

Response from British Film Institute (BFI) to European Commission Public Consultation on Content Online in the Single Market

A Response from the British Film Institute

The BFI is pleased to respond to the Commissions' consultation on Content Online in the Single Market

QUESTIONNAIRE

Types of creative content and services online

1. Do you offer creative content or services also online? If so, what kind of content or services? Are these content and services substantially different from creative content and services you offer offline (length, format, etc.)?

The BFI has a well developed range of online services. Since 2003 we have provided access to UK educational institutions and public libraries to a wide range of British film and television material drawn from the BFI archives through screenonline (www.screenonline.org.uk). We are a partner in the Creative Archive Licence Group which makes material available for repurposing for non-commercial use (<http://creative.bfi.org.uk>). This year we have also made elements of our film and television database available online (www.bfi.org.uk/database) and have recently inaugurated a download shop for some titles (www.bfi.org.uk/filmdownloads).

All of these services are different from the BFI's offline services except the download shop, which operates commercially and to a large extent is complementary to our DVD publishing.

2. Are there other types of content which you feel should be included in the scope of the future Communication? Please indicate the different types of content/services you propose to include.

We would suggest that any future Communication should be worded in a way that enables the inclusion of any new services which might be established under the rubric of online content provision.

Consumption, creation and diversity of online content

3. Do you think the present environment (legal, technical, business, etc.) is conducive to developing trust in and take-up of new creative content services online? If not, what are your concerns: Insufficient reliability / security of the network? Insufficient speed of the networks? Fears for your privacy? Fears of a violation of protected content? Unreliable payment systems? Complicated price systems? Lack of interoperability between devices? Insufficient harmonisation in the Single Market? Etc.

The legal framework poses some of the greatest challenge to the development of services but in our experience there has been sufficient

goodwill to find solutions to the problems encountered. Technical advance will always be a challenge and this is probably felt more acutely by public sector organizations which provide services adding public value rather than seeking to generate revenue in the market, and needing to justify capital investment.

4. Do you think that adequate protection of public interests (privacy, access to information, etc) is ensured in the online environment? How are user rights taken into account in the country you live / operate in?

We have not encountered any problems in this area

5. How important for you is the possibility to access and use all online content on several, different devices? What are the advantages and / or risks of such interoperability between content and devices in the online environment? What is your opinion on the current legal framework in that respect?

It is desirable but not essential for online content to be available on different devices. Interoperability is clearly a major issue and the cost of implementation can be significant.

6. How far is cultural diversity self-sustaining online? Or should cultural diversity specifically be further fostered online? How can more people be enabled to share and circulate their own creative works? Is enough done to respect and enhance linguistic diversity?

As an organization, we are committed to cultural diversity taking particular account of different ethnicities and issues associated with disability and sexual orientation. We believe a proactive agenda is needed to ensure adequate representation online.

As noted above, we are partners in the Creative Archive Licence Group in the UK, seeking to assist people who wish to create and then share their own creative works online.

Competitiveness of European online content industry

7. If you compare the online content industry in Europe with the same industry in other regions of the world, what in your opinion are the strengths and weaknesses of our industry in terms of competitiveness? Please give examples.

Europe's online content industry is certainly stronger than that in most other territories. The major weakness is a dependency on US technology; a major strength of Europe's industries is the ability to exploit these technologies imaginatively.

New business models and transition of traditional ones into the digital world

8. Where do you see opportunities for new online content creation and distribution in the area of your activity, within your country/ies (This could include streaming, PPV, subscription, VOD, P2P, special offers for groups or communities for instance schools, digital libraries, online communities) and the delivery platforms used. Do you intend to offer these new services only at national level, or in whole Europe or beyond? If not, which are the obstacles?

We have already pioneered these services in the UK. Due to rights restrictions we are unable to extend the access to the streamed video and audio material on screenonline to other territories.

9. Please supply medium term forecasts on the evolution of demand for online content in your field of activity, if available.

