



# **Intellectual Property Rights and the Television Sector**

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## **Introduction**

South West Screen has commissioned this report as part of their Rights Action Programme. It is designed for media companies and individuals involved in the making and distribution of original content television and multi-media.

It is a broad introduction into Intellectual Property Rights issues with regards to the television industry and New Digital Media. The rights information provided is intended to be used as a guide and springboard to accessing further detailed information.

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## **Intellectual Property Protection**

Intellectual endeavour can be protected by various means in the UK and worldwide:

- Copyright
- Patents
- Rights in performances
- The law of confidence
- Registered designs
- Design Right
- Trade Mark
- Passing off
- Trade libel

For the purposes of this report UK law is considered only. If you wish to consider copyright as applicable to other jurisdictions please take further advice.

For television and films copyright is the right used for protection. Trade Marks and registered designs can be utilised for merchandising related to the programme.

### **Copyright**

To obtain copyright one must set down 'original work' in material form. Two identical works could be created independently, by their originators' own efforts, and both would have a copyright.

Copyright is a restrictive right preventing others from using the work in certain ways, allowing the author protection from infringement of the work by another.

Under certain circumstances, 'permitted acts', copyright material can be used, e.g. for educational and research purposes, and there is no infringement. But these permitted acts are limited

Copyright can be transferred or licensed.

Copyright is an unregistered right (sometimes called "soft IP"), unlike, for example, a patent, which is a registrable right ("hard IP").

Two forms of right surface from copyright:

1. proprietary i.e. the ownership of the right
2. moral rights i.e. the right of the individual to protect his/her rights as the creator of the work

Copyright is more of a restrictive right, preventing others from using work without consent.

### **UK Legislation**

The primary source of UK law is Copyright Designs and Patents Act 1988  
The CDPA 1988 (10) establishes the following areas of protection:

- a) Original literary, dramatic or musical work
- b) Sound recordings
- c) Films
- d) Broadcasts
- e) Cable programmes
- f) Published editions

### **Films**

Films are defined in the act by: *'a recording on any medium from which a moving image may be by any means produced'* - CPDA 1988 5B(1).

### **Broadcast and Cable Programmes**

The definition of broadcast is: *'a transmission by wireless telegraphy of visual images, sounds or other information which is capable of being lawfully received by members of the public or is transmitted for presentation to members of the public'* - CDPA 1988 s 6.

Cable Programmes are considered to be a transmission other than that of wireless transmission, such as by cables, and are protected as broadcasts under CDPA 1988 as amended by the 2003 Regulations. But cable services are not protected (this includes websites and ISP). Contents of a website are considered as cable programmes.

Satellite channels using decoding equipment also have copyright protection (CDPA 1988 s 6 (2)).

### **Copyright Protection for Ideas**

There is no protection available for ideas or suggestions of a story. In order to qualify for copyright the material must be "recorded in writing or otherwise" and only applies to that form and not any ideas embodied in the form. The only protection available for ideas falls under common law are; breach of confidence, and trade secrecy, if it was clear that the information could be considered confidential, was imparted in confidence and an expressed or duty of confidentiality implied.

Protection may exist for a treatment or programme idea under obligations of confidentiality if some or all of the following factors are evident. However it is very difficult to prove unless there is a signed confidentiality agreement, and even then it may be problematic to establish a breach:

- a) *The concept must be clearly identifiable and have some elements not in the realm of public knowledge .The concept must be delivered at a stage at which it has commercial potential and is capable of being realized*
- c) *The concept must be given or expressed in a situation in which all parties recognize a moral obligation not to make further use of it without consent of communication (1)*

A single piece of work may consist of multiple copyrights, such as a television dram documentary having: literary rights for the script, dramatic copyright for the screenplay and musical copyright. This piece of work will then have protection as a recorded programme, owned on creation by the producer/production company and licensed to the broadcaster who then owns the broadcast right.

### **Duration of Copyright**

Copyright as general rule starts from the point at which the work is made. The various categories of protectable work are afforded different durations of protection under the Copyright Designs and Patents Act 1988, as amended (10).

In summery:

Literary, dramatic, musical or artistic works:

70 years from the author's death, if author unknown 70 years from date when first made available to the public.

Computer generated literary work (i.e. computer programmes):

50 years.

Sound Recording:

50 years from making of the work.

50 years from the release.

Film or Television Series:

70 years from the death of the last principal director, author of the screenplay, dialogue, or creator of specially composed music to die.

Broadcasts and Cable:

50 years for a broadcast and 70 years for a series from end of the calender year of first transmission

Published Editions:

25 years from first publication.

### **Restricted Acts**

The copyright owner has, under the CDPA 1988, the monopoly on a set of rights:

- *to copy the work*
- *to issue copies of the work to the public*
- *to rent or lend the work to the public*
- *to perform, show or play the work to the public*

- *to broadcast the work or include it in a cable programme*
- *to make an adaptation of the work or do any of the above in relation to an adaptation (2)*

### **Infringement**

Infringement occurs if the work is used in certain ways without the consent of the owner of the copyright.

### **Permitted Use**

Some use of copyright work is permitted but one must be careful not to rely on these exclusions. Always confirm their applicability since they are limited:

- *Transient or incidental copies*  
*Such as caching material whilst browsing.*
- *Computer Programmes- lawful copies*  
*Making back up copies.*
- *Research and Private study*  
*For non-commercial purposes.*
- *Criticism or Review*  
*Providing sufficient acknowledgement of the work is made and available to the public by any means.*
- *Incidental Inclusion*  
*(see later)*
- *Time-Shifting*  
*Broadcast recordings made for private and domestic use.*
- *Photograph of Broadcast*  
*Only for private or domestic use.*
- *Free Public Shows or Playing of Broadcasts*  
*No admission is charged. Cannot be shown in places where a profit from sales is made.*
- *Education*  
*For non-commercial purposes and providing sufficient acknowledgement of work is made.*
- *Libraries and Archives*  
*Used for non-commercial purposes (7)*

### **International Legislative Framework**

#### **European Protection**

Community law takes precedence over domestic law due to the European Communities Act 1972. The most important EU legal framework was a result of the Berne Copyright Convention. Despite the member state signatories falling under this legal European 'umbrella' there are differences in copyright law. Six EU Directives have attempted to harmonize national laws, the sixth being Copyright and Related Rights in the Information Society 2002.

### **International Protection**

Copyright is the product of national law and so a true international copyright does not exist. It is necessary to work under the local law where the infringement occurs to enforce copyright protection.

The important copyright conventions, which impart the minimum standards for copyright protection and signatory reciprocity are the Berne Copyright Convention and Universal Copyright Convention (UCC).

### **Berne Copyright Convention**

This convention, the most important convention regarding copyright, is regularly revised, and is administered by WIPO (21) having, for example, all European countries, the US and China as signatories.

### **Universal Copyright Convention (UCC)**

The UCC agreement, administered by UNESCO, grants 'minimum standards of reciprocity', whereby foreign nationals do not have to register or comply with local formalities, with the exception being the US. The same protection is afforded to foreign nationals with work originating in other countries, as nationals or locally originating work. Copyright can be claimed if the country of infringement is a member state of one of the main agreements. Under the UCC, to avoid complying with domestic formalities the copyright symbol © and name of the copyright owner followed by the date must be added prominently to the programme. This has no legal bearing in the UK, but simplifies matters internationally. As a practical step, always use the copyright symbol © and name of the copyright owner followed by the date.

In the US the copyright should be registered at the US Copyright Office in order to enable the owner to act upon infringement in the US. This will also as a rule be an insurance requirement in relation to any work released in the US.

The US Copyright Office will also do a standard title search, which at least could avoid potential confusion when marketing, if there were existing works having the same title, and possible trademark infringement. It is also likely to be an insurance requirement that a full title report is obtained in addition to any report of the US Copyright Office.

### **TRIP's Agreement**

(Trade Related Aspects of Intellectual Property Rights)

This international agreement is trade related and stems from changes implemented after the Uruguay Round of the GATT (General Agreement on Tariffs and Trade). Members of the WTO (World Trade Organization) are immediately members of the TRIP's Agreement.

Principal

*“Copyright protection is expressed to extend to expressions and not ideas, procedure, methods of operations or mathematical concepts as such” Article 9*

Computer programme Art 10

Compilations Art 10

Rental Rights Arts 11 & 14 (4)

Performers Rights Art 14 (1)

Phonogram producers Art 14 (2)

Broadcasting Organizations:

*‘should have the right to prohibit the fixation of their broadcasts, the reproduction of fixations, the wireless rebroadcast of their broadcasts and the communication to the public of television broadcasts’.* Art 14

Term Arts 12 & 14 (5)

(For a detailed list of national laws (UK) and international treaties refer to “Important UK Acts, European Directives and US Acts” in the Appendix.

### **Television Programme Rights**

The CDPA 1988, as amended, has a broad definition of programmes and films: *‘a recording on any medium from which a moving image may be by any means produced’* s 5B (1). How, and on what the recording is produced is irrelevant, allowing for the incorporation of future technological advancement. Therefore television programmes, films and moving image material on the Internet are protected.

### **Acquisition of Rights**

Rights connected with elements for inclusion in a programme.

