



## **Review of Intellectual Property and Growth: Call for Evidence**

### **Response from British Equity Collecting Society Limited**

1 March 2011

The British Equity Collecting Society Ltd (BECS) was set up by Equity (the UK trade union representing professional performers and other creative workers) in 1998.

It is a collecting society that administers performers' remuneration for their work in films and television programmes due from rental, retransmission and certain other exploitation of such works.

BECS represents actors, singers dancers and other performers who perform in any way, other than musicians. Since 1998 it has paid out more than £30 million in revenue to performers.

Growth in levels of distribution has been significant over the last 12 years.

BECS therefore welcomes the opportunity to respond to the Call for Evidence.

Due to the copyright nature of the interests of its members, BECS will respond to the questions in the Call for Evidence linked to Copyright rather than other intellectual property.

## **Copyright**

**1. Is there evidence from other national frameworks to suggest how the UK (and EU) copyright systems could better support innovation?**

- **e.g. comparisons with the USA's system (including "fair use") along with other jurisdictions in Asia and Europe.**

International Copyright Treaties support innovation around the world.

Challenges to innovation, and investment in innovation, arise more from lack of protection for copyright works and unauthorised use, than from application of the rights recognised by International Treaties.

Piracy and unauthorised use emanating from territories where levels of protection and/or levels of enforcement are weakest is an increasing threat to long term growth.

This often occurs when the framework for protection, recognised by International Treaties, is not adopted or implemented by individual countries.

**The EU (including the UK) has generally acknowledged levels of protection for copyright works which provide a strong example for others to follow.**

**Levels of protection for audiovisual performers need improvement at international level. BECS has therefore long supported the adoption of a WIPO Treaty for the protection of Audiovisual Performers.**

The EU and UK framework therefore potentially supports copyright recognition linked to all innovation. More practical problems arise when one innovator wishes to use the work of another without being prepared to pay the price that the seller or licensor wishes to secure.

**For individuals, practical problems in day to day business include difficulties in attracting business loans to support individual or SME creative innovation. In addition many individual creators lack general business training to support their vocation. Working alone, or within very small companies, they have no access to the business support functions that exist within larger corporations. These practical issues are not problems with the copyright framework.**

Rather than changing the copyright framework which supports the potential to secure rewards and growth from innovation, efforts should be concentrated upon improving the business environment within which creative businesses operate.

Attracting investment which supports the work of creative individuals who work within the UK will be the key to growth.

Removing rights from one copyright owner to allow another party to profit from use of the property of the other, is not going to promote innovation or investment in innovation, in the longer term.

Instead it will promote a "dog eat dog" charter which may in the short term only benefit large international companies over the interests of individual and SME innovators.

Initially, grass roots of innovation driven by individual creators and performers will be stifled and removed by companies further up the food chain. Without copyright protection applying to those who initially profit from "taking" the rights of others to support their own innovation, the new companies will have no firm foundations on which to grow and secure further investment.

With copyright protection in place, has this happened? In some cases, larger companies have "tested the market" by acting without clearances from underlying rights owners.

Court cases have ensued and resulted in significant legal costs being incurred by all sides.

However, recognition of copyright protection within the UK has generally prevented this "sue if you dare" approach from becoming the norm. Instead, new forms of exploitation and new forms of licensing opportunities have emerged for the benefit of rights owners and consumers.

In addition, the UK approach of defining the scope of copyright exceptions and limitations within legislation (rather than leaving courts greater scope to assess application of an exception against a "fair use" test) has helped to reduce litigation between rights owners and users.

This has been particularly important within markets that are linked to those where some use is covered by accepted copyright exceptions. Non-commercial educational use is an example.

However, within the market for educational use of copyright works and performances, opportunities to license use of copyright apply in fewer cases than opportunities for third parties to "use" a right under provision for "exceptions or limitations", then the "exceptions" become the norm.

Effective growth from rights will therefore be stifled.

International recognition of the requirement for exceptions only to apply in special cases which do not conflict with the normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the right holder, is therefore as valid today as it has ever been.

The US approach of applying a "fair use" doctrine to certain exceptions still has to be read in the light of the three step test. However the "fair use" approach leaves rights owners and users much more exposed to "legal interpretation" around the scope of individual exceptions. "Fair use" is less certain than the EU approach to defining the scope of exceptions more clearly.

