

S4C'S RESPONSE TO THE EC CONSULTATION ON CONTENT ONLINE

S4C (Sianel Pedwar Cymru - the Welsh Fourth Channel) is an independent broadcasting authority established under the Broadcasting Act 1981, and regulated by the Communications Act 2003 and the Broadcasting Act 1990. We are established to provide a broad range of high quality and diverse programming, in which a substantial proportion of the programmes shown are in Welsh. We currently broadcast S4C on analogue, S4C Digidol and S4C2 on the digital platforms and some content on broadband. On S4C analogue we also broadcast the best of Channel 4.

We are uniquely funded through a mixture of grant in aid and advertising and commercial revenue. We have an annual turnover of just over £95 million. In addition we annually receive approximately £20m per annum of Welsh Language programming from the BBC, and we receive Channel 4's programming free of charge.

As a commissioner broadcaster with a commitment to the independent production sector in Wales we have a key role in developing a vibrant independent content production sector in Wales (aiming to commission at least £68m on original programmes in 2006, with 95% of the hours commissioned produced by independent production companies).

- 1 S4C offers content and services online, mainly through its website <http://www.s4c.co.uk> on a free to view on demand basis. The rights in programmes commissioned by S4C are governed by the Code of Practice and Terms of Trade brought about by the Communications Act 2003, and approved by Ofcom. This provides the framework that allows S4C to take a broadcast licence in content commissioned, including new media rights.

S4C currently offers a linear on demand 'catch up' service for those users that subscribe to broadband. The S4C service is free and utilises Windows Media 9 technology (again free to download) to view. The service is made available for a limited period after the TV broadcast, usually for between 7 and 35 days. S4C also offers live web streaming for a limited number of programmes, and it is intended to increase this provision in the near future. Some additional and unique programming is also available online, offering the viewer an extended viewing experience to the scheduled TV broadcast - this would include offering content that educates or offers extended versions of the televised programme. The online service is also used as a promotional tool with limited clips and promotional material available.

- 2 S4C are continually reviewing options for making full use of the new media rights available in the Terms of Trade, so as to make available its content and archive as extensively as possible but taking into consideration S4C's funding levels, broadcast obligations and the rights available. Financial factors may govern the choice of devices that S4C services are available on.
- 3 Ensuring that a trustworthy (for both rights holder and user), proper and affordable rights management facility is developed should facilitate the take up and expansion of new online services. S4C operates a free to view online service and does not operate any form of payment system. However S4C recognises the role of rights control systems, but that the cost of providing such systems is high and can be restrictive for those developing their own online services.

S4C believes that the speed of networks and broadband availability will play a pivotal role in developing the sector and its economic objectives. These services will extend to all consumers - public, business and educational. S4C welcomes the Welsh Assembly Government's initiative to extend broadband networks to households throughout the country. This will ensure that the thirty five exchanges in Wales are upgraded and that the issue of some remaining blackspots where residents may still not be able to receive broadband is also being addressed. S4C liaises with the minister responsible for broadband issues at the WAG, and are being kept informed of developments.

Consideration should also be given to a review of copyright legislation to catch up with current uses in a converged and digital world. It is important that access to public service content should be encouraged and the use of it as a resource to develop understanding, knowledge and as an educational tool.

S4C has signed the Charter for Media Literacy. S4C considers that this will contribute in raising awareness, in improving knowledge, respect and understanding for the wide range of media services available, including security issues and payment structures.

- 5 S4C is working on its multi media platform policy, with a number of expanding services under consideration. However financial factors may govern the choice of devices that the S4C services will be available on.
- 6 S4C believes that free access to public service content should be used as a resource to develop and encourage a respect for diversity, better understanding and knowledge.

S4C provides Welsh language programming, and online services have been valuable in providing resources which will allow non Welsh speaking viewers to enjoy the content. See Learn on S4C - <http://www.learnons4c.co.uk/Welsh/home.php>. It facilitates the development of skills and knowledge (providing additional and background information) but also encourages new viewers to understand the content and improve language skills.

S4C is aware that the use and demand for shared content by the public is increasing and that the increasing popularity of the sites that offer shared banks of personal content contributes towards sustaining, developing and encouraging respect for linguistic diversity.

- 7 With fast growing technological developments it is hard to gauge the demand for the material services. However, it is assumed that as availability of the services expands, and access is made easier then the take up will also increase.

The scope of developing online services will also depend on the rights to offer the service to as wide an audience as possible, and compete with larger organisations.

- 8 The rights in content commissioned by S4C are governed by the Code of Practice and Terms of Trade brought about by the Communications Act 2003, and approved by Ofcom. S4C acquire a licence to broadcast and the rights are retained by the producers, but providing the exclusivity required for the TV broadcast and the free to view catch up service of 35 days from the date of the first transmission. This model ensures that the producers will benefit fully from secondary exploitation, and are offered the flexibility to innovate and exploit new uses for the content on all platforms and for all types of uses (educational, online services and communities, programme related and promotional websites).

