

House of Commons
Culture, Media and Sport
Committee

New Media and the Creative Industries

Fifth Report of Session 2006–07



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Report, together with formal minutes

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The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

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Summary

We are in the midst of a transformation in the way that viewers and listeners access and consume media content. The move from analogue to digital broadcasting, the growth of broadband access to the internet, and the development of new platforms such as mobile TV are all giving consumers a far greater choice over what they watch and listen to, and when and where they do so. As a result, whole new markets are opening up for creators and broadcasters and this is empowering consumers who are no longer forced to accept the narrow range of offerings of a limited number of broadcasters at a particular time. At the same time, it also creates new challenges for the creative industries and their regulators to ensure that consumers are protected and that creators are able to obtain their due reward while not stifling the spread of creativity and knowledge.

The pace of change is so rapid that solutions to some of the problems that we sought to address have already begun to emerge. However, at the same time, new challenges are being posed by technological developments that are now coming to market. The ease with which consumers can now access content, copy it and keep it, makes the protection of intellectual property and enforcement of copyright law of far greater importance to the health, and indeed the survival, of our creative industries than ever before. Some have argued that the rights of intellectual property owners should be limited in order to promote the spread of knowledge and creativity. However, we take the view that this is a matter of choice for the creators and that rights owners who wish to retain control over the use and exploitation of their material should be able to do so. We also believe that the level and period of remuneration as well as the future direction of the development of technology are generally best left to the market to determine.

With this in mind, we welcome the agreements that have been reached between producers and broadcasters over the ownership and duration of rights to distribute content through new media applications. This is much more preferable than a solution imposed by Ofcom, although we believe that it will need to be reviewed once the market has developed further and business models are clearer.

Where Government and regulators do have a clear role is in setting the legal framework and enforcing it, particularly to combat piracy, both in its traditional and on-line forms. Perhaps prompted by the Gowers Review of Intellectual Property, we welcome recent moves by the Government to strengthen intellectual property protection, particularly by at last requiring local trading standards to take enforcement action and by resourcing them to do so. However, we believe that more should be done to send out a strong message that this matter is taken seriously—by increasing the level of damages for infringement and by making it illegal to camcord a film being shown in the cinema, the principal way by which illegal copies are first obtained.

We also believe that there needs to be greater clarity in the law in order that there is no confusion among consumers about what is and what is not permitted. We therefore agree with Gowers that there should be a limited exemption to allow consumers to copy content which they have purchased for their own private use, in whichever format they choose. In doing so, the law will legitimise what is already an almost universal practice, and we do not

accept the argument that a levy should be introduced on hardware or software in compensation. However, we do agree with the music industry that it is unfair that performers do not enjoy the same rights as composers and artists and we therefore believe that the Government should press the European Union to extend the copyright term for sound recordings to at least 70 years, as is the case in many other countries.

The failure of consumers to understand the reasons for observing copyright and to appreciate the damaging consequences of piracy makes enforcement far harder. We congratulate the industry on initiatives to increase awareness through initiatives in schools and elsewhere and call on all those with an interest to make this a priority. In particular, we believe that internet service providers and search businesses, whose growth is driven in large part by the availability of audio visual content, should be doing much more to prevent piracy, for instance by establishing an industry-funded body to address the problem similar to the Internet Watch Foundation.

As Britain's biggest and most powerful broadcaster, the BBC will have a powerful impact on these emerging technologies. We would expect it to set an example by stressing the importance of observing copyright and believe that this message needs to be clearer if its plans for establishing a Creative Archive go ahead. We will also monitor closely the new governance arrangements to ensure that the market impact of proposed new services is fully taken into account by the Trust before permission is given to proceed.

We share the general view of the Government that attempts by the European Union to apply the same regulations for non-linear services as presently apply to linear broadcasting are misguided and doomed to fail. We welcome the recent move to restrict such ambitions to on-demand broadcast services but remain convinced that self-regulation by the industry and consumers offers a more realistic and practical approach.

The creative industries already make a major contribution to the UK economy and this is likely to continue to grow. The rapid take-up of new media offers enormous opportunities for both consumers and businesses and we welcome the increasing recognition of this. We look forward to the publication of the Government's own Green Paper and hope that this will include many of the measures that we have recommended.

1 Introduction

1. The BBC, when setting out its manifesto for the future in *Building Public Value* in June 2004, forecast that:

"Digital radio and TV audiences will soon have the same flexibility as Internet users to control when and where they watch and listen to programmes. We expect seven in ten homes to be able to schedule their viewing and listening at a time that suits them best by 2016. Many will use personal video recorders (PVRs), which will be able to hold as much as 4,000 hours of content (equivalent to six months of output of a 24-hour television channel), compared to just 40 hours today. At the same time, downloading and file sharing of video and audio from the Internet will become commonplace for many people."

- 2. Less than three years later, much of that vision has already come to pass, and the predictions for 2016 seem, if anything, conservative. A revolution is underway not just in the way in which we watch television programmes and film but in the way we listen to music, gather news information, and use all forms of creative content: it could be said that the reproduction and dissemination of creative content has come to new life thanks to recent technological developments.² This revolution challenges all elements of the delivery chain, from creators themselves through to distributors, broadcasters and consumers. These challenges are largely ones for the market to address and resolve, by adapting, by exploring ways in which it can draw upon what technology can offer and by judging how to meet the public's appetite. There are, nonetheless, roles for regulators and the Government in ensuring an open and fair marketplace, and in preserving a balance between public access to knowledge and ideas on the one hand and the right and ability of creators and rights holders to exploit full commercial value from creative products on the other. This report is about those challenges, roles and balances.
- 3. The inquiry was announced in November 2005. The terms of reference were:
- The impact upon creative industries of recent and future developments in digital convergence and media technology;
- The effects upon the various creative industries of unauthorised reproduction and dissemination of creative content, particularly using new technology; and what steps can or should be taken—using new technology, statutory protection or other means to protect creators;

¹ Building Public Value, page 51

² See Design and Artists Copyright Society Ev 54

- The extent to which a regulatory environment should be applied to creative content accessed using non-traditional media platforms; and
- Where the balance should lie between the rights of creators and the expectations of consumers in the context of the BBC's Creative Archive and other developments.
- 4. We received submissions from bodies representing creators' interests, distributors of creative content, broadcasters, regulators, providers of media services based upon new technology, libraries, public bodies with responsibilities for film, arts and collections, Government, and interested individuals. By far the larger part of this evidence is printed along with this report.³ Many gave oral evidence in a series of eight sessions between May and November 2006. We have also benefited from informal presentations on new technology and services both in the UK and in Korea. We are grateful to all those who have helped us, and we owe a particular debt to our Specialist Adviser on broadcasting, Mr Ray Gallagher, for his guidance.
- 5. This has been a particularly stimulating and challenging inquiry. The terrain covered has been vast, not least because of the incredible range of the creative industries and the complexities of technological innovation. In addition, the speed of technological change in this area is such that even during the course of our inquiry, developments provided answers to some of the questions we originally posed while also provoking new ones. The evidence has taken us into many distinct policy areas, including support for the creative industries, regulation of content, policy on allocation of spectrum, and, above all, copyright and the protection of intellectual property. We could have held an in-depth inquiry into any one of these areas (and may well do so at some point in the future). We have instead chosen to take an overview and to try to identify strands common to different sectors within the creative industries. This report does not claim to be an exhaustive analysis of any of the areas covered; and there are some subjects on which evidence was sought but little was submitted, such as fashion and design. We hope, however, that we have succeeded in enabling views to be aired and in making useful recommendations in advance of the forthcoming Green Paper on the creative industries.

2 New media technology in the UK today

How do consumers benefit?

6. The last two to three years, in particular, have witnessed a pace of change in communications technology which has been extraordinary. Much of that change has been directly relevant to people's daily lives and their typical leisure activities: watching television and film, reading a newspaper, listening to music or playing interactive games. The Internet has become a new focus for entertainment, having moved beyond being purely a vehicle for access to information to become a media platform in its own right, hosting live broadcasts of television services, Video on Demand, catch-up services for

³ HC 509-II, Session 2006-07

linear⁴ TV and radio channels, websites offering creative material (film, visual art and music),⁵ interactive gaming and "user-generated content" such as home-produced videos, audio and written material.

7. Consumers have more flexibility than ever before as to how, when and where they consume creative content: this message was re-iterated throughout evidence to the inquiry. PACT's written submission illustrated the point well:

"The public now has unprecedented levels of choice not only in the variety of content available but in how it accesses that content. People can choose from pay-TV and free-to-air packages on satellite, cable, digital terrestrial or broadband. They can watch films and sports on a pay-per-view or on-demand basis, and pause and rewind live television using PVR technology. With the advent of content distribution via portable devices, audiences need not even go near a television. And those 'audiences' are becoming creators, with 'user-generated' content democratising the media, as illustrated so dramatically by the mobile phone clips that bore witness to London's July bombings."

The Institute of Practitioners in Advertising described a "seismic shift" in the relationship between consumers and the media, with consumers now dictating how they used it.⁶ DCMS noted that consumers sought choice, flexibility and protection, adding that consumers expected products and services to work together seamlessly.⁷

8. The choice available to consumers has increased dramatically in just a few years. The move from analogue platforms has allowed the number of terrestrial channels to rise from just five to dozens while digital cable and satellite channels offer hundreds more. The online world will offer a virtually limitless number. The Internet is altering the economics of retailing by making it viable to offer a far greater range of product even if there may only be a tiny demand. This is already benefiting authors, musicians and other creators through increased sales. The UK Film Council predicted that this "long tail" effect could also be particularly valuable for the British film industry as consumers take advantage of the opportunity to choose from a far wider range of titles online.9

The contribution of the creative industries to the UK economy

9. The creative industries do more than inform and entertain the general public: they are a major part of the UK economy, generating 7.8% of Gross Value Added in 2003¹⁰ and possibly 10% of the economy in the near future.¹¹ The extent of employment in the creative

⁴ Broadcast according to a schedule

⁵ The Internet is the "primary marketplace" for the supply of images by members of the British Association of Picture Libraries. Ev 339

⁶ Q 412

⁷ Ev 298

⁸ Ev 164

⁹ Q 589

¹⁰ Ev 296

¹¹ Budget Statement by the Chancellor of the Exchequer, HC Deb, 22 March 2006, col.291

industries is not entirely clear. Of com told us that the creative industries supported almost two million jobs, including 130,000 in the music industry and 85,000 in broadcast TV and radio.12 Recent research conducted by Frontier Economics for DCMS (and using a different methodology) suggests, however, a total of 1.15 million people employed in the creative industries in 2004, including 73,000 in the music sector, another 73,000 in the television and radio sector, 331,000 in software and computer services, 185,000 in design and 168,000 in publishing.¹³ The Minister for Creative Industries and Tourism described the creative industries as "an enormous engine of growth" which had grown in the last five years at about twice the rate of the rest of the economy.¹⁴ The Alliance Against IP Theft described the creative industries as "innovative and dynamic" and "a hugely successful sector of which the country can be proud";15 and Phonographic Performance Ltd. (PPL UK), a collecting society licensed on behalf of performers and record companies, identified the creative industries and the financial sectors as "the key to prosperity in modern economies". 16 The music industry alone accounts for a large slice of that prosperity, being the third largest market in the world for music sales (behind the US and Japan) and the second greatest source of music repertoire globally—again, behind the US.¹⁷ UK investment in television content has been estimated to be greater per head than that of any other country, at \$75 per person.¹⁸

10. The UK has the world's third largest computer and video games market by value (after the US and Japan), recording sales in excess of £2.3 billion every year;¹⁹ one study suggested that 21.6 million people aged between 6 and 65 in the UK played such games every week.²⁰ Mr Ian Livingstone, Product Acquisition Director at Eidos Interactive UK, a major games firm, told us that interactive games are "important economically and culturally as much as music, films and television".²¹

- 11. The UK also has the largest concentration of picture libraries in the world,²² offering tremendous potential for creative industries through the supply of images worldwide.
- 12. Early in the inquiry, we were told by Mr Anthony Lilley, Chief Executive of Magic Lantern Productions, that there were "whole sectors" within the creative industries which were "growing incredibly quickly" but which were not dependent on television, radio or music: they were native to the new media technological environment. Mr Lilley observed

¹² Ofcom Ev 187

¹³ Comparative analysis of the UK's creative industries, Frontier Economics, August 2006. Figures are mostly based upon Annual Business Inquiry data and are indicative only

¹⁴ Q 625

¹⁵ Ev 44

¹⁶ Ev 56

¹⁷ Ev 56–7

¹⁸ UK Television Content in the Digital Age, Oliver & Ohlbaum, October 2003

¹⁹ Ev 216

²⁰ Ev 216

²¹ Q 485

²² British Association of Picture Libraries Ev 339

that more people are involved in web production in the UK than in television production in the UK "by a very large number".²³

13. In June 2005, the then Minister for the Creative Industries at DCMS, prompted perhaps by the evidence gathering on the value of the creative industries to the economy, announced his intention that the UK should become the world's creative hub for the creative industries.²⁴ The Government has since established a Creative Economy Programme and plans to publish a Green Paper on the creative industries later this year.²⁵ We consider the Government's role in supporting the creative industries in section 7 of this report.

14. Witnesses were unanimous that the pace of technological change had enormous implications for the creative industries and for their consumers.²⁶ In many cases these were very positive:

- the Creators Rights Alliance told us that the new technology had introduced potential new revenue streams to the economy, which were to be shared by all organisations involved;²⁷
- Equity said that technical development presented an opportunity for creative industries to improve the accessibility and availability of creative work across platforms;²⁸
- the UK Film Council told us that "the development of the new media is transforming the landscape of the creative industries and film in particular" and it identified the speed of scale and change in the film world as being greater than at any previous point in the history of film";²⁹ and
- Ingenious Media, a major investor in the sector, concluded that Britain, as a home for production companies with strong creative abilities, was well placed to take advantage of these opportunities.³⁰

Communications technology and the media: where the UK stands

15. The UK is well placed to take advantage of advances in communications technology:

• By the end of March 2006, 60% of UK households claimed to have an Internet connection, compared to 45% at the end of 2001;³¹

²⁴ Speech to the Institute for Public Policy Research: http://www.culture.gov.uk/Reference_library/Minister_Speeches/Ministers_Speech_Archive/James_Purnell/James_Purnell_Speech01.htm

²³ Q 39

²⁵ HC Deb, 26 January 2007, col 2056w

²⁶ See for instance Alliance Against IP Theft Ev 44, British Music Rights Ev 32, DCMS Ev 287, National Consumer Council Ev 20

²⁷ Ev 51

²⁸ Ev 366

²⁹ Ev 260

³⁰ Ev 225

- Internet penetration continues to intensify, reaching 88% of 15 to 24 year olds and 67% of over 45 year olds;³²
- The UK compares well to other large EU Member States in terms of broadband penetration, estimated by Eurostat in April 2006 to have reached 32% of households, below only Benelux and Scandinavian countries;³³
- The Office for National Statistics, meanwhile, estimates that 40% of UK households had broadband Internet access between January and April 2006;³⁴ and
- DCMS cited analysts' estimates that, by 2010, 90% of Internet-connected households would have a broadband connection, representing 60% of all households.³⁵

16. Consumers, particularly young people, have adopted new products and services with enthusiasm:

- Claire Enders, Chief Executive of Enders Analysis, told us that the UK had the highest penetration of DVD players, MP3 players, digital terrestrial television and satellite television;³⁶
- In January 2006, the then Minister for the Creative Industries claimed that no other country had the same combination of high uptake of mobiles, broadband and digital TV and radio;³⁷
- 26% of media consumption worldwide is now in front of a computer screen;³⁸
- We were told that the UK had the biggest legitimate download market for music in Europe;³⁹ and
- There were 53 million legal downloads of single tracks in the UK in 2006, double 2005 levels,⁴⁰ and it has been forecast that as much as 25% of the global music market will be represented by digital music sales within the next few years.⁴¹

17. The rapid expansion of broadband availability and increases in broadband speeds are key drivers for the growth of new media services⁴² and are themselves partly driven by

³¹ Ofcom Consumer Engagement with Digital Communications Services Report 2006.

³² Q 412

³³ Eurostat News Release 45/2006

³⁴ See http://www.statistics.gov.uk/pdfdir/inta0806.pdf

³⁵ Ev 287-8

³⁶ Q 39

³⁷ Ev 147: speech by James Purnell MP to Foreign Policy Centre, 26 January 2006.

³⁸ IPA Bellwether Report for 2006 Second Quarter: see www.itweek.co.uk/itweek/news/2160771/web-marketers-better-insight

³⁹ Ms Enders Q 39

⁴⁰ Figures from Official Charter Company data: see IFPI Digital Music Report 2007

⁴¹ British Music Rights Ev 32

⁴² BT data from January 2006 shows that 99.9% of premises in the UK are connected to DSL-enabled exchanges

demand for faster download speeds allowing the distribution of "rich" content such as video, film and television. DCMS observed that "each time the networks press the broadband accelerator pedal, the content community responds with content ideas, which in turn encourages broadband adoption". Other drivers include price reductions in high-speed broadband connectivity, improved functionality, increased interconnectivity between devices in the home, digitisation of content, growth of computer processing power, the development of the PC as a media platform and, perhaps most importantly, greater storage capacity. Personal Video Recorders routinely allow 100 hours or more of television programming to be stored and replayed on demand. In the case of iPods, storage capacity has increased by a factor of 12 within three years; and Google suggested that in five years it might be possible to store all the music ever created on a single iPod.

18. A further stimulus is provided by the Government's plans to cease analogue television transmission region by region, starting in 2008 and finishing in 2012, releasing spectrum and opening the door to an even greater choice of applications.

19. The communications and media industries have been quick to respond to technological change by developing new products and services. Some are well-established among consumers: satellite and cable TV services have been available as alternatives to terrestrial broadcasting for many years; and interactivity between broadcast media and consumers, including participation and feedback, is now commonplace. The availability of music as digital files for download has stimulated the development of the MP3 player (such as the iPod, which has itself developed video-enabled models). Mobile phones have travelled from being single-purpose instruments owned by less than 10% of the UK population some 10 years ago to multi-function devices complementing voice telephony with text messaging functions and video capability. Mobile phone penetration has now reached the stage where handsets are almost ubiquitous.⁴⁸

20. The trend towards multi-purpose devices seems likely to continue. As the Entertainment and Leisure Software Providers Association (a representative body for the interactive games sector) observed, the home computer itself can serve as a single control point for an entire household's audio-visual and information requirements. Many new games consoles are Internet-enabled devices, often portable, which also play video and music from both broadcast and recorded sources.⁴⁹ The Mobile Broadband Group noted that consumers were increasingly using portable entertainment devices such as mobile phones, iPods, portable Playstations and digital radios, to consume content. The main obstacles to all these being combined into one, it suggested, were memory and battery life; and it predicted that both blockages would be overcome.⁵⁰

⁴³ Q 166. "Rich" in this context means data-intensive

⁴⁴ Ev 297

⁴⁵ The BBC told us that the cost of data storage had halved each year: Ev 135. MPEG4 technology allows significant reductions in file sizes required to store high quality video content

⁴⁶ BBC Ev 135

⁴⁷ O 519

⁴⁸ DCMS Ev 287

⁴⁹ Ev 216

⁵⁰ Ev 87

New media services and genres: a survey

21. A range of new services and genres is now emerging, taking up the opportunities offered by technological change. The short survey which follows offers a snapshot of what was new to the market in early 2007, when this report was prepared.

On demand and "time-shifting" services

- 22. Domestic television viewing practices are beginning to move away from the standard format, in which viewers watch linear services at the time of transmission. By March 2006, there were over 1.4 million subscribers to BSkyB's Sky+ personal video recorder (PVR) service, which uses a hard disk drive to store digital TV programmes and replay them with no reduction in picture quality. PVR facilties are also offered for broadcasts by BT, Telewest (now Virgin Media) and the Freeview consortium.⁵¹ ITV cited forecasts that there could be 10 million homes in the UK with PVRs by 2014.⁵²
- 23. All the major UK broadcasters have launched or are planning to launch on-demand services. Besides the BBC proposals which are described below, Channel 4 has launched a video-on-demand product using cable technology (in late 2006) and via broadband (in March 2007). The broadband service allows users to catch up on content up to 28 days after transmission and to access archive material from the past two decades. ITV plans to launch an on-demand broadband service in spring 2007.
- 24. In December 2006, BT launched BT Vision, offering a range of on-demand and interactive services via a BT broadband line,⁵³ complemented by access to Freeview channels received via a standard aerial. BT stressed the interactive potential offered by the broadband line, which permits flows of data both to and from the user. BT suggested that TV-based interactivity could help bridge the "digital divide", providing information services to people who do not have a PC at home.⁵⁴ It hinted that its network could have the capacity in future to offer not just single services on-demand but streaming of a range of channels.⁵⁵
- 25. Digital files of music and film content are already widely available on demand. The UK Film Council noted the convenience for consumers of downloading a file rather than renting a DVD, and it saw the potential for on-demand download transactions to generate very substantial revenues for the film industry.⁵⁶ The growth in the number of online music sales outlets has enabled consumers to become more selective about the music they listen to (and where they obtain it). The British Phonographic Industry (BPI) acknowledged that there was a move towards a track-based culture and a "sampleable" framework for music listening, which gives buyers more opportunity to buy selected tracks from a compilation

⁵¹ Ofcom Communications Market 2006, page 25

⁵² Ev 382

⁵³ On-demand: films, a range of TV programming, music videos and the previous seven days of broadcast programming (subject to rights availability); interactive services include video telephony, games, information and educational services. See Ev 99

⁵⁴ Ev 99

⁵⁵ QQ 215-6

⁵⁶ Q 589

rather than obliging them to buy a complete album.⁵⁷ The Musicians' Union made the same point and warned that the music industry would need to adapt to this extension of consumer choice.⁵⁸

26. While PVRs have allowed consumers to "time-shift" their viewing, other technologies have emerged which enable them to "place-shift". For example, the Slingbox allows viewers to redirect the television signal from their home to their desktop or laptop, regardless of where the computer is located. This means, for example, that viewers can access domestic services from their home country while they are overseas, as long as they have a broadband connection. There is already heated debate about the complex rights issues which are raised, as it becomes possible for viewers to gain access to content which is available in their home country but which has not been released in the destination country.

Television on mobile handsets

27. Since October 2006, BT, in partnership with Virgin Mobile, has offered a service "Movio"—broadcasting digital TV and radio to mobile phone handsets in the UK. The service uses spectrum allocated to Digital Audio Broadcasting (DAB) services⁵⁹ and offers a range of content including BBC One, ITV1, Channel 4, E4, ITN News and DAB radio. BT trials ahead of the launch of the Movio service found the TV and radio service to be either "appealing" or "very appealing" and that consumers watched on average 66 minutes of television on their mobiles each week. The principal constraint was signal strength and reception quality.⁶⁰ Evidence from these trials needs to be placed against consumer surveys which report that only 17% of the wider public are keen on taking up mobile TV;⁶¹ and questions remain, as ITV pointed out, about the viability of television services delivered by mobile telephony as a mass market model.⁶²

28. BT is not the only provider of televisual content to mobile handsets in the UK. Witnesses from the Mobile Broadband Group outlined services offering streamed live content (as opposed to video clips on demand) available to mobile handsets using 3G technology based upon cellular networks. The nature of 3G technology can place a strain on network capacity if there are large numbers of simultaneous connections.⁶³ We asked therefore whether the quality of the picture would degrade when the number of users reached a certain level. The Mobile Broadband Group assured us that technological enhancements using HSDPA technology.⁶⁴ were being developed which would provide the necessary capacity.⁶⁵

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<sup>57</sup> Q 125
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⁵⁸ Ev 403

⁵⁹ Ev 100

⁶⁰ QQ 200–1

⁶¹ Olswang Convergence Consumer Survey 2005: www.olswang.com/convergence/default.asp

⁶² Ev 383

⁶³ Ev 87

⁶⁴ High Speed Downlink Packet Access

⁶⁵ Q 162

29. Other technologies capable of transmitting television services to mobiles are being developed. In Korea, we were shown services using Digital Multimedia Broadcasting (DMB) technology; Italy is pioneering the DVB-H (Digital Video Broadcasting (Handheld)) standard which, it was suggested by BT, could be a future technology for the UK if spectrum is made available.⁶⁶ Arqiva and O² have already conducted a trial of broadcast mobile TV using DVB-H technology in late 2005, which reported positive results. Sky has also conducted a trial using MediaFlo technology. It is not clear at this stage the extent to which the market will support a number of competing technologies.

