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EBU reply to the Green Paper on "Unlocking the potential of cultural and creative industries"

Introduction

The advent and rapid development of digital technology and globalization have not only revolutionized communication and access to information but have also ushered in a period of profound change for the cultural and creative sectors. New audiences, distribution channels and consumption models have emerged which have posed challenges for creativity and innovation. While access to the arts, information and cultural content is changing constantly as a result of the fast-paced evolution of technology, the emergence of new social platforms has eroded the dividing-line between creators and consumers, paving the way for a more participatory and open digital and information society.

To ensure the viability and dynamism in this new digital environment for Europe's cultural and creative industries and to protect the cultural heritage and distinctiveness, it is crucial to create the conditions which will prompt investment in innovative and diverse cultural content on-line. As highlighted in the Green Paper, cultural content plays a crucial role in the deployment of the information society, fuelling investment in broadband infrastructures, services and digital technology. Consequently, access to communications infrastructure and access to content should be taken into joint account and considered equally important.

- European broadcasters (both public and commercial) finance more than 80% of original audiovisual programme production in Europe. PSBs, in particular, have contributed substantially to the European creative effort by offering to a weekly audience of 375 million Europeans original and diverse content in terms of quality, variety and impartiality. By investing more than 10 billion Euros a year in original content, public service media help to ensure a sustainable environment for creators and creation and encourage further investment in the sector by other actors. Unlike many broadcasters heavily reliant on imports from large markets such as the US, 65% of PSB programming is produced in-house or commissioned from independent producers, ensuring that PSBs contribute to the creation of jobs and foster innovation and economic growth.

- PSBs have been particularly active in providing the widest possible range of cultural content on all platforms for European audiences by producing numerous youth and arts programmes. PSBs have made the Digital Terrestrial Platform a success in many countries by launching thematic DTT channels specializing in cultural and youth programmes and documentaries. For example, Germany's ARD and ZDF have seen the share of their digital thematic channels grow significantly, the main part of which is credited to the digital version of KiKa, the children's channel. In France, the children's channel Gulli is among the most popular thematic channels available on France's TNT digital terrestrial service. Clan TVE, the channel offering content targeting children and youth audiences, is TVE's most popular theme channel in Spain. In Sweden, there has been a growing popularity for the public service media's thematic channels (News, Children's and Science), which represented 14% of the total share in 2009, compared to 9% in 2007. The growth is mainly due to the increasing audience interest in children's content and the children's channel, SVTB, which has doubled its audience since 2007. In Finland YLE's cultural channel Teema has recorded a growing share of the audience, as have Denmark DR's News channel (DR Update), children's channel (DR Ramasjang) and culture and history channel (DR K).
- PSBs also pay a particular attention to the social and cultural needs of ethnic minorities, migrants and disabled persons by providing television, radio and on-line services with subtitles and in many different languages. Thus, in recent years both France Télévisions and the BBC have achieved 100% subtitling of their programming. In Greece Radio Filia 665 AM broadcasts in 12 languages, in Romania Radio Timisoara serves audiences in eight minority languages, and MR4 in Hungary broadcasts in 15 languages. Swedish Radio offers web radio channels in the Samic minority language and Polish TV offers contemporary day-to-day insights into the achievements and problems of minorities via regional programming.
- Moreover, PSBs have made great efforts to adapt to the challenges posed by technological developments and to take advantage of the opportunities offered by the rise of Internet, digitization and multimedia services. PSBs have developed offerings on new platforms, serving new audiences and delivering innovative, unlimited and original content allowing for information to be accessed anytime, anywhere and on any platform.
 - PSBs have undertaken a wide range of initiatives and have launched attractive new services in a number of Member States, for example: with more than 100 million streams on a monthly basis in 2010 and a third of the adults in the UK using it, the BBC's iPlayer has become one of the most popular sites, making it possible to access on-line a wide variety of BBC's programming. The service has become available through an increasing number of devices including smartphones, games consoles and web-connected television sets. Also in the United Kingdom Channel 4 (C4) has signed an agreement with YouTube which gives users in the UK access to C4's entire catch-up service catalogue "4oD" and 3,000 hours of full-length archiving content. In September 2009, 4oD delivered more than ten million views of long form content, representing an increase of

204% over the previous year. In 2009 more than 125 million videos were accessed (20 million per month at the end of 2009) via the free catch-up services available on the internet sites of France Télévisions. In July 2010 France Télévisions launched Pluzz, a free catch-up TV platform offering 72 hours of free programmes every day and 1000 videos available at any moment. The Dutch public media organization NPO has set up an extensive on-line video and audio portal which registered more than 148 million streams in 2009, offering most of its broadcast content. Hungary's MTV catch-up TV service attracts more than 800,000 visitors a month. All PSBs offer on-line services, and their websites are among the most visited.

