retransmission. They have argued that the fact that their set top decoder boxes allowed subscribers to also pick-up those PSB channels was not their responsibility.

So far however, there has been no jurisprudence in their favour. In France, local satellite operators TPS and Canal+ have appealed a court decision of 2005 which turned down their arguments for carve-out and maintained their obligation to pay copyright royalties relating to the programmes within the PSB services which were re-broadcast on their platforms.

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<sup>8</sup> WIPO Copyright Treaty – Article 8 – Right of Communication to the Public

Without prejudice to the provisions of Articles 11(1) (ii), 11 bis (1) (i) and (ii),

11 ter (1) (ii), 14 (1) (ii) and 14 bis (1) of the Berne Convention, authors of literary and artistic works shall enjoy the exclusive right of authorising any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.

<sup>9</sup> Agreement on Trade-related aspects of Intellectual Property.

Prevalent legal opinion is that the appeal, when eventually heard, will not overrule the initial decision.

6. As the Perspective Associates Report points out<sup>10</sup>, PSB channels delivered through satellite pay-TV operators under the must-carry rules now account for 60% of all viewing within multi-channel homes in the United Kingdom.

7. The potential returns to film and television production from establishing a royalty collections framework for the retransmission of PSB channels on pay-TV platforms whether delivered by satellite or cable, is substantial in the United Kingdom.

8. According to research conducted by Compact Collections, royalties attributable to the retransmission right (cable and satellite) accounted for an estimated €1.36 billion in Europe in the years 2002 to 2006, for all rights holders, including performers, broadcasters for the productions whose rights they control and external producers/distributors.

The retransmission royalties paid directly to producers and distributors was €478 million. The share of producers and directors from payments made within Europe averages 35% of retransmission payments.

8. PSB operators within the European Union accounted for 75% of all spend on new originated programming. That proportion is much higher in some of the leading countries within the European Union. German PSBs accounted for a staggering 87% of all new commissioning spend within the same period (2007).

The €1.36 billion referred to in 8 above, represents 8.6% of the total estimated investment into new originated programming by European Public Sector Broadcasters in 2006/07

These figures demonstrate the strategic importance of PSBs to investment in content creation and innovation in Europe. Royalties for the retransmission of such valuable content would operate between market and public policy. Instead of direct subsidy from the grant-in-aid pool, this strategy merely requires a regulatory input which would trigger new revenues linked to PSB programming which would be generated from the dynamics of the marketplace itself.

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<sup>10</sup> A study commissioned as part of the Digital Britain Interim Report process and published in April 2009 under the title Digital Britain – Assessing the Policy Framework for Public Service Rights.

## **The value of cable/satellite retransmission in Europe**

Cable and satellite retransmission mechanisms currently exist in 29 countries in the EEA. Compact carried out original research into the amount of revenues collected through those schemes in the 23 European countries when these have been operating for at least 2 years. Our estimate, based on existing data, is that total collections for the producers' share of retransmission royalties alone was just short of €478 million for the five years 2002 to 2006.

The average producers' share of the cable retransmission royalties total is 35%.

Extrapolating from the collection data, it is possible to also estimate the total amount collected on behalf of all rights holders at €1.36 billion over the same period, an average of €280 million per annum.

Cable retransmission revenue is concentrated in a small number of European territories. Table 2 (below) shows funds collected annually over the period by the international producers' cable royalties collection agency AGICOA and its national affiliates.

Six countries, Belgium, Germany, Netherlands, France, Denmark and Ireland account for €335,715,501 out of a total of €437,914,410. These six countries accounted for just under 77% of all collections.

The remaining 17 territories in this comprehensive account for the balance of just 23%.

On average, some 40% of the collections are attributable to programmes and films by local producers and authors. The balance of 60% is accounted for by non-national rights holders.

Looking at amounts collected on behalf of producers alone (€478 million over the period 02-06), this would have left about €190 million returning to local rights holders during those 5 years, or €38 million per annum.

Such levels of revenue can make a considerable difference for Europe's cash starved production companies. Vitally, such revenues help to finance research and development for new projects and support innovation in making new content for the broadcasting economy.

A recent Study by the Institute for Public Policy Research on the potential of industry retransmission payments in the UK, found that a £5 flat fee per subscriber would have raised around £45 million from Sky and around £18 million from Virgin, a total of £63 million on the 2008 subscriber base<sup>11</sup>. The report also notes that subscription revenue grew by 6.4% to £4.3 billion in 2007, while advertiser revenue rose only 2.2% to £3.5 billion.