This reduces litigation and legal costs, whilst ensuring that systems for fair compensation and licensing can operate where the scope of a definition might otherwise be uncertain for rights owners or users.

In terms of the application of copyright exceptions, the UK approach of providing for "conditional" copyright exceptions in certain circumstances, has proved of appeal to both rights owners and users.

In agreed circumstances, where the scope of an exception may or may not go beyond the scope permitted by International Copyright Treaties legislation, providing for a conditional exception which applies only in circumstances when rights holders do not offer a licensed alternative, promotes effective licensing that avoids unnecessary disputes over the possible scope of the relevant exception.

By way of example, the licensing scheme that has been certified under s 35 and paragraph 6 Schedule 2 Copyright, Designs and Patents Act 1988 by The Educational Recording Agency (ERA) to cover recording of radio and television broadcasts and subsequent non-commercial educational use within educational establishments, has proved successful in bringing together a uniquely broad range of rights owners to license rights in a specific field (see [www.era.org.uk](http://www.era.org.uk) ).

In this capacity, BECS is aware of the support that ERA has given to developing the scope of s 35 and paragraph 6 Schedule 2 CDPA to support educational use of extracts from licensed recordings, and facilitating use of licensed recordings for distance learning by students when working from home.

Practical steps for changing the scope of s 35 and paragraph 6 Schedule 2 CDPA have been (and continue to be) debated with the IPO. On the back of these discussions, ERA has launched a licensing scheme known as ERA Plus (particularly targeted as assisting distance learning).

Development in the application of copyright exceptions in this way can promote and support access to copyright works, whilst providing fair compensation to rights owners and certainty for users over the scope of licences.

**Examples such as the ERA licensing show that it is important for the copyright framework to be flexible to allow for the development of interpretation of copyright exceptions as new technologies emerge and new licensing models for the use of copyright become established.**

Nevertheless, it remains important that evolution of exceptions follows technological advances. Proposing general copyright exceptions for, say, “electronic learning” before services for the supply of educational services on-line have become established creates a danger that opportunities driving investment in such new services (and securing a return on investment for content created for the service) will be reduced.

Against this, there are challenges facing new users in seeking to identify and secure licences from identified rights owners, particularly when collective licensing bodies do not exist to cover licensing certain uses of specified types of work.

BECS is a member of the British Copyright Council (BCC). BECS supports the BCC proposal for development of a UK licensing solution for orphan works based upon use of collecting societies operating licensing schemes which are certified for the purposes of s 143 CDPA.

BECS would refer to the BCC response to the Call For Evidence for further details.

Whilst it is important for the UK to take a lead in new copyright licensing initiatives (such as the BCC orphan works licensing proposal) in the area of authorisation for non-commercial private copying (or format shifting), the UK is at a disadvantage to most Member States within the EU. This is because the UK has failed to provide for systems of fair compensation to cover format shifting and private copying for private and non-commercial use.

Statutory licensing solutions are available in most EU member states to provide for compensation to be paid to rights holders.

BECS members benefit from payments collected within other EU Member States (see BECS Distribution Facts and Figures below).

Rather than seeking to introduce new more vague concepts underlying “exceptions” to use, the UK government would do more to promote growth within the creative industries if licensing solutions are promoted linked to the delivery of fair compensation for rights owners.

## **2. Are markets involving copyright more competitive in any other countries, while still providing satisfactory incentives to creators and investors?**

BECS believes that recognition of an exclusive right for performers to consent to the electronic “making available” of a recorded performance on demand has been vital to ensuring that audiovisual performers within the UK have received some payment for the use of their work within a number of new online services , which were not even thought of 20 years ago.

The way that the exclusive rights have been linked to collective bargaining agreements for audiovisual performers within the UK, has been important for growth.

In countries with poor collective bargaining representation, assumptions have been made over the transfer of rights to producers, prompting support for provision of a right to “right to remuneration” for the exercise of the making available right, rather

than contractually negotiated payments that can better reflect the true value of consents secured against profits/returns from use within individual new services.

The relative strength of collective bargaining representation for performers within the UK has helped to ensure that "fair compensation" for performers has been paid for use of performances in new services, during recent years (see reference to Distribution Facts and Figures below).

