



PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET

BRITISH SCREEN ADVISORY COUNCIL RESPONSE

5 October 2006

EXECUTIVE SUMMARY

We are pleased to have the opportunity to outline our views on the challenges and opportunities that content online presents for the audiovisual sector. The British Screen Advisory Council (BSAC) represents a wide cross-section of stakeholders in the audiovisual sector. Our Members encompass companies creating, investing in and exploiting content, as well as technology providers and those with educational and archiving roles.

In developing our response to the content online consultation questionnaire, a number of key themes and messages have emerged:

1. In a transitional environment, any changes within the regulatory regime should be undertaken with great care. A light touch regulatory environment is essential to enable new online services and business models to emerge unhindered. The industry needs to be able to experiment with many different forms of online business models, pricing/payment systems and DRMs to find out what consumers want. Premature intervention runs the risk of distorting the market, with potentially long-lasting and undesired consequences.
2. We are strongly in favour of national self and co-regulatory models for “non-linear” online media – in our view, new services are already adequately regulated by the Electronic Commerce Directive and the Council Recommendation concerning the Protection of Minors and Human Dignity.
3. We believe that the development of DRMs should be market driven, and only subject to the existing EU regulatory framework. It is in the industry’s interest to put in place DRM systems that are transparent and consumer friendly. We would welcome further work to be facilitated by either the EU Commission or the UK Government to encourage a greater consensus on standards.

4. Generally we do not believe there is a need for intervention in the area of online content licensing/rights clearance – although there are some limited areas of licensing where further study and regulatory change may be necessary, in particular with regard to orphan works.
5. While piracy is a major threat to the development of the online content market, it should be borne in mind that providing attractive new business models to consumers at a fair price is part of the solution to piracy - as is better education and awareness about IP. Enforcement activities need to be supported by an appropriate regulatory framework.
6. Although there are some concerns that existing communications networks may not be able to live up to consumer expectations in the delivery of certain forms of online entertainment in the near future – intervention is not necessary since the market is expected to evolve naturally as more online entertainment services rollout and consumer demand increases.
7. While it is essential that public access to knowledge and ideas should be maintained in the online media environment in line with the Lisbon Agenda aims, this must be balanced by enabling commercial entities to thrive and exploit the full value from their investments going forward.

Introduction

The British Screen Advisory Council (BSAC) is an independent, industry-funded advisory body which focuses on audiovisual policy issues. It brings together many of the most influential players from the TV, film and new media sectors¹.

BSAC is well placed to explore the impact of technological changes on the audiovisual industry as its Membership encompasses the widest possible range of UK industry interests, including those creating, investing in and exploiting creative content, as well as the technology providers and those with educational and archiving roles.

In responding to this questionnaire, BSAC has concentrated on the issues that are most important to the majority of its Members. Our response does not replace the evidence that individual BSAC Members may have separately provided on this consultation.

Further reading

For more background about the industry we represent, and more discussion about some of the views we have set out in this response, we would like to refer the Content Online consultation team to several existing documents as additional evidence.

For a detailed overview of the audiovisual sector, and its consideration of the opportunities as well as the challenges in the digital environment, we would recommend reading:

- New Business Models for Audiovisual Content - Report by the British Screen Advisory Council for the Creative Economy Conference, September 2005 (held during the UK Presidency of the EU).
(<http://www.bsac.uk.com/reports/bsacbusinessmodels.pdf>).

For a comprehensive overview of the implications of new technologies for the copyright regime, we would recommend reading the recent BSAC response to the Gowers Review of Intellectual Property.

- Gowers Review of Intellectual Property: BSAC Response to the call for Evidence from the British Screen Advisory Council
(<http://www.bsac.uk.com/bsacgowers%20review.pdf>)

BSAC has also recently responded to an EC consultation on copyright levies, aspects of which may be relevant for the consultation on content online:

- Stakeholder Consultation on Copyright Levies in a Converging World: Response from the British Screen Advisory Council
(<http://www.bsac.uk.com/cionlevyconsultation.pdf>)

¹ See <http://www.bsac.uk.com/members.html> for a list of BSAC Members.

BSAC has also contributed to the debate about public access to content online, most notably in a paper prepared for the Creative Economy Conference which sets out many of the issues that need to be considered in such a debate.

- Public Access Discussion Paper - Report by the British Screen Advisory Council for the UK Presidency Creative Economy Conference, September 2005 (<http://www.bsac.uk.com/reports/bsacpublicaccesspaper.pdf>).