**Table 1**  
**% cable royalties retained by local producers in Europe**

Country	Year	% foreign	% local
Portugal	2007	42	58
Norway	2007	90	10
Netherlands	2007	49	51
Finland	2007	76	24
Poland	2007	54	46
Belgium	2007	83	17
France	2003	44	56
Sweden	2003	62	38

<sup>11</sup> Mind the Funding Gap - The Potential of Industry levies for Continued Funding of Public Service Broadcasting. An ippr report for BECTU and the NUJ, March 2009



**Table 2**  
**European cable retransmission royalties collected**  
**for AV producers – 2002-06**

<b>Country</b>	<b>2002 (€)</b>	<b>2003 (€)</b>	<b>2004 (€)</b>	<b>2005 (€)</b>	<b>2006 (€)</b>	<b>Total (€)</b>
Netherlands	21,318,246	22,216,650	22,538,162	24,237,596	25,480,546	<b>115,791,200</b>
Germany	10,039,199	14,500,000	14,500,000	14,500,000	15,887,794	<b>69,426,993</b>
Belgium (1)	48,487,184	18,467,181	14,068,995	14,211,736	14,122,751	<b>109,357,847</b>
France (2)	3,632,566	2,544,185	4,290,118	3,950,626	4,400,000	<b>18,817,000</b>
Ireland	1,318,712	3,822,601	4,252,046	4,088,171	6,191,116	<b>19,672,646</b>
Poland	n/a	n/a	1,727,609	9,048,187	5,361,796	<b>16,137,592</b>
Denmark	6,021,743	3,827,379	3,772,740	4,088,078	3,756,875	<b>21,466,815</b>
Spain	1,200,000	3,077,927	3,000,000	2,400,000	3,000,000	<b>12,677,927</b>
Norway	4,375,983	2,429,716	2,265,045	2,523,227	n/a	<b>11,593,971</b>
Switzerland	3,298,025	2,855,799	2,825,299	2,608,207	2,690,460	<b>14,277,790</b>
Sweden	1,318,712	1,254,780	1,180,994	1,657,293	1,927,641	<b>7,339,420</b>
Romania	n/a	n/a	1,275,476	1,685,006	1,618,287	<b>4,578,769</b>
Portugal	n/a	704,983	2,906,393	1,215,506	1,138,012	<b>5,964,894</b>
Austria	454,001	507,962	509,858	308,385	716,370	<b>2,496,576</b>
Luxembourg	602,609	720,000	550,722	555,282	533,079	<b>2,961,692</b>
Slovenia	459,482	786,295	483,742	741,985	437,005	<b>2,908,509</b>
Slovakia	n/a	n/a	99,110	19,102	217,933	<b>336,145</b>
Serbia	n/a	n/a	n/a	13,524	99,062	<b>112,586</b>
Bulgaria	80,967	n/a	129,231	94,110	95,687	<b>399,995</b>
Lithuania	124,865	126,284	130,164	117,408	94,946	<b>593,667</b>
Estonia	102,419	96,324	106,927	89,279	83,369	<b>478,318</b>
Latvia	44,035	76,209	93,233	140,649	60,104	<b>414,230</b>
Bosnia	n/a	n/a	24,255	34,229	50,849	<b>109,333</b>
<b>Totals (3)</b>	<b>102,878,748</b>	<b>78,014,275</b>	<b>80,730,119</b>	<b>88,327,586</b>	<b>87,963,682</b>	<b>437,914,410</b>

Source: Compiled by Compact from AGICOA and national affiliates' data (2009)

Notes:

(1) Belgian collections for 2002 are anomalous – due to back collections owing for the years 1996-2001 and remitted in 2001.

(2) Collections for France in 2006 have been estimated using data in AGICOA annual reports.

(3) Data are for the 23 European countries with cable agreements dating back at least 3 years – income not remitted to AGICOA does not appear.

(4) The above table does not include those territories (chiefly Austria, Denmark & Switzerland) that pay directly to local/domestic producers and do not account additional figures via AGICOA. The total, including these estimated returns, equates to circa €478 million as previously referenced.

## **Reuse Fees**

**Introducing a “reuse” fee on consumer blank recording media and equipment would also reflect schemes already in place in the majority of EU Member States.**

**Such fees could account for PVRs and other devices which the private reuse of films through home recording and subsequent repeat viewing of content accessed as part of the reception of broadcast signals.**

1. Private copying levy schemes are in existence in the majority of EU countries.
2. They are based either on a specific exception to copyright and exclusive rights, or on specific administrative dispositions which allow producers and other rights holders to be compensated for the copying of their broadcast programmes made by consumers who record those programmes from the broadcast signal received on their television sets.
3. The Copyright Directive (EC 2001/29) gives Member States the choice to implement private copying through a copyright exception. So far, the UK has chosen not to implement this provision, despite implementation in the majority of Member States.

