

# BRITISH COPYRIGHT COUNCIL

## Response to the European Commission's Green Paper "Unlocking the potential of cultural and creative industries" (Brussels, COM (2010) 183) and to its Communication on "A Digital Agenda for Europe"

The British Copyright Council represents those who create, hold interests or manage rights in literary, dramatic, musical and artistic works, performances, films, sound recordings, broadcasts and other material in which there are rights of copyright and related rights.

Our members include professional associations, industry bodies and trade unions which together represent hundreds of thousands of authors, creators, performers, publishers and producers. These right holders include many individual freelancers, sole traders and SMEs as well as larger corporations within the CCIs. Our members also include collecting societies which represent right holders and which enable access to works of creativity.

### **BCC Member organisations:**

Association of Authors' Agents . Association of Illustrators . Association of Learned & Professional Society Publishers . Association of Photographers . Authors' Licensing & Collecting Society . BPI . British Academy of Songwriters, Composers and Authors . British Association of Picture Libraries & Agencies . British Computer Society . British Institute of Professional Photography Broadcast Entertainment Cinematograph & Theatre Union . Chartered Institute of Journalists . Copyright Licensing Agency . Design & Artists Copyright Society . Directors UK . Educational Recording Agency . Equity . Music Managers' Forum . Music Publishers Association . Musicians' Union . National Union of Journalists . Periodical Publishers Association . PPL . PRS for Music . Publishers Association . Publishers Licensing Society . Royal Photographic Society . Society of Authors . Writers' Guild of Great Britain .

We welcome the European Commission's Green Paper on "Unlocking the potential of cultural and creative industries" which includes much that is of interest to our members. In particular we welcome the recognition given to the fact that cultural and creative industries (CCIs) represent highly innovative companies with great economic potential and the fact that these industries make up one of Europe's most dynamic sectors. The recognition that CCIs are also important drivers of economic and social innovation in many other services further emphasises the crucial importance of the intellectual property rights which are the foundation for the economic impact and potential for CCIs.

Recognition of, and respect for, copyright is, and will remain, one of the vital enablers for CCIs in Europe. It is crucial to the ability of Europe's CCIs to influence and benefit international trade. We have therefore, in the main, limited ourselves to commenting on the way in which copyright and related rights and associated matters are of vital relevance to answering the questions raised in the Green

Paper. We cover key points where we feel we can add value to the more detailed responses which will come from our member organisations.

We also welcome the Commission's Communication on "A Digital Agenda for Europe" which, in many ways more directly raises issues relevant to the evolution of copyright and related rights, while the Green Paper itself raises questions relevant to the needs and interests of rights holders. We have therefore included our comments on the Digital Agenda here. We look forward to participating in future discussions with Commission representatives.

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### **Effective copyright law underpins the success of the cultural and creative industries**

Submissions from our members and from other right holder groups have made the value of the CCIs to the European economy abundantly clear. Nevertheless we would reiterate that, in the UK, the creative industries generate 7.3% of Gross Domestic Product; provide large numbers of jobs as well as sustaining a population of freelancers and sole traders; encourage entrepreneurs and innovation and it is a sector which continues to grow. The copyright and related rights interests of our members play a crucial role in supporting the UK and Europe's role as a world leader in music, publishing, television and film.

Copyright and related rights are central to the economies of each sector within the CCIs. Without copyright and related rights, those industries cannot recoup investment in such works, or promote new products and services. Copyright and related rights also enable the success of telecommunications and electronic communication business.

The British Copyright Council wholeheartedly welcomes and supports the Green Paper's renewed commitment to "**adequate protection and remuneration for rights holders**". The recognition that the Digital Agenda for Europe must have "a balanced regulatory framework governing the management of intellectual property" whilst working to "create a true single market for online content and services" does involve tensions over choices made within CCIs about investment in new markets and services which rely upon recognition of copyright to support economic returns from investment. Incentive is key when it comes to ensuring that creativity flourishes. For creators and performers that means financial incentive, whether that comes from users of their works, from public service media or from some other resource, in order that they can work as dedicated professionals producing high-quality creative content.

