

**EUROPEAN CHARTER FOR THE DEVELOPMENT
AND THE TAKE-UP OF FILM ONLINE
23 May 2006**



Introduction

Film Online services provide an opportunity to substantially broaden access for European citizens to film in all its diversity, and to encourage the wider circulation of European films, both within the European Union and in the broader global market. Such new services also provide the opportunity to create a more vibrant and competitive film sector and to accelerate the take-up of broadband within the European Union in line with the Lisbon agenda and the i2010 strategy. Furthermore, Film Online offers significant opportunities to develop new audiences, to respond to their needs and open to creators new distribution channels.

Film Online services offer great opportunities for both online service providers and content providers. High quality content is valuable, socially and economically, and is a proven driver for the broadband industry. The availability of film for online distribution and promoting legitimate services is an opportunity for online service providers to generate additional revenues beyond the revenues from their access services. The need to protect, value and respect content, the underlying copyright in that content and the investment it represents is accordingly accepted by all. Taking full advantage of the flexibility and convenience online distribution can deliver, is an objective that the more recent developments in broadband access and technology are now putting within reach.

Hence, commercial agreements between rightholders and online service providers will be beneficial to both the film industry and online service providers. In this context, a wide offer of attractive films, consumer-friendly film online services, adequate protection of copyrighted works and a close cooperation to fight piracy are urgently needed to create a win-win situation for all stakeholders, in particular for consumers, and to facilitate the emergence of new, diverse and viable European business models for Film Online.

Launched in May 2005 at the Cannes International Film Festival, upon the initiative of Viviane Reding, European Commissioner for Information Society and Media, the Film Online Talks aim to create a favourable environment that will foster the emergence of new forms of online distribution through this European Charter for the Development and the Take-up of Film Online. "Film Online" was originally conceived as an event for the European Day at the Cannes Film Festival in May 2005. It would serve as a policy issue for the Meeting of the EU Ministers for Audiovisual and as a topic for discussion amongst industry representatives⁽¹⁾.

This Charter has been elaborated thanks to the active contribution of representatives of the film and content industry, of internet service providers and of telecom operators. It obtained the formal consent of CEOs and other representatives present at the final meeting on Film Online at the 59th Cannes International Film Festival on 23 May 2006, in the presence of representatives of the European Commission, which acted as honest broker of the Talks. The Commission will explore in the course of 2006 how this European Charter on Film Online could become the starting point for a broader Content Online policy for the Information Society.

(1) http://ec.europa.eu/comm/avpolicy/docs/other_actions/cannes_declaration_2005_en.pdf

This Charter promotes examples of "Commendable practices" for Film Online in three areas:

1. Working together to improve the availability of Film Online Services on a mutually profitable basis.

1.1. Commercial agreements between content providers and online service providers

Sound commercial agreements between online service providers and content providers are the prerequisite for developing Film Online offers. These offers have to be attractive to consumers, technologically effective and user-friendly. These offers should contribute to film diversity, organised on a voluntary, contractual basis with the rightholders, or by applying relevant legislative provisions. Inter-professional agreements can play an important role for the development of such commercial agreements, and can take into account national specificities.

Commendable practices:

- The French inter-professional agreement protocol of December 2005 on Video-On-Demand is an example of an inter-professional agreement at national level between content and telecoms/access providers that provides for a platform of discussion for the development of business models adapted to different types of commercial offers in this country.
http://www.sacd.fr/actus/positions/2005/accord_vod.pdf
- The "Patto di San Remo" (signed on March 2nd, 2005) aims to promote the availability of digital content that contributes to spreading Italian culture. Rightholders undertake to augment significantly the quantity and quality of contents offered digitally, so as to develop the online market. All parties should collaborate on initiatives that favour the production of new digital content and the digitisation of existing content.
- Attractive Video-on-demand services for legal downloading of films can be found in the following offers, amongst others: 'Rosso Alice' by Telecom Italia, 'VOD' by Fastweb, 'Ma Ligne TV' by France Telecom, "Canal Play" by Groupe Canal +, Rai Click (a "virtual library" with all the old programmes produced by the public service broadcaster RAI available on the Internet).