30. Mobile handsets, while not an obvious choice for prolonged viewing of television content such as film⁶⁷ or drama,⁶⁸ are nonetheless suited to short clips from full-length shows, comedy sketches or sports highlights. Producers of television programming are therefore responding with specially assembled packages—"mobisodes"⁶⁹—on which consumers can "snack"⁷⁰ while on the move or in short leisure breaks. The Mobile Broadband Group forecast that mobile content would become more sophisticated once battery life for handsets had lengthened.⁷¹

BBC new media services

31. In *Building Public Value*, the BBC's policy paper published in June 2004, the BBC set out its vision for expansion of its digital services, recognising its key role in enabling digital switchover and outlining a set of new digital services. It stated that "over the next decade, the BBC will invest in digital infrastructure, content, services and promotion to help bring the benefits of the new digital technologies to everyone".⁷² As the Charter Review process proceeded, the BBC refined and trialled its proposals, and Government confirmed its intention that the BBC should have the scope, under the future Charter and Agreement, to develop its role as a "trusted guide" to new technology in broadcasting.⁷³

32. In April 2006, the Director-General of the BBC announced "a new editorial blueprint designed to deliver more value to audiences over the next six years and turn the BBC's public purposes laid out in the recent White Paper into quality content for the on-demand world". Known as *Creative Future*, the BBC's blueprint includes plans to relaunch the BBC website, deliver a new teen brand via broadband, TV and radio services, and "learn from the world of video games and experiment with commissioning for new platforms".⁷⁴ It remains to be seen what impact, if any, the settlement of a licence fee at a level lower than that sought by the BBC will have on its online plans.

⁶⁶ See for instance Ms Lloyd QQ 202 and 206

⁶⁷ The UK Film Council nonetheless remarked upon consumers' loyalty to film and their willingness to absorb it wherever they can: Q 601

⁶⁸ See BBC Ev 135

⁶⁹ See Ofcom Ev 188

 $^{^{70}}$ This was the term used by Hutchison 3G: Ev 83

⁷¹ Fy 87

⁷² Building Public Value, page 61

⁷³ A Public Service for all: the BBC in the digital age, Cm 6763, March 2006, para 3.1.15

⁷⁴ BBC press release 25 April 2006

33. Some of the BBC's proposed new services have now undergone trials. The BBC has for some time offered podcasts of its radio output, allowing consumers to download excerpts from recent broadcasts. There were 4.8 million downloads of BBC radio programmes in September 2006.⁷⁵ Television content has also been made available on demand for a sevenday window on a trial basis to 5,000 households. The two proposals have now been rolled together to form a package—the BBC i-Player—which has recently undergone a Public Value Test and has been approved by the BBC Trust, subject to modifications.

34. A proposal for a Creative Archive was announced in 2003 by the then Director-General, Greg Dyke, in a speech at the Edinburgh Television Festival. The aim of the Archive is "to create a substantial—but selected—national archive of audio-visual material in the public domain that is available for users to download, manipulate and reuse for their own ends". A one-year pilot has been held in which members of the Creative Archive Licence Group have made material available under a licence which sets out restrictions, including requirements that anything created from Creative Archive content must credit those who have contributed to it and that downloaded material cannot be used for commercial purposes. The pilot closed in September 2006 and the project is expected to be submitted to the BBC Trust in order to undergo a Public Value Test.

35. The BBC described the Archive as providing "creative fuel for the nation", 78 and it was praised by many. The British Screen Advisory Council (a cross-sector body seeking to enhance the prosperity and effectiveness of the screen industries in the UK) said that it very much welcomed the Creative Archive as "a natural and logical way of the BBC making its programme archive materials either more easily available or, in many cases, available for the first time to the public"; and it described the venture as "brave". Others described the Creative Archive as "a grand and generous vision" and as "an innovative way of giving back the content which has effectively been paid for by public funds". The National Consumer Council also commended the initiative, although it regretted that the range of material available was limited and "fragmented", as it depended upon rights holders' exercise of their rights. However, others expressed serious reservations about the project, because of the message it might convey on copyright and the potential for harmful effects on commercial undertakings. We examine these arguments at paragraphs 155 and 187 respectively.

36. The BBC has also trialled a local TV service, which used satellite and broadband technologies to deliver local news content to viewers in the West Midlands between December 2005 and August 2006. This too has attracted controversy, with concerns being

⁷⁵ BBC press release 6 November 2006

⁷⁶ Ev 138

⁷⁷ Group membership included the BBC, Channel 4, Teachers TV, the British Film Institute, the Media Trust (for the Community Channel) and the Open University. In March 2006, nearly 200 hours of material were available for downloading

⁷⁸ Ev 138

⁷⁹ Q 37

⁸⁰ British Association of Picture Libraries, Ev 342

⁸¹ Bridgeman Art Library Ev 338

⁸² Ev 23

expressed by the newspaper industry. The Director-General of the BBC recently acknowledged that the local TV trial had raised some "quite big questions", adding that there was no certainty that the trial would be carried forward in the light of the "tight" licence fee settlement.⁸³

37. The BBC possesses a vast archive which has until now been difficult or impossible for the public to access. Mr Ashley Highfield (Director of New Media and Technology at the BBC) told us that 99.9% of all of the BBC's archive content was "stuck on shelves gently vinegaring away" and that the BBC was looking at how to make it available. Since then, the BBC has announced a "limited consumer trial", expected to last for up to six months, in which 20,000 triallists would have free access to 1,000 hours of archive content drawn from a mix of genres. Ultimately, the BBC proposes to make large parts of its television and radio archive available on demand to licence fee payers.

User-generated content

38. The genre in which recent growth has been especially striking is user-generated content on the Internet. The last two years have witnessed an explosion in the amount of audio, video and written material posted on websites such as YouTube, MySpace, and Flickr. Google told us that there are 65,000 videos uploaded to YouTube every day and a blog is created every second. Fools of the trade are relatively inexpensive, typically a webcam or a mobile phone; and content may be uploaded and downloaded using either PCs and their equivalents or mobile phones. The nature of the content varies widely from short home-produced films to mobile phone video coverage of dramatic events. Channel 4 identified the emergence of a new generation of non-professional creators, expressing themselves increasingly through their own websites, blogs, podcasts, games and digital art; and it believed that some of these creators would become "key players in the UK's creative industries in the coming years". Channel 4's FourDocs project enables people to upload their own documentaries for assessment by Channel 4 commissioning editors, while also providing advice to documentary makers.

39. The UK Film Council welcomed the development of user-generated content as "an entirely welcome democratisation of the media", important in its ability "to stimulate the development of better informed citizens and a more media-literate society". For Google (which had just announced an intention to purchase YouTube at the time of giving oral evidence), the "huge revolution" symbolised by the rapid emergence of user-generated

⁸³ Oral evidence from the BBC to the Committee's inquiry into Public Service Media Content on 24 April 2007, Q349, available on the Committee's web pages on www.parliament.uk and expected to be published in due course as HC 316-II, Session 2006-07

⁸⁴ Q 315

⁸⁵ BBC news release 15 December 2006

⁸⁶ Q 526

⁸⁷ See Institute of Practitioners in Advertising Q 420

⁸⁸ Ev 169.

⁸⁹ See Ev 371

⁹⁰ Ev 262

content showed that users were "finding a way to express themselves" and were wanting to "participate in the creative process of media". 91

40. User-generated content commonly re-uses creative material from other sources (typically music or visual art and design). Such practices have led to disputes over rights, an issue which we note in more detail at paragraph 170. The BBC's Creative Archive pilot was designed to enable re-use of material to create derivative works; but the extent to which it enhances creativity is debatable. Phonographic Performance Ltd. (PPL) suggested that the BBC was muddled about what the Creative Archive was trying to achieve, confusing the value of releasing archive material with enabling true creativity. The Creators' Rights Alliance went further, stating that copying, cutting and pasting digital content electronically was neither original nor creative and could not be a substitute for selfexpression. 92 This sentiment was echoed by others, who spoke of the Creative Archive as encouraging "regurgitation of others' work"93 and who questioned the value of a "cut and paste generation".94 A more positive view was taken by the Design and Artists Copyright Society (DACS), which licenses works by creators in the visual arts: DACS acknowledged that there could be strong elements of creativity and even artistry in the re-use of existing works. 95 Mr Ahlert, a supporter of the Creative Commons concept, 96 said that copying was how one learnt and that "over time your creativity and originality increases because you are assembling the world and aggregating it".97

Other new services and genres

41. Five million homes across the world use data protocols similar to those that support the Internet to watch digital television via broadband (hence the term "Internet protocol television" or IPTV). To receive IPTV services, a television is connected to a telephone point via a decoder box. Availability of the service in the UK has been restricted to London and Stevenage, and take-up has been limited; but major growth has been forecast for the future.⁹⁸

42. Viewers in the UK have had access to High Definition Television (HDTV) services from ntl:Telewest (now Virgin Media) since March 2006 and from Sky since May 2006. HDTV offers higher picture quality than standard definition television, and the UK Film Council observed that HDTV was of particular benefit to film, which has high production values.⁹⁹ During the lifetime of this inquiry, public service broadcasters have conducted a trial of HDTV services over digital terrestrial television (DTT).¹⁰⁰ A senior analyst at *Screen*

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<sup>91</sup> Q 538
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⁹² Ev 52

⁹³ British Photographers Liaison Committee Ev 352

⁹⁴ Authors' Licensing and Collective Society Ev 327

⁹⁵ Ev 53

⁹⁶ A form of licensing regime offering greater freedom to re-use material: see paragraph 57

⁹⁷ O 68

⁹⁸ IPTV: A Global Analysis, Informa Telecoms and Media, October 2006

⁹⁹ Q 602

¹⁰⁰ Digital signals received through an aerial

Digest has suggested that there will be more than 51 million "HD-ready" households in Europe by 2010, 11 million of which would be in the UK.¹⁰¹ HDTV broadcasts require significantly more spectrum than do standard definition television broadcasts, and the level of take-up in the UK may depend on whether extra spectrum is made available to allow it to be broadcast as part of the DTT offering.

43. Interactive computer and video games are not new; but the adoption of broadband by ever more households (and the increase in speeds) has expanded the market for downloading games which are rich in graphics and features. In Korea, we watched a demonstration of a "massively multi-player online role-playing game" (MMORPG), a form of interactive video game dependent on fast broadband speeds. A player assumes the role of a particular character—based on fantasy or possibly drawing on mythology—and pursues a quest, interacting with other players or competing against them. MMORPGs have attracted an avid following in Korea, and Mr Ian Livingstone—the Product Acquisition Director at Eidos Interactive UK, with a lifetime of experience in the industry, developing and marketing interactive games—forecast that they would also take root in the UK.¹⁰² Ofcom also predicted that the experience of video console games could become more like that of films in a theatrical setting.¹⁰³ DCMS told us that the Government was becoming increasingly aware of the potential use of games technology in non-entertainment applications, for instance in simulation training.¹⁰⁴

44. Newspaper publishers have developed an online presence, not just among national titles but also in the regional press. Johnston Press, the second largest regional newspaper group in the UK, announced plans in 2006 to convert 70 newsrooms to allow journalists to file video reports for streaming on newspaper websites.¹⁰⁵

Future for "traditional" media

45. The advent of new technology and platforms for delivering creative content does not necessarily mean that traditional forms of delivery will cease. Mr Lilley, Chief Executive of Magic Lantern Productions, warned against any assumption that any one medium was "setting out to kill another one", saying that "media do not die, they just get better at what they were good at" and that "cinema becomes better at being cinema". Neither DVD nor videocassettes destroyed the cinema, as was predicted at the time: in fact it was suggested to us that DVDs had helped people to rediscover the cinema. The British Screen Advisory Council suggested that cinema could develop further, as an up-market theatre-style venue with a specialised clientele. Similarly, the Institute of Practitioners in Advertising (IPA) predicted that newspapers, in their traditional format, would continue to be read in the future. An IPA witness saw "no reason at all" why a strong regional newspaper should not

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<sup>101</sup> See PACT magazine, May 2006
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¹⁰² Q 488

¹⁰³ Ev 187

¹⁰⁴ Ev 295

¹⁰⁵ Guardian 28 June 2006

¹⁰⁶ Q 39

¹⁰⁷ Q 365

¹⁰⁸ Q 8

survive the development of online news services, although he acknowledged that regional titles' dependence on classified advertising had led them to suffer from the growth of online advertising.¹⁰⁹ The solution advocated by the IPA was to adapt and to operate on a cross-platform basis.

46. It is more difficult to predict with confidence the future for linear television (the broadcasting of television programming according to a schedule). Alex Graham, a witness appearing for PACT, suspected that "good old-fashioned linear television" would remain for the foreseeable future.¹¹⁰ The Satellite and Cable Broadcasters' Group (SCBG) agreed and forecast that the big players "will certainly be there for some time to come", although it believed that television channels would disappear "ultimately". The Group predicted that 'niche' satellite and cable channels would start to be replaced by video-on-demand or IPTV services, neither of which were dependent on spectrum.¹¹¹ We note with interest the Group's observation that satellite and cable broadcasters, seen not so long ago as "new media", now found themselves classed along with traditional media platforms.¹¹²

47. The days of hard carrier formats such as CDs and DVDs may well also be numbered. Witnesses forecast their decline or disappearance as broadband delivery took over. This does indeed seem likely, once high broadband speeds become widely available and affordable and once the hardware needed to access and play content meets the criteria of cost and user-friendliness which allow it to gain universal (or near-universal) penetration.

3 The impact upon creators

48. In theory, creators are in a powerful position as the source of the material on which whole industries are based. "Content is king", said a witness from Ingenious Media—"the fuel that powers the media engine". In his view, "it is consumer demand for better access to compelling content, through enhanced technology, which is forcing established media conglomerates to adapt themselves in order to maintain their market shares of consumer spending". He cited Sky's acquisition of rights for 24, a US television show, as an example of a company using "compelling, quality content" to drive new subscriptions. Sports and film broadcast rights have performed much the same function, at a price. The British Screen Advisory Council observed that whereas cable technology might have been the best for supporting TV platforms, it was Sky, based on a satellite platform, which had proved "the real winner" as it had "understood the consumer far better than anyone" and had satisfied the demand for compelling content. Equity told us of the need for broadcasters to secure distinctive and high quality programming in order to maximise a fragmented

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<sup>109</sup> Q 421
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¹¹⁰ Q 364

¹¹¹ Q 279

¹¹² Q 280

¹¹³ Decline of DVD, BSAC Q 15; disappearance of CD and DVD, Ingenious Media, Ev 226

¹¹⁴ Ingenious Media Ev 225

¹¹⁵ Q 499

¹¹⁶ Q2

audience.¹¹⁷ Mobile phone operators have likewise recognised the importance of music in attracting "a high-spending young demographic" to their networks.¹¹⁸

49. In this section, we look briefly at the opportunities for creators to use new media outlets to widen their audience reach and to distribute their products directly to consumers, and at the impact of new media on creators' control over their content.

New outlets

50. The sudden explosion in the number of media platforms provides creators with new outlets and, for those that have rights to sell, new scope to earn revenues. The Design and Artists Copyright Society, for instance, noted the value to creators of visual content of exposure to wider audiences through new media, which could lead to future commissions. Hutchison 3G noted that some artists had released music videos as content downloadable to 3G mobile phones prior to general release, or had broadcast a live 3G link to a concert. Newspaper publishers have identified opportunities to expand their services, for instance by offering parallel online newspapers and mobile phone messaging services. The Bridgeman Art Library told us that digital convergence had enabled it to enhance sales of reproductions via the web and to exploit new markets, such as screen savers for mobile telephones and computers.

51. The profusion of television channels on satellite and cable platforms would appear to offer plentiful new opportunities for producers of television programming. The BBC saw the growth in the number of television channels as having been "very good for audiences and very good for creative industry". As Channel 4 observed, the capacity of new digital television platforms far exceeds that of analogue platforms: the number of channels has increased by a factor of ten or more. Much will depend, however, on how much new material is commissioned by owners of new outlets.

52. Of potentially more significance is the new scope for performers and creators—particularly in the music industry—to gain direct access to consumers through broadband and the Internet. Almost anyone can now create and distribute content worldwide from their own homes. Channel 4 spoke of the "increased democratisation of digital production and distribution";¹²⁵ British Music Rights described personal computers as being "latent composition and recording studios";¹²⁶ and the Music Managers' Forum described the opportunities for creators and performers to "do it themselves", bypassing record

¹¹⁷ Ev 367

¹¹⁸ British Music Rights Ev 32

¹¹⁹ DACS Ev 53

¹²⁰ Ev 84

¹²¹ Ev 110

¹²² Ev 335

¹²³ Q 304

¹²⁴ Ev 164

¹²⁵ Ev 164

¹²⁶ Ev 32

producers and publishers and selling recordings to the consumer direct from a website.¹²⁷ One witness described these opportunities as "fantastic"¹²⁸, and another said that the DIY band phenomenon was "extremely exciting" and "a fantastic leveller".¹²⁹ The Association of Independent Music, a trade body representing independent record labels, told us that several of its members were record labels operating entirely online, producing no manufactured product at all.¹³⁰ Google spelt out the equation in economic terms, observing that if online distribution was cheaper, and if that saving could be reflected in the price charged to buyers, more people would be likely to buy the product.¹³¹

53. Direct distribution of content and the successful exploitation of rights both require particular skills, however. The Minister for Creative Industries and Tourism told us of small enterprises which had been generated through creative talent but in which the individuals involved had neither received formal business education nor acquired the necessary skills; yet they found themselves running £100,000 or £500,000 turnover businesses. Ingenious Media, a major investor in the sector, told us that businesses would need to professionalise and transform themselves from producers into rights owners, exploiting all of the new revenue channels that are developing; and to do this, they would need to develop an interface with consumers and acquire financial and business skills. A similar point was made by Google, who identified two new challenges for content creators: understanding the monetisation models available to them, and being able to adapt.

54. While the cost of producing a music track at home and uploading it to the Internet may not be prohibitive, the cost of creating brand awareness and marketing may still be. The Music Managers Forum warned that there were limitations on what could be achieved without the "serious marketing investment" provided by record companies, which could take artists "right through to another level". Some, it noted, had succeeded on their own, but they were the exception.¹³⁵ The Forum also pointed out that, whatever advances were made in direct distribution and marketing, the DIY model still depended upon collection societies to collect royalties.¹³⁶

Creators' control over their content

55. The Design and Artists Copyright Society remarked that it was becoming increasingly difficult in the new media environment to ensure that artists received the credit which they sought.¹³⁷ The Creators' Rights Alliance warned that the ease with which digital files could

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^{127} Q 74. The Arctic Monkeys are an obvious example. Google cited others: see Q 563
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¹²⁸ Mr Stopps Q 74

¹²⁹ Ms Pike Q 76

¹³⁰ Ev 323

¹³¹ Q 563

¹³² Q 630

¹³³ Ev 225 and 230

¹³⁴ Q 521

¹³⁵ Q 74. The Arctic Monkeys are the most obvious example, although the BPI told us that the Arctic Monkeys had used the Internet not so much to bypass record companies as to get a better deal from them: see Q 132

¹³⁶ Q 74

¹³⁷ Q 96

be copied and adapted made it easier for unscrupulous publishers to re-use work while copyright remained with the creator and that, "for a myriad of reasons", work initially commissioned for print appeared on the Internet without the creator's permission. The Alliance listed a number of organisations which insisted on assignment of copyright when commissioning work from freelance creators, including rights for exploitation in electronic formats. It argued that the bargaining power of freelance creators was weak, ¹³⁸ as did DACS, which referred to "huge pressure" faced by freelance creators "to agree to a range of uses for their work wider than they may have intended or wished for". ¹³⁹ There are parallels for independent producers of television programming, who may fear that refusal to agree to broadcasters' proposals on rights will jeopardise the possibility of future commissions. We deal with this issue at paragraphs 102–118.

56. Creators may decide that a commercial approach, involving monetisation of their product, may not in fact best suit their needs. For some, recognition is more important than remuneration; some see it as a duty to society to make creative content freely available; and others judge that making some of their product available for free is in fact a strong marketing strategy which, by encouraging take-up, builds a customer base and will allow revenue streams to develop as a result. Google make available facilities like Google Earth and Google News free in the belief that it helps their rank and enhances their core business. The Association of Independent Music, representing independent record labels, noted that a loss of some measure of copyright control was a factor in reaching new and enthusiastic markets around the world, and one witness suggested that even unlawful use of content had some benefit in promoting and disseminating artists in the music industry.

57. One approach is to adopt a form of licence—such as a Creative Commons licence—specifically authorising (and thereby encouraging) copying and re-use of a creator's work. Broadly speaking, there are six main forms of Creative Commons licence, allowing redistribution of a work and varying degrees of freedom to re-use or change that material for either commercial or non-commercial use, with a credit to the original creator. The intention behind the licences is to provide a tool for authors, educators and artists to "mark their creative work with the freedoms they want it to carry". We were told in May 2006 that more than 100,000 websites were using Creative Commons licences, including Flickr (a photo-sharing website) and a number of small record labels.

58. A form of Creative Commons licence was used by the BBC's pilot of the Creative Archive, which enabled users to download "clips" of content broadcast by the BBC and use them for their own creative purposes, as long as the source was attributed and there was no commercial gain. Clips from *Planet Earth* had been made available in this way; as had

¹³⁸ Ev 50–51

¹³⁹ Ev 53 and Q 96

¹⁴⁰ Q 549

¹⁴¹ Ev 324

¹⁴² Mr Barrow Ev 331

¹⁴³ See http://creativecommons.org.uk/licenses.

¹⁴⁴ www.creativecommons.org.uk

¹⁴⁵ QQ 68 and 83

material from BBC Radio One. Channel 4 pointed out that it had pioneered the use of Creative Commons in the UK and that the creative re-use of existing content had been a core component of several education projects which it had promoted.¹⁴⁶

59. Not all witnesses were enthusiastic about the Creative Commons model. The Creators' Rights Alliance warned that the licences "would not work in certain types of industries", arguing that they made it impossible ever to monetise the products covered; and it dismissed the concept as being a product of academics who "do not understand the rest of the world". The BPI took a more measured view, reserving judgment on whether such licences would offer commercial benefits, believing that this would be determined by the market. It did, however, warn that some creators, especially those at the beginning of their careers, might sign up to Creative Commons licences without being aware that they applied in perpetuity (thereby permanently limiting the scope for commercial exploitation). 148

60. In our view, some of the argument about the merits of Creative Commons licences is misdirected. The licences represent an attempt not to change copyright law but to work within it.¹⁴⁹ The BPI acknowledged this, saying that Creative Commons licences were not an alternative to copyright but "a series of principles applied to existing copyright law".¹⁵⁰ The British Screen Advisory Council told us that Creative Commons licences were now accepted by industry as a valid alternative and that they could sit alongside conventional, traditional systems.¹⁵¹ Channel 4 urged large media companies to "overcome their innate conservatism" and contribute more openly to the debate on issues such as Creative Commons.¹⁵² We believe that Creative Commons licences are a valid option for creators who make a conscious and informed decision to make their work available for re-use. We accept that they can in fact be a useful marketing tool, as long as licensees understand the limitations on future commercial exploitation. Creative Commons licences should not, however, be regarded as the norm; nor should more radical rightsfree regimes. Creators are entitled to demand payment for their product and the success of the creative industries depends on their ability to do so.

4 Linking the creator to the consumer in the new media world

61. In general, the creative industries rely upon one or more intermediaries as links between the creator and the consumer. The roles of the intermediaries may include financing, bearing upfront costs in commissioning and producing material; marketing and creating brand awareness; broadcasting content; collection of revenue; and distribution.

¹⁴⁶ Ev 169

¹⁴⁷ Q 98

¹⁴⁸ Ev 73

¹⁴⁹ See Mr Ahlert Q 68

¹⁵⁰ Ev 73

¹⁵¹ Q1

¹⁵² Ev 169

62. Despite the new opportunities for creators to distribute their work directly to consumers via the web, as outlined earlier, the role of the intermediary shows no sign of diminishing in the new media world and may in fact be gaining in importance. The British Screen Advisory Council foresees a trend towards very large content "aggregators" or "online hypermarkets", with all forms of content available for download, ¹⁵³ and it suggested that the person in charge of the marketing or distribution, or the owner of the platform, would have the "dominant role" in future. ¹⁵⁴ British Music Rights was confident that record label and music publishing roles were not set to disappear, ¹⁵⁵ and the UK Film Council told us that the cost of creating awareness of a product was likely to remain extremely high for the foreseeable future, particularly given the "increasingly shrill cacophony of products all desperately seeking the attention of the consumer". ¹⁵⁶

63. This section of the report examines how the media industries are reacting to technological change in general; and it examines in more detail two issues of particular concern to broadcasters: the availability of spectrum, and rights for the transmission of programming on new media platforms.

The response of the media industries to new technology

Industry consolidation

64. Recent months have witnessed a constant stream of reports of mergers, acquisitions or collaborative deals between firms in different branches of the communications and media sectors. Ofcom recited a long list of company mergers and acquisitions in the communications sector, as firms jostled for a strong position from which to compete across different platforms.¹⁵⁷ These structural changes represent a response by companies striving to retain or expand their market position, disposing of divisions representing obsolete technology or acquiring other companies in order to reach new markets and spread their revenue base.¹⁵⁸ Hence BSkyB has acquired a broadband provider (Easynet) and a stake in ITV;¹⁵⁹ ITV has acquired a social networking website (Friends Reunited);¹⁶⁰ Tiscali, a broadband provider, has acquired the Homechoice brand (offering IPTV services); Sony Pictures has acquired Grouper, an Internet-based company specialising in user-generated video;¹⁶¹ Google has acquired YouTube (a video-sharing website); and ntl has merged with Telewest (the owner of multichannel provider Flextech) and has subsequently purchased Virgin Mobile in order to offer broadband, TV, fixed and mobile telephony services under the Virgin Media brand.

