

Response by the British Broadcasting Corporation (BBC) to
Creative Content in a European Digital Single Market: Challenges for the Future
A Reflection Document of DG INFSO and DG MARKT
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Introduction

1. The BBC welcomes the European Commission's continuing commitment to a 'Digital Agenda', and its ongoing recognition of the important role played by the creative industries in European economic recovery, culture and democracy. This Reflection paper is a positive step in navigating the opportunities and challenges presented by digital marketplace.

2. The BBC is a UK Licence Fee funded, public service broadcaster reaching 93% of the UK public each week. It is also a global broadcaster, as Europe's largest exporter of TV programmes and the provider of trusted, independent and impartial international news to a weekly audience of around 250 million households, with over 17 million unique users online.¹ From its experience, the BBC agrees with the Reflection paper analysis that the 'global' nature of the internet brings the potential for wider availability of a diverse range of high-quality services online. Indeed, connected access to content has brought what could be described as a golden age for all creative content. Never before was so much audio and audiovisual material enjoyed by so many. Of course, as the paper notes, industry and policy makers are also faced with the challenges, for example, of global competition and piracy.

3. Alongside broadcasting, which will continue to be much used, highly valued and relevant long into the future, online services have already greatly benefited European citizens. In the UK, the BBC has been at the forefront of the digital revolution. Ever since its launch in the 1990s as a text- and news-led service, bbc.co.uk has been confirmed as an important reason given by people in the UK for connecting to the internet in the first place.² The BBC has also pioneered online audio and video services: BBC iPlayer launched on Christmas Day 2007 and total views have now passed 500 million.³ Innovation continues. The latest independent forecasts suggest that the BBC-proposed consortium, Project Canvas, will have internet-connected TV devices offering iPlayer and other on-demand services to 3.4m UK homes by 2014.⁴

¹ BBC Annual Report 2008/09

² For example, one survey revealed that 9% of internet users agree that "the existence of the BBC's website www.bbc.co.uk was one of the main reasons why I first accessed the Internet" (TNS, December 2007)

³ BBC Server Data, 2009

⁴ Enders Analysis, 2009

4. The benefits of digital have also reached rightsholders. The BBC itself is a rightsholder and a rights user, as well as a major investor in the overall creative economic and copyright industries. The BBC will shortly be publishing research which found that the BBC's overall economic impact creates a total gross value added of £ 7.6 billion - an amount approximately equivalent to twice the level of the licence fee.⁵ The BBC believes public service broadcasters play an essential role in the digital value chain: offering trusted content and editorial responsibility; creative commissioning and in-house production; destinations (such as bbc.co.uk) which bring audiences together around innovative and interactive content, while also syndicating content to others widely; and an unwavering focus on delivering public purposes.

5. But the role that broadcasters like the BBC need to play in the age of digital convergence is now impeded by a copyright regime that has not kept pace with technological change and increasingly appears antiquated. For example, while the BBC iPlayer was popular with audiences right from launch, it took five years of rights negotiations to get to launch. Enhanced services, new innovation and wider availability will be impeded unless copyright laws are reformed.

6. To offer the most to audiences and to play their fullest role in the digital economy, broadcasters like the BBC need a simple, efficient, platform-neutral and multi-territory copyright framework fit for the digital age.

7. Of course, copyright reform enabling 'ease of access' can only be part of the solution. The BBC welcomes the Reflection paper's acknowledgement that copyright must be protected. The BBC believes strong rights are important. While the BBC opposes extension of term for sound recordings (because it is unsupported by the economic evidence), it does support the raft of strong anti-infringement measures contained in the UK Digital Economy Bill.

8. First, the focus should be on providing superlative legal offers. To do so requires the industry to adapt rapidly and fundamentally. The BBC is already at the forefront of implementing profound changes in the way it organises its functioning and its service offer. Second, education and media literacy are crucial. Third, copyright law reform should follow, precisely to ensure that both the rights and their goals, i.e. the unprecedented dissemination and use of creative material, can be adequately protected in the age of convergence. Fourth – and *ultimately* – repeated copyright theft should be met with technical measures including disconnection.

9. In responding, the BBC would also like to draw attention to its support for the submission by the European Broadcasting Union (EBU).

Towards a technology-neutral, multi-territorial copyright framework:

Proposal to extend the Satellite and Cable Directive

⁵ Research conducted by Deloitte based on BBC Annual Accounts 2008/09 – including commercial activities – to be published in early 2010.

10. The BBC welcomes the proposal of the “extension of the scope of the Satellite and Cable Directive” (p.17) (SATCAB Directive) as a possible EU action. As noted in the Reflection paper, this proposal has been supported by public service broadcasters.