This approach has a number of advantages over provision for a mere right to "equitable remuneration" for the making available of audiovisual performances in on demand online services.

In particular, where the actual value of new online uses cannot be easily identified before a recording including audiovisual performances has been made, a negotiated approach to fixing payments if and when rights are to be exercised, avoids overweighting up front payments within budgets for new productions.

The "costs" of underlying copyright clearances can then be spread to link with different types of exploitation, with payments to rights owners being fixed by agreement with producers and performers, but collection and distribution of payments being handled through appointed collecting societies.

In this context BECS has welcomed and supported moves to :-

(a) ensure that the "making available right" operates effectively and "is truly beneficial for performers";

(b) enable collecting societies to play an appropriate role in enabling the identification of performances fixed in sound recordings and films which are made available on demand; and

(c) enable collecting societies to play an effective role in the allocation and distribution of monies due to performers when

(i) contractual arrangements do not secure effective and equitable remuneration to be paid for use of the making available right and/or

(ii) the identity and/or the whereabouts of an individual performer is not certain at the time when a user wishes to exercise making available on demand rights in a sound recording or film under a contract whereby the owner of the sound recording or film has authorised such use.

### **3. Is there evidence of how the UK copyright framework supports growth and innovation?**

- **has it adapted to the economics and opportunities of the digital age?**
- **does it meet the needs of digital industries e.g. software, games, internet services?**
- **does it provide the right incentives for investors and creators?**

BECS would refer to the online services operating today including the delivery and use of copyright works by business and consumers, which were unheard of 20 years ago. These new services are evidence of the way in which the copyright framework has been able to adapt to the economics and opportunities of the digital age.

Please see the new definitions listed in response to question 4 below for an indication of the new on-demand and pay tv markets now being licensed by rights owners. Catch up TV services and E-books and E-Magazines and delivery using Apps on a range of electronic tablets are all part of everyday life within the UK and many other countries around the world. They are new. They rely on copyright and they should therefore trigger payments for rights owners to stimulate the creation of new content for the new services.

There are problems in establishing appropriate prices for use within new services as between rights owners and users; but this is not the fault of the copyright framework itself.

The framework provides for an opportunity to negotiate for the use of work when a third party wishes to use the work of a performer or copyright owner, with a view to gaining from it.

In the case of BECS, the Catch up Video on Demand payments negotiated between Equity and the BBC, ITV and Channel 4 are now of real benefit to audiovisual performers because BECS is able to provide distribution services

which ensure that all performers whose work is included in the new services, benefit from the new use.

**Voluntary licensing solutions, supported by collecting societies offering distribution services which facilitate the processing of micro rights payments, must be a central part of applying copyright in the future.**

The framework only provides the right incentives for investors and creators when they are able to secure a return from the use of work.

#### **4. Is there evidence of areas where the UK copyright framework does not deliver the optimal outcomes?**

- **do established rules or practices obstruct research and innovation?**

The reality is that a wide range of new online services have been developed in recent years, reliant upon copyright licensing for their business model.

Without copyright content, there would be no business models.

With copyright, the entrepreneur is faced with the need to secure clearances. This is often hard work because the people or bodies with whom negotiations take place do not :-

(a) have a clear explanation of the level of use of a work in the new service, or its likely effect on the other market opportunities for the use of the work; and

(b) wish to take an equity investment in the new business model itself, with the risks that such investment entails.

Instead, rights owners eke out details to agree what is regarded as a fair price. This is markets in operation, not unnecessary barriers to long term growth.

Licensing has, in practice, supported many licensed on-line uses of copyright works and performances. By way of example BECS lists below some definitions which support a variety of new ways in which the right to broadcast a work and the right to make available a work on demand by means of communication to the

public have been applied to services within television distribution agreements in recent years :-

Analogue Terrestrial Television : Terrestrial Television broadcast services where the Authorised Signal Format is analogue.(being a continuous signal of radio waves varied by amplification).

"Digital Terrestrial Television" Terrestrial Television broadcast services where the Authorised Signal Format is digital (being transmission by means of a data communication technique that passes information encoded in binary code).