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153 Q1
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¹⁵⁴ Q3

¹⁵⁵ Q 94

¹⁵⁶ Ev 262

¹⁵⁷ Q 430

¹⁵⁸ See Ingenious Media Ev 226

¹⁵⁹ The IPA forecast that Sky would "drive broadband very aggressively" because of its revenue potential in the next few years: Q 424

¹⁶⁰ Ev 384

¹⁶¹ Financial Times 23 August 2006

65. Virgin's approach is an example of a organisation branching out of core business areas to offer a range of communications and entertainment services—the "triple-play" or "quadruple-play" concept under which consumers are offered packages of services such as broadband Internet access together with fixed telephony, mobile telephony and televisual content. BT pointed out that communications service providers were discovering that different platforms—particularly broadband—had the capability to deliver services previously considered the preserve of traditional broadcasters. Ms Claire Enders, Chief Executive of Enders Analysis, was sceptical, however, that multiple-play packages would give operators a fundamental advantage, given the strong competition within each element of the package. It remains to be seen whether packages will remain an attractive and successful business proposition in the long term.

Digital distribution

66. As noted earlier, as the market moves from sales of tangible products to online sales, the physical constraints of shelf space lose their relevance, creating the "long tail" effect whereby the sale of goods with only very limited demand can still be profitable. The BPI spoke of the "enormous" increase likely in the availability from the music industry of recorded music, due to the ability to overcome the restrictions of physical retail space by storing digitally, ¹⁶⁴ and the UK Film Council noted that the ability of the supplier to offer an enhanced range of content would "increase exponentially". ¹⁶⁵ The Council pointed out that whereas an average bookstore might stock 130,000 titles, more than half of Amazon's online book sales came from outside its 130,000 top titles, ¹⁶⁶ suggesting that the market for books not available in an average bookstore may be larger than the market for those that are. The same could apply, in theory, to any form of creative content sold through retail outlets. Mr Highfield, Director of New Media at the BBC, has noted the potential for interest in television archives to generate a similar "long-tail" effect. ¹⁶⁷

67. Ofcom remarked upon the potential for film-makers to reach audiences more cost-effectively through download services. When the BPI gave evidence to us in June 2006, however, the cost savings which might be expected from online distribution of music had yet to be realised: one producer told us that digital distribution actually cost *more* than distribution of physical products, although savings would emerge in time. 169

68. The Creators' Rights Alliance was critical of recording companies for not offering higher royalties for sales of music as digital files, describing record companies' business models as "scandalous";¹⁷⁰ and the Music Managers Forum argued that potentially "huge"

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<sup>162</sup> Ev 98
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¹⁶³ See Ms Enders QQ 45 and 46

¹⁶⁴ Q 119

¹⁶⁵ Ev 263

¹⁶⁶ The "long-tail" phenomenon: see Ev 263

¹⁶⁷ Independent 14 August 2006

¹⁶⁸ Ev 191

¹⁶⁹ Q 125

¹⁷⁰ Q 96

savings in manufacturing CDs and their accompanying booklets, and in packaging, storage and delivery costs, should allow record companies to offer a larger proportion of the sale price as a royalty to creators and performers.¹⁷¹ Estimates of revenue retained by record companies from sales of music downloads vary from "above two thirds" of sale price for downloads (compared to 46% of sale price for CDs)¹⁷² to 48% for downloads in the US.¹⁷³ The Creators' Rights Alliance told us that royalties from secondary exploitation of freelance creators' works¹⁷⁴ formed "the cornerstone of many earnings" and that it was not unusual for a composer to make 70% of their income from royalty payments.¹⁷⁵ Royalty levels range from as little as 4% of sale price (3–5 pence on a 79 pence download from iTunes) to perhaps 20% of dealer price.¹⁷⁶ The Forum described the present business model as "simply not sustainable for the vast majority of performers and creators" and it proposed an industry norm of 50% of net receipts for royalties on digital music sales.¹⁷⁷

69. The British Phonographic Industry countered this argument, maintaining that digital distribution did nothing to reduce the costs of studio production and marketing which formed the greatest expenses in marketing a record. 178 It argued that the present percentage levels for royalties should be retained, citing increases in production costs and lower returns on individual sales, which meant that record companies took longer to recoup their initial investment.¹⁷⁹ PPL also challenged the assumption that online distribution was free distribution, noting that, in the music industry at least, there were up-front costs of digitally remastering tracks, converting them into new formats and making them available to online retailers.¹⁸⁰ Mr Mark Richardson, managing director of Independiente Records, said that costs of digital distribution, because these were very early stages of a developing format, were higher than distribution of hard copy, although savings would emerge.¹⁸¹ Royalty levels are a commercial matter for negotiation between relevant parties. We acknowledge that, whatever the means of distribution of their product, recording companies incur a major part of their costs in identifying and promoting artists, the majority of which may never provide a return on the investment. As digital distribution increases, costs are bound to fall, as may revenues. We would expect the recording industry to ensure that there is a fair sharing of both risk and profits with creators.

70. The UK Film Council told us that it has commissioned research into the potential of digital platforms to enhance public access to British and specialised films and that the

¹⁷¹ Mr Stopps Q 95

¹⁷² Mark Mulligan, vice-president of Jupiter Research: see Sunday Times 11 June 2006

¹⁷³ Comparative analysis of the UK's creative industries, Frontier Economics, August 2006, page 86: figures drawn from OECD sources.

¹⁷⁴ i.e. royalties from performances or transmissions over and above the number specified in the original commission

¹⁷⁵ Ev 50

¹⁷⁶ Ev 30 and Q 95

¹⁷⁷ Ev 30

¹⁷⁸ Q 125

¹⁷⁹ Q 129

¹⁸⁰ Q 104

¹⁸¹ QQ 125-6; this statement was made in June 2006.

recommendations of the study would be taken forward via the Digital Screen Network.¹⁸² Asked why it has taken so long to commission such research when digital channels have been around for quite a long time and there are channels available for many niche genres, the Chairman of the Film Council, Stewart Till, said there is "an evolution rather than revolution" underway and in future there would be hundreds of film channels and a blurring between a pay movie channel available for a monthly subscription or as part of a subscription package, video on demand and other forms of distribution. John Woodward, Chief Executive of the Film Council, said that delivering films to British viewers via a linear television channel was "where the industry came from in terms of electronic delivery of films" but "where it is moving away from as well". Mr Till thought it was vital that British producers and distributors obtain at least parity with the American studios in their deals with the various providers of video on demand film services, and said that the pay television deals that Sky did at the end of the 1980s/early 1990s were "probably the worst thing that happened to the British film industry in the last 20 or 30 years" and it was important not to see this repeated. We note that, at the time, Mr Till held the position of deputy managing director at Sky Television and subsequently Head of Movies at BSkyB.

71. While the research initiative to enhance public access to British and specialised films is welcome, it is surprising that it has taken as long as it has to commission such research and advance the use of digital platforms to promote British film. Digital platforms have been operating in the UK for many years now and in that time hundreds of services have been launched in a range of niche categories, including dedicated film channels on digital broadcasting platforms and online services such as lovefilm.com and Channel Four's broadband documentary service 4Docs. As the strategic agency for film in the UK whose aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and with multi-million pound Government funding, the Film Council might have been expected to have commissioned and reported on this area some time ago.

Adapting and developing business models

72. The media and communications industries have entered a period of great uncertainty about how to construct viable business models, given that audience behaviour towards consumption on the newest media is largely untested. The British Screen Advisory Council said that its members were "experiencing very dramatic technological changes which are forcing them to think about their business in new ways which are themselves leading to new technological innovations". The UK Film Council told us that people running businesses in the films sector were "literally making it up as they go along" and struggling with the move from a stable business model which had been in place for 15–20 years to an on-demand model, where transaction volumes and typical profit levels were not yet known. It is not yet clear how far sales of content using a new platform cannibalise sales using an existing one, although the Mobile Broadband Group asserted that content consumption on mobile and on traditional TV were "not close substitutes" and that mobile

¹⁸² Ev 263 and UK Film Council Annual Report for 2005–06. The Digital Screen Network aims to use digital technology to widen access to specialised film by overcoming the cost barrier of 35mm celluloid prints.

¹⁸³ Q1

¹⁸⁴ Q 590

TV was a complementary service which offered opportunities for additional revenue for rights holders. 185

73. On-demand models can take various forms: users can pay per item; they can pay a period subscription entitling them to limited or unlimited access to a library or catalogue; or downloads can be free at the point of use, with revenue secured through advertising. Users can pay to own in perpetuity or to rent, in which case time limits can be set within which a downloaded file must be opened or viewing must be completed. Examples of the pay-per-item approach include iTunes (for music tracks) and lovefilm.com (for film); examples of the subscription approach include Napster UK and Rhapsody. Both models can run in parallel (as with Channel 4's Video on Demand service).

74. A typical business model for content available on mobile phones has been for items to be made available individually for download to mobile handsets, for the mobile operator to take 50% of revenue, and for the remainder to be paid to the content producer, who pays royalties and other costs.¹⁸⁷ User-generated content supplied by Hutchison 3G (H3G) customers is made available to other H3G customers to view and download. For each download the contributing customer receives a small payment. In March 2006, H3G told us that there were over one million such downloads per month.¹⁸⁸ More recently, reports have suggested a shift towards free provision of TV content to mobile handsets, funded by advertising.¹⁸⁹

75. Various witnesses identified limitations to on-demand services. The British Screen Advisory Council (BSAC) told us that video-on-demand would, to some degree, substitute for television viewing; but it maintained that there remained a role for linear broadcasting, noting that the scheduling of a particular programme at a particular time on television would provide a focus for marketing and branding, in much the same way that cinema release provides a focus and generates publicity.¹⁹⁰ The Deputy Chairman of BSAC pointed out that generating demand for a TV programme was hard unless it had first been offered for free.¹⁹¹ Mr Anthony Lilley, Chief Executive of Magic Lantern Productions, reminded us that the declining cost and increasing capability of storage capacity was driving the development of hardware which could store an almost infinite range of television programmes. As he said, if a viewer has a choice between watching a programme either by paying to download it or by selecting it at no cost from a Personal Video Recorder, that was "a really easy call". He added that "in content company terms, this was a disaster waiting to happen" and that there was potential for such companies' secondary markets to be "very badly dented" within years rather than decades.¹⁹²

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<sup>185</sup> Ev 88
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¹⁸⁶ Ofcom Ev 190.

¹⁸⁷ Ingenious Media Q 506

¹⁸⁸ Ev 84; also Q 174

¹⁸⁹ Guardian 7 September 2006

¹⁹⁰ Q 11

¹⁹¹ Q 13

¹⁹² Q 40. The British Equity Collecting Society argued that PVRs and similar devices would "inevitably reduce the value of the secondary market": Ev 343.

76. In June 2006, the BPI described subscription services in the music industry as being "very, very much in their infancy" and told us that work was still being done to establish ways of ensuring that creators could be properly remunerated from subscription sales. It did anticipate that subscription services would grow in importance in the relatively near future but warned that exact patterns were difficult to predict.¹⁹³

77. Broadcasters have, of course, used for some years a subscription model for linear TV broadcasts using digital terrestrial television, satellite or cable platforms. We were told by Channel 4, however, that it had not in the past derived much revenue from subscription fees, as the platform owner had taken the lion's share and rights holders (particularly in broadcasts of sport and film) had also taken a large chunk. Two channels from the Channel 4 family have moved from a subscription model to a free–to-air model funded through advertising: E4 and FilmFour. We note that subscription revenues earned by platform operators are now the single largest source of revenue in the television sector, achieving almost £3.9 billion in 2005.

78. Other providers offer a mix-and-match of pay-per-view, subscription or combination deals. Hutchison 3G indicated that it was moving towards "bundling" of services, offering quotas of calls, TV stream hours and downloads as a more customer-friendly alternative to charges for individual transactions.¹⁹⁶ BT has identified flexibility as an attractive consumer proposition and offers its BT Vision service through a range of payment models, including subscription, pre-payment, pay-as-you-go and pay in arrears.¹⁹⁷

79. We were particularly struck, during our visit to Korea in 2006, by some of the business models used in the interactive games industry. One game in particular—Kart Rider—was marketed as a family game and was treated by its manufacturers as an entry point for drawing in a new customer base. The game could be downloaded and played for free but derived revenue from customisation and personalisation of characters (or cars), using micropayments made online, for sometimes very small sums. However, the number playing—sometimes 200,000 at any one time—had made it a very successful business model.

Business models in the film industry

80. The film industry has traditionally attempted to maximise the revenue stream from its creative product by exploiting it through a system of rights windows. At present a typical rights cycle involves release of a film on DVD four months after cinematic release, 12 months from cinematic release to release on pay television, and another 12 months before release on free-to-air television.¹⁹⁹ Ofcom said that the system had served to prevent

¹⁹⁴ Q 399

¹⁹³ Q 133

¹⁹⁵ The Communications Market 2006, Ofcom, page 204

¹⁹⁶ Q 171

¹⁹⁷ Ev 99 and Q 209

¹⁹⁸ See also Mr Livingstone Q 488

¹⁹⁹ Q 600

excessive cannibalisation of revenues, although intervals between release windows have tended to shorten.²⁰⁰

- 81. The UK Film Council identified four forms of exhibition rights between release of a film on DVD and the screening of a film on free-to-air terrestrial television:
- Video On Demand (VOD) whereby the consumer purchases films on a title-by-title basis;
- Pay-Per-View, currently equivalent to Near Video On Demand;²⁰¹
- Subscription VOD (SVOD) in which the consumer pays a monthly fee and is able to access an unlimited or large number of titles against that payment;
- Other pay-TV windows.²⁰²
- 82. The UK Film Council believed that once video on demand became established, the market would get "much, much more complicated". The present time-lapse between cinematic release and DVD issue (four months) is already coming under pressure from rights holders anxious to deny the opportunity for piracy—a matter which we address in more detail at paragraph 147.
- 83. The Cinema Exhibitors' Association forecast that Video on Demand, "in all its guises", would ultimately take over from the rental and sale of DVDs as the largest source of income for film producers, although security of delivery and of payment systems would need to be established first.²⁰⁴ The Association told us of evidence that, as in the music industry, returns to rights holders per download in the US (where on demand models had been in place for longer) were proving to be significantly lower than returns per DVD sold: \$4 from a \$10 transaction as opposed to \$12 from a \$16 one. It also suggested that the costs imposed by distributors of download and Video on Demand services appeared to be higher than those imposed by distributors of products in traditional formats.²⁰⁵

Advertising

84. Much has been made of trends in advertising on commercial television. Ofcom noted research by PriceWaterhouseCoopers in 2005 suggesting that TV advertising would continue to show "real growth" at least up until 2014,²⁰⁶ and the recent upward trend for net advertising revenue in the television industry continued in 2005. Growth from 2004–

²⁰⁰ Ev 199; see also UKFC Ev 264

²⁰¹ Availability of a programme on demand but at a series of set times.

²⁰² See UK Film Council Ev 264

²⁰³ Q 600

²⁰⁴ Ev 358

²⁰⁵ Ev 360

²⁰⁶ The Communications Market 2005, Ofcom, page 197

2005, however, was modest at 1.9%, down from 7.4% from 2003 to 2004, and all of that growth was attributable to commercial multichannels rather than mainstream analogue channels.²⁰⁷ The Institute for Practitioners in Advertising (IPA) stated that it "would never foresee particularly dramatic growth in television advertising in the foreseeable future" and it doubted that ITV would be able to maintain its present public service obligations if advertising revenues were to continue to decline.²⁰⁸ It observed that ITV's ability to attract mass audiences of 15 million or more was being eaten away.²⁰⁹

85. While this inquiry was under way, Ofcom held a consultation on proposals to restrict advertising to children of foods high in fat, salt or sugar content. It set out its preliminary conclusions in November 2006 and stated its intention to introduce a total ban on the television advertising of all such foods in and around programmes of particular appeal to children under the age of 16.²¹⁰ The Government endorsed Ofcom's approach.²¹¹ On 22 February 2007, Ofcom published its final statement, announcing that introduction of the ban would be phased and would apply from 1 April 2007 to programmes of particular appeal to children aged from 4–9 years, and from 1 January 2008 to programmes of particular appeal to children aged from 4–15. Grim forecasts were made by various commentators about the effect upon commercial broadcasters' advertising revenue, and Ofcom has estimated that the economic impact upon television companies will be in the region of £20 million.²¹² PACT and others have expressed alarm about the impact of the restrictions on original children's programming, and we will examine this further in our forthcoming report on Public Service Media Content.

86. The greatest threat to television advertising lies in the phenomenal growth of online advertising, described by one witness as "the hottest place to be at the moment". Figures from the Advertising Association show that advertising on the Internet recorded by far the largest gain of any advertising sector in percentage terms in 2005, rising by 65.6% when measured at current prices (62.3% in real terms) to reach £1.36 billion, up from £825 million in 2004. This rise dwarfs the increase in advertising expenditure in the television sector (3.6% in current prices, 1.5% in real terms). Advertising expenditure in the press, cinema and radio sectors actually fell in both current prices and real terms over the same period. Spending on online advertising was worth £917.2 million in the first half of 2006 alone, according to the Internet Advertising Bureau.

87. We sought witnesses' views on how far advertising on digital media would cannibalise advertising on more traditional media. Commercial broadcasters dependent upon advertising were gloomy in tone. Channel 4 told us that the development of many and

²⁰⁷ The Communications Market 2006, Ofcom, page 205

²⁰⁸ Q 417

²⁰⁹ Q 419

²¹⁰ Ofcom Press Release, 17 November 2006

²¹¹ See for instance DCMS Press Release 146/06, 17 November 2006

²¹² Oral evidence from Ofcom to the Culture, Media and Sport Committee and Trade and Industry Committee on 17 April 2007, on the Ofcom Annual Plan for 2007-08, Q 51, HC 459, Session 2006-07.

²¹³ Mr Lilley Q 44

²¹⁴ http://www.adassoc.org.uk/html/statistics.html; figures current in September 2006

²¹⁵ http://www.iabuk.net/media/images/Online%20adspend%20factsheet%20-%20H1%202006_1215.pdf

varied means of accessing televisual content was fragmenting audiences and (as a consequence) advertising revenues, which had historically justified the major expenditure involved in commissioning and funding new content. There was therefore a risk that quality would suffer.²¹⁶ ITV advanced essentially the same argument as did Channel 4, predicting a further decline in its share of advertising expenditure and concluding that it would be difficult to maintain investment in programming unless it was able to diversify beyond existing revenue streams.²¹⁷ Channel 4's Chief Executive offered his personal view that, in ten years' time, between a third and a half of all TV viewing would be timeshifted²¹⁸ but without any overall increase in TV viewing.²¹⁹ Ofcom, however, does not accept that opening up revenue streams through exploitation of new media rights need necessarily be at the expense of revenue derived from sponsorship or advertising supporting traditional broadcasts.²²⁰ It does accept, though, that there is potential for certain on-demand rights to lead to a substitution for conventional viewing of scheduled programming, posing a threat to advertising and sponsorship revenue.²²¹

88. Ingenious Media, a major investor in the new media sector, agreed that there was indeed an "advertising cake" to be shared between different sectors and that the digital outlet would draw away from, rather than complement, traditional media.²²² It also noted the potential for further erosion of audiences for television advertising through the use of Personal Video Recorders (PVRs) to "skip" advertising.²²³ Talkback Thames TV cited research suggesting that PVR owners fast forward through adverts three times out of four.²²⁴ The Chief Executive of Channel 4 believed that it would take a few years before the impact of "ad-skipping" on PVRs and Sky+ became clear, but he feared that it could be "very, very difficult" for Channel 4.²²⁵

89. A more optimistic view was put to us by the Institute of Practitioners in Advertising (IPA), which told us of evidence that the "break bumpers"3—brief clips promoting a programme's sponsor and framing advertisement breaks—were getting "incredibly high attention levels" because of their use as navigation points, and that there was also an impact upon advertisements at the beginnings and ends of breaks. The IPA therefore challenged assumptions that viewers would habitually skip adverts, pointing out that "ad avoidance" was not a new phenomenon in any case.²²⁶

90. The IPA argued that the vast majority of the country did not want to spend substantial sums monthly on subscription fees and that there were many for whom the availability of hundreds of channels on satellite or cable platforms held no attraction—indeed, they might

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<sup>216</sup> Ev 165
<sup>217</sup> Ev 383
<sup>218</sup> Viewed at a time other than that of linear broadcast
<sup>219</sup> Q 377
<sup>220</sup> Ev 199
<sup>221</sup> Ev 203
<sup>222</sup> Q 503
<sup>223</sup> Ev 229. See also ITV, Ev 382
<sup>224</sup> Ev 446
<sup>225</sup> Q 397
<sup>226</sup> Q 423
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be deterred by the technology. Such people would continue to watch free-to-air programming, much of which would be funded through advertising.²²⁷ As noted above, Channel 4 has moved from a subscription model for its FilmFour and E4 services to an advertising-funded model. In both cases, this was to widen public access; Channel 4 told us that FilmFour, when broadcast as a subscription channel of the Sky satellite platform, had reached between 300,000 and 400,000 homes. By moving to a free-to-air funding model supported by advertising, the channel had an immediate reach of 17 million homes.²²⁸

- 91. We note that advertising is taking root in forms of content which are perhaps only at the start of their developmental curve. One witness told us that websites built around usergenerated content (such as MySpace and YouTube) were starting to generate advertising revenue.²²⁹ Google Video operates a policy of free uploading and free viewing of video content unless the content owner chooses to charge, whether for viewing, for download or for subscription to their content. The business model, as with most Google services, is built upon advertising. Google did not rule out, however, deriving revenue from viewers and downloaders at some point in the future.²³⁰
- 92. Other new ways of using advertising to support business models include:
- Niche advertising on niche channels, which may well continue to proliferate;
- Real-time advertising in interactive games hosted on the Internet (for instance on interactive advertising screens around a virtual racetrack);²³¹
- Plans to screen advertisements to precede free downloading of music tracks;²³²
- Integration of advertising into video downloads;²³³ and
- The possible future gradation of subscription fees (once technology allows), with lower subscription rates for viewers who watched advertisements.²³⁴
- 93. We note that the proposed EU Audio Visual Media Services Directive may enable a more liberal regime in respect of product placement²³⁵ by allowing a derogation from the existing ban to permit product placement (unless Member States decide otherwise) in cinematographic works, films and series made for audiovisual media services, light

²²⁷ Q 424

²²⁸ Ev 165 and Q 399

²²⁹ Mr Bradley, Director, Ingenious Media, Q 500

²³⁰ QQ 535-7

²³¹ Ev 229

²³² Spiralfrog.com: see *The Guardian* 30 August 2006

²³³ Q 505

²³⁴ Institute of Practitioners in Advertising Q 423

²³⁵ The appearance or "placement" of a commercial product in a programme as part of a commercial transaction

entertainment and sports programmes.²³⁶ If taken up, such a derogation could help to sustain advertising revenue although it is likely that the potential income will be small in comparison to broadcast advertisements. PACT noted that some genres (such as sport and entertainment) lent themselves better than others to product placement; and it suggested to us that if product placement were to be used sensitively and creatively, it would not have an adverse effect on the content itself.²³⁷ Research by Ofcom has also noted public support for product placement which was "relevant to the programme and subtle".²³⁸

94. There is no doubt that commercial broadcasters will come under increasing pressure from fragmentation of audiences and of advertising revenue. We are convinced that there will remain a market for televisual content free at the point of use but the decline in revenues from traditional advertisements may be permanent. We believe that commercial broadcasters will need to adopt a flexible approach and to be willing to diversify. Broadcasters are already recognising the need to tap into the online market themselves and to make use of opportunities presented by the development of technology, e.g. the ability to integrate advertisements into downloads on demand. We also encourage Ofcom to take advantage of the proposed derogation in the Audio Visual Media Services Directive, under which limited use may be made of product placement. We will examine further the implications of the decline in advertising revenues for the provision of public service media content by commercial broadcasters in our forthcoming Report on this issue.

Availability of spectrum

95. Terrestrial broadcasters, satellite broadcasters and mobile phone companies offering video and audio content rely upon access to spectrum, a commodity which is finite and which has traditionally been allocated for fixed terms by the Government and regulators. The switchover from analogue signal to digital signal for terrestrial television broadcasting will free up a particularly valuable range of spectrum, well suited for many technologies, including mobile services, wireless broadband, as well as more digital television services in both standard and high definition. This was one of the principal justifications given by the Government for going ahead with the switchover project.

