

**Response to Department for Business, Enterprise and Regulatory
Reform consultation:
Legislative options to address illicit P2P file-sharing**

30 October 2008

UK Film Council

Executive Summary

1. The UK Film Council is the Government backed lead agency for film in the UK ensuring that the economic, cultural and educational aspects of film are effectively represented at home and abroad.
2. The UK Film Council welcomes the opportunity to comment on BERR's consultation on mechanisms to address illicit peer to peer file-sharing.
3. The UK Film Council's overall role is encapsulated in its goal, "to help make the UK a global hub for film in the digital age, with the world's most imaginative, diverse and vibrant film culture, underpinned by a flourishing, competitive film industry."
4. We work with government, the film industry and other interested parties to help protect and promote copyright in our industry.
5. All copyright infringements, whether online or offline, direct revenue from production, distribution, exhibition and retail – reducing income from legitimate sales.
6. We very welcome the development of the MOU designed to stem illicit peer to peer file-sharing. Such an MOU represents the best way forward in our view. We agree that that an industry solution in this area, as envisaged by the Gowers Review, would be best, provided it is effective and is fair to all parties, particularly citizens. However, we would like to see explicit references to film in any revised MOU.
7. We support the Government's preferred option as set out in the consultation paper, namely a self-regulatory industry approach, designing codes of practice under principles such as those set out in Annex D, covering both rights holders and ISPs and dealing with education and awareness. We support the proposal that, alongside this, the Government should also invite stakeholders, including ISPs and rights holders to join a group to explore effective mechanisms to deal with repeat infringers.

Question 1: Do you agree that a voluntary solution based on the principles set out in the draft MOU at Annex D, if effective and fair to consumers, would be the best approach to this problem. How likely is it to be achieved?

Yes. We believe that the MOU is a very positive step forward in creating a unified response to the problem of illicit file-sharing. We would however prefer to see an explicit reference to film in the MOU - not just one to music. But as noted in our response to Question 4 below, sanctions need to be in place to deal with persistent offenders.

Question 2: Do you consider this list (of issues) is complete? Are there any other important factors that should be added?

We have no further issues to add.

Question 3: Are any of these criteria (or any omitted criteria) more important (or less important) than the others and therefore should attract a weighting?

We think the area of technology to identify the infringer and consumer protection and level of proof is very important. If there is a lack of rigour in this area, innocent consumers wrongly accused will feel they are being badly treated and the resulting negative perceptions will be harmful to the content owners industries in the medium and long term

Question 4: Do you agree that the preferred approach set out in section 8 is capable of dealing effectively with all of these constraints? If not, which are problematic and how? Please give reasons.

The aims of the overall approach are fine and in a perfect world, a voluntary agreement would suffice, but sanctions for hard core infringers will need some sort of legislative teeth to ensure Internet Service Providers (ISPs) are committed to the process. Without there being any real deterrent, all other efforts to reduce infringement will be diluted. Research recently undertaken by Entertainment Media Research tells us that 70% of ISP subscribers would stop unauthorised file sharing if they had a letter from their ISP, but it is the small group of hard core infringers who would ignore such activity and would soon publicise the lack of a real deterrent and undermine any initial progress made.

Question 5: Do you agree that a self-regulatory only approach may not be sufficient to resolve this problem? Please give reasons.

We agree that such an approach may not be sufficient. Please see answer to Question 4 above.

Question 6: Do you support the described co-regulatory approach? Please set out clearly what aspects of this approach you support and which you do not support. Please provide reasons and, where appropriate, evidence.

We support the proposed approach.

Question 7: Do you agree that Ofcom is the right regulator to oversee the self regulatory body?

Yes, as the statutory regulator for electronic communications in the UK, it seems entirely appropriate that Ofcom should be given this role.

Question 8: Do you agree that the regulatory oversight should include approval of Codes of Practice?

Yes. Codes of Practice are desirable so as to increase the transparency of the approach.

Question 9: What do you think the coverage of the self-regulatory approach should be? The proposal above suggests rights holders and ISPs. Is this right? Should any other stakeholders such as consumer organisations have a place in the self regulatory approach? If so, which?