- A majority of PSBs also offer a wide variety of applications for mobile usage. The BBCi mobile service has introduced some exemplary features, making it easy for users to access the site from their telephone. Since 2009, the BBC World News service has become available as an iPhone application, providing users in 16 European countries access to one-click access to the latest international news and sport. France Télévisions have also launched in 2010 free iPhone and iPod Touch applications. Finland's YLE reports more than 195,000 downloads a month of its programmes in podcasts, while Swedish Radio has registered more than 900,000 podcasts and 150,000 iPhone application downloads on a weekly basis.
- Alongside online and other emerging platforms, all the EBU's audience data and market forecasts suggest that broadcasting will continue to be greatly used, highly valued and relevant for a long time to come. The EBU believes that the EU should continue to play an important role in ensuring that the communications infrastructure in Member States is future-proofed. This applies to ensuring adequate spectrum allocation for broadcasting, such as the Digital Terrestrial free-to-air platforms. In many Member States, these provide an efficient, scalable way of conveying content to mass audiences, thereby bringing communities and nations together. Broadcasters have traditionally invested significantly (and continue to do so) in maximizing the efficiency of their spectrum use. For example, the BBC pioneered work on the efficient use of spectrum via the DVB-T2 standard, making it possible to distribute High Definition Television on the digital terrestrial platform in the United Kingdom. However, audience fragmentation and the increasing expectations of quality and functionality make it difficult to forecast how far future efficiency gains by broadcasters can be made without a serious risk to their ability to serve audiences.
- A serious challenge for PSBs consists of securing sufficient financial support to be able to continue to contribute to media pluralism, cultural and linguistic diversity and freedom of expression by offering to their audiences on all platforms original and distinctive programming in terms of quality, variety and impartiality. Only the European broadcasters can ensure a broad, diverse offer of European audiovisual programmes on the Internet. Public service broadcasters can play an important role and help bring about a better balance in the on-line world, as they have done in the case of traditional media.
- Moreover, to be able to continue to invest in new digital services and content production, PSBs need a balanced regulatory framework adapted to the digital era governing the management of copyright (including neighbouring rights). The increasing

demand for content on a growing number of platforms makes the clearance of copyright for all uses increasingly complex. Unfortunately, owing to a framework for rights clearance which is not adapted to technological convergence, rights clearance for the *on-demand use* of the broadcasters' programmes does not function in the same efficient way as the current models for rights clearance for traditional broadcasting.

- If cumbersome and expensive rights clearance processes can be streamlined and adapted to the digital era, more funds for investment in yet more original, diverse and high-quality European content can be released. Such modern rules would also unlock the potential for on-line and multi-platform usage of the archives of PSBs (28 million hours of television and radio content programming) which would guarantee access for Europeans to high-quality cultural content and would further foster the production and circulation of content to the advantage of all actors in the cultural industry. For example, the BBC has calculated that clearing rights for the whole BBC archive would cost £72 million for staff alone and take three years. ZDF (Germany) has established that the number of contracts pertaining to its archives is as high as 3 million, which makes their individual renegotiation for on-line use simply impossible. Copyright reform would make it possible to reduce significantly the deadweight of this administrative cost and reinvestment in content creation.
- In that sense the EBU welcomes the initiatives envisaged by the Digital Agenda for Europe and the strategy on a sector-specific reform of copyright law aimed at creating a true single market for on-line content and services and achieving a balance between the necessary protection and sustainability of creation and the need to foster the development of new services and business models. ***Such reform is long overdue and should be a top priority for regulatory action at the European level***, and also from the cultural perspective. In this context, the EBU hopes that its concrete proposals (set out in more detail below) for collective licensing solutions and the extension of the rights clearance systems of the traditional broadcasting world, which function well, to the on-demand world and to other platforms will be taken into account. They could play a major role in achieving the goals set out in the Green Paper and the Digital Agenda for Europe.

Putting in place the right enablers

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

- 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?