11. The 1993 SATCAB Directive performed well. It complemented the “Television Without Frontiers” Directive in delivering cross-border provision of television services insofar as this could be achieved under the technological and market conditions of the past 15 years. But its restricted focus on cable and satellite makes the SATCAB Directive outdated in the internet age. If the Directive and its underlying principles are to be future-proofed and deliver benefits to a post-2010 Europe, it must be modernised on the basis of technology- and platform-neutrality, and multi-territoriality. This would likely require two steps. First, the regime established for cable retransmission could be extended to enable the simultaneous, unaltered and unabridged retransmission of broadcasts by third parties via any media platform. Therefore the non-cable platform operator, like the cable operator now, would need to clear the retransmission rights only with the originating broadcaster on the one hand and the collecting societies for the remaining rights on the other. This would significantly ease rights clearance for platforms such as mobile, satellite and IPTV, thereby creating a level playing field. Second, the “country of origin of the transmission” rule used for satellite could be extended to all audiovisual media communications on all platforms. Differing audience demand and business needs (reflected eg. in contractual arrangements) would likely often continue to restrict content to individual member states. But this modernisation of EU law would nonetheless encourage innovation in retransmission services and multi-territorial or EU-wide provision of content. As we have argued, innovation is progressing very rapidly. Adapting the SATCAB Directive would remove a disincentive to treating audiovisual distribution via the internet differently from traditional broadcasting, and encourage a multiplatform approach to distribution both globally and, by reflection, nationally.

Towards a simpler copyright framework:

Proposals aligning certain rights

12. The BBC welcomes the Commission’s proposal to streamline the clearance of music rights online and agrees that a unitary licence for reproduction and ‘making available’ – and an exemption for ‘incidental reproduction’ necessary for technical purposes - could “greatly facilitate online rights clearance” (p.16). The Commission’s suggestion of a more ambitious “one-stop shop” also has many attractions.

13. Broadcasters are very big users of music rights. They represent the biggest single contributor to collectively licensed music rights via the PRS in the UK (c.25%).⁶ The BBC alone clears rights under collective licence for 200,000 items of music each week. Underlying rights holders of course benefit from the remuneration and recognition

⁶ O&O, 2009

resulting from such a large volume of use, but for such use to be viable requires as much simplicity as possible.

14. Similarly, the BBC is supportive of the EBU's proposal to align the copyright regulation of non-linear 'broadcast-like' services with that of broadcasting. This proposal would ensure that audiovisual media communications to the public – whether linear or non-linear – would be licensed under a single clearance regime.

Towards an efficient copyright framework:

Proposal for extended collective licensing

15. The BBC strongly supports the encouragement of extended collective licensing (pp.14-15) as a possible EU action. We believe the Commission should provide Member States with a toolkit and explicit entitlement to make use of extended collective licensing, and for certain uses preferably an obligation to do so. The BBC would therefore request the Commission clarifies whether, as hoped, this proposal applies to audiovisual content, as well as the textual material referred to explicitly.

16. Extended collective licensing has proved to be an excellent tool for appropriate rights clearance on adequate terms agreed directly between the user and the rights owners' association. Extended collective licensing allows associations of rights owners to negotiate on the basis of user framework agreements regulating the transfer of rights and remuneration. In order to safeguard the absolute right of authors, extended collective licensing systems allow individual authors to 'opt out'. However, the success of the Nordic model on which the proposal is based has been such that the 'opt out' has been used extremely rarely in countries where the scheme is used. By enabling quick, efficient and fair rights clearance of archive material and time shifted content, the Nordic model has considerably enriched the content offer for audiences.

17. In a welcome move, the UK Government has put proposals before Parliament to enable extended collective licensing in the UK as well as specific measures to tackle orphan works. These enabling powers, if approved and correctly implemented, may significantly improve the copyright management considerations involved in unlocking the archives of the BBC and others. The BBC's 80-year old archive is one of the largest and most significant media archives in the world. The archive includes 6 million photographs, 200,000 word pronunciations and above all, 2.5 million hours of film and video. It represents an important part of the UK's collective heritage. While a small amount of BBC content is being released now, the task ahead in making widely available the bulk of archive content is enormous, in part due to the rights clearance issues. The overwhelming majority of content in the BBC's archives was made before digital technology was conceivable. Online rights are therefore not covered by existing contracts, and in order to make archive content available online, the BBC must clear scores or hundreds of contributions for each and every programme. Where contributions cannot be cleared (or where there are orphan works, when contributors cannot be identified), it is possible that the public may be denied access to the entire

programmes. Using evidence from the BBC's 2007 Archive Trial, the BBC has calculated that to clear the whole BBC archive would take 800 people working for three years continuously, at a potential cost of £72 million for staff alone. Over the same period, that's equivalent to the total budget for the BBC's highly-esteemed *CBeebies* TV Channel, the key investor in original programming for under six-year olds in the UK.

18. Extended collective licensing would greatly facilitate the clearance of rights for the BBC's archive material. While UK legislation – once on the statute book – would enable this, by the measure outlined above, the Commission could importantly provide further legal certainty.