1.2. Revenues

Film Online is a growing market which will generate additional revenues to be shared as set out in commercial agreements. At the same time, availability of films is directly related to the possibility of financing the high costs of their production. Therefore the foreseeable growth of this new, large and dynamic online market should have a beneficial impact on the attitude of all investors in online distribution of films. With a view to developing this market rapidly, commercial agreements between online service providers and content providers should be based on the principle of the availability of films on a fair, economically sound basis, be consistent with the objectives of this Charter and take account of national situations.

Commendable practices:

- The French inter-professional agreement protocol of December 2005 on Video-on-demand provides for a minimum remuneration of the rightholders based on a percentage of the price paid by the consumers and for a financial contribution from VOD operators towards the production of films based on a percentage of their turnover in line with what is practiced for other distribution channels.
- Increasing involvement of mobile phone operators in the short film market (example: competition of five short films produced for distribution of mobiles at the 2005 Cannes Film Festival, organised by Orange – France Telecom): on an annual basis, SFR provides the advanced mobile phones that directors use to create content for the Pocket Films Festival held in Paris).

1.3. Rights clearance

All stakeholders must be proactive in promoting effective rights clearance. Distributing films online requires that rights be cleared from all the copyright-holders (directors, writers, actors, music composers and producers, etc.). Solutions that allow an authorisation of such services and remuneration of the different copyright-holders will be reached through contractual agreements. Europe-wide or multi-territory licences and clearances should be encouraged, where appropriate, especially for European films with limited distribution outside their principal territories.

Commendable practices:

- Online databases on rights (Cannes market - 'cannesmarket.com' supported by the MEDIA programme).
- Complete digitisation of the Chaplin collection of non-film documents, undertaken by the Cineteca Bologna, which can now be consulted on line by researchers (<http://www.charliechaplinarchive.org/>).
- British Film Institute project "Screen on line", that allows the showing of film clips on line for pedagogic purposes (<http://www.screenonline.org.uk>).
- Development of the unique film identifier (ISAN).
- Agreement between INA (Institut National de l'audiovisuel) and the copyright collecting societies on the conditions relevant to the use of audiovisual works on the new forms of exploitation. INA and the French copyright collecting societies (SACEM, SACD, SCAM, SDRM, and SESAM) in 2005 have amended the 1996 General Protocol defining the conditions whereby INA is authorised to make available audiovisual works in the repertoires of the aforementioned collecting societies via internet, mobile TV and other video-on-demand services.
- Agreement between Fastweb and SIAE (Società degli autori ed editori, the copyright collecting society in Italy) that provides for a Licence for video-on-demand (OPZIONI TV DI FASTWEB – ONtv, RaiClick). For each purchase of a programme on VOD, Fastweb pays a "virtual ticket" to SIAE a percentage of the price paid by the subscriber for the programme on VOD. Another agreement between Fastweb and SIAE provides for a licence for "video rec", which is a virtual video recorder. Fastweb

subscribers can submit an order through their remote control for recording one or more TV events. Fastweb records the TV programmes on its Hard Disk and puts them at the customer's disposal for 20 days. Fastweb pays to SIAE a percentage of the price paid by its subscribers for the service.

(http://www.fastweb.it/principale.php?Area=MF&Page=4_family.php)

1.4. Non-commercial Services

The launching of non-commercial services offering cleared archive material for download, alongside commercial services, is a potentially useful way of complementing commercial offers to consumers for audiovisual online content in general.

Commendable practices:

- The Creative Archive Licence Group, set up by the BBC, the BFI, Channel 4 and the Open University to make their archive content available for download under the terms of the Creative Archive Licence - a single, shared user licence scheme for the downloading of moving images, audio and stills. (<http://creativearchive.bbc.co.uk/index.html>).
- The "Patto di San Remo" encourages the availability and use of digital content in the public domain, in order to boost the circulation and development of Italian cultural heritage.

1.5. Release windows

Commercial agreements on Film Online should include an agreement of producers, rightholders and online distributors on the most suitable online release window, while bearing in mind the need for an attractive offer to the public.

Commendable practices:

- The French inter-professional agreement protocol of December 2005 on Video-on-demand provides for an online window agreed by the stakeholders.
- Day-and-Date release of films on DVD and download-to-own by Warner Bros. in the Netherlands and the Dutch-speaking part of Belgium through Free Record Shop's website beginning on April 4, 2006 with "Harry Potter and the Goblet of Fire". http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20060330005444&newsLang=en
- Day-and-Date release of King Kong on DVD and download-to-own in the United Kingdom on 10 April 2006.

1.6. New formats and new forms of distribution

Content owners and online service providers need to co-operate to develop new formats and to identify new forms of distribution. Peer-to-peer technology is considered to be a positive development for the legitimate online distribution of content.

Commendable practices:

- Warner Bros. Home Entertainment Group announced the formation of a joint venture with Arvato Mobile, In2Movies, a revolutionary new digital download platform for

the electronic sell-through of motion picture and television content in Germany, Austria and German-speaking Switzerland. In2Movies will leverage the speed and flexibility of a peer-to-peer (P2P) network and the security and quality of a centralised service to provide consumers with the ultimate legal entertainment downloading experience. (<http://www.timewarner.com/corp/newsroom/pr/0,20812,1156926,00.html>)

- EMI and Arvato Mobile signed a pan-European P2P download agreement for a peer-to-peer music service for GNAB service. GNAB is a white label content distribution platform offering brands and digital retailers the opportunity to distribute digital content on a P2P and subscription basis.

1.7. Consumers' Trust and user-friendly technologies

In order to preserve trust and promote operational simplicity for consumers, technical measures for the online management of copyright and for protection against unauthorised use should allow, as much as possible, the use of a wide range of networks and devices, while respecting the rights granted by law or that have been cleared on a contractual basis and should be based on consumer friendly technologies.

1.8. Incentive schemes

Incentive schemes should be put in place to help reduce the costs of digital distribution and multilingual versions of European works online. They should also support efforts that facilitate or promote the making available of rights for licensing of European films on new platforms.

Commendable practices:

- The new MEDIA 2007 programme will include the introduction of specific support for accompanying the evolution of the market with regard to new technologies. The key actors in the audiovisual sector that need to take advantage of digital technologies are producers and distributors. Appropriate guidelines for the calls for proposals will be established by the Commission, taking into account the input from the Film Online talks.
- The i2010 initiative, with its objective to create a Single Information Space ensures that the development of new platforms for distribution of content will foster distribution of digital content across Europe.
- The Commission's review of the Member State's Lisbon National Reform Programs and emphasis on their swift implementation with a focus on increasing expenditure on investing on education and research.
- The Spanish Institute of Cinematography and Audiovisual Arts (ICAA) has an incentive scheme to support independent distributors to make films available for digital distribution. To this end, the ICAA has signed an Agreement with the Instituto de Crédito Oficial (ICO), which is a Public Financing Institution, to give access to soft loans, whose interests are partially subsidised by the ICAA, for both conventional and online distribution.

<http://www.boe.es/boe/dias/2006/03/10/pdfs/A09815-09821.pdf>

2. Education and awareness-Increasing respect for copyright in order to secure the sustainable availability of content

2.1. Co-operation between online service providers and content providers to raise copyright awareness

Creating a culture of proper respect for creativity and effective protection of copyright is essential if the creative community is to be encouraged to make films available online. Improving communication and educational messages on copyright is therefore important for all of us in the digital value chain. It is vital that consumers understand and appreciate the value of content; this must be done by challenging the perception – held by some - that content should be accessible for free. Including provisions for enhanced cooperation on copyright awareness - in agreements or accompanying initiatives between access and content providers - will further improve the conditions for new services to emerge.

