**BRITISH FILM INSTITUTE**

**Response to:**

**The European Union consultation on the evaluation and modernisation of the legal framework for the enforcement of intellectual property rights (IPR)**

**Final**

**April 2016**

1. Executive summary

1. The BFI welcomes the opportunity to comment on **the European Commission’s consultation on the legal framework for the enforcement of intellectual property rights.**
2. Although the BFI is a public body, we do not have direct experience of applying the enforcement of intellectual property rights. We are therefore unable to answer using the template of the questionnaire intended for public authorities. Instead, in this paper we make some general observations about the importance of the need to address issues of copyright infringement and theft within the broader context of this consultation.
3. **The BFI recognises that an effective measures to stem copyright infringement and theft are crucial if Europe’s creative and screen sectors are to grow. Enforcement is one part of this although we would also strongly underline the importance, alongside this, of legal offers and educational initiatives such as the Creative Content UK programme.**[[1]](#footnote-1) **These three approaches complement one another. For the purpose of this consultation we would strongly suggest that without improved enforcement business confidence is sapped.**
4. **The role of intermediaries in facilitating or preventing copyright infringement and theft is a core issue. At present, the BFI believes that they are not playing a full role in helping to reduce copyright infringement and theft. In particular, Article 8 of the Directive which requires intermediaries to put in place measures to enable the identification of counterparties is not working effectively.**
5. We strongly support the implementation of a follow-the-money approach involving the co-operation of advertising companies and payment services at a national and EU level.

2. About the BFI

In 2011 the BFI became the lead organisation for film in the UK. It is now a Government arm’s-length body and a distributor of Lottery funds for film.

Our mission is to ensure that film is central to our cultural life, in particular by supporting and nurturing the next generation of filmmakers and audiences. The BFI serves a public role which covers the cultural, creative and economic aspects of film in the UK.

It delivers this role:

* As the UK-wide organisation for film, a charity core-funded by government;
* By providing Lottery and government funds for film across the UK;
* By working with partners to advance the position of film in the UK.

In October 2012, the BFI published ‘Film Forever, Supporting UK Film 2012-2017’, which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI’s three strategic priorities:

* + Expanding education and learning opportunities and boosting audience choice across the UK;
  + Supporting the future success of British film; and
  + Unlocking film heritage for everyone in the UK to enjoy.

To that end, the BFI helps ensure that public policy supports film and, in particular, British film.

Founded in 1933, the BFI is a registered charity governed by Royal Charter. The BFI Board of Governors is chaired by Josh Berger.

**3. Comments in relation to the consultation**

3.1 Policy for intellectual property, notably copyright, is one of the drivers that plays a key role in either helping or hindering the future success of UK film.

* 1. The BFI’s own position on intellectual property policy is informed by the commitment to balance the needs of copyright owners and the expectations of the public. We believe it is vital to strike an appropriate balance between access and protection. For us, we believe that achieving an equitable balance between these two expectations would represent success.

#### For rights owners

* + It is vital that rights-holders are able to make their films available to audiences secure in the knowledge that there is a robust legal framework in place which is designed to significantly reduce copyright infringement - both online and offline. However, it is equally important that such a framework is equitable, proportionate and transparent and serves the broader public interest.

#### For citizens and consumers

* + That access to film in the digital age is maximised to the benefit of audiences, learners and creators.
  + That the copyright framework should make it simple and easy for consumers to copy film materials legitimately.

3.3. The BFI believes that the European Commission’s emerging plans to undertake copyright reform as part of its Digital Single Market strategy are the single most important IP issue presenting both opportunities and challenges facing the UK film sector over the next few years.

* 1. Copyright is a powerful tool to stimulate creativity, learning and innovation. By holding copyrights and licences, creators, production companies, distributors and others have the opportunity to build sustainable businesses, to create high quality works and to finance future works.
  2. But growth will be hampered unless effective measures are taken to block or take down services, which carry stolen or infringing works. One of the difficulties at present is that where illegal content is taken down, it is very often reappears via another site.
  3. As set out in Article 8 of IPRED online intermediaries are also required to put in place procedures to validate the identity of their counterparties. However, too often these procedures are not effective and do not enable right holders to identify these counterparties in cases where illegal content is being hosted.
  4. Follow-the-money approaches involving the voluntary co-operation of advertising companies and payment services also have an important role to play. The UK offers some examples of best practice in this respect, notably through the initiatives supported by the Police Intellectual Property Crime Unit (PIPCU).[[2]](#footnote-2)
  5. Educational initiatives are also crucial in helping consumers to understand the value of intellectual property and to enable understanding how exceptions and limitations can be used in educational situations to assist in the development of knowledge. The Creative Content UK initiative, which is supported by different sectors across the creative sectors, work undertaken by the Industry Trust, and work from CREATe (copyrightuser.org) offer some useful examples of best practice.

Ends.

1. https://www.bpi.co.uk/home/uk-creative-industries-and-isps-partner-in-major-new-initiative-to-promote-legal-online-entertainment.aspx [↑](#footnote-ref-1)
2. https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Pages/default.aspx [↑](#footnote-ref-2)