It would seem sensible to include consumer organisations.

Question 10: What do you think the scope of the legal obligation should be? Do you agree that as described its effect would be limited to P2P networks? If not, how could such a limitation be achieved?

We understand that other forms of unauthorised file distribution are growing - forums and blogs that have links to download entire files directly (without the need to file-share using peer to peer technologies). The criteria for a legal obligation should therefore cover any form of online distribution involved in copyright breaches.

Question 11: The costs of the self-regulatory approach would have to be met by industry. How do you think this should be split between the stakeholders, including between the different content industries?

As a public body, it is not appropriate for us to comment on this.

Question 12: The costs of the activities envisaged under the codes of practice could be met either by those responsible for carrying them out, or by some form of cost sharing between parties. It is envisaged that this should be agreed

by industry as a part of relevant codes of practice. Do you agree with this process?

The proposed process seems entirely sensible.

Question 13: The [draft] MOU at Annex D provides the principles within which the self regulatory approach could work. Do you think these are the right principles?

Yes, these principles seem sensible.

Questions on Alternative Options

Question 14: Do any of these alternative options seem more likely to achieve the objective of significantly reducing illicit P2P use? If so, which? Please give reasons.

We support the existing proposal and we do not therefore believe it is appropriate to respond on questions relating to alternative options.

Question 15: In relation to any Alternative Option that you would prefer over the co-regulatory option outlined in section 6 please answer the following questions:

See answer to Question 14.

- a) *who should take action?*
- b) *who should decide whether to take action and the nature of the action?*
- c) *what costs would this Option entail?*
- d) *who should bear these costs?*
- e) *what safeguards would this Option require? In particular*
 - i) *How would the rights of the consumer be protected?*
 - ii) *Should there be an appeal mechanism? If so, who would handle any appeals?*

Question 16: If you consider option A3 to be an appropriate model then:-

See answer to Question 14.

- a) *Is there an existing official body which could take on this role? If not, should such a body be created?*
- b) *What status should the body have?*
- c) *How should the body (or the additional work an existing body would have to take on) be funded?*
- d) *Who should the body be accountable to?*
- e) *Who should carry the cost of carrying out action against the alleged file-sharer, given the lack of legal action means there is no prospect of costs being awarded?*
- f) *Should the body have a legal enforcement role (ie) the power to take legal action:*
 - i) *to force ISPs to take action?*
 - ii) *against alleged unlawful file-sharers?*
- g) *What level of cases (ie how many) would such a body need to consider in order to be effective and credible? Could this be automated without an unacceptable loss of control over quality of evidence and proportionality of action? Please give reasons*

Question 17. If you consider option A4 to be an appropriate model then:

See answer to Question 14.

- a) *Do you consider that filters are able to offer a sufficiently high level of reliability in identifying correctly copyright material to justify an obligation to utilise them (or allow their use)?*
- b) *Do you consider filters are able to check accurately the status of copyright material and to distinguish between legal and unlawful transactions?*
- c) *Who should operate the filters and bear the cost of their installation and operation?*
- d) *What redress should consumers have if legitimate material is mistakenly blocked?*

e) *Assuming no technological solution is 100% reliable, there will inevitably be a number of "false positives" generated (ie legal material is wrongly identified and blocked as unlawful). What level of false positives would you deem acceptable, bearing in mind the potential for damage to legitimate business and to the individual? Please give reasons.*

Question 18. Do you agree that a joint rights holder/ISP industry working group to look at filtering options would be a useful initiative? Is there a role for Government in convening and/or facilitating such a group? Should any other stakeholders be involved? Would you be willing to participate in such a working group if it was established? Please give reasons.

We believe that Government would have a role helping to convene such a group, possibly through Ofcom. The UK Film Council would be very willing to participate in such a working group if it were established.

Question 19. We are committed to producing an impact assessment in order to quantify as far as possible the implications for business, the consumer and the wider socioeconomic environment of any regulatory proposal. This is an integral part of our decision-making process. Can you provide further information to better inform that process?

We would be happy to supply any additional research that we become aware of in relation to film if the Government would consider this useful.