Writers' Guild of Great Britain

Response to the European Commission's Green Paper:
"On the online distribution of audiovisual works in the European Union: Opportunities and challenges towards a digital single market"
(13 July 2011)

Introduction

i. The Writers' Guild of Great Britain is a trade union with about 2,000 members, representing professional writers in TV and radio; theatre; film; publishing; writing for children; videogames and multimedia. The majority of our members depend for their livelihoods on the successful exploitation of audiovisual works for which they have written the scripts. Such exploitation is increasingly taking place online, and in such cases our members are entitled to receive various residual payments, royalty payments and collectively managed payments. Most of these payments are within the scope of collective agreements that the Writers' Guild of Great Britain has established and maintained with broadcasters and producers. These issues are therefore of profound significance to our members' creativity and livelihoods, and this significance is likely to grow even more in the next few years.

ii. While it is customary to welcome new thinking and proposals emanating from the European Commission, before going on to highlight any inconsistencies and to suggest various improvements, in this case it is difficult to feel anything other than foreboding that an existing system that works and that nobody really wants to change could be seriously undermined – to the severe detriment of our members and many other contributors to audiovisual works – in pursuit of the chimera of a pan-European audiovisual single market. In fact there is no such market and there is never likely to be.

iii. We will present our detailed comments as responses to the suggested questions in the Green Paper.

1. What are the main legal and other obstacles – copyright or otherwise – that impede the development of the digital single market for the cross-border distribution of audiovisual works? Which framework conditions should be adapted or be put in place to stimulate a dynamic digital single market for audiovisual content and to facilitate multi-territorial licensing? What should be the key priorities?

Among the most imaginative and important achievements of the European Union and its predecessors over many years have been measures and programmes designed specifically to preserve and strengthen the many different languages and diverse cultures that permeate Europe's nations and regions, and to cultivate mutual respect between them. But these very languages and cultures – many of which are stronger today than for many decades – are themselves the key obstacle in the path of a meaningful and functioning single market in audiovisual works. The achievement of this single market in audiovisual works would be a

powerful and tragic stride towards the marginalisation and eventual destruction of this diversity, and the undoing of so much of the European achievement of the past half-century.

Another insurmountable obstacle flows directly from the background of language and cultural diversity: most European audiovisual works are likely to have a high value in one or two parts of Europe and a low value in the rest of Europe. Therefore any attempt to license and exploit a work across the whole of Europe on a single set of terms will founder on this central contradiction. The only way in which it could be achieved would be to rigidly enforce lowest-common-denominator terms across the pan-European territory, which would not advantage anybody over the position prevailing today, but would be catastrophic for creators and producers in their "home" countries, regions or language zones. Here is the recipe for a pan-European slump in audiovisual creativity and production. And if this happens in the online area, which is already growing strongly, it will make it enormously harder for traditional linear broadcasting and cinematic exhibition to compete and survive against online alternatives. Of course, online delivery may take over in any case, but if it does we need to make sure that creativity and content production can continue to thrive in the new environment as they have in the old one.

One thing that is not an obstacle to successful online audiovisual businesses across Europe is copyright. The visionary novelist Laurence Sterne wrote in 1759: "The sweat of a man's brows, and the exudations of a man's brains, are as much a man's own property as the breeches upon his backside." Universally accepted principles and rules based on this simple and clear proposition have served the world since 1886. Since then humankind has seen the invention of the mass-circulation newspaper, various types of phonographs, radio, magazines, cinema, mass-produced paperbacks, television, CDs and video recorders. At every step the fair and well-understood principles of copyright have not merely coped, but have served us well. Copyright has allowed the new to develop to its full potential while the best of the old continued to prosper. Now a weird coalition of pirates, smugglers, bit-torrenters, obsessive collectors, samplers, mashers, agglomerators, search engines, cloud server owners and morally-blindfolded ISPs tell us that copyright is an "obstacle" to our own future. What a nerve. Worse, we are allowing ourselves to become so mesmerised by the internet, the many forms it takes and the many objects of desire that can beam it down to us, that we behave as if we believe them. The very first question in this Green Paper is drafted as though it is an undisputed fact that copyright is an "obstacle". No. We should stick to our principles. We should stick to copyright.

2. What practical problems arise for audiovisual media services providers in the context of clearing rights in audiovisual works (a) in a single territory; and (b) across multiple territories? What rights are affected? For which uses?

