European Commission consultation on the review of EU copyright rules



March 2014

**Executive summary**

* The UK’s audio visual sector plays an important cultural role in people’s lives and makes a significant economic contribution to the UK. In 2012, sector revenues for the UK independent production sector were £2.8 billion[[1]](#footnote-1).
* An effective copyright regime is vital to securing future growth in the sector.
* Content producers are both rights holders and rights users and therefore have an interest in fair access to available rights, provided that rights holders are adequately compensated for their use.
* The success of UK Indies over the last ten years has been due to the effective legislative framework set out in the Communications Act 2003 and the associated Terms of Trade allowing independent producers to exploit their rights in the marketplace. In addition to this, the current copyright model has served the broadcasting sector well, allowing the UK industry to thrive and contribute to economic growth and job creation.
* The creative industries, including the TV and film sector, are an important industry both to the UK and EU’s comparative advantage allowing both to compete in a competitive and innovative global market place. The creative industries have also contributed to a more diversified economy particularly in the UK but across the EU also.
* Pact’s view is that the UK Copyright model should be one for the EU to emulate. It is positive and effective in the sense that it is sufficiently flexible to allow for action by individual member states appropriate to their territory. Pact is clear on the fact that the territorial element to the current framework is key for producers to retain intellectual property (IP) and exploit this overseas for export growth.
* Pact understands that there is appetite amongst the EU institutions for moving towards fully realising the EU Single Market and the EU Digital Single Market. However, with broadcasting it is important to protect the territoriality element and we need to keep in mind what the audience wants in all this and not just the EU institutions. The reality is that there is limited demand for multi territorial licences for programming because this is very specific to language, culture and individual territories.
* Pact’s firm view is that the current copyright model supports the Single Digital Market and that any steps to alter this for example by introducing a Single Copyright Title, would need to be rigorously analysed and evidenced over a period of time before any changes were implemented.

**Introduction**

1. Pact is the trade association that represents the commercial interests of the independent production sector.
2. The UK independent television sector is one of the biggest in the world, with revenues of £2.8 billion in 2012.[[2]](#footnote-2)
3. The copyright licensing framework underpins growth in this sector. It enables rights holders to exploit their intellectual property by controlling access to their content which they use to generate revenues to invest in future productions.
4. The UK copyright framework is considered to be one of the best in the world. It has been effective in enabling competition and growth in the television production sector, and as a result:

* The UK is now the second-largest exporter of television programmes in the world.
* Audiences in the UK and across the globe have had access to high-quality, thought provoking and entertaining content in a range of different genres, much of which is provided free-of-charge via television broadcasting.
* The flexibility of the copyright licensing regime has allowed independent producers, including many SMEs, to adapt to changes in market conditions and find new business opportunities in the UK and overseas.
* There are now many examples of audio-visual content producers working with non-linear digital content providers to create new, innovative content and services for consumers in the UK and elsewhere.

1. Any disruption to the ecology of this complex market would have a significant impact on UK original content production.
2. Secondary sales rights are vital to the continued growth of the UK creative industries. Any changes to the existing IP regime must take into account the value of these rights and the potential impact which changes would have on content producers in this sector.
3. Pact’s address is 3rd floor, Fitzrovia House, 153-157 Cleveland Street, London, W1T 6QW, UK.
4. Pact’s ID number on the European Transparency Register is 6912933898895.
5. For further information on this issue please contact Pact’s Head of Policy, at [rosina@pact.co.uk](mailto:rosina@pact.co.uk) or on 020 7380 8232.