"Satellite Distribution": the transmission of programmes in scheduled linear uninterrupted form via any frequency for delivery directly from a satellite to end users without the use of intermediary transmission devices.(such rights being sometimes referred to as DTH (Direct to Home) or DBS (Direct Broadcast by Satellite).

"Cable Distribution": the electronic transmission of Programmes in scheduled linear uninterrupted form as part of a television service transmitted by cable (i.e. by wire or fibres).

"A la Carte": the transmission of Programmes in a specified broadcast service receivable for a periodic subscription fee payable no less frequently than monthly when the fee payable relates directly to the reception of the specified broadcast service ("A la Carte" specifically excludes Free, Basic, Premium, Pay per Day and Streamed Pay Per View broadcast services and all on demand services).

"Basic": the end user receives the service delivering Programmes as part of the most widely available tier or package of broadcast services available from the relevant system operator (and whether or not making use of Multiplex Services (if any)) for a subscription fee payable on a periodic basis usually no less frequent than monthly ("Basic" specifically excludes Free, Premium, A la Carte, Pay per Day and Streamed Pay Per View broadcast services and all on demand services).

"Free": the end user receives Programmes free of charge save for the governmental licence fee or levy, if any, payable by the owners of receivers to permit reception of services (as opposed to their content).

"Pay": the end user is charged a sum for the right to use a decoding device to receive and decode an encoded signal of Programmes together with other programming. ("Pay" specifically excludes (as defined in this Agreement) Free, Basic, Premium, A la Carte, Pay per Day, and Streamed Pay Per View broadcasting services and all on demand services).

"Pay per Day": the end user pays a separate fee solely for the privilege of viewing multiple times during a twenty four (24 hour) period or part thereof an individual programme at times scheduled by the programming service operator ("Pay per Day" specifically excludes (as defined in this Agreement) Free, Basic, Pay, Premium, A la Carte and Streamed Pay Per View broadcast services and all on demand services).

"Premium": broadcasting services for which the end user receives the service delivering Programmes as part of a tier or package of services (as opposed to selection of individual services on an A la Carte basis) in addition to the services available as part of a Basic tier or package for a subscription fee payable on a periodic basis usually no less frequent than monthly in addition to the subscription fee payable for the Basic tier or package alone. ("Premium" specifically excludes Free, Basic, Pay, A la Carte Pay per Day and Streamed Pay Per View broadcasting services and all on demand services).

"Catch up TV Rights" means the right for a period of up to a maximum number of days specified in the Schedule of days from the first Authorised Transmission of a Programme ("the Catch up Period") on a Free television service under this Licence to make that Programme available to the public by means of enabling subscribers to record that Programme by means of downloading a copy which can only be accessed and viewed by subscribers during the catch up period provided always that no permanent copy or reproduction of that Programme (or any part of it) shall be made.

"Commercial Download Rights" :any Download Rights other than Catch up TV Rights, Restricted VOD Rights and Podcasting Rights.

“Download Rights”: the right excluding only by means of Catch up Tv Rights to make available Programmes to the public by means of electronic transmission in such a way that members of the public may download by transfer and storage of a discrete data file of Programmes required copies of Programmes for subsequent viewing for non-commercial private purposes only, and whether for direct payment or indirect payment or otherwise.

“Interactive Additions” relevant to Videogram Rights means: -

- (i) recordings of other sound or pictures, embodied with the Programme(s) in a Videogram or other disc, carrier or other device manufactured and available as devices for sale to the general public for “interactive” use in conjunction with a computer or other device whereby several elements of all of such recordings or the Programme(s) can together and discontinuously and interactively be accessed, selected, extracted and simultaneously held, viewed and listened to by the user; or
- (ii) the addition to the complete Programme(s) in linear playback of separate features such as optional related material including still-frame material, biographies and other textual reference items and trailers.

“Videogram”: shall mean any audio-visual media device or recording (whether tape, cassette or DVD, CDI or CD ROM or other optical-read or other disc, carrier or other device of any kind) which is capable of storing visual images and sounds and/or reproducing and/or enabling the reproduction or display of such visual images whether with or without sound associated with such images by any means whether now known or hereafter devised.

“Videogram Rights”: the right to license and authorise the manufacture, sale, rental, distribution, issue to the public and delivery of Videograms of Programmes or any part thereof (and with or without Interactive Additions) for the purpose of using a Videogram for viewing of material in private home circumstances.