3. Can copyright clearance problems be solved by improving the licensing framework? Is a copyright system based on territoriality in the EU appropriate in the online environment?

It depends what you mean by "problems". If a business wishes to make use of an audiovisual work, it needs to communicate with the rights holder and negotiate the price and other terms of the licence. If that is regarded as a problem, and it is desired to have automated, standardised licences, that can only be done by enforcing a system that removes from rights holders the possibility of negotiating the terms or refusing a licence – this would almost amount to removing copyright as a concept. It would be useful for a system (such as ARROW) to be developed to make it easier for users to identify the rights holders they need to contact. In theory it is possible to create a copyright system that is harmonised across Europe, although past attempts to do so do not provide any grounds for optimism. But even if that were achieved,. it would still be necessary to enable licensing for smaller territories than the whole of Europe – e.g. nations, regions, language areas. If all users are obliged to

buy a pan-European licence for every use, then in almost every case they would be forced to pay for uses they do not want and are probably unable to exploit.

Broadcasters and producers make millions (which are reinvested in new productions) by selling their TV programmes to channels in other countries. Say a UK series is sold to a German channel. A substantial price will be agreed, of which the BBC will pay royalties to the scriptwriter, and also to performers and other creators. But if the same series is available in Germany via an online on-demand service, either the deal will not happen or the price (and therefore the royalties and the future investment) will be much reduced. So online access needs to be suspended in Germany, but it is fine for it to go ahead in France or Italy – until one of their channels buys the series, and so on.

4. What technological means, for example individual access codes, could be envisaged to enable consumers to access "their" broadcast or other services and "their" content, irrespective of their location? What impact might such approaches have on licensing models?

Let us take the example of a UK citizen who has paid the BBC licence fee and is thereby entitled to consume BBC programmes on a variety of platforms within the UK. When this person goes to Europe on holiday or a business trip, s/he may wish to access current BBC programmes online, but finds they are geographically blocked. The Writers' Guild of Great Britain would have no objection to BBC free online services being unblocked for UK licence fee payers temporarily overseas, presumably using some kind of access code system. We would not seek additional payment. But the BBC has no statutory duty to provide such a service, and it is arguable that it would be a misuse of licence-fee money to provide an additional and perhaps expensive service for a relatively small number of fee payers. And what about UK citizens living permanently or spending extended periods in other EU countries? What about citizens of other Member States who would like to have access to BBC programming? This would require a service that is not dependent on the UK TV licence fee. Consumers would need to pay for access, either on a subscription or pay-per-view basis. Such a service would also satisfy the needs of temporary travellers at modest cost. And guess what? The BBC's commercial arm is trialling just such a service, currently on the iPad platform. This "Global iPlayer" is available in 11 European countries and costs €6.99 per month (no minimum period), or €49.99 per year. If successful it will be rolled out into other countries and on to other platforms. Writers and other creators receive royalty payments based on the revenues collected. Any programmes that have been sold exclusively to TV channels in a particular territory can be removed from the service in that territory. The service also features popular archive material in addition to current programming. This is an example of how this issue can be tackled without any changes to existing legislation or regulations.

5. What would be the feasibility, and what would be the advantages and disadvantages of, extending the "country of origin" principle, as applied to satellite broadcasting, to online audiovisual media services? What would be the most appropriate way to determine the country of origin in respect to online transmissions?

We think this idea is a non-starter. Servers can be anywhere in the world. Files can be (and are) switched from a server in one place to a server in a different part of the world quickly and frequently. The files on a server in one place will be backed up on servers elsewhere. Most operators of server-based services will use "mirror" operations so that at times of heavy demand, customers can be redirected from one server to another, usually in different continents. There is really no comparability between satellite broadcasting and the provision of online services in this respect. The "country of origin" would be impossible to define and it would be impossible to set up a system of regulation, enforcement, dispute resolution, etc.

Any attempt to do so would be open to circumvention simply by operating out of a non-Member State.

6. What would be the costs and benefits of extending the copyright clearance system for cross-border retransmission of audiovisual media services by cable on a technology neutral basis? Should such an extension be limited to "closed environments" such as IPTV or should it cover all forms of open retransmissions (Simulcasting) over the internet?

