



**Public Consultation on Content Online in the Single Market – Submission
of the “Motion Picture Association” (MPA) in response to the
Questionnaire of the European Commission**

I. Executive Summary

The Motion Picture Association (MPA) is a trade association that represents seven major international producers and distributors of films, home entertainment and television programmes¹. Our member companies have been developing a wide range of online services and are licensing their works to a broad array of new media platforms. These new services offer consumers exciting and novel ways of enjoying an ever broader variety of copyright-protected content, notably (but not only) on the Internet.

The MPA’s response to the Questionnaire of the European Commission emphasises the current breadth of experimentation with new business models as illustrated by the raft of new deals being concluded in the market place. In this context, the MPA stresses the crucial importance of robust – and legally protected – digital rights management tools (DRMs), notably in allowing for the deployment of flexible content delivery models and increased transparency for consumers. On a darker note, the MPA underlines the extremely damaging consequences of widespread piracy, not only in terms of direct economic impact, but also as a terrible disincentive to creativity and innovation, ultimately impoverishing consumer choice.

The MPA identifies several concrete actions that could, and should, be taken at the EU level to address the specific issues raised in this submission. Without going into as much detail as in each individual response, the relevant EU actions that are being called for could be summarised as follows:

- The review of the EU’s “Telecom Package” should be seized as an opportunity to strengthen consumers and network users’ interests. This could be done by remedying the somewhat outdated nature of the regulatory framework. In particular, concrete ideas need to be explored to ensure that the European information society networks, in particular the next generation of networks, deliver more than just ever-larger bandwidth, but also contribute responsibly to the development of a thriving environment for legitimate delivery and exchanges of online content that will benefit all stakeholders, including consumers and end-users.

¹ The MPA’s members comprise: Buena Vista International, Inc., Metro-Goldwyn-Mayer Studios, Inc., Paramount Pictures Corporation, Sony Pictures Releasing International Corporation, Twentieth Century Fox International Corporation, Universal International Films, Inc., Warner Bros. Pictures International, a division of Warner Bros. Pictures Inc.

- The Commission should take concrete steps to push for the translation of the “European Charter for the Development and Take-up of Film Online” into robust inter-industry codes of conduct that encourage the emergence of new services in a secure, consumer-friendly environment. This could be supplemented by facilitating the emergence of efficient on-line enforcement mechanisms that comply with the important public policy requirements of data privacy protection, while not “allowing” offenders to hide behind data privacy rules.
- The Commission should actively encourage and support inter-industry standardisation work currently carried out in various forums and aimed at finding secure “content interoperability” solutions in the digital environment (e.g. within DVB, DLNA, Coral). If needed, the Commission may wish to assist in obtaining a consensus on the essential public policy elements underlying the concept of interoperability, while the market is allowed to pursue the goal of interoperability.
- Obstacles to fruitful inter-industry co-operation – be they behavioural or legal – need to be removed. To be properly addressed, some of these might actually require recourse to legislation. The Commission should therefore be ready to use all the policy instruments at its disposal to bridge the content protection gap in Europe, in particular with reference to the so-called “analogue hole” and the unauthorized retransmission of unencrypted over-the-air digital television signals.
- The Commission also has a role to play in securing means to enforce compliance with DRM standards, regardless of whether these are of an open or a proprietary nature. While it is true that the legal protection of technological measures granted by the EU Copyright Directive as well as contractual terms related to technological licensing are possible avenues for enforcing compliance with a given system, in certain cases this will simply not be enough. It will not be sufficient, for example, in cases where there is no so-called “licensing hook”, or where a particular technological measure is not circumvented, but security is nevertheless compromised by a non-compliant device. In such cases, the Commission (or other public authorities) may have to step in and ensure a means of enforcement or the goal of secure interoperability will not be met.
- The Commission should consider legislative guidelines that allow the creative community to go after publishers and distributors of software which is mainly used for unauthorised use and distribution of protected content on the Internet, with all needed checks and balances.
- The Commission needs to gear up for the management of more diversity within the internal market in order to ensure better implementation and enforcement of single market rules in an enlarged EU. With particular reference to “Content Online”, the EU must be ready to ensure proper application of its legal foundation which must include deterrence against IP crime and online infringement while encouraging the emergence of new, consumer-friendly on-line opportunities.

II. 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 core activity of the MPA's member companies involves the distribution and production of films, home entertainment (Video/DVD) and television programmes. With the great opportunity available to offer creative content online, a number of our member companies have been developing a wide range of online services working with local service providers, content aggregators and broadcasters in a growing number of countries in Europe and are licensing their works to a broad array of new media platforms, in particular Video-On-Demand (VoD) and Electronic Sell-Thru (EST) services. These new services offer consumers exciting and novel ways of enjoying an ever broader variety of copyright-protected content, notably (but not only) on the Internet. Although most of the content offered on-line is also offered off-line, experiments with on-line versions and new on-line only content are also appearing in the market.

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.

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?

Joint answer to Questions 3 & 17:

As a general matter, the MPA would argue that the proper legal environment is for the most part in place at EU level to facilitate the development and take-up of new creative content services online. This being said, we believe that the recently launched review of the EU's so-called "Telecom Package" should be seized as an opportunity to – in the Commission's own words – "strengthen consumers and users' interests". This could be done by remedying the somewhat anachronistic nature of the regulatory framework. In particular, concrete ideas need to be explored to ensure that the European information society networks, especially the next generation of networks, deliver more than just ever-larger bandwidth. They should also contribute responsibly to the development of a thriving environment for legitimate delivery and exchanges of

online content that will benefit all stakeholders, including consumers and end-users by facilitating the continued experimentation of business models for delivery of content on new media at varying price points.

In addition, a substantial challenge that now lies in the hands of the European Commission relates to the need to gear up for the management of more diversity within the internal market in order to ensure better implementation and enforcement of single market rules in an enlarged EU. With particular reference to “Content Online”, the EU must be ready to ensure proper application of its legal foundation which must include deterrence and education against IP crime and online infringement while encouraging the emergence of new, consumer-friendly on-line opportunities. In this context, the EU may be able to assist in finding effective on-line enforcement mechanisms that respect important public policy objectives such as the fight against piracy and counterfeiting and underlying data privacy protection.