While the EU Digital Agenda essentially focusses on the development of high-speed networks and access for all to broadband networks by 2013, it is important to stress that the whole debate is not only about access to infrastructures and networks but is also about access to (cultural and creative) online content. The content aspect is of key importance and should be strongly highlighted in the debate. Cultural policy objectives should be integrated into broadband policies, and the cultural impact of any proposed measures should be assessed. It is crucial to ensure that broadband networks facilitate the creation, exchange and dissemination of content, including local content.

Both aspects, access to the communication infrastructure and access to the content and service, should be taken into account together. Ensuring end-users' access to the broadband Internet is worthless if they are prevented from accessing a wide range of content, services and applications of their choice, and in particular high-quality content provided by professional media.

The availability of high-quality content will drive forward technological innovation and encourage new innovative business models. It is thus necessary to have common basic net neutrality principles (such as openness, transparency, non-discrimination, and quality of service) to the Internet traffic management in order to ensure that end-users have access to the content, services and applications of their choice.

European broadcasters (both public and commercial) finance more than 80% of original audiovisual programme production in Europe. Only the European broadcasters can thus ensure a broad, diverse offer of European audiovisual programmes on the Internet. The "European audiovisual model", which implies the co-existence of commercial and public service media and which places much emphasis on cultural diversity, and especially on support for European audiovisual production, needs to have an equivalent on the Internet too. In terms of pluralism and cultural diversity, both commercial and public spaces on the Internet are needed. Public service broadcasters can play an important role and help bring about a better balance in the online world, as they have done with traditional media.

New technology enables Europe's citizens to access content through a range of

platforms, such as digital terrestrial television, cable, satellite, broadband (IPTV), mobile devices, video consoles and the Internet. Consumers now expect to obtain access to content on all relevant platforms at any time. European broadcasters have already started to offer a range of on-demand services, such as video-on-demand streaming, podcast and vodcast services.

The growing demand for content on a growing number of platforms makes the clearance of copyright for all uses increasingly complex. Audiovisual media works are usually the result of creative input for hundreds of creators and contributors. These works can be communicated to the general public only when all the necessary rights are cleared. Unfortunately, owing to a framework for rights clearance which is not adapted to technological convergence, rights clearance for the *on-demand use* of the broadcasters' programmes does not function in the same efficient way as for traditional broadcasting.

Cumbersome rights clearance procedures inevitably threaten the availability of a diverse, high-quality and, most importantly, legal on-demand offer. If inefficient and expensive rights clearance processes can be streamlined, more funds for investment in yet more original European content can be released. Modernized rules for rights clearance would foster the production and circulation of content to the advantage of all actors in the cultural industry.

The EBU presented its White Paper with concrete proposals to make copyright licensing future-proof and technology-neutral during the "*Modern Copyright for Digital Media*" Conference on 16-17 March 2010 in the European Parliament in Brussels. The EBU White Paper (Policy Paper and Legal Analysis) can be found at: <http://www.ebu.ch/copyright>. (Further details are given below.)

Better matching the skills needs of CCIs

- 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?

As recognized by the Green Paper, since CCIs make increasingly innovative use of ICT, there are certain e-skills requirements to foster innovation and competitiveness. Ensuring a better match between the supply of skills and the demands of the labour market is crucial in the medium and long run if the sectors' competitive potential is to be boosted.

PSBs play a particularly important role in contributing to the provision of high-quality qualification and training for media professionals and serve as a platform for promoting talent. PSBs invest in programmes and projects supporting young musicians, actors, journalists and film producers. In Germany, for example, ARD has been promoting young creators and directors since the 1970s. ARD is investing more than 30 million Euros in its regional film support organizations. ZDF has also been actively contributing to the provision of national and regional financial aid for films by providing more than 17 million Euros for different film support organizations in Germany. ARD gives young creators a springboard to further careers by providing a platform on its channels to show film debuts to a wide audience. ZDF also provides a very famous platform for young film makers called "Das Kleine Fernsehspiel." PSBs have also developed special partnerships with universities and film academies, such as the cooperation in Germany of RBB with the film academy Konrad Wolf (HFF) and the German film and television academy Berlin (dff). ZDF also collaborates with specialised academic institutions in Germany such as the film academy "Internationale Filmschule" based in Köln, of which ZDF is a shareholder.