This question refers to a territory-based system in which it is mandatory for a payment to be made to a local copyright collecting society, which in turn distributes money to its own members and relevant collecting societies in other countries. While this system is long-established, it is at best a spatchcock solution and at worse inaccurate, inconsistent and unaccountable.

Everybody in Brussels is aware of the energetic lobbying by the Society of Audiovisual Authors in favour of extending the Satellite and Cable directive (SATCAB) to the online digital environment. This the Guild strongly opposes. It needs to be said that although the SAA introduces itself as representing "over 118,000 screenwriters and directors, including the most respected European names" in fact it is a trade association for a sub-group of copyright collecting societies who handle a limited range of mostly secondary rights on behalf of those creators. Its "White Paper" of February 2011 was produced, as far as we know, without any consultation with any of those 118,000 screenwriters and directors, nor with the many trade unions, guilds or associations of writers and directors (other than the collecting societies themselves). Certainly the SAA did not consult the Writers' Guild of Great Britain, and has still not done so.

Copyright collecting societies have greatly benefited from SATCAB. This directive has resulted in a one-size-fits-all basis for collecting and distributing royalties whereby every film or TV programme on a satellite or cable retransmission service is rewarded at a standard rate per minute, regardless of the size of the audience, the status of the writer and performers, the production budget of the programme, or the programme price set by the original producer or distributor. Therefore the remuneration bears no relation at all to the royalties, residuals, repeat fees, etc. negotiated by writers and performers or their agents and trade unions. Another problem with the SATCAB system is that the modest sums due to writers often pass through two or three different organisations and are subject to the removal of taxes, statutory and "voluntary" cultural levies and unregulated commissions. These deductions are commonly in the region of 25 per cent of the total payment and can reach 40 per cent. The ultimate recipient has no means of pursuing an enquiry, complaint or grievance either with his/her own collecting society, or the one originating the payment.

However, the provision of online services easily allows the precise measurement of audiences, price-setting that relates to the market value of each work, and differential remuneration by means of micropayments. This, rather than inappropriate extension of SATCAB, is the right way forward.

7. Are specific measures needed in light of the fast development of social networking and social media sites which rely on the creation and upload of online content by end-users (blogs, podcasts, posts, wikis, mash-ups, file and video sharing)?

There is probably no way to stop individuals gathering copyright material online and incorporating it in their own private works. But there do need to be some limits. Firstly, if such uses are to be legitimised at all, this can only be on the basis that they are privately used and not exploited for financial or commercial gain. Any publication should be subject to a no-questions and immediate take-down if required by the rights owner of the original work. There is also the question of moral rights in cases where the creator considers the use to be

derogatory, and/or if the creator is not properly credited. This could hardly happen today in many countries, including the UK, because of the waivability of moral rights. This practice is almost universal in audiovisual writing contracts. Therefore if a writer sees the work based on his/her script debased, there are no moral rights remaining to enforce. The EU could be decisive in resolving this issue by legislating the inalienability of moral rights – which we believe is the correct interpretation of international copyright law.

8. How will further technological developments (e.g. cloud computing) impact upon the distribution of audiovisual content, including the delivery of content to multiple devices and customers' ability to access content regardless of their location?

"Cloud computing" is a new and vague term covering at least two distinct recent developments.

The first is a service to private computer users offering them vast amounts of cheap space on commercial servers so that they can upload their personal photographs, videos, etc. for backup. Unfortunately they can just as easily upload copyright works such as music, audiovisual material, etc. This is perhaps not so serious if it were just a means of securely saving a personal collection for personal use, however these systems make it easy for the uploader to enable a third party to download the material, and some services encourage this use. This can easily amount to an abuse of private copying, in which a consumer legitimately obtains, say a DVD of a film; uploads it to the cloud; and then supplies a code to one or more or many friends and relations to download. It is important that definitions of private copying make it clear that this practice is not legitimate; and that the suppliers of these services, and the ISPs that facilitate them, issue clear warnings against this practice and monitor traffic to enable at least the most serious breaches to be exposed and dealt with.

The other early manifestation of cloud computing is the creation of huge commercial archives of copyright material that is legitimately sold to consumers. Until recently the files would be downloaded to the individual's devices, but now the files remain on the main server and are instantly accessible from any location via broadband, wifi or 3G. There is a great danger that one subscriber to such a service could unlawfully provide the codes giving access to a number of other consumers, creating many uses that do not generate revenue and do not result in royalty payments to creators. The EU could perhaps require the providers of such services to introduce effective technical safeguards and penalties against account holders who breach the terms of use.