96. We note that Ofcom is moving towards a market-based approach for the general allocation of spectrum. However, Ofcom is also undertaking a review of how the released spectrum should be re-used and re-allocated once switchover is completed: the Digital Dividend Review (DDR). In summer 2007 Ofcom expects to release a statement on the outcome of the DDR and to launch a second consultation on detailed proposals for the award of spectrum. A second DDR statement is expected in early 2008 with a view to commencing awards of spectrum later in the year. Under current proposals, the multiplexes on which digital terrestrial channels are presently carried will be allocated 32 of the spectrum channels in the 470–862 Megahertz band. Ofcom is conducting a separate consultation on whether broadcasters might, after 2014, have to pay for that spectrum

²³⁶ Article 3i of Non Binding Working Document on the Directive, published in March 2007

²³⁷ Q 374

²³⁸ The future of television funding, Ofcom September 2005 [cited by Talkback Thames Ev 446]

under an Administered Incentive Pricing model.²³⁹ Most of the remaining spectrum is likely to be auctioned. Ofcom has stated clearly its intention to remain neutral between competing technologies, not favouring one over another.²⁴⁰ The Government has declared that it supports Ofcom's proposals to auction on an open basis the spectrum released by switchover and views such an approach as consistent with the Government's established policy.²⁴¹

97. The proposal to use the Administered Incentive Pricing model for channels which have hitherto had free access to spectrum has been criticised by public service broadcasters.²⁴² Ofcom maintains that a requirement to pay merely brings broadcasters into line with most other spectrum users, including the emergency services and the Ministry of Defence. It adds, furthermore, that it has a duty to secure optimum use of spectrum and that that duty is best met by providing incentives to users to adopt technologies which enable effective and minimal use of spectrum. Ofcom suggested that the cost to broadcasters, maybe in the region of £3 million per year for a channel such as ITV 1, is comparatively small in relation to the previous licence fee payments and other regulatory burdens imposed on commercial broadcasters, and could be absorbed.²⁴³

98. Pressure is being applied upon Ofcom by broadcasters to reserve some of the released spectrum for high definition television services (HDTV), in order to preserve consumer choice.²⁴⁴ Ofcom is also being urged by the programme-making and special events (PMSE) sector, which relies upon interleaved spectrum in the existing analogue TV bands for the operation of radio microphones by outside broadcasters and in theatres, to ensure that spectrum continues to be made available at a rate which the sector can afford. These concerns were aired in a recent debate on the floor of the House, when the Minister made it clear that Ofcom was aware of the sector's fears.²⁴⁵

99. Others are concerned that the process of re-allocating spectrum should not be unduly prolonged. We noted over a year ago, in our report on analogue switch-off, the concerns of transmission companies such as Arqiva that the lengthy decision process of the Digital Dividend Review would jeopardise the UK's present lead in the relevant technologies. Those concerns remain strong. The Mobile Broadband Group described the limited availability of radio spectrum as "a significant inhibitor of mobile TV services market development in the UK", 247 and it urged Ofcom to allocate frequencies without delay if the UK was not to be left behind other European states. The Group suggested to us that the UK could find itself the only country in Europe where the London 2012 Olympic Games and

²³⁹ Administered Incentive Pricing: the charging of annual fees for the holding of spectrum that reflect the opportunity cost of the holding of that spectrum. See Future pricing of spectrum used for terrestrial broadcasting, Ofcom consultation document, paragraph 1.8, July 2006

²⁴⁰ Q 445

²⁴¹ Budget 2007, HC 342, paragraph 6.43

²⁴² See response from the BBC to the Ofcom consultation on spectrum pricing: http://www.ofcom.org.uk/consult/condocs/futurepricing/responses/bbc.pdf

²⁴³ QQ 449-50

²⁴⁴ Financial Times, 19 April 2007

²⁴⁵ HC Deb 6 March 2007, col 1489

²⁴⁶ Analogue switch-off: Second Report of the Committee in Session 2005-06, HC 650-I, paragraph 57

²⁴⁷ Ev 88

Paralympic Games could not be watched on a mobile device using the DVB-H standard.²⁴⁸ BT, however, expressed confidence that the Games could be broadcast to mobile handsets using either the DAB or DVB-H format in at least some of the country.²⁴⁹ Ofcom was careful to say only that it expected that spectrum would be available in 2012 for mobile television, and that additional spectrum to be released shortly (not under the Digital Dividend Review process) was well suited to Digital Multimedia Broadcasting (DMB) technology capability.²⁵⁰ It did, however, float the possibility of a staged release of spectrum while the switchover process is under way, region by region, or even early release of a block of spectrum nationally.²⁵¹

100. Although we will continue to listen to the arguments, we do not believe that a persuasive case has yet been made to justify reserving spectrum for High Definition Television following digital switchover, and we endorse Ofcom's approach in not favouring any particular technology or application in the framework being drawn up for re-allocation of spectrum under the Digital Dividend Review. However, we do recognise the special case of the programme-making and special events (PMSE) sector which risks losing access to spectrum it has traditionally enjoyed as a result of switch-off and we believe that it is essential that an acceptable solution to their difficulties be found.

101. The Digital Dividend Review is complex and its outcome will have far-reaching consequences; we accept that Ofcom should not be pressured into taking hasty decisions. But it should bear in mind that delays in reaching decisions in the DDR process create uncertainty for all and can have adverse economic consequences for some. We shall be addressing the Review further as our current inquiry into public service media content evolves.

New media rights for televisual content

102. We have already outlined the importance of compelling content in driving the development of new media platforms. As new forms of broadcasting materialise, and new operators enter the field, competition for secondary rights to attractive content has intensified. ²⁵² Producers of that content, therefore, have sought to maximise their ability to exploit and extract revenue from those secondary rights. Over the years a three-way tug-of-war has developed between producers, commissioners (generally the public service channels) and non-traditional media operators, all seeking a measure of control.

103. The market for new media rights—secondary rights—is currently small, although it is generally recognised that it will expand.²⁵³ Ofcom listed possible new media rights categories:

²⁴⁸ Ev 88 and Q 176

²⁴⁹ Q 206

²⁵⁰ QQ 444-5

²⁵¹ O 444

²⁵² Rights to broadcast after primary transmission, typically including rights for broadcast on new media platforms

²⁵³ In early 2006, new media rights accounted for approximately one-fifth of all non-TV production turnover: Ofcom Ev 198

- Simulcast distribution of the programme on digital channels across different platforms (e.g. Internet, mobile, as well as traditional broadcast platforms)
- Time-shifted distribution—on traditional broadcast platforms and alternative distribution platforms
- On-demand services—via free to view, pay per view or subscription
- Re-purposing and re-versioning of content.²⁵⁴

The Codes of Practice and associated terms of trade

104. Section 285 of the Communications Act 2003 established a duty upon each licensed public service channel to draw up and revise from time to time a Code of Practice setting out the principles to be applied by that channel when agreeing terms for the commissioning of independent productions. Each channel's Code of Practice must secure, amongst other things:

- sufficient clarity at the time of commissioning about the categories of rights covered;
- sufficient transparency about amounts to be paid in respect of each category of rights; and
- satisfactory arrangements for the duration and exclusivity of those rights.

At the time that the Communications Act was debated, these provisions were perceived as offering new levels of protection for the interests of independent producers. One witness described the impact of the changes in television production rights—and the increased scope for producers to exploit their content both in the UK and internationally—as being very important in attracting new investment into the sector.²⁵⁵

105. The new Codes of Practice were introduced by broadcasters at the beginning of 2004. The BBC told us that its Code had been "instrumental" in clarifying the ownership of primary and secondary rights and that the challenge was to keep the framework "relevant in a changing world", always ensuring that the right of independent producers commercially to exploit their intellectual property did not impinge on the BBC's ability to serve the licence fee payer.²⁵⁶

106. Despite the general acceptance of the value of establishing Codes of Practice, the terms of trade drawn up under those Codes, governing new commissions and the distribution of rights to broadcast programming, never commanded full support from interested parties. Channel 4 argued that the terms had had a disproportionately negative effect upon it, as other public service broadcaster competitors (BBC and ITV) had substantial in-house production capacity which was not covered by the agreement. Channel 4 took the view, in its response to Ofcom's recent consultation on the television production sector, that a

²⁵⁴ Ofcom Ev 197

²⁵⁵ Ingenious Media Q 515

²⁵⁶ Ev 137

portion of its audiences would use new media platforms and on-demand facilities as alternatives to viewing linear broadcasts, with a direct impact on viewing figures on traditional platforms (and therefore advertising revenue). Channel 4 therefore sought to revise the terms in a way which would allow it to have access to a wide range of new media rights as part of the primary rights package.²⁵⁷

107. The Satellite and Cable Broadcasters' Group (SCBG) stressed that its members relied upon being able to acquire secondary rights in order to build audiences and thereby generate revenue to finance the commissioning of new material.²⁵⁸ The Group pointed out that the negotiations which were then taking place between PACT (representing independent production companies) and the terrestrial broadcasters on updating terms of trade had been bilateral only and that, if anything, acquisition of secondary rights was becoming harder rather than easier for Group members.²⁵⁹ The SCBG accused Ofcom of failing to ensure that PACT and the terrestrial broadcasters took account, in their negotiations, of the need to ensure a strong competitive market in secondary rights.²⁶⁰

108. The SCBG also claimed that terrestrial broadcasters took advantage of their public service status and privileges, which enabled them to finance the majority of UK programme commissioning and then take a restrictive attitude in releasing secondary rights to their programming.²⁶¹ It cited a number of occasions when an independent channel had sought to acquire secondary rights to material which it had commissioned jointly with a terrestrial broadcaster but had met a determined attempt by the terrestrial partner to acquire for itself exclusive rights (or the inclusion of secondary rights as part of an all rights bundle) by exerting pressure upon the producer, sometimes giving the impression that the producer stood to lose out in future unless it agreed to the terms proposed by the terrestrial broadcaster.²⁶² We note, in passing, that the UK Film Council identified a similar problem in relation to film and warned that "rights creep" of this sort "would be to the severe detriment of both consumers and citizens".²⁶³

109. The SCBG was not alone in directing criticism at traditional broadcasters for taking a restrictive attitude. BT called upon the BBC to use its position as a provider of publicly-funded programming to stimulate the growth of new media "by allowing reasonable and fair access to its programming". Hutchison 3G described the process of securing TV content for mobile networks as "very frustrating", singling out the BBC's attitude towards providing content as having thus far been "mixed at best and contradictory at worst". The Mobile Broadband Group told us that simulcasting of TV channels to

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257 Ev 166
258 It noted an increase of 19% per year in original UK commissioning by multi-channels over five years: Ev 120
259 QQ 285 and 288
260 Q 286
261 Ev 124; See also Video Networks Ltd, Ev 446
262 Ev 122
263 Ev 264
264 Ev 105
265 Q 159
266 Ev 85
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²⁶⁷ Broadcasting at the same time as scheduled broadcasts to traditional platforms.

mobile phones had to be interrupted when rights clearance for a programme could not be obtained. It called for a rights framework which delivered a "clear, consistent and timely rights regime for all platforms" and minimum holdback periods.²⁶⁸ BT, although declaring itself as reasonably content with progress in reaching agreement with content providers in acquiring rights for content for its BT Vision service,²⁶⁹ made a similar appeal.²⁷⁰ SCBG urged Ofcom to intervene to ensure that terrestrial broadcasters' purchase of primary rights for their terrestrial channels did not confer automatic rights to broadcast on their digital channels, and it advocated an entirely separate negotiating process for the purchase of secondary rights, open to competition under the control of the independent producer.²⁷¹

110. PACT agreed that broadcasters sought to exercise their bargaining power, gained through their dominance of the market for commissioning new material, ²⁷² by "bundling" rights for broadcast on non-traditional platforms in with primary rights for no additional cost. PACT said that this "clearly represents a transfer of value back to the terrestrial broadcaster, negating the impact of the Codes of Practice laid out in the Communications Act 2003 and potentially undermining the business model of PACT members". ²⁷³ Ofcom has confirmed its view that the main terrestrial broadcasters are likely to remain the main buyers of programming and will therefore retain much of their negotiating strength. ²⁷⁴

111. PACT had specific concerns about practices by broadcasters which it perceived as damaging to producers' interests. Two practices came in for particular criticism: the use in commissions of "holdback" periods, in which a broadcaster has the right to prevent a producer exploiting secondary rights within a fixed period of time; and "warehousing", a term for the practice of acquiring rights but not subsequently exploiting them. It argued that the holdback provisions, which broadcasters negotiated with producers allowing them to restrict onward sales of programming ran counter to the intention of the Codes of Practice.²⁷⁵ The Satellite and Cable Broadcasters' Group agreed, believing that holdback periods, by denying public access, created a window for piracy;²⁷⁶ and it argued that holdback in general should be "significantly reduced or eliminated".²⁷⁷ Video Networks Ltd., who, at the time that evidence was received for this inquiry, were suppliers of the Homechoice service offering TV and radio channels via broadband, noted the "chilling" effect of holdback periods.²⁷⁸ With regard to "warehousing", PACT claimed that incumbent broadcasters had a long history of such practices, which it viewed as being

²⁶⁸ Ev 88

²⁶⁹ BT had successfully negotiated deals with VPL/PPL, Warner Music, Paramount and Dreamworks. It had also acquired Premiership football rights and content supplied by various TV channels: Q 210

²⁷⁰ Ev 100

²⁷¹ Ev 123–4

^{272 79%} of all viewing and 95% of new non-news commissioning: see UK TV content in the Digital Age – Opportunities and Challenges, Oliver & Ohlbaum Associates, page 8, section 1

²⁷³ Ev 149. See also Talkback Thames Ev 443

²⁷⁴ Review of the Television Production Sector, Ofcom consultation paper, paragraph 1.39. In early 2006, the main terrestrial channels accounted for 87% of expenditure on first releases; Ofcom expects that they may still account for 80% by early 2011

²⁷⁵ Ev 149

²⁷⁶ Q 287

²⁷⁷ Ev 123

²⁷⁸ Ev 450

designed to deny new entrants access to content and thereby to stifle secondary markets.²⁷⁹ It maintained that the practice was damaging to the public interest, to producers' commercial interests and indeed to broadcasters' interests.²⁸⁰

112. The BBC defended itself against these attacks and maintained that there were "numerous examples" of its efforts to make its content available on-demand, for example on a cable platform or through Homechoice (now Tiscali TV). It also cited an agreement with Orange to make clips from BBC comedy productions available on mobile phones.²⁸¹

New terms of trade

113. During the course of the inquiry, the main public service broadcasters agreed individually with PACT new structures for rights governing use of content supplied by independent producers. The new terms were outlined in evidence to us by Mr Highfield, Director of New Media and Technology at the BBC;²⁸² but they have since evolved. Under the current provisions, there will be an initial window in which the BBC will have an exclusive licence of up to five years in the UK television market (with an option to renew for a further two years), depending on genre and channel of initial broadcast. Viewers will be able to:

- preview programmes up to seven days prior to first linear broadcast;
- "catch up" on viewing or listening by downloading content within seven days of transmission and then opening the downloaded file within thirty days; and
- "stack" series programming up until seven days after linear transmission of the final episode, subject to a maximum thirty day period of programming being available on demand at any one time.

The second window would open once the first had closed: at this point BBC content would become available for commercial exploitation. The standard policy for release of a returning series for commercial exploitation will be for a first series to be released once two further "runs" of the series have been transmitted.²⁸³

114. The agreement concluded between PACT and Channel 4 differed significantly from that made with the BBC. Channel 4 licences will in future last for three years rather than five; and Channel 4 will be able to offer content on demand for up to 30 days after transmission. Channel 4 will have the flexibility to decide what charges, if any, it will make for such downloads and how the business model will work. Once the 30 days have elapsed, the programme rights will revert to the producer unless Channel 4 seeks to extend its exclusive licence, in which case the producer will either accept the price offered or will keep the rights with a holdback condition that they cannot be sold to another broadcaster for a

²⁷⁹ Ev 149

²⁸⁰ Mr McVay Q 353

²⁸¹ Ev 136

²⁸² QQ 310-2

²⁸³ Q 345

further five months.²⁸⁴ Channel 4 expects to achieve commercial deals in the vast majority of cases.²⁸⁵ The "warehousing" issue was resolved by undertaking to include a "use or lose" clause in commissioning contracts, so that new media rights not exploited within a specified timeframe would automatically be released from broadcaster to producer.²⁸⁶

115. Channel 4 told us that it was "comfortable" with the deal that had been struck and that it genuinely represented a "win-win" situation for both sides.²⁸⁷ In further discussion, however, it acknowledged that the agreement was "not ideal" and that adjustments might be needed in future to some of the detail, including splitting of revenue.²⁸⁸ More recently, the Chief Executive of "Five" has told us that she was "very relieved" that the new terms of trade had been described as short-term solutions. She believed strongly that advertising revenue from on-demand services could replace rather than supplement revenue from more traditional funding formulas (i.e. advertising on terrestrial services), and that for producers to take a share of the revenue from advertising-funded on-demand services (as is envisaged under the new terms) could lead to a net decrease in income for the broadcaster.²⁸⁹

116. PACT clearly believed that it had made a significant advance in the new deals. It was confident that what had been achieved was "very, very good news for satellite and cable broadcasters" and would make products available in the market sooner, 290 and it welcomed in particular the acceptance that a commissioning agreement for broadcast on a primary channel could not "bundle" up rights for secondary channels. We note, however, that rights for transmission of content to mobiles at the same time as linear broadcast on television will rest with the broadcasters.

117. The new terms of trade between producers and broadcasters have swung the balance towards producers. Steps to strengthen the ability of content originators to retain greater control over their rights are welcome; but commissioning channels need to be able to derive fair value for the product which they have financed, particularly as the climate for advertising on terrestrial television becomes harsher. While we welcome the fact that agreement has eventually been reached between producers and broadcasters, we expect that a further review of the terms of trade will become necessary once the value of on-demand services to broadcasters' funding models becomes clearer—probably sooner rather than later.

118. Some of the restrictive practices described to us in evidence as being used by broadcasters when commissioning programming and driving deals on rights for future

²⁸⁵ Q 386

²⁸⁴ Q 351

²⁸⁶ See Ev 167

²⁸⁷ Q 379

²⁸⁸ QQ 381-2

²⁸⁹ Uncorrected oral evidence given on 13 March 2007 as part of the Committee's inquiry into Public Service Media Content, available on Committee website; corrected version likely to be published as HC 316-II, Session 2006-07.

²⁹⁰ QQ 355-6

²⁹¹ Q 358

²⁹² Q 346

transmission were, if accurately reported, counter to the spirit of the Communications Act. We believe that they are less likely to occur under the new terms of trade, although Ofcom must remain vigilant.

5 Realising the value of creative content

119. Despite the ability of creators to access new markets and develop new forms of creative content through new media, the importance of that content in helping to drive the development of new technology and sustain business models does not necessarily translate into economic value for content owners. The chief cause is piracy, and we examine various suggestions for preventing it or at least reducing its scale. We also consider in this section the development of online activities by the BBC and by Google, both of which have been accused of proposing or introducing services which eroded the ability of creative industries and dependent businesses to exploit material.

120. Intellectual property rights underpin the viability of our creative industries, and much of the remainder of this report is about the protection and exploitation of rights to creative content. We have not attempted, however, to undertake a comprehensive survey of copyright legislation. The subject has been addressed in much greater detail in the recent report commissioned by the Treasury from Andrew Gowers.²⁹³ Nonetheless, we believe that it is useful, in order to set in relief the discussions which follow, to record here our preferred perspective on copyright: a means by which people can own what they create and earn a living from their creativity.²⁹⁴ Whether creators choose to take advantage of intellectual property rights is a decision for them. The Arts Council noted that artists "can be quite pragmatic about copyright law, sometimes licensing the copyright in their works to other distributors; sometimes appropriating other people's work to generate something new; and sometimes giving their work away free for others to reuse".²⁹⁵

Piracy: scale and methods

121. As Ofcom said, the ability to copy has changed out of all recognition in the last 10 years.²⁹⁶ Even the most expensively produced creative content can be cheaply and easily copied and distributed; but those benefits apply equally to licensed *and* unlicensed distribution.

122. The Alliance Against IP Theft described intellectual property theft as "the biggest threat to the prosperity and development of the creative industries", with illegal copying, filesharing and other illicit uses of copyright material "growing exponentially", and counterfeiting and piracy becoming increasingly attractive to organised criminal gangs.²⁹⁷ Piracy can and does erode business models: Ingenious Media told us that, without copyright, it would be difficult to create a sustainable and consistent flow of investment

²⁹³ Review of Intellectual Property, December 2006

²⁹⁴ See Q 97 and Ms Pike, Q 60

²⁹⁵ Ev 318

²⁹⁶ Q 431

²⁹⁷ Ev 45

into the sector.²⁹⁸ The British Screen Advisory Council described piracy as "not just something which is a threat to current assets, balance sheets and current revenues but threatens innovation and ultimately UK competitiveness"; and it predicted that levels of piracy would increase in line with broadband usage levels and speeds.²⁹⁹ ELSPA³⁰⁰—the trade body for the interactive games sector—drew attention to the loss to the Exchequer through lost sales;³⁰¹ and it noted an association with a variety of criminal activities including extortion and people trafficking, as well as benefit fraud.³⁰²

123. Unlicensed copying takes place either through bootleg piracy of physical productsales of hard-format copies at car boot sales and markets-or through digital distribution via the Internet, often through file-sharing using peer-to-peer technology. Initially, in the absence of authorised services to provide audio and video content on-line, large-scale unauthorised providers sprung up, based upon the unlicensed exchange of files; some have been successfully challenged by the recording industry. The first widely-used peer-to-peer filesharing service, Napster, was closed by court order in the USA in 2001; but other services soon moved in to take its place. 303 One of these, Grokster, a manufacturer of filesharing software, was found by the US Supreme Court in June 2005 to be liable for copyright infringements using its products. Grokster was ordered to pay \$50 million to the music and recording industries in recompense. KaZaA, a, Australian-owned peer-to-peer file-sharing application, has similarly been the target of many copyright-related lawsuits, and has agreed to compensate the entertainment industries for revenues lost through filesharing of unlicensed content.304 British Music Rights described some peer-to-peer operators as operating a business model which was "blatantly selling advertising on the back of illegitimate music". It told us that such operators were protected by "safe harbours in the law" and that the only option open to organisations acting on behalf of rights holders was to sue consumers, who were the only people actually infringing the law.³⁰⁵ Litigation by the music recording industry in the UK has generally been directed against people uploading large numbers of files rather than downloaders.³⁰⁶ We note that peer-to-peer file-sharing technology can have beneficial uses as well as bad ones,307 and the International Federation of Phonographic Industry (IFPI) noted the beginnings of a legitimate peer-topeer file-sharing industry.³⁰⁸

124. The scale of piracy is so vast that there is a danger of becoming inured to such activity and treating it as routine. Andrew Gowers noted in his recent review of intellectual property that downloading of music and film from the Internet is now the most common

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<sup>298</sup> Q 500
<sup>299</sup> Q1
<sup>300</sup> The Entertainment and Leisure Software Providers Association
<sup>301</sup> Also Mr Livingstone Q 496
<sup>302</sup> Ev 218
<sup>303</sup> Ev 189
<sup>304</sup> Guardian 28 July 2006
<sup>305</sup> Q 76
<sup>306</sup> Q 146
<sup>307</sup> Q 76
<sup>308</sup> Ev 377
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offence committed by people aged between 10 and 25 in the UK.³⁰⁹ British Music Rights cited research published in 2005 indicating that only 6% of all Internet consumers paid to download music.³¹⁰ The Alliance Against IP Theft claimed that a ten percentage point drop in software piracy would add nearly £11 billion to the UK economy, create nearly 34,000 jobs, increase local industry revenue by nearly £10 billion and generate an additional £2.8 billion in tax revenues.³¹¹ The BPI estimated that 13 million or more unauthorised copies of CDs had been sold in 2004, often at car boot sales. Further research suggested that piracy of physical music products in the UK cost the industry approximately £165 million in lost sales in 2005, almost 10% of the UK's legal market in CD albums.³¹² Illegal file-sharing was believed to have cost the music industry £414 million in lost sales in 2005.313 The BPI argued that those using illegal file-sharing networks spent less on music as a result and that the industry had therefore been able to re-invest less in new recordings.³¹⁴ We were, however, warned by one witness against "bogus arithmetic" in quantifying the industry's losses, on the basis that people who copied music illegally would not necessarily have paid full price for it had they had no other option. Not all illegal copying of music therefore represents a loss of sale.315

125. Piracy of film and television programming is also becoming rife. The UK Film Council estimated that film piracy cost the industry over £800 million in 2005. here 2 and The Revenge of the Sith both became available through file-sharing networks before reaching cinematic release in the UK; and Casino Royale was reported to have been freely available on file-sharing websites within hours of release. Television is increasingly affected: for instance, we were told that the programme "24" was being downloaded on the US west coast within about half an hour of it being shown on TV on the east coast. The first episode of the revived Doctor Who was downloaded by tens of thousands of fans in the UK from file-sharing websites even before it had been transmitted on terrestrial television. Channel 4 noted very high numbers of illegal downloads of Lost in the UK during the "quite significant gap" between screening in the US and the UK. PACT cited the UK as a leading offender in illegal distribution of TV programming and quoted research undertaken by Envisional suggesting that the UK population contributed more

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309 Gowers Review, page 27; figures from Fraud and technology crimes, Home Office. 2006, http://www.homeoffice.gov.uk/rds/pdfs06/rdsolr0906.pdf.
310 Ev 33: see http://www.jupitermedia.com/corporate/releases/05.11.29-newjupresearch.html
311 Ev 45
312 http://www.bpi.co.uk/index.asp?Page=piracy/content_file_76.shtml
313 Gowers Review of Intellectual Property, page 27
314 Ev 71
315 Mr Barrow Ev 331
316 Q 595
317 Equity Ev 367
318 Guardian 22 November 2006
319 Q 18
320 Ev 136
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might be downloading the programme on an ongoing basis: Q 390

321Between 2.2 million and 3.3 million illegal downloads of the second series: Q 383; but Channel 4 witnesses later qualified the figures, suggesting that they were "claimed" and possibly not a true picture of regular downloads. They suggested that figures of between a quarter of a million and three quarters of a million of potential viewers

³²² An internet monitoring technology firm.

than any other to unauthorised filesharing of copies of television programmes, accounting for 18% of the total.³²³

126. There is some, limited, evidence of a slowdown in the rate of illegal filesharing. Ofcom cited research from Austria and Germany showing distinct falls; and a comparison of the growth in numbers of files available on filesharing websites compared with the rate of increase in numbers of installed broadband lines indicates a decline in filesharing as a proportion of total Internet activity.³²⁴

Meeting the threat from piracy

127. Options for tackling piracy vary from increasing effort to enforce existing provisions, introducing new statutory provisions, encouraging a legitimate market, seeking to bring about a change in public attitudes through education about intellectual property, and the use of technology to restrict the transfer of digital content. We examine each in turn.