And finally, BSAC's commitment to keeping stakeholders engaged with the opportunities and challenges in the digital world, so that these issues remain at the top of the agenda in the audiovisual sector, is demonstrated by the discussions that took place at a BSAC hosted Film Conference earlier this year:

- BSAC Film Conference – A Brave New World: Emerging Platforms and Formats, March 2006 (<http://www.bsac.uk.com/reports/filmconferencereport006.pdf>).

N.B. This final document does not necessarily represent a consensus view of BSAC Members on the issues discussed as it is a record of the discussion rather than a paper agreed by the Council.

QUESTIONS

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)?**

Many of BSAC's Members provide content and services online. While scheduled TV broadcasts and DVD retail/rental remain the most dominant forms of consuming audiovisual content in the UK, audiovisual organisations are exploring various new models for making content available on an on demand basis to consumers.

Most free to air public broadcasters in the UK are providing clips of programmes and in some cases entire shows for free (for a limited period) on demand, while multi-channel players are also exploring new business models for making programming available online.

Major international film producers have been providing access to their movies on demand for a number of years through services such as MovieLink and CinemaNow in the US. Producers and distributors of independent film content are now also beginning to experiment with providing on demand access.

Many cable, satellite and telco companies have launched, or are imminently launching "triple play" packages which integrate broadcast, internet and telephony services.

- 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.**

N/A

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.**

Many of these questions are asked in the questionnaire below, most of which we have responded to in detail.

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?

Council Members agree that there is clearly a need to ensure that the principles of consumer privacy and ensuring public access to knowledge and ideas can be maintained in the online media environment.

A number of consumer and civil liberty groups, such as the Consumer Project on Technology (CPTech), Trans Atlantic Consumer Dialogue (TACD), the European Consumers' Organisation (BEUC) and the Electronic Frontier Foundation (EFF), are actively campaigning to ensure that the public's rights to certain types of content and information are protected in an online environment (e.g. medical research, educational and other knowledge resources). In their view, open access to knowledge and research helps further the education and development of society.

In working towards protecting public interests, it is also important to ensure that the economics of the industry are able to continue functioning well, otherwise there is a danger of reducing European competitiveness.

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?

Interoperability between devices is desirable, however BSAC does not believe that there should be any government regulation in this area. The development of DRMs should be market driven, and only subject to the existing EU regulatory framework. We would welcome further work to be facilitated by either the EU Commission or the UK Government to encourage a greater consensus on standards. Ofcom might be an appropriate independent body to lead such discussions in the UK.

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?

One of the advantages of the Internet is the ability for content creators to be able to find audiences for their material, no matter how niche, more effectively than off line. The explosion of user-generated content (UGC) sites such as MySpace, YouTube and Bebo, indicates that consumers already feel enabled to make and circulate their own creative works online. Potentially anyone, anywhere in the world can upload their content onto these sites and have access to global, regional or local audiences, depending on their aims and interests. Although the most prominent UGC sites are catering primarily towards audiences in the US, UK, Ireland, Australia and Canada at present, similar sites are

appearing across Europe and overseas which will most likely feature local-language content aimed at national audiences.

There are a number of non-commercial initiatives which also enable people to share and circulate content. Creative Commons licences allow people to share, watch, listen and re-use content. Typically, the rights-holder will keep some rights of attribution and commercial use and allow non-commercial uses. These kinds of licences enable people to promote their work or to participate in a creative community where culture and ideas can be exchanged freely. In a similar vein, the Creative Archive Licence Group² are making some of their archive content (moving images, audio and stills) available for download using a “Creative Archive” licence - a shared user licence scheme which has some similarities to the Creative Commons licence.

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.**

Although it is rather early to know how online content distribution systems may develop, and also the future regulatory structures governing online content in Europe are at present perhaps in transition - the very nature of the Internet means that any content can potentially reach audiences across the globe.

However, as the Internet rapidly turns into an online content hypermarket with potentially millions of content companies (and individuals) competing for audiences and revenues, effective, targeted marketing will become more crucial. There are some concerns amongst smaller players in Europe that large international entities may have a significant advantage over them in terms of marketing spend, and that this could affect their abilities to build audiences for their brands.

New business models and transition of digital 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?**

² The Creative Archive Licence Group comprises the BBC, Channel 4, British Film Institute, ITN Source, and Open University. Content made available through the Creative Archive is all original material sourced from these organisations, not user generated content.

Digital technologies are expected to transform the production, distribution and consumption of audiovisual content, potentially bringing significant benefits to producers (and consumers) alike. For consumers, this will mean access to more and better audiovisual content (including film and television, as well as new media) than ever before, available for them to use wherever and whenever they want.