9. How could technology facilitate the clearing of rights? Would the development of identification systems for audiovisual works and rights ownership databases facilitate the clearance of rights for online distribution of audiovisual works? What role, if any, is there for the European Union?

The ARROW and EUROPEANA projects offer huge value in compiling and making accessible databases of copyright works, including audiovisual works, along with metadata giving details of the holders of underlying and other rights, such as writers, directors, performers, etc., and information on how these rights holders can be contacted by anyone wishing to use such works, either personally or commercially. A lot of good work seems to have been done on the basic design and functionality of these projects, but they are as yet unpopulated with comprehensive details of large numbers of works, and there is a long way to go before they are comprehensive and can be regarded as a reliable first port of call for information. The EU could be instrumental in encouraging the many holders of information to link into these schemes. It is a task that perhaps will never be finished, but at the moment it has hardly been started.

The ISBN system has been successful over many years and is the de facto standard for identifying and tracking published works throughout the world. It is puzzling, given that cinema is over a century old, and TV over half a century, that relatively little progress has been made in establishing a similarly robust scheme for audiovisual works. There have been various attempts, the best known of which is probably ISAN. But ISAN has not taken off in a convincing way, perhaps because it is expensive to use, over-complicated in some ways (potentially many different numbers may be allocated to essentially the same work) and too simple in others (mystifyingly, the mandatory fields of metadata do not include the identity of the scriptwriter). Perhaps the explanation is that while the ISBN system was introduced as a public service, free to use in many countries, ISAN emerged at a time when such projects were more commercialised and had to cover their costs from day one. Another penalty of being late in the day is that the task of listing back catalogues is daunting and expensive, with no clear financial return. Perhaps a single global system is not even necessary. We think the EU should give renewed thought to the question of unique identifiers and related traceability, perhaps by an extension of the ARROW scheme or something similar.

10. Are the current models of film financing and distribution, based on staggered platform and territorial release options, still relevant in the context of online audiovisual services? What is the best means to facilitate older films which are no longer under an exclusivity agreement being released for online distribution across the EU?

11. Should Member States be prohibited from maintaining or introducing legally binding release windows in the context of state funding for film production?

The concept of "release windows" for different territories and different platforms is obsolescent. It is a practice with its roots in a world where producers and distributors could control when and how their material would be consumed by the public. In the digital age this power has gone for good, and it is now the consumers who control in what form, at what time – and to some extent at what price – they will agree to consume the works that are made available. To the extent that release windows survive today, it is due to the territorial restrictions that this Green Paper seeks to simplify or sweep away, so even without any specific measures the EU may well be banging nails into the coffin of this practice. But because of piracy and near-instant online communications, the idea that a film or TV programme can be released in one place and kept completely out of another for weeks or months, is no longer credible. It is to invite piracy on a scale that could seriously compromise the economics of legitimate distribution in the "later" territories. Also, the vast variety of platforms available, from tiny mobile devices to enormous HD TV screens, means that the public will no longer tolerate a policy that "forces" them to go to a cinema for weeks or months before they can watch a film at home or on the move. They will resist and circumvent such restrictions. Distributors would do better to explore the creation of multiple versions of their products customised for different viewing platforms, and a range of price-points for different versions, such as premium pricing for HD, 5.1 sound, etc. We think the markets will decide these issues. We do not think Member States should be prohibited from legislating binding release windows, but we will be surprised if they are able to make them stick. We do not think there is a case for action at EU level.

12. What measures should be taken to ensure the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service providers?

The concept of European or national quotas is simple to apply to linear broadcasting, and simple to enforce. This is not the case with VOD services. Many new services will not be general, but will deal in specialised niche areas, e.g. Western movies, Bollywood musicals or world religions. It is impossible for them to comply with a European quota. But if a general service supplying popular movies of TV programmes were to be subject to a quota, all that

would need to happen would be to make available a vast jumble sale of cheap, inferior European content that would remain unwatched, while the true focus of the service was the material – wherever it originated – that proved most popular. All that would be achieved would be to increase the costs of the operator, and therefore the prices to the consumer. An on-demand service is just that, and no EU law can be devised to apply a quota to the choices made by the audience.