**The Reflection Paper recently published by DG INFOSOC and DG Markt highlights possible benefits from greater harmonisation of copyright exceptions and limitations. The issue of enabling rights owners to secure fair compensation from private copying of works which cannot otherwise be practically licensed by rights owners is central to this harmonisation debate.**

### **The value of reuse fees generated within Europe**

**1. Home copying levies on music and audiovisual works raised a total of over €2.6 billion in 22 European countries in the years 2004 to 2008.** €463.2 million was raised in Germany, France, Spain, Belgium, Italy and The Netherlands alone in 2007. This is larger than the entire annual programming budget of Channel 4 within the United Kingdom.

2. Germany raised €148.841 million in levies during 2007 (of which €14.339 million from music/audio media, €46.685 million from audiovisual media and €87.817 million from hardware).

France raised €163,402 million in levies during 2007 (€44.908 million from audio, €63.129 million from audiovisual and €42.218 million from hardware).

These countries are closest to the United Kingdom within the European Union in terms of both population and the size of their audiovisual industries. Based on those data, it is possible to hypothesise that a similar scheme, were it to be introduced within the United Kingdom, it would raised well over £100 million per annum for rights holders and programme makers if it was applied to both recordable media and recording hardware and not limited to Private Video Recorders (PVRs) alone.

3. Home copying levies are applied as a small additional charge on the trader or retail price of copying media such as blank re-writable CDs and DVDs. The countries in our sample study also apply levies to recording equipment such as analogue and digital audio recorders and DVD players with built-in hard discs. Some also levy on decoders and other reception equipment. Empirically, there appears to have been no detrimental effect on the growth of hardware and recordable disc sales resulting from such legitimate overhead charges: a report by the GFK Group in 2009 puts annual growth at over 12% average in the consumer market for consumer electronics in the period prior to the recent credit crunch.

4. According to the European alliance of societies administering private copying levies in the various Member States, “levies, [today] are still the best possible approach which reconciles the consumers’ expectations to benefit from the exception, their wish for privacy and the rightholders’ right to fair compensation”. There is also no discernible link between the application of private copying levies and the increase in rates of piracy.

5. The UK is currently one of only 6 countries Europe not operating a home copying levy, and the largest amongst those<sup>12</sup>. Under EU national treatment rules, although the United Kingdom does not operate a home copying scheme, its rights holders may claim home copying revenues relating to the dissemination of their content in other EU countries where such schemes are in place.

6. The current imbalance is source of tension, with some countries arguing the lack of a similar scheme in the United Kingdom generates an unfair imbalance within the European Union.

7. 22 European countries collect private copying revenues. This represented a total of €561,454,479 in 2007, for all levies relating to both recorded music and audiovisual works. Similar levies are also collected in Canada (€16,404,845 in 2008) and Japan (€21,090,642) during 2008<sup>13</sup>.

8. In the 22 European countries where schemes have been in operation, home copying levies raised just over €2.6 billion in the years 2004 to 2008, with some countries' figures not yet filed for the last year (Germany). The average raised by these countries over the 5 years was €518.1 million.

The figures (see Table 3 below) demonstrate that home copying levies are making an important contribution to the music and audiovisual industries. They support research and development and generating substantial financial compensation from a market that remains practically difficult to deal with through individual licensing.

Concentration is a salient feature of home copying collections, with the 6 largest home copying countries (Belgium, France, Germany, Italy, Spain and The Netherlands) accounting for over 80% of sums collected amongst themselves, and Germany and France alone accounting for 54% of the total collected over the period (€1.4 billion).

Extrapolation of potential revenue for the UK industry, were a reciprocal reuse compensation system introduced, is difficult to predict. Much would depend upon the Government and regulator's willingness to apply the re-use royalty structure not just to traditional recording and duplication media such as CDs and DVDs, or traditional hardware such as DVD players with record functions, but also to next generation media and hardware, from USB to hard drives, PVRs and PCs.

In its recent study "Mind the Funding Gap", on the potential for industry levies in the UK, the Institute of Public Policy Research (IPPR) provides conservative estimates of around £65 million per annum, assuming a scenario of a 1% "levy" on audio and AV recordable media, computers and all video recording and playback hardware.