The most significant of these changes is likely to be the development of true video-on-demand (VOD), which potentially allows for a range of attractive services, including: “catch up” services for new TV programmes; recently-released films (in a form similar to video rental); niche content for which physical distribution costs have hitherto been prohibitively high; a “global archive” that could include any audiovisual content (TV programmes, films, music videos etc.) ever produced; more flexible ways of accessing content, e.g. individual reports within news bulletins; games and other interactive content.

New technologies should enable producers, large and small, to get their creative output more directly to consumers; and to address large; potentially worldwide, audiences with little or no repackaging of content for different platforms. VOD will enable a vastly expanded range of pre-existing content to be made available, opening up historic and global archives. New mainstream high-end content will continue to be offered across all platforms, and may be promoted even more heavily. New technologies should empower niche interest communities, who can be targeted more effectively, enabling the production of a potentially significant volume of niche content.

While some of our Members will continue to aim their content primarily at national audiences (e.g. public service broadcasters), others (e.g. the US studios) will rollout their content on a global level online. The industry is still experimenting with many different forms of business models and DRMs to find out what works. In terms of obstacles, there has certainly been some nervousness in recent years about providing online access to movies and TV programmes because of the threat of piracy – however it is now generally acknowledged that consumers’ needs must be met in order to lessen piracy, and this means making material available quickly after its’ initial theatrical release or TV transmission. While the ‘tipping point’ for the online music market happened after the arrival of iTunes and the iPod³ (and the emergence of a range of other legal music download sites and MP3 devices) – it seems that the same could be about to happen for online video. The latest generations of iPod can now play videos, and full-length feature films are now available from iTunes – Apple’s soon to be launched set top box device iTV will be able to wirelessly transfer files from an iPod to a TV. Other manufacturers are expected to follow suit shortly.

³ The first generation iPod (with a 5GB hard drive) was launched in October 2001

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

We are unable to provide forecasts - however the growing levels of piracy give a strong indication that the demand for online audiovisual entertainment is very high.

10. Are there any technological barriers (e.g. download and upload capacity, availability or 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.

Research suggests that while demand for rich media content online continues to grow, existing networks may not be able to live up to consumer expectations in the delivery of such services.⁴ By 2012, bandwidth requirements are expected to reach about 23 Mbit/s downstream and 14 Mbit/s upstream. Services of this speed are unlikely to be available to more than 50% of UK households with existing networks. (ADSL2+ cannot offer speeds in excess of 20 Mbit/s beyond 1.5 km from the exchange, although the performance of xDSL technologies may improve between now and 2012. Also, cable networks, which reach 45% of UK households, can support these speeds).

In order for the online content market to be able to develop unhindered and be able to meet consumer demand, investment in infrastructure will be required. However, we see no need for intervention since the market is expected to evolve naturally as more online entertainment services rollout and consumer demand increases.

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

There are a number of concerns within the audiovisual industry relating to future revenue streams online. Firstly, fragmenting audiences are already putting increasing pressure on advertising funded TV channels. In the online space, they will find it difficult to survive on advertising revenues alone. Personal video recorders (PRVs), which enable viewers to skip ads, provide an additional pressure in this respect. Broadcasters will need to develop new revenue models and find ways of exploiting content across multiple windows (such as on demand catch up services) as viewing migrates from their traditional network channels.

Secondly, the film business currently depends largely on DVD revenues as a source of finance for investment in future productions – but with DVD sales expected to decline over time as on-demand distribution of content takes precedence, there are industry concerns that market pressures could force the price of film downloads significantly

⁴ Broadband Stakeholder Group Green Paper: Predicting UK Future Residential Bandwidth Requirements (May 2006).

lower than DVDs (as seen in the differential between music downloads and CDs), which could result in seriously undermining the film financing model.

However, online piracy is currently considered the biggest threat to the audiovisual industry's revenue streams – we have discussed this at more length in our response to questions 21 and 22.

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?

The audiovisual industry is currently experimenting with a number of different payment models for online content. The most dominant are:- subscription based models (e.g. “all you can eat” fixed monthly payments as seen with some online music companies such as Napster, this model is also currently used by many DVD rental sites); per download or micropayment models (e.g. payment per download as seen on iTunes and mobile phone networks); advertising funded models (where downloads are “free” but effectively subsidised by advertising, such as the soon to be launched music download site SpiralFrog); and other “free” models which typically are subsidised by public funding or a licence fee (e.g. BFI's Screenonline service; and the soon to be launched 'MyBBCPlayer' will enable people to download BBC TV content for free up to a week after transmission).