Enforcement of existing provisions

128. The Government told us that having the right legislative structure for protection of intellectual property was "only a start" and that any structure had to be enforced effectively on the ground. In 2004, the Patent Office, a DTI-sponsored public body, published an IP Crime Strategy, and it has since developed a National Enforcement Strategy "to build a coordinated and focussed multi agency partnership between Government, enforcement agencies, and rights holders". Ministers pointed towards the establishment of the IP Crime Group in 2005 to take forward these aims, bringing together stakeholders including the police, trading standards agency and industry representatives to ensure that criminal activity was dealt with in a co-ordinated way. The work of the Group was praised by the Alliance Against IP Theft. The Gowers Review of Intellectual Property noted the initial work which had been done by the Group to bring together the relevant bodies, but it concluded that further work was needed in order to achieve the desired results.

129. The major rights holders in the music industry have made strenuous efforts in recent years to combat illegal copying and file-sharing by taking legal action against those found responsible. The BPI described its policy of launching actions against uploaders in the civil courts as costly but as "far more cost-effective [...] than anything else we have tried to do", comparing favourably, for instance, with the cost of taking out advertisements to convey a message.³²⁹ The Music Managers Forum supported strong and effective enforcement of copyright to neutralise criminal activity undertaken for criminal gain, although it believed that recent actions against music lovers sharing files without permission for no commercial

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323 Ev 151
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³²⁴ Ev 189

³²⁵ Patent Office National Enforcement Report 2005

³²⁶ Ev 290

³²⁷ Ev 48

³²⁸ Gowers Review of Intellectual Property, paragraph 5.104

³²⁹ Q 151

gain might have been counterproductive.³³⁰ In theory, rights holders themselves would use legal remedies to enforce their rights, but the cost of bringing actions is perceived to be prohibitive.³³¹

130. Section 165 of the Criminal Justice and Public Order Act 1994 inserted a new section—section 107A—into the Copyright, Designs and Patents Act 1988, requiring every local weights and measures authority (in practice, local authority trading standards offices) to enforce provisions elsewhere in the Act designating as an offence the making or dealing in any article which is "an infringing copy of a copyright work". These provisions have not, however, been brought into force. Witnesses from the creative industries and from anti-piracy organisations were unanimous that section 107A should be brought into force without delay and that the Government should make available the necessary resources to local authorities to enable trading standards officers to police it.³³²

131. When we asked Ministers whether they planned to bring section 107A of the 1988 Act into force, they indicated that to do so would place an additional burden on local authorities and that local government would need to be funded accordingly. The Minister of State at the DTI maintained that this was an issue for the Department for Communities and Local Government, and both she and her DCMS colleague suggested that alternative approaches (such as a technological solutions) could be more cost-effective.³³³

132. The Gowers Review noted that local authority trading standards services' powers and duties in relation to infringement of copyright were far more limited than those relating to the prevention of the sale of trade mark protected goods. The Review concluded that this was inconsistent and recommended that section 107A of the 1988 Act should be implemented to rectify the balance.³³⁴ The Government, in response, announced that it was "endorsing the full Gowers enforcement package to tackle piracy and other IP infringement";³³⁵ and it has since made it clear that Trading Standards officers "will be able to enforce copyright offences from this April [2007]" and that £5 million would be made available to local government to fund the first year of enforcement of section 107A.³³⁶ We welcome the commitment made by the Government to bring into force section 107A of the Copyright, Designs and Patents Act 1988 and to provide £5 million to local government to fund enforcement. These steps are long overdue.

Possible new statutory provisions

133. The UK Film Council, in its report *Film Theft in the UK*, published in 2004, recommended the introduction of "exemplary" damages for infringement of copyright. The British Phonographic Industry (BPI) and the Alliance Against IP Theft set out in detail

³³⁰ Ev 27

³³¹ Gowers Review of Intellectual Property, para 3.34. See also British Association of Picture Libraries Ev 340; Creators Rights Alliance Ev 50

³³² For instance UKAOP Ev 108; PACT Ev 151; ELSPA Ev 218; MMF Ev 27; Alliance Against IP Theft Ev 47

³³³ QQ 646–7

³³⁴ Gowers Review page 105

³³⁵ Pre-Budget Report, December 2006, Cm 6984, paragraph 3.81

³³⁶ Budget 2007: paragraph 3.98, HC 342 (Session 2006-07)

the underlying rationale, noting that an infringer normally only had to pay the cost of the licence which should have been secured, a penalty which had little deterrent effect, barely warranted the cost of legal representation, and made little impact upon profits made by piracy.³³⁷ While there is provision under the Copyright, Designs and Patents Act 1988 for a court to award additional damages,³³⁸ we were told that it had become "extremely difficult" to secure such awards.³³⁹ The BPI also observed that calculating damages could often be "complex, time-consuming and costly—or even impossible".³⁴⁰ Exemplary damages in the US range from \$750 to \$30,000 per infringed work and up to \$150,000 per work for wilful infringement.³⁴¹

134. The Department for Constitutional Affairs has indicated that it plans to publish a consultation paper on damages in the near future. The Gowers Review recommended that DCA should review the question of damages for infringement of intellectual property in its forthcoming consultation and that it should seek further evidence to ensure that an effective and dissuasive system of damages exists for civil IP cases, and that the system is operating effectively.³⁴² We agree. The Department for Constitutional Affairs should investigate reports that the award of additional damages for infringement of intellectual property is difficult to secure. The deterrent effect of the present law in this respect is near zero: it should be substantial, as are some of the illicit profits being made.

135. The UK Film Council and the Cinema Exhibitors' Association proposed that legislation should be introduced to enable the prosecution of people video-recording the picture on a cinema screen for commercial gain. According to the British Video Association, in 9 cases out of 10, the origin of a pirate copy of a film on its first appearance in the market is a camcorded copy. They cited as examples the recent films *The Number 23* and *Hot Fuzz*, pirate copies of which were available long before their legitimate DVD release and which were traced back to a UK cinema showing. Ministers questioned whether making camcording a criminal offence would be particularly effective in reducing the numbers of pirate copies in circulation unless action was taken to prevent the practice worldwide, and they urged a "realistic" approach. However, we note that both the USA and Italy have passed specific legislation to ban camcording and we do not accept that because it may take place elsewhere, this is a reason for not legislating against it here. We therefore recommend that unauthorised copying and commercial distribution of audiovisual content projected onto a cinema screen should be made a criminal offence.

136. The arrival of affordable audio and video cassette recorders in the 1970s and 1980s enabled consumers to copy privately from LPs, CDs and television and radio broadcasts to audio and video cassette. The recent increase in household penetration of fast broadband

³³⁷ Ev 47; also British Photographers Liaison Committee Ev 351 and Redeye Ev 425

³³⁸ Section 97(2)

³³⁹ Ev 47 and Q 153

³⁴⁰ Ev 72

³⁴¹ Ev 73

³⁴² Gowers Review of Intellectual Property, page 101

³⁴³ Mr Woodward, Q 595, and Ev 359

³⁴⁴ Q 638

services and of DVD and CD re-writers and recorders has extended home copying into new formats, including MP3 players.³⁴⁵ The BPI told us that, in 2004, 227 million blank CD-Rs were used for home audio recording, almost equivalent to the number of pre-recorded CDs shipped the same year.³⁴⁶ Figures for 2006 suggest that some 266 million blank CD-Rs were used for home recording, outstripping legitimate sales of pre-recorded CDs in the same year (154.1 million).³⁴⁷

137. In certain circumstances, copyright legislation permits unlicensed copying. Broadly speaking, these include fair dealing in works for the purposes of research, private study, criticism or review; copying in order to render material accessible to visually impaired persons; copying for educational use; copying by librarians for certain purposes; and copying for the purposes of parliamentary or judicial proceedings, or Royal Commissions or statutory inquiries.³⁴⁸ Recording in domestic premises of a broadcast "solely for the purpose of enabling it to be viewed or listened to at a more convenient time"—the "time-shifting" exemption—is likewise not an infringement of copyright.³⁴⁹

138. Some of the statutory exemptions have been stretched to their limits and beyond. The vast majority of home copying of audio material is carried out for relistening again and again over the long term. When undertaken for private purposes and not for commercial gain, home copying has, however, been tolerated by the music industry. When asked whether an owner of a CD should have a right to burn that CD to their iPod, or to their car music system, the British Screen Advisory Council said that "the law says they should not; 100% of practice says they do"; and it added that rights owners had been "sensible" and had not taken people to court about it.³⁵⁰ The BPI confirmed that the UK record industry had never taken action against an individual copying their CDs to their computer for the purpose of transferring those tracks to another device for their private and personal use only, and it added that the industry had no intention of doing so in the future.³⁵¹ Both the BPI and the British Screen Advisory Council distinguished clearly between home copying for private use, which was acceptable, and domestic copying in "industrial quantities", even when not undertaken for commercial gain, because of the damage done to the industry.³⁵²

139. Given the inconsistency between practice and law, we asked witnesses whether steps should now be taken to reconcile the two, for instance by drawing up a new statutory exemption. The British Screen Advisory Council told us that the problem of establishing a new right and doing it in a way which was acceptable and seen as fair and reasonable by the public was "not worth the candle". The BPI was also opposed, arguing that to provide a new statutory authorisation "could lead to dangerous misunderstandings of what types of private copying are permitted" and that material legally copied under the proposed

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345 Ev 45 and 71
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³⁴⁶ Ev 71

³⁴⁷ Figures provided to BPI by *Understanding and Solutions*.

³⁴⁸ Copyright. Designs and Patents Act 1988, sections 29, 30, 31A, 32 to 36, 38, 39, 41 to 46

³⁴⁹ Copyright, Designs and Patents Act 1988, section 70

³⁵⁰ Q 25

³⁵¹ Ev 73

³⁵² Ev 82 and Q 26

³⁵³ Q 21

exception (including compilations acquired through "stream ripping"³⁵⁴) could be passed to others who would then make further copies.³⁵⁵ The UK Association of Online Publishers agreed, telling us that it would be "very dangerous" to introduce a new broad "fair use" exception in law as "people do push the envelope a bit".³⁵⁶ For general home copying, the BPI advocated instead a non-statutory solution, based upon a 'maxim' that "to buy it and copy it is OK – but to pass it on is not".³⁵⁷ The BPI did, however, favour an amendment to legislation to make it clear that "stream ripping" was not covered by the exemption under section 70 of the 1988 Act.

140. The exemption for fair dealing for criticism or review has also been used in a dubious context. The Music Managers Forum described a practice used by one company of releasing DVDs of footage of Pink Floyd accompanied by a critique of that footage by what the Forum described as "an unknown musician off the street". The DVD had therefore become a work of review and criticism which satisfied the "fair use" exemption under the 1988 Act. The Forum called for a clarification of the exemption to prevent such practices.³⁵⁸

141. The National Consumer Council took a different view and suggested that the necessary balance of interests between creators and consumers in relation to intellectual property was not being achieved, and that consumers' "legitimate interests" had been eroded by the strident articulation (and advancement) of the interests of intellectual property rights holders. It cited as an example the manner in which the European Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society (often abbreviated to EUCD) had been transposed into UK law in 2003, arguing that implementation had been "minimalist" in areas which would be of benefit to consumers (for instance by failing to take advantage of exceptions and exclusions to copyright allowed under the EUCD) but had been "extensive and detailed" in areas which benefited commercial operators. Associated to the suggestion of the s

142. There was a measure of agreement that the law on copyright exceptions was unclear. Ms Johnstone, speaking on behalf of the National Consumer Council, believed that the law needed to be clarified to tell consumers "what they can do rather than [...] what they cannot do";³⁶¹ and the Alliance Against IP Theft made a very similar statement.³⁶² The Design and Artists Copyright Society told us that some of the existing provisions on fair dealing in the 1988 Act were "unclear" and left "both copyright users and owners uncertain about their rights and responsibilities".³⁶³ Others saw not so much a lack of clarity but

^{354 &}quot;Stream ripping" allows users to record from a broadcast to a digital file. Tracks can then be extracted to form a library. The BPI identified this as a clear example of home copying which did not take place "solely for the purposes of listening to the broadcast at a more convenient time" as provided for in the exemption under section 70 of the 1988 Act.

³⁵⁵ Ev 73

³⁵⁶ Q 257

³⁵⁷ Ev 82

³⁵⁸ QQ 80-1

³⁵⁹ Ev 20

³⁶⁰ Ev 24

³⁶¹ Q 90

³⁶² Q 96

³⁶³ Ev 55

useful flexibility: the Digital Content Forum believed, for instance, that the statutory exceptions and limitations had provided a "flexible test" which had "worked well to enable and accommodate technological developments" and which it believed should continue to be recognised and observed.³⁶⁴

143. We do not believe that the present statutory exemptions from infringement of copyright are providing clarity or confidence for users or for the creative industries, particularly in relation to home copying. We do not believe that it is satisfactory that consumers should be advised by the industry that they can ignore certain provisions of the existing law and not others, and we believe that this must contribute towards a general lack of understanding and respect for copyright law. We note that the Gowers Review of Intellectual Property recommended a limited private copying exception from the offence of copyright infringement for format shifting.³⁶⁵ We also note the recent proposal by the Institute for Public Policy Research (ippr) that a private right to copy should be introduced.³⁶⁶ We recommend that the Government should draw up a new exemption permitting copying within domestic premises for domestic use (including portable devices such as MP3 players, and vehicles owned or used regularly by the household) but not onward transmission of copied material. We also recommend that the Government should consult representatives of the creative industries and of consumers on an ongoing basis to ensure that it can respond appropriately. This will allow it to act more effectively and to establish where the existing regime of exceptions is either vulnerable to abuse, failing to respond to advances in digital technology, or unduly restrictive.

144. The growth of home copying of audio and video content on a mass scale in the 1970s and 1980s diminished creators' and distributors' control over reproduction of content and led to calls for levies to be imposed on the sales of hardware to compensate the industry for potential loss of sales. The Music Managers' Forum argued that the failure to introduce levies in the UK had caused creators and copyright owners to lose "a very valuable income stream", 367 and it contrasted the UK with other EU partners and Canada, where it claimed that copying levies on hardware and on media had operated successfully for many years. 368 The British Equity Collecting Society described levies to us as a "manageable, efficient and fair solution for dealing with the reality of private copying", 369 and there was also support for the idea from Equity. 370 Claire Enders, Chief Executive of Enders Analysis, argued that levies on hardware in Canada had enabled music publishers and songwriters to enjoy whatever standard of living they liked but at minimal pain to consumers because of the small sums involved. 371

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<sup>364</sup> Ev 126
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³⁶⁵ Gowers Review, page 63

³⁶⁶ Public Innovation: Intellectual property in a digital age, ippr, October 2006

³⁶⁷ Ev 30

³⁶⁸ Music Managers Forum Ev 30

³⁶⁹ Ev 343

³⁷⁰ Ev 368

³⁷¹ Q 41. See also DACS Q 116

145. With the trend towards distribution of music through downloading of digital files from the Internet, it may be that the concept of levies on copying hardware is declining in relevance. PPL, for instance, noted a division of opinion in the industry on the worth of levies, with some viewing DRM copy protection tools (discussed below) as a more effective solution for the future.³⁷² Mr Mark Oliver, Chief Executive of Oliver and Ohlbaum Associates³⁷³ discounted levies on sales of equipment, noting that the idea was "not in fashion" and would discourage take-up of new technology. He saw more value in a levy on software which provided the capacity to consume on demand, collected in a fashion similar to that used by collection societies collecting royalties.³⁷⁴ The Creators' Rights Alliance favoured some form of levy on Internet service providers and telecommunications companies.³⁷⁵

146. We accept that home copying can damage business models. We agree with the conclusion of the Gowers review, however, that levies are a blunt instrument for exacting recompense, and we do not recommend that they should be imposed on either hardware or software.

Encouraging a legitimate market

147. It was put to us repeatedly in evidence that piracy flourished when the market failed to provide a suitably priced legal alternative. We quote from the UK Film Council:

"The brutal truth is that if you do not give people the opportunity to buy something in an easy and convenient way on-line, then the evidence suggests that a large number of people will steal it. So the industry itself has to react and change the way it operates in order to be more consumer friendly. I think that is something the industry is doing and [...] it is an evolution rather than a revolution and people are very keen in the film industry to learn from the mistakes of the music industry".³⁷⁶

Ofcom stated simply that piracy and file-sharing in breach of copyright developed in the absence of a legal means of access to music online, and that piracy was in part a consequence of market failure to meet demand.³⁷⁷ Fred Perkins, Chief Executive of Information TV, took the same line, saying that "if technology allows consumers to get something, they will get it one way or another".³⁷⁸ Others cited the experience of the music industry (which suffered severely from online piracy) as a salutary lesson. The British Screen Advisory Council said that the music industry had "had a terrible time" but that it had survived, and that others (particularly in the film industry) had learnt an enormous

³⁷² Mr McGonigal Q 116

³⁷³ A firm describing itself as a 'knowledge company' offering strategic advice to media, entertainment and sports industries, with a particular focus on new media.

³⁷⁴ QQ 40-1

³⁷⁵ Q 116. See also Association of Independent Music, Ev 323.

³⁷⁶ Q 595

³⁷⁷ Ev 188

³⁷⁸ Q 291; see also PACT Ev 150

amount as a result.³⁷⁹ PACT suggested that the music business "had learned the hard way the dangers of not giving consumers what they want", and it argued that there was now evidence to show that people would pay for a download service if the quality and price were "decent".³⁸⁰ Andy Duncan, Chief Executive of Channel 4, said that it remained to be seen, however, whether there was a willingness to pay for shows which could be downloaded for free;³⁸¹ and the Managing Director of New Media at Channel 4 stressed the importance of setting a sensible price point and looking at ways of adding value, in order to make paid-for content attractive.³⁸²

148. The Satellite and Cable Broadcasters Group (SCBG) and Video Networks Ltd.³⁸³ identified holdback periods as contributing to piracy by denying or restricting access to content which had been heavily promoted for initial release. An SCBG witness noted a general reaction "across the industry" to collapse traditional release windows and hasten the release sequence to extract as much commercial value as possible before pirated versions could be distributed.³⁸⁴ Mr Highfield, Director of New Media and Technology at the BBC, also noted an emerging consensus that commercial exploitation had to happen "pretty much up front" in order to thwart attempts at piracy.³⁸⁵

149. The legal download market for music is now fairly well established, and film is following. Movielink, formed by MGM, Warner, Sony, Universal and Paramount, allows users pay-per-view access to downloadable films; DRM technology limits the time that material, once opened, can be watched. CinemaNow, Starz, Google, Lovefilm.com and BoxOffice365.com offer film for download, some on a subscription model.³⁸⁶ The BPI noted in evidence to us in early 2006 that there were more than 40 legitimate online music services available in the UK, using a variety of business models from single track downloads to "all you can eat" subscription services.³⁸⁷ The Alliance Against IP Theft pointed to the growth of iTunes, MyCokeMusic, HMVDigital and Lovefilm.com as legitimate outlets. iTunes, which is estimated to hold 75%–80% of the music download market, offers approximately 3 million tracks in the UK. By January 2006, the number of people downloading music legally in the UK had overtaken the number obtaining music through illegal file-sharing.³⁸⁸

150. Bearing in mind Mr Duncan's uncertainty about whether the development of a legal download market would indeed reduce the creative industries' exposure to illegal file-sharing, we asked Ofcom for an opinion. Ofcom was optimistic that, as long as the demand was being met, and at an attractive price, young people would be prepared to use legal

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<sup>379</sup> Q 18
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³⁸⁰ Q 361

³⁸¹ Q 383

³⁸² Q 384

³⁸³ At the time that evidence was sought, Video Networks Ltd. provided the Homechoice service, offering TV and radio channels via broadband.

³⁸⁴ Q 287; see also Ingenious Media Ev 228 and Video Networks Ltd Ev 450

³⁸⁵ Q 312

³⁸⁶ Ev 191

³⁸⁷ Ev 71. The number of such services is now nearing 50: see www.pro-music.org/musiconline/tracker_region_europe.htm.

³⁸⁸ IFPI Digital Music Report 2006: see Ev 328

access routes. It pointed to evidence that the rate of growth of illegal downloading was "tailing off" and that it was in fact in decline in some areas.³⁸⁹ It may be that consumers' concerns about possible adverse effects on the security of home computers through downloading unauthorised material could provide as much of a stimulus as the mere existence of a legal download market.³⁹⁰

151. We also explored with witnesses whether simultaneous release of movies in the cinema and on demand might help to combat illegal downloading by starving piracy of demand. Responses were mixed: such a strategy had been adopted with a number of recent films, and the Motion Picture Association has examined the possible impact;³⁹¹ but it was not seen as a universal solution. The Cinema Exhibitors' Association was confident that the majority of film producers would acknowledge that cinemas would need a period of exclusivity to remain viable and that, for marketing purposes, producers needed cinema.³⁹² However, they recognised that in time the number of windows may reduce to just two: theatrical exhibition and domestic consumption, and they pointed out that the period of theatrical exclusivity had been reduced in recent times to between three and just over four months. PACT pointed out that global synchronised release might work for blockbusters which were eagerly anticipated but that many independently-produced movies needed to make a mark in their home market in order to build any kind of success overseas.³⁹³ The Deputy Chairman of the British Screen Advisory Council put forward a similar argument, reminding us that film distributors needed theatrical release as a marketing event "because that is how you get reviews and [...] word of mouth and buzz". 394 He added that, "at the margin", people would stay at home if release windows were narrowed, and it would become "harder to get the older audience". 395 The UK Film Council warned that the film industry would have to be "smart and clever" about how it organised its release window structure, and its Chairman said that he would be "nervous" of simultaneous release of film in cinema and digitally, which he believed would be to the detriment of cinema-going.³⁹⁶ Others maintained that it was too early to draw conclusions on the sustainability of cinema release as a window.397

152. We accept the argument, in principle, that delaying universal access to film through the use of release windows, and holding back rights to broadcast television programming via new media, contributes to a climate in which piracy flourishes. The film and television industries cannot ignore this. However, we recognise that cinema exhibitors have relied on a period of exclusivity of release to sustain their businesses. While this has declined, there will continue to be pressure for further reductions and we believe that in future cinemas will need to rely more and more upon providing a

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<sup>389</sup> QQ 434-5: see also para 126 above
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³⁹⁰ QQ 434–5

³⁹¹ Q 359

³⁹² Ev 358 and 360. See also BSAC Q1

³⁹³ Q 360

³⁹⁴ Q 10

³⁹⁵ Q7

³⁹⁶ Q 597

³⁹⁷ Ingenious Media Ev 228

distinct experience and environment. The UK Film Council should support and publicise new approaches by cinemas to retaining and developing their audiences.

Education about copyright

153. Many witnesses described a lack of awareness among the public about counterfeiting and piracy, with theft of creative content not being viewed as seriously as theft of a physical product.³⁹⁸ The Music Managers Forum said, correctly in our view, that children "had no idea" that unlicensed file-sharing was illegal.³⁹⁹ Some people are just uncertain about what they can and cannot do legally.⁴⁰⁰ Others have an idea of what is not permitted but do not accept the principle: Ofcom told us of research which had suggested that over 80% of consumers were aware that there was a distinction between legal and illegal downloads, but that over 50% of 16–24 year olds believed that unlicensed downloading should not be illegal.⁴⁰¹ The British Screen Advisory Council said that the fight against piracy had initially been seen as "just a battle"; now there was a recognition that it should be "an education process with the public";⁴⁰² and this call for some form of education was widespread in submissions to the inquiry.⁴⁰³

154. Music industry bodies have played an active role in campaigns to increase public awareness of the illegality of unlicensed distribution of music, for instance through using educational material and leaflets in public libraries and record stores. He is music Rights saw a role for Internet service providers to employ advertising policies "designed to discourage rather than encourage copyright infringement", and it commended AOL for its "Play Legal" awareness campaign. The UK Film Council hoped that its proposed Digital Film Club network, which would offer films to schools across the UK, would teach respect for intellectual property among young people. Ofcom told us that it planned publicity campaigns in future, working with industry and others, to get information to people, to make sure that they understood "the borders of what is legal" and the reasons for the law itself.

