

## GREEN PAPER - UNLOCKING THE POTENTIAL OF CULTURAL AND CREATIVE INDUSTRIES

### European Commission public consultation

July 2010

#### Putting in place the right enablers

##### *New spaces for experimentation, innovation and entrepreneurship in the cultural and creative sector*

1. How to create more spaces and better support for experimentation, innovation and entrepreneurship in the CCIs? More particularly, how to increase access to ICT services in/for cultural and creative activities and improve the use of their cultural content? How could ICTs become a driver of new business models for some CCIs?

The Society of Audiovisual Authors is a new association of European collective management societies representing audiovisual authors. Through its 24 members in 17 countries, SAA represents over 100 000 film and television European screenwriters and directors ([www.saa-authors.eu](http://www.saa-authors.eu)).

SAA's main objectives are:

- To defend and strengthen the economic and moral rights of audiovisual authors (screenwriters and directors);
- To secure fair remuneration for audiovisual authors for every use of their works;
- To develop, promote and facilitate the management of rights by member societies.

SAA has joined the Platform on the Potential of Creative and Cultural Industries in 2010 and endorsed the recommendations the Platform issued in September 2009 in preparation of the Green Paper ([http://ec.europa.eu/culture/our-policy-development/doc/platform\\_CCI\\_paper.pdf](http://ec.europa.eu/culture/our-policy-development/doc/platform_CCI_paper.pdf)). In this context, SAA is disappointed that four important issues addressed in the recommendations made by the Platform are not developed in the Green Paper, whereas they are central to the European cultural and creative industries:

- The Green Paper focuses a lot on the importance of SMEs in the cultural and creative sectors and addresses their particular challenges, while it neglects the individual creators and the problems related to their status, rights and social and tax environments.

- Authors' rights are very briefly mentioned and their challenges not addressed, while they are an essential enabler for artistic creation and represent the key system of protection of works, allowing their exploitation by the cultural and creative industries and rewarding the authors.
- The long-standing claim from the cultural and creative industries to provide reduced VAT rates for all cultural products and services, both online and offline, is not even mentioned in the Green Paper.
- The cultural exchanges and international trade chapter does not reflect the current discussions on the cultural cooperation protocols annexed to international agreements neither, whereas they aim at promoting the implementation of the UNESCO convention on the protection and promotion of the diversity of cultural expressions, which is the unique international instrument which recognizes the role of cultural and creative industries in the promotion of cultural diversity.

SAA's contribution aims therefore at reintroducing these issues in the discussion on unlocking the potential of European cultural and creative industries and at answering the questions of the public consultation which are relevant to its field of activity.

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The Green paper assesses that the ICTs open up new opportunities for creators to produce and distribute their works to a wider public at a lower cost, independently of physical and geographical constraints. Except in theory, this is not completely true. Obviously ICTs open up new opportunities for the creative and cultural industries and in particular creators, notably in artistic terms, but this does not happen without any constraints, at least in the film and audiovisual sectors. Scriptwriters and directors can hardly create films on their own; they need to work with a team of talents and technicians. Even if digital technologies have reduced the weight of technical material, scriptwriters and directors need minimal funding to make their film project become true. According to the European Audiovisual Observatory, in the five biggest markets of the EU (France, UK, Germany, Italy and Spain), the average budget for a film was still € 4.58 million in 2008, even if budgets have dramatically decreased in many countries since 2008.

In this context, public funds are becoming increasingly important: we observe the proportional intensification of the share of public funds in the financing of the whole cinematographic and audiovisual value chain. It is therefore of a tremendous importance that these public funds are secured both in terms of legacy regarding the EU state aids' rules (see the conclusions of the Belgium EU Presidency seminar on support to European cinema ([http://www.audiovisuel.cfwb.be/index.php?id=avm\\_mons2010en](http://www.audiovisuel.cfwb.be/index.php?id=avm_mons2010en))) and in terms of resources made available.