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

As stated above, the audiovisual industry is experimenting with a number of different payment systems and pricing structures online. It is expected that, as in the analogue world, consumers will be prepared to pay varying prices for a range of different propositions – based on a piece of content's timing (i.e. how soon content will be available after its theatrical release or initial broadcast transmission) and the flexibility of the consumer proposition. Understanding consumer attitudes to different pricing models is important - we anticipate that transparency and simplicity will be key features of any future pricing systems.

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?

At the Creative Economy Conference (organised by BSAC and held during the Presidency of the EU last October), the Commission's proposed policy measures to

encourage the collective management of copyright across the EU were discussed at length. There was an acknowledgement that collective management must adapt and change to the challenges of the online universe. Essentially it was agreed that arrangements should become more flexible and accommodate both the rights-holders' freedom to entrust their repertoire to the collecting society of their choice *and* the demand of users to negotiate licenses on a multi-territory and multi-repertoire basis.

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

In general, BSAC does not believe that there is a need for intervention in this area, however, there are some limited areas of licensing where BSAC Members believe there needs to be further study and possible regulatory change. Use of orphan works in particular gives rise to problems. Difficulties in tracing copyright owners are an increasing problem for the audiovisual sector and this is also preventing public access to some of our audiovisual heritage. We believe that the solution to this problem should be part regulatory, but that the establishment of more voluntary databases of rights should help ameliorate this problem in the future. We are unable at this point to offer a preferred regulatory solution, but believe that it should permit immunity from liability if all reasonable efforts to trace right holders have been made and provide for a royalty to be paid to any right holder who turns up after an orphan work has been used. The Copyright Tribunal would be an appropriate body for deciding on the royalty level.

There can also be problems where the copyright owner can be traced but is not able to license the use in question because the relevant rights have already been licensed to others and there is then a problem tracing those people, for example those who have been granted distribution or other rights by the copyright owner. Moreover, where original licensing contracts have been negotiated without anticipating technological change, or where new uses are in their infancy at the time the original contract was agreed and are not covered in the contract, it can be difficult securing licensing for all these rights in the future. Uncleared rights can then hold up the pace of change and the roll out of audiovisual material on new platforms and this in turn can have an adverse impact on competitiveness. Given the often very large number of rights in a single audiovisual production, it can be that there is a failure to reach agreement to clear just one of the rights, which means that no-one can use the product even if all the other rights have been cleared.

Industry-led registers of rights could be beneficial in finding partners for collaborative activities as well as clearing rights. But registers of rights are unlikely to provide a complete solution. BSAC has not yet formed a final view on whether compulsory licensing or licences of right should ever provide part of the solution to these problems, but we do believe that copyright licensing issues at the margins should be investigated further with a view to deciding whether any equitable and balanced solutions might be possible.

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.)?

Digital Rights Management systems (DRMs) should be able to play an important role in the remuneration of rights holders. As well as managing the distribution of content, they should also be able to potentially incorporate more sophisticated mechanisms that allow income to be collected as content is distributed (e.g. using micropayments), and for artists, writers, musicians etc. to be directly reimbursed from the funds raised. These systems should enable copying issues to be addressed directly, for example by prohibiting it altogether, restricting it (e.g. allowing a limited number of copies to be made freely), or permitting it subject to additional payments by the consumer. This would reduce the need for traditional levies, as DRMs would directly manage the raising of payments associated with copying.

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?

In a transitional environment, any changes within the regulatory regime should be undertaken with great care. There has been some concern within the UK audiovisual industry regarding the draft Audiovisual Media Services Directive, which proposes to extend the scope of former Television without Frontiers Directive to include “non-linear” online media.

While BSAC supports the general aims and principles of the draft Directive, there are a number of problematic areas within the current text which, if implemented, would actually work against these aims – specifically the aim of encouraging the growth of a strong, competitive and integrated European audiovisual industry, in line with the Lisbon agenda objectives. Although we accept that online services which are very similar to scheduled TV programmes should be regulated in a similar way to TV broadcasts, including all other non-linear services within the scope of the Directive could seriously hamper the growth of the online content sector. In our view, new services are already adequately regulated by the Electronic Commerce Directive and the Council Recommendation concerning the Protection of Minors and Human Dignity – and there is no need to depart from the self-regulatory approach favoured to date.