155. There were criticisms by witnesses of the BBC for appearing to encourage a cavalier approach to copyright through its message to users of the Creative Archive—"find it, rip it, mix it, share it, come and get it". BECTU pointed out that there was no suggestion of "Respect it" in the slogan and that users were quite likely to be unaware of the terms of the licence. The Music Managers' Forum suggested that the underlying message "had the air

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Alliance Against IP Theft Ev 46; BPI QQ 147–8. See also Mr Livingstone Q 496
Q 92
BPI Q 148
Q 432
Prinstance DACS Ev 55
British Music Rights Ev 72; BPI Ev 46
Ev 33; see also Q 190
Q 595. The Digital Film Club project was outlined in Film in the digital age, a UK Film Council consultation document on policy and funding priorities issued in November 2006
Q 432
Q 334. See also Creators' Rights Alliance Ev 52 and British Photographers' Liaison Committee Ev 352
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of an organisation which seeks to undermine copyright rather than a publicly-owned authority which should emphasise best practice". 409 Many witnesses urged the BBC to use its position as a public service broadcaster with unparalleled access to audiences and experience in interpreting complex issues for public consumption to promote copyright education through its services. 410 The Creators Rights Alliance agreed and suggested that the BBC should inform users that they were paying for the right to view content rather than the right to own it. 411

156. The BBC defended its slogan, saying that the terms used were "the common parlance of the Internet", used by Microsoft and iTunes, and were in no way the language of piracy. While this may be true, the common parlance of the Internet should not be setting the standard for the BBC. We recommend that the BBC should amend the slogan for the Creative Archive, if it proceeds beyond the pilot phase, to convey the message to users that content should be respected. The BBC should examine whether more can be done to oblige users of the Creative Archive to read the terms of the licence governing use of the material before downloading and consider what other action it can take to educate consumers about the purpose and importance of copyright law.

157. It is clearly desirable to find a way of instilling an understanding of copyright in children's minds. Some valuable work has already been done. In 2004, British Music Rights prepared material for issue to secondary schools for inclusion in music lessons "to encourage young people to value the creativity involved in producing a piece of music": 80% of schools contacted expressed an interest, and British Music Rights claimed that teachers were "crying out for copyright materials to enable them to teach copyright in schools". The Patent Office has also produced material to raise awareness in secondary schools. PPL proposed that children should be encouraged to put copyright notices on their own work, from pictures to short stories and essays.

158. Many witnesses suggested that copyright should feature in the core curriculum. 416 The Minister of State at the Department for Trade and Industry told us that intellectual property was already integrated into the curriculum with some GCSEs, but she had reservations about simply adding copyright to the core curriculum. 417 We share the Minister's reservations about adding copyright as a specific item to the core curriculum. However, we believe that a less formal approach would be better and that teachers should be encouraged to promote an understanding of copyright as it becomes relevant, whether in music, creative writing or information technology lessons.

⁴⁰⁹ Ev 30

⁴¹⁰ BMR Ev 34; BECTU Ev 334; BAPLA Ev 341

⁴¹¹ Ev 51

⁴¹² Q 319

⁴¹³ Ev 32 (footnote) and Q 89

⁴¹⁴ Q 251. One of The Patent Office's targets is to encourage 80% of UK secondary schools to adopt its educational resource: THINK kit (version II). See Patent Office Annual Report and Accounts for 2005-06, HC 1391, page 15

 $^{^{415}}$ Ev 59 and Mr McGonigal Q 108

⁴¹⁶ For example the Bridgeman Art Library Ev 337, British Photographers Liaison Committee Ev 351, PPL Ev 59, Music Managers Forum Ev 28, BPI Ev 72

⁴¹⁷ QQ 649-51

Digital Rights Management

159. The Government defined Digital Rights Management (DRM) as "an umbrella term referring to any of several technical methods used to handle the description [...] analysis, valuation, trading and monitoring of the rights held over a digital work". 418 DRM tools are widely used by distributors of creative content in digital formats both as a way of limiting or preventing the copying of content and as a market analysis tool, identifying works, providing market data and tracking purchasing trends. Digital Rights Management has, however, become synonymous in many people's minds with copy control or "Technological Protection Measures" (TPM), even though this is just one element.

160. Businesses reliant on the distribution of content were mostly keen supporters of DRM tools, and the British Screen Advisory Council saw copy control as "the way that industry is going at the moment". 419 The Business Software Alliance forecast that the value of the online music market using DRM tools would rise from 46.8 million euros in 2005 to 134.6 million euros in 2007 and 194.5 million euros in 2008. 420 The Mobile Broadband Group told us that copy protection for content distributed to mobiles was essential to the business model.421 The Digital Content Forum, a network of trade associations and other organisations with a business interest in the creation and commercial exploitation of digital content, described technical protection measures and rights management information systems as being "central to enabling digital technology to provide increased choice and opportunity for both consumers and business". 422 DRM protection is used in online delivery of video games. 423 The Alliance Against IP Theft pointed out that DRM mechanisms enabled content providers to offer legal downloading or streaming of audio or visual content, and that without DRM technology, consumer choice would be "significantly restricted". 424 The Bridgeman Art Library noted that seeking out infringements of copyright, whether in the analogue or the digital world, was extremely onerous and time-consuming", 425 and we recognise the clear value of DRM tools in "tagging" work and reporting to rights owners on the use of tagged works.

161. The National Consumer Council and others were strongly critical of the way in which DRM tools were being used, 426 arguing that they placed unreasonable constraints on the use of digital products, had adverse impacts on the use and security of consumers' equipment, and infringed consumer rights under consumer protection and data protection law. The Council claimed that the regular absence of clear statements about the operation of, and effects of, using a product containing DRM software flouted European and UK consumer protection law. 427 Others pointed out that some DRM copy protection tools

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<sup>418</sup> Ev 299
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⁴¹⁹ Q 22

⁴²⁰ Business Software Alliance Ev 356

⁴²¹ Ev 87; see also H3G Ev 84

⁴²² Ev 125

⁴²³ ELSPA Ev 218

⁴²⁴ Ev 44

⁴²⁵ Ev 336

⁴²⁶ For instance Mr Ahlert, who described DRM tools as over-protective and limiting consumer choice: Q 61

⁴²⁷ Ev 21

could prevent the use of statutory exemptions permitting unlicensed copying (for instance by visually impaired people) and made no provision for expiry of copyright term. 428

162. The National Consumer Council also criticised DRM tools which affected consumers' ability to use their hardware, for instance by requiring software upgrades. In some cases, DRM software will use the consumer's Internet connection to communicate information to the seller of the product. The risks to consumers were exposed in 2005, when DRM software on a CD marketed by Sony BMG compromised the security of host computers.⁴²⁹ The outcry which followed was widely recognised as a public relations disaster for Sony BMG, which subsequently announced its intention to rethink its anti-piracy policy.⁴³⁰

163. Further criticism was directed against DRM tools for diminishing inter-operability between different models of hardware, or for rendering content unreadable except by proprietary players, the most familiar example being Apple's iTunes digital music files, which can only be played using iTunes software on iPod portable devices. Apple estimated in 2005 that iTunes held an 80% market share of single-track downloads.⁴³¹ Likewise, the coding on certain DVDs manufactured in the US can prevent them from playing on hardware in Europe. DCMS warned that the public would "have little patience in the future if industry does not tackle inter-operability as an issue". 432 The BPI recognised the risk that a firm could deny inter-operability and thereby gain a dominant position in the market.⁴³³ It saw such a development as "not particularly healthy" and said that it urged download retailers to adopt inter-operable standards allowing digital music formats to be played on other providers' platforms. 434 Recent research by Frontier Economics for DCMS concluded that, in the medium term, there is little evidence to suggest that the strong position achieved by Apple will not persist. 435 Ofcom appeared content to take a long-term view and to wait for competitors to emerge in a market which is still in its early stages of development.436

164. We note recent developments in Norway, where the Consumer Ombudsman has ruled that the iTunes online music store was in breach of Norwegian consumer protection laws because its tracks could not be played on rival companies' technology devices. The Ombudsman has instructed Apple to provide its protective codes to other technology companies by 1 October 2007.⁴³⁷ We also note the recent decision of EMI to make available all of its catalogue for download in a format which can be copied and played on any digital device without restriction, and reports that other record companies may follow.⁴³⁸

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<sup>428</sup> Mr Barrow Ev 333; British Library Ev 350; Libraries and Archives Copyright Alliance Ev 389; RNIB Ev 430 and 432.
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⁴²⁹ Ev 21 and 28

⁴³⁰ See BSAC Q 32 and Ev 191

⁴³¹ See Apple press release, 7 September 2005 and *Comparative analysis of the UK's creative industries*, Frontier Economics, August 2006, page 88

⁴³² Ev 298

⁴³³ See also Mr Oliver Q 43

⁴³⁴ Ev 71

⁴³⁵ Comparative analysis of the UK's creative industries, Frontier Economics, August 2006, page 88

⁴³⁶ Q 437

⁴³⁷ Financial Times, 25 January 2007

⁴³⁸ Independent on Sunday, 8 April 2007

165. Those who see potential in DRM technology recognise that an effort needs to be made by the creative industries and those dependent on DRM tools to broadcast their benefits to the public. British Music Rights proposed an initiative to promote a greater understanding of DRM as a way of enabling digital services to operate and of tracking music usage so that songwriters, artists and labels could be paid the correct royalties. The Digital Content Forum envisaged a clear role for Government in improving awareness about intellectual property and about DRM in particular, so that consumers could be better informed about the ways in which such products could improve efficiency and provide consumer choice. The UK Association of Online Publishers concurred and advocated better labelling and clearer advice to consumers on what they were buying.

166. Copy control mechanisms are not insuperable. The software is vulnerable to determined "hackers", and "workaround" packages enabling DRM software to be sidestepped are available on the Internet. 442 Most forms of copy control tools are effective only for digital copying (for instance using CD recorders or MP3 players): recording to an analogue device automatically removes all restrictions. 443

167. We note the useful contribution to the debate on Digital Rights Management made by the Parliamentary All Party Internet Group, which has published a substantial and detailed report on many aspects of DRM.⁴⁴⁴

168. We are in no doubt that Digital Rights Management copy control mechanisms have damaged consumer trust and have sometimes provided a very poor deal for consumers. They should not be allowed to operate in defiance of exemptions for unlicensed copying enshrined in UK copyright law. We do not, however, believe that a rush to regulate is the answer, particularly as the technology is still in an early stage of development. DRM systems have value and can, if constantly refined, play a major part in fighting piracy. We agree with evidence that they constitute a way ahead for protection of creative content. We believe that DRM tools could in future allow the sale of digital files at a range of prices to reflect the extent of reproduction permitted.

169. We believe that it is a matter for companies to decide the extent to which they wish to impose restrictions on the use of downloads and physical product. However, Digital Rights Management technology must be applied with care, and the impact of any DRM tools, whether designed for copy control or for other purposes, should be made clear to consumers at the time of purchase. It should also be borne in mind that any excessive restriction of consumers' ability to copy and share content, and unwelcome consequences for consumers' use of their own computer hardware, will only dissuade them from using the legitimate market. DRM could, if used carelessly, be an own goal.

⁴³⁹ Ev 33

⁴⁴⁰ Ev 126

⁴⁴¹ Q 256

⁴⁴² See Musicians Union Ev 404 and *Gowers Review of Intellectual Property* para 2.19

⁴⁴³ Motion Picture Association Ev 394

⁴⁴⁴ See www.apig.org.uk

We welcome the recent evidence that record companies are now choosing to make available content free from DRM for commercial reasons.

Availability of unlicensed content on the Internet

170. It is not difficult to find Internet sites which enable users to download unlicensed creative content. User-generated content on websites frequently includes clips from music tracks, television or video footage still subject to copyright. If, as is often the case, copyright clearance has not been obtained, the use of such material is unlicensed. Although the initiator of the breach is the person uploading the content, it was put to us that owners of such sites and indeed businesses enabling access to them through navigational and search tools had a duty to take steps to restrict access to unauthorised content on websites and thereby safeguard the revenue streams of the creative sectors.

171. There have been significant developments in this area during the course of the inquiry. Viacom, owner of the MTV channel, has filed a suit against YouTube in the US courts for compensation for infringement of copyright by videos posted on the site. 445 It is also reported that one social networking site—MySpace—has agreed to screen uploaded content against a database of copyrighted material. 446

172. The International Federation of Phonographic Industry (IFPI) argued strongly that internet service providers should do more to prevent copyright infringement through peer-to-peer file-sharing activity, by terminating the accounts of subscribers "abusing the network to engage in serious copyright infringement" and by providing rights holders with the information needed to identify such subscribers and enforce their rights, through legal action if necessary. The IFPI criticised internet service providers for "standing back and washing their hands of any role" in the knowledge that simply transmitting content between users' computers (as opposed to hosting or caching it) did not make them subject to any legal obligation in the EU as a condition of their immunity from damages—the so-called "safe harbour" provisions.⁴⁴⁷ We note, however, the observation by the Gowers Review that if Internet service providers were to be made liable for content passing through their networks, they might limit lawful content, for fear of breaking the law.⁴⁴⁸

173. Google told us that it took complaints from copyright owners "very seriously" and acknowledged that content companies needed to feel comfortable in placing material on the Internet; and it said that it wanted to help such companies make money and fight piracy. Google does not see itself as a major engine for access to copyright material and described peer-to-peer file-sharing services as "vastly more important". It stated that it would act to comply with US law to remove content that infringed copyright when it received a letter from counsel for the copyright owner; and it would take similar action in any country in order to comply with the laws of the land, for instance when prompted by a

⁴⁴⁵ The Times, 14 March 2007

⁴⁴⁶ Daily Telegraph, 31 October 2006

⁴⁴⁷ Ev 377–8

⁴⁴⁸ Gowers Review of Intellectual Property, para 5.96

⁴⁴⁹ Q 573

defamation or libel claim.⁴⁵⁰ Material hosted on Google Video which is found to infringe copyright is simply removed;⁴⁵¹ internet service providers take the same action on receipt of a court order.⁴⁵² Google argued that it could not be assumed, however, that enabling users to find out about the existence of a site would necessarily lead them to download illegally from that site. It pointed out that a site based in another country and enabling downloading might be acting illegally under UK law but not necessarily under the law of the host country, and it maintained that it was "very difficult to try to shut off all access to something you do not like as long as it is legal somewhere else".⁴⁵³

174. The Internet Service Providers Association (ISPA) put forward similar arguments, saying that internet service providers were not in a position to decide whether or not a website was enabling infringement of copyright, that being a matter for a court. It argued that the approach to child pornography was different and observed that not only was it illegal for a website to display such content: it was also illegal for an internet service provider to "possess" it.⁴⁵⁴ Internet service providers and mobile phone organisations have helped to establish the Internet Watch Foundation as a self-regulatory body, equipped to interpret the law and notify the industry of sites which are in breach of it. ISPA maintained that it was easier to assess whether child abuse imagery was illegal than to determine whether content constituted defamation or racism. We asked the ISPA whether it would consider setting up a body parallel to the Internet Watch Foundation, to monitor breach of copyright in material hosted on websites. The Association told us that such an approach had been tried but did not succeed because of the difficulty of interpreting the law and examining detail.⁴⁵⁵

175. We note that some deals have been concluded between owners of websites where creative content is commonly made available and major copyright owners to obtain blanket licences for content. We also note that Google does remove some sites from its search index because they violate company policies, and it confirmed that in some cases the reason for removal was copyright-related. Internet service providers and search-based businesses have already demonstrated that they accept the principle that access to unlicensed material on websites is undesirable and should be prevented if at all possible. It may be impractical for such businesses to be made legally liable for providing access to certain material, but we believe strongly that the industry should do more to discourage piracy. We are not persuaded that an industry-funded body with a remit to examine claims that unlicensed material is being made available on a website cannot be made to succeed, and we believe that the industry should establish such a body without delay.

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<sup>450</sup> Q 555
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⁴⁵¹ Q 574

⁴⁵² Q 192

⁴⁵³ Q 572

⁴⁵⁴ Q 191. See also HC Deb 26 February 2007, cols. 1098–9W

⁴⁵⁵ Q 197

⁴⁵⁶ Times, 14 March 2007

⁴⁵⁷ Q 572

Challenges to commercial exploitation

176. Not all threats from the use of new media to revenue from exploitation of content are attributable to unlicensed copying. Some arise simply from new ventures enabled by technology. We look briefly at three such enterprises: the use of internet-based news aggregation models, libraries' use of digitisation, and online activities by the BBC.

Internet-based news aggregation

177. Google and other companies based upon internet search tools are diversifying, offering (amongst other things) access to books, videos, news publications and satellite imagery. Google News, for instance, will aggregate news stories matching search terms, list one-line summaries of articles on the search results page, and provide links to the originating websites.

178. The Newspaper Society told us that the "monsters of the Internet" were "building a business model on the back of newspaper editorial and sales investments, with no direct financial recognition or recompense" for their publications.⁴⁵⁸ Ms Mills Wade, speaking on behalf of the British Internet Publishers Alliance, described Google News as "helping itself to content generated by others and redisplaying it", and she questioned whether this was straightforward copyright theft.⁴⁵⁹

179. Google defended itself from these charges, maintaining that Google News was an indexing service which provided only headlines and snippets from relevant articles, and that to read the full story, users would need to follow links to the newspaper website. 460 Google added that content owners could opt out if they chose, thereby ensuring that references from their titles would not appear in response to search requests. For Google to operate exclusively on an opt-in basis would, it said, frustrate its aim to provide comprehensive search results; and it believed that content owners had an interest in their content being found, for instance through signposting via Google.461

180. Copiepresse, a copyright protection group based in Belgium, has recently brought an action against Google in Belgian courts, claiming that Google News had breached copyright legislation by reproducing and publishing newspaper content. A judgment in the Court of First Instance in Brussels in February 2007 confirmed an earlier ruling that Google News had indeed breached the law; but the court made it clear that copyright owners would in future be responsible for notifying Google News about unlicensed reproduction of content, at which point Google would have 24 hours to remove the content before becoming liable to fines. Google plans to appeal against the judgment.⁴⁶²

181. Unless and until an action similar to that brought by Copiepresse against Google in Belgium is brought in the UK, we cannot know what view the UK courts would take on reproduction of online newspaper content by third parties. In principle, however, we do

⁴⁵⁸ Ev 110

⁴⁵⁹ Q 265

⁴⁶⁰ Q 546

⁴⁶¹ Ev 242-3

⁴⁶² UK Association of Online Publishers press release 14 February 2007

not find the representations made by the publishing industry about Internet news portals to be convincing. Newspaper websites on the internet are part of a public arena; there is no legal bar to providing an indexing service; and we have yet to be persuaded that the establishment of internet news portals is causing damage to commercial publishing enterprises. We recommend that the onus should remain with firms to opt out of Internet search engine listings rather than opt in.

Digitised libraries and archives

182. In September 2005, the European Commission issued a Communication titled *i2010*: Digital Libraries. The purpose of the document is to encourage the digitisation of collections, in order to increase accessibility and to enable long-term preservation. 463 Many libraries and archives have already begun digitisation programmes or are amassing or committing funds to do so. 464 The British Film Institute described it as "unfortunate" that the implementation in the UK of the EU Copyright Directive in 2003 had not taken advantage of the opportunity to introduce a statutory exemption to permit libraries to digitise their collections for archival purposes without infringing copyright by doing so. 465

183. British Music Rights told us that it had urged the European Commission to consider, as part of its *i2010* initiative, the potentially "very significant effect" that digitisation by libraries of their collections (and the availability of that content for digital distribution) might have on the commercial market.⁴⁶⁶ PPL observed that libraries' activities in making material available online, and the formats of their consumer propositions (in terms of price charged—if any—and level of copy control) would set up expectations and influence consumer behaviour.⁴⁶⁷ The Newspaper Society argued that digitisation and online accessibility should only be carried out in a way that was compatible with the commercial interests and sustainability of the publishing industry; and it appeared uneasy about the British Library's plans to secure the deposit of newspaper websites.⁴⁶⁸ British Music Rights proposed that libraries' activities in digitising their collections and making them available online should be limited at first to works which were out of copyright.⁴⁶⁹

184. We have not examined this issue fully. However, we note the British Library's principle that "digital is not different" when considering the application of copyright to works held in collections.⁴⁷⁰

BBC ventures

185. The BBC's various ventures in the new media field were outlined in paragraphs 31 to 37 of this report. The press notice announcing this inquiry sought specific comment on

⁴⁶³ See http://ec.europa.eu/information_society/activities/digital_libraries/cultural/actions_on/policy_actions/index_en.htm

⁴⁶⁴ See for instance British Library projects, Ev 348

⁴⁶⁵ BFI Ev 347

⁴⁶⁶ Ev 34

⁴⁶⁷ Ev 59

⁴⁶⁸ Ev 110

⁴⁶⁹ Ev 34

⁴⁷⁰ Ev 349

"where the balance should lie between the rights of creators and the expectations of consumers in the context of the BBC's Creative Archive and other developments". From the responses, it became clear that there was a deep-seated apprehension in many quarters about the BBC's online activities (not just the Creative Archive), which were seen as bringing the BBC into direct competition with the commercial sector and in some cases undermining or threatening to undermine the viability of commercial business models. The common argument underlying these responses was that the BBC's increasing provision of free new media material was making it difficult, if not impossible, for commercial players to offer paid-for services, and that the BBC could alter consumer perceptions of how online content might be made available.⁴⁷¹ Ms Mills Wade, representing the British Internet Publishers Association, described the BBC's Creative Future paper and statements by the Director-General as "disturbing" and "expansionist" and added that any move by the BBC to fund part of their online service by advertising, even outside the UK, would depress advertising rates in the UK because of BBC's size in the market.⁴⁷² PPL described the BBC as "competing head-on with many sectors of the creative industries" and noted a risk that any major player with the benefit of public finance—such as the BBC—could "foreclose any market". 473 Mr Perkins, of Information TV, pronounced himself "absolutely horrified" at the BBC's plans. 474

186. One flashpoint was the "Beethoven Experience" in June 2005, during which the BBC broadcast every work by Beethoven and offered free downloads of symphonies from the BBC website. The BPI was fiercely critical, arguing that the download offer had had "a huge commercial effect on the marketplace". The Beethoven Experience, the BBC was acting within the terms of copyright legislation, as it owned the rights to the recordings. The BBC, it said, had "taken the protest on board" and had not offered the same facility again. The BBC, for its part, acknowledged that the experiment had generated an unexpected level of demand and had been controversial. However, it noted feedback indicating that the experiment had stimulated interest in classical music among new audiences; and it observed that sales of CDs of Beethoven had risen dramatically. Equity claimed that the Beethoven symphonies had been downloaded 1.4 million times and had been "the most popular download of all time".

187. While the intention behind the BBC's Creative Archive was widely praised—PACT, for instance, recognised its "valuable public service role" — creative industry bodies were anxious that it could encourage a general perception that online creative content was free. PPL, PACT and others highlighted the difficulties caused for commercial players

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471 See for example ITV Ev 385; Video Networks Ltd. Ev 451
472 Q 231
473 Ev 59
474 Q 292
475 Q 156
476 Q 156
477 The BBC reported to us an increase in CD sales of over 109%: Ev 137. See also Q 324
478 Ev 369
479 Ev 152
480 For instance Creators Rights Alliance Ev 52
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seeking to offer paid-for services when the BBC was making available through the Archive its own material, such as premium newsreels.⁴⁸¹ The UK Association of Online Publishers went so far as to say, in relation to the Creative Archive, that unless consumers were made aware of the intrinsic value of such information, publishing would decline as a viable industry.⁴⁸²

188. In January 2007, BSkyB described the BBC's plans for its i-Player (which includes a facility to view on demand BBC programming from the previous seven days) as "a major state intervention in a nascent but promising commercial marketplace" and "a project which reduced incentives for commercial investment and experimentation [...] by creating consumer expectations that such services should allow audiences lengthy periods in which to watch the downloaded content and provide hundreds of hours of programming free of charge". The BBC's proposals for highly local television services and for a broadband service aimed at the "teen" market were also seen as threats to the commercial sector. The Newspaper Society suggested that even the announcement of proposals by the BBC could deter commercial players from entering a market, and the British Internet Publishers Alliance argued that the teen market was already plentifully served by commercial magazines, websites and newspapers. Channel 4 saw the proposals for a teen brand on the web and for education services for older children as potentially encroaching upon Channel 4's provision of education support services.