Example: Documentary drama of public figure:

- *Use of biography or some other material*
- *Commissioning of a researcher, providing written report for screenplay writer*
- *Commissioning of a writer for the screenplay*
- *Extracts from letters, speeches, diaries quoted in the programme*
- *Hiring a principal Director, who becomes the co-author of the programme (unless explicit right waived in contract)*
- *Use of existing photographs and commissioning of new photographs*
- *Archive footage*
- *Composer for opening, closing and incidental music*
- *Use of commercial sound recordings*
- *Engaging of actors, musicians to perform in production (3)*

### **Associated Rights Clearance**

In order to make commercial use of the programme for several years the producer/production company must acquire extensive rights:

- *Right to adapt source material: waiver of author's moral right of integrity*
- *Right to copy all works and performances used in the programme: required for filming and subsequent post-production, intermediate copying, trailers, prequels, sequels, remixes, spin-offs*
- *Right to broadcast each work and performance in the programme by all methods of broadcast transmission (3)*

### **Secondary Exploitation/Ancillary Rights**

- *Right to make and distribute copies of the programme in the form of videograms, DVD's etc. for sale, rental and lending*
- *Right to make and distribute copies of the soundtrack in the form of CD's etc.*
- *Right to permit the programme to be transmitted via cable, through licence of the programme, through a third party cable channel or through reception and retransmission of broadcast via cable*
- *Right to permit the programme to be included in Internet services including on-demand services*
- *Right to distribute the programme in non-linear media (CD-ROM & CDi)*
- *Right to permit the programme to be shown in public, containing non-paying audiences*
- *Right to publish and distribute the screenplay, treatment, synopsis, adaptation of any books related to the programme or books based on the programme, photographs and extracts from source material*
- *Right to publish the screenplay in the form of a novelization of it*
- *Right to use any works or performances in connection with promotion or advertising of the programme*
- *The right to produce merchandise related to the programme; comics, books, clothes etc. in all languages*
- *Right to register any Trade Marks where appropriate (3)*

Ideally the acquired rights should be for complete copyright in the work throughout the world, in perpetuity for an up-front single fee.

Most commonly specific rights are negotiated for: limited territories, for limited periods, from several rights owners for a single work, against an initial fee and instalments payable at different stages of the production process, followed by royalties.

Terms of agreement with unions, specifying minimum wages, working conditions, credits, equitable remuneration for rental and lending etc., and collecting societies must also be considered. (3)

### **Rights Clearance Issues**

The producer will have to consider the following copyright issues involved in the making of the programme:

## **Optioning Copyright Works**

An option allows a person to acquire the exclusive rights, for a certain period of time, usually one year with the provision to further extend, with a payment of a fee (commonly 10% of the total purchase price). But this depends upon the status of the producer, rights owner and other circumstances. Usually the more experienced the producer the cheaper the option fee.

When considering optioning one must also consider, at onset, and have in place, prearranged terms for the rights transfer, and all that that entails etc. for when the option is exercised.

Elements to consider when optioning:

- *Option Agreement*
- *Option Extension Agreement*
- *Assignment or Purchase Agreement*
- *Short form Option Agreement*
- *Short form Assignment Agreement*
- *Quit Claim (confirming release of any competing claims to copyright ownership)*
- *Writer's Agreement*
- *Publisher's Release*
- *Life Story Rights Agreement (6)*

Important clauses to consider when entering into an agreement:

- *Parties to the Agreement*  
*Producer with the rights owner*
- *Consideration for the Option*  
*Written acknowledgment and fee paid*
- *Option Period*  
*Sets duration of option*
- *Exercise of Option*  
*Written document to prove payment made*
- *Assignment*  
*Producer must ensure that the option is freely assignable*
- *Entire Agreement Clause*  
*Complete understanding between two parties, supersedes all other agreements*
- *Governing Law*  
*Sets out which country's law governs the agreement and where to adjudicate in disputes (6)*

## **Screenplay**

A producer may acquire the rights to a screenplay, in whatever form negotiated. However there may be instances when a screenplay requires rewriting and the producer may employ a writer. Under a contract of service the producer will require an assignment of copyright of the writer's work but other rights must be waived or negotiated: moral right, credit, equitable remuneration for lending or rental. A credit clause is negotiated or included as a matter of practice in return for the rights waiver. Source material already in the public domain, which is to be used as a basis for a screenplay must be cleared in the country of origin, the UK and all signatories to the Berne Convention (19) and UCC (20).

### **Literary Material**

Treatments and other materials used in the making of the film/programme should be acquired as appropriate.

### **Musical Compositions**

Background or featured music.

### **Specially Composed Music**

A 'composer's service agreement', ('composer's agreement/publishing agreement/publisher's agreement) is necessary to acquire both the right to services of the composer and various rights within the production of these services. The rights of the composer are subject to the Performing Rights Society (PRS) regulations. The producer must obtain the right to synchronize musical compositions to the soundtrack of the programme/film and trailers and the right to performance, as for example in cinemas, and inclusion in a broadcast. For music specially composed for the film the producer would ideally retain all rights related to the composition.

### **Composed Music**

When using composed, previously recorded music as part of the film, rights will have to be cleared with the publisher, other relevant agencies and collecting societies. The producer must obtain the right to synchronize musical compositions to the soundtrack of the programme/film and trailers - this is called a 'synchronisation licence'. Other rights to be cleared are the right to exhibit, for example in cinemas, and inclusion in a broadcast.

### **Sound Recordings**

When using sound recordings performed 'live' in the film it is necessary to obtain the right to dub: i.e. copy the recording onto the programme sound track. The distributor takes a hand in this, under a specified contract with the producer, to obtain further rights.

### **Set Designs, Costume Designs, Locations**

Sufficient rights clearances must be obtained for any artistic works used in the film.

### **Performance Rights**

*Performers, actors and musicians have various rights dealing with the right to consent with live performances and with recording of the performance. An appropriate waiver of these rights should be obtained. (5)*

EQUITY has an agreement with PACT regarding engagement of actors for films. Cable and satellite exploitation have a separate agreement.

### **The Director**

Since the Director is deemed the 'author', of a recorded film along with the producer, it is necessary to transfer the copyright to the producer and waive moral rights.

### **Moral Rights**

- a) *Paternity right: right to be identified as the author of the work*
- b) *False attribution right*
- c) *Right of privacy of certain photographs*
- d) *Integrity right, or right to object to derogatory treatment of a work (5)*

Under moral rights the author has paternity right, integrity right, and the right to object to false attribution. The starting point for all contracts is for the author's rights to be waived and, as applicable, replacement provisions are negotiated such as credits.

### **Incidental Inclusions**

The allowance of incidental inclusions of work under copyright which happen to be in shot in programmes, or films, are provided for by the CDPA 1988 (12) and clarified by a court action summing up with the following definition: ‘“Incidental” casual, inessential, subordinate, merely background.’ (15)

There is the provision for special use of artistic works. Such works as artistic works, buildings and sculptures situated in public places on permanent display, sound recordings (music) are allowable and so do not infringe. However there is provision in the 1988 Act, s 31(3), for musical works, spoken or sung, that are considered not incidental, when infringement is said to occur.

### **Chain of Title**

When dealing with work the producer must clearly confirm the legal status of the ownership of the copyright. The first owner has legal title to copyright (usually the author). But the owner is not necessarily the author. A complete chain of title, tracking legal ownership, must be established by the present owner as to how he/she acquired the rights and have in place the necessary warranties, indemnities and ownership documents.

### **Employee**

Employees do not own the copyright to any work created during the course of employment, unless stated to the contrary by a written agreement.

### **Consultants**

Unless specified in a contract the consultant owns the copyright of the work they produce.

### **Commissioned Work**

Unless stated to the contrary in a written agreement the person commissioned is the copyright holder of their work. (3)

## **Transmission of Title (Rights Ownership)**

Rights can be transferred, assigned or licensed onto others:

By:

### **Assignment**

Rights can be assigned, in writing by the assignor, to another person. When assigned the original rights owner has no further connection to those rights.

### **Partial Assignment**

A bundle of copyrights can be divided up for different people for different types of exploitation for varying periods of time in different territories. (3)

- Assignees own the title (rights)
- Assignees may do whatever they want with the work e.g. adaptation, subject to the restrictions that came with the rights such as previous contractual reservations
- Assignees acquire the copyright contractual obligations
- Assignees can sue in their own name

Or:

### **Licences**

Instead of assigning work away it is preferable to grant a licence, to use the work for different types of exploitation for varying periods of time in different territories, so that any future benefit will not be lost to the original rights owner.

- Licensees do not own the rights
- Licensees must act within the scope of the licence or infringement occurs
- Licensees can assign benefits of exclusive rights subject to the terms of the licence
- Licensees cannot sue unless they do so jointly with the rights owner

### **Exclusive Licence**

*Grants the rights governed by the licence to the licensee who can perform the rights to the exclusion of everyone including the owner. (2)*

### **Non-Exclusive Licence**

*The owner grants a licence to a number of licensees but retains the right to perform the act him/herself. (2)*

### **Assignment or Purchase Agreement**

#### **Elements to consider in the contract:**

- *Parties to Agreement*  
*producer and rights owner*
- *Rights Granted*  
*which rights, reserved rights, limitations*
- *Duration and Extent of Rights*  
*duration of rights exploitation*
- *Right to make Alterations*  
*waiver author's moral right allowing for adaptation*
- *Consideration*  
*Specify when payments are made, for example, by instalment, first on the day of principal photography. Consider which rights are acquired and the necessary payments for other types of rights exploitation*

- *Representation and Warranties and No Infringement*  
states the original owner of the copyright including chain of title and not assigned to another party
- *Indemnity*  
agreement clause that protects each party against losses resulting in the other party's breach
- *Credit Provision*  
states that the originator of the work must be credited
- *Assignment*  
assignment to banker /financier when funding is involved (6)

### **Elements To Consider When Negotiating Rights**

The following clauses are examples of rights acquisition clauses for film/programme agreements including recorded images, sounds and source material.

1 *Exclusive and irrevocable right to distribute, reproduce, exhibit, licence and otherwise exploit and deal in and with the film in any and all parts of the film by all methods and means in any and all media systems and processes now known or in the future devised.*

2 *All rights of copyright of the original screenplay of the film/programme and in all other literary, artistic, dramatic and musical works created or to be created for and whether or not used and /or contained in the film/programme and, in respect to the music and the source material independently of the film/programme (except musical performing rights if the composer is a member of the Performing Rights Society (PRS))*

3 *All ancillary publishing spin-offs and merchandising rights of every kind and nature in or to the film/programme, including but not limited to novelization and publishing rights and commercial tie-ups and sponsorship. (6)*

### **Elements to consider when dealing with Ancillary Rights**

- *Right to commercially exploit material that is produced or acquired as a result of or during the course of production distinct from the film/programme itself.* For example, merchandising rights, television spin-off rights, sequel, prequel and remake, book publishing rights, computer games rights, soundtrack album rights and the music publishing rights to the score.

### **Distribution**

Since the Communication Act 2003, and the subsequent New Terms of Trade agreements, changes of rights ownership there are increased opportunities for independent production companies to seriously and actively pursue further exploitation of the programmes. This also involves the need to acquire

knowledge of national and international markets, territories and extensive legal contractual work.

