



## **Response to the Open Letter on the Communications Review**

**June 2011**

1. Directors UK is the professional association for film and television directors in the UK. The organisation is both a collecting society for the distribution of secondary rights payments to directors, and the professional guild providing services and support to members and seeking to protect and enhance the creative, economic and contractual rights of directors in the UK.
2. Directors UK very much welcomes the Government's announcement of its new Review of Communications policy. The fast-changing nature of communications technology and services presents both new opportunities and challenges to the UK creative industries, and it is therefore very important to ensure that regulatory structures and policy initiatives remain appropriate and forward-thinking.
3. We totally support the aim of encouraging innovation and growth, and agree that providing the industry is properly structured, the UK's creative industries have great potential for achieving huge growth, both in new digital markets and the traditional media.
4. Our key priorities for the Communications Review are:
  - a) Maximising value of investment in great British content and creativity
  - b) Fair rewards and effective incentives for British creators
  - c) Nurturing and inspiring new directing talent

### **Maximising value of investment in great British content and creativity**

#### Preventing Talent Migration

5. Much of the government's desired innovation from the creative industries will derive from the ideas and creations of individual authors and creators – writers, directors and producers – meaning it is crucial that individual creators are able to participate fairly in the rewards of success of their creations, and thereby incentivised to commit their careers to creating more great British works.

6. The work of creative talent will always to an extent be divided between work for private and public organisations, but to ensure that creativity is working to the maximum benefit of growth in the UK, the Government needs to be careful to ensure that authors and creators do not feel driven away from the commercial sector through lack of incentive and reward, to the point where they are concentrating solely on projects where the incentives come from critical or artistic acclaim rather than commercial success.
7. We have seen in both our own and other industries how the UK's brightest talents can become disillusioned and decide instead to forge their careers in other countries and/or industries where their talent is fairly rewarded (such as – in the case of directors – the USA).
8. The threat here results from the imbalance of bargaining power between the mainly individuals and small businesses in the creative sector with the result that they are forced to surrender their IP rights to much larger businesses or institutions, through employment contracts that effectively take ownership of their IP rights, which has a number of damaging consequences:
  - a) It does not allow the creator to retain control over where and how they are used
  - b) There is no compensation given for the removal of IP rights over and above what the director is paid for their work
  - c) There is no other reward in terms of payments for any subsequent financial gain from the use of the IP rights
9. This practice affects writers as well as directors, and also many small producers. Its impact is less prevalent for TV productions due to the existence of regulated terms of trade between producers and public service broadcasters, well-developed collective licensing schemes and industry agreements with unions and guilds.
10. Retaining IP rights energises creators to maximise their potential value. The extent to which independent TV producers have used the retention of rights granted in the 2003 Communications Act to distribute more UK content on secondary channels and in particular internationally illustrates the extra success achieved when content creators have control over their own IP rights.
11. In addition, the lack of an equivalent structure for protection of IP in British film productions is a serious problem for the industry, and we would like it to be introduced for those PSBs who invest in film, such as the BBC and Channel 4, alongside those protections extended to terms of trade for PSB Television programmes. This would for example fit neatly with Channel 4's current requirement, as stipulated in the Digital Economy Act, to "support the

12. We also are concerned that this problem may occur in the new digital markets such as VOD, where it proves difficult for individual creators to tap into the various different revenue streams and to deal with some of the very large ISPs.

### BFI

13. We will participate in the Film Forum to ensure that our particular perspective on this is recognised. We also want to work with the BFI to ensure that their film funding strategy and business models ensure fair rewards and incentives for creators, and we would welcome support from the Government to ensure that this is achieved.

### Re-Transmission Fees

14. One anomalous situation in the UK is the fact that there is no standard requirement that payments are made by pay TV platforms for retransmission free-to-air PSB broadcast channels, unlike the position that operates in many countries in the rest of Europe. Were the new Communications Act to require that all pay TV broadcasters pay to carry the PSB channels, this would provide additional funds to those channels. This would represent a valuable incentive to all creator groups – writers, producers, directors, performers, music composers – through both remuneration for use of their works and as funds for investment in new content creation.
15. Similarly proprietary TV platform re-use fees could be introduced to provide further revenue for the PSBs.