Beyond the involvement of PSBs in the provision of training to creators and media professionals, PSBs contribute to the overall development of ICT skills by promoting media literacy and allowing users to keep pace with technological change, to invest in new technology, and to learn how to control such technology and make the best use of new services.

Media literacy is central to the EU's digital agenda, Europe's five-year strategy to maximize the social and economic benefits of information and communication technology (ICT). The digital agenda plan is part of the overall EU 2020 strategy which represents Europe's long-range goals for the economic and social development of Europe. Media literacy is of key importance as it will determine users' confidence in digital technology and, therefore, the take-up of ICT and media services.

Public service media have always played a central role in media literacy and in the promotion of awareness-raising activities building on their traditional position of trust and credibility. Through a range of educational programmes, they help viewers and listeners understand their audiovisual content and how media

(traditional and new) work, how they influence people's lives and how they can best be used. In today's times of intense technological change this is even more necessary.

Under their remit, public service media have special duties and responsibilities in this regard and they are, in particular, strongly committed to providing the necessary and appropriate measures to promote media literacy. They highlight good practices in media literacy across Europe which foster awareness and exchanges of experience.

Public service media address media literacy in different ways and at different levels. Continuous, reliable information about programmes and new online services as well as high-quality programmes with a strong educational dimension are key tools for media literacy.

Public service media empower viewers to watch and enjoy their programmes critically and use different media platforms in order to benefit effectively from their services. This can be more efficient than heavy regulation in achieving media literacy in today's information society.

Public service media welcome and support the European Commission's efforts to enhance media literacy within the Digital Agenda through a number of measures, including the development of online consumer education tools on new media technology, in 2011 and EU-wide indicators of digital competences and media literacy by 2013. Ensuring a safer online environment for children and young people, facilitating access for persons with disabilities to digital television services and online services, and raising awareness on copyright issues, are also part of the media literacy dimension and are key priorities for public service media.

- How could peer-coaching in the CCIs be encouraged at the level of the European Union?

Access to funding

- 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?

The European Union has set up a number of instruments, such as the MEDIA programme, in support of the CCIs. In the light of the public consultation "MEDIA Programme for support of the European audiovisual sector beyond 2010" which is expected to be launched in the autumn of 2010, the EBU will formulate proposals on the future orientations of the programme.

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

Local and regional development as a launchpad for global success

Local and regional dimension

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

Mobility and the circulation of cultural and creative works

- 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?

As stated above, in order to facilitate the circulation of European content in Europe a priority for action must be the establishment of an *efficient* copyright framework for rights clearance. An excessively complex system prevents, and can in some cases deter, service providers from launching new initiatives.

The EBU has put forward concrete proposals to make copyright licensing future-proof and technology-neutral in its White Paper "*Modern Copyright for Digital Media*". The EBU proposals include, *inter alia*, the following:

- To make copyright licensing future-proof, it must be modernized on the basis of technological and platform neutrality. The EBU advocates the creation of a **coherent framework for all audiovisual media communications** so that rights clearance for radio and television embraces broadcast-like on-demand services (such as catch-up services, podcasts and vodcasts). The rights clearance process must be made simpler and faster for all audiovisual media service providers.
- The "**country-of-origin**" rule which applies to satellite broadcasting should be extended to **cover all communication of audiovisual media services on all platforms** (in particular, the Internet). A provider of audiovisual media services (e.g. a broadcaster), who bears the editorial responsibility for the choice and assembling of the content, would need to clear the audiovisual

media communication rights, including for online and on-demand use, through a licence under the law of the country in which the media service originates. This would *avoid the cumulative application of 27 national laws to one single act* of cross-border transmission, for both linear and on-demand (broadcast-like) media services. This proposal thus leads to an effective and pragmatic system providing for one licence for linear (broadcasting) and on-demand broadcast-like services.

- The **mandatory collective licensing** for cable retransmission of linear channels should be extended to **apply to all third-party retransmission of linear channels, i.e. on any platform** (e.g. mobile networks, and IPTV), and not just cable.
- The EU should promote the adoption of **extended collective licences** as an *optional model* for clearing rights for all audio and audiovisual media services where this is deemed necessary or useful. For broadcasters' archives, in particular, Member States should be required to ensure, via appropriate means (for example, through extended collective licensing) that broadcasters are entitled to use their archives in new online services.