Organisations and production companies already involved in sales are for example: BBC Worldwide, Granada International, Channel Four International and RDF Media.

The distributor has the right to distribute and sell all works owned or controlled in certain territories for a defined period of time. Considerations in a distribution agreement are:

- Term/ period the agreement will last
- Period of distribution rights allocated to the distributor
- Length of any sell off material (if agreement period over and unsold stock remains)
- Extent of collection period (here the collection of outstanding debts must be included since payments may be late)

### **Distributors/Sales Agents Commission**

Usually commission is based upon the gross receipts generated as a percentage of the sales. The agreement can favour the production company or the sales agent with regards to paid commission (such terms generally favour the sales agent). The wording of these definitions needs to be carefully considered. For example, there is a difference between commission paid: 'received income' and 'receivable income':

### **Receivable Income**

The company will pay commission based upon income raised from sales made, not when income is received.

The distributor is protected from bad debts, while the company bears the debt.

### **Received Income**

Based on actual receipts the distributor receives commission on actual sales where payment has been made and payments received. (8)

## **Broadcast Copyright and Related Rights Regulations 2003**

Copyright and Related Rights Regulations 2003 amends the CDPA 1988.

All works before 31<sup>st</sup> October 2003, which satisfy Section 9 of the CDPA 1988, as amended, are protected under the new regulation.

Broadcast programmes have their own separate copyright.

Broadcast definition: *"Electronic transmission of visual images, sounds or other transmissions which (a) is transmitted for simultaneous reception by members of the public and capable of being lawfully received by them, or (b) is transmitted at a time determined solely by the person making the transmission for presentation to members of the public, and which is not an excepted internet transmission."* CDPA 1988 s6 (1) (3)

A retransmission of a broadcast programme is protected under the same conditions, including the term, as the original broadcast. (3)

### **Duration of Copyright**

Under the CDPA 1988, as amended, the copyright extends for 50 years as from the end of the year of the broadcast. Television series have copyright for 70 years. Repeat broadcasts fall under the same term with no extension.

### **Relevance of the 2003 Regulations**

- The Copyright and Related Rights Regulations 2003 have included a '*technology neutral*' definition, so as to include future developments: 'broadcast and communication to the public' for simultaneous reception but excludes transmission of on-demand services.
- In the Broadcasting Act 1990 it was stated that 25% of television programmes must be from independent producers. This remains the same but the 2003 Regulations limit the scope of the rights broadcasters traditionally acquired when commissioning a programme (see New Standard Terms of Trade).
- Since the 2003 Regulations, copyright owners can authorize the '*communication to the public*' of the work including broadcast.

### **Communications Act 2003**

This Act gives powers to the Office of Communication (OFCOM) to regulate the electronic communications network, broadcasting, the provision of radio and television services and media business mergers. (29)

In 2004 OFCOM compiled the Codes of Practice for the terrestrial broadcasters to implement. The idea is to liberate and strengthen the production sector. Previously the broadcasters owned all rights to commissioned programmes profiting from any further uses whilst in return the production companies received a production fee (usually 10-15%). As determined by the media regulator OFCOM in the Communications Act 2003 required that the broadcasters reviewed their position regarding IP and the independent sector and so commenced the broadcasters negotiations with Pact and produced the New Terms of Trade. Some aspects are:

- *Confirmation of a minimum external production quota- 25%*
- *Transparent purchase of non-first run rights; broadcasters now pay a licence fee for transmission of the programme and must negotiate separately for further rights*
- *Nations and Regions provision to make a specified proportion of production outside of the M25*
- *Stronger commitment to training*
- *OFCOM has a duty to investigate complaints brought against the broadcasters and has the power to enforce sanctions (24)*

All IP ancillary rights for independent programmes now remain with the producer. A key right may be packaged with ancillary rights to create a bundle of rights when licensing to a broadcaster. It would be prudent to retain all the rights to new media for further exploitation but in practice there may be clearance issues related to future rights exploitation with certain broadcasters. Programme content can be exploited over diverse platforms, mobile etc. even market programme related branded (trade mark) merchandising: board games, clothing, stationery, mugs etc.

For example, the German series “Gute Zeiten, Schlete Zeiten’ (Good Times, Bad Times) as cited, at the Pact Rights Lab 2006, by Claire Tavernier of Freemantle Media, has taken advantage of its enormous popularity. There are 49 print products such as; stationery, puzzle books, magazines etc. through to ranges of clothing and crockery, and musical releases and DVD’s. There is programme related interactive preview, catch-up for both on-line and mobile.

#### **Pact and the Broadcasters: New Terms of Trade**

Pact entered into negotiations with the UK terrestrial broadcasters BBC, Channel Four, Channel 5 and ITV in order to reevaluate their Terms of Trade Agreements in line with OFCOM’s ‘TV Production Sector Review’. These agreements exist between the broadcaster and the content suppliers, the independent production companies. Cable channels such as Discovery and Living TV, for example, do not have to adhere to the guidelines. Some of the broadcasters are still negotiating the terms.

With the advent of new and emerging media it has been necessary to create precise industry-wide definitions. Harmonization will avoid potential conflicts that may arise in the contracts. Pact has been in consultation with the major broadcasters preparing the fine details for the Terms of Trade review and finalizing the ‘global’ definitions. These will be available from Pact and the broadcasters in the near future.

#### **Standard Programme Production Agreement**

This is the contract between the producer and the broadcaster.

Here are a few pertinent points from a range of broadcasters:

##### **BBC**

The BBC has 7 days in which to exploit digital rights across all platforms such as:

- viewers using an on-demand service to watch episodes on an on going series
- download programmes locally to view later (7 day window)
- commercial availability of a video-on-demand service

This leaves the independents to manage their media rights and share revenue from commercial exploitation in the UK (23). The BBC have initiated the Window of Creative Competition (WOCC) with the intention of making up to 50%

of programming budget available to Independents. The BBC in-house producers compete with the Indies for commissions.

### **Channel Four**

Channel Four has agreed a 30 day window of programme exploitation using video-on-demand (VOD) platforms: broadband, cable and mobile. A VOD package to be rolled out in the Autumn will see Channel Four paying a 'royalty' fee if the service is free, and a revenue share if it is a subscription-based service. They have altered their holdback rights. (23)

### **ITV**

ITV have also reached an agreement with Pact on a 30 day window:

- watching an episode of a series up to 30 days after it has been broadcast
- offering on-demand services including mobile and broadband (23)

### **Holdback Policies**

Holdback is a period of time following a rights window during which neither the licensee nor the licensor is free to exploit those rights without permission from the other party and possibly an agreement on sharing revenue. Each broadcaster is now intended to have a more flexible holdback policy allowing for an earlier release of more programmes enabling producers to profit from selling/licensing to the secondary UK TV market and subject to agreement on revenue sharing.

### **Example: BBC Terms of Trade and Rights Issues**

This is a condensed, non-comprehensive, paraphrased excerpt of the licence deal from the BBC Terms of Trade as published on the BBC website (26). For detailed and extensive information see bibliography (26). For the BBC Code of Practice Programmes from Independent Producers see bibliography (28).

#### **3. Rights - Public Service Use and Commercial Exploitation**

##### **3.2**

- an exclusive licence in the UK to use BBC licence fee funded services, for 5 years
- option to review after 2 years with a further fee
- BBC exercise the right to holdback for the licence period
- initial fee would cover a specific number of uses

##### **3.3**

- all commercial exploitation rights will be retained by the independent producer

##### **3.4**

- BBC expects to share in the net revenue arising from commercial exploitation as a measure to the value added by association with the BBC

##### **3.9**

But where the programme is part of a strand (e.g. Horizon), and is co-produced and distributed by the BBC, the rights arrangement will not apply.

#### 4. New Media Rights

##### 4.1

BBC expects to acquire under section 3.1 and 3.2 of BBC licence fee funded services

- on-line, on-demand and interactive rights (including SMS) linked to the broadcast, simulcast the programme, make available the programme or extracts of on websites associated with the programme

#### **Channel Four**

For the Channel Four Code of Practice for Commissioning Programmes from Independent Producers please refer to bibliography (26).

#### **Alliance for the Protection of Copyright**

The code governed by the Alliance for the Protection of Copyright has been signed by BBC, ITV, Channel 4 and Channel 5. The Alliance for the Protection of Copyright (APC) comprises BECTU, Writer's Guild, Director's Guild, NUJ, Society of Authors, Women in Film and Television, Musician's Union and Pact. This is intended for information only. To read the complete Code of Practice refer to the bibliography (25).

*This Code of Practice applies to:*

*1 any professional person or company not employed by a Receiver who originates Creative Material and sends it to a Receiver (UK broadcasters (BBC, C4, C5 and ITV companies and/or the ITV Network Centre); but Receivers shall include film producers, independent producers and others and/or the Network Centre who have adopted this Code of Practice for the receipt of Creative Material.*

*2 any professional person or company who receives Creative Material, which may include formats, treatments, scripts, outlines, development documents, tender submissions, storylines, artwork, and synopses from another party.*

*By the Originator*

*When presenting Creative Material to a Receiver, the Originator should, where possible, ensure the following:*

*1 that Creative Material submitted to a Receiver is stated as being submitted in confidence;*

*2 that the Originator retains an exact copy of the Creative Material submitted, and written details of the date of submission, and the name of the person to whom it was submitted. An Originator may also wish to formally register the documentation at the time of the submission with a registration or legal representative. However, registration is not a condition of protection under the Code of Practice;*

*3 that Creative Material is in writing and its distinctive and original features are clearly identified. (25)*

## Copyright and Electronic Publishing

'Electronic Publishing' is the publication and distribution by:

- *sale, rental, lending of CD-ROM, DVD, magnetic disk, magnetic tape*
- *cable networks: internet, on-line*
- *broadcast: whether or not encrypted e.g. Prestel, CEEFAX (2)*

All the above have material eligible for copyright protection.

### The Internet

Copyright is applicable to material placed on the Internet. The Internet is considered by the CDPA 1988 as a cable programme service, CDPA s7 (1) (treated in the same way as a broadcast programme service). Web pages are treated like cable programmes and afforded the same protection, whilst there are many rights available for page content. Copyright is to be found in:

- Structure and layout of the web page,
- hypertext links
- HTML versions of the work
- 'applets' (executable code that runs automatically)
- text
- film clips
- music
- photographs
- logos
- icons

Difficulties arise, however, when defining the cable programme service provider, who is, in reality, the web page controller and not the access provider (ISP). Work is easy to copy and policing cyberspace is fraught with difficulties.

The Directive of Copyright and Related Rights of the Information Society deals with the Internet and falls into the WIPO Copyright Treaty (16) and WIPO Performance and Phonograms Treaty (17). The WIPO treaties protect all Protection of Rights Management Information (RMI). The RMI must be:

- attached or embodied in a copy of the work
- or:
- appear in connection with the work

ERMI must not:

- be removed or altered without authorisation
- unauthorised information must not be added
- copies should not be made when authorisation has not been granted
- copies should not be made or distributed with manipulated ERMI

### Multi-Media

Multi-media is the storage and use of text, sounds, graphics, and moving images in digital format on computers. The categories being:

- a) *CD-ROM*
- b) *CD-I (DVD)*
- c) *electronic book*
- d) *on-line applications*
- e) *interactive television and video on demand (VOD)*
- f) *location-based applications: virtual reality products & arcade machine games (8)*

### **Copyright Issues**

The many elements that constitute a multi-media product can be protected:

- *Literary Elements*  
*protected as 'literary works'*
- *Dramatic Elements*  
*protected as 'dramatic works'*
- *Musical elements*  
*protected as 'musical works', with any words protected as 'literary works'*
- *Artistic Works*  
*protected as 'artistic works'*
- *Moving Images*  
*protected in the same way as film*
- *Sound Recordings*  
*protected in the same way as other sound recordings*
- *Topological Arrangement*  
*protection for the arrangement of published editions of literary/dramatic/musical works*
- *Computer Programmes*  
*protected as a 'literary work'*
- *Choreographic Routines*  
*protected as a 'literary work' (8)*

### **Consents and Permissions**

A multi-media product requires the licensing and clearance of any copyright works to be used in the product, whether on CD-ROM or on a website. All rights must be cleared beforehand, otherwise the rights owner could delay or prevent exploitation. The usual considerations apply:

- a) it should define the territory,
- b) for a period of years (to justify the investment) and
- c) state the use, "what for"

and acquire the rights:

- *The right to copy the work*

- *The right to issue copies of the work to the public*
- *The right to perform, show or play the work in public*
- *The right to adapt the work*
- *The right to broadcast the work/include it in a cable programme service (8)*

Retaining the rights to commissioned music is also a prudent move.

If in an animation, full motion video or computer game a resemblance to a well-known personality is used, a contractual agreement should be reached with that person. This also applies to names, likenesses and biographies where consent is required. The UK does not protect personality rights but other countries have such protection.

### **Networked Communications, Broadcasting, Cable and Mobile Transmissions New Directions**

Technological progression has created the convergence of previously distinct means of content delivery. Television, computer, telephone and mobile devices have the ability to deliver the same content.

At present, in accordance with the general view at the PACT Rights Lab June 2006, the commercial applications and value of Digital Rights is difficult to judge. Content can be distributed over numerous platforms, but the market is untested. There is a view that the potential gain in new media is massive, however presently the traditional forms of revenue remain the most important: secondary sales, formats, international sales, co-productions and various forms of licensing agreements. What appears to be an interesting route for content could be the targeting of niche markets.

Different age groups will have different expectations of access to media. The less technologically aware consumer will want easy solutions similar to traditional television, video, DVD set-ups. Whilst the generally younger, savvy consumer will be au fait with all platforms. This may affect the distribution strategy for content.

### **Available Rights**

PVOD (Primary Video On Demand), VOD, Streamed VOD, Commercial Downloads (from computer), DM, New Media Extract, PNMR (Primary New Media Rights), Stream not Broadcast Rights, Mobile Rights, Interactive Rights (for terms used see glossary).

### **The Technology**

#### **Television Content sent over TVODSL**

This is the delivery of audio-visual content, usually sent as data 'packets' (used when sending material over the Internet) over copper wire, cable and fibres. The owners of the TVODSL form part of the existing telecommunications network for television content having a bandwidth for such content, such content having prioritised delivery. For example France Telecom launched TVODSL in 2003. In 2006 BT are launching BT Vision offering a full spectrum of services including:

over 30 Freeview channels through the TV aerial, entertainment on demand, VOD library of content, catch-up TV and a DPVR.

### **Television Content sent over the Internet IPTV**

This broadcasts television quality images to users over the Internet and can be viewed, depending on the form of IPTV, on television sets and computers. IPTV is dependent on the ability to carry large quantities of material, successfully reaching the user without interruptions. Content compression has improved the potentiality of this system. Channel four launched its free simulcast IP television, on broadband, in June 2006. Programmes without rights clearance are not broadcast. Adverts are shown. It has a VOD service for catch up programmes with a minimum charge for selected content. ITV are planning to launch a cross-platform service in the future. *Wanadoo are planning to offer a broadband home gateway offering voice, Internet access and IPTV/VOD.* (3)

The BBC are trailing IMP downloads of encrypted DRM-protected audio and video files. The content is time-limited and will only play on machines with Microsoft's Media DRM scheme (WMDRM). Sky's 'Broadband on Sky' scheme uses a variant of Bittorrent (see Glossary) as the BBC.

### **Personal Video Records (PVR)**

PVR is the system whereby set top boxes, for example from BskyB and Sky, store broadcast data on hard disks so that the user can record and manipulate the material, for example forward winding etc. and peer-to-peer redistribution.

### **Mobile Devices**

Mobile devices having 3G technology (third generation) increase the speed and enable the delivery of WiFi, WiMax, MobileF or attachment to the Internet and the ability to receive broadcast content. But this is rapidly being exceeded by DVB-H (Digital Video Broadcasting - Handheld (similar to digital terrestrial broadcasting DVB-T), appropriate for longer clips, and DMB (Digital Media Broadcast) the multi-media variation of DAB.

In 2005 the BBC worked with Nokia, Arqiva and O2 in designing a handset for a six-month trial testing mobile technology that receives direct TV signals, on 400 participants. Sixteen channels were available including BBC One and Two, ITV 1 and 2, and Channel 4.

Television content has been streamed by Orange using 3G technology, but they too trailed DVB-H technology in France. The DVB-H approach differs since the signal is UHF, the frequency currently used for analogue television, and so were temporarily licensed from OFCOM for the trial. When the digital switchover occurs between 2008 until 2012 the frequencies will be free for transmissions.

### **Duration Of Protection**

1. Broadcasts: person making the broadcast owns the copyright. Copyright runs for 50 years.
2. Digital Products: made up of many elements of copyright each element having its term defined by the CDPA 1988. Copyright runs for 70 years

following author's death. Moral rights apply to the elements of a 'digital product' as with a film.

3. Sound recordings: including MP3 over the Internet lasts for 50 years.
4. Computer generated works: copyright runs for 50 years from creation.
5. Topological Arrangements: of published editions lasts from 25 years from first publication. (7)

### **Distribution**

Content is no longer a prisoner of the broadcaster. Apart from the secondary sales market, the New Terms of Trade have unlocked the potential for content to be repackaged, re-edited and distributed in numerous ways. This freedom potentially opens the door to sponsorship. Content such as:

- Web Content: downloading subscription-based programmes, programme extras, gaming
- Mobile Content: programme clips, additional programme information, shorts, interactive games, 'magazine items' for niche markets. Additional income from text (or phone) voting

It was clear from the Pact Rights Lab that there is a surge of distributors, of all kinds, entering into the developing market, crying out for new digital content, such as:

- Traditional Broadcasters  
Such as the BBC and Channel Four. Channel Four are developing a one stop shop maximising integration with Channel Four brands: More4, 4DVD's
- Traditional Distributors  
Such as Warner Brothers, RDF (soon to launch a web portal)
- Specialised Distributors for Broadband  
Such as BT Vision, a2a, Google Video
- Operators  
Telecoms companies e.g. Orange, O2, Vodafone etc. (difficult to access)
- Aggregators  
These deal with mobile operators (see glossary) e.g. Buongiorno, Sponge, Player X

### **Management**

Digital rights management is of increasing importance and there exists a wide range of commercial software products providing a turn key solution to DRM issues.

For further information see appendix for contact details of a limited number of rights management companies (provided information only with and no recommendation.)

### **Digital Copyright**

For digital media work to be protected it must meet the same requirements as copyright a discussed earlier.

Certain copyright works can only truly exist in digital form:

a) computer programmes (literary work)

both analogue and digital:

b) databases

c) photographs

d) computer-generated literary, dramatic, musical or artistic works

e) dramatic work (inc. films recording dramatic works)

f) musical works

g) sound recordings

h) films

i) broadcasts (including cable)

j) typefaces

There are problems in enforcing digital copyrights:

1. *Ease of replication*
2. *Ease of transmission and multiple use*
3. *Plasticity of digital media (easily of modified)*
4. *Equivalence of works in digital form (all work looks alike in code)*
5. *Compactness of works in digital form (storage on CD-ROM)*
6. *Search and link capabilities (sites easily linked)*
7. *No human author (22) (computer generated) this makes copyright difficult since the principal is based in human endeavour (7)*

### **Licensing Digital Copyright Work**

- Copyright owner (licensor) grant a contractual licence, which gives clear exploitation restrictions. There are problems in traceability, which may arise where it is not clear where the licence terms are accepted by the licensee.

Licence Types

#### **Shrink Wrap Licence**

Product bought in the shop - contained with the product and so a user agrees by purchase to terms on software, but there may be problems in enforcing these terms if they are not sufficiently brought to the attention of the user.

#### **Click Wrap Licence**

User clicks an 'on-screen' icon. Preferably after scrolling through the terms, which set out the parameters of use.

#### **Browse Wrap Licence**

User may be aware of the licence before the download but no definite acceptance is required. This type of licence is used when the licensor is not concerned about enforcing or limiting the use of the software.