As to technology, the online delivery of films faces a number of challenges. Primarily, right holders rely on the effective implementation and protection of technical measures that provide a safe environment for the delivery of content and expansion of services driven to better satisfy consumer needs and demands. Of course, circumvention of technological protection measures can not be prevented entirely but robust safeguards are available and the legal protection is in place. There are legacy issues that present challenges at this time, such as the so-called analogue hole (whereby protected digital content is converted into analogue signals and then redigitised without respecting copy protection signaling). These vulnerabilities, taken together with the problem of unauthorized retransmission of unencrypted digital-television signals, exacerbate an online environment already being used to facilitate piracy and retard the important policy goal of digital switchover. In this respect, the Content Online initiative offers a great opportunity to make some progress on these two key issues with the involvement of all stakeholders, and should become one of the priorities of the Commission.

Furthermore, we believe that the emphasis needs to be clearly put on encouraging the migration to legal delivery services and fostering a culture of dialogue between rights-holders and those who develop new distribution channels for copyright-protected content, notably network providers. A good level of effective and meaningful cooperation between content providers and access providers – as a matter of course and not just in the context of commercial agreements – should be a key component of any effort to address the problem of intellectual property theft.

In the film sector, the 2006 “European Charter for the Development and Take-up of Film Online” provides a very positive first step, which now needs to be translated into either robust inter-industry codes of conduct or, where such codes do not provide for meaningful cooperation, appropriate legislation to fight piracy that encourage the emergence of new services in a secure, consumer-friendly environment. This would reflect the conclusion of the Charter, which states that “[t]he European Commission will instigate, during the preparatory phase of the Communication on Content Online (...) a process whereby

cooperation procedures (such as codes of conduct) will be developed by interested stakeholders, including the participants to the Film Online Talks.” The MPA has already given concrete thoughts to what such codes of conduct should include and stands ready to contribute to their actual elaboration.

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?

As a preliminary remark, the MPA wishes to say that it strongly supports the idea that the promotion of public interests, including the fight against piracy and counterfeiting, should be pursued both offline and online, while recognizing that specifically-tailored tools might be the most effective to reach given public policy objectives in the “online world” (e.g. self-regulation and/or co-regulation, promotion of Codes of Conduct that could govern the application of public policy rules in view of the specificities of the on-line environment). This being said, the MPA takes issue with the often-voiced notion that there is an inevitable clash between, on the one hand, “consumer interests” (e.g. protection of privacy, access to information, etc.) and, on the other hand, “business interests” (e.g. copyright, enforcement, etc.).

As a concrete example, the deployment of Digital Rights Managements tools (DRMs) often leads to discussions focusing on a perceived dichotomy à la “private vs. public interest”. In fact DRMs can provide a perfect illustration as to how and why business and consumer interests are in practice most often converging. Concretely, DRMs allow copyright owners to make content available to consumers in a variety of new ways through product and services diversification. In the film sector, this includes the development of new business models (flexible pricing, super-distribution, on-demand, subscription) and new formats (DVD, next generation DVD, digital cinema, digital TV, etc). In turn, by enabling diverse approaches to bringing content to the consumers, DRMs empower consumers to enjoy content when and where they want and to pay for only what they want. This more efficient means of delivering content is bound to expand consumer choice.

Keeping the foregoing in mind, DRMs are tools that enable rights holders to effectively manage their rights in the digital environment, which includes allowing consumers convenient means of access to licensed content. Copyright holders and consumers have converging objectives, with rights holders having a clear market incentive to satisfy consumer demand for flexible pricing and innovative means of consumption, whereas consumers are expecting a diversified menu of choices.

Public authorities need to recognize the mutual interests of content providers and content consumers to find the best ways of meeting public policy objectives that might be characterized (incorrectly) by some as being in conflict with each other. Privacy rules and law enforcement provide good examples here: while the protection of privacy is a very important and legitimate objective in the online world, its application must be examined in the context of those merely wishing to shield their illegal operation or operators trying to hide behind privacy

protection as a pretext for avoiding any responsibility for the use of their services and facilities by customers for illegal purposes.

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?

Satisfying consumer needs in the context of a digital environment that includes various peripheral devices is a priority of MPA member companies. As part of that endeavour, certain content security risks need to be addressed in order to maximise the benefits for consumers, while protecting the viability and growth of legitimate services. Therefore, when considering this question, it should be borne in mind that the range of possible uses of copyrighted material has been greatly expanded in the online world, in favour of consumers. At the same time, digital technologies have made possible mass replication (indeed cloning) and redistribution of copyright works on a global scale, with little or marginal cost for users and massive risks for right holders, as well as network operators and service providers that are offering innovative services, where content is not properly secured.

The discussion of interoperability is often related to concerns that not all devices will accommodate all types of content, in form and/or format. This discussion often also spills over into the debate over the impact of DRMs on certain uses of content protected by technological measures. At the heart of this debate intersect copyright exceptions and the legal protection of technological measures, equally important objectives of the EU Copyright Directive (EUCD). Indeed, the Directive establishes a balanced mechanism to deal with this issue.

The MPA submits that interoperability and security of content need not be mutually exclusive. In other words, interoperability should not be achieved at the expense of security. The EUCD provides legal protection for technological measures, used to protect works, against circumvention and trafficking in circumvention devices and services. Copyright owners and users of copyrighted works should, where necessary, reach voluntary agreements to afford the beneficiaries of exceptions who would otherwise not be able to benefit from them, the ability to do so (see Article 6.4 and Recitals 51/52 EUCD).

The market is increasingly engaged in dealing with these issues. Accordingly, the market should be given a chance to address and resolve problems as and if they arise. Heavy-handed public intervention, for example in the form of prescriptive solutions or simplistic solutions that compromise or waive content protection, would at this nascent stage doubtless do more to chill the market, both in respect of deployment of new business models and development of content specific for those models, than it could to help it, particularly when it remains unclear whether problems of frustrated legal access exist and, if

extant, how profound such problems might be – and, indeed what might be done within the industry to overcome them.

Given the consumer interest in this area, there exists significant incentive for the market to resolve these issues. Indeed, this has led to an increased multi-industry cooperation to address security concerns and interoperability issues, though continued and further cooperation is needed (for example in the Digital Video Broadcasting project, the Coral consortium and the Digital Living Network Alliance). Public policy should provide a support for such industry dialogue, bearing in mind that any process of interoperability needs to also achieve security in full respect for copyright. The MPA and its member companies stand ready to work with the Commission to clarify such key policy principles while the market is allowed to pursue the goal of interoperability.

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?

Digital technology and the creation of content are directly relevant to a self-sustaining level of cultural diversity in the online world. In this regard, the MPA's assessment is that individual citizens today have vastly more possibilities than ever before to access, display, reproduce and distribute content online in a perfect, immediate and inexpensive way. There has probably never been as many possibilities to create (e.g., user-generated content), access and share information on such a massive scale and at no other point in time has so much information, including local content, been available to citizens. In this sense, the online world is clearly a boon for the advancement of cultural diversity, as witnessed by the ever-expanding breadth of content available on the Internet and by the fact that online services are also increasingly "localizing" their content to better address the needs of local markets.

However, the obvious fact that cultural diversity can only be effectively developed when creativity is nurtured as an activity with economic and cultural benefits for everybody involved in the creative process does unfortunately not always seem to be fully acknowledged. This is a crucial proposition though, notably for developing countries whose cultural creativity is arguably currently under-represented in the online world. Hence, the MPA submits that an emphasis on the importance of copyright protection should constitute a key element of any developing strategy aimed at bridging the gap between developing and developed countries, and thus usefully assist in fostering cultural diversity. In particular, copyright is unique amongst other intellectual property rights, in that the creation of a copyright work requires very little in the way of tangible resources. It therefore has great potential for use in developing economies to encourage growth and trade in culturally unique creative products.

Competitiveness of European online content industry

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?

MPA member companies operate across the EU and in nearly all of the categories delineated in this question, including production where they are welcome, and distribution. Since the online environment is teeming with opportunity to offer content, it is probably fair to say that, ultimately, consumer demand will determine which and whether specific delivery models prevail over others.

As to the licensing models that will be pursued in the market-place, the MPA believes that these should reflect the diverse needs of European and local creators, industry and consumers best addressed through arms-length negotiations based on the principle of contractual freedom. Hence, a diversified licensing landscape should be allowed to continue, not a one-size-fits-all solution. Reflecting the most appropriate model from a commercial point of view, creative content will alternatively be licensed on a national, linguistic or multi-territorial basis where appropriate.

The preservation of this contractual freedom, both at the national and European level, is of utmost importance as new and diversified business models are being tested and embraced by creative industries. Indeed, the notion of imposing a single model or restriction on the industry's freedom to license would clearly penalise creators and eliminate market-driven incentives to invest in the right sort of new and diverse content that can drive new business models, products and services. As an illustration in the film sector, it is not unusual for independent producers in Europe to depend on pre-sales to individual markets to finance their projects; an imposed EU-wide license would therefore undermine an important source of financing for European productions and thus be detrimental to cultural diversity.

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

With various business models being tested by content providers and new distribution platforms being regularly launched, we are in a period of robust experimentation and the MPA finds that it is still early stages to make accurate predictions of the future potential of the online marketplace. Studies carried out usually point to the increasing number of online services but contain little precise indications, e.g. on financial viability. In the specific case of video-on-

demand (VOD) services, a recent study published by the “New Media Markets TV Journal” in September 2006 (September 8th and September 15th issues) points to the fact that VOD uptake in Europe is gathering pace. “New Media Markets” estimates that 4.1 million subscribers across twelve considered European markets are now able to take VOD services from 25 cable, DSL and other operators.

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.

As a general requirement, legal services of content delivery rely on a high-level quality of service. The quality of service would notably include criteria such as speed of the user-friendly interfaces, network, bandwidth, security and application of content protection technologies. In the specific case of films online, these characteristics are essential to ensure a level of consumer satisfaction at least equivalent to television or DVD.

In the MPA’s view, the main technological barrier to efficient online distribution relates to the need to accelerate the uptake of robust DRM technologies in the marketplace and to the requirement to deal with legacy problems slowing down the transition from analogue to digital media. Steps notably need to be taken to improve the security environment by addressing gaps in protection, such as the unauthorized re-transmission of unencrypted over-the-air digital television signal, improvement of the tamper-resistance of software-enabled DRMs and the protection of analogue interfaces on consumer electronics equipment (i.e. to plug the analogue hole whereby protected digital content could be stripped of its associated usage rights by converting to analogue format and then back to digital).

The Commission could play an important role in encouraging and supporting inter-industry work currently being carried out in various forums and aimed at finding robust “content interoperability” solutions for a secure digital environment (e.g. within DVB, DLNA, Coral).

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?

As illustrated by a string of recent licensing arrangements concluded between producers of filmed entertainment and operators of new distribution channels, the market is responding to consumer demand for greater flexibility in consumption. This reflects the concomitant facts that it is clearly in the interest of copyright owners to exhibit and otherwise distribute their works, while network providers are becoming aware that legal content distribution could be an important compensating factor for the fall in revenues witnessed in sectors such as broadband internet access and traditional voice telephony.

In this context, the main obstacle encountered by the film industry in securing revenue streams is the steady threat of erosion of investment returns in copyrighted works due to the effects of digital piracy. Since earnings from distribution of audiovisual works provide the funds for the production and distribution of new works, failure to secure the necessary revenues means by definition that less capital is available for investment in new films. In our view, containing digital piracy should notably involve a commitment by public authorities to stymie the main sources of piracy content (e.g. camcording in cinemas, unauthorised redistribution and making available of works over the Internet, circumvention of technological measures, etc.). This requires public outreach and improved enforcement mechanisms that are credible and deterrent, as well as further incentives for network/service providers to cooperate with copyright owners to curb piracy on the Internet. If no remedies are provided by public authorities, digital piracy is likely to grow exponentially with the development and roll out of the next generation of networks.

