



## IPO QUESTIONS ON TERRITORIAL LICENSING

### RESPONSE FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)

**11 November 2014**

#### **Introduction**

1. We welcome the IPO's desire to better understand the role of territorial licensing and cross border use of copyright works. The British Screen Advisory Council (BSAC) is a UK umbrella group in the audiovisual sector. BSAC Members include, not only all of the segments in the UK audiovisual value chain (including development, production, sales, acquisition and licensing of content), but also leading technology firms and ISPs whose growth relies, in part, on strategic alliances with the content production sector in the UK and across the EU.<sup>1</sup> Our Members therefore rely on effective intellectual property rights and have considerable experience and understanding of, and support a healthy functioning of the marketplace for, audiovisual works. This includes how and why copyright licensing choices are made.
2. BSAC is in favour of producers and distributors of audiovisual content having the ability to choose the appropriate form of licensing. We are, therefore, deeply concerned about possible changes to the copyright framework that would negatively impact the current eco-system, where territorial, cross-border and pan-European licensing are all possible, but can be chosen to suit all the relevant circumstances, including in response to demonstrable consumer demand. This includes concern over changes that would limit right holders' ability to license on a territorial basis in such manner as they see fit. A fundamental issue underlying our concern is the importance of licensing choices to obtain a return on investment, something that enables and sustains the ongoing production of audiovisual content. We are therefore becoming more and more alarmed about some of the comments that have been emerging from some parts of both the past and the new EU Commission, which suggest the copyright framework needs addressing. It is important to point out that there is nothing in the current framework of EU and Member States' copyright laws that prevents producers and distributors from licensing audiovisual content on a multi-territorial or on a pan-European basis, when this is the best option and they hold the relevant rights, but

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<sup>1</sup> See BSAC's Membership at <http://bsac.uk.com/membership-list.html>.

there are valid reasons why it may not, in many situations, be in the best interests of any stakeholders, including consumers.

3. In the time available, we have not been able to assemble significant new evidence relevant to this debate, but this is an issue that we have commented on and provided evidence about on a number of occasions in the past. Particularly relevant evidence was included in the paper that we produced as a contribution to the EU Commission's *Licences for Europe* initiative.<sup>2</sup> This paper has already been provided to the IPO and the issues that it raised, relevant to cross-border access and the portability of services, were highlighted in our response to last year's IPO consultation on Copyright in Europe.<sup>3</sup> We also referred to the evidence in that paper in our answers to the questions about cross-border content services in the EU Commission consultation on the review of the EU copyright rules.<sup>4</sup> A copy of that response was made available to the IPO. Our *Licences for Europe* paper is still very relevant to a number of the questions the IPO is now asking. Some of the information from that paper is included in our answers, below, but we urge the IPO to consider the information provided in our *Licences for Europe* and Copyright Policy in Europe papers, which address the broader context in which the current questions are being asked.
4. The questions being asked now seem to be mostly aimed at exploring why territorial licensing, which remains the predominant form for audiovisual content, is used, which seems predicated on the assumption that this is a barrier to certain objectives. If the objective is to address perceived gaps in the marketplace, then the first step should be to acknowledge the rapidly increasing choices that European consumers have with regard to how they access audiovisual content. It will be really important for the IPO to understand both aspects. It is also important to ask the right questions. For example, it will always be possible to identify certain consumers who would prefer to have content delivered in ways other than those on offer, especially when the Commission has asked questions which lead them to believe that there is a 'problem' in this respect.<sup>5</sup> This non-analytical acceptance that there is a problem that needs a solution seems to be behind much of the drive to explore possible changes to the

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<sup>2</sup> See our response to the European Commission's *Licences for Europe* initiative (October 2013) at <http://www.bsac.uk.com/2013.html?download=261:bsac-contribution-to-the-eu-commission-s-licences-for-europe-initiative>.

<sup>3</sup> See our response to the IPO's Copyright Policy and Europe consultation (October 2013) at <http://www.bsac.uk.com/2013.html?download=262:bsac-response-to-consultation-on-copyright-in-europe>.