### **Bare or Implied Licence**

This is Internet content without a specified contractual licence for copyright content. Copyright is indicated by a notice on the site. There are no restrictions as to use. The use of the copyright symbol does give put a third party on notice and if the user were to copy the work this would be an infringement under the CDPA 1988 (under UK law). But copying in an on-line environment can be difficult to police.

### **Copyright Issues**

- Have all the rights to content been cleared?
- Are the licence terms and conditions sufficient?
- Are there enough notices on the site to protect the IP?
- Are there commercially alternative ways to manage or copy protect the material?
- Should web crawlers be used to monitor piracy?

### **Digital Rights Management (DRM)**

Digital Rights Management (DRM) is the management of, and the technologies used in, controlling access to digital content using systems to track and/or limit access to copyright content. The system uses, for example, 'meta tagging' licence rights and additional ownership information.

DRM can be contentious since it may restrict and enforce barriers to content. Where Copyright in 'digital products' is to be protected.

Consider the following steps:

- *identify content - every piece of content has a code/ unique number associated with it*
- *describe data by attaching 'meta-data' to digital content so as to indicate: author, date and place of publication*
- *attach rules as to the accessing and exploitation of data, set by the rights owner i.e. do not copy, or more complex parameters (3)*

Protection is covered in CDPA 1988, as amended and the WIPO 2001 Directive.

Further use of DRM:

- *Filter/classification - distinguishing certain types of content from others*
- *Authentication - being confident that only authorised users can access content*
- *Broadcast monitoring - embedding code in the works, monitoring timing and frequency of appearance on broadcast signals*
- *Forensic tracking - allowing for a record of where the work has been accessed and report details*

- *Copy prevention - restricting or resisting attempts to duplicate work*
- *E-commerce/linking - triggering transactions or suggestions of transaction upon access*
- *Copyright communications - ensuring that the end-user is aware of the identities of the rights holders (3)*

### **Streaming Media and Digital Copyright**

In order to stream/receive digital work over the Internet software programmes called 'codec' (coder/Decoder) are used. This allows access to users having the correct decoder/player (RealNetworks use formats such as RealVideo or Real Media Player). This system of encryption prevents copying since the content is not downloaded onto the computer.

Other forms of encryption:

'Content Scrambling Systems'(CSS) as used in DVD protection

'Conditional Access Systems' as used in digital satellite broadcasts.

- Initial compression of data using a 'coder' programme. A decoder programme is used to decompress the file and view it. No trace of the decompressed media is left on the computer unless download is permitted.

Advantages of both:

- a) Can have contractually binding on-line terms prohibiting retransmission, copying or modification of the streamed media file.
- b) Protected by copyright law.
- c) Only authorised users are allowed access.

### **Digital Encryption**

Digital content can be added, this is called 'meta-tagging', prior to encryption, information can be embedded in the fore/background, using:

- Digital Signals
- Digital Indelible Marking: Watermarking or code

Digital watermarking provides information on owner and usage. Data can be embedded in digital content (text, video clip, audio) or next to the content to identify the copyright owner, usage rules etc. Additional code can make content difficult to copy or use without authorised permission. It can be:

- Visible - adds another image to image, such as a copyright sign,  
or:
- Invisible - fingerprints the purchaser's information, if they make illegal copies these will contain his or her name

To access encrypted material the user must to have the necessary decryption technology. DTCP (Digital Transmission Content Protection) is a cryptographic protocol protecting audio/video content.

### **Wrapped Content**

This involves a third party fee collector being alerted when the digital content is downloaded.

### **Peer to Peer (P2P)**

P2P is where servers are circumvented and connections are made between individual users' machines. Napster, sharing music files, provided P2P software and operated a central indexed server. For further information regarding other methods of P2P file sharing refer to bibliography (3).

### **Electronic Rights Management Information ERMI**

Protection against removal or alteration of embedded information. It is illegal to distribute material in any form if ERMI is removed.

### **On-Demand Transmission**

Content available to the public at a time and place chosen by them.

### **ERMI Protection**

ERMI information placed on the site should be retained in case of infringement:

- *name or creator, date of creation, employment details (employee/contractor) and terms of engagement, details of work created, where created*
- *investment put into databases*
- *info on supply/ licensing*
- *technical steps to prevent copying / DRM*
- *do employment or consultancy contracts deal with ownership/moral rights waivers?*

### **European Legislation**

#### **E-commerce Directive**

Digital Copyright Directive implements the WIPO treaty and other matters

#### **EU Digital Copyright Directive 2001**

Implemented by the Copyright and Related Regulations 2003. The rights owner has control over their work on the Internet.

### **Internet and International Copyright**

It is difficult to police due to the issues of place. The physical presence is shown by the server or routers but these could be controlled from elsewhere.

### **International Legislation**

#### **WIPO 1996**

Clarifies liability of ISP's and other intermediaries legal protection

#### **Digital Millennium Copyright Act (DMCA) 1988**

This is a US law that implements the WIPO treaty and other matters.

### **Commercial DRM Software**

Software is available to provide a DRM service. For information on suppliers refer to the bibliography (30)

### **Rights Case Study: RDF Media**

#### **In Discussion with Matthew Frank Managing Director RDF Rights**

Founded in 1993 by David and Matthew Frank, RDF produced business shorts for breakfast television, then moved into factual and factual entertainment programmes. From the start the company had investment from 'business angels' (individuals investing private funds) and in 2005 floated on the London AIM. It is one of the UK's fastest growing independents, and the only television company to feature for three consecutive years in the Sunday Times Fast Track 100 Companies. Amongst a raft of awards, in 2002 and 2003 RDF won the Pact Indie award, given to the UK's most outstanding production company.

During the early growth years RDF realized the potential of rights exploitation and decided to specialize: David produced and Matthew worked to exploit any residual rights. At that time the broadcasters paid a fixed price and retained all the secondary and ancillary rights.

Producers were only allowed to reuse parts of their films, or 'rushes', with permission from the broadcaster. The rights arm of RDF became a sales agency selling, on commission, programmes from other production companies and companies they had acquired, such as IWC Media, Presentable and Touchpaper Television.

Third party rights exploitation has become an increasingly important part of the company since the advent of the new Terms of Trade, which saw the catalogue increase from 1000 hours of programmes to 3000 hours as they could now bid for other Indies' programmes. As rights ownership has shifted, producers now see 85% of the net revenue rather than the 30% when the broadcaster absorbed the rights. This new freedom in facilitating of secondary sales will increase the supply of programmes to the sales agents since it is more difficult to self-distribute, and buyers like catalogues as they can easily buy in to fill schedules. This side of the business is set to develop further as distribution platforms diversify and rights issues become more involved. Chasing markets, sales and contracts is time-consuming, complicated and specialised.

RDF's development ethos is simple: only develop programmes having ancillary revenue or foreign sales. They target output towards the broadcasters' needs through strong relationships, continual dialogue and understanding the slot requirements. Sixteen people work in the development department contributing to the weekly development approval committee, where three rights execs sit, there to evaluate programme ideas, not only on freshness and originality, but more importantly on the potential for further exploitation such as international sales, DVD sales, book deals, magazines, premium rate calls (add-on or integral), mobile, broadband and other merchandising possibilities. If there is no added value the idea is dropped. Despite this rights-driven decision-making, RDF strives to make clever, innovative and creative output.

The rights department at RDF consists of thirty staff and eight lawyers: a necessity in order to realize the value of their own output and that of the distribution clients. However, as with all Indies, protecting formats is high impossible and RDF found itself in litigation with FOX for the direct copy of 'Wife Swap' called 'Trading Spouses'. RDF developed various secondary and tertiary rights, particularly in the genre of format factual and entertainment programming: 'Wife Swap', 'Faking It' and 'Scrapheap Challenge'. For example when licensing 'Wife Swap', an internationally successful format, the buyer not only acquires the format, design etc. but the expertise behind the making of the show that enables a successful reproduction.

Factual is the reliable genre for sales although not on DVD. Drama can be valuable if long-running, or a series. Children's has the advantage of auxiliary sales through merchandising, although since the advent of CBeebies DVD sales have plummeted. Entertainment formats can have massive appeal and be a very successful commodity, examples including 'Who Wants to be a Millionaire' and 'Deal or No Deal'.

The future of distribution lies in manipulation of material to suite niche markets for cross/ multi-platform distribution: for example short programmes/ programme excerpts designed for downloading onto mobile phones or handheld devices. An area of expected growth is VOD (video on demand) /DTO (Download to Own).

As cultural differences blur, foreign sales becomes easier. Formats can transgress boundaries or be modified, as with programmes, for specific audiences. Foreign sales are mainly to mainland Europe, the US and Australia. Other regions include South Africa and the Middle East. In the US their clients include ABC, NBC and Fox. South America is problematic due to the ongoing political instability and the difficulty of transferring money out of the country. China is not an area for growth as yet, since programme rates are low and piracy is rife. Eastern Europe is an emerging market.

For detailed information about RDF Media and RDF Rights please visit the following website: <http://www.rdfmedia.com>

## **Perceived Barriers to Intellectual Property Rights Exploitation**

### **Existing Content**

- Archive programmes may not be available for exploitation due to contractual restrictions. Each contract should be checked for the possibility of digital exploitation or renegotiation with the broadcaster for further uses.

### **New Content**

- Production companies must seriously consider contracting the services of specialised rights managers.
- Production companies should buy into commercial rights management products, or develop their own system.

## **Distribution**

- The New Terms of Trade impose certain payback and distribution obligations to the producer.
- Freshness of programmes can be lost potentially exhausting the use on certain/all platforms.
- Mobile providers are difficult to deal with directly.
- Using aggregates ties up rights.
- Distributors want all rights and effectively become like the traditional broadcaster.
- Extra encoding expenses are incurred, dependent on transmission means; VOD (high), mobile (lower).