### **Fair rewards and effective incentives for British creators**

16. We support the work the Government is doing to bring the Digital Economy Act's enforcement regime into being as soon as possible.
17. Directors UK also welcomes much of the Hargreaves Report, in particular its understanding of the need to sustain fair rewards for creators, and for the continuing fight against IP theft, which represents a huge threat to the creative industries:

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<sup>1</sup> Excerpt from Digital Economy Act 2010:

**22 Functions of C4C in relation to media content**

- (3) In performing their duties under subsections (1) to (3) C4C must—
- (a) support the development of people with creative talent, in particular—
    - (i) people at the beginning of their careers in relevant media content or films, and
    - (ii) people involved in the making of innovative content and films

'In copyright, the interests of the UK's creative industries are of great national importance. Digital creative industries exports rank third, behind only advanced engineering and financial and professional services. In order to grow these creative businesses further globally, they need efficient, open and effective digital markets at home, where rights can be speedily licensed and effectively protected.'<sup>2</sup>

18. We agree with Prof Hargreaves that rights owners must facilitate a much simpler IP rights licensing regime (for example the report's Digital Copyright Exchange proposal) that makes it easier for new digital businesses to obtain fair licences through a simple procedure, and the creators and authors (in this context authors refers to both writers and directors) of the works used obtain a fair reward. Directors UK is working with fellow societies in Europe to facilitate the development of such a scheme that would enable licences to be granted for services operating across national boundaries in Europe. We would also urge the Government to support a multi-territory licensing system that incorporates the fair remuneration for authors in the forthcoming EC green paper on online distribution of AV works (due out in July), so that we can arrive at arrangements that operate efficiently and seamlessly across Europe.
  
19. The value of film production activity in the UK from inward investment demonstrates the vital need to ensure that the UK's talent base remains attractive for non-UK producers, both in terms of facilities and resources but also for creative talent. The vast majority of creators and authors are now freelance i.e. pursuing their careers outside a company/employment structure. Their careers are often characterised by long periods where they are not paid while they develop and research new projects at their own risk. We note the moves that the Government has already made to alter certain aspects of the corporate tax regime in the UK with a view to incentivising spend on R&D, and would like the government to explore the possibility of extending similar ideas to individual creators through the personal tax system so that authors are incentivised to invest their time in the development of strong and innovative creative ideas.
  
20. We are also concerned with the unexpected consequences of the HMRC's '9-month rule'. This rule, whereby any freelance worker in the film and TV industries whose contract extends beyond 9 months is deemed to have PAYE tax status, is causing producers and broadcasters to limit contracts to 9 months maximum, even if the project has a natural life of one year. As a result, a director who is quite clearly a freelance worker has to take an enforced and artificial 3 month period of unemployment, and is denied the opportunity to complete the natural cycle of employment on that project. This measure was originally introduced, we believe, to prevent the avoidance of PAYE by workers who claimed to be self-employed, but in practice now it is having the effect of an additional and unfair penalty on workers who are clearly freelance and have no claim to employed status. Directors

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<sup>2</sup> Hargreaves, Prof. Ian. Digital Opportunity: A Review of Intellectual Property and Growth. May 2011, p3

UK would therefore like to see the 9-month rule altered in the case of the film and Television industry, to remove this unnecessary and harmful effect.

### Nurturing and Inspiring New Talent

21. We are great supporters of the work of Skillset in developing the skills base of creative industries. However, as a professional association we – along with others in the industry – need to offer continuing support to our members in their professional development throughout their careers, and not just at the start.
22. Directors UK recognises the opportunity for all the key professional groups and institutions to work more closely on this aspect of our work. We include here two examples of this:
  - a) Many groups operate or are considering talent mentoring schemes that bring together young people at the start of their careers with senior and eminent colleagues to share experience and provide inspiration, but it can be hard to devote sufficient resource to individual schemes and to ensure that there is consistent delivery of excellence of the outcome of such schemes. We would like support from the government to bring industry groups together to consider ways of making all our schemes more effective. We understand that funds managed by BIS to support initiatives designed to raise the skills levels could be available for suitable schemes and we think this is a great opportunity for different sectors of the industry to come together with proposal that the government can support.
  - b) Directors UK is trying to ensure that activity designed to identify and develop new talent is applied across the country. This is important not only to ensure that all potential talent has the opportunity wherever it is based, but also that a range and diversity of UK voices is present both behind and in front of the camera. We are liaising with bodies such as Creative England to make this a reality, and will also be having similar with screen agencies.