189. The BBC has not denied that it is seeking to expand its digital realm. The Director-General was widely reported in June 2006 as stating that the BBC was "the only European brand that could take on Google and AOL", 487 and it maintained that it had a duty to "adapt to the changing behaviour and preferences of its audience" if the relevance and impact of public service broadcasting was to be sustained. 488 It pointed out in evidence that the licence fee had allowed it to innovate (for instance in relation to local TV services), and it questioned whether the BBC local television service really was diverting revenue from the commercial sector. 489

190. The new BBC Charter sets out a duty for the newly-established BBC Trust to have regard to the competitive impact of the BBC's activities on the wider market.⁴⁹⁰ The Trust plays an essential part in the mechanism for measuring the impact of BBC activity upon the commercial sector—it administers the Public Value Test, based upon a public value assessment conducted by the BBC's Executive Board and a market impact assessment conducted by Ofcom. A Public Value Test must be applied before any decision to "make any significant change" to a UK public service, such as the introduction or discontinuation

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<sup>481</sup> PPL Ev 59 and Q 366 (PACT). See also memorandum from Ingenious Media Ev 231–2
<sup>482</sup> Ev 109
<sup>483</sup> BSkyB briefing note January 2007
<sup>484</sup> QQ 233 and 237–8
<sup>485</sup> Q 234
<sup>486</sup> Q 401
<sup>487</sup> Daily Telegraph, 1 June 2006
<sup>488</sup> Ev 136
<sup>489</sup> Q 308
<sup>490</sup> Cm 6925, paragraph 23(e)
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of a service. The Trust is required to judge whether any proposal constitutes a "significant change". Once a Public Value Test has been performed, the Trust is required first to consider the outcome and reach provisional conclusions and then to consult on those provisional conclusions before proceeding to a final conclusion.⁴⁹¹

191. While Ofcom has responsibility for undertaking the market impact assessment that contributes to the Public Value Test, and while the findings remain a matter for the judgment of Ofcom, its activities are overseen (and terms of reference are set) by a Joint Steering Group composed of members drawn from the Trust, from Ofcom and from independent sources.

192. Witnesses from the Satellite and Cable Broadcasters' Group expressed scepticism about the ability of the BBC's new governance structure to regulate and rein in expenditure in areas where there was already a substantial commercial presence. Impresario Media described the arrangement as "deeply unsatisfactory" and one "which cannot possibly deal properly with new services proposed by the BBC". SkyB issued a briefing note in January 2007 stating that there was "very limited confidence outside the BBC or the Government in the new BBC governance arrangements". Ofcom expressed great faith in its ownership of the market impact assessment procedure, but there has certainly been some apprehension that the role of Ofcom is circumscribed and that its market impact assessments are ultimately only advisory, in that the decision on whether or not to proceed with a project rests with the Trust.

193. In January 2007, Ofcom announced the results of its first Market Impact Assessment, examining the BBC's proposed i-Player, which would provide an on-demand catch-up television service, an audio download service, and simulcasting of BBC television channels on the Internet. Ofcom found that the proposed services would be "likely to stimulate considerable interest in other new media services, to the benefit of all UK consumers and businesses"; but it raised concerns about potentially negative effects on DVD rentals and sales and on commercial sales of classical music recordings and audio books. Ofcom recommended that the proposals should be amended in various ways, for instance by excluding audio books, limiting or removing the availability of classical music recordings, reducing the length of the window within which downloaded television content could be stored, and removing (or at least reducing the scale of) scope for "series stacking". The Trust has since announced final conclusions which authorise the BBC Executive to launch the i-Player but with restrictions broadly similar to those proposed by Ofcom.

194. There was a significant development on 14 March 2007, when the BBC Trust announced that it had decided to suspend the online education service, BBC Jam, with effect from 20 March 2007. BBC Jam, which had offered a free interactive online learning

⁴⁹¹ Cm 6872, paragraphs 24–26

⁴⁹² QQ 292 and 294

⁴⁹³ Ev 375

⁴⁹⁴ O 471

⁴⁹⁵ Ofcom press release 23 January 2007. "Series stacking" could allow viewers to store and view an entire series of programmes.

⁴⁹⁶ BBC Trust Press Release 30 April 2007

service for 5–16-year-olds of all abilities, reflecting the school curricula in England, Scotland, Wales and Northern Ireland, had been launched in January 2006 and had been allocated a budget of £150 million. As the Acting BBC Chairman noted, BBC Jam had attracted criticism from the commercial sector about the extent of its activities, and complaints had been made to the European Commission alleging that the service had not complied with its conditions of consent.⁴⁹⁷ The BBC management has been asked to prepare fresh proposals for meeting the BBC's public purpose of promoting formal education in the context of school age children.

195. We have yet to see whether the new arrangements for governance of the BBC will inspire any greater confidence in the commercial sector that the BBC will take account of its privileged position in the market when considering new projects. The onus is on the BBC Trust to acknowledge that there is potential for the BBC's activities to have a damaging impact on the commercial sector and that different elements of its plans have differing impacts, and we believe that the BBC must be scrupulous in addressing all the relevant markets and impacts in its Public Value Tests. It is recognised that the Trust will need to make fine judgements about conducting Public Value Tests from time to time (as well as Ofcom with respect to Market Impact Assessments), but a sensible approach would be, "When in doubt, test." Public and commercial confidence in self-regulation by the BBC Trust will be boosted by evidence that the Trust will act, as it has done in the case of BBC Jam: we see this as an encouraging sign of real change.

6 Regulation of content on new media

Existing regulation of content

196. Linear broadcasting⁴⁹⁸ of programmes to a schedule on traditional media has been carefully regulated, with controls designed to protect viewers or listeners—particularly young people—from harmful and offensive content. Holders of broadcasting licences granted by Ofcom are required to adhere to Ofcom's Broadcasting Code. Breach of the Code may lead to fines or ultimately to variation or revocation of a licence; but the regulation is *ex post* and entails no assessment before broadcast. The onus is on a viewer to register a complaint.

197. The exhibition of film content is governed by section 20 of the Licensing Act 2003, which specifies that the admission of people aged under 18 must be restricted in accordance with any recommendation made by either the British Board of Film Classification (BBFC) or (more rarely) by another licensing authority (such as the local authority). The BBFC classifies almost all films released in the UK, taking into account licensing objectives designated by the Licensing Act: the prevention of crime and disorder,

⁴⁹⁷ The provision of financial aid from state resources needed to be authorised by the European Commission in line with Article 87(1) of the EC Treaty. The Commission gave its assent in 2003.

⁴⁹⁸ Broadcasting in real time of programmes to a schedule: the programmes are "pushed" by the broadcaster rather than "pulled" on demand by the viewer.

public safety, the prevention of public nuisance, and the protection of children from harm.⁴⁹⁹

198. Video works are also regulated for content and are subject to classification in much the same way as film. "Video work" is defined under the Video Recordings Act 1984 as any series of visual images (with or without sound) produced electronically by the use of information contained on any disc, magnetic tape or any other device capable of storing data electronically and shown as a moving picture. The Act therefore covers works in a wide range of formats including works on VHS cassettes, DVDs and games console cartridges; but it does not cover moving images which are transmitted using the Internet or mobile phone networks. There is also doubt about whether the Act covers video-ondemand: current legal opinion is that it does not, although this has yet to be tested in the courts. Therefore, a viewer may obtain perfectly legally on demand material which includes scenes which have had to be excised at the BBFC's instruction in order to secure a classification and go on general release. Only if the viewer then seeks to publish the material, or if under-age participants are involved, is an offence likely to have been committed.

199. The BBFC told us that there was "simply no gap between what most adults want to be able to see and what the BBFC classifies": in other words, most adults' film and video viewing preferences are not constrained by the BBFC. The BBFC noted, however, that new media offered easy access to extreme material, including animal cruelty, killing, torture and mutilation and sexual violence, and it gave a number of examples of ways in which such material could be made available using new technology to evade regulation. Many methods involved the Internet: material cut from versions issued on general release, on instruction from the BBFC, may simply be posted on websites; and Internet-based mail order services have frequently been used to circumvent UK law and regulation. 502

200. Video games are covered by the Video Recordings Act 1984 but may claim exemption from classification unless the work depicts to any significant extent certain types of violence or sexual activity, in which case the work must be submitted to the BBFC for classification. Less than 5% of interactive games fall into this category. The remainder are classified under a self-regulatory system–PEGI (Pan European Games System) – under which games developers complete a questionnaire and are awarded a rating by PEGI on the basis of their answers. The BBFC believed that the threshold above which submission to the BBFC became necessary was set very high, thereby permitting the free circulation of material which was clearly unsuitable for young children. The BBFC also pointed out that video games were often upgraded through downloadable "enhancements" or patches,

⁴⁹⁹ Licensing Act 2003, section 4

⁵⁰⁰ See Ev 273

⁵⁰¹ Q 611

⁵⁰² Ev 277–8

⁵⁰³ ELSPA Ev 218

⁵⁰⁴ BBFC Ev 278

which were free from regulation; such patches could nonetheless include material which would take a game into a more restricted category of classification.⁵⁰⁵

The AudioVisual Media Services Directive

201. The European Commission has brought forward a proposal to update the framework for the regulation of broadcasting at an EU level. This proposal was published in December 2005 and is now presented as a draft Audio Visual Media Services Directive, updating the Television Without Frontiers Directive adopted in 1989.

202. The draft Directive covers many areas, including the maintenance of a single market for television services in the EU, quotas for the transmission of works produced in Europe, and the use of advertising. The area which is of especial relevance to this inquiry, however, and which has given rise to considerable controversy, is the proposal to extend regulation to cover not just traditional "linear" broadcasting, in which programmes are transmitted according to a schedule, but also "non-linear" broadcasting, in which the viewer "pulls" content at a time of his or her choosing. The draft would apply a two-tier approach, with a range of controls over both linear and non-linear broadcasting, but with further provisions applying to linear broadcasts only.

203. Most of the evidence which we received was critical of the proposal to regulate non-linear content, often on the grounds that to do so would hinder the development of new services, "stifle the market", 506 and "deter new and existing new media players from the market and divert investment and innovation away from the EU". 507 DCMS pointed out in an Explanatory Memorandum that some Articles within the Directive offered only an illusion of protection, as they did nothing to prevent children or adults accessing services from outside the EU. 508 Ms Enders spoke of "an amazing sense of optimism that the Commission must have that they can regulate anything online" and described the intention as "foolish" and based upon a "European tradition of wishing to control". 509 Google also described the application of TV rules to content made available on the Internet as misguided and saw the distinctions drawn between linear and non-linear content as impossible to apply in any sensible way on the Internet. At what point, it asked, did timeshifted viewing cease to feel like a television programme (and be regulated as such)? 510

204. The British Screen Advisory Council warned that the cost of compliance with the Commission's proposals—both for the industry and for Ofcom—would increase "massively",⁵¹¹ and the Mobile Broadband Group suspected that the Commission had made no attempt to assess the impact on national regulatory authorities; it reported Ofcom

⁵⁰⁵ Ev 278

⁵⁰⁶ H3G Ev 85; see also Mobile Broadband Group Ev 89

⁵⁰⁷ BT Ev 100; also BSAC Q1. See also Ofcom memorandum to the House of Lords European Union Committee, published in *Television Without Frontiers*?, 3rd Report of the European Union Committee, Session 2006-07, HL 27, Ev 43

⁵⁰⁸ See *Television Without Frontiers*?, 3rd Report of the House of Lords European Union Committee, Session 2006-07, HL 27. Ev 67

⁵⁰⁹ Q 39

⁵¹⁰ Q 586

⁵¹¹ Q 33

as saying that a regulator ten times its present size would be "overwhelmed by the task".⁵¹² DCMS told us that it was vital that regulation was not unnecessary or unenforceable;⁵¹³ and Talkback Thames, while acknowledging the Commission's concern for the protection of young people, maintained that the criminal law in the UK already provided the necessary protection.⁵¹⁴

205. H3G objected to the proposed inclusion of television content broadcast to mobile phones within the framework for regulatory content, arguing that mobile content (unlike scheduled television content) had to be specifically requested, could not be viewed unwittingly and could not be a shared viewing experience. The Mobile Broadband Group described the Commission's proposals on content regulation as "futile, expensive and counter-productive". 516

206. Not all witnesses were opposed to the Commission's plans to subject non-linear services to regulation. BECTU believed that the proposed framework had already been sufficiently graduated, in that it did not seek to apply the same depth of regulation to new media services as it did to traditional formats, and it regarded the opposition to the draft Directive from new media platform owners (mobile phone, telecommunications and Internet companies) as "blatant self-interest".⁵¹⁷ Equity was also in favour of a degree of regulation of services delivered using non-traditional methods.⁵¹⁸

207. The stance taken by the Government and Ofcom at the outset of negotiations on the Directive was to resist much of what was proposed, and it represented many of the objections raised above in discussions on the document in the Commission. Both the Government and Ofcom were commended by witnesses for their efforts.⁵¹⁹ In taking this stance, however, the UK found itself in a tiny minority. In the autumn of 2006, recognising that the UK was unlikely to gather support for its preferred course, entailing minimal regulation, the Government took a strategic decision to propose a limited extension of regulation so as to cover on-demand services. Ofcom, although not persuaded of the need to widen the scope of regulation in broadcasting, was prepared to accept regulation "genuinely limited to material that looks, feels, sounds and generally is substitutable for television".⁵²⁰ The Minister for Creative Industries and Tourism presented this solution as a more logical approach, noting that there was an inconsistency in acknowledging the need to regulate a programme broadcast to a schedule while resisting regulation of the same programme delivered days later on demand.⁵²¹

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<sup>512</sup> Ev 90
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⁵¹³ Ev 291

⁵¹⁴ Q 442

⁵¹⁵ Ev 85

⁵¹⁶ Ev 90

⁵¹⁷ Ev 333

⁵¹⁸ Ev 368

⁵¹⁹ Mobile Broadband Group and Internet Service Providers Association Q 187; Ms Mills Wade, on behalf of the British Internet Publishers Alliance believed that the Government was "doing a grand job in fighting the fight at Council of Ministers level": Q 273

⁵²⁰ Q 476

⁵²¹ Q 654

208. Ofcom urged that self- and co-regulatory mechanisms should be used to ensure the outcomes desired by the Directive. Directive. Others agreed that this would be the best approach, supported by existing statutory controls such as those applicable to child pornography. Some models for self-regulation have already emerged. One, the PEGI system for interactive games, we have described above. We were also told by the Mobile Broadband Group in March 2006 that a classification framework for content was to be drawn up by an independent body—the Independent Mobile Classification Body—against which content providers could self-classify content. ATVOD, the Association for Television on Demand, has drawn up for its members a Code of Practice based upon two core principles: Association members should recognise their responsibility to protect children and young people from unsuitable material; and members should recognise their responsibility to provide accurate, timely and reasonably prominent guidance in relation to their offerings of (a) content reasonably expected to cause significant offence or upset to some customers and (b) commercial services. Described the ATVOD model as "providing a good example of a way forward".

209. Although this is a report about creative industries rather than about the protection of children, the difficult issue of harmful content which is not broadcast and is not a programme as such but which simply sits on the Internet cannot be ignored. We pressed Google on its policy on controlling user-generated content disseminated via the Internet. It described its strategy as being "to harness the power of [...] users to find and flag inappropriate content", and it maintained that it acted promptly to review (and if necessary remove) any content on Google Video found to be inappropriate for instance on the grounds of obscenity, graphic violence or for being racially or ethnically hateful.⁵²⁷

210. The most succinct and, we believe, persuasive statement on protection from harmful content was made by Ofcom, which said that "the fundamental message is that the primary responsibility in so many of these environments will lie with the consumer" and that "it is our opportunity to educate them and to make sure they have the tools available to them to make sure that they know what is there.⁵²⁸ Google also subscribed to this view, saying that the best way of enabling parents to protect their children was to provide them with the tools to control viewing.⁵²⁹ The Mobile Broadband Group told us that mobile phone operators provide filters for content accessible from a mobile phone over the Internet, providing a degree of parental control over children's access to websites.⁵³⁰

211. We agree with the approach taken by the Government and by Ofcom in negotiations with other EU Member States and with the European Commission on the

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522 Q 476
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⁵²³ Channel 4 Ev 169; Talkback Thames Ev 445

⁵²⁴ Ev 89

⁵²⁵ See www.atvod.org.uk

⁵²⁶ Video Networks Ltd. Ev 451

⁵²⁷ Q 540

⁵²⁸ Q 477

⁵²⁹ Q 586

⁵³⁰ Ev 89

draft Audio Visual Media Services Directive. The Government took a pragmatic decision to support the regulation of on-demand broadcast services, although we accept that there is in any case some logic underlying such a policy. It must be recognised, however, that the EU has chosen to extend the scope of new media regulation in ways that may disadvantage it in a globally competitive and increasingly technologically borderless world, and could see some existing businesses as well as start-ups in future choose to operate from more liberal jurisdictions. We believe that any such regulation of on-demand services should be self-regulation, both by the industry and within the home. In line with its duty to promote media literacy, Ofcom, with the assistance of all broadcasters and media regulators, should seek to increase public awareness that the protection of children from harmful content accessed via both new and traditional media will become increasingly a responsibility for parents.

7 The role of Government

212. We observed at the outset of this Report that many of the challenges posed by the rise of new media are ones for the market to address and resolve. Most of this Report has discussed the ways in which the various stakeholders—creators, distributors, broadcasters and indeed consumers—have tackled those challenges. Many of our recommendations have been directed towards the various industries or to Ofcom as regulator. Nonetheless, as we noted at the start, the Government has roles in helping to ensure (with Ofcom) an open and fair marketplace, and in preserving a balance between public access to knowledge and ideas and the ability of commercial entities to exploit full commercial value from creative products. The last few paragraphs of this Report discuss those roles.

Policy responsibility in Government

213. DCMS is the sole sponsor of the film, broadcasting, music and designer fashion industries, and joint sponsor (with the DTI) of the advertising, computer games, design and publishing industries. The DTI has specific responsibility for competition, innovation, consumer policy, the science base and the ICT sector; and it supports small businesses (through the Small Business Service), intellectual property (through the Patent Office) and trade.⁵³¹ The Government's stated aim is to ensure that an environment exists in which the creative industries can prosper and grow, by enabling access to skills and finance.⁵³²

214. The nature of DCMS as a Department without responsibility for core services, very often complementing others, and as a distributor of funds for public bodies, has in the past led us to question whether it has the weight within Government to represent its constituent interests.⁵³³ In this case, however, there was comparatively little evidence suggesting directly that creative industries or broadcasters were poorly served by DCMS. The Entertainment and Leisure Software Providers Association (ELSPA), a trade body for the

⁵³¹ Ev 288

⁵³² Q 625

⁵³³ See, for example, Third Report of the Committee, Session 2005–06, Protecting and Preserving our Heritage, HC 912–I, paragraphs 38–41

interactive games sector, told us that it had yet to be persuaded that DCMS was set to play an active part in promoting and supporting the industry, and it pointed out that the video games industry (unlike the film industry) had no Government-funded body to promote it and advocate its interests; nor, unlike film, did it benefit from tax advantages to stimulate and support production, even though it argued that it faced similar problems of leakage of creative talent overseas.⁵³⁴ One witness told us that in Korea, which has a vibrant interactive games industry, the Government had done much more to support the industry through trade shows, helping to change the public perception of games.⁵³⁵

215. Phonographic Performance Ltd suggested that the Department's approach to the creative industries was "piecemeal" and that the split in responsibility between DCMS and DTI led to a lack of focus and understanding, with little input on the industries' behalf to other Departments, such as the Treasury.⁵³⁶ PPL proposed that a new cross-departmental body, perhaps on the model of UK Trade and Investment,⁵³⁷ should be formed to bring together the various arms of Government and handle jointly the relationship with the creative industries.⁵³⁸

216. This is not an inquiry into the creative industries *per* se, and we did not discuss PPL's suggestion in detail with witnesses other than the Government, which did not support the idea. The Minister for Creative Industries and Tourism accepted that the creative industries engaged across many government departments, but he questioned whether a special bureaucracy was necessarily a solution, saying that what was needed instead was "an awareness about the opportunities".⁵³⁹ We are not able at this point to give a considered view on the merits of PPL's proposal, given the limited evidence on the subject.

Support for business development

217. Creative industries are in many respects industries just the same as any other: they need the right climate to prosper; individual enterprises need to be able to stand or fall on their merits; and they need business acumen to know how to monetise the product and generate revenue.⁵⁴⁰

218. The UK is well placed in terms of creative skills: it has a worldwide reputation.⁵⁴¹ The position appears particularly strong in the new media sector. Skillset told us that the proportion of the workforce in interactive media sectors educated to graduate level was unusually high when compared to other sectors.⁵⁴² Google told us that universities in the

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534 Ev 217
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⁵³⁵ Mr Livingstone Q 483

⁵³⁶ Ev 58 and Q 105

⁵³⁷ A Government body formed from elements of the FCO and the DTI, with a remit to promote UK trade overseas and encourage inward investment from abroad.

⁵³⁸ Ev 58

⁵³⁹ Q 625

⁵⁴⁰ Mr Bradley Q 508

⁵⁴¹ Mr Bradley Q 507

⁵⁴² Skillset Ev 438

UK were producing "tons of talent" with "fantastic skillsets that are globally competitive", adding that it was able to hire "incredibly talented people" out of universities in the UK.⁵⁴³

219. In terms of investment climate, the UK may not be in such a favourable position. Mr Patrick Bradley, speaking on behalf of Ingenious Media, a major investor in the new media sector, said that unless the UK could "get it right", investment would flow elsewhere, and he warned against complacency.⁵⁴⁴ We note that Silicon Valley in the US has a well-developed ecosystem of financing for start-up businesses, as well as an on-site infrastructure of office space, lawyers and accountants specialised in the creative industries.⁵⁴⁵ Governments in the Far East are investing major effort in promoting industries (interactive games in Korea)⁵⁴⁶ or in seeking to attract creative talent (Singapore).⁵⁴⁷

220. The Government described some of the instruments used to stimulate technology and innovation, for instance through Research and Development tax credits and support for overseas missions for industry experts to gain and disseminate knowledge. Venture Capital Trusts also play a part; but Ingenious Media told us that the Government could do more to provide or encourage the provision of risk capital for businesses which were at a very early stage and which had no track record to enable them to attract investment from larger investment funds. Ingenious Media suggested that the Government might contribute to public-private initiatives and help to share early stage risk capital investments.

221. The Government is clearly aware of the difficulties in securing first stage capital, and it recognises that support for small and medium-sized enterprises is "crucial", whether through deregulation, through Regional Development Agencies or through Business Link.⁵⁵¹ To some extent, the problem arises from a difference in culture between the UK and the US: Google noted a greater risk aversion in the UK because of the fear or stigma of failure.⁵⁵² The Minister of State at the DTI accepted that access to finance was much easier in the US, where people were more willing to take risks, and she said that the DTI was monitoring to see "where there is a failure on market access to finance".⁵⁵³ She also encouraged the banking sector to take more risk.⁵⁵⁴ We recommend that proposals for policy development in the forthcoming Green Paper on Creative Industries should be accompanied by a strategy for research, to include an assessment of the investment climate for start-up businesses in new media sectors.

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<sup>543</sup> QQ 520 and 522
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⁵⁴⁴ Q 507

⁵⁴⁵ Q 523

⁵⁴⁶ Mr Livingstone Q 483

⁵⁴⁷ Q 507

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⁵⁴⁹ Mr Bradley Q 510

⁵⁵⁰ QQ 511-2

⁵⁵¹ Q 626

⁵⁵² Q 518

⁵⁵³ QQ 626-7

⁵⁵⁴ Q 635

222. We note that the Government brought forward secondary legislation under the Communications Act 2003 to accommodate a request both to change the maximum amount of data which can be carried on a digital radio (DAB) multiplex and to change the definition of a "digital programme service", in order to allow television services to be carried on a digital radio multiplex. Doing so enabled BT to offer enough broadcasting channels on its Movio service (which offers TV broadcasts to mobile phone handsets) to make it a commercial proposition. This is one recent example of how the Communications Act is already proving outdated; we have no doubt that there will be others and that the Government and Ofcom will need to monitor the legislative framework to ensure that it does not stifle technological development.

Government policy on creative industries

223. In June 2005, the then Minister for the Creative Industries announced an intention to make Britain "the world's first creative hub",⁵⁵⁵ and the Creative Economy Programme was established to drive forward that ambition. The Programme has the following aims:

- Developing a strategic vision for the Creative Industries that can be shared at national, regional and local level;
- Developing new policy for the Creative Industries, generating ideas from a wider range of contributors, NDPBs, industry and other stakeholders;
- Creating better coherence for current policies, funding programmes and workstreams; and
- Creating new projects between NDPBs and across sectors.

224. The Minister for Creative Industries and Tourism presented the Creative Economy Programme as "a new venture by government [...] to bring these industries together with an opportunity of seeing what are the issues that they have in common that government needs to address". Although the Programme clearly has value, it is questionable how "new" it really is, given its resemblance to the Creative Economy Task Force launched by the then Secretary of State for Culture, Media and Sport in 1998. No substantive information was given on the Department's previous initiative, its results and what actions have or have not been undertaken in its wake since 1998. This must undermine confidence in the latest initiative and we request that the Government provide this information in its response to this report.