Scriptwriters and directors consider the ICTs to be a driver for innovation. They experiment the full potential of digital tools on a daily basis, using them either to create interactive works or new formats like 3D. Unfortunately, it is on the exploitation side that the ICTs fail today to develop real opportunities. Online digital networks have not proved to be great vectors of distribution of European audiovisual works to the benefit of creators yet, both in terms of availability of works and of revenues. The high level rate of online piracy and the concomitant internet users' habit for free content make it difficult to develop online audiovisual services with high quality professional European audiovisual works.

An important measure to improve the use of creative and cultural content online, in particular audiovisual works, would be to reduce VAT rates for all cultural products and services, both online and offline, as mentioned in the introduction as a central proposal of the Platform's recommendations and a long-standing claim from the cultural and creative industries. Indeed, it is economically inconsistent for the EU to allow reduced VAT rates for traditional exploitation of films in theatres and on TV and to apply a full rate on video on-demand, while at the same time calling for a vibrant digital single market (see the European Commission

Communication on a Digital Agenda for Europe of 19 May 2010). A full VAT rate on online cultural products and services is an important lock which prevents the take-up of audiovisual medias services online. This aspect has been recently highlighted by the preliminary results of the KEA and CERNA study on multi-territorial licensing for the online distribution of audiovisual works in the EU commissioned by the European Commission ([http://www.keanet.eu/docs/stakeholderworkshopslides2june2010\\_updated.pdf](http://www.keanet.eu/docs/stakeholderworkshopslides2june2010_updated.pdf)).

In addition, the call for innovation and experimentation in the cultural and creative industries should not be an excuse for the questioning of some fundamental principles for the basic functioning of the cultural and creative industries, such as the respect and enforcement of authors' rights online. SAA rejects the idea that internet and the massive development of intellectual property infringing activities online, in particular via peer-to-peer networks, make the possibility and thus the need to protect intellectual property online obsolete. On the contrary, digital technologies which make it so easy to copy and disseminate works call for increased education on the nature and value of intellectual property rights. Creators need and deserve the same level of protection online and offline.

Finally, the Green Paper acknowledges that the economic value is being displaced towards the end of the chain, which affects the effective reward for creation.

Payment of royalties to authors should take into account these factors and stop being mainly based on the production conditions with buy-out payments, as it is the case in many countries. ICTs allow the establishment of new systems of remuneration for audiovisual authors based on the revenues of the exploitation. Collective management societies representing audiovisual authors are proposing to develop in cooperation with the online operators the ICTs' tools to guarantee payments to audiovisual authors.

The improvement of the payments to audiovisual authors in relation to the exploitation of their works should therefore be a priority of the European Commission in order to unlock the potential of the European cultural and creative industries and develop a sustainable remuneration system for audiovisual authors. SAA has made a proposal for the establishment of an unwaivable right to fair remuneration for audiovisual authors proportional to the revenues of the exploitation in EU legislation, even when exclusive rights have been transferred ([http://www.saa-authors.eu/dbfiles/mfile/700/717/SAA\\_Contribution\\_EC\\_Reflection\\_doc\\_Content\\_Online.pdf](http://www.saa-authors.eu/dbfiles/mfile/700/717/SAA_Contribution_EC_Reflection_doc_Content_Online.pdf)). This would secure for authors a financial reward proportional to the real exploitation of the works. SAA believes that the best way to ensure payments to audiovisual authors is to organise the collective management of this right. The objective is to bypass the intermediaries of the contractual chain who block the upturn of the revenues to the authors and to establish a direct stream line between the exploitation stage and the audiovisual authors.

### ***Better matching the skills needs of CCI***

2. How to foster art and design schools/business partnerships as a way to promote incubation, start-ups and entrepreneurship, as well as e-skills development?
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No comment.

3. How could peer-coaching in the CCI be encouraged at the level of the European Union?
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No comment.