<sup>4</sup> See our response to the European Commission's consultation on EU copyright rules (March 2014) at <http://www.bsac.uk.com/2014.html?download=273:bsac-response-to-eu-consultation-on-copyright-rules>.

<sup>5</sup> The Commission's public consultation on the review of EU copyright rules, launched in December 2013, said that, "*despite progress*" (presumably a reference to the *Licences for Europe* initiative which was acknowledged, but which had, of course, only just concluded and so would not have had time to see whether or not the commitment made by the audiovisual sector had had any effect), "*there are continued problems with the cross-border provision of, and access to, services*". Having therefore already given the answer that they expected, the Commission then asked consumers "*Have you faced problems when trying to access online services in an EU Member State other than the one in which you live?*"

copyright framework. It will, however, be really important to understand why the answers to questions, such as those asked in the most recent consultation on copyright, conducted by the European Commission, may give the wrong impression of both what is happening and what might be possible if consumers continue to want the high quality content that European producers and distributors create and supply.

5. In this respect the audiovisual sector is different from others in the media industry, given its specificities and funding needs, and it faces particular challenges when creating innovative ways to meet consumer demand. This must be done in a way that supports – not undermines – the new content production that consumers ultimately want; reflects consumers’ cultural and linguistic preferences and ability to pay in different regions; and maintains a plurality of media voices. Audiovisual content is mostly related to particular language and/or cultural regions. Moreover, audiovisual content is made available to the public in various ways, including by cinema exhibition and broadcasting, as well as by physical copies and video on-demand services (VoD). It is particularly important to consider the whole ecology of how content is made available to consumers across the EU, and not just when it is made available via VoD. Audiovisual content requires considerable investment for its production and distribution and business models are needed that enable this investment to be recouped, taking into account how consumers might be prepared to pay. Finding ways to recoup the considerable investment in making the content is, of course, crucial if new business models being developed (as consumers move away from old models) are going to support production of the content.<sup>6</sup> It is also essential to understand how consumers ‘pay’ in different ways (including with differences between Member States) at different points in the value chain, such as pay per view (cinema entry, rental VoD), advertising-funded services (free to air TV, catch-up from broadcasters, YouTube), subscription services (NOW TV, Amazon Prime) and physical formats (DVD).
6. It is important to explore any concerns raised about the availability of content across the EU with a full understanding of market issues and specificities for the many different types of content, both within a sector and in different sectors. Different sectors in the creative industries have different characteristics, including the business models that enable them to thrive, and so conclusions reached for one sector should not be carried across to other sectors without fully understanding what this might mean. In this respect, the audiovisual sector has

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<sup>6</sup> For cross-border VoD services there are significant challenges posed by the willingness of consumers to pay. The Plum study on ‘The economic potential of cross-border pay-to-view and listen audio-visual media services’ (March 2012), commissioned by the European Commission (see [http://ec.europa.eu/internal\\_market/media/docs/elecpay/plum\\_tns\\_final\\_en.pdf](http://ec.europa.eu/internal_market/media/docs/elecpay/plum_tns_final_en.pdf)) concludes that only 34% of migrants in the sample would be very willing to pay a monthly subscription of €10 or more for “*all the channels and programmes they wish to watch from a particular country*” (p. 11). The consumers covered by this study are more likely than other EU citizens to be prepared to pay for cross-border services and so this figure, of 34% of a sample of 462 European migrants residing in France, Poland, Spain, Sweden and UK, cannot be extrapolated to the 503 million inhabitants of the European Union of 28 Member States.

unique specificities and funding needs linked to territorial licensing, and will likely be the most impacted by any proposals.