13. What are your views on the possible advantages and disadvantages of harmonizing copyright in the EU via a comprehensive Copyright Code?

It can't be done. The Information Society Directive demonstrated conclusively that what starts out as an attempt at harmonisation first fails, then is supplanted by a long list of every copyright quirk and wrinkle from every Member State, which is printed as an a la carte menu from which future legislators can make their selection. To repeat or extend this process will be a waste of time and brains, and is likely to result in an even worse outcome of reducing everybody's standards to those of the lowest.

14. What are your views on the introduction of an optional unitary EU Copyright Title? What should be the characteristics of a unitary Title, including in relation to national rights?

Unobjectionable but pointless. There is nothing at all preventing any rights owner issuing licences for the entire EU area. The fact that this hardly ever happens is a simple demonstration that nobody wants to obtain such licences and therefore nobody bothers to offer them.

15. Is the harmonisation of the notion of authorship and/or the transfer of rights in audiovisual productions required in order to facilitate the cross border licensing of audiovisual works in the EU?

Obviously not, otherwise there would be no cross-border licensing now. It is standard across the EU that the director of an audiovisual work is regarded as an author of the work, but it is a sore point in the UK that the writer of a screenplay is not. To add insult to injury, the producer is regarded as an author. Naturally the Writers' Guild of Great Britain would like to see minimum European standards that recognise the writer as an author of the audiovisual work, and not just of an underlying work – but we would have to admit that this is mostly for reasons of self-esteem, as there is little evidence that these legal distinctions have very much practical or financial impact. We see little value in meddling with transfer of rights practices, since in reality writers and other collaborators in audiovisual works are always going to be expected to sign belt-and-braces contracts assigning or exclusively licensing all relevant rights. However writers for TV and film often do retain some rights, such as book publishing, changed formats, remakes, and EU standardisation could interfere with this. Given the widely differing practices around the world regarding the transfer of rights, we think the likely outcome of EU harmonisation would be a lowest-common-denominator solution leading to the importation of the American "work-for-hire" system, which we regard as an abomination.

16. Is an unwaivable right to remuneration required at European level for audiovisual authors to guarantee proportional remuneration for online uses of their works after they transferred their making available right? If so, should such a remuneration right be compulsorily administered by collecting societies?

It is difficult to argue against an unwaivable right to specific and proportional remuneration. We are aware of writers' organisations in a number of Member States – mostly smaller states or newer democracies – where the scriptwriter is paid a fee for writing the script, but never

sees any further residual or royalty payments, regardless how successful the work turns out to be. For them the unwaivable right for online uses would be an improvement and we do not want to stop them achieving it. But this approach, inevitably coupled to a one-size-fits-all collecting society approach, would risk undermining and devaluing the rewards that we and others have achieved in the UK through collective bargaining with broadcasters and producers. We would be very anxious about proposals for an unwaivable right that were anything more than a fall-back position to click in where no other arrangements have been made. We note the clarification issued by the Society of Audiovisual Authors in its "Frequently Asked Questions" document of November 2011: "Such a provision would not undermine the audiovisual authors who, in a very few countries such as the UK and the Nordic countries, exercise their exclusive rights through agents, guilds or their collective management societies. In such cases, the right to equitable remuneration would not apply to the extent that separate mechanisms deal with remuneration payments for the making available right." We welcome that statement, but we need to add that the need to make it demonstrates the awkwardness of the SAA's approach. It seems to say that the unwaivable right is unwaivable except in cases where it is waivable, and this suggests that the initial attractions of the "unwaivable right" approach have not been carefully or fully thought through.

17. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers? In particular, what would be the effect on the crossborder licensing of audiovisual works?

We think the costs would be small, as we fear that the remuneration would be at a low level. The disadvantages of the system in relation to cross-border licensing would be the same as those outlined above in relation to cable retransmission. The costs would fall on either the producer or the distributor (or both) and would inevitably be passed on to the consumer. Plainly there is no clear benefit to the consumer, and the benefit to other stakeholders would be as small as the level of payments.

18. Is an unwaivable right to remuneration required at European level for audiovisual performers to guarantee proportional remuneration for online uses of their performances after they transferred their making available right? If so, should such a remuneration right be compulsorily be administered by collecting societies?

19. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers? In particular, what would be the effect on the crossborder licensing of audiovisual works?

These ones are for the performers to answer.

20. Are there other means to ensure the adequate remuneration of authors and performers and if so which ones?

Absolutely there are. In the UK the Writers' Guild of Great Britain has negotiated a detailed agreement with the BBC under which all writers' contracts will provide for payments for all online uses. Commercial uses (paid for by subscription or pay-per-view systems) will be subject to a royalty in the traditional way. Non-commercial uses such as the iPlayer catch-up service and the planned "online archive" on-demand service will be remunerated in a new way. A company called Writers Digital Payments has been set up by the Writers' Guild and the trade association for writers' agents. The BBC will make lump-sum payments to WDP that will be negotiated from time to time with the Guild under collective bargaining. The BBC will provide exact data of the number of hits for each programme to WDP. WDP will arrange for the money to be distributed to writers in proportion to the number of hits their works have generated. It is very early days, but it is feasible that each "hit" could result in a

payment to the script writer of 1p. Thus 50,000 hits would produce a payment to the writer of £50. A million hits would produce a payment of £10,000. And no hits will produce no payment. Undistributed money will not be allowed to accumulate into a "cash mountain", as with some collecting societies, but will be redistributed to known writers in a future share-out; or applied to charitable and cultural purposes; or retained as a fund available to writers needing to take legal action in cases of plagiarism, breach of contract, etc. Nevertheless funds will be available to cover any late claims that are authenticated. All BBC writers' contracts since 2002 will automatically be included in this scheme. For contracts signed before 2002, right back to the origins of the BBC, writers or their successors will be invited (but not obliged) to sign up to exactly the same terms.

It will be noted that this scheme is similar in some ways to the operation of a copyright collecting society, but it is not based on licensing, but on commercial contractual terms agreed between the BBC and the writer, and a collective agreement between the BBC and the writers' union.

A broadly similar system is being developed for the UK's other main broadcaster, ITV. Similar arrangements are being put in place for performers and musicians, and are likely to be developed for directors. This is happening now, entirely under existing legislation.

In an EU context it is relevant to point out that in the UK it is possible for a registered trade union, such as the Writers' Guild of Great Britain, to operate fully and legally, to negotiate minimum contractual terms with producers and broadcasters on behalf of writers who are self-employed freelances. Sadly in many Member States this is not the case, as self-employed freelances are treated as business entities and such activities are outlawed as anti-competitive market-fixing. In our view this interpretation is a clear denial of Article 23 (4) of the Universal Declaration of Human Rights; Article 11 (1) of the European Convention on Human Rights; and Section VI (4) of the UNESCO Recommendation Concerning the Status of the Artist. Most creators are self-employed. Plainly and common-sensically they are workers; they are not corporations acting in some kind of cartel. We strongly urge the EU to reconsider this fundamental issue so that throughout Europe workers who are also creators can enjoy the same opportunities to represent their interests and negotiate their rewards as those who are lucky enough to live and work in the UK.

21. Are legislative changes required in order to help film heritage institutions fulfil their public interest mission? Should exceptions of Article 5(2)(c) (reproduction for preservation in libraries) and of Article 5(3)(n) (in situ consultation for researchers) of Directive 2001/29/EC be adapted in order to provide legal security to the daily practice of European film heritage institutions?

Everybody agrees that heritage institutions should be able to work unhindered to build collections of audiovisual works and to do whatever is necessary to preserve, archive and catalogue them, including digitising them, and also to make them available for genuine research and study. To the extent that these uncontroversial activities are not already legitimate, we do not believe the right approach is to make further exceptions to copyright. Instead the institutions should negotiate licences with the relevant collecting societies. Depending on the exact details, it is probable that such licences would be at minimal cost or free. The problem we have with museums, libraries, galleries, archives and other such institutions is that they are under enormous pressure to generate revenues to supplement their income from governments, local authorities and benefactors. One of the chief ways in which they do so is by the publication of reproductions, books, souvenirs, CDs, DVDs, images on T-shirts, etc., etc. These are commercial activities undertaken for profit. They should be negotiated and licensed in exactly the same way as is necessary for any other commercial undertaking. It is a mistake to confuse the practice with the motive. We are sorry to say this but we fear that any loopholes that might be found in new exceptions to copyright would be

shamelessly exploited to the cost of any rights holders whose works were exploited in this way. In addition it is doubtful whether the commercial activities of heritage institutions should benefit from any privileges that are not available to any other kind of commercial entity.