Payment and price systems

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

Pricing strategies in the on-line segment of the audiovisual sector are diverse and still seemingly evolving, with individual market players testing consumer reactions to various models. However, both in the “offline” and “online” worlds, high levels of counterfeiting and piracy result in legitimate businesses being put in the awkward position of often having to “compete” with illegal “free” offers. Considering that the widespread use of the Internet and the advent of high-speed digital networks have made duplication and sharing of perfect copies of copyrighted work increasingly easy, we submit that the most effective improvement that could be made to the operation of the marketplace would take the form of a tightening of security in the digital environment. Indeed, security is an issue that goes beyond content protection and that is vital to e-commerce, consumer protection and privacy. Finally, in view of the need for the content sector to continue to innovate and ensure fair return on investment, we would strongly warn against any form of market interventions (e.g. compulsory licenses, additional limitations on the rights of copyright holders), which would only add to the need of content creators to recapture lost revenues from other sources. Such interventions also raise legal questions at the EC and international levels. Both pricing systems and strategies should continue to be market driven.

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?

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?

Joint answer to Questions 14 & 15:

The member companies of the MPA deal with rights clearance both as licensees and licensors on a daily basis across borders, whether geographic or linguistic. This is a normal activity for companies operating in the content sector, be it offline or online. As a matter of fact, licensing and rights clearance lie at the heart of the core business of media companies. Although defining and agreeing on a specific licensing model can sometimes involve important contractual negotiations, it needs to be borne in mind that licensing and rights clearance, alongside production, are the essence of the creative media sector. Without it, creative media companies would simply not exist as they do today. This is particularly true for smaller and medium sized producers whose very existence depends on a precarious mix of funding sources including presales into certain markets. The MPA would therefore like to caution against attempts to portray the licensing and rights clearance activity as a potential obstacle to content delivery, when on the contrary it constitutes one of the main drivers behind content production and availability.

As to the decision to engage in single or multi-territorial licensing, it should be recalled that this choice is made on the basis of informed decisions by the rights holders, on a case-by-case basis, with due consideration for local specificities (cultural preferences, classification regulations, language, etc.) and the requirement to ensure full consumer satisfaction. Even though international, EU and national law recognise the territorial nature of copyright, it is perhaps useful to recall here that the territorial application of copyright does not in any way preclude, from a legal point of view, EU-wide or cross-border licensing models. The recent Commission Recommendation on the cross-border licensing of music confirms this view. Moreover, the Commission has noted that “[a successful transition to the emerging market for the distribution of films over digital networks will continue to be based on direct licensing with collective management playing a role in certain cases to secure remuneration for the use of their works for some right holders.” (See pages 22-23, Commission Staff Working Document: Study on A Community Initiative on the Cross-Border Collective Management of Copyright (7 July 2005)).

The contractual freedom granted to rights holders to license their content (e.g. in some cases on a territorial basis) does not constitute an obstacle to the launch of innovative services available across borders. On the contrary, as new and various business models are being tested and embraced by the film

industry, notably in the online environment, it appears obvious that no one business model could be effective at meeting the diverse needs of European creators, industry and consumers. In this context, dictating a single model or restriction on the industry's freedom to license would penalise creators and eliminate market-driven incentives to invest in the right sort of new and diverse content that can drive new business models, products and services. Hence, what should be retained is the current flexible system based on contractual freedom, not a one-size-fits-all solution. A flexible system allows rights-holders to license their content as they deem most appropriate from a commercial point of view based on market signals, be it on a national, linguistic or multi-territorial basis, as it is done in practice. With regard to the distribution of films and audiovisual works, the MPA's view is therefore that any form of mandate for Europe-wide or multi-territory licensing would be inappropriate.

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.)?

With regard to the consequences of convergence, the MPA considers that the basis for right holders remuneration should continue to be contractual negotiations conducted between the copyright holder and the copyright user, except of course in the limited cases where collective licensing is required by law (e.g. cable retransmission, as per the EU's 1993 "Cable and Satellite" Directive). As to the issue of private copy levies, the wording of Question 16 could seem to suggest that levies could eventually be used as a compensation for "unauthorised private copy". The MPA takes issue with that suggestion since it is our firm understanding that levies were never intended to constitute a mechanism to compensate for piracy. In other words, the private copy exception that exists in some EU Member States does not extend to copies made from illegal sources or pursuant to illegal access to protected works.

Private copy levies never adequately remunerated right holders in the analogue world – there is less chance they will do so in the digital realm. We recognize the importance that many right holders attach to private copy levies. In our view, DRM will enable the reproduction right to become more valuable and all right holders will benefit. This has been the role for instance of the copy protection technology applied to DVDs since their inception in 1997. Indeed, it should be recalled that (i) there is no authorization to copy a DVD back to back and (ii) the levies on blank DVDs are only collected to compensate for the private recording of free-to-air television programmes.

The levy system is often seen as a drag on technological development and confuses the public debate on the importance of copyright for innovation and creativity. Further extension of the private copy system to the on-line paradigm through a compulsory license system would violate European Directives and International Copyright Treaties. Such a system, which is based on initial theft (i.e., illegal camcording of a film from a cinema, pirated DVDs, illegal copies of audiovisual works) would seriously undermine efforts of content creators,

including our member companies, to develop new sustainable business models for content delivery via the Internet. The notion that private copying extends to copies made from illegal sources is contrary to EU and international norms.

The MPA notes that the availability of new legal services in the audio-visual sector is increasing steadily. New Video On-Demand, Electronic Sell-Thru, Download to Own services are being announced weekly. IPTV offerings are exploding across Europe. However, at the same time, certain gaps in content protection must still be resolved. These gaps are delaying the full transition to digital (indeed functionalities of new devices introduced into the market are geared towards exploiting these gaps). It is urgent that the Commission support efforts to address the analogue hole and the unauthorised retransmission of unencrypted digital terrestrial TV signals.

The reality of course is that the DRMs and levy systems will have to coexist for some time. The Copyright Directive provides the legal basis for this peaceful coexistence. As the use of DRMs increases, the level of levies will need to be circumscribed and indeed decreased where appropriate. The Commission's priority should be to encourage the development and take-up of DRMs with corresponding levy-relief as and to the extent appropriate. Finally, the MPA would like to recall the basic but crucial notion that authors and performers are – and should continue to be – above all remunerated by producers. As new revenue streams are developed all creative participants must benefit.