## Access to funding

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| 4. How to stimulate private investment and improve CCIs access to finance? Is there added value for financial instruments at the EU level to support and complement efforts made at national and regional levels? If yes, how? |
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At the moment, the digital shift has far greater consequences for the audiovisual sector compared to other related sectors, as it seems to require a fundamental restructuring of the industry's financial mechanisms. But just as the audiovisual industry finds itself in a state of transition from old business models to new ones, the global financial crisis has caused Member States to cut state aid to production of new films; broadcasters pay less for screening rights due to competition with internet for advertising revenue, corporate sponsorship sharply decreases, and private investors invest more conservatively - if at all.

Therefore, the backbone of financing for the audiovisual industry in Europe is – and must continue to be - public funding.

SAA supports the MEDIA programme of the European Commission which complements the national and regional funds for the audiovisual industry in order to foster the competitiveness of the European industry, the circulation of cinematographic and audiovisual works and cultural diversity. It particularly cares about the development and video on demand action lines.

Regarding development, it is generally admitted that scriptwriting is underfunded in Europe. Yet, this stage which is essential in shaping the project is not properly taken into account in the framework of the development support granted to production companies. Therefore, in view of the next generation of programmes after 2013, SAA would encourage the MEDIA programme to find a better balance between writing and development. Development support should also be aimed at improving the circulation of scripts, particularly with a view to co-production.

Regarding the current difficulties for video on demand to take up, as mentioned in the first question due to online piracy, lack of business models and licensing issues, it is important that the MEDIA programme supports European video on-demand platforms which display European cinematographic and audiovisual works to a multi-territorial audience. It would be useful to reinforce this action line in two directions:

- support the digitisation of European cinematographic and audiovisual works to foster their online availability on these platforms;
- facilitate the licensing process across borders and decrease transaction costs by promoting rights' aggregation, catalogues, rights' registries and one stop shops (see the preliminary results of the KEA and CERNA study mentioned in the answer to the first question). Linked with the proposal made in the answer to the first question for an audiovisual authors' payment system organised at the exploitation stage by collective management societies, this would foster the online availability of European cinematographic and audiovisual works.

The Green Paper further remarks that “the global digital shift reinforces the position of important stakeholders such as telecom companies or consumer electronics manufacturers, and coincides with the emergence of new strong global players such as search engines and web based social platforms which while making significant contributions to the development of the market place – can potentially act as new gatekeepers.”

It would therefore be reasonable to require any audiovisual media services that profits from European audiovisual works to invest a fair share of their turnover in the production of new works by for instance contributing to national film and audiovisual production funds, in line with Article 13 of the Audiovisual Media Services Directive.

5. How to improve the investment readiness of CCI companies? Which specific measures could be taken and at which level (regional, national, European)?

No comment.

## Local and regional development as a launch pad for global success

### *Local and regional dimension*

6. How to strengthen the integration of CCIs into strategic regional/local development? Which tools and which partnerships are needed for an integrated approach?

No comment.

### *Mobility and the circulation of cultural and creative works*

7. What new instruments should be mobilised to promote cultural diversity through the mobility of cultural and creative works, artists and cultural practitioners within the European Union and beyond? To which extent could virtual mobility and online access contribute to these objectives?

The cinematographic and audiovisual sectors already benefit from two EU instruments aiming at promoting cultural diversity through the circulation of audiovisual works, which are known to play an important role in enhancing intercultural dialogue and mutual understanding, two key elements to build a European common identity and citizenship. The first one is the MEDIA programme, some elements of which have already been discussed in the answer to question 4. The second is the Audiovisual Media Services Directive which took over from the Television without Frontiers Directive.

Apart from the development' scheme and support to video on-demand services addressed in the answer to question 4, the MEDIA programme also contains important action lines for the distribution of films outside of their territory of origin, for the film promotion and festivals. These action lines are essential to help films and audiovisual works to circulate out of their country of origin and to give the opportunity to a foreign audience to discover and access European films. In this context, support to sub-titles and dubbing of audiovisual works is also important to facilitate this circulation.

Article 16 of the codified version of the Audiovisual Media Services Directive maintains the broadcasting quotas of European audiovisual works defined in the Television Without Frontiers Directive, while Article 13 adapts them to the specificities of the on-demand services. Article 13 provides that Member States shall ensure that on-demand audiovisual media services promote the production of and access to European works. Such a promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered.