Not available

10. Are there any technological barriers (e.g. download and upload capacity, availability of software and other technological conditions such as interoperability, equipment, skills, other) to a more efficient online content creation and distribution? If so, please identify them.

All of these elements are relevant but are not really barriers - more necessary components to enable a successful service delivery

11. What kind of difficulties do you encounter in securing revenue streams? What should in your view be the role of the different players to secure a sustainable revenue chain for creation and distribution online?

We have deliberately avoided competing in the market for our main services which are public services provided through public funding.

Payment and price systems

12. What kinds of payment systems are used in your field of activity and in the country or countries you operate in? How could payment systems be improved?

No comment

13. What kinds of pricing systems or strategies are used in your field of activity? How could these be improved?

No comment

Licensing, rights clearance, right holders remuneration

14. Would creative businesses benefit from Europe-wide or multi-territory licensing and clearance? If so, what would be the appropriate way to deal with this? What economic and legal challenges do you identify in that respect?

Of course this would improve any organization's or company's ability to deliver services across borders but it is clearly problematic where we inherit conventional business models from the analogue world which are geographically defined by territories.

Intervention would seem too heavy handed and it is likely that market needs will lead to a different modus operandi.

15. Are there any problems concerning licensing and / or effective rights clearance in the sector and in the country or countries you operate in? How could these problems be solved?

In our particular educational domain we have not encountered any major problems with licensing. This is due in part to the high level of trust which rightsholders have when dealing with the BFI. The process, however, can be time consuming as all relevant rightsholders have to agree to the terms of any clearance.

16. How should the distribution of creative content online be taken into account in the remuneration of the right holders? What should be the consequences of convergence in terms of right holders' remuneration (levy systems, new forms of compensation for authorised / unauthorised private copy, etc.)?

We are very concerned to ensure that the balance between the legitimate interests of rightsholders and those of citizens is maintained in the online world.

We are beginning to explore the idea of extending the concept of a public lending right, which applies to books borrowed from libraries in the UK, to the online services of public organizations offering copyright materials. This would require both a way of measuring usage and a source of public funds to compensate the rightsholders.

Legal or regulatory barriers

17. Are there any legal or regulatory barriers which hamper the development of creative online content and services, for example fiscal measures, the intellectual property regime, or other controls?

The IP regime in Europe needs to be adjusted to take account of the changed technical environment. In particular, we remain concerned that the Exceptions allowed under the Copyright Directive are not applied uniformly across the Single Market.

18. How does the country you mainly operate in encourage the development of creative online content and services?

UK government has been very active in its encouragement of online services both through direct funding and through the allocation of resources and objectives to the various lottery funds.

Release windows

19. Are "release windows" applicable to your business model? If so, how do you assess the functioning of the system? Do you have proposals to improve it where necessary? Do you think release windows still make sense in the online environment? Would other models be appropriate?

We believe the windows system will evolve according to changing market pressures. There is an argument that release windows will continue to be appropriate mechanisms in the online world but this will be tested by changing consumer behaviour.

As an Archive we are very interested in exploring the notion of a public service window whereby material could be made available online to specifically designated sectors (education is the obvious example) before the copyright term is exhausted

Networks

20. The Internet is currently based on the principle of "network neutrality", with all data moving around the system treated equally. One of the ideas being floated is that network operators should be allowed to offer preferential, high-quality services to some service providers instead of providing a neutral service. What is your position on this issue?

If telcos were allowed to offer a higher quality service to some providers, we would want any future legislative or regulatory framework to maintain a basic minimum level of service for public sector bodies like the BFI which provide educational services. This level would have to be high enough to enable seamless service provision.

Piracy and unauthorised uploading and downloading of copyright protected works

21. To what extent does your business model suffer from piracy (physical and/or online)? What kinds of action to curb piracy are taken in your sector/field of activity and in the country or countries you operate in? Do you consider unauthorised uploading and downloading to be equally damaging? Should a distinction be made as regards the fight against pirates between "small" and "big" ones?