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?

See joint answer to Questions 3 & 7 above.

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

The MPA's member companies operate in all the Member States of the EU and we would therefore like to focus our response on initiatives currently being pursued at the European level. The MPA is of the opinion that while national initiatives need to be supported and encouraged, an EU-level solution could provide the right sort of answer to maintain a level-playing field and obviate distortions in the internal market on specific issues as described below.

As a general matter, the MPA believes that an emphasis needs to be clearly put on encouraging the migration to legal delivery services of online content and fostering a culture of dialogue between rights-holders and those who develop new distribution channels for copyright-protected content, notably network providers. A good and meaningful level of cooperation between content providers and access providers should be a key component of efforts to address the problem of intellectual property theft.

At the EU level and with specific reference to the film sector, the 2006 “European Charter for the Development and Take-up of Film Online” provides a very positive first step, which now needs to be translated into robust inter-industry codes of conduct that encourage the emergence of new services in a secure, consumer-friendly environment. It is the MPA’s hope that the next step in the “Content Online” exercise launched by the European Commission will feature a close involvement of the Commission in the elaboration of measures as industry-wide standards. We have in the past expressed our firm belief that this endeavour is a matter of general interest and that all stakeholders will benefit from it as it will make the emergence of new business models sustainable, enrich consumer choice and create a level-playing field in the area.

Obstacles to fruitful inter-industry co-operation – be they behavioural or legal – need to be removed urgently. To be properly addressed, some of these might actually require recourse to legislation. The MPA would like to take this opportunity to encourage the Commission to use and develop all the policy instruments at its disposal to bridge the content protection gap in Europe.

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?

“Release windows” are an important characteristic of the film industry, whereby movies are released in different formats in a sequential order (e.g. theatrical release, DVD/VOD, Pay-TV, free-to-air television). The contractual freedom to set time periods for the release of films in any medium is a fundamental feature of the film industry’s business model.

The system of contractual or market based “release windows” works well in jurisdictions where there are no “legislated windows”, i.e. no mandatory period dictating at which point a film may move from one window to another. When decisions on window release are made through contractual negotiations between the rights holders and the parties involved in the distribution, they allow for the distribution of each film on the basis of its individual merits. This approach also allows a degree of flexibility needed to adapt to local markets and emerging modes of distribution. Keeping in mind that most films never recoup their initial investment, and hence that those that do need to finance all the others, the flexibility afforded to copyright holders in setting release patterns is crucial for the livelihood of the film industry. European policy has wisely recognized the importance of this flexibility. This flexibility has allowed MPA Member Companies to experiment with different window models and, on a case-by-case basis, shorter windows.

With the multiplication of distribution channels in the online environment, the need for flexibility in the choice of release patterns for a film increases even further, with always the same aim of carefully determining the optimal exploitation in any given market. In the various markets, this choice will notably

take into account local/cultural factors, such as cinema-going habits, national holidays, film festivals, etc. It will also be based on the thorough understanding that for most films, the cinema release remains the keystone to their successes and future profitability in other distribution outlets.

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?

According to MPA estimates, worldwide consumer spending losses incurred in 2005 by the film industry as a whole (i.e. European and non-European film industry) amounted to approximately \$18.1 billion (~14.5 billion euros). While most pirated movies are still distributed in the form of hard goods, such as DVDs, CD-Rs, DVD-rs, VCDs and VHS cassettes, “online piracy” is taking an increasing share of the overall piracy figures, notably in Europe where it is now reaching about 50% of the total. Indeed, with the increasing demand for high-speed broadband across Europe, online piracy is bound to continue growing as a share of total piracy. In 2005, MPA estimates show that in Europe alone, consumer spending losses sustained as a result of film piracy via the Internet totaled \$3.4 billion (~2.7 billion euros). Piracy impacts each segment of the release schedule of a film since in many instances, pirate copies of motion pictures are available even before their theatrical releases. Piracy therefore not only negatively impacts the theatrical exploitation of a movie, but also its commercial potential in Video-On-Demand, DVD/Video, Pay-TV and Free-To-Air television offerings.

Local film industries and national anti-piracy organizations co-operate with law enforcement authorities across Europe in their efforts to carry out investigations, raids and seizures. Unfortunately, statistics paint a grim picture of the challenge ahead and of the steadily growing piracy problem around the world. For instance, between 1997 and 2003, the number of investigations and raids increased 29% and 85%, respectively, while the number of seized items (including videocassettes, DVDs, VCDs, and replication material) jumped a startling 663%. In 2003 alone, officials seized 72.8 million items tied to piracy, compared to 9.5 million items in 1997.

While enforcement will always constitute a key element of any robust anti-piracy strategy, the threat posed by the current level of copyright theft to the healthy development of a “content online” marketplace also urgently calls for a need to encourage the migration to legal delivery services, which are becoming widely available, and to foster a culture of dialogue between rights-holders and those who develop new distribution channels for copyright-protected content, notably network providers. At the EU level, the 2006 “European Charter for the Development and Take-up of Film Online” – which provides a very positive first

step of a political nature – now needs to be translated into robust inter-industry codes of conduct that encourage the emergence of new services in a secure and consumer-friendly environment.

Finally, as an answer to the sub-question regarding the distinction between uploading and downloading, the MPA considers that this distinction is becoming less and less meaningful in view of the development of file-sharing technologies whereby users, while downloading a file, are simultaneously uploading the parts of the given file that have already been downloaded to their computers. Indeed, many of these systems require users to make available files in return for accessing the files of others. Hence, there does not seem to be any rationale at all for any distinction in terms of penalties. At the same time, at the top of the pyramid, the law should include a stronger penalty and provide the means to bring action against the entity/person that first made the illegal copy of a copyrighted work available online. However, the clear merit (for investigation purposes) of being able to identify who it was who first made a copy illegally available does not mean that a distinction should be made between “big” and “small” pirates since the essence of the online piracy problem today, notably on peer-to-peer file-sharing networks, is that “casual” piracy is occurring on a cumulative massive scale, i.e. one film upload provides illegal access to millions of people.