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

The answer to this question would depend on what is meant by “creative” online content and services.

There is little direct Government support for creativity specifically online – however there is an R&D tax credit for games developers, whereby up to 40% of the development budget of games (including games intended for online platforms) made in the UK may qualify for tax relief.

Another means of support for creativity online is the Creative Archive Licence Group⁵, which provides access to public service audio and video archives to enable British citizens to find, re-use archive material for their own (non-commercial) creative endeavours.

More generally, the regulatory environment in the UK gives the public service broadcasters relative freedom to develop new services and migrate their activities online so that they can fulfil their obligations to provide universal access to their material. (Although in the case of the BBC, under the terms of the new Charter, it seems likely that new services will be subject to market impact assessments by Ofcom)

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?

For many BSAC Members, release windows are key to maximising the value of their content by exploiting it sequentially across a range of platforms or “windows”. This is most pronounced for films, which are typically premiered in cinemas, before being released a few months later on DVD, both as rentals and sell through⁶. The DVD window is followed by the pay per view (PPV) TV window, with a video on demand (VOD) window, emerging alongside it in recent years. Next comes the main pay TV window, around 18 months after the original theatrical release - and then a year later, the free to air network TV premiere. Finally, a VOD library window is developing after a period of exclusivity for the free-TV window. The theatrical window, even though it provides the first opportunity to watch new films, tends to be a loss leader, with greater revenues derived from subsequent windows.

As for TV, the value chain is also highly structured, but differs significantly from film. Most value is typically attached to the first-run network transmission for TV content. This can be close to 100% of the value for some content, particularly live or topical events or programmes which attracts large audiences, e.g. news, sports, reality shows and

⁵ The Creative Archive Licence Group comprises the BBC, Channel 4, British Film Institute, ITN Source, and Open University.

⁶ A few years ago, the DVD rental window tended to precede the retail window by around three months, but the two windows now usually coincide. Also, while the video rental window historically followed by theatrical release by 6 months, the DVD window has moved closer to the theatrical release by 6 months. The DVD window has moved closer to the theatrical premiere, now often coming 4-5 months after the original release.

soap operas. Other genres, such as high-end drama and comedy, may have significant value in secondary markets (TV syndication or repeat channels, DVD sales etc). TV programmes thus follow a simpler release pattern than films, with the premiere followed by repeat transmissions/syndication and DVD sales. Many TV programmes however will only ever receive a single transmission and may never be repeated.

The development of video on demand services fundamentally changes the entire release pattern for films in particular. In general, new VOD rental windows may be expected to compete with, and ultimately to replace, the video rental, pay per view and premium pay-TV windows. These windows may be expected to shorten and converge in the short to medium term. In the long term, only the theatrical, DVD sell through (or new forms of packaged media), VOD and free to air TV may remain. While producers and studios appear to be coming round to the idea of significantly reduced windows, and are starting to experiment with releasing film theatrically and as a DVD/download almost simultaneously – this naturally is strongly resisted by exhibitors, whose revenues have traditionally be derived from the exclusive `event' of the initial movie release. However, everyone is agreed that there is a need to experiment and to find out what works, and distributors need to be mindful of the difficulties compressed release patterns imply for the exhibitors.

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?**

BSAC has not yet developed a view on network neutrality.

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?**

The impact of piracy on the audiovisual industry cannot be overstated – in 2005, approximately 12 million UK adults (1 in 4) watched a film via pirated means – in terms of sales to the UK film industry, this translated into an estimated £800 million. As for downloading films from the Internet - 6% of the adult population illegally downloaded a film or TV series. As more and more people subscribe to broadband offerings, and as

broadband speeds increase – there is a real threat that piracy levels could worsen considerably.

Many of our Members spend considerable resources on enforcement activity, either alone or in collaboration. Enforcement activity needs to be supported by an appropriate regulatory framework and BSAC believes that some improvements are needed – e.g. to bring section 107A or the Copyright, Designs and Patents Act 1988 into force, to make camcording in cinemas a criminal offence, and to remove some difficulties in proof of the copyright offences.

However, we also believe that providing attractive new business models to consumers at a fair price is part of the solution to piracy, as is better education and awareness about IP.

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?

Another preventative approach to piracy is better education about IP in the school curriculum in as positive a way as possible. Efforts need to continue to raise public awareness about IP and the impact of IP crime. The audiovisual sector continues to devote considerable resources to this type of activity and in 2004 the major DVD distributors joined forces with retail and rental outlets in the UK to establish the Industry Trust for IP Awareness⁷. This organisation, amongst other things, engages in consumer awareness campaigns.