Recital 69, which notes that on-demand audiovisual media services “*should, where practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity*” proposes a third measure of support for European works: the attractive presentation of European works in electronic programme guides.

The Directive does neither provide any figures for the financial contribution nor for the share and/or prominence of European works in the catalogues. Member States should nevertheless include such recommendations in their national law by providing the minimum figures that should be met. It is up to the Member States to determine this share and the level of the financial contribution according to the local characteristics of their markets.

The financial contribution of on-demand services could consist of the obligation to invest a share of the turnover of the service concerned in the production and rights acquisition of European works (the investment rate could increase according to the turnover) and/or to contribute to the national film and audiovisual production fund, following the existing obligations of broadcasters in a number of European countries. Alternatively or simultaneously, catalogues should contain an important proportion of European works.

Detailed indications, including figures where possible, will be necessary to make these obligations concrete and allow a follow-up at European level. Unfortunately, it appears that the implementation of Article 13 of the Directive in the Member States rarely includes figures to be met by the on-demand audiovisual media services.

At this stage, it seems that only a few countries have set a mandatory minimum share for European works in the catalogues of programmes offered: the Spanish law of 31 March 2010 stipulates that 30% must be European works, of which 50% Spanish, while the French draft decree to implement the law of 5 March 2009 requires a 60% share for European works and a 40% share thereof for French works in catalogues (the proportions are the same as those set for the broadcasting quotas).

The digital market will not automatically deliver diversity. There is no inherent diversity and big companies and new online gatekeepers have no economic interest in providing such diversity. Therefore, SAA strongly supports Article 13 of the Directive and calls for its strict and careful implementation by all Member States. It believes that, unless encouraged by financial incentives or regulatory measures, most of the online platforms would only market what is currently available in cinemas and would neglect this incredible opportunity that the online exploitation of European works represents for the circulation, visibility and success of European cinema and audiovisual programmes.

Another important element for the circulation of audiovisual works is co-production. A film being considered national in several Member States has greater chances to find its way to the audience in the co-production countries, being promoted by a native producer in each territory. It is therefore important that funding schemes at national level allow and encourage co-productions.

The authors and artists' mobility is not addressed by the MEDIA programme as such. European audiovisual professionals can benefit from training programmes supported by MEDIA but these programmes do not aim at fostering their mobility in particular. It therefore seems that the best mobility plans for audiovisual authors are co-productions, which combine teams of talents and technicians of the co-production countries. At the development stage, one can also imagine residences and cross-residence schemes for audiovisual authors to develop projects in a multi-cultural environment.

### ***Cultural exchanges and international trade***

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| 8. Which tools should be foreseen or reinforced at EU level to promote cooperation, exchanges and trade between the EU CCIIs and third countries? |
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SAA has been surprised to discover that the Green Paper did not mention in its chapter on cultural exchanges and international trade the cultural cooperation protocols annexed to international agreements. Whereas the Green Paper explains that “the EU’s perspective in

international cultural exchanges and trade is framed by the 2005 UNESCO convention on the protection and promotion of the diversity of cultural expressions”, it fails to explain the European Commission’s strategy of negotiating cultural cooperation protocols in bilateral or regional trade agreements, although they are presented as implementation tools of the UNESCO convention.

Since 2008, the European Coalitions for Cultural Diversity have alerted the European cultural sector and interpellated the European Commission’s representatives on the danger of a systematic inclusion of cultural cooperation protocols in bilateral trade agreements (<http://www.coalitionfrancaise.org/wp-content/uploads/2009/11/Barroso-Coree-18-03-09.pdf> and <http://www.coalitionfrancaise.org/wp-content/uploads/2009/08/declaration050509.pdf>).

