

November 21, 2016

Section 73 CDPA Technical Consultation 2016
Copyright and Enforcement Directorate
Intellectual Property Office
Room 1Y05, Concept House
Cardiff Road Newport NP10 8QQ
United Kingdom

via email: Section73CDPA@ipo.gov.uk

RE: Technical Consultation on the transitional arrangements following the repeal of Section 73 of the Copyright, Designs and Patents Act 1988 (reception and re-transmission of wireless broadcast by cable)

The Independent Film & Television Alliance® (“IFTA®”) is the trade association for the independent film and television industry worldwide and submits the following comments regarding the repeal of Section 73 of the Copyright, Designs and Patents Act 1988, and specifically supports the positions taken by PACT in its response to this proceeding. Our nonprofit organization represents more than 125 member companies from 20 countries, consisting of independent¹ production and distribution companies, sales agents, television companies, studio-affiliated companies and institutions engaged in film finance. IFTA has 21 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 collected and disbursed to rights holders. IFTA Collections works with AGICOA and other collection societies to confirm authorization for the use of secondary rights and to identify available royalties such as cable and satellite retransmission royalties to disburse those royalties to producers. While IFTA Collections collects statutorily mandated royalties for secondary uses, IFTA Members also routinely negotiate directly with broadcasters to clear other exclusive rights including Free TV, Catch Up TV, and other secondary uses in exchange for payment of an agreed upon license fee and royalties.

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, Cornerstone Films Limited, Distant Horizon, Embankment Films Limited, Entertainment One, GFM Films, Goldcrest Films International, HanWay Films Ltd., Independent, LIONSGATE, Metro International Entertainment Limited, Metrodome International, Mister Smith Entertainment Limited, Pathé, Phoenix Worldwide Entertainment Limited, Protagonist Pictures Limited, Reel One, STUDIOCANAL, and The Works.

Technical Consultation Response

Royalty income from secondary uses is often a steady, significant income stream for the independent production and distribution companies that IFTA represents and provides financial support for business operations. These rights holders depend upon legal frameworks which ensure compensation for the use of the secondary rights, including protection against the unequal economic leverage of broadcasters to avoid the specific payment to the producer for such additional or secondary uses. A repeal of Section 73 should foster and immediately facilitate producers' ability to receive compensation for each use on all platforms by all users of copyright. As for performers, the relevant exclusive rights of performers will have been cleared by the producers. In most cases, the remuneration for the retransmission of performances will be satisfied by means of individual contract and/or collective bargaining agreement.

As noted, IFTA has reviewed the responses submitted in this proceeding by other rights holder groups (PACT as well as AGICOA) and agree with the basic tenets of those responses. Specifically, we have noted in the past OFCOM Consultation regarding the exemption of PSBs, that PSBs should also pay for secondary uses (i.e., retransmission by cable of PSB's terrestrial broadcasts) to ensure that producers are compensated for all uses of its exclusive rights in a film or television program regardless of whether the broadcaster is supported by "public" subscriptions or tariffs. IFTA believes 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 customary industry practices, the repeal of Section 73 would eliminate that exemption for PSBs and immediately provide the opportunity for the producer and broadcaster to negotiate additional compensation for those uses not previously compensated. We agree with other responses that the terms of trade for commissioned works in the U.K. provide structure as to paid remuneration for secondary uses. We also agree that in some cases a compulsory, statutory framework may be necessary to ensure additional compensation to the producer for these uses previously exempt from payment; however, we believe that the U.K. marketplace is sufficiently prepared to progress to direct negotiation for additional compensation to the producer. We urge the Commission to implement the new change within a six month time period so that the market can react appropriately to ensure compensation is paid to copyright owners for the secondary use and exploitation of their works on all platforms. In any case, a shorter transitional period must not work to defeat the interests of right holders whose rights should be protected as quickly as possible.

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