**Key points for independent producers**

The key themes that Pact would like to get across in this response are:

* The success of UK Indies over the last ten years has been due to the effective legislative framework set out in the Communications Act 2003 and the associated Terms of Trade allowing independent producers to exploit their rights in the marketplace. In addition to this, the current copyright model has served the broadcasting sector well, allowing the UK industry to thrive and contribute to economic growth and job creation.
* The creative industries, including the TV and film sector, are an important industry both to the UK and EU’s comparative advantage allowing both to compete in a competitive and innovative market place. The creative industries have also contributed to a more diversified economy for more sustainable growth in the future, particularly in the UK but across the EU also.
* Pact’s view is that the UK Copyright model should be one for the EU to emulate. It is positive and effective in the sense that it is sufficiently flexible to allow for initiatives by individual member states appropriate to their territory. Pact is clear on the fact that the territorial element to the current framework is key for producers to retain intellectual property (IP) and exploit this overseas for export growth.
* Pact understands that there is appetite amongst the EU institutions for moving towards fully realising the EU Single Market and the EU Digital Single Market. However, with broadcasting it is important to protect the territoriality element and we need to keep in mind what the public and the audience want in all this and not just the EU institutions. The reality is that there is limited demand for multi territorial licences for programming because this is very specific to language, culture and individual territories.
* Pact’s firm view is that the current copyright model supports a Single Digital Market and that any steps to altering this would need to be rigorously analysed and evidenced over a period of time before any changes were implemented.

**Consultation questions**

**II.A Rights and the functioning of the Single Market**

**Qu.1**: There are currently no problems with accessing online content services. The reality is that there is no significant demand for audiences to access online services in an EU Member State other than where viewers and citizens live, largely due to the language barrier created by individual countries.

The current success of the broadcasting sector both in the UK and across the EU is based on the important territorial element which is key to the current business model where producers retain Intellectual Property (IP) and exploit this across the EU and globally.

Any proposals to introduce cross border licensing would be a significant concern to Pact. The reality of the current, and very successful, model is that territorial sales fund the production of new content with production companies reinvesting in new copyright. A single market for copyright would have the reverse effect and would destroy all potential secondary sales in Europe. Pact is not clear on who would benefit from the introduction of an EU wide licence given that there is little audience demand for this. The TV market is a complex one and any attempt to alter this ecosystem would have far reaching negative repercussions, compared with any limited benefits for pockets of diaspora communities in the EU.

**Qu.2:** No, there are no problems when providing online services across borders in the EU. Under current copyright legislation, it is possible for UK production companies to license programming cross borders. However, culture and language is considered when determining the commercial viability of a cross border license, with the cost of clearances balanced against user demand. There are also issues and added costs around the fact that when programmes are licensed, they are often formatted with local talent. There are also differing approaches and preferences around dubbing and subtitling where legislation varies across Europe.

**Qu.3 & 4**: This is not a regular occurrence for individual producers and is more a question for distributors. Pact does not hold any central information on the number of requests per year. The issue at the moment is that each territory wants its own licence. Multi-territorial licences are usually granted for finance reasons i.e. for payment of actors but only where two or three territories are involved.

**Qu.5**: The reality is that licences reflect market demand and are often adapted into a local version, in keeping with and responding to cultural differences. A license is not exclusive or restrictive but it is open to all who are willing to negotiate. Licences for individual territories should not be seen as a barrier, but as a catalyst for further sales in other territories.

**Qu.6**: Despite having all the rights, a production company may not necessarily want to grant all rights to an individual party. There must be consideration for what might be considered sensitive or provocative topics for one country but not another. There is also a hypothetical example; if a UK company was licensing a programme that was in itself a changed format from Canada, then they may not want the UK version in France if they were already exporting their French version to France.

**Qu.7:**No, no further measures (either legislative or non-legislative) are needed at an EU level to increase the cross border availability of content services in the Single Market. As Pact has explained, the retention of cross border licensing is important to maintain the success of the current system.

**II.B Digital transmissions**

**Qu.8:** The scope of the ‘making available’ right in cross-border situations is sufficiently clear. Pact has no issue with the current position.

**Qu.9:** Pact’s view is that any change to the current territorial scope of the ‘making available’ right, should be considered with caution. Pact advocates maintaining the status quo due to current understanding around the framework.

**Qu.10:**Pact’s view is that there is not necessarily a problem at present and it is difficult to deconstruct what has worked for a long time. When considering other areas of copyright, it may be more appropriate to keep the elements separate despite it possibly being useful to simplify the rights into one for production companies.

**Qu.11:** No. Pact believes that it would be too onerous an obligation to obtain consent for lawfully accessed public websites. The judgement in the recent ECJ-Svensson case should be followed whereby hyperlinking is not considered a communication to the public. It is only where hyperlinking bypasses website restrictions or geo-blocking that consent is introduced.