In the framework of the follow-up to the Film Online Charter, the MPA would like to encourage the Commission to promote enhanced networking between national and local anti-piracy organizations, in line with Charter, which states that “[c]ontent providers and online service providers will promote the establishment and effective operation of adequately-resourced national anti-piracy organisations, encouraging and assisting those organisations to work together. The European Commission will promote enhanced networking between national and local anti-piracy organisations”.

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?

The MPA is of the opinion that awareness-raising campaigns emphasising the societal importance of copyright as an incentive for content creation and the launch and viability of legitimate online services constitute one of three main prerequisites (alongside commercial agreements and the effective fight against piracy) for the development of a healthy “Content Online” environment, where creativity is stimulated and consumer expectations are met. The MPA therefore fully subscribes to the wording of the 2006 “European Charter for the Development and Take-up of Film Online”, which notably states that “[c]reating a culture of proper respect for creativity and effective protection of copyright is essential if the creative community is to be encouraged to make films available online. Improving communication and educational messages on copyright is therefore important for all of us in the digital value chain. It is vital that consumers understand and appreciate the value of content; this must be done by challenging the perception – held by some – that content should be

accessible for free.” In its list of “commendable practices” the Film Online Charter contains a series of interesting illustrations of how the “copyright message” can be efficiently communicated that are worth emphasis (see pp. 8-9 in http://ec.europa.eu/comm/avpolicy/docs/other_actions/film_online_en.pdf).

As concrete proposals of elements that should usefully be part of any communication campaign on the value of copyright, the MPA would submit that such awareness-raising efforts should first dispel the often-held idea that piracy is a victimless crime but also facilitate the efforts of industry and law enforcement authorities to fight piracy by informing citizens on how acts of piracy can most efficiently be reported. Additionally, it could also usefully entail training and information material for retail outlets and enforcement agencies on how to easily identify pirated products.

Educational programmes informing young people on the value of the creative economy have been devised in a number of countries, e.g. in Germany – where a website containing lesson suggestions and resources has been tailored to the national curriculum and is available for teachers to download (see <http://www.respectcopyrights.de>) – and the Netherlands where websites have been established by the local audiovisual industry (see <http://www.filmwereld.net> and <http://www.bigweb.nl>). The film industry is also supporting an international educational programme by the organisation “Students in Free Enterprise”, to be launched in eight countries in Europe (Russia, Poland, Italy, France, Sweden, Spain, Russia and the UK) in 2007.

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?

Peer-to-peer (P2P) is a technology that brings with it exciting opportunities, notably for the digital delivery of online content. The fact that P2P file-sharing networks have been the object of controversy and litigations in several countries around the world does not relate to the technology it is based on, but is more accurately linked to the fact that it has been used by some service operators that were (or still are) actively seeking to induce copyright infringements as a means of building their own businesses. It is clear to the MPA that those who build a business around encouraging copyright violations should also be responsible for such actions. We would respectfully suggest that the Commission considers legislative guidelines that allow the creative community to go after publishers and distributors of software which is mainly used for unauthorised use and distribution of protected content on the Internet, with all needed checks and balances.

P2P technology, provided content is of legitimate source and properly secured, is of great interest to the film sector as a means of content delivery since digital movie files are generally characterised by a substantially larger size than, say, a music record or a book. It has also been used as a means of marketing films. Therefore, the speed and bandwidth efficiency provided by P2P systems can

help ensure that the downloading time of a legitimately acquired movie file is kept at a speed ensuring a high level of consumer satisfaction.

The use of P2P technology in the legitimate online marketplace for content delivery can be illustrated by the BitTorrent Platform in the United States which, in May 2006, concluded a commercial deal with one of the major film studios for the digital sell-through of hundreds of television programmes and motion pictures using super-distribution technology (in this case so-called “file-swarming”). Other examples that could be mentioned are the “In2movies” service in certain German-speaking territories in Europe (<http://www.timewarner.com/corp/newsroom/pr/0,20812,1156926,00.html>), as well as SNOCAP (<http://www.snocap.com/>), which for digital music delivery offers the benefits of the P2P experience in a legal and trusted environment offering end-to-end solutions for digital licensing, copyright management and distribution.

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)?

Motion pictures are often the subject of content classification (i.e. ratings) in the more than 150 countries in which the MPA’s member companies are operating. In some countries, the rating system operates on the basis of industry self- or co-regulation regulation schemes, while some other territories display a higher level of governmental involvement in the classification process.

At the time of the first revision of the “Television without Frontiers” Directive (1997), the EU Member States called upon the European Commission to carry out a study in order to, among others, consider the merits of setting up of pan-European rating system. This study notably concluded that “a harmonised approach to rating audiovisual content is ruled out by the great cultural diversity which characterises the European audiovisual market”. The study instead underlined the importance of “broadcaster responsibility” and a need for more coherence in how the different distribution outlets were rated. Finally it also put emphasis on the importance of educational and awareness measures (see Commission Communication of 19 July 1999 on the Study of Parental Control of Television Broadcasting (Appendix C)).

More recently, in a May 2003 “Empirical Study” of rating practices in the EEA Member States prepared by consultants on behalf of the Commission, the conclusion was reached that there was not much pressure for change (i.e. harmonisation) because neither the industry, nor consumers, nor the internal market seem to call for greater homogeneity in rating practices throughout the EEA.

The MPA continues to endorse these findings and believes that while some basic regulatory provisions are necessary (e.g. on pornography and illegal

content), the EU audiovisual industry has been most responsible in setting up voluntary rating schemes, codes of conduct, through adopting watersheds and where necessary encrypting programming. It therefore does not see the merits of either suggesting a tightening of regulation or European harmonisation in this area.

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 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?

MPA Member Companies have been developing a wide range of online services that offer consumers exciting and novel ways of enjoying an ever broader variety of copyright-protected content, notably (but not only) on the Internet. These services encompass in particular “download-to-own”, “video-on-demand” and “subscription” services. Clearly, DRM tools play a central role in the success of these new business models. In particular, DRM systems offer consumers the ability to enjoy content when and where they want and to pay only for what they want in the digital environment.