S4C have been instrumental in removing any other barriers that inhibit the distribution of content. S4C's lead in the broadcast industry, offering to re-assign the rights (where possible) in the back catalogue has provided new and additional commercial opportunities for the production companies. This catalogue will facilitate re versioning, sales and partnerships potential for the sector, which should also benefit S4C in the future with re worked additional material and a healthier more commercial production sector. It should also offer additional work opportunities outside of Wales by facilitating partnerships not possible in the past.

Rights clearance issues may restrict and affect the development of some services, and is an obstacle to the territory in which services will be made available. The

sector could be better served by arrangements for clearance of contributors - avoiding the single showing territory by territory clearance framework that exists for rights management. Offering windows of opportunities for both talent and other levels of IP rights would reflect consumer expectations. Some work has been done in re assessing a suitable model for licensing rights that would better serve the industry, and a pan industry forum has been established although some of this work has been stalled and S4C await the outcome of this process.

It is also recognised that access to multi platform services is not universally available, and where it is available that the user will need to invest in new equipment and subscription based services in order to receive the content. This may be a barrier to consumers living in Wales.

- 10 S4C is of the view that consumer demand should dictate the availability and development of services. Please note S4C's response to question 3 in this document.
- 11 S4C operates a free to view service and is not involved in revenue streams for further content or distribution. However S4C is aware of the pressures and difficulties of securing funding for developing services by the production sector that holds its rights.
- 12/13 S4C operates a free to view service and there are no immediate or near term plans to utilise a payment structure such a facility.
- 14/15 With on line services developing, there is nervousness amongst rights holders when negotiating licensing terms for copyright clearances. They are wary of setting precedents and undermining their positions for the future.

It is clear that the exploitation of rights and content has to be realised and taken advantage of. S4C is of the view that while technology has advanced, the way that rights are licensed has not kept pace. Territory-by-territory management of copyright clearance is too cumbersome and too costly, and we should aim for more harmonised copyright legislation so as to reduce any barriers that currently exist.

S4C has also encountered problems in tracing copyright holders and more could be done to facilitate this process e.g. by introducing a registration system, so as to benefit the process of administering the clearances of works in copyright. This would also provide a tool for monitoring the chain of copyright where the assignment changes over time. By operating a registration scheme this may improve knowledge

about the type of uses made for works in copyright - in particular for new media.

S4C is of the view that more could be done to clarify some of the exceptions that allow limited use of copyright works, without the permission of the copyright holder. In particular the incidental use exception, where views differ as to what the scope of incidental use within programmes actually allows. There could be also be an over reliance of the News Access agreement in clarifying what uses can be made under this exception. The exceptions should also be reviewed to permit the user to adapt or allow materials to be adapted for the hard of hearing i.e. create subtitles or suitable versioning.

S4C, as a rights user, can see the benefits of a simplified "one stop shop" that manages the licensing of rights across different platforms and for different uses, a mechanism for clearances that does not recognise territories, or a structure that may offer a reciprocal arrangement between countries. This would provide a framework for worldwide clearances, avoiding situations where users are often forced to negotiate rights with a number of licensors.

The resource should be aware of the types of uses made of the rights, and provide an educated, informed and appropriate negotiation service. It should also be simple and streamlined to use. This would enable rights holders and users to take advantage of new markets and financial opportunities. This will ensure that a balance exists between ease of licensing and maintaining the value of copyright protected works, ensuring that content still in copyright generates and maintains an income for rights holders.

The current systems of fragmented rights management does not serve the interests of right-holders who want their content disseminated as widely as possible but S4C also recognises that the 'one stop shop'/single framework option may not provide the most appropriate or competitive system for managing their rights. Collective management may not offer the best economic value as it may suffer when collective bargaining takes place / rates are formed that does not provide flexibility for individual works, it may prove to be a barrier for non European exploitation and some collection societies may develop to control or monopolise the market.

- 17 S4C offered its comments to the UK government's Television without Frontier consultation process and is a member of the TVWS / AVMS stakeholder group that meets to monitor progress.

It is clear that the exploitation of content and IP rights holds enormous potential for economic gain, and that this has to be realised and taken advantage of. A streamlined efficient registration, clearance and licensing system should facilitate this. We should also aim for a clearer, harmonised and more transparent approach to copyright across different countries, reducing the barriers that currently exist.

- 18 S4C has contributed the UK government's consultation on the Creative Economy Programme.

S4C acknowledges the role of the Creative Business Development unit within the Welsh Assembly Government, in offering a service of professional advisors to work with businesses to spearhead the development of the industries. With funding also made available through the IP fund this should contribute towards the development of new services and of the audio visual and creative industry in Wales.

S4C has worked in partnership with the independent sector to ensure that any barriers to exploitation have been removed, so that producers can benefit from exploiting the content that they have and will produce in future. S4C's progressive approach will ensure that the creative industries can maximise and build on the commercial benefits in their product in any language and on all platforms.

