

DG Information Society and Media
European Commission
B-1049 BRUXELLES
BELGIUM

12 October 2006

Dear Sir/ Madam

PUBLIC CONSULTATION ON CONTENT ONLINE IN THE SINGLE MARKET

I am writing in response to the current public consultation being conducted by the European Commission Directorate General for Information Society and Media, which is examining key issues regarding the growth of online digital content.

Equity is a trade union representing 37,000 performers and creative personnel in the UK. Our members work across the whole spectrum of entertainment, and in a number of the types of creative content and services identified by the Commission. In particular, the work of Equity members features in audiovisual work as well as music and radio, but also in video games and educational work. Equity is also a member of the European group of the International Federation of Actors (FIA).

This response does not attempt to address every question raised by the Commission in the consultation. Nevertheless, I would like to provide a number of comments on the broad issues raised by the consultation.

I should also state that, because of the nature of Equity's membership, this submission will focus primarily on the supply of content online rather than addressing detailed issues relating to the stimulating of demand.

CONSUMPTION, CREATION AND DIVERSITY OF CONTENT ONLINE

Equity members clearly have a direct interest in ensuring that their work is available to as broad an audience as possible, and that their content is consumed in a way that sustains the economics of the industry and provides remuneration to the rights holders.

To that end Equity supports the interoperability between devices and would welcome further work to encourage a greater consensus on standards.

However, we would not propose a legislative approach to this issue in the way that has been brought forward in France and under consideration in Denmark.

With respect to the diversity of content we welcome the fact that the internet provides opportunities for content creators to reach niche audiences more effectively. For example, the availability of archives or on-demand audiovisual material will provide significant advantages for consumers who may not otherwise be able to access this work. Moreover, it should also provide opportunities for producers to develop new business models and provide additional remuneration for performers and other rights holders.

The recent and rapid expansion of “Web 2.0” with the proliferation of user-generated content (e.g. YouTube, MySpace) will also provide opportunities for content creators to share and circulate creative work. However, it would appear that these emerging platforms have yet to establish a clear business model to sustain a commercial operation in the longer term.

NEW BUSINESS MODELS AND TRANSITION OF TRADITIONAL ONE INTO THE DIGITAL WORLD

Equity currently has collective agreements with the main producers of audiovisual content in the UK, specifically the BBC, ITV and PACT as well as a separate Cinema Films Agreement. These agreements provide minimum terms and conditions for creators, as well as ongoing ancillary payments for secondary uses of the work. These secondary payments are usually calculated through the payment of a residual (based on the artist’s original fee) or a royalty (based on the sale price) and in some cases a collective licence.

These mechanisms are designed to ensure that an artist benefits from the success and continued exploitation of their performance. They also enable broadcasters and producers to ensure the efficient administration of the intellectual property rights agreed under the contract.

In addition to these traditional uses through “linear” television broadcasts, Equity has reached a number of trial agreements with broadcasters and producers for the use of performances through a number of “non-linear” distribution channels, including video-on-demand and “stacking” of programmes, internet download, mobile phone download and a range of digital catch-up services.

It is clear from our discussions with the main producers of audiovisual content that the industry is still experimenting with a range of business models and platforms that include different approaches to the availability of content online. However, there is an acknowledgement that these national content providers will need to respond to the needs of consumers and look at ways to build audiences internationally through a strong and distinctive brand.

For its part, Equity will continue to examine the ways in which content can be made available and will work with producers to devise the most appropriate payment methods for Equity members, depending on the business models that are ultimately adopted.

PAYMENT AND PRICE SYSTEMS

The payment and pricing structure for content online is of great importance to Equity members, because much of the remuneration of performers and other rights holders will be determined by the nature and volume of payment made by consumers.

In particular, Equity has sought to apply its agreed *royalty* arrangement for much of the content made available by producers in the new and exciting ways outlined above. This payment structure generally provides a 17% share of the gross receipts of the sale of a programme, divided amongst the performers in proportion to their original fee.

This structure has worked well for the sale of programmes where the gross receipts form a large and identifiable price that generates a share of income – for example from overseas sales or revenues from DVDs. However, there is some evidence that content producers do not always comply with this contractual provision. As a result, Equity believes that the royalty system itself needs to be improved to provide greater confidence that producers are complying with its terms and payment artists appropriately.