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?

There is sufficient confidence in copyright protection technologies to encourage companies to experiment with a range of different online models, including peer-to-peer distribution. Warner Bros plans to sell movie downloads using BitTorrent peer-to-peer software in due course. Users will be able to buy downloads of films and TV shows on the same day that they become available on DVD – feature films are expected to cost the same as a DVD release, while TV shows will cost upwards of \$1.

In addition, EMI Music will be making its catalogue of recordings available for an advertising-supported, legal peer-to-peer music distribution service. This business model is intended to attract a broad base of consumers to try out the service, and then graduate those consumers to purchase music permanently or subscribe.

⁷ See <http://www.piracyisacrime.com>

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)

BSAC has not yet formed a view on the rating/classification of content online.

Digital Rights Management systems (DRMs)

Digital Rights Management Systems (DRMs) involve technologies that identify and describe digital content protected by intellectual property rights. While DRMs are essentially technologies which provide for the management of rights and payments, they also help to prevent unauthorised use.

25. Do you use 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?

Many BSAC Members use DRMs in their provision of online content. DRMs provide enhanced control and flexibility, and are beneficial to both content creators and consumers. Effective DRMs offer a range of attractive legal options to consumers, enabling them to use content how they want, and providing viable alternatives to pirated content. The flexibility of DRMs enable a wide range of propositions to be offered to consumers including:

- Variants of propositions in current windows (e.g. own for one day or one week within rental window)
- Entirely new models such as peer to peer distribution, whereby DRMs empowers consumers to legally forward content to friends and rewards them if the content is viewed (while automatically remunerating rights holders)

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?

Without robust DRM systems in place, perfect digital copies of content can be made and potentially distributed anywhere in the world without limit. DRM is therefore necessary to prevent large-scale copyright infringement of digital content - which, unchecked, could lead to the demise of the content industries. This in turn would result in the discontinuation of the production of the quality cultural products that consumers currently expect and enjoy.

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 user friendly?

Yes, DRMs are widely used in the sectors we represent. It is in the industry's interest to put in place DRM systems that are transparent and user friendly. With so many operators in competition with one another, consumers will naturally gravitate towards the services they feel the most comfortable using.

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?

Yes, the sectors we represent use a range of copy protection measures. While copy protection is not water tight, it is essential for sending a message to consumers that unauthorised copying of content is wrong, and that it could potentially affect the ability of the industry in the long term to be able to make the high quality content that consumers expect. It is more difficult to prevent professional hackers from doing this, however the average person will be deterred by copy protection measures.

At this early stage in the HD market, there is an opportunity to develop secure systems to protect content in HD formats. A DRM technology called AACCS (Advanced Access Content System) has been developed⁸ to protect all HD video content (both Blu-Ray and HD-DVD) - although some consumer groups have expressed some concerns that AACCS in its current form could give the industry too much control over how consumers can use their software and hardware.

29. Are there any other issues concerning DRMs you would like to raise, such as governance, trust models and compliance, interoperability?

In general, BSAC believes that the development of DRMs should be market driven, only subject to the existing EU regulatory framework. We would also welcome further work to be facilitated by either the EU Commission or the UK Government to encourage a greater consensus on standards.

Complementing commercial offers with non-commercial services

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 long as there is a clear line drawn between public domain archived content and commercial content which must be paid for, the two different kinds of offerings can co-exist – in much the same way that public and private offerings already co-exist off-line

⁸ (AACCS was co-developed by Sony, Toshiba, Intel, IBM, Panasonic, Microsoft, Warner Brothers and Disney)

(e.g. free to air TV and subscription TV, or public galleries/private exhibitions). Therefore, initiatives such as the Creative Archive - whereby citizens may download clips of archive footage for free (sourced by the BBC, C4, BFI, ITN Source and Open University) for their own (non-commercial) use – should be able to co-exist alongside commercial on-demand services without there being a tension between these two very different kinds of offering.

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.)?

N/A

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.)?

BSAC believes that during this time of transition for the industry, a light touch regulatory environment is essential to enable new online services and business models to emerge. As we have already discussed in our response to question 17, we are in favour of national self and co-regulatory models for “non-linear” online media - new services are already adequately regulated by the Electronic Commerce Directive and the Council Recommendation concerning the Protection of Minors and Human Dignity.

BSAC supports UK Government measures to promote digital inclusion e.g. providing financial and other aid to the elderly and other sections of the population who might experience difficulties during digital switchover.

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?

N/A