The modernization of the above-mentioned (and other) rights clearance principles should be implemented through the new ***European Framework Directive on collective licensing envisaged for 2010 as part of the EU Digital Agenda.***

It is only through effective collective management that one-stop-shop licensing arrangements for mass use of protected material can be established. Collecting societies are of fundamental importance for ensuring that broadcasters have access to the European and global music repertoire and for right holders to be remunerated. Their existence in the various Member States is crucial for cultural diversity. It is therefore vital for any immediate action that such a new Framework Directive on collective licensing is not limited to the mere supervision of music collecting societies, but that it also addresses the rights clearance concerns of the audiovisual media sector, as proposed by the EBU, in conformity with the scope and principles of the Audiovisual Media Services Directive.

Cultural exchanges and international trade

- Which tools should be foreseen or reinforced at EU level to promote cooperation, exchanges and trade between the EU CCIs and third countries?

The EBU fully supports the objectives set out in the Green Paper, and particularly a greater balance in cultural exchanges and the strengthening of international cooperation and solidarity in a spirit of partnership.

Moreover, the EBU welcomes the fact that the European Union has preserved the

capacity, for itself and especially for the Member States, to define and implement cultural policies for the purpose of preserving cultural diversity. This has been achieved in international trade negotiations by notifying MFN exemptions and by consistently refraining from making specific commitments on market access and national treatment in cultural services, and in particular in the audiovisual sector. It is of great importance that the EU should continue to pursue this approach, and in a technological and platform neutral way. There needs to be the same protection and scope for cultural and audiovisual policies online as there is offline.

The EBU expresses a clear preference for instruments and policies serving to facilitate international cultural exchanges to be developed within the framework of the 2005 UNESCO Convention on cultural diversity.¹ The EBU regards as positive the approach developed by the Commission to implement the UNESCO Convention and strengthen international cooperation in the field of culture. The EBU appreciates that the protocols on cultural cooperation which have recently been included in Economic Partnership Agreements (EPAs), Free Trade Agreements (FTAs) and Association Agreements (AAs) are based on the principles and definitions of the UNESCO Convention and highlight the consideration that cultural goods and services are not comparable to other goods and services, given their cultural value.

Where Cultural Cooperation Protocols are negotiated together or attached to bilateral (or multilateral) trade agreements, there is always a risk of undue pressure or trade-offs between cultural and economic aspects and objectives. Consequently, such Protocols should not only be governed by the principles of the UNESCO Convention on cultural diversity but also be negotiated in a clearly separated way, with distinct procedures. This should not pose a problem where all the other parties have ratified the UNESCO Convention. The Protocols also need to be adapted to each specific bilateral agreement, taking into account the needs and interests of the cultural and audiovisual sector on both sides.

In addition, the EBU considers that measures and policies to foster cultural exchanges, and particularly in the audiovisual sector, should also be considered and reinforced as part of the EU's neighbourhood policy, in line with the new Article 8 TEU introduced by the Lisbon Treaty.

The EBU has many Members in countries outside the borders of the European Union.² It pursues an active policy of promoting exchanges and cooperation among all its Members, including by coordinating and supporting television and radio programme exchanges, and notably in the framework of Eurovision and Euroradio, and promoting co-productions and any other form of cooperation among its Members and with other broadcasting organizations or groups of such organizations.

¹ Convention on the protection and promotion of the diversity of cultural expressions.

² Including - in the East - Russia, Ukraine, Turkey, Israel, Georgia, Armenia and Azerbaijan, and - in the South - Morocco, Algeria, Tunisia, Libya and Egypt. (The full membership list available at: http://www.ebu.ch/en/ebu_members/actives/index.php.)

In this context, the EBU is concerned about the uncertain future of the European Convention on Transfrontier Television of the Council of Europe. It has always been understood that the instrument should serve to extend the common European broadcasting area across the whole continent. If it were to be abandoned, the risk of a legal vacuum would exist, and there would seem to be a need for additional measures to strengthen and guarantee the freedom of audiovisual exchanges across frontiers. It is also important to ensure that the notion of "European audiovisual works" in the Audiovisual Media Services Directive continues to be applied in a broad sense, which can also include productions from or with neighbouring countries.³

Towards a creative economy: the spillovers of CCIs

- 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?

- How can "creative partnerships" be promoted between CCIs and education institutions / businesses / administrations?

- 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?

³ Under Article 1(n) of Directive 2010/13/EU, "European works" also include, subject to certain conditions, works originating in European third States party to the European Convention on Transfrontier Television and works co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries.