Dear Mr Cullen,

GREEN PAPER ON EUROPEAN LABOUR LAW

Position from the Association of Commercial Television in Europe
March, 2007

We are pleased to reply to your consultation on the questions of modernising labour law to meet the challenges of the 21st century, on behalf of private television broadcasters active in 32 European markets, including 26 EU Member States.

The Association of Commercial Television in Europe welcomes the initiative of the European Commission to launch a debate on the modernisation of labour law, but rather than trying to response to all questions raised by the Green Paper, we would like concentrate in general on the particular concerns related to this issue in our sector.

Most importantly, we would like to emphasise that although employment relation is present in the sector, in addition to traditional employment relations, the audiovisual industry is mostly also characterised by atypical forms of work such as freelancer, self-employment, fixed-time, short time and temporary contracts. This is for instance often the case as regards journalists, who prefer working as freelancers in order to:

1) keep open possibilities to work for several channels concurrently, and
2) preserve their independence and avoid being bound by the editorial policy of one specific channel.
This type of arrangements are not only best necessary to suited to the specificities of the audiovisual industry, it is but are also encouraged by independent production quotas required by EU regulation. Also, innovation vital to our sector is often fostered in small businesses structured under atypical working arrangements.

It also needs to be considered that working conditions are not only determined by labour law but are also strongly linked with other fields of law, such as taxation and social security. Modernisation of working structures within the EU thus requires a more holistic approach.

To explain our sector specific concerns, we would like to use different examples taken from different broadcasting markets of the European Union and would also like to call attention to the difficulties that media professionals face due to less flexible working arrangements recently introduced in many European markets.

- **In Hungary**, for example - due to stricter taxation rules being introduced - most freelancers of the broadcasting industry have recently been forced to change their status from freelancers to employees.

  As a result of this change,

  1) broadcasters ended up paying a lot more for the very same services on the very same market from one day to another,
  2) while freelancers working in the industry lost their freedom to work for several companies simultaneously and make the most of their professional capacities at the same time.

  **Cameramen** - as an example – worked traditionally on short term contracts, often doing a couple of days’ projects for one company and then moving on to another assignment. But even filming for one channel in the morning and for another in the afternoon was not a rare example. Broadcasters used to have long lists of cameraman that could be called in for shorter or longer projects and cameramen enjoyed a great amount of flexibility in organising their working time.

  Under the new system of compulsory employment contracts, broadcasters find it very difficult to put a suitable crew together for short projects, while cameramen working under employment contracts constantly complain about receiving less money and often waiting around at their employers’ premises for any work coming in at all.

- In many European countries, **journalists** are facing similar problems. They traditionally work for several broadcasters independently concurrently, while having to preserve strong editorial independence as regards all of these broadcasters. Forced employment is not only harmful for their individual situation and their capacity to hold several interesting jobs at the same time, but it also endangers maintaining independent sources of information vital for democracy.

  The specificities of journalism also require more flexibility. Journalists work with trusted sources and one journalist cannot simply be substituted for another: for example, news stories often require a relationship to be struck between a journalist and a community and it is essential that this relationship is not weakened or broken by unnecessary restrictions e.g. on working hours. Further the numbers sent to places of danger needs to be minimised so as to limit risk to life, with the result that those in such environments may also need to work longer hours.
Translators are another group of professionals relevant to several broadcasters. In Finland for example, broadcasters buy programmes from several countries and have continuous need to translate them into Finnish. Translators are mostly freelancers. For instance, MTV Media employs only a few translators but 80 freelancers are translating programmes at the moment. The reason being that one translator is able to translate only 1-2 languages. Programmes with special vocabulary (medical, technical, biological....) need to have a translator that knows the specialised vocabulary. At the moment MTV has translations from about 10 languages regularly. Occasionally even more languages are needed. It is impossible for employers to employ all translators needed for short projects on an occasional basis and also it is important to for a translator with special competence to have the freedom to work for several employers. In Finland no dubbing is used but the same problem arises for translators and broadcasters with regard to dubbed programmes.

Another point is that working hours strictly regulated by labour law are often unsuitable for the realities of broadcasting and the needs of our viewers today. One of the problems is that broadcasters need to work around the clock to follow breaking news all over the world. This is specifically the case for 24 hours news channels. This type of work requires flexibility from a whole range of broadcasting professionals (journalists, reporters, cameramen, news editors etc.) and cannot be fitted into the rigid working time stipulations of labour law. In broadcasting, journalists, camera crews, engineers, etc may work longer hours in order to maintain continuity of the broadcasting service.

For example in the UK in 2005, during the Tsunami disaster news crews worked 15 hour days without interruption for the duration. Another UK example is that the funeral of the Pope and the wedding of Prince Charles and Camilla Parker Bowles, coincided requiring production teams to work around the clock for 7 days.

There are similar problems in the Spanish market. In Spain, there is a draft law, which aims at assimilating those freelance workers who work more than 75% of their time to one employer, to an almost normal employee. In Spanish broadcasting freelance arrangements are normally used to those jobs which cannot be interrupted and need more hours than the stipulated ones during a week in accordance with labour law. With the new regulation, freelance workers could claim to work similar hours than a standard employee (37 or 40 per week), which would introduce less flexibility in the field and would make previous flexible arrangements almost impossible.

Another issue is that the longer working hours of shootings cannot be tailored into employment arrangements. Broadcasters need to make the most of the expensive technical equipments, settings etc. and cannot organize filming on an eight hour working time basis.

The seasonal nature of the business creates additional difficulties. Broadcasters are forced to permanently employ expensive staff even at times when there are significantly less viewers e.g. summer time, while under employment arrangements broadcasting professionals cannot take off to meet more fulfilling challenges.
The European media industry employs a disproportionately high percentage of skilled and creative people. Since the 1980s and the entry of competition in European television, the structure of the television industry has changed completely. Our sector has moved away from the model of large, vertically-integrated public broadcasters where a "job for life" was arguably part of the in-house culture. Commercial broadcasters typically operate with much smaller staff levels than our public competitors, and independent producers are, usually, much smaller again, often with only a skeleton permanent staff but engaging specialists on a project-by-project basis - the skills needed to make a documentary are different from those needed for a big entertainment show, for example. Many of these people are attracted to the sector partly by the possibility to work independently ("to be your own boss") and/or for a range of different employers. Certainly, the demand among graduates indicates that the well-known flexibility of employment relations in television and media does not discourage talented young people from entering the business.

Our sector will continue to evolve in this direction, with an increasing number of small start-up companies in all aspects of broadcasting, production and new media. As employers in this sector, we urge the EU institutions to draw favourable conclusions from the structural changes we have experienced in recent years. It is inevitable that these changes will continue, indeed intensify, and we hope that the media sector is recognised as a positive example of how a flexible, skilled and creative sector can contribute to the EU’s growth and employment targets.

As a conclusion, we welcome the European Commission’s recognition that for certain industries atypical forms of work have become rather the rule than the exemption within the EU. These contractual arrangements often serve the best interest of all parties involved. We believe that creating a legal framework at EU level acknowledging these forms is crucial for not only the broadcasting industry but also for modernising labour law, promoting economic activity and high productivity within the European Union. However, it is also important to point out that a clear understanding of the existing working arrangements within the broadcasting sector is a prerequisite of any action. Thus, we urge the European Commission to pursue comprehensive and conclusive data gathering and analysis of the working arrangements within the audiovisual sector.

Yours sincerely,