The MPA submits that the key to a future in which consumers will continue to enjoy greater choice in their use of copyrighted works is the notion that copyright owners are able to effectively exercise and protect their rights in copyrighted works through constructive management of their rights in the online environment. Indeed, unless copyright owners continue to be able to license and manage their works in the digital realm, they will not be able to recover the large upfront investment made to create those works. There would be a resulting lack of incentive to invest in the creation of new content or to increase the availability of existing content online. Effective management tools are thus needed to ensure secure exploitation of works, recovery of related investment, and deployment of new business models. In short, DRM tools are vital both to guarantee the fair remuneration of copyright owners and to ensure the satisfaction of consumers who are legitimately expecting a wide menu of choices.

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?

While the deployment and use of DRM systems in the marketplace is increasing steadily, the MPA believes that DRM uptake will only accelerate

towards a mass market once certain steps are taken (i) to ensure compliance with agreed standards and (ii) to address certain current gaps in content protection. Public authorities, both at the European and national level, should have an important role to play in making sure that these mostly technological obstacles are overcome.

Concretely, two main technological loopholes still pose challenges to the development of a legitimate “online” environment for content delivery:

- The widespread dissemination of hacking tools over the Internet.
- Computers and CE equipments that frequently display unprotected analogue video outputs/inputs that allow for the conversion of protected digitized content into analogue format and then re-digitisation without respect for usage rules associated with the original digital file (thereby exploiting the so-called “analogue hole”).

These two vulnerabilities, taken together with the problem of unauthorized retransmission of unencrypted digital television signals, are exacerbating the problem of widespread piracy of copyrighted content that today characterises the online world. Subsequently, they put at risk the development of the healthy DRM-enabled environment for legitimate delivery of content online, which is needed to realise the full potential of the European digital broadband networks. The MPA considers that the European Union and its Member States should address these technological challenges through encouragement and, as appropriate, facilitation of cooperation between content creators and providers, technology providers and other interested stakeholders in order to improve the security environment.

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?

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?

Joint answer to Questions 27 & 28:

In the film sector, DRM systems are widely used and have been so for quite some time, notably to sustain the business models behind a new range of online services that allow copyright owners to make content available to consumers in innovative ways involving extensive product and services diversification. Technological protection measures (TPMs) are also widely used and, as a concrete example, DVDs have been equipped with copy-protection technology ever since their launch in 1997.

New services imply the development of new business models (flexible pricing, super-distribution, video-on-demand, subscription) and new formats (DVD, next generation DVD, digital cinema, digital TV, etc). In turn, these DRM and TPM-enabled services empower consumers to enjoy content when and where they want and to pay for only what they want.

When measuring the expectations of consumers in terms of “user-friendliness” of DRM tools or TPMs, it should be emphasised that in the digital age, the range of possible uses of copyrighted material has been greatly expanded, largely in favour of consumers. As a matter of fact, it needs to be borne in mind that digital technologies have made possible mass replication (indeed cloning) and redistribution of copyrighted works on a global scale, with little or no marginal cost for users. Hence, it is by facilitating the legitimate provision of copyrighted content to consumers that DRM and TPMs help to strike a fair balance between ensuring “rights-holder remuneration” and meeting “consumer expectation” in the digital environment.

Keeping the foregoing in mind, it appears obvious that copyright holders and consumers have converging objectives, with rights holders having a clear market incentive to satisfy effective demand for flexible pricing and innovative means of consumption, whereas consumers are expecting a diversified menu of choices. As user-friendliness is concerned, steady improvements are being made to make sure (e.g. through clear labelling) that consumers are fully aware of the exact usage rights – defined in the DRM tool or by the TPM – associated with a particular piece of content.

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

The MPA welcomes much of the debate of interoperability but considers that this discussion covers much more than mere compatibility between content delivery platforms and consumer electronics equipment. Indeed, interoperability should also encompass consistent functioning of the overall system of security and access, i.e. the mutual recognition and respect for usage rules, content and technical measures in all the ways in which they were intended to function from the outset. Interoperability cannot take place at the expense of eroded security and it should be understood that initiating new avenues of network and equipment interoperability without contemporaneously addressing content security requirements will result in failure to achieve the real goal of “content interoperability”. Simply put, a system that fails to strike the right equilibrium could not deliver true content interoperability and would simply incite piracy.

One of the key goals of ongoing standardisation efforts is to ensure interoperability as it relates to the ability of the consumer to choose between different devices and services. The MPA is of the opinion that standardisation efforts have an important role to play in establishing DRM in the marketplace. The MPA and its member companies are active participants in many standards bodies and, as such, we remain committed toward working for secure interoperable DRM solutions. Nevertheless, we do question whether “near universal interoperability” is required or useful to produce mass market benefits. As a matter of fact, it should be recalled that competition between technologies also has a vital role to play in the selection of the most appropriate new technological solutions. Technical innovation is spurred by competition and intellectual property protection.

Finally, the MPA would like to underline the importance of securing means to enforce compliance with DRM standards, regardless of whether these are of an open or a proprietary nature. While it is true that the legal protection of technological measures granted by the EU Copyright Directive as well as contractual terms related to technological licensing are possible avenues for enforcing compliance with a given system, in certain cases this will simply not be enough. It will not be sufficient, for example, in cases where there is no so-called “licensing hook”, or where a particular technological measure is not circumvented, but security is nevertheless compromised by a non-compliant device. In such cases, the Commission (or other public authorities) may have to step in and ensure a means of enforcement or the goal of secure interoperability will not be met.

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?

The MPA believes that the preservation and protection of cultural heritage is a legitimate and laudable aim from a public policy perspective and that non-commercial archives/public libraries can play an important role in this regard. However, it is our firm conviction that the mission of such institutions should solely be devoted to the preservation of works for future generations as well as to education purposes. Under no circumstances (except for works that have entered the public domain) should it be allowed for, say, a non-commercial digital library to exploit copyrighted works without authorisation from – and thus to the detriment of – rights holders.

To preserve and protect cultural heritage, we believe that voluntary agreements and private-public partnerships are the way forward. In this regard and as a specific example in the film sector, the MPA is currently engaged in discussions with the British Film Institute on issues of print deposit for film preservation and the educational use of film materials. Should a public sector archive/library wish to provide access to copyrighted content online, it should do so through contracts between rights holders and users in the same way as is common practice for physical content and always in a manner not interfering with the normal exploitation of such content by the rights holders, as foreseen by applicable European and international law.