"Interactive Use": the electronic transmission of Programmes or any part of them linked to any service that allows the end user to manipulate a Programme or any part of it or to add or delete content or other material of any kind to Programmes.

"IPTV" or "Internet Protocol Television": a digital broadcast transmission delivered using Internet Protocol over a closed network structure where the broadcast signal is sent through a switched telephone or cable network by way of a broadband connection along with a set top box programmed with software that can handle viewer requests to access media sources.

"Mobile Rights" shall mean the electronic transmission of Programmes by wireless technology for playback simultaneously or non-simultaneously on mobile receivers. All Mobile Rights shall be Reserved Rights with the exception on Mobile Relay Rights to the extent that they are specified as forming part of Rights granted in the Schedule.

"Mobile Relay Rights" the right to authorise the simulcast of licensed broadcasts of the Programmes over Authorised Distribution Systems by means wireless transmission over a telecommunications service licensed for reception within the Territory but only to the extent that the telecommunications service can be received in the territory in which the original broadcast can be received.

"Multiplex Service": a service consisting of two or more channels (i) all having the same name, (ii) all sold and marketed together for a single subscription charge, and (iii) all of whose content is identical, save only that their daily programming schedules start at different times.

"Podcasting": the inclusion of Programmes or any part or parts thereof in audio and/or media files containing the domain name and address of the media file and thereafter making the file available for electronic transmission so that the file can be downloaded by third parties for subsequent access.

"Restricted VOD" the right within the maximum number of days specified in the Special Conditions in the Schedule ("the VOD access period") to make Programmes available by electronic transmission in such a way that members of the public may access an individual Programme within the VOD access period but otherwise from a place within the Territory and at a

time chosen by them provided always that no permanent copy or reproduction of the Programme (or any part of it) shall be made. (Restricted VOD applies to any VOD access period not relevant to Catch Up TV Rights).

“Streaming” transmitting programmes in electronic form upon receipt of a request from a subscriber by means of the transfer of an apparently steady stream of data but without a permanent copy of the data being made and only when the transmission is intended for viewing simultaneously with reception.

“Streamed Pay Per View” linear broadcasting services for which the end user pays a separate fee solely for the privilege of viewing a single exhibition of an individual programme at a time scheduled by the programme service provider. (Streamed Pay Per View specifically excludes Free, Basic, Pay, Premium, A la Carte and Pay Per Day broadcast services and all on demand services).

**In terms of use of copyright to support research and innovation, BECS welcomes the fact that responses to the various consultations following from recommendations made by the Gowers Review of Intellectual Property, will be taken into account.**

In particular, BECS hopes that the concerns raised in response to the 2010 IPO Second Consultation on Copyright Exceptions and Limitations and draft Regulations linked to it, will once again be taken into account as the benefits of legislating for exceptions and limitations to copyright against the EU “fair dealing” approach (rather than the more general and potentially costly US fair use approach) are considered.

BECS continues to support changes to the scope of exceptions relevant for educational establishments linked to s 35 CDPA and paragraph 6 Schedule 2 CDPA to facilitate a licensing solution for distance learning educational use of recordings of broadcasts by educational establishments and for the educational use of extracts from sound recordings and films.

However, when looking at extending the scope of other exceptions, it remains important for government to recognise that the commercial effect for right owners differs when work is used for commercial research on the one hand and

private non-commercial private study on the other. These differences have different impacts for use of different types of copyright work.

Market growth should be encouraged by giving rights owners opportunities to choose how they exercise rights, whilst encouraging collective licensing options to reduce bureaucracy when possible and economically viable and when non-exclusive secondary licences can complement, and not remove, primary markets for use of a work.

**5. Is there evidence to suggest that the current framework impacts the production and delivery of goods and services which consumers want?**

- **e.g. derivative and transformative works**
- **development of new goods and services**

(a) Development of new goods and services

BECS supports the licensing of performers' rights in the context of development of new goods and services. It supports secondary payments to performers and proves that "buy outs" are far from the only effective option for provision of payment to audio-visual performers for use of their works.