While expecting recognition and reward appropriate to the value of their works, right holders in CCIs, generally encourage and support authorised access to their works, by consumers and by the public at large, recognising that, without access, there can be no recognition or reward. Though operating in a changing environment, they believe that the copyright system is sufficiently flexible to cope with the development of new online business models and would encourage policymakers to recognise that factors not directly related to the copyright framework, such as technological advances and changing social attitudes, are closer to the heart of so called “problems” with the copyright system, than the system itself.

We would, however, ask the Commission to recognise, that CCIs are distinct from the network infrastructure by which creative work is increasingly disseminated. Policymakers must recognise this distinction to preserve and promote investment and innovation within the creative and cultural industries.

### **Distribution and Production – Creative content not digital widgets**

While it may be true that the cost of distribution will reduce over time, surely this cannot be said of the cost of origination and investment in production. Remembering that what is being produced is creative content and not digital nuts and bolts, and that creative content is, first and foremost a product of the mind, and that most of those who produce that content or invest in its development rely on it entirely for their livelihood, it seems likely that the cost of production will, if anything, increase. The availability of “high quality and diversified cultural content” depends entirely on the level of reward and recognition given to its creators.

Nevertheless we agree that the creative community must be encouraged to find alternative ways of drawing value from their content in the light of changing consumer expectations. We believe that new and emerging business models, including technological innovations and the use of collective administration and licensing, must be allowed to flourish, particularly if we are to safeguard an economic future for those creators and performers who often sit at the bottom of the value chain, but on whose content the end product, and indeed the distributor, depends. Creators have the right to manage their economic rights, and where it is most effective for them to do so directly, such business models should be supported.

Another issue, which must be addressed at European level, in the context of encouragement for the creative community, is enforcement of rights, particularly against persistent violators in the online environment, as highlighted by the Digital Agenda Communication. Without adequate protection

against illegitimate use of copyright works, there is little point in the creative community seeking to provide alternative business models.

### **Easy Licensing goes hand in hand with Easy Access**

Rights play a crucial role at every stage in the value chain for each sector within the CCIs.

Individual licensing arrangements will remain the licensing method of choice for many creators, performers, publishers and producers who create, perform or produce unique, high value content for primary markets including many forms of digital use and distribution and new business models are already being developed to deal with such use. However, right holders recognise that there are other forms of use or distribution where micropayments distributed through collecting societies are more appropriate in those instances where direct remuneration is not possible or uneconomic, as in the analogue world, where such societies already license for secondary uses such as photocopying. The decision about which type of licensing is most appropriate depends almost as much on the category of work and the existing business models within that sector of the CCIs as it does on the type of use involved. There is no “one size fits all” solution.

Collecting societies represent and are effective intermediaries for right holders. Through these societies, works protected by copyright is licensed efficiently and cost effectively. The role of rights intermediaries in the management of cross border rights, complex rights arrangements and relationships is becoming more, not less, important within the increasingly sophisticated markets of on-line digital distribution.

Also in the context of the Digital Agenda communication, the British Copyright Council will continue to play an active role in trying to find a solution to the challenges presented by orphan works at UK and European level and would welcome an opportunity to discuss our views further with the Commission.

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### **The Right Enablers**

Initiatives supporting or investigating the needs of the CCIs are to be welcomed. We leave it to others to comments on such initiatives apart from three points we would like to make.

- **Helping our creative community to help itself**

Copyright and related rights are themselves major enablers, playing a crucial role in the value chain in each sector across the CCIs. Initiatives supporting and enabling creative professionals to experiment and innovate, to develop at local and regional level and to stimulate investment in the creative individuals and companies, have their place. Nevertheless, creative professionals, particularly those lower down the value chain e.g. individuals, whether freelance or sole traders, or small companies, would be less reliant on such support and initiatives if they were more aware of, and better informed about, copyright and related rights, about how they can use those rights to draw value from the content and innovations which they create and how they can apply that knowledge in practice.