7. Our *Licences for Europe* paper nonetheless identifies an increasing number of cross-border business models. Some of these are relevant to portability of content subscribed to in one Member State by a consumer temporarily in another member State, and so are cross-referenced in answer to Question 7, below. However, in paragraph 2.3 of the *Licences for Europe* paper, we referred to EuroVoD,<sup>7</sup> a service which aims to develop and promote legal offers of art-house films on demand across Europe. It now has members in twelve countries, an increase of 50% in a year from the eight member countries that we indicated in our paper of October 2013, and so demonstrates a real commitment to its intention to expand across the whole of Europe.
8. Just as important is an understanding of pan-European licensing that has not worked. As we noted in paragraph 6.3 of the *Licences for Europe* paper, the cost of, for example, more flexibility in providing cross-border services needs to be set against the actual demand for content, and there is strong evidence that not every genre of content attracts cross-border demand on a scale sufficient to support viable businesses.<sup>8</sup> For example, we noted that uefa.com, a website launched in 2006 to enable users to stream European Champion League football matches live, had been a stark disappointment for UEFA. Despite active promotion, the site had been a loss-leader for the past six years, demonstrating that the underlying cross-border demand may not be sufficiently strong.
9. We would therefore urge the IPO to ensure that they fully understand, and are able to share with colleagues across Europe, not only the dangers of any legislative changes designed to compel or coerce producers and distributors to deliver standardised and EU-wide distribution of content, but also why territorial licensing matters and may, in many cases, be the best way to meet consumer demand; and also to recognise the very healthy market developments that mean that the number of cross-border business models are, in any case, continuing to increase in a way that is adapted to actual consumer preferences. As a country with an extremely successful audiovisual sector,<sup>9</sup> we consider that the UK should take a lead in explaining why territorial licensing continues to be a very effective and pro-consumer option, and so the absence of a cross-border service for a particular piece of content should not necessarily be seen as a ‘problem’ that needs to be solved.

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<sup>7</sup> See EuroVoD’s website at <http://www.eurovod.org/>.

<sup>8</sup> According to Olivier Bomsel and Camille Rosay’s recent economic study, ‘Why territories matter: Vertical restraints and portability in audiovisual media services’ (October 2013), the demand for foreign language programmes is low and limited to migrant populations or expatriates. This study estimates that only 3.3% of the total population were either living in another EU country or travelling abroad in the EU on a given day in 2011 (p. 38). See at [http://www.lets-go-connected.eu/files/Study-Olivier\\_Bomsel-Why\\_Territories\\_Matter-FINAL\\_14\\_Oct\\_2013.pdf](http://www.lets-go-connected.eu/files/Study-Olivier_Bomsel-Why_Territories_Matter-FINAL_14_Oct_2013.pdf),

<sup>9</sup> For example, see paragraph 1.4 of our response to the *Licences for Europe* initiative (October 2013), at <http://www.bsac.uk.com/2013.html?download=261:bsac-contribution-to-the-eu-commission-s-licenses-for-europe-initiative>.

10. It is vital to retain the current contractual freedom to choose whether to licence on a country, multi-territory or pan-European basis, according to real consumer demand, so that the audiovisual sector can continue to develop market-led solutions to shifting consumption patterns. Serious harm could result from intervention – mandating a particular model, or limiting the flexibility of licensing in other ways, would be a blunt instrument that undermines the UK’s ability to invest in the creation of original content and new distribution models to the detriment of consumers and the UK economy. Constraints from any regulatory intervention would ultimately undermine the incentives to finance and invest in the production of audiovisual content or, indeed, inhibit the development of flexible models that the intervention was intended to promote. The marketplace is evolving at an ever increasing pace and the existing copyright framework is no impediment to the delivery of services to meet consumer demand, including on a cross-border basis. This emerging element of the marketplace would be particularly vulnerable to legislative intervention, which is ill-suited to addressing perceived gaps in a changing landscape.

## Questions

1) To what extent is territorial licensing currently used in your sector? Please provide examples.