In 2009, the French Coalition for Cultural Diversity has been invited by the French Ministry of Foreign Affairs to discuss the issue and to elaborate with the French administration a communication calling for a new European Union external cultural strategy ([http://www.coalitionfrancaise.org/eng/wp-content/uploads/2009/12/comm\\_fr\\_strat\\_culturelle\\_ext\\_eng.pdf](http://www.coalitionfrancaise.org/eng/wp-content/uploads/2009/12/comm_fr_strat_culturelle_ext_eng.pdf)).

The conclusions of this communication are shared by the European Coalitions for Cultural Diversity and SAA. It sets the guidelines for the negotiation of specific frameworks for cultural cooperation and develops a strategy of negotiation that is both comprehensive and differentiated, ensuring the autonomy of the cultural sector and the implementation of an ambitious and coherent European cultural policy.

At meetings with representatives of European Commissioners De Gucht and Vassiliou in May 2010, the European Coalitions for Cultural Diversity were reassured that the Commission heard the concerns of the cultural sector and changed its strategy in order not to repeat the cultural cooperation protocol annexed to the EU/South Korea free trade agreement in other negotiations. However, no communication presenting this new strategy has been published yet, so the details of this new strategy and the responsible administrations, both at EU and national levels, remain unclear.

SAA calls therefore on the Commission to publish the new strategy as soon as possible and to open a specific civil society public consultation process on this issue.

In addition, in the audiovisual sector, tools for cultural exchanges are now in place. The MEDIA Mundus programme aims at strengthening cultural and commercial relations between Europe’s film industry and professionals of third countries ([http://ec.europa.eu/culture/media/mundus/index\\_en.htm](http://ec.europa.eu/culture/media/mundus/index_en.htm)). The EU provides €15 million of funding from 2011-2013 for projects submitted by audiovisual professionals from Europe and from third countries.

## **Towards a creative economy: the spillovers of CCIs**

9. How to accelerate the spill-over effects of CCIs on other industries and society at large? How can effective mechanisms for such knowledge diffusion be developed and implemented?

The economic spill-over effects of cultural and creative industries on other industries and society at large are well-known and widely recognised. The Green paper quotes figures from the study on the economy of culture in Europe conducted by KEA for the European Commission in 2006 and from the UNCTAD 2008 report on Creative Economy.

A more recent study conducted by TERA Consultants in March 2010 for the International Chamber of Commerce shows that the core creative industries in the EU27 are estimated to

generate almost €560 billion in value added in 2008, which represent a contribution of 4.5% of the total EU GDP. If we add the non-core creative industries, such as the manufacture and sale of hardware and non-dedicated industries such as transport, the value added is approximately €860 billion, representing an estimated 6.9% share of EU GDP. In terms of employment, the core creative industries account for 8.5 million of jobs in 2008 or 3.8% of the total workforce. With the non-core creative industries, employment is 14 million or 6.5% of the total EU workforce. A principal goal of the study was to evaluate the economic consequences of digital piracy on the creative industries. It estimates that approximately €10 billion and more than 185 000 jobs were lost in Europe in the creative industries due to piracy in 2008 ([http://www.teraconsultants.fr/assets/publications/PDF/2010-Mars-Etude\\_Piratage\\_TERA\\_full\\_report-En.pdf](http://www.teraconsultants.fr/assets/publications/PDF/2010-Mars-Etude_Piratage_TERA_full_report-En.pdf)).

The European Commission should commission its own studies based on a clear and well accepted methodology to monitor on a regular basis the economic weight of the cultural and creative industries and its spill-over effects on other industries and society at large. This would be the most efficient mechanism for the diffusion of such knowledge among the Directorates General in charge of other policies, as a basis for an efficient implementation of article 167.4 of the Treaty (ex-article 151 EC).

Against this background, the Green Paper announces that the Commission will be working on three major policy frameworks: the Digital Agenda for Europe, the “Innovation Union” flagship initiative and the Strategy on Intellectual Property (p. 7 and 8 of the Green Paper). However, as mentioned in the Platform recommendations, the effective implementation of article 167.4 should be ensured through the mainstreaming of culture in all Communities policies, particularly in competition, internal market, information society, social affairs, trade and industry policies. It is then up to DG Culture and Education, with the support of the President of the European Commission, to put in place the appropriate mechanisms to ensure such an effective implementation in other policies.