**Qu.12:** Authorisation of the rightholder should only need to be obtained in instances where the user would ordinarily need to pay to obtain access (as long as it is not posted unlawfully). The copyright work should not be available permanently.

**Qu.13:** No, digital content cannot be compared to tangible products i.e. a book or CD/DVD as it is possible to retain a copy of digital content and resell due to cloud storage. A method must be put in place to prohibit retaining original versions or resold products.

**C Registration of works and other subject matter**

**Qu.15:** No. Pact believes that this would be a costly exercise and would be difficult to maintain without any real benefit. It would have to be a common system with common definitions, (i.e. download to rent, download to own etc) which would be difficult to realise. Unique identifiers would need to be used to show authorship and a central repository of rights information would be near impossible. It would also be impractical due to the fact that the value of the works would be subjective at the time of registration. It is not possible to use for licensing for the same reasons for either B2B or B2C.

**D. Improve the use and operability of identifiers**

**Qu.19:** The cost of adopting identifiers must be balanced against potential benefits as current identifier systems on offer are not free. The ISAN registry currently reveals rights holder. Until broadcasters make it mandatory there is no incentive for use. At the moment both production companies and broadcasters give content their own unique identifier. ISBN is used for publishing and ISRC is used for music. The main problem is that there are two systems for identifying programming (ISAN and IDER) but neither is recognised as the accepted standard.

**E: Term of protection – is it appropriate?**

**Qu.20:** Yes, the current terms of protection are still appropriate in the digital environment.

**III Limitations and exceptions in the Single Market**

**Qu.21:** Pact advocates maintaining the status quo as this gives a more flexible approach. If a more harmonised system was to become mandatory then exceptions should be introduced for caching.

**Qu.22:** No, the exceptions should not be made mandatory. The continental system is so different from England and Ireland particularly in relation to moral rights that it would take decades to harmonise.

**Qu.25:** Pact considers that different exceptions would need to be considered for sales.

**Qu.26:** There is only a problem where law applies to one country but not to others.

***A: Access to content in libraries and archives***

**Mass digitisation**

**Qu.40:** No, there is no need for legislation to be enacted to make the 2011 MoU have a cross border effect. A definition for ‘out of commerce’ is needed but the reality is that this is not easily defined. Enshrining the MoU in legislation should not be used as a way to avoiding clearing rights in works (i.e. BBC Store).

**User generated content**

**Qu. 58:** Pact has not experienced problems here.If favourable, internet uploads can result in additional promotion. If disliked, the rights-holder can have uploads removed via usual channels. There must be a method for rights-holders to claim what is theirs.

**IV: Private copying and reprography**

**Qu.64:** No,private copying levies do not exist in UK and what is proposed in the question seems excessive.

**Qu.65:** No. There is already technology in existence to restrict the sharing of copies with friends and limiting the use of content on multiple devices.This is not an issue that needs resolving in legislation

**V: Fair remuneration of authors**

**Qu.72:** Remuneration is currently protected by unions and agents.

**VI: Respect for rights**

**Qu.75:** Yes, the civil enforcement system should be made more efficient for copyright infringements with a commercial purpose. Following the judgement of ITV v TV catch up it needs to be clear that the service is illegitimate. Case law in this area is not enough and it should recognised as a clear infringement.

**Qu.76:** ISPs resist supporting rights holders. There needs to be a system where ISPs support the removal of infringing websites, without the need for a court order.

**VII A Single EU copyright title**

**Qu.78:** Pact considers that any change should be carefully considered as it is content dependent.

**Qu.79:** It is crucial that any future proposals in this area involve a long process of evidence based decision making before any changes are introduced.

1. Pact Census Independent Production Sector Financial Census and Survey 2013, by Oliver & Ohlbaum Associates Limited (July 2013) [↑](#footnote-ref-1)
2. Pact Census Independent Production Sector Financial Census and Survey 2013, by Oliver & Ohlbaum Associates Limited, July 2013 [↑](#footnote-ref-2)