225. The Government plans to publish a Creative Industries Green Paper later this year.⁵⁵⁸ The Minister told us that it would examine the role of the creative industries in the UK economy as well as the challenges (and opportunities) raised by global competition; and he

⁵⁵⁵http://www.culture.gov.uk/Reference_library/Minister_Speeches/Ministers_Speech_Archive/James_Purnell/James_Purnell _Speech01.htm

⁵⁵⁶ Ev 289

⁵⁵⁷ Q 630

⁵⁵⁸ HC Deb, 26 January 2007, Col. 2056W

added that the Green Paper would allow the industries the opportunity "to see themselves in the same way that manufacturing and financial services do" and that "instead of being seen independently as a group of craft industries operating in the margins of the economy, their full strength and positions, the opportunities and the challenges they face, can be embraced collectively".⁵⁵⁹ We welcome the intention to publish a Green Paper on the Creative Industries. We believe that it will mark a long overdue recognition of the importance of their role in the UK economy.

Government policy on copyright

226. Turning to copyright, we are not entirely confident that the Government and responsible agencies have taken a sufficiently vigorous approach to developing the law on copyright in recent years. The Government *has* taken action to bring together the various stakeholders with an interest in copyright to generate ideas and inform each other and Government. The Alliance Against IP Theft told us that it had lobbied very hard for a cross-departmental approach to counterfeiting and piracy, which had led to the formation of the Creative Industries Intellectual Property Forum, with representation from different Government departments and from interested parties.⁵⁶⁰ The Association of Online Publishers described the Forum as having been important not only in enabling the weaknesses within the current legal framework to be considered and addressed but also in securing recognition from the Government of the importance of helping users and creators to recognise the value of intellectual property to the health of the creative industries in the UK.⁵⁶¹

227. We have also noted the work of the Patent Office, sponsored by the DTI, in publishing an IP Crime Strategy and developing a National IP Enforcement Strategy, which has in itself led to the establishment of the IP Crime Group in 2005 to ensure that criminal activity was dealt with in a co-ordinated way.⁵⁶²

228. Despite the various strategies and the work done by cross-departmental groups, there has been little sign of copyright policy development within Government departments or relevant agencies. One of the Patent Office's objectives is to "promote and support moves to simplify the law on intellectual property and to harmonise international rules and procedures"; yet its most recent Annual Report makes no mention of any steps to develop copyright policy. Indeed, the word is hardly mentioned, and none of the present Agency targets specifically relate to copyright.⁵⁶³ PPL said that copyright policy-making "had been in a state of malaise for the past few years" and that policy was handled as a subset of patents by officials in the Patent Office "who are remote from the copyright industries, with little ministerial input".⁵⁶⁴ We note the statement in the Gowers Review of Intellectual Property that the Patent Office "has been less effective at taking a strategic view of

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<sup>559</sup> Q 625
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⁵⁶⁰ Q 106

⁵⁶¹ Ev 109

⁵⁶² Ev 290

⁵⁶³ Patent Office Annual Report and Accounts 2005–06, HC 1391, page 56

⁵⁶⁴ Ev 58

intellectual property policy" and that it had not always been effective in linking intellectual property will other related areas. 565

229. We question the Government's statement in its memorandum to this inquiry that "we are well placed in terms of modern copyright legislation that is up to date". ⁵⁶⁶ Certainly, we did not detect a widespread appetite for fundamental reform of existing law: British Music Rights suggested that "tweaking and clarifying the existing provision" was what was needed, ⁵⁶⁷ and others took a similar view. ⁵⁶⁸ Yet various inconsistencies and unsatisfactory elements in copyright law emerged during our inquiry, and the Gowers Review made a number of recommendations on enforcement which seem to us to be eminently sensible and which could, with ministerial encouragement, have been developed and put into action some time ago. We have in mind, for instance, the proposals on statutory damages and resources for local authority trading standards officers.

230. PPL believed that the value of copyright to the economy warranted a dedicated Copyright Office, charged with promoting the UK's copyright interests.⁵⁶⁹ We await with interest the Government's response to the recommendation by the Gowers Review that a new Strategic Advisory Board for intellectual property policy should be established, to strengthen the mechanism for policy development.⁵⁷⁰ We believe that the Gowers Review of Intellectual Property was timely. We hope that it will help to galvanise the Government into action in improving enforcement of copyright law and amending it where necessary. However, we note that a number have expressed disappointment at its findings.

231. The Government also stated in its memorandum that present copyright legislation "strikes the balance between the need for the right holders to be able to extract economic value from creativity and the legitimate expectations of others".⁵⁷¹ Given that representations to this inquiry suggest an equal measure of dissatisfaction with the law from both sides, the Government may be correct. We noted above (at paragraph 120) our preferred perspective on copyright: a means by which people can own what they create and earn a living from their creativity. We are aware of the concept that the purpose of intellectual property laws should be to serve the public interest and to enhance creativity and innovation, as enshrined in the RSA Adelphi Charter;⁵⁷² but we do not believe that this should mean that consumer interests should prevail over the rights of creators. This brings us to our final observations, on copyright term.

232. The copyright term granted to creators of literary, dramatic, musical or artistic works in the UK is 70 years from the end of the calendar year in which the author dies, subject to certain exceptions. The term granted to creators of sound recordings in the UK is 50 years

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565 Gowers Review, para 6.6
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⁵⁶⁶ Ev 290

⁵⁶⁷ Q 78

⁵⁶⁸ Mr Stopps Q 79; Ms Carey Q 96; Ms Cave Q 96; Mr McGonigal Q 97; BPI Q 155; BSAC QQ 23 and 24

⁵⁶⁹ Fy 58

⁵⁷⁰ Gowers Review of Intellectual Property, Recommendation 46

⁵⁷¹ Ev 290

⁵⁷² A set of principles drawn up in 2005 by a commission of scientists, artists and legal experts: Ev 436

from the end of the calendar year in which the recording is made, again, subject to certain exceptions.⁵⁷³ In the USA, the copyright term was extended in 1998 to 95 years from release; in Australia, the term has recently been increased from 50 years to 70 years.⁵⁷⁴ The Music Managers' Forum argued that the disparity in the UK was anomalous and dated from a time when life expectancy (and the scope for creators to exploit their work during their lifetime) was shorter; and it concluded that "there could be no possible justification for the discrimination against performers".⁵⁷⁵ Phonographic Performance Ltd told us that the shorter term for sound recordings in the UK reduced the value of the recording industry in the UK, decreasing the value of any record company catalogue and consequently the amount that it was able to reinvest in new recordings. We were also told that the longer term available in the USA made it a more attractive base for recording.⁵⁷⁶ Many other bodies supported an extension.⁵⁷⁷

233. A different view was put forward by the National Consumer Council, which argued that recording companies' business models are generally based upon much shorter periods for generating returns on investment, and that the concept of using returns on recordings to finance future recording investments is giving way to models in which each recording is treated as an independent investment vehicle.⁵⁷⁸ The British Library cited research suggesting that 98% of works had no commercial value after 50 years.⁵⁷⁹ A witness for the National Consumer Council said that she did not accept arguments that long copyright terms provided an incentive to create and invest in creation, and she suggested that, while it was legitimate to recoup returns on investment, it was not legitimate for "monopoly rights" to extend to the descendants of original creators.⁵⁸⁰ The Libraries and Archives Copyright Alliance was also strongly opposed, believing that extension would "massively upset the balance between right holders and users".⁵⁸¹

234. The 50-year term dates from the Copyright Act 1911 and was confirmed by the EU Directive on Harmonising the Term of Protection of Copyright and Related Rights, ⁵⁸² implemented by regulations in the UK in 1995. Any increase in the term would need approval by the EU.

235. The Gowers Review undertook an extensive analysis of the argument for extending the term. On economic grounds, the Review concluded that there was little evidence that extension would benefit performers, increase the number of works created or made

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<sup>573</sup> Sections 12 and 13A of the Copyright. Designs and Patents Act 1988
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⁵⁷⁴ Ev 70

⁵⁷⁵ Ev 27

⁵⁷⁶ PPL Ev 59-60

⁵⁷⁷ British Equity Collecting Society Ev 344; Equity Ev 369

⁵⁷⁸ Ev 22

⁵⁷⁹ Ev 350

⁵⁸⁰ Q 66

⁵⁸¹ Ev 392

⁵⁸² Council Directive 93/98/EEC

available, or provide incentives for creativity; and it noted a potentially negative effect on the balance of trade.⁵⁸³

236. Gowers' analysis was thorough and in economic terms may be correct. It gives the impression, however, of having been conducted entirely on economic grounds. We strongly believe that copyright represents a moral right of a creator to choose to retain ownership and control of their own intellectual property. We have not heard a convincing reason why a composer and his or her heirs should benefit from a term of copyright which extends for lifetime and beyond, but a performer should not. Under the present term, some 7,000 performers, including session musicians and backing singers will, over the next ten years, lose airplay royalties from recordings they made in the late fifties and sixties. They will also no longer benefit from sales just at a time when the long tail enabled by on-line retailing may be creating a market for their product once again. Given the strength and importance of the creative industries in the UK, it seems extraordinary that the protection of intellectual property rights should be weaker here than in many other countries whose creative industries are less successful. We recommend that the Government should press the European Commission to bring forward proposals for an extension of copyright term for sound recordings to at least 70 years, to provide reasonable certainty that an artist will be able to derive benefit from a recording throughout his or her lifetime.

⁵⁸³ Gowers Review of Intellectual Property, paras 4.20–4.39

Conclusions and recommendations

- 1. We believe that Creative Commons licences are a valid option for creators who make a conscious and informed decision to make their work available for re-use. We accept that they can in fact be a useful marketing tool, as long as licensees understand the limitations on future commercial exploitation. Creative Commons licences should not, however, be regarded as the norm; nor should more radical rights-free regimes. Creators are entitled to demand payment for their product and the success of the creative industries depends on their ability to do so. (Paragraph 60)
- 2. Royalty levels are a commercial matter for negotiation between relevant parties. We acknowledge that, whatever the means of distribution of their product, recording companies incur a major part of their costs in identifying and promoting artists, the majority of which may never provide a return on the investment. As digital distribution increases, costs are bound to fall, as may revenues. We would expect the recording industry to ensure that there is a fair sharing of both risk and profits with creators. (Paragraph 69)
- 3. As the strategic agency for film in the UK whose aim is to stimulate a competitive, successful and vibrant UK film industry and culture, and with multi-million pound Government funding, the Film Council might have been expected to have commissioned and reported on this area [the potential for digital platforms to enhance public access to British and specialised films] some time ago. (Paragraph 71)
- 4. There is no doubt that commercial broadcasters will come under increasing pressure from fragmentation of audiences and of advertising revenue. We are convinced that there will remain a market for televisual content free at the point of use but the decline in revenues from traditional advertisements may be permanent. We believe that commercial broadcasters will need to adopt a flexible approach and to be willing to diversify. Broadcasters are already recognising the need to tap into the online market themselves and to make use of opportunities presented by the development of technology, e.g. the ability to integrate advertisements into downloads on demand. We also encourage Ofcom to take advantage of the proposed derogation in the Audio Visual Media Services Directive, under which limited use may be made of product placement. We will examine further the implications of the decline in advertising revenues for the provision of public service media content by commercial broadcasters in our forthcoming Report on this issue. (Paragraph 94)
- 5. Although we will continue to listen to the arguments, we do not believe that a persuasive case has yet been made to justify reserving spectrum for High Definition Television following digital switchover, and we endorse Ofcom's approach in not favouring any particular technology or application in the framework being drawn up for re-allocation of spectrum under the Digital Dividend Review. However, we do recognise the special case of the programme-making and special events (PMSE) sector which risks losing access to spectrum it has traditionally enjoyed as a result of switch-off and we believe that it is essential that an acceptable solution to their difficulties be found. (Paragraph 100)

- 6. The Digital Dividend Review is complex and its outcome will have far-reaching consequences; we accept that Ofcom should not be pressured into taking hasty decisions. But it should bear in mind that delays in reaching decisions in the DDR process create uncertainty for all and can have adverse economic consequences for some. (Paragraph 101)
- 7. The new terms of trade between producers and broadcasters have swung the balance towards producers. Steps to strengthen the ability of content originators to retain greater control over their rights are welcome; but commissioning channels need to be able to derive fair value for the product which they have financed, particularly as the climate for advertising on terrestrial television becomes harsher. While we welcome the fact that agreement has eventually been reached between producers and broadcasters, we expect that a further review of the terms of trade will become necessary once the value of on-demand services to broadcasters' funding models becomes clearer—probably sooner rather than later. (Paragraph 117)
- 8. Some of the restrictive practices described to us in evidence as being used by broadcasters when commissioning programming and driving deals on rights for future transmission were, if accurately reported, counter to the spirit of the Communications Act. We believe that they are less likely to occur under the new terms of trade, although Ofcom must remain vigilant. (Paragraph 118)
- 9. We welcome the commitment made by the Government to bring into force section 107A of the Copyright, Designs and Patents Act 1988 and to provide £5 million to local government to fund enforcement. These steps are long overdue. (Paragraph 132)
- 10. The Department for Constitutional Affairs should investigate reports that the award of additional damages for infringement of intellectual property is difficult to secure. The deterrent effect of the present law in this respect is near zero: it should be substantial, as are some of the illicit profits being made. (Paragraph 134)
- 11. We therefore recommend that unauthorised copying and commercial distribution of audiovisual content projected onto a cinema screen should be made a criminal offence. (Paragraph 135)
- 12. We do not believe that the present statutory exemptions from infringement of copyright are providing clarity or confidence for users or for the creative industries, particularly in relation to home copying. We do not believe that it is satisfactory that consumers should be advised by the industry that they can ignore certain provisions of the existing law and not others, and we believe that this must contribute towards a general lack of understanding and respect for copyright law. (Paragraph 143)
- 13. We recommend that the Government should draw up a new exemption permitting copying within domestic premises for domestic use (including portable devices such as MP3 players, and vehicles owned or used regularly by the household) but not onward transmission of copied material. We also recommend that the Government should consult representatives of the creative industries and of consumers on an ongoing basis to ensure that it can respond appropriately. This will allow it to act more effectively and to establish where the existing regime of exceptions is either

- vulnerable to abuse, failing to respond to advances in digital technology, or unduly restrictive. (Paragraph 143)
- 14. We accept that home copying can damage business models. We agree with the conclusion of the Gowers review, however, that levies are a blunt instrument for exacting recompense, and we do not recommend that they should be imposed on either hardware or software. (Paragraph 146)
- 15. We accept the argument, in principle, that delaying universal access to film through the use of release windows, and holding back rights to broadcast television programming via new media, contributes to a climate in which piracy flourishes. The film and television industries cannot ignore this. However, we recognise that cinema exhibitors have relied on a period of exclusivity of release to sustain their businesses. While this has declined, there will continue to be pressure for further reductions and we believe that in future cinemas will need to rely more and more upon providing a distinct experience and environment. The UK Film Council should support and publicise new approaches by cinemas to retaining and developing their audiences. (Paragraph 152)
- 16. We recommend that the BBC should amend the slogan for the Creative Archive, if it proceeds beyond the pilot phase, to convey the message to users that content should be respected. The BBC should examine whether more can be done to oblige users of the Creative Archive to read the terms of the licence governing use of the material before downloading and consider what other action it can take to educate consumers about the purpose and importance of copyright law. (Paragraph 156)
- 17. We share the Minister's reservations about adding copyright as a specific item to the core curriculum. However, we believe that a less formal approach would be better and that teachers should be encouraged to promote an understanding of copyright as it becomes relevant, whether in music, creative writing or information technology lessons. (Paragraph 158)
- 18. We are in no doubt that Digital Rights Management copy control mechanisms have damaged consumer trust and have sometimes provided a very poor deal for consumers. They should not be allowed to operate in defiance of exemptions for unlicensed copying enshrined in UK copyright law. We do not, however, believe that a rush to regulate is the answer, particularly as the technology is still in an early stage of development. DRM systems have value and can, if constantly refined, play a major part in fighting piracy. We agree with evidence that they constitute a way ahead for protection of creative content. We believe that DRM tools could in future allow the sale of digital files at a range of prices to reflect the extent of reproduction permitted. (Paragraph 168)
- 19. We believe that it is a matter for companies to decide the extent to which they wish to impose restrictions on the use of downloads and physical product. However, Digital Rights Management technology must be applied with care, and the impact of any DRM tools, whether designed for copy control or for other purposes, should be made clear to consumers at the time of purchase. It should also be borne in mind that any excessive restriction of consumers' ability to copy and share content, and

- unwelcome consequences for consumers' use of their own computer hardware, will only dissuade them from using the legitimate market. DRM could, if used carelessly, be an own goal. We welcome the recent evidence that record companies are now choosing to make available content free from DRM for commercial reasons. (Paragraph 169)
- 20. Internet service providers and search-based businesses have already demonstrated that they accept the principle that access to unlicensed material on websites is undesirable and should be prevented if at all possible. It may be impractical for such businesses to be made legally liable for providing access to certain material, but we believe strongly that the industry should do more to discourage piracy. We are not persuaded that an industry-funded body with a remit to examine claims that unlicensed material is being made available on a website cannot be made to succeed, and we believe that the industry should establish such a body without delay. (Paragraph 175)
- 21. We do not find the representations made by the publishing industry about Internet news portals to be convincing. Newspaper websites on the Internet are part of a public arena; there is no legal bar to providing an indexing service; and we have yet to be persuaded that the establishment of Internet news portals is causing damage to commercial publishing enterprises. We recommend that the onus should remain with firms to opt out of Internet search engine listings rather than opt in. (Paragraph 181)
- 22. We have yet to see whether the new arrangements for governance of the BBC will inspire any greater confidence in the commercial sector that the BBC will take account of its privileged position in the market when considering new projects. The onus is on the BBC Trust to acknowledge that there is potential for the BBC's activities to have a damaging impact on the commercial sector and that different elements of its plans have differing impacts, and we believe that the BBC must be scrupulous in addressing all the relevant markets and impacts in its Public Value Tests. It is recognised that the Trust will need to make fine judgements about conducting Public Value Tests from time to time (as well as Ofcom with respect to Market Impact Assessments), but a sensible approach would be, "When in doubt, test." Public and commercial confidence in self-regulation by the BBC Trust will be boosted by evidence that the Trust will act, as it has done in the case of BBC Jam: we see this as an encouraging sign of real change. (Paragraph 195)
- 23. We agree with the approach taken by the Government and by Ofcom in negotiations with other EU Member States and with the European Commission on the draft Audio Visual Media Services Directive. The Government took a pragmatic decision to support the regulation of on-demand broadcast services, although we accept that there is in any case some logic underlying such a policy. It must be recognised, however, that the EU has chosen to extend the scope of new media regulation in ways that may disadvantage it in a globally competitive and increasingly technologically borderless world, and could see some existing businesses as well as start-ups in future choose to operate from more liberal jurisdictions. We believe that any such regulation of on-demand services should be self-regulation, both by the industry and within the home. In line with its duty to promote media literacy,

- Ofcom, with the assistance of all broadcasters and media regulators, should seek to increase public awareness that the protection of children from harmful content accessed via both new and traditional media will become increasingly a responsibility for parents. (Paragraph 211)
- 24. We recommend that proposals for policy development in the forthcoming Green Paper on Creative Industries should be accompanied by a strategy for research, to include an assessment of the investment climate for start-up businesses in new media sectors. (Paragraph 221)
- 25. We request that the Government provide this information [on the results of the Creative Economy Task Force launched in 1998, together with actions which have been undertaken in its wake] in its response to this report. (Paragraph 224)
- **26.** We welcome the intention to publish a Green Paper on the Creative Industries. We believe that it will mark a long overdue recognition of the importance of their role in the UK economy. (Paragraph 225)
- 27. We believe that the Gowers Review of Intellectual Property was timely. We hope that it will help to galvanise the Government into action in improving enforcement of copyright law and amending it where necessary. However, we note that a number have expressed disappointment at its findings. (Paragraph 230)
- 28. We recommend that the Government should press the European Commission to bring forward proposals for an extension of copyright term for sound recordings to at least 70 years, to provide reasonable certainty that an artist will be able to derive benefit from a recording throughout his or her lifetime. (Paragraph 236)

Formal minutes

Tuesday 1 May 2007

Members present:

Mr John Whittingdale, in the Chair

Philip Davies Alan Keen

Paul Farrelly Mr Adrian Sanders

Mr Mike Hall

Draft Report (*New media and the creative industries*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 236 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the report to the House.

Several Papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

Several memoranda were ordered to be reported to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 8 May at 10.15 am

Witnesses

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Christian Ahlert, Public Project Lead, Creative Commons, Jill Johnstone, Director of Policy, National Consumer Council, David Stopps, Head of Copyright & Contracts, Music Managers Forum and Emma Pike, Chief Executive, British Music Rights Lavinia Carey, Chair, Alliance against IP Theft, David Ferguson, Chairman, Creators' Rights Alliance, Dominic McGonigal, Director of Government Relations, Phonographic Performance Ltd, and Joanna Cave, Chief Executive, Design and Artists' Copyright	Ev 34 Ev 60
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Peter Jamieson, Executive Chairman, Roz Groome, General Counsel, and Mark Richardson, Managing Director, Independiente Records, British Phonographic Industry Deborah Tonroe, Head of TV, Video & Sports Products and Commercial Development, Orange UK, Tim Lord, Regulatory Director, Hutchison 3G, Hamish MacLeod, Mobile Broadband Group, Nicholas Lansman, Secretary General, Camille de Stempel, Director, and James Blessing, Director, Internet Service Providers' Association Dan Marks, Chief Executive, BT Vision, Emma Lloyd, Managing Director, BT Movio, and Mita Mitra, Manager, Internet & New Media Regulation, BT	
Andrew Yeates, Intellectual Property Adviser, UK Association of Online Publishers, Angela Mills Wade, Executive Director of the European Publishers Council, British Internet Publishers Alliance, Santha Rasaiah, Director of Political Editorial and Regulatory Affairs, and Catherine Courtney, Legal Adviser, Newspaper Society John Hambley, Chairman and Media Consultant, Nick Betts, Managing Director, Sci-fi Channel UK, Satellite and Cable Broadcasters Group, and Fred Perkins, Former Chairman of Digital Content Forum (DCF), and Founder and Chief Executive of	Ev 112
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Philip Graf, Deputy Chairman, Tim Suter, Partner, Content and Standards, and Peter Phillips, Senior Partner, Strategy and Market Developments, Ofcom Ian Livingstone OBE, Product Acquisition Director, Eidos Interactive UK, and Paul Jackson, Director-General, Entertainment and Leisure Software Publishers Association Patrick Bradley, Director, Ingenious Media	Ev 205 Ev 219 Ev 236
Thursday 26 October 2006 Nikesh Arora, Vice President of European Operations, and Andrew McLaughlin, Head of Global Public Policy, Google	Ev 243
Tuesday 7 November 2006	
Stewart Till CBE, Chairman, and John Woodward, Chief Executive, UK Film Council David Cooke, Director, and Peter Johnson, Head of Policy, British Board of Film	Ev 266
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Rt Hon Margaret Hodge MP, Minister of State, Department of Trade and Industry, and Shaun Woodward MP, Parliamentary Under-Secretary of State, Department for	
Culture, Media and Sport	Ev 302

List of written evidence

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4	Alliance against IP Theft	Ev 43
5	Creators' Rights Alliance	Ev 50
6	Design and Artists Copyright Society	Ev 52
7	Phonographic Performance Ltd (PPL)	Ev 56
8	British Phonographic Industry (BPI)	Ev 69, 82
9	Hutchison 3G UK Ltd	Ev 83
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19	Institute of Practitioners in Advertising (IPA)	Ev 178
20	Ofcom	Ev 186, 215
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22	Ingenious Media Group Plc	Ev 223
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45	Engineering and Physical Sciences Research Council (EPSRC)	Ev 364
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48	Impresario Media LLP	Ev 374
49	International Association of Music Libraries	Ev 375
50	International Federation of the Phonographic Industry	Ev 377
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66	Redeye – The Photography Network	Ev 427
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68	The Royal Society of the Encouragement of Arts, Manufacturers and	
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69	Skillset	Ev 438
70	South East Media Network	Ev 440
71	South East Museum, Library and Archive Council	Ev 442
72	Talkback THAMES TV	Ev 443
73	Video Networks	Ev 449
74	Women in Film and Television	Ev 452
75	Internet Services Providers' Association	Ev 454

List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Parliamentary Archives, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Parliamentary Archives, House of Lords, London SW1. (Tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Chris Thomas
British Screen Advisory Council
Anthony Lilley (Magic Lantern Productions)
British Internet Publishers Alliance (BIPA)
European Publishers Council
Automated Content Access Protocol (ACAP)
DCMS
Campaign for Press and Broadcasting Freedom

Reports from the Committee since 2005

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