A well-known UK heritage institution, the British Film Institute, operates mediatheques at its main centres in London and Bradford, and at other centres around the UK. Members of the public can visit these premises and watch a wide selection of archive television programmes. Anyone can do this – you do not need to be a researcher or student. There is no charge for the service. This is enabled under agreements with three trade unions – the Writers' Guild of Great Britain, Equity (actors), and the Musicians' Union – using rights that members mandate to those unions coupled with an indemnity against any unintentional breaches of copyright. This system has operated without a single hitch over many years. The annual cost to the BFI is small. The money is not distributed to authors/creators but is instead applied to the cost of briefing and lobbying politicians and civil servants about issues of importance to the members of the three unions. This system is very simple, it is possible under existing legislation, and everybody wins.

22. What other measures could be considered?

Responses to this Green Paper are being submitted in a media and creative environment dominated by film and TV producers, broadcasters, distributors, communications and internet corporations. But we are already seeing a steep movement away from the corporate towards the individual and personal. Musicians record their own music and they launch it and market it using the internet. Authors write books which they self-publish using print-on-demand services and ebooks. Writers, directors, performers and photographers are beginning to team up to self-produce their own audiovisual works and distribute them online. It is not likely that self-publishing and self-production will completely take over from corporate models, but it seems clear that it can and will play a far more important role in the future, having been made feasible by digital technology and online communications. The EU should be thinking how it can encourage and foster economic growth by encouraging these trends.

Despite all the brilliant innovations of the internet, there is a key missing link enabling individuals to interact fully in a commercial and economic way – a payment system. Internet banking and online systems such as PayPal are fine for quite small transactions of one or two euros. But the creators of a short film need to be able to sell their product for a few cents – maybe even a fraction of a cent. The idea would be that at a very small price, many consumers may be willing to buy and watch an audiovisual work (or song, or book). And, as noted above in a different context, a million hits at a penny each comes to £10,000 – not a bad payday for anyone. The missing link is micropayments. Europe – and the world – badly need a system in which an individual can upload his/her work on to the internet and charge members of the public a tiny price to access it. Consumers need the same system to be able to make their tiny payments. Everyone would have an account, which they could top up with deposits, and from which they can draw down any surplus. But in the main, consumer watches video, one cent passes from consumer's account to film-maker's account. As for running costs, plainly it is impractical to charge a commission on each transaction – they are too small – but perhaps commission could be charged on deposits and withdrawals from accounts. Micropayments are the key to the future of online commerce. The Writers' Guild is not the organisation to think through and develop such a system. We challenge the EU, with its vast resources and brain-power, to engage in this subject, to make and implement proposals. Here is something the EU could do that would enhance the life of every European.

23. Which practical problems arise for persons with disabilities to have access on an equal basis with others to audiovisual media services in Europe?

24. Does the copyright framework need to be adapted to improve accessibility to audiovisual works for persons with disabilities?

25. What would be the practical benefits of harmonising accessibility requirements to online audiovisual media services in Europe?

26. What other actions should be explored to increase the availability of accessible content across Europe?

Even a few years ago this would have been an important and difficult question. But technology is riding to the rescue. Around the world, great thought is being given to legislative and even treaty-level measures to allow blind and visually impaired access to digital versions of newly published books to enable them to convert them into large-type, Braille, audio and other formats. Have these highly educated, well-paid experts, negotiators and diplomats not heard of the ebook revolution? Innovation and commerce have overtaken governmental and intergovernmental procedures, and while the talks drone endlessly on, nearly every mainstream book published in the UK (and no doubt other developed countries) is available immediately as an ebook, and VIPs are using a variety of devices to achieve the access they have so long desired. It is less clear what kind of access to audiovisual works would be meaningful for VIPs, given the central importance of the visual image, nor is it clear what other types of disability may be relevant. But any moderately prosperous home can now contain an enormous high-definition screen, capable of zooming in on any portion of the frame, able to show audiovisual works via digital broadcasting, DVD, PVR, cable, satellite, download, streaming . . . Let us not strive to solve a problem that has actually gone away.

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