Commendable practices:

- The 'CREATE' principles put together by the UK Government's Creative Industries IP Forum.
- The UK's Intellect Digital Convergence Council (IDCC), which brings together representatives from the telecoms, IT, consumer electronics, broadcasting and creative content sectors and their recent report entitled "Capitalising on Convergence".
- AOL's "Play Legal" initiative launched in both Germany and the United Kingdom—described by AOL as "a campaign to excite the public about legitimate online entertainment".
- The UK Patent Office's "Think Kit" (aimed at schools) is a government IP awareness initiative, produced in cooperation with business, which is now being used in 80% of British schools by children aged 14 – 18 as part of the Enterprise curriculum.
- The awareness campaign that was launched on 1 December 2004 in Italy, with the sponsorship of the Ministry of Education, University and Research (MIUR). The "School Project" campaign is aimed at primary school students and consists of an educational CD-ROM distributed to 1500 primary schools and 5,000 town halls across Italy. In addition, the campaign involved meetings with students in Rome, Florence, Milan and Naples, meeting with teachers as well as contacts with regional officers and school head teachers to draw support for implementing policies to safeguard intellectual property within educational institutions (<http://www.controlapirateria.org/>).
- The creation of the <http://www.respectcopyrights.de> web portal in Germany to inform citizens on the rationale for protecting the rights associated to creative works.
- The trade association NVPI, representing the Dutch entertainment industry (<http://www.nvpi.nl/>), is launching several marketing campaigns in order to promote and stimulate the usage of legal portals on platforms such as IPTV and the Internet, with the support of the "KPN Internet/Planet Internet" Internet Service Provider (ISP).

2.2. Copyright has a central role in the creative economy

The 'copyright story' should clearly explain to people, especially to the young, the key role that copyright plays in the economy, including:

- the central role of copyright in the process of creation and production of works and in the remuneration of authors and artists;
- the importance and scale of the creative industries in Europe and the central importance of copyright to the success of those industries;
- the role copyright plays in the wider value chain, by underpinning incentives to invest in the kind of content that can really drive convergence;
- the use of technical means to ensure fair remuneration of authors and other rightholders.

Positive, effective messages around copyright need to be delivered in a tangible, relevant way that "touches people's lives."

Commendable practices:

- brochure entitled 'Guide de sensibilisation pour les jeunes internautes «Musique et film : Adopte la Net attitude»' of the Forum des droits sur l'Internet (http://www.droitdunet.fr/telechargements/guide_musique20050320.pdf).
- "Young People, Music and the Internet" – a guide for parents about P2P, file sharing and downloading, written by children's charity Childnet International and Net Family News, Inc, with support from Pro-Music (<http://www.pro-music.org/guide/index.htm>).
- A "Study Guide" is being developed for the UK film industry by the education charity "Film Education" (<http://www.filmeducation.org/>). It is announced for September 2006. This Study Guide is being formulated for 11-15 year olds, as part of the curriculum, and will emphasise the cultural and financial importance of the creative industries to the national economy and the role played by copyright protection to incentivise investment in creativity.

3. Co-operation to fight piracy

3.1. Conditions for effective cooperation to fight piracy

In addition to complying fully with the law and contractual obligations, parties to agreements for the distribution of content online should commit to making all reasonable efforts in good faith to fight piracy. Where rightholders are clearly identified in distribution agreements, online service providers together with rightholders should commit themselves to dealing swiftly with infringements to copyright. This will be facilitated by the development of technologies allowing efficient identification of copyrighted content.

Commendable practices:

