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To : Audiovisual and Media Policy Unit – Directorate-General for Information
Society and Media
E : avpolicy@ec.europa.eu
From : John Wilkinson
Date : 13 October 2006
Re : **CONTENT ONLINE IN THE SINGLE MARKET**

Dear Sir

Below is CEA's response to the questions posed in your Public Consultation on Content Online in the Single Market.

I would be pleased to provide further views as the consultation process proceeds.

JOHN WILKINSON
Chief Executive

- 1 Currently cinematographic films are offered through VOD services. Many films are also offered for downloading illegally having been stolen from the rights holders and therefore no income flows to the rights holders.
 - 3 The legal consumption of film online will undoubtedly grow but will be competing against the consumption of film that has been made available online without the rights holders' permission where no income flows to the rights holders. The legal distribution of film online will have to compete in price terms with the illegal consumption and therefore the legal distributors will have to price their product to compete with 'free' access.
 - 5 Technology will ensure that online content will be useable on all devices and legal restrictions will be circumnavigated therefore legislation to restrict access to specific devices is most probably not worthwhile.
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- 6 Cultural diversity will be self-sustaining online therefore no central action to increase diversity needs to be undertaken.
- 8 Currently cinematographic films are sold on a territory by territory basis as this produces the greatest income for the rights holders and enables them to exploit the windows of opportunity that are available in an orderly fashion. It is believed that it will be very difficult in the future to restrict online downloading activity to specific territories.
- 10 Fortunately the download capability has ensured that where film content has been stolen and placed on the web its usage has been restricted because of the restriction in download capabilities.
- 11 Revenue streams to rights holders will have to compete against free illegal downloads. To compete, the amount that the rights holders and distributors will be able to charge will be restricted to the 'cost' of illegal copies or a cost that a person is prepared to pay to enable the download to be legal. Music downloads have illustrated that the only way to ensure that the rights holders receive an income is to price the product at a level which the downloader is prepared to pay which produces substantially less income for the work than the traditional delivery systems. For many delivery systems the costs associated with the creation of the delivery systems are high (mobile devices) therefore the distributor take of the reduced charge often restricts the amount of money that can be passed on to the rights holder.
- 14 Creative businesses have argued that sale of rights on a territory by territory basis has enabled the rights holders to create the greatest value. If the use of rights can only be licensed on a multi-territory basis there will be the temptation to increase the licence fee and not all countries have an adequate appeals procedure for when agreement cannot be reached between parties on what is a fair level of payment. The Commission's recommendation that online music can be licensed for the whole of Europe with a collecting society of the rights holders' choice, it could be argued, has set a precedent but this precedent should not be followed until the recommendation has had time to be used and its advantages or disadvantages identified. If European rights for the whole territory of Europe could be created, it is felt that this would be disadvantageous to European rights holders and the creators of European product which

unfortunately currently, especially for audio visual works, does not easily cross European borders. If a European work were only able to be offered on an all-country basis, it might restrict those works which appeal to the public in only one or two countries for as a distributor might have to pay a greater licence fee than if it were only limited to one country or territory.

- 16 Current evidence indicates that where creative content is legally distributed online, the charge that the distributor can make is limited to the cost of illegal copies available in the country, though a small uplift in price to achieve legal download may be achievable. In the USA, VOD has a cost of approximately \$6 – the cost of a pirated DVD. In the UK, research indicates that the public is prepared to pay £5 for a download which equates with the cost of a pirated DVD, whilst some distributors are currently able to charge the same price for a download as the legal cost of a DVD which they also supply, it is not yet known if this will be sustainable when the facility is taken up by the general public and not just early adopters. It does seem most probable that the money that can be raised by the distributor which can be shared with the rights holder is substantially less than that raised by the traditional distribution systems. Volume sales may fill the shortfall but only if sales can be multiplied by 3 or 4 times and the appetite of the public cannot be quantified, so it would appear that online sales will not produce the same level of income for distribution and rights holders which they currently enjoy. Levy system to compensate for illegal copying should not be introduced as they 'legalise' and condone illegal activity.
- 19 In the online environment, the importance of 'release windows' is still most important as they enable the rights holders to achieve the greatest value from their creative endeavours. Whilst the theft of creative product will be controlled, it will never, unfortunately, be completely eradicated, therefore legal users of creative product outside the online distribution will remain important sources of income for the rights holders. Many of the non-online users also act as effective marketing tools for the exploitation in other windows and online and, most importantly, also produce income. The order of exploitation in the various windows of opportunity available to rights holders may change, as may the period of the windows, but this will be driven by the potential income that the rights holders can achieve in each specific window. The first window is the most valuable to the rights holders on an individual personal consumption basis as is illustrated by musical concerts of all types and the exhibition of film. Because of its monetary value to the rights holders the current first exploitation, will undoubtedly

remain as the first public performance of creative works which may or may not subsequently be distributed online but it will be necessary to protect the value that a period of exclusivity – either through commercial restraint or legal means – to ensure the income flow to the rights holders.

- 20 Network neutrality should be retained.
- 21 No distinction between large or small thieves of intellectual property should be made. The cinema industry spends many millions of Euros fighting theft and all sectors of the industry are involved in this fight.
- 22 In the UK specific anti-theft educational programmes are available and issued in schools. The industry advertises regularly to inform members of the public of the impact on them of intellectual property theft.
- 24 Classification of product in different forms of delivery to the public is not consistent within the UK. Classification of product across borders is not feasible as what offends in one country does not offend in another. We believe general guidance for the whole of Europe is helpful but centralised classification for the whole of Europe will not work. Local classification must be continued unless all forms of classification and censorship are abandoned, which is not supported by either the Commission or the European Parliament, which continues to insist on the protection of children from potential harm.
- 28 Copy protection measures are a necessity to protect the income of rights holders and the creators of intellectual property.
- 32 Government can help the development of new business models by avoiding passing legislation that either favours the development of new models or protects them. Legislation should not favour one delivery system over another.