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.)?

European equipment and software manufacturers have a complementary role to play – alongside content providers and platform operators – in the development of a thriving marketplace for digital online content. However, for this objective to fully materialise, closer inter-industry cooperation is needed to

ensure that a secure environment for content delivery is effectively put into place. Concretely, inter-industry efforts should aim at further development of content protection systems ensuring protection:

- during delivery, i.e. for packaged media (e.g. high-definition DVDs) and DRM-enabled conditional access systems (e.g. PayTV, web-based Internet downloads, mobile and portable media players);
- after delivery, i.e. for analogue and digital interfaces, secure digital home networking and managed remote access.

As concrete examples of inter-industry forums where stakeholders are seeking solutions to the challenges outlined above and which would benefit from the support of the European Commission, the MPA would notably like to draw the Commission's attention to the ongoing work being carried out within (i) the Digital Video Broadcasting Project (DVB) on a "Content Protection & Copy Management" (CPCM) system, (ii) the Digital Living Network Alliance (DLNA) on interoperable video networking, and (iii) the Coral Consortium on an interoperability framework across proprietary DRM solutions.

However, even though the film industry is hopeful that much can be achieved in terms of secure content interoperability through inter-industry standardisation efforts, there are nevertheless two areas where the need for governmental/EU support is clearly warranted if specific gaps in protection are to be effectively addressed, and where the lack of government mandate would result in an uneven competitive landscape for manufacturers, an inconsistent user experience and an uneven protection of copyright. These two areas are the following:

- the implementation of a "redistribution control" mechanism to ensure that unencrypted over-the-air digital television signals are not illegally retransmitted over the Internet (this is a crucial challenge for the future viability of free-to-air television);
- the challenge of plugging the so-called "analogue hole", whereby protected digital content can be stripped of its associated usage rights by converting to analogue format and then back to digital (this is an important requirement in order to preserve the effectiveness of all content protection systems).

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.)?

The MPA considers that it is first and foremost up to market players to develop, experiment with and adopt new business models in the online environment. This being said, we believe that public authorities have a crucial role to play in encouraging and removing obstacles to the migration to legal delivery services and fostering a culture of dialogue between rights-holders and those who develop new distribution channels for copyright-protected content, notably

network providers. A good level of cooperation between content providers and access providers should be a key component of any effort to address the problem of intellectual property theft. In this regard and with specific reference to the film sector, the 2006 “European Charter for the Development and Take-up of Film Online” provides a very positive first step, which now needs to be translated into robust inter-industry codes of conduct that encourage the emergence of new services in a secure, consumer-friendly environment.

In addition, the Film Charter also emphasised the importance of creating a culture of proper respect for creativity and effective protection of copyright as an essential element if the creative community is to be encouraged to make films available online. It was deemed vital that consumers understand and appreciate the value of content and that this had to be done by challenging the perception – held by some – that content should be accessible for free. In this regard, public authorities would appear to be in a privileged position to conduct or support this kind of awareness-raising campaigns emphasising the societal importance of copyright as an incentive for content creation. Finally, public authorities should make sure that high priority is given to the fight against piracy (both offline and online) within law enforcement bodies and that adequate funding is available for that purpose.

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?

Several actions could be taken at EU level to address certain specific issues raised by the MPA in this submission. Without going into as much detail as in each individual response to the questionnaire, the relevant EU actions could be summarised as follows:

- The review of the EU’s “Telecom Package” should be seized as an opportunity to – in the Commission’s own words – “strengthen consumers and users’ interests”. This could be done by remedying the somewhat anachronistic nature of the regulatory framework. In particular, concrete ideas need to be explored to ensure that the European information society networks, in particular the next generation of networks, deliver more than just ever-larger bandwidth, but also contribute responsibly to the development of a thriving environment for legitimate delivery and exchanges of online content that will benefit all stakeholders, including consumers and end-users.
- The Commission should take concrete steps to push for the translation of the “European Charter for the Development and Take-up of Film Online” into robust inter-industry codes of conduct that encourage the emergence of new services in a secure, consumer-friendly environment. This could be supplemented by facilitating the emergence of efficient on-line enforcement mechanisms that comply with the important public policy requirements of data privacy protection. As mentioned before, offenders should not be “allowed” to hide behind data privacy rules.
- The Commission should actively encourage and support inter-industry standardisation work currently carried out in various forums and aimed at

finding secure “content interoperability” solutions in the digital environment (e.g. within DVB, DLNA, Coral). If needed, the Commission may wish to assist in obtaining a consensus on the essential public policy elements underlying the concept of interoperability, while the market is allowed to pursue the goal of interoperability.

- Obstacles to fruitful inter-industry co-operation – be they behavioural or legal – need to be removed. To be properly addressed, some of these might actually require recourse to legislation. The Commission should therefore be ready to use all the policy instruments at its disposal to bridge the content protection gap in Europe, in particular with reference to the so-called “analogue hole” and the unauthorized retransmission of unencrypted over-the-air digital television signals.
- The Commission certainly also has a role to play in securing means to enforce compliance with DRM standards, regardless of whether these are of an open or a proprietary nature. While it is true that the legal protection of technological measures granted by the EU Copyright Directive as well as contractual terms related to technological licensing are possible avenues for enforcing compliance with a given system, in certain cases this will simply not be enough. It will not be sufficient, for example, in cases where there is no so-called “licensing hook”, or where a particular technological measure is not circumvented, but security is nevertheless compromised by a non-compliant device. In such cases, the Commission (or other public authorities) may have to step in and ensure a means of enforcement or the goal of secure interoperability will not be met.
- The Commission should consider legislative guidelines that allow the creative community to go after publishers and distributors of software which is mainly used for unauthorised use and distribution of protected content on the Internet, with all needed checks and balances.
- The Commission needs to gear up for the management of more diversity within the internal market in order to ensure better implementation and enforcement of single market rules in an enlarged EU. With particular reference to “Content Online”, the EU must be ready to ensure proper application of its legal foundation which must include deterrence against IP crime and online infringement while encouraging the emergence of new, consumer-friendly on-line opportunities.

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