We safeguard our services against piracy to as great a degree as we can as this is a wholly reasonable term of our licences with third party rightsholders. However, equally we are keen to encourage repurposing of material which we own to encourage creative reuse and we provide material for this purpose under the Creative Archive licence.

The UK Film Council has a comprehensive programme in relation to anti-piracy measures to which we fully subscribe

22. To what extent do education and awareness-raising campaigns concerning respect for copyright contribute to limiting piracy in the country or countries you operate in? Do you have specific proposals in this respect?

This is an important aspect of work in the UK across all public sector agencies

23. Could peer-to-peer technologies be used in such a way that the owners of copyrighted material are adequately protected in your field of activity and in the country or countries you operate in? Does peer-to-peer file sharing (also of uncopyrighted material) reveal new business models? If so, please describe them?

We are keen to see peer-to-peer technology used to enable many of our objectives which would be difficult to fund without its development. We expect new business models to develop quite rapidly which adequately protect IP in high value materials but provide access to other materials in a way which is acceptable to all parties.

Rating or classification

24. Is rating or classification of content an issue for your business? Do the different national practices concerning classification cause any problem for the free movement of creative services? How is classification ensured in your business (self-regulation, co-regulation)?

We are sensitive to the need to ensure some degree of classification for online materials but self-regulation is the route we would initially expect responsible agencies to follow. Where this approach is flouted there may be a case at some future date for intervention through regulation.

Digital Rights Management systems (DRMs)

25. Do you use Digital Rights Management systems (DRMs) or intend to do so? If you do not use any, why not? Do you consider DRMs an appropriate means to manage and secure the distribution of copyrighted material in the online environment?

We have used a rudimentary form of DRM for screenonline. Authentication measures which provide security for online services at an acceptably high level is an important aspect of the agreements we have with third party rightsholders to use their materials online.

26. Do you have access to robust DRM systems providing what you consider to be an appropriate level of protection? If not, what is the reason for that? What are the consequences for you of not having access to a robust DRM system?

See above

27. In the sector and in the country or countries you operate in, are DRMs widely used? Are these systems sufficiently transparent to creators and consumers? Are the systems used user-friendly?

DRM systems are at an early stage of development. User friendliness is unfortunately yet to be achieved. The bigger issue is the lack of interoperability due to the resistance of key stakeholders.

28. Do you use copy protection measures? To what extent is such copy protection accepted by others in the sector and in the country or countries you operate in?

We do not use copy protection measures. We have no data on its wider use.

29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability? Complementing commercial offers with non-commercial services

No further comments at this time

30. In which way can non-commercial services, such as opening archives online (public/private partnerships) complement commercial offers to consumers in the sector you operate in?

As noted above we have pioneered non-commercial access to our archive through screenonline (www.screenonline.org.uk). We expect commercial offers will in time complement this service but for a different market

What role for equipment and software manufacturers?

31. How could European equipment and software manufacturers take full advantage of the creation and distribution of creative content and services online (devices, DRMs, etc.)?

We had experience of working with a European Digital Asset Management in the development of screenonline. Subsequently, this company has been taken over by a large US corporation.

European start-up businesses in the equipment and software sectors need to be nurtured and supported if this area is to succeed in future.

What role for public authorities?

32. What could be the role of national governments / regional entities to foster new business models in the online environment (broadband deployment, inclusion, etc.)?

As has happened in the UK, there is a role for national governments in providing initial funding - particularly to non-profit public organizations - for new online services.

33. What actions (policy, support measures, research projects) could be taken at EU level to address the specific issues you raised? Do you have concrete proposals in this respect?

Online service development is a very dynamic sector and it is difficult to assess what policy measures might be appropriate at the EU level. The Commission should beware of chilling innovation in the development of technologies or in business models through interventions it makes.

Support measures for the public sector - acting wherever necessary with private sector partners - should continue to be put in place to develop skills in the sector as it transforms in line with technology and consumer behaviour.

Research projects should be funded under FP7 and future research initiatives both in blue skies research areas and in the development of practical applications to exploit basic research.