## **Conclusion**

It would be wise to seek professional advice since:

- Intellectual Property is an extremely valuable asset which requires management
- Contracts must be robust
- IP law is complicated and best dealt with by specialists in the field, rather than a 'all-purpose' general practice solicitor

## **Considerations**

- Distribution would more efficiently and cost effectively be handled by a distribution company
- A digital rights management tool could be shared amongst many smaller companies or be regionally based
- Know your niche market/s
- Employ specialist Digital Media personnel in the company to access the niche market places with suitable content
- Re-evaluate archive and renegotiate deals with broadcasters if possible for exploiting programme content
- Start getting digital content out there now whilst the market is just evolving and join in the learning process
- Effectively balance the cost of rights acquisition versus profit margin when developing content for an untested market place

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edn) Tottel Publishing  
Straight-forward, current investigation of copyright and digital media  
issues.
- 6 Alberstat P. *The Insider's Guide to Film Finance* (2004) Focal Press  
Investigation of film finance and copyright.
- 7 Stokes S. *Digital Copyright Law and Practice* (2005) (2<sup>nd</sup> edn) Hart  
Publishing  
Straight forward, current, and very useful investigation of copyright  
and digital media issues.
- 8 *The Encyclopedia of Forms and Precedents 15 (1) Entertainment and  
Media*. 1998 Reissue. (5<sup>th</sup> edn) Volume 15. Butterworths  
Details of film and television acquisition

- 9 *Digital Rights Management : Report of an Inquiry by the All Party Parliamentary Internet Group. June 2006*
- 10 *Copyright Designs and Patents Act 1998*  
[http://www.opsi.gov.uk/acts/acts1988/Ukpga\\_1988004\\_8\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/Ukpga_1988004_8_en_1.htm)  
 Note that the act has been amended, so the original version is of limited use. Current amendments:  
<http://www.patent.gov.uk/copy/legislation/index.htm>  
<http://www.jenkins-ip.com/patlaw/index1.htm>
- 11 *Copyright and Related Rights Regulations 2003*  
<http://www.opsi.gov.uk/si/si2003/20032498.htm>
- 12 “Copyright in a work is not infringed by incidental inclusion in an artistic work, sound recording, film broadcast or cable programme.”  
 31 (1) CDPA 1988
- 13 “Green V New Zealand Broadcasting Corp” R.P.C. 700
- 14 CDPA 1988 s154 (1)(a) et seq.
- 15 IPC Magazine Ltd V. MGN Ltd [1998] P. SR. 431
- 16 WIPO Copyright Treaty 1996 (World Intellectual Property Organization)  
 Supplements and updates protection for literary and artistic works in view of economic, social, cultural and technological development. Supplements the Paris Act, but retains the member states’ obligations regarding the Berne Convention. Controls future development and harmonisation of international copyright treaties since governments tend to have differing interpretations of the convention.
- 17 WIPO Performances and Phonograms Treaty 1996  
 Recognizes the rights of actors, dancers, performers of literary or artistic work to be identified. recognizes their economic right , right to authorise broadcast, reproduction rights and the right to object to distortion of their performance if it could be harmful to the performers’ performance.
- 18 Berne Convention 1971 (Paris Act)  
 For the Protection of Literacy and Artistic Works.  
 All EU member states and the European Trade Associations are signatories to the Convention.
- 19 Universal Copyright Convention (UCC) 1952  
 UNESCO. Forms the basis of national and international laws enforced in 1955.
- 20 WIPO (World Intellectual Property Organization)

- 21 Samuelson, *Digital Media and the Changing Face of Intellectual Property Law*.1990. 16 Rutgers computer and TEC CJ323
- 22 Pact *Pact and C4 Agree New Media Rights Deal*  
<http://www.pact.co.uk/detail.asp?id=5478>  
*ITV and Pact Agree New Terms of Trade*  
<http://www.pact.co.uk/detail.asp?id=5508>  
*BBC & Pact Agree On New Media Rights*  
<http://www.pact.co.uk/detail.asp?id=5466>
- 23 An Independent Report commissioned by the BBC in 2005 by Mediatique: *From the Cottage to the City: the Evolution of the UK An Independent Production Sector*
- 24 Bectu *Code of Practice for Submission of Programme Proposals*  
<http://www.bectu.org.uk/resources/agree/agreecodep01.html>
- 25 BBC Terms of Trade  
<http://www.bbc.co.uk/supplying/termsoftrade.shtml>
- 26 Channel Four *Code of Practice for Commissioning Programmes from Independent Producers*  
[www.channel4.com/microsites/F/foia/documents/c4\\_code\\_of\\_practice.pdf](http://www.channel4.com/microsites/F/foia/documents/c4_code_of_practice.pdf) -
- 27 BBC *Code of Practice for Commissioning Programmes from Independent Producers*  
[http://www.bbc.co.uk/commissioning/tv/business/code .shtml](http://www.bbc.co.uk/commissioning/tv/business/code.shtml)
- 28 HMSO *Communications Act 2003*  
<http://www.opsi.gov.uk/ACTS/acts2003/30021--c.htm>  
 DTI *Communications Act 2003* <http://www.communicationsact.gov.uk/>
- 29 Wikipedia *Digital Rights Management*  
[http://en.wikipedia.org/wiki/Digital\\_rights\\_management](http://en.wikipedia.org/wiki/Digital_rights_management) t#Copyrig  
 ht\_law\_vs.\_particular\_techniques

## Glossary Of Terms

**2.5G** - The original digital mobile phone networks (dubbed second generation or 2G) tweaked to deliver better data bandwidth. GPRS, HSCSD and then EDGE enhancements have pushed up data speeds of GSM close to that of 3G, even enough to stream full-motion video to small screens.

**3G** - Providers of third generation (3G) mobile networks paid billions for licenses for newly allocated bandwidth able to carry new mobile services such as video calls and fast media downloads at broadband speeds.

**3GP** - A container file format for video and audio files carried over 3G networks. The 3GPP and 3GPP2 standards have been developed by the 3G Partnership Program (3GPP).

**AAC** - The Advanced Audio Codec compresses audio files around 30% smaller than MP3 for the same quality. It was developed by the MPEG Group and is preferred for carrying audio in mp4 and 3gpp files. It is also used by Apple iTunes.

**AC3** - Dolby-developed audio codec used on almost every commercial DVD to carry stereo and 5.1 sound.

**Aggregator** - A business or service that re-distributes content from multiple sources, adding value in terms of repurposing, technology, promotion and so on.

**Analogue switch-off** - the point at which all analogue TV broadcasting is wound up to release spectrum (air waves) to be used by more efficient digital transmission and so allow for more terrestrial TV channels, HDTV, mobile TV plus other services not necessarily related to entertainment.

**Bandwidth** - the maximum capacity of an electronic channel or the network capacity required to carry a media stream. In analogue terms this is measured in a frequency range sliced out of the available spectrum (eg. MHz). In the digital world it is measured as thousands or millions of bits or bytes per second (eg kbit/s or mbyte/sec).

**BBC iMP** – Interactive or Internet Media Player. A Web-based catch up TV service on trial since last year and that will be rolled into a service tagged my BBC player and pencilled for UK release later this year.

**Bit Rate** - a measure of digital bandwidth. Generally the higher it is, the higher the quality of audio or video for any given codec.

**Bittorent** – P2P software most commonly associated with illegal video file sharing. It has the reputation Napster did with music downloads before it went legal.

**Blog** – short for weblog. A website carrying a personal journal of interests and opinions.

**Blu Ray** – A new optical disk storage format the size of a DVD but able to hold 5 times as much (50GB) and carry bulky high definition video. A rival to HD-DVD, the format is backed by Sony, Philips and others.

**Broadband TV** – TV-like content and services delivered to broadband Internet users. More often refers to open access Web services than proprietary IPTV.

**Bundle** – in licensing terms this is the practice of packaging one or more ancillary rights with a key right being purchased. For example, new media rights to use short clips for promotional purposes may often be bundled with primary broadcast rights

**Catch Up TV** – a service to view TV content which has been broadcast in the last 7 days, on demand.

**CDMA** – Code Division Multiple Access is a multiplexed radio transmission technology. It is used in the digital mobile network standard of the same name developed by Qualcomm and widely used in the USA.

**CDMA2000** – an enhancement to CDMA cellular network standard that raises data rates to 144kbit/sec for 2.5G services.

**CDN** – Content Distribution Network. A proprietary network of geographically distributed servers, linked with dedicated connections, which replicate media at numerous points across the Internet to be nearer the consumer and so minimise the impact of congestion on delivery.

**Chase play** – watching a programme while it is still being recorded off air by a PVR, allowing the viewer to pause live TV. Also known as Timeslip

**ChiMP** – the speculated nickname for a commercial version of BBC iMP which is thought may be implemented by BBC Worldwide to sell content outside the UK.

**Codes of Practice** – usually refers to the codes of practice drawn up by public service broadcasters for commissioning programmes from independent producers under the auspices of Ofcom in 2004. These promised independent producers greater opportunities to retain rights in the programmes they produced but left some questions, especially in the area of new media rights.

**Codec** – stands for COmpression/DECompression. A codec is an algorithm applied by software or silicon that reduces the data required to store and transmit video or audio content by efficiently re-encoding picture and motion detail and stripping out data with least impact on human perception when reconstituted for viewing. Commonly used video codecs are MPEG2, MPEG4, DiVx and for audio MP3, AC3 and AAC

**Container File** - a data file format that can carry media in a variety of codecs. Usually identified by a three letter suffix at the end of a filename. Commonly used containers are AVI, WMV, MOV, 3GPP, FLV and MPEG2-TS

**Convergence** - the trend for consumer media devices to play back and exchange all manner of content, carried on all manner of media, and accessed in an integrated way through common, easy to use controls. Similar to 'interoperability'.

**Creative Commons** - a non-profit organization devoted to expanding the range of creative work available for others to build upon and share legally. Its licences are the basis of the Creative Archive Licence used by the BBC, Channel 4, the BFI and Open University to release video material that can be re-used (or 'mashed up') within user-generated content.

**Cross-collateralization** - pooling income from various sources to fund other ventures.

**DMB** - Digital Media Broadcast. Mobile TV service that uses DAB equipment to broadcast H.264 encoded live TV. Launched in South Korea last year.

**DivX** - a proprietary MPEG-4 based video codec widely used for sharing on the Internet. Typically video file sizes are a third or less than for an MPEG2 encoded file of the same quality. Often referred to as 'the MP3 of video'.

**Download to Own** - The term used for legally downloaded media whose DRM licence does not expire.

**DRM** - Digital Rights Management. Anti-piracy technology that controls not only what equipment digital media can be played on but also how many times or for what period of time. The equivalent of conditional access in traditional distribution.