11. Territorial licensing is still common in the audiovisual sector. Whether or not and when services are made available on a cross-border basis depends on a number of market-driven factors, including market demand and economic sustainability, and is a matter of individual negotiation. We do not have a breakdown of all the complexities of different licensing in the audiovisual sector and how much licensing falls into any particular category. We do not believe that this sort of information is routinely collated. However, we did give some examples of different approaches to licensing in our *Licences for Europe* paper, as well as explaining the factors that are likely to be relevant to licensing choices.
12. Deals reached to finance the making of a film will often involve licensing different types of future exploitation of the film, including exclusive licences for exploitation in different territories. However, providing evidence about licensing and financing for specific productions is, as I am sure the IPO is aware, often commercially sensitive. The IPO may, however, like to note in particular the detail of how the financing for one film was achieved, as explained in our *Licences for Europe* paper. In this example, local distributors’ in particular European territories were willing to pay a premium to have first access to the film.<sup>10</sup>

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<sup>10</sup> See paragraph 4.5 of our response to the *Licences for Europe* paper for comments about Ken Loach’s film, *The Wind That Shakes The Barley* (2006), and the financing Plan for the film in Appendix One, at <http://www.bsac.uk.com/2013.html?download=261:bsac-contribution-to-the-eu-commission-s-licenses-for-europe-initiative>.

2) Why is territorial licensing used in your sector, and what are its impacts? (For example, impacts could include: impacts on prices, the range of content available, the number of member states in which content is available, how and when content is made available in different member states, ability to develop and make available new content).

13. The current legislative framework enabling territorial licensing has a positive impact on the range of content available. In our *Licences for Europe* paper, we pointed out that it would ultimately be the consumer who would lose out from the loss of a culturally diverse range of material in any desire to promote EU-wide distribution of content.<sup>11</sup> For example, in paragraph 3.2, we discussed cultural diversity and the need for audiovisual content to be localised in order to both appeal and be relevant to consumers in local markets. We pointed out the role of exclusivity in supporting the investment needed to deliver this localisation. We then went on, in paragraph 3.3, to explain some of the issues that may militate against a superficially attractive business model of pan-European distribution being the same everywhere. These issues include the need to localise marketing campaigns to the specific cultural context of a territory, and to take different patterns of release, such as by cinema exhibition and broadcast, as well as VoD, into account.
14. Section 4 of the *Licences for Europe* paper then went on to explain the importance of exclusive rights to finance the production of European content. The complexities of raising the considerable finance, which is often needed to produce content, were explored. It also explained how exclusive rights can be used to try and secure the financing needed to produce the high quality audiovisual content that consumers enjoy. The paper therefore pointed out the dangers to the continued production of EU films with any attempts to regulate licensing models. Similar issues apply to TV, notably high-end drama. In paragraph 4.4 of the paper, we explained, with examples, how different films are attractive in different territories and why it is important to assess both risks and opportunities when forming film financing deals. In paragraph 4.5, we explained the importance of building up relationships with local distributors and broadcasters in order to agree financing for production, with a specific example as already mentioned in answer to Question 1. Any restrictions on being able to agree territorial licensing when that is desirable could therefore seriously impact on the finance available to make audiovisual content. In section 5 of the paper, we emphasised the fact that the financing, which makes it possible to make EU audiovisual content, and how it is distributed are inextricably linked. We emphasised that any regulation that removes the current choices regarding licensing would therefore not be in the interests of consumers as it would destroy the economic and financial mechanism

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<sup>11</sup> This conclusion is also supported by the study by Charles Rivers Associates on the ‘Economic analysis of the territoriality of the making available right in the EU’ (March 2014). See at [http://ec.europa.eu/internal\\_market/copyright/docs/studies/1403\\_study1\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study1_en.pdf). For example, paragraph 479 states that “policy changes to limit stakeholders’ ability to exploit online content on a territory-by-territory basis are likely to impact social welfare...” and this is clearly a reference to decreasing social welfare.

that supports the production of quality audiovisual products that European viewers currently enjoy.

