

February 24, 2015

PSB Review
Content Policy Team
Ofcom

Via email: psbreview@ofcom.org.uk

RE: Consultation Response Submitted by IFTA – *Public Service Content in a Connected Society: Ofcom’s Third Review of Public Service Broadcasting*

About IFTA

The Independent Film & Television Alliance (“IFTA”) is the trade association for the independent film and television industry worldwide. Our nonprofit organization represents more than 145 member companies from 21 countries, consisting of independent¹ production and distribution companies, sales agents, television companies, studio-affiliated companies and institutions engaged in film finance. IFTA has 24 member companies based in or with significant business operations in the United Kingdom², all of which are active in film production, sales and/or distribution.

IFTA established a royalty collections division in 1994—IFTA Collections—to represent the secondary rights in audiovisual works owned or controlled by independent companies and to ensure that royalties attributable to those rights were effectively collected and disbursed to rights holders. IFTA Collections works with AGICOA, as well as other international collection societies, to confirm authorization for the use of these secondary rights and to identify available royalties such as cable and satellite retransmission royalties and blank tape levies and to disburse those royalties to independent producers.

Royalty income from secondary uses is often a steady, significant income stream for the independent enterprises that IFTA represents and provides financial collateral to support business operations. These companies depend upon collective management regimes to ensure compensation for the use of the secondary rights as they rarely possess the economic leverage to negotiate for compensation directly with the individual broadcasters or users.

¹ IFTA defines “independent” producers and distributors as those companies and individuals apart from the major studios that assume the majority (more than 50%) of the financial risk for production of a film or television program and control its exploitation in the majority of the world.

² Altitude Film Sales, BFI - British Film Institute, Content Media Corporation Limited, Cori Distribution Group, Distant Horizon, Embankment Films Limited, Entertainment One, Fortissimo Films, GFM Films, Goldcrest Films International, HanWay Films Ltd., Independent, K5 Media Group, LIONSGATE, Metro International Entertainment Limited, Metrodome International/Hollywood Classics, Mister Smith Entertainment Limited, Moviehouse Entertainment, Pathé, Phoenix Worldwide Entertainment Limited, Protagonist Pictures Limited, STUDIOCANAL, Umedia International and The Works.

Consultation Response

Scope

IFTA shall limit its response to the issues related to retransmission fees.

Position

We note that the issue of retransmission fees is raised under the section addressing other options for increasing the direct funding available to PSBs. However, we would like to emphasize our view that the issue of retransmission fees in the United Kingdom should be the subject of a broader debate. Particularly, we believe that the exemption of all content broadcasted on PSBs' channels provided under Section 73 of the Copyright, Designs and Patents Act 1988 is contrary to EU Law, particularly Directive 2001/29 and Directive 93/83/EEC, as well as the Berne Convention, and operates to deprive independent producers of remuneration for the secondary uses of their works.

Considering the EU legal framework, and the importance that owners of audiovisual works are properly remunerated for the use of their works, we urge you to consider confirming exclusive rights for copyright owners to authorize or prohibit the secondary use of their works, including retransmission, in the United Kingdom irrespective of the channel to which they have licensed the primary broadcast rights. Furthermore, we request that you consider a framework which ensures that an adequate level of remuneration is attributed and paid to copyright owners for the secondary use and exploitation of their works on all platforms.

The report mentions the U.S. retransmission consent regime in the context of transferring value from other parts of the value chain into broadcasting and production. However, the report fails to add that, in addition to the ability of TV networks to negotiate fair value for their signal through the possibility of preventing retransmission, the U.S. framework provides for additional compensation to the content owner for the secondary use of its work.³ The interplay of these two regimes ensures adequate compensation for both TV networks and their licensor content owners.

We thank you for taking these comments into consideration and invite you to contact us if you require any further information. Thank you.

Sincerely,



Jean M. Prewitt
President & CEO

³ 17 U.S.C. §§ 111, 119, 122 provide for compulsory licenses for the retransmission of copyrighted content by cable and satellite operators.