Many who work, or who will go on to work, within CCIs, not as creators or performers but as commercial users of rights, are as much in need of education about rights as creators and performers themselves. An understanding of copyright and related rights and more and better information about the practical application of those rights must be a priority for our educational establishments and for industry support mechanisms, if we want our creative communities to be in a position to help themselves.

We also welcome initiatives which encourage other industries to understand and value their own Intellectual Property. A better understanding at this level not only encourages an innovation culture, it encourages wider respect for the products of the CCIs. Proposals within the Digital Agenda to enhance digital literacy skills and inclusion should also embrace education about the value of intellectual property and what it means in practice for creators and performers.

Furthermore, we support initiatives which encourage technological innovation, that enable and encourage rights owners to track the use and re-use of their content in automated ways, to be part of the digital content chain and not excluded from it and to determine the rights inherent in their work.

With regard to freelancers, sole traders and small companies, one very important enabler is to ensure that they are in a position to enforce their existing rights. Enforcement of rights is frequently too expensive and too complicated to be worthwhile for individuals and small companies to pursue in a practical way.

- **Experimentation and innovation**

While many of the references in Section 3 of the Green Paper are to “physical” space for experimentation, innovation and entrepreneurship, it is quite clear that it is the digital, virtual and on-

line space where most experimental, innovative and entrepreneurial activities are now starting to take shape and this raises two issues.

- **Experimentation - *User-Generated Content***

In the British Copyright Council's response to the earlier Commission consultation on the Knowledge Economy on the question of user-created content, we said: "Copyright protection does not restrict inspiration....The owner of copyright has the right to prevent copying, but not the independent creation of new works." There is a distinction between users creating new works and users generating works that incorporate the works of others. In the latter case the rights in the pre-existing work must be respected. Right holders have responded quickly to this type of use, particularly in the music industry, where normal licensing procedures have been successfully adapted to permit sampling, adaptations and where new on-line services have been provided.

- **Innovation – *Pre-Commercial Use***

It has been suggested that copyright creates a barrier to technological innovation. We strongly disagree. Licensing arrangements are available for those who wish to utilise copyright works during the process of product development.

- **Mobility and cross-border licensing – *taxation a major inhibitor***

We believe that the complexity of the system for withholding tax/double taxation agreements within Europe is a major contributor to the lack of mobility of individual creators and performers in European and that it inhibits efficient cross-border licensing within the CCIs.

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While we strongly support the Commission's interest in further developing its creative and digital economy and agree that if Europe wants to remain competitive "***it needs to put in place the right conditions for creativity and innovation to flourish...***", we caution against overuse of language suggestive of a view that Europe does not already have a successful Creative Economy, or that our Creative Economy is, in future, to be defined solely in terms of its contribution to the Digital Economy.

Creativity and innovation already flourish in Europe. In establishing the right conditions for the "***new entrepreneurial culture***", it is vital that our existing entrepreneurial culture continues to thrive. Let us not throw the baby out with the bathwater. Economic opportunity based upon copyright supports and attracts innovation. Without such opportunity, innovation (particularly innovation requiring investment) would very be much more limited, or would shift to those parts of the world where there is more effective economic recognition for rights owners in place.

As we have said, the European Creative Economy was already successful prior to the emergence of the Digital Economy. Many of its elements remain non-digital and will do so for the foreseeable future. Where there has been rapid change and innovation is in the digital distribution, access and marketing of creative and cultural works and in the development of new media, whether interactive or otherwise, for “experiencing” creative works. Attendant on this is the development of new business models for acquiring, accessing and using cultural and creative works. Copyright and related rights and copyright licensing have a crucial role to play in assuring the continuing success of the European Creative Economy.

As the Commission’s Digital Agenda so rightly identifies, its main aim must be ***“getting Europe back on track and achieve a sustainable future by promoting the digital economy and society”***. Copyright and related rights have a crucial role to play in ensuring that Europe’s CCIs are well placed to make a major contribution to that sustainable future.

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