15. We noted in section 6 of the *Licences for Europe* paper that smaller independent producers and those producing niche content would be most likely to be affected by any regulation of territorial licensing as they would find it too costly to offer content via pan-EU distribution models. The experience of BSAC Members shows that aggregation of content on a pan-European basis is both capital and labour intensive. As already mentioned, there are many fixed costs, including the insertion of metadata, language versioning (such as dubbing and subtitling), encoding, the need for differentiated marketing and press for each language market and legal compliance (including content classification).<sup>12</sup> These investments need to be replicated for each language/cultural market in which the platform will offer its content to local consumers. The high technical and compliance costs, combined with low revenues, make pan-EU distribution a difficult economic proposition for independent producers and distributors in Europe. For many free-to-air services, the deployment of cross-border access could prove prohibitively costly, owing to the considerable financial outlay required to implement requisite registration and verification systems.

*3) To what extent do prices for the same content vary between different member states in your sector? (Including for consumers and business-to-business transactions)*

*4) What are the reasons for introducing price differentials for the same content between member states? Can you give specific examples of where price differentiation is used?*

*5) If freedom to vary prices between member states were removed or limited, would this impact your pricing structure? If so, how? What would be the likely impact of this on consumers and businesses in the UK?*

16. We do not have access to such data, but would point out that simple comparisons of prices for audiovisual content in different territories should be treated with extreme caution.<sup>13</sup> For example, content first shown by public service broadcasters in one territory is likely to have been paid for very differently to how it would need to be paid for if made available in another territory. The various

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<sup>12</sup> Bomsel and Rosay examined the issue of “mediatisation” – the contextual conditioning of the expression for the consumer – and so provide further explanation of the need to invest in “local/localised” content to respond to local consumers’ demand. See at [http://www.letsgoconnected.eu/files/Study-Olivier\\_Bomsel-Why\\_Territories\\_Matter-FINAL\\_14\\_Oct\\_2013.pdf](http://www.letsgoconnected.eu/files/Study-Olivier_Bomsel-Why_Territories_Matter-FINAL_14_Oct_2013.pdf)).

<sup>13</sup> The study by Charles Rivers Associates, paragraph 349, warns, “Therefore, in weakening the ability of the rightholders to price discriminate, there is a real risk that welfare would be undermined. In our opinion, the uncertain gains associated with the risk of harming dynamic efficiency from a weakening of the ability of the rightholders to discriminate in prices is not in itself a good basis for changes in the copyright framework.” See at [http://ec.europa.eu/internal\\_market/copyright/docs/studies/1403\\_study1\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/1403_study1_en.pdf).

capital and labour costs for a number of technical issues, as we have explained in answer to Question 2, are also very relevant to whether there might be territorial restrictions and different prices in different territories. Whether or not there is consumer demand in a particular territory, and if so, how it might be possible to recoup the investment in making the content available there, will also be relevant. We have, of course, already noted the evidence that there is not a demand for cross-border services for every genre of content on a scale sufficient to support viable businesses.

17. In our response to the EU Commission's consultation on the review of the EU copyright rules we noted that two studies<sup>14</sup> conclude that territorial licensing is still important to the continued success of the audiovisual sector and the preservation of linguistic and cultural diversity, and that regulation imposing cross-border services could mean that consumers would face higher prices. The IPO may therefore find it particularly helpful to look at these studies carefully before it decides that any differences in prices are relevant to the right policy to adopt on cross-border licensing. Any removal or limitation of the freedom to vary prices between member States would certainly impact on businesses in the UK, as well as consumers, with neither impact likely to be advantageous to that group.

*6) Are methods such as geo-blocking tools or specific licence/contract terms used to limit the Member States from which content can be bought (e.g. preventing a consumer based in the UK from buying or subscribing to content available in France)? If so, how are these methods used and what are the reasons for their usage? What proportion of content uses such controls?*

18. As already explained above in answer to the other questions, there are a number of reasons why territorial licensing might be the option chosen, and so various methods may then be used to ensure that the licensing deal that has been agreed gives rise to the expected return. As we noted in paragraph 6.3 of our *Licences for Europe* paper, if, for example, there were to be a requirement to deliver more flexibility in providing cross-border services, this would have to be set against the risk of potential losses in foreign distribution revenues and/or advertising income, a factor which could undermine Europe's competitiveness in content financing and so, in turn, negatively impact the range and quality of content available to consumers.