BECS enters into agreements with other collecting societies representing the interests of audiovisual performers across the EU. The work of BECS and the collecting societies with which it has reciprocal agreements support the use of performers' work within secondary markets and in areas where statutory provision enables the collection and distribution of "fair compensation" to rights holders.

These payments are a vital part of the way in which the copyright framework supports the development of new goods and services.

Members of BECS are performers. They appoint BECS to act as their exclusive agent for the collection of "Performers' Remuneration". "Performers' Remuneration" is defined in the Articles of Association of BECS:

In summary, this consists of any income or remuneration arising or payable to performers, which is

(a) in respect of the rental of a sound recording or film either by way of the exercise of the rental right or the right to equitable remuneration for the rental in the UK under sections 182C or 191 G of the CDPA 1988;

(b) in other countries pursuant to any rental right and/or such equitable remuneration and/or their implementation of Articles 3 and 5 of the Rental Directive 2006/115/EC;

(c) from any blank tape levy or other levies on copying media or devices;

(d) in respect of cable re-transmission of programmes incorporating their performances;

or (e) which is of similar collective character and which the BECS Management Board resolved should be collected by BECS.

The role of collecting societies is vital to enable payments under the above headings to be collected and distributed to individual performers. They do not interfere with the relationship between retailers and consumers. They complement it "behind the scenes".

BECS collects an administration charge on most of the remuneration it collects. However, some forms of remuneration are exempt of such charges.

BECS negotiates blanket agreements with collecting societies in other European countries where performers are legally entitled to compensation for the use of their film and television work.

The main sources of income distributed to performers by BECS via these agreements are derived from private copying levies, the retransmission right, the communication to the public right and the rental right. BECS also acts as the payment agent for Equity and some major broadcasters. This involves the payments of fees that are agreed as compensation for those performers who work under Equity contracts. Such fees include those relating to the retransmission of BBC channels in Belgium, the Netherlands and the Republic of Ireland.

In addition Equity has granted a licence to the BBC for the broadcast of archive radio programmes made under Equity contracts on the BBC's digital radio station BBC 7 (4 Extra) and BECS distributes this income to performers. Equity has also

granted licences to the BBC, ITV and Channel 4 to use television programmes made under Equity contracts in various new formats such as 'catch up' television (e.g. BBC iPlayer) and BECS acts as distribution agent for the payments agreed to support such licences.

(b) Derivative and transformative works

(Turning to derivative and transformative works, BECS has long argued for more effective recognition of moral rights for audio-visual performers.

BECS continues to believe that it is illogical to recognise certain moral rights for musicians, but not audio-visual performers. At present, moral rights apply to audio fixations and live performance only.

The mutilation and distortion of audio-visual performances is becoming easier and can be extremely damaging, with digital manipulation of performances even leading to performers' faces being attached to naked images on the internet.

Whilst the Performances (Moral Rights, etc) Regulations 2006 ostensibly give performers statutory rights, the right to be identified still needs to be dealt with by contract.

The slow progress within WIPO towards adoption of any protocol or a Treaty for the protection of Audio-Visual performers has been previously mentioned.

However, there is nothing to stop the UK Government from taking the lead and improving recognition of moral rights for audio-visual performers prior to any WIPO protocol being agreed. Legislation for moral rights to cover both audio and audio-visual performances would remove any likelihood of audio-visual performers being perceived as second class citizens and would bring the UK to a level more comparable with other EU states.

The right to consent to the adaptation of a work is recognised at international level. Licensing regimes do exist to permit adaptations of work, whilst providing for due recognition for the rights owners of work that has been adapted.

BECS supports the approach of ERA and others to allow for the use of licensed recordings of works alongside other work as part of educational use.

Whilst many rights owners are supportive of establishing licensing solutions for non-commercial private use of works, the ability to ring fence such use from commercial use that damages the interests of original rights owners and avoid online dissemination of "new" adaptations without the consent of the original

rights owners, must surely of importance to “adapters” whose work may then subsequently be used and adapted by others.

In terms of policy it is vital for the “amateur innovators” of today, working non-commercially and privately, not to be excluded from and entitlement to benefit from the copyright elements of their work, should they wish to do so and commercial opportunities for use of the work arise at a later date.

