

18 September 2012

By email (total 2 pages) to:
onlinecopyrightinfringement@ofcom.org.uk

Dear Sirs,

Film Distributors' Association Ltd. (FDA) welcomes the opportunity to respond to Ofcom's consultation on **Online Infringement of Copyright: Implementation of the Online Infringement of Copyright (Initial Obligations) (Sharing of Costs) Order 2012**. In July this year, we responded to the consultation on the Initial Obligations Code relating to online copyright infringement and the Digital Economy Act 2010 (DEA).

1) About our sector

FDA is the trade body for UK theatrical film distributors, the companies that release feature films for cinema audiences. Most distributors are small- or medium-sized enterprises. The titles brought to market by FDA's membership – ranging widely from international blockbusters to classic revivals; and from British films to productions of 42 other countries in 2011 – account for 97% of UK cinema admissions.

Film distribution is a competitive, sophisticated and dynamic business that depends on product and the extent to which it connects with audiences. Theatrical distribution requires substantial investments in both product acquisition and bringing completed titles to market. Last year, distributors invested more than £330 million in film prints and advertising alone: they are the entrepreneurial innovators who take financial risks to help create and then release content, and they rely on IP protection to underpin their future investments.

With 1% of the global population, the UK generates 7% of global cinema box-office receipts (£1.12 billion from 171.5 million admissions in 2011). The sector delivers a significant contribution to the economy in terms of revenue and jobs, as well as the consequent cultural and creative impacts. An economic multiplier effect applies: for every £1 spent on cinema tickets, at least a further £2 are pumped into the economy on directly related expenditure.

2) Digital market developments

FDA strongly supported the statement in the Hargreaves Review of Intellectual Property and Growth that "Government should pursue an integrated approach based on enforcement, education and, crucially, measures to strengthen and grow legitimate markets in copyright and other IP protected fields." We hope that an effective step in the education process will be the notice-sending procedures set out in the DEA. Vast numbers of films are now available through

legitimate online services, as distributors eagerly strive to experiment in, and embrace, an all-digital landscape. But with the industry in transition (to fully digital) mode for years to come, and with copyright infringement widespread, an appropriate regulatory framework is needed.

The UK's regulatory environment has played a vital role in the creation of one of the strongest creative sectors in the world, attracting billions of pounds in foreign investment annually. The UK film industry demonstrably 'punches above its weight' in terms of awards and contribution to the international film market – but this is all underpinned by a long-established, adaptable copyright framework. Any potential changes to copyright should not risk diluting clarity for investors or making funding harder to secure.

3) Specific points about costs

As a matter of principle, we wish to underline our continuing and very serious concern that **both the level of costs and the way in which they are to be allocated will, in practice, prevent many distributors, especially the smaller companies, from participating in the DEA provisions to stem online infringement.**

We note that, on the basis of previous consultations, the costs order will require that copyright owners should bear all of the costs incurred by Ofcom, the majority of the costs incurred by the appeals body and 75% of the costs efficiently and reasonably incurred by Qualifying ISPs in carrying out their obligations. We remain of the view that this allocation of costs places an inequitable burden on rights holders when infringement is taking place by means of platforms operated by Internet Service Providers.

We agree with paragraph 3.9 of the consultation which states that: "Ofcom should seek to secure productive efficiency – in other words that Qualifying ISPs should have an incentive to minimise the cost of processing CIRs."

However we fear that, in practice, the actual level of costs will be simply too high to allow many smaller rights-holders to participate, and that thereby the principle of productive efficiency will be rendered irrelevant in their case. The inability of such distributors to participate in the scheme will mean that they will continue to suffer from significant levels of copyright infringement and that the DEA will offer them no effective protection at all.

Thank you again for the opportunity to participate in this important consultation.

Yours faithfully,

Mark Batey

Mark Batey
Chief Executive