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<sup>14</sup> See the studies by Olivier Bomsel, at [http://www.letsgoconnected.eu/files/Study-Olivier\\_Bomsel-Why\\_Territories\\_Matter-FINAL\\_14\\_Oct\\_2013.pdf](http://www.letsgoconnected.eu/files/Study-Olivier_Bomsel-Why_Territories_Matter-FINAL_14_Oct_2013.pdf), and Enders Analysis, published by LetsGoConnected, at <http://www.letsgoconnected.eu/studies.php> (October 2013).



7) *In your sector, to what extent can a consumer of content lawfully purchased or subscribed-to in one Member State continue to use it when that consumer travels to another Member State? (For example, can someone lawfully subscribing to a video service in the UK continue to use that service when on holiday in Spain?) If this is not possible, how are these barriers applied and what are the reasons for their usage? What proportion of content uses such barriers?*

19. In paragraph 6.1 of our *Licences for Europe* paper, we indicated that the opportunities for consumers to access their national television services and content while abroad are increasing. For example, we noted that a Mediaset premium subscription permits Italian nationals visiting London to download their favourite content before travelling and view it from any place, thereby individually curating their viewing experiences to their own taste of home grown fare while on the move.
20. We also noted other opportunities for consumers to carry or access pay- or free-to-access content while on the move within the EU, such as the BBC iPlayer which enables UK users to download their favourite programmes from the platform and consume them while away from the UK. For non-UK consumers who wish to access ITV programmes when out of the country, an international catch-up service – ‘*ITV Essentials*’<sup>15</sup> – has been developed. New cloud-based services take advantage of the technology to offer users flexible options to use content while on the move. For example, UltraViolet, a technology platform developed jointly by consumer electronics device manufacturers, content owners and several of the larger international film distributors, provides consumers with the ability to register UltraViolet enabled films and TV content that they have purchased in their personal cloud ‘locker’. The content in a consumer’s Ultraviolet library can be downloaded to a device before travelling, or streamed to a connected device whilst on the move. Services are also appearing which allow consumers to register their existing DVD/Blu-Ray collection in their UltraViolet library.

8) *What would be the impact on your sector of removing the ability to use geo-blocking, contracts, or other tools to control the use of content within the EU?*

21. Our answers to a number of the above questions illustrate the negative impact of any regulation which would remove the choices about how to control the use of audiovisual content in the EU. The comments and evidence in paragraphs 6.5 and 6.6 of the *Licences for Europe* paper are also particularly relevant to content that reflects UK life and culture, where we said the following:

“The high capital costs and the complex technological and compliance issues involved mean that pan-EU distribution may be a very difficult proposition for

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<sup>15</sup> *ITV Essentials* is available on a portable basis across 12 European territories for a monthly fee of €5.49. The service allows consumers to catch-up with certain ITV programmes (where ITV has international rights) via online streaming.

most market players, other than those that are already able to enjoy a high level of integration and scale. Large online video aggregators currently think twice about offers from smaller EU independents because their content is deemed too ‘niche,’ as it is seldom able to attract sufficient traffic. As one independent film distributor puts it bluntly, “*under one million hits, you don’t exist*”. Fewer and larger gatekeepers would drive up prices to the consumer, damage creativity and innovation in EU content production and restrict consumer choice. This would run the risk of confining content from Europe’s smaller languages and cultures to a cultural ghetto. The less competition, the more costly it would be to make available and promote so-called ‘niche’ content to consumers. This outcome would be against the spirit and letter of Article 151(4) of the EU Treaty, which creates an obligation for the European institutions to preserve and promote cultural diversity.