**6. What evidence is there that the necessity / complexity / cost of obtaining permissions from existing rights holders constrains economic growth?**

- **in terms of licensing arrangements**
- **in terms of transparency**
- **the effect of collecting societies.**

“Evidence” that potential users find it difficult to obtain permissions required needs to distinguish concerns which arise because a user does not like the commercial terms offered by rights owners. This is not a fault of the copyright regime.

If rights owners cannot be identified, it is important that recognised diligent search procedures can be established. In addition, if rights owners, or a source for licensing, can still not be identified after diligent search, it is important that rights owners support development of practical systems for the licensing of “orphan works”.

In this context BECS would again refer to proposals made by the British Copyright Council to provide for the licensing of use of orphan works in the future.

Collecting societies must have an important role to play in facilitating the licensing of works within secondary markets in a world of non- exclusive digital communication.

As a collecting society, BECS now has over 25,000 members. Its database enables the work of individual performers to be noted and used for the purposes of processing payments due to them.

BECS has licensed access to some of the information held on its database to assist producers of new programmes with completing cast lists for new

productions. This ensures that existing data being reused where possible rather than data being retyped, possibly with minor errors, which in turn create rights verification issues for the future.

BECS has established links with others collecting societies involved in the development of international identifiers for Performers. These identifiers help with recognition of performers whose performances are fixed in films, sound recordings, radio and television programmes.

It is to be hoped that international identifiers and exchange of data at levels necessary to assist in the identification and payment of performers for online use of performances in the future can be promoted within the context of data protection law.

**The growth in BECS' activities and distributions made to audiovisual performers are reliant upon strong and effective recognition for the rights on performers (particularly within the online world). BECS believes that the evidence available about the total of collective copyright licensing shows the importance of such licensing to economic growth.**

**Some recent facts and figures published by BECS support this:-**

In 2010 BECS paid out £7,760,000 to audiovisual performers.

In 2009 BECS collected over £7,000,000 from 23 different sources of revenue for distribution

In the space of 12 years, BECS has collected over £30 million of additional revenue for audio-visual performers in British film, television and radio productions.

In 2009 alone distributions broke down as follows:

**Performers' Rights Distributable Revenue 2009 £**

Spain	585k	
France	422k	
Sweden	350k	
Netherlands	304k	
Switzerland	287k	
Germany	145k	
Norway	119k	
Greece	39.5	
		<b>Total = 2.25M</b>

### Contractual New Media Distributable Revenue 2009 £

BBC Broadband Premieres, HDTV, i-Player, Online Clips and Video-on-demand	<b>Total = 1.003M</b>
Channel 4 Video-on-demand	
ITV Video-on-demand	

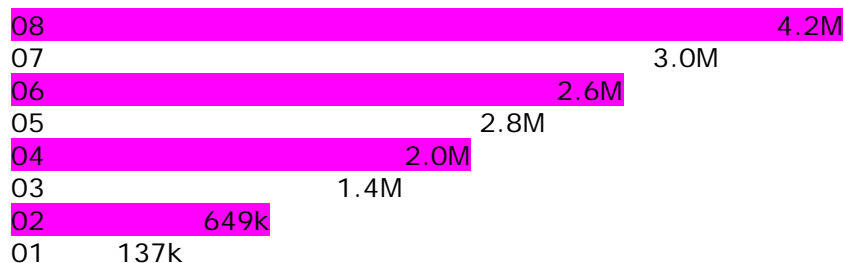
### BBC Cable & Satellite and BBC7 Distributable Revenue 2009 £

BBC programmes rebroadcast by cable and satellite in Belgium, Ireland and the Netherlands in 2007	<b>Total = 2.3M</b>
Additional back payments for BBC cable and satellite simulcasts in Belgium, Ireland and the Netherlands (2000-06)	<b>Total = 3.88M</b>
BBC7 Digital Radio	<b>Total = 300k</b>