Such a figure seems to be at the low end of the fundraising spectrum, considering the size of the overall market for all consumer hardware and recordable media in the UK, which the UK's Expenditure and Food Survey 2008 put at £7 billion.

The Reflection Paper (page 15) recognises that complete harmonisation of copyright exceptions and limitations across the EU may be less beneficial than a more nuanced approach in the medium term. However, important recognition is given to the importance of future policy making a clear distinction between "public interest" exceptions for research and teaching or for access to works in favour of persons with a disability on the one hand, and "consumer" exceptions, such as private copying on the other hand. The importance of precise goals being pursued in addressing issues of harmonisation is highlighted. The importance of revenue generated through application of private copying re-use fees as a practical means of rewarding rights owners as outlined in Table 3 must be carefully noted and preserved in the context of future debate.

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<sup>12</sup> United Kingdom, Cyprus, Malta, Iceland, Ireland and Luxembourg.

Of these only Luxembourg and Malta have a private copying exception in their copyright law, but have chosen not to develop a revenue collection scheme. The United Kingdom, Cyprus and Ireland have no private copying exception in their current copyright laws.

<sup>13</sup> Stichting de ThuisKopie, International Survey on Private Copying Law & Practice, 20<sup>th</sup> Revision 2009

**Table 3**  
**Revenue collections for private copy remuneration in Europe**  
**2004-08 (in €)**

Country	2004 (€)	2005 (€)	2006 (€)	2007 (€)	2008 (€)	Total (€)
Austria	15,897,000	17,627,000	15,846,000	16,413,000	13,213,000	<b>78,996,000</b>
Belgium	16,631,125	21,457,903	20,034,788	20,081,280	15,063,440	<b>93,268,536</b>
Croatia	n/a	n/a	n/a	284,624	1,380,286	<b>1,664,910</b>
Czech Republic	2,227,345	2,286,084	2,617,152	5,224,663	8,810,309	<b>21,165,553</b>
Denmark	7,300,000	6,367,517	5,324,940	5,680,862	4,352,177	<b>29,025,496</b>
Estonia	n/a	n/a	239,080	283,452	228,500	<b>751,032</b>
Finland	12,121,000	11,575,000	11,703,585	15,566,656	12,030,920	<b>39301161</b>
France	161,590,000	155,000,000	149,197,987	163,402,714	166,932,996	<b>796,123,697</b>
Germany	146,750,917	153,722,748	156,094,349	148,841,000	n/a	<b>605,409,014</b>
Greece	n/a	n/a	n/a	22,894	524,486	<b>547,380</b>
Hungary	10,154,372	9,688,905	11,678,621	11,539,681	8,476,274	<b>51,537,853</b>
Italy	74,060,350	72,791,081	70,921,716	70,956,045	61,662,630	<b>288,729,192</b>
Latvia	310,250	716,025	800,464	812,423	601,625	<b>3,240,787</b>
Lithuania	747,064	250,014	165,839	84,423	801,650	<b>2,048,990</b>
Netherlands	25,700,000	26,122,000	19,866,000	19,249,000	17,010,000	<b>107,947,000</b>
Poland	2,850,000	3,836,573	5,093,822	4,290,581	4,906,569	<b>20,977,545</b>
Portugal	n/a	5,112,962	6,238,951	5,752,919	4,594,998	<b>21,699,830</b>
Slovakia	667,935	611,183	682,744	903,677	977,373	<b>3,842,912</b>
Slovenia	n/a	n/a	n/a	n/a	938,515	<b>938,515</b>
Spain	72,578,416	58,654,171	55,607,634	40,706,047	59,992,342	<b>287,538,610</b>
Sweden	9,409,423	16,375,090	15,893,251	19,136,070	14,403,548	<b>75,217,382</b>
Switzerland	7,340,000	10,070,083	9,566,050	11,742,728	22,049,626	<b>60,768,487</b>
<b>Totals</b>	<b>566,335,197</b>	<b>572,264,339</b>	<b>557,572,973</b>	<b>560,974,739</b>	<b>357,288,634</b>	<b>2,590,739,882</b>

Source: Stichting de Thuiskopie, International Survey on Private Copying Law & Practice, 20<sup>th</sup> Revision 2009

## **FURTHER INFORMATION**

For further information about the above contents and/or additional research please contact:

James Sellar

Head of Media & Business Development

[jsellar@compactmediagroup.com](mailto:jsellar@compactmediagroup.com)

Compact Media Group  
8-12 Camden High Street,  
London NW1 OJH.

Tel: 0044 (0)20 7874 7495

Web: [www.compactmediagroup.com](http://www.compactmediagroup.com)