High technical and compliance costs also combine with low revenues to make pan-EU distribution a difficult economic proposition for independent producers and distributors in Europe. The current cost of supplying a digital master for a leading branded online platform is between €800 and €1,500. At an average unit price of between €1 and €3 to the consumer on that platform, (rental or download-to-own), the supplier will need between 400 and 1,000 downloads just to recoup the cost of producing the master. Also, the sales/rental volume would have to hit critical mass before any reasonable return on investment may be expected.”

22. We are not aware of anything that has happened in the last year to alter these most undesirable likely effects of any lack of choice about licensing. Producers and distributors are continuing to introduce new business models that meet EU consumers’ growing and evolving interest in flexible access to content, including cross-border portability and access. This should be encouraged with practical incentives and not rigid regulation requiring a type of licensing that is likely to have a very detrimental impact on all stakeholders.
23. It is important also to remember that the questions raised by the IPO are presumably being asked in the context of deciding the impact of possible changes to the copyright framework. The copyright framework is only one issue relevant to how audiovisual content is made available to consumers, and not one which, for the reasons we have explained, needs to be adjusted. There are, of course, other differences in the legal frameworks of Member States in which audiovisual content might be made available to consumers, such as ratings and taxes, and the impact of these also needs to be taken into account.

## Conclusion

24. The comments in our response of a year ago to the IPO consultation on copyright in Europe are as true today as then. We said that copyright and, more specifically, copyright licensing, is not a problem that needs to be solved by regulatory solutions in order for cross-border business models for audiovisual content to continue to be developed. The current Directives harmonising copyright mean that rights holders retain the contractual freedom and flexibility necessary to approve exploitation of their works in ways that can maximise opportunities for monetisation in their home countries and throughout the EU. Copyright is intrinsically divisible, and the difference between an analogue single market and a digital one is that the latter offers opportunities for plurality, and so much greater choice for consumers. The finance model for European films typically depends upon pre-sales to distributors. This, in turn, depends on an agreed degree of exclusivity to release the finished film – not necessarily in national silos, but more probably in groups of countries according to language (e.g. English rights, French rights, etc.). This system also allows all sorts of local customs, holiday dates and cultural considerations to be taken into account. If the current flexibilities are disrupted, by reducing the ability for individual film titles to be released with an individual plan regarding how they are licensed, then there would be a serious risk of reducing consumer choice and cultural diversity across the EU. Policymakers should therefore tread extremely carefully.
25. We did, however, note some practical measures that might facilitate cross-border availability of content. In the UK, the industry-led work on a Copyright Hub has made significant progress in the last year and should certainly deliver better solutions for some types of copyright licensing. In paragraph 6.7 of our *Licences for Europe* paper we suggested that the EU Commission should explore practical incentives, for SMEs in particular, in their efforts to develop new business models that meet EU consumers' growing interest in flexible access to content, including cross-border portability and access. We suggested that funds from Creative Europe could usefully be reprioritised to support business ventures with pan-European components by offering to share in a number of technical costs, including regarding:
- encoding costs
  - language versioning
  - market research
  - content identification and registration.
26. We noted that the work in the UK linked to development of the Copyright Hub had already identified some of these issues, such as content identification and registration, as important building blocks to facilitate easier copyright licensing. These issues remain part of the agenda as the Copyright Hub is being driven forward. Other issues, such as language versioning, are not relevant unless content is licensed outside its country of origin, but for audiovisual content it is a very important issue if content is to be found attractive across Europe. Producing

different language versions incurs a significant cost and so is a considerable barrier for SMEs.

27. As we have already noted, new business models, using the very latest developments in technology to make content more flexibly available, including cross-border access options, continue to be developed. They are the product of entrepreneurial risk-taking and experimentation by the professional content production, distribution and retail sectors, whose role it is to study consumer behaviour and trial new means of responding to consumer demand. More such innovative offerings for consumers will emerge as demand leads to economically sustainable business models. BSAC believes it is vital to allow the industry to continue to develop market-led solutions to shifting patterns of use by the EU consumer, and not be constrained by regulatory interventions that limit copyright licensing choices.