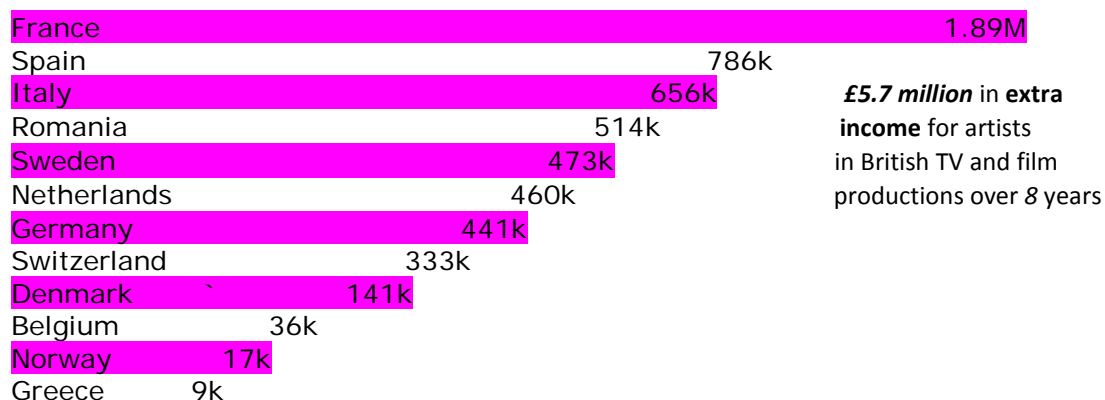
### Payments before 2009

BECS made its first ever distribution in July 2001. The figures below give an indication of how payments – most of them non-contractual - have grown to become an important source of extra income for audiovisual performers.

### Distributable Revenue Per Year £



### Total Performers' Rights Revenue by Country since 2001 £



### Total Sums Negotiated by Equity for performers on Equity contracts since 2001 £

BBC programmes rebroadcast by cable & satellite in Belgium, Ireland and the Netherlands	9.7M
BBC7 Digital Radio	884k
BBC New Media (since 2005) Equity members '	772k
ITV New Media (since 2007)	150k
Channel 4 New Media (since 2007)	134k

\* All figures are approximate

## 7. What non-legislative changes could improve practices around copyright to improve overall outcomes?

- **E.g. standard terms and guidance on what actions are permitted**
- **agreed default permissions in some areas**
- **non-legislative dispute resolution**

BECS supports work to promote transparency over the activities of collecting societies and the services that they offer to rights owners and to users.

BECS would refer to the proposals from the British Copyright Council concerning the development of a UK licensing solutions relating to the use of copyright works found to be "orphan" after a diligent search process.

Concerns remain over the lack of access to the Copyright Tribunal by licensing bodies when concerns arise concerning the approach of users and licensees.

## 8. Is there evidence of difficulties in obtaining financing relating to copyright?

- **compared to other digitally innovative markets (e.g. US, Israel)**

Please see comments in response to question 1 above.

## 9. To what extent are the international rules around copyright more or less important than those in the UK? How should the UK approach this matter?

- **do international frameworks adapt effectively to support innovation?**

The UK cannot operate in isolation in a world of increased digital communication and services delivered electronically around the globe.

Regular electronic communication between servers based in different countries makes it all the more important for similar rules to apply to the protection and use of copyright works, wherever the servers are based.

Inconsistent application of an effective international framework for recognition of copyright and its application, permits bases for piracy and unauthorised use to develop.

The UK and the EU should work to lead by example in adopting standards for the protection and effective enforcement of copyright, which can hopefully be adopted and provide a level playing field for the future.

Effective International rules should allow for a degree of flexibility in application at national level.

This enables local cultural differences to be taken into account.

However, it is important that carefully crafted international rules, such as the three step test, which set benchmarks for the application of copyright exceptions and limitations, are preserved.

Reaching a consensus over new International rules is a slow and difficult process. Therefore any efforts to undermine rules in the interests of "innovation" should be treated with extreme caution.

In particular, the important international recognition of the right to make a work available on demand is providing a vital base for growth of creative communication industries within many parts of the western world.

The potential enabled by recognition of the right to consent to electronic communication to the public of copyright works must not be destroyed because new markets are at different levels of adoption and implementation within countries around the world.

By way of example, it is surely not in the interest of growth for a country without current capacity to deliver work electronically on demand for educational use to claim that all such use should be subject to a general “educational” copyright exception, or exceptions linked to general subjects such as “research”?

Investment in new publications and new services will only be encouraged if a return on investment is possible. Copyright recognition, not copyright exceptions, provide the return.

BECS would be happy to assist in providing further background to support the issues raised in this response to the Call for Evidence, should this be helpful.

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