**DSL** - Digital Subscriber Line. The most widespread broadband Internet technology. Piggybacks an always-on data connection on the cables bringing voice calls into the home. Comes in a variety of flavours, ADSL (asynchronous) being the most common. ADSL2, HSDSL and VDSL are pushing bandwidths in excess of 20mbit/sec, allowing for many HDTV streams.

**DTT** - Digital Terrestrial Television.

**DVB-H** Digital Video Broadcast for Handheld. An adaptation of the scheme widely used for digital TV on cable, satellite and terrestrial for portable devices. Services were launched this year in Finland, Italy and Albania and are widely trialled elsewhere.

**EDGE** - Also known as 'Enhanced GPRS', it pushes top data speeds on GSM cellular networks over 300kbit/sec although real-world bandwidth is likely to be under 100mbit/s.

**EPG** - Electronic Programming Guide. A dynamic user interface provided on digital TV platforms to allow consumers to browse an up to the minute schedule of numerous channels.

**EV-DO** - a technology delivering mobile broadband speeds up to 3mbit/sec on 3G networks introduced in markets using CDMA. It is a rival to UMTS.

**File sharing** - the process by which computer users allow others to copy files from their machine via the Internet. Popular file sharing software, allowing users

to search millions of files on all connected machines, include Kazaa, Gnutella, eDonkey and Bittorrent.

**Flash Video** – video encoded in a FLV container for playback in Adobe/Macromedia’s Flash Player software which has a greater installed base of Web users than any other. The addition in Flash V8 of the high power VP6 codec from On2 has made Flash a compelling delivery mechanism for Web-based video services.

**Free-to-air** – Channels or content broadcast on satellite or terrestrial platforms without encryption and viewable without **subscription or payment**.

**Free-to-view** – Channels or content broadcast on satellite that is encrypted (to limit viewing to some territories say) but do not require subscription or payment. Also refers to content distributed online for free.

**GPRS** – General Packet Radio Service. The original technology for carrying always-on Internet-style data traffic on GSM networks, at moderate speeds of 15-80kbit/s.

**GSM** – Global System for Mobile communications. The most prevalent digital cellular network protocol used Worldwide, based on TDMA technology.

**H.264** – also know as MPEG4-Part 10 and AVC (Advanced Video Coding), its the most efficient MPEG-4 codec, giving higher quality video at lower rates and challenging even proprietary codecs such as DivX and Windows Media 9 (WM9). It can put an HD movie on a regular DVD or a HDTV channel in the space of a regular channel. It is being used widely in IPTV.

**HD-DVD** – a new optical disk format the size of a DVD but holding up to 3 times more data (30GB), for carrying bulky high definition video. A rival to Blu-Ray, the format is backed by a range of electronics manufacturers notably Toshiba, Microsoft and Intel.

**Holdback** – a period of time following a rights window during which neither the licensee nor the licensor is free to exploit those rights without permission from the other party and agreement on sharing revenue.

**i-mode** – a lightweight Web-style Internet service for small-screen mobile devices invented by Japanese teleco NTT DoCoMo. It is a rival to WAP that is popular in Asia and available on O2 UK.

**Internet Protocol** – IP is the robust data communication system that transports data chopped into packets, each tagged with a global address for their destination. It underpins the entire Internet which emerged from US military research in the 1970s.

**Internet Television** – see Broadband TV

**IPTV** – Internet Protocol Television. An umbrella term for any TV like content or service distributed on an IP-based network, such as the Internet. Most commonly it refers to proprietary, closed networks that support Pay TV platforms like Homechoice.

**Java** – a highly portable computer language developed by Sun. Programs written in Java run in the same way on any device that can support a Java Virtual Machine, which includes most mobile phones, PDAs, STBs as well as PCs. It is widely used for mobile games but also for audio video applications .

**Long tail** – refers to niche content that cannot attract a large enough audience to be commercially viable through traditional distribution but may be so through new routes.

**Linear TV** – or linear channels are scheduled, sequential video services on which what you see is dependant on the time at which you view it. Traditional TV channels, such as BBC1 and Sky One are linear TV.

**Mash-up** - Reedit, repurpose and remixing content from multiple sources, usually by a layperson and with no regard to copyright

**Media Center** – a PC intended for entertainment use, connected to a TV and equipped with hardware and software for receiving, recording and playing TV.

**MediaFLO** – a proprietary Qualcomm system for transmitting live TV to mobile devices on cellular networks. Verizon has announced it will roll out services to some of its EV-DO-based 3G networks in the US. Last month Sky announced it will run a trial in the UK.

**Metadata** – descriptive, textual information associated with content. Video metadata might include title, duration, originator, genre and so on. It is required for machines to identify and organise data, which in turn is vital for providing effective navigation tools to people.

**Mobile portal** – a walled garden of selected interactive mobile services, typically branded by the host network (e.g. Vodafone Live) and accessed easily from that network's handsets with payment for premium services via the phone bill.

**Mobile TV** – Linear TV services streamed over the air to mobile phones and other portable devices.

**MP3** – the most prolific audio codec, especially for file sharing and ripping CDs to portable players. Music tracks compressed this way are at least a fifth the size of the original file on the CD at a comparable quality.

**MPEG4** – The most recent video codec from the Motion Picture Expert Group standards body and a successor to the VHS quality MPEG1 used on VCDs and MPEG2 used for DVDs and digital TV. It is more efficient and has many flavours and profiles to support a broader range of bit-rates from small screen mobile TV, to HDTV and beyond.

**Multi platform** – content or service that can be accessed via a variety of content distribution systems. For example a TV programme that is also available on the Web and mobile.

**Multicast** – a technology which allows the same video to be streamed to many users simultaneously, without hogging network capacity with a stream from a central server to every viewer. Equipment at the network's nodes copies data to every other node on the path to the viewer. It is vital for linear TV on IPTV or mobile TV.

**Multiplex** – any means by which multiple concurrent signals (say TV channels or telephone calls) can be combined for efficient transmission and disentangled further down the line. A group of digital terrestrial channels, for instance, are delivered through one of a number of DTT 'multiplexes' each of which is broadcast in specific slice of the airwaves.

**MUX** – abbreviation for 'multiplex'.

**Narrowcasting** – distributing niche content to small special interest audiences.

**Netting Off** - when broadcasters pay less to commission programmes because independent producers now benefit more from the rights to their programmes. Alleged to be a side effect of the New Terms of Trade.

**Networked Media Device** – a video or music player, such as a TV, DVD player or mp3 player, with a wired or wireless network connection to retrieve media from a home based server or directly over the Internet.

**New Media Rights** – an umbrella term for rights to carry media or brands on a growing range of services enabled by new technology. A fluid area with many rights defined in contracts over the last decade relating to redundant technologies, such as Videodisc or CDi, while emerging services are not defined at all. It is unlikely to stabilise any time soon prompting PACT to push for a 'When not Where' approach.

**New Terms of Trade** – The agreements being negotiated by PACT and UK broadcasters to put Codes of Practice drawn up by Ofcom in 2004 into formal practice.

**Ofcom** - Office of Communication. The Government appointed independent regulator and competition authority formed from the merger of the ITC and Oftel. Overseeing UK communications industries, with responsibilities across TV, radio, telecommunications and wireless communications.

**P2P – Peer-to-Peer**. Rather than retrieve a file from a central server, a P2P application locates a copy of the requested file on the machines of other P2P users to which it can establish good connections. Chunks for the same file may be downloaded from many machines at the same time, increasing the throughput. Users of a P2P network cooperate in an ad-hoc CDN. While long associated with illegal file sharing, services like BBC iMP and Sky by Broadband are making use of P2P legally, to reduce server and bandwidth costs.

**Pay-per-play** – the on demand equivalent of pay per view. In fact, payment for a single play is unusual and this term simply signifies that there is a limit on use (in contrast to download to own). More common is a limited number of plays or a window, of 24 hours say or a month, during which the content can be viewed an unlimited number times.

**PDA** – Personal Digital Assistant. A stylus-operated pocket sized computer using a Windows or Palm operating systems and with office and communications applications, media players and the ability to access the Internet via a built in phone, Wifi or a Bluetooth-connected phone.

**Place-shifting** – watching media when most convenient, perhaps at your desk on a PC or while commuting, on a mobile device.

**Platform** - a term used to describe a distinct distribution solution, including the network and device required for viewing. For example, Sky DSAT is one platform; Telewest DCABLE another and Virgin mobile is another. Platforms are generally not interoperable, and content must be specifically formatted for each.

**PMP** – Portable (or personal) Media Player that can play video as well as music files, such as the Video iPod, Sony PSP or the Archos devices.

**POD** – Publishing on Demand. The automated production and dispatch of a DVD when an order is placed.

**Podcast** – an audio programme typically of spoken content on a specialist topic and produced regularly by an amateur, like an audio blog. They are distributed

online and listeners may subscribe using software to automatically download the latest episode to their PC or an attached mp3 player.

**Progressive Download** – the ability to start viewing a media file before it has finished downloading, but not as quickly as streaming.

**PSP** – Sony’s portable video game and media player.

**PVR** – Personal Video Recorder. A digital video recorder that captures TV to a hard disk that can store tens or even hundreds of hours of material. Easy to use software and integration with EPGs makes time-shifting a breeze. Tivo created the market and in the UK Sky+ leads but they are also available on DTT without a subscription and are now being promoted under the Freeview Playback banner.

**QoS** – Quality of Service. A network protocol that allows an operator to give higher priority to streams of premium content, such as IPTV video, to avoid network congestion.

**Red Button** – interactive TV services (accessed via the red button on digital TV remote controls).

**Rentailer** – a term coined for the rent-by-mail DVD business epitomised by Netflix.

**Repurpose** - Editing, re-versioning or in some way presenting content differently to make more suitable for a different platform, for example delivering single sketches from a TV show as clips on a mobile service.

**Rights Window** – a defined period of time during which a certain right or bundle can be exclusively exploited by the licensee.

**Rip** – to copy media from one storage medium to another, normally by re-encoding, such as ripping a CD to mp3 or a DVD to DivX.