However, we noted with great disappointment that the European Union Strategy 2020 published on 3<sup>rd</sup> March 2010, which defines and sets the course of the evolution of the EU over the next 10 years, unfortunately neglects the significance and importance of culture in the economic and social development of Europe. A letter signed by prominent artists, among others Peter Brook, Mike Leigh, Alan Parker, Andrzej Wajda, Krzysztof Zanussi, Jiri Menzel, Richard Eyre, Liliana Cavani, Marco Bellocchio, Pedro Almodovar has been sent to the President of the European Commission on this issue, to echo a letter addressed by three Ministers of Culture – Bernd Neumann for Germany, Frédéric Mitterrand for France and Bogdan Zdrojewski for Poland - in June to Commissioner Vassiliou with a similar appeal.

10. How can "creative partnerships" be promoted between CCIs and education institutions / businesses / administrations?
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The Green Paper rightfully mentions that cultural and art education has an important role to play in maximising the links between culture and education so as to promote creativity in a life-long perspective and that media literacy education is also important to promote participation in the cultural life of society as the medias are very important means for the distribution of cultural content.

It should be added as mentioned in the answer to question 1 that digital technologies which make it so easy to copy and disseminate works call for an increased need for education on the nature and value of intellectual property rights. In this context, SAA with many other rights holders' organisations call for intellectual property education and awareness campaigns addressing the nature and value of intellectual property rights in schools, universities, businesses and administrations.



11. How to support the better use of existing intermediaries and the development of a variety of intermediaries acting as an interface between artistic and creative communities and CCIs on the one hand, and education institutions / businesses and administrations, on the other hand?

Collective management societies of authors' rights are both full actors of the cultural and creative industries taking into account their role and activities, and intermediaries between the authors' community on the one hand and businesses, administrations and education institutions which make use of their works on the other hand.

As mentioned in the introduction, SAA has been established in order to defend and strengthen the economic and moral rights of audiovisual authors (screenwriters and directors), to secure fair remuneration for audiovisual authors for every use of their works and to develop, promote and facilitate the management of rights by member societies. In this context, SAA would like to highlight the great yet unused potential of collective management for authors' rights in the audiovisual sector.

In instances where the individual enforcement or management of rights would not be appropriate due to the large number and variety of uses of a work, rightsholders have chosen to have their rights represented collectively through collective management societies. The societies negotiate and collect rights payments from the various private and public entities that use protected works and distribute them to rights holders. The societies also defend the interests and rights of authors.

The multiple exploitations of audiovisual works through so many different medias make it impossible for audiovisual authors to monitor these exploitations and the remunerations they are entitled to in the different EU countries. In addition, these multiple exploitations are very often made by different businesses which acquire the rights of exploitation after a long contractual chain with many intermediaries, which make the upturn of the revenues to the authors difficult or impossible.

In this context, SAA is committed to securing in EU legislation an unwaivable right to fair remuneration for audiovisual authors for each exploitation of their works, even when exclusive rights have been contractually transferred to the producer. SAA believes that the collective management of this right is the only way to ensure that audiovisual authors receive this fair remuneration, as collective management societies are the only structure able to establish a direct stream line between the exploitation stage and the audiovisual authors.

The European Commission announced in its communication on a Digital Agenda for Europe key actions to simplify copyright clearance, management and cross-border licensing, such as a framework directive on collective rights management and a Green Paper addressing the opportunities and challenges of online distribution of audiovisual works.

In the discussion of these initiatives, SAA would like to stress the objective of best governance and transparency of collective management societies, which are fully accountable to their members on all matters. Audiovisual authors' societies consider that they aim to conform to best standards on governance and transparency and endorse any initiative to achieve this. Best governance and transparency are essential for collective management societies to administer rights on behalf of authors, in particular if they want to play a larger role in the audiovisual sector, as it is the case for SAA members.