Furthermore, there is a specific problem with applying the royalty arrangement to content online due to small amounts of revenue received through the dominant business models of subscription and micro-payments for access to audiovisual work. The adoption of these payment systems and strategies has therefore led Equity to examine the greater use of collective licensing to enshrine the principle of additional payment for additional use on new platforms.

However, from the perspective of Equity members it would appear that the best way to improve the payment for artists will be to negotiate appropriate collective agreements covering new uses, in a manner that reflects the business models (and revenue streams) that are emerging. As a result it does not appear necessary or desirable to see specific regulatory or legislative intervention in this area.

LICENSING, RIGHTS CLEARANCE, RIGHTS HOLDERS REMUNERATION

As noted above, the future market for content online is likely to reward performers in a number of different ways depending on the revenue streams available and the contractual arrangements in place. It is likely that this will involve an expansion of collective licensing, as well as continued use of the royalty and residual payment methods, which currently provide the majority of remuneration to performers for the secondary exploitation of their work.

Over and above these contractual rights, Equity would also like to see greater harmonisation of statutory rights across the EU. In particular, Equity supports the operation of a tightly framed levy to compensate performers for the restricted private copying of their work in the UK, which should be applied to recordable media (such as blank tapes and CDs) and equipment (including

computer hardware and portable download devices such as i-Pods and games consoles).

LEGAL AND REGULATORY BARRIERS

Equity has supported the European Commission's proposals for an extension of the aims and principles of the Television Without Frontiers Directive beyond traditional "linear" broadcasting into "non-linear" media, such as video-on-demand services and personal video recorders, as well as audiovisual content on mobile phones and available via high-speed internet connections.

While the current draft of the European Commission's Audiovisual Media Services Directive has led to concern from the UK Government and some audiovisual producers, Equity believes that the Commission is correct in seeking to apply common principles of regulation and minimum standards to non-linear media services. In particular, Equity supports measures designed to promote European work, as well as the fundamental public interest objectives referred to by the Directive regarding content of programming, the free movement of broadcasting services within the EU and support for media pluralism.

We also note that there appears to be an increasing acceptance from the audiovisual industry – even within the UK – that online services that are similar to scheduled television services should be regulated in a similar way to television broadcasts.

PIRACY AND UNAUTHORISED UPLOADING AND DOWLOADING OF COPYRIGHT PROTECTED WORK

As noted above Equity believes that it is essential to provide consumers with attractive new business models. This is the only approach which makes sense with the growth in piracy across the audiovisual industry. It is estimated that 12 million adults in the UK watched a film via pirated means in 2005, which translates to about £8m. Moreover 6% illegally downloaded a film or TV series.

A combination of better, trusted and legal alternatives to piracy should be at the heart of the industries approach to tackling the problem. This will inevitably be supplemented by services that are protected and subject to digital rights management systems (DRMs).

DIGITAL RIGHTS MANAGEMENT

DRMs may be helpful in providing an enhancement in the flexibility of the propositions that can be offered to consumers in the short term. However, they can be cracked relatively quickly by professional pirates, are incapable of distinguishing between fair dealing and unauthorised copying and do not guarantee financial return for performers.

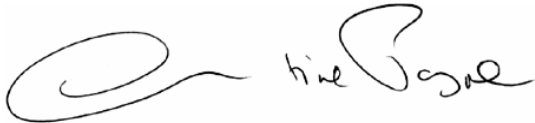
Equity believes that DRMs should not exclude the use of a levy system, which provides a sensible and pragmatic approach, with the aim of enabling consumers and legislators to more easily discern between piracy and legitimate

private copying, creating a renewed legitimacy in a copyright system sometimes viewed as anti-citizen.

Moreover, a reliance on DRMs will require Governments and enforcement bodies to spend disproportionate amounts of time and money on policing and monitoring cases where the technological protection is breached. Similarly, it is unrealistic to expect all individual rights holders to have the resources to pursue private prosecutions every time DRM protection is broken and material is copied in a manner that breaches the original licence.

I hope that you find these comments helpful. If you require further information please contact Matt Payton, Equity Research & Parliamentary Officer on 020 76700260 or at mpayton@equity.org.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christine Payne', written in a cursive style.

Christine Payne
General Secretary