- In their general conditions of sale, many European ISPs reserve the right, in case of violation of customer's obligations, including infringement of IPRs determined by a Court or Administrative Authority, to suspend or terminate the contract. A non-exhaustive list of examples includes: Tiscali in Italy, Germany, the Czech Republic, the Netherlands, and the United Kingdom (<http://abbonati.tiscali.it/adsl/comeabbonarsi/#12>), UPC-Chello in Austria (http://www.upc.at/pdf/agb_austria.pdf), Telia Sofa in Denmark (<http://www.stofa.dk/showpage.php?shortcut=snvilkaar>), "Wanadoo" in the Netherlands (http://webapps.wanadoo.nl/wcr/popups/popup_av.html), Telecom Italia/TIN.it (http://tin.virgilio.it/posta/pdf/contratto_tinit_free.pdf) and Fastweb (<http://www.fastweb.it/DATA/PDF/PDFfamiglia/famiglie.pdf>) in Italy as well as Cable & Wireless (http://www.cw.com/legal/acceptable_use_policy.html) and NTL in the United Kingdom (<http://www.home.ntl.com/page/userpolicy>)
- In 2005, Verizon and The Walt Disney Company Signed a Long-Term Programming Agreement in which they agreed to help curb infringement of Disney's copyrighted works over the Internet while at the same time appropriately safeguarding the privacy of Verizon Internet service subscribers. (<http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=92857>)
- Decision of the Danish Supreme Court (Case No 49/2005 -2nd division) specifically referring to the need to comply with Article 8(3) of the Copyright Directive and confirming that, on the basis of a proportionality assessment, a preliminary injunction should be granted to protect the plaintiffs against extensive infringement.
- Decision of the Austrian Supreme Court confirming that, in the context of a Court proceeding, ISPs have to disclose names and addresses of infringing users, regardless whether they access the Internet over static or dynamic IP addresses. http://www.internet4jurists.at/entscheidungen/ogh11_57_05z.pdf
- The Swedish Data Inspection Board, in its decision of 13 October 2005, permitted the Swedish Anti-Piracy Bureau to process IP numbers so that it can report to the police and institute proceedings against particularly serious copyright infringements, inform Internet service providers of subscribers' copyright infringements and take civil action against copyright infringers. This decision pertains solely to the processing of personal data concerning persons who make copyrighted material available to others. The exemption granted, is applicable until 31 December 2006. (http://www.datainspektionen.se/in_english/anti_piracy.shtml)
- The French Syndicat des Editeurs de Logiciel de Loisirs – SELL (Syndicate of recreational software) put in place an automated system of detection of IPR infringement for illegal sharing of "recreational software" (video games) published by SELL members. The Commission nationale de l'informatique et des libertés (CNIL), the French administrative authority for data privacy, has accepted the following procedure: 1) addressing warning messages of prevention to surfers illegally downloading software from peer-to-peer file-sharing network, as well as to people making available video games on peer-to-peer networks and 2) a representative of SELL agreed by the Ministry of Culture is entitled to retrieve, in limited cases, the IP

address of surfers who are illegally uploading video game software to peer-to-peer file sharing networks. (see <http://www.cnil.fr/index.php?id=1801&print=1>).

3.2 Advertisements concerning entities engaged in piracy

Online service providers will refrain from knowingly showing advertisements from entities engaged in, or intentionally inducing, piracy; they will take the necessary steps to end such practices as quickly as possible following adequate notification.

Commendable practices:

- The French Charter for Music signed in July 2004.

3.3. Developing technologies to protect copyrighted material

Content providers and online service providers need to co-operate to develop technologies to protect copyrighted material. This cooperation should aim at promoting technologies that are secure, cost effective, robust, and interoperable, ideally based on open standards, across multiple platforms and devices. It will be held under the auspices of the European Commission as a follow-up to the Film Online Talks and in the context of the ICT Research activities of the European Union.

3.4. Anti-piracy organisations

Content providers and online service providers will promote the establishment and effective operation of adequately-resourced national anti-piracy organisations, encouraging and assisting those organisations to work together. The European Commission will promote enhanced networking between national and local anti-piracy organisations.

Commendable practices:

- The "Patto di San Remo" foresees the creation of a specific Observatory in order to monitor the evolution of business models, digital contents marketplace and piracy.
- The Spanish Integral Plan for the reduction and elimination of activities in violation of intellectual property approved on 8 April 2005 by the Council of Ministers, which seeks to defend the rights of creators with regard to the devastating effects of piracy from the cultural, economic and social points of view. This plan was drawn up by the Ministry of Culture and involves eleven Ministries and provides for the active collaboration of bodies for the management of intellectual property rights, other sectors involved, public institutions and consumers.

4. Conclusion/Cooperation procedures

The European Commission will instigate, during the preparatory phase of the Communication on Content Online which is due by the end of 2006, a process whereby cooperation procedures (such as codes of conduct) will be developed by interested stakeholders, including the participants to the Film Online Talks.