- 19 S4C is of the view that exclusive or release windows still make sense in the online environment, as long as the duration is appropriate. The S4C terms acknowledges the principle of a core primary window for the new media rights. The window safeguards the exclusivity in the rights required by the broadcaster, but should be short so as to preserve the scope for secondary distribution. S4C operates on the basis of an exclusive 35 day window for new media uses, after which the new media rights expire allowing the producer the right to exploit further new media opportunities and new uses for the content - facilitating the development of their business. S4C's approach is consistent with balancing the public funded service with its policy of empowering the independent sector.
- 20 S4C is of the view that consumer demand should dictate the availability and development of any service.
- 21 Luckily, S4C have had no cases of copyright infringements against it, and so has no experience or specific problems with enforcing action. However, it is S4C's view that online infringement should be treated in the same method as any other infringement.

- 22 S4C is of the view that education and media literacy initiatives are key factors in ensuring that there is a raised awareness of copyright in the future.

S4C notes the importance attributed to education in raising awareness of copyright and considers that the Skillset UK 14 - 19 Creative and Media Diploma will assist and contribute in future to a better understanding of this complex area and will lead to reduced instances of piracy.

S4C has signed the Charter for Media Literacy. S4C considers that this will contribute in raising awareness, in improving knowledge, respect and understanding about rights. S4C is in discussion with partners in Wales and with Ofcom, in developing an action plan so that the public have a better understanding, make effective use of and have greater respect for the wide range of media services available.

- 24 We endorse the Television without Frontier UK Government Consultation response in respect of self-regulation in the non-linear field, as we do in all fields. We have found that the self-regulatory systems in the UK to work effectively.

There is a significant cost and impact to Regulatory Compliance. Prior to 2004 S4C was mainly regulated by the S4C Authority. We have first hand experience of the impact (financial and time resources) of a new regulator upon a broadcaster.

- 25/26 S4C is of the view that new technology should not be allowed to circumvent the fair return of uses to the copyright holders. S4C is in favour of ensuring that the necessary management to control the exploitation of material in copyright is put in place, and agree with the principle of digital rights management. However, as S4C is a public service broadcaster it does not charge for content as it has already been paid for from the public fund. S4C operates a free to view service without the need for DRM. There are no immediate or near term plans to utilise such a facility. S4C is of the view that DRMs are an effective facility for managing material, but concedes that it can create various problems for the user - in its use, in restricting and in enforcing barriers to accessing material.

- 27 S4C is an UK broadcaster and has an arrangement for online broadband hosting services. The contract allows for the management of access on a geo basis. Essentially, the users host ISP address is checked against their country of origin (in S4C's case the UK), and only pre-defined ranges / ISP addresses are allowed access to the online content services offered by S4C.

S4C recognises that certain UK consumers are unable to access the services but that the clearance of rights costs / issues limits the possibilities.

- 28 S4C does not use copy protection measures. However, as S4C do not offer a downloadable service and offer a streamed service direct from the server there is no need to such measures.
- 29 The increased use of the Internet and the introduction of high speed digital technology have made it easier to use and copy information/content quicker, easier and with higher quality. Technological developments have provided companies in the production sector with additional opportunities to exploit their products, but have also given them additional pressures to ensure that copyright is protected in a multi platform, developing market. It is essential that affordable controls exist to ensure that exploitation can take place legally, so that it does not infringe the different forms of IP rights.
- 30 It is important that access to public service content should be encouraged and the use of it as a resource to develop understanding, knowledge and as an educational tool.

S4C considers that the Media Literacy initiatives in the UK will contribute in raising awareness and in improving knowledge and understanding for the wide range of media services available. Limited access to free content can sit alongside commercial services and offerings. Consumers accept that some of the content will be available without cost to them, but that other areas within the same service will be chargeable.

- 31 S4C is of the opinion that it would be worthwhile involving both the wide range of representatives from the creative industry and technology sectors in sharing information and barriers, and supports the recommendation that the UK's Creative Economy Programme is considering. S4C is of the view that this should contribute towards a more coordinated approach that will assist in maximising the potential commercial value of new technologies. It would also promote closer working relationships and assist in creating networks in a new and developing industry.
- 32 S4C has already been pro active in ensuring that the sector has the option to own rights in their content - and these rights are offered over and above the requirements of the Communications Act 2003. It presents the sector with opportunities to exploit new distribution platforms and take advantage of a wide range of possibilities. S4C would be

happy to elaborate on the specific initiatives taken to fulfill its remit as a public service broadcaster and its stated aim of promoting creative excellence and developing and strengthening the communications industry in Wales.

S4C is committed to working in partnership with the independent sector to ensure that any barriers to exploitation are removed and are confident that the most enterprising companies will successfully exploit the content they create in any number of languages, and on emerging platforms. S4C's progressive approach ensures that the public investment delivers commercial benefits for the creative industries, establishing and developing a strong and sustainable foundation for the future.

It is important to note that S4C will have the rights in exercising the secondary rights on a non exclusive basis. S4C is of the view that it can further facilitate the exploitation of new media rights in some cases, and on new emerging and additional platforms without the need to own and control the rights. It considers that it has and will continue to work in partnership to ensure a mutually beneficial arrangement.

33 There needs to be constant review of any policies or regulations that affect or act as barriers to new forms of exploitation.