**Season Pass/Series Link** – a mechanism to instruct a PVR to record every episode of a series without worrying about when it is scheduled.

**Series Stacking** – the Catch up TV equivalent to a season pass which allows any episode of a current series to be viewed on demand until 7 days after the last episode is broadcast.

**Simulcasting** – the simultaneous transmission of a programme, most often of an event such as sports or music, on multiple platforms.

**Slingbox** – the best known of a new class of devices that streams the output of an STB, like a Sky digibox, onto the web for the owner to watch on a PC or mobile device anywhere in the world.

**Smartphone** – a mobile phone that offers all the functionality of a PDA through a small screen.

**Space shifting** - the ability to move media from one device to another, for instance from a PC to a networked media player or a portable device.

**STB** – set-top box, such as a satellite or cable receiver.

**Streaming** – the transfer of a digital media file that’s viewed almost as soon as the first bits arrive. A cookbook of tricks, including heavy error correction and buffering, attempt to counter network congestion.

**Symbian** – a smartphone operating system.

**TCP/IP** - Transmission Control Protocol is the pillar that stands beside IP in holding up the Net. It defines how two computers establish a connection and exchange streams of data. It guarantees delivery of data and that data packets will be delivered in the same order in which they were sent.

**TDMA** - Time Division Multiple Access. The multiplexed radio transmission scheme behind GSM digital cellular networks.

**Time-shifting** - watching a TV programme at a different time to when it was scheduled by using a PVR or plain old VCR.

**Tivo-to-go** - A function introduced to the leading PVR to allow recorded shows to be transferred to a Windows PC and from there to a portable device for place-shifting.

**Triple Play** - the ability for a single business to sell to consumer a 'golden' package of voice, Internet and Pay TV services.

**UMTS** - Universal Mobile Telecommunications System. A 3G mobile network system using W-CDMA technology being rolled out in markets using GSM technology. With theoretical data speeds up to 2mbit, real world bandwidth is typically around 300kbit/sec currently.

**User Generated Content** - amateur-made free video content. A lot of laudable grassroots journalism and other creativity is drowned in a swarming mass of kids lip-syncing into their webcams to the latest pop hits.

**VC-1** - a version of Windows Media 9 (WM9) video codec offered by Microsoft and accepted as a standard by the Society of Motion Picture and Television Engineers (SMPTE).

**vlog** - a video blog. Also known as a VODcast.

**VOD** - Video on demand. Refers to video content that is requested and viewed when the viewer wants rather than scheduled as part of a linear channel.

**Vodcast** - the video equivalent of a Podcast. See vlog.

**Walled Garden** - a service that provides only a sub set of services available on an open network, say a limited selection of websites, sometimes to raise a fee from participants but also to offer an easier to navigate collection or to limit content known to work on the particular platform.

**WAP** - Wireless Application Protocol. An open standard for delivering lightweight Web-style Internet service to small-screen mobile devices.

**Warehousing** - the alleged anti-competitive practice of holding on to unexploited secondary rights in an effort to deny new entrants to a market access to content.

**Watermark** - an invisible (or inaudible) imprint in digital media that incorporates copyright or ownership information that can be used to trace the origins of illegally distributed content.

**W-CDMA** - Wideband Code Division Multiple Access. Developed by NTT DoCoMo to carry data and calls on its 3G network, FOMA. Accepted as a standard by the International Telecommunication Union (ITU) and selected for UMTS, the 3G successor to GSM. Developments are pushing theoretical data speeds as high as 14mbit/sec.

**When Not Where** - a progressive principle relating to future rights definitions that limits usage by time rather than a medium.

**Wifi** –widespread wireless local area networking system, providing real-world bandwidths up to 30mbit/sec today at ranges of up to 300m from the radio equipment.

**WiMAX** – an emerging wireless networking standard that promises Wifi type services over ranges of tens of kilometres. It has been proposed as a medium for mobile TV.

**Windows Mobile** – a PDA and smartphone operating system.

**WOCC** - Window of Creative Competition. A proportion (25%) of the BBC's programme output over and above the independent production quota for which both external and in-house producers can compete.

**The glossary has kindly been provided by Pioneer Online.**

Pioneer Online is an Internet TV specialist created by a UK independent producer, with 6 years of expertise in distributing digital content online. *"We are embarking on a mission to generate new revenue for rights owners by targeting niche audiences online with existing special interest TV programming"*. First Science.tv launches later this year. If you are interested in releasing new revenue from your science and technology content please contact Gideon Summerfield on Gideon.summerfield@pioneer-online.co.uk or 020 8962 0794

## **Appendix Relevant Organizations and Sources of Information**

A2a tv  
<http://www.a2a.tv/>

AGICOA  
Association for Standards and Practices in Electronic Trade (EAN UK LTD)  
<http://www.agicoa.org>

Association of Professional Composers (APC)  
[a.p.c.@dial.pipex.com](mailto:a.p.c.@dial.pipex.com)

Authors Licensing and Collecting Society  
<http://www.alsc.co.uk>

Baker & McKenzie  
<http://www.bakernet.com>  
Intellectual Property Newsletter - London  
May 2006

BBC  
Code of Practice  
Terms of Trade  
Programme Production Agreement  
BBC General Terms of the Production of Television Programmes by Independent Producers  
<http://www.bbc.co.uk>

BBC News

“Libraries Fear Digital Lockdown”

<http://news.bbc.co.uk/1/hi/technology/4675280.stm>

BECTU

Code of Practice for Submission of Programme Proposals

BECTU submission to the ITC review of the programme supply market

OFCOM review of television production sector: BECTU response to consultation

<http://www.bectu.org.uk>

Broadcast Act 1990

[http://www.hmso.gov.uk/acts/acts1990/Ukpga\\_19900042\\_en\\_1.htm](http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm)

Broadcast Act 1996

<http://www.hmso.gov.uk/acts/acts1996/1996055.htm>

British Academy of Composers & Songwriters

<http://www.britishacademy.com>

British Copyright Council

<http://www.britishcopyright.org>

British Video Association (BVA)

The trade body that represents the interests of publishers and rights owners of video home entertainment.

[www.bva.org.uk](http://www.bva.org.uk)

BT Vision

<http://www.btvision.bt.com/>

Buongiorno

[ww.buongiorno.com](http://www.buongiorno.com)

Butterworths

Law Search

<http://www.butterworths.com/>

Channel Four

Code of Practice for Commissioning Programmes from Independent Producers

<http://www.channel4.com/corporate/4producers>

4 Broadband

<http://www.channel4.com/broadband/>

Communications Act 2003

<http://www.opsi.gov.uk/acts/acts2003>

<http://www.hmso.gov.uk/acts/acts2003/20030021.pdf>

Compact Collections Ltd

Compact manages the collection of Secondary Television and Film Rights, Collection Account Management and the tracking television broadcasts.

<http://www.compactcollections.com>

Copyright Licensing Agency  
<http://www.cla.co.uk>

Copyright Designs and Patents Act 1998  
[http://www.opsi.gov.uk/acts/acts1988/Ukpga\\_19880048\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm)  
Note that the Act has been amended, so the original version is of limited use.  
Current amendments:  
<http://www.patent.gov.uk/copy/legislation/index.htm>  
<http://www.jenkins-ip.com/patlaw/index1.htm>

Copyright and Related Rights Regulations 2003  
<http://www.opsi.gov.uk/si/si2003/20032498.htm>

Creative Commons  
<http://creativecommons.org>

Design & Artists Copyright Society  
[Http://www.dacs.org.uk](http://www.dacs.org.uk)

Digital Rights Management Watch  
<http://www.drmwatch.com>

Director & Producers Rights Society  
<http://www.dprs.org/intro.htm>

Directors Guild of Great Britain  
<http://www.dggb.co.uk>

DTI  
<http://www.communicationsact.gov.uk/>

EQUITY  
<http://www.equity.org.uk>

European Intellectual Property Review  
<http://www.sweetandmaxwell.co.uk/index.html>

European Trade Mark and Designs Office  
<http://oami.europa.eu/>

European Union  
The Copyright Directive  
<http://europa.eu>

Federation Against Copyright Theft  
[contact@fact-uk.org.uk](mailto:contact@fact-uk.org.uk)

fipr  
Foundation for Information Policy Research  
<http://www.fipr.org>

Fremantle Media  
<http://www.fremantlemedia.com>

Google Video  
[video.google.com](http://video.google.com)

Government Intellectual Property Initiative  
<http://www.intellectual-property.gov.uk/>

Guardian Unlimited  
<http://education.guardian.co.uk>

H M Treasury  
<http://www.hm-treasury.gov.uk>

International Federation of the Phonographic Industry  
<http://www.ifpi.org>

Lawrence Lessig  
Teaches and writes in the areas of constitutional law, contracts, and the law of cyberspace.  
<http://www.lessig.org>

Mechanical-Copyright Protection Society  
Membership organization representing songwriters, composers and music publishers, nationally and internationally.  
<http://www.mcps.co.uk>

Microsoft DRM  
<http://www.microsoft.com/windows/windowsmedia/forpros/drm/default.aspx>

Music Publishers Association  
<http://www.musicpublishersassociation.org.uk>

New Producers Alliance  
<http://www.npa.org.uk>

Office of Communication (OFCOM)  
<http://www.ofcom.org.uk/tv>

Pact  
<http://www.pact.co.uk>

Performing Arts Media Rights Association (PAMRA)  
Administers the performers' right to receive payments for the exploitation of their commercially published sound recordings.

[www.pamra.org.uk](http://www.pamra.org.uk)

Paid Content

<http://www.paidcontent.org>

Society for Producers and Composers of Applied Music (PCAM) (SPAM 1982 - 1997) Represents its members who write music for advertising, TV programmes and other audio-visual media.

[www.pcam.co.uk](http://www.pcam.co.uk)

Phonographic Performance Ltd (PPL)

UK collecting society licensing broadcast and public performance of sound recordings

[www.ppluk.com](http://www.ppluk.com)

Performing Right Society (PRS)

UK collecting society licensing broadcast, cable and public performance of musical works.

[www.prs.co.uk](http://www.prs.co.uk)

Player X

[www.playerx.co.uk](http://www.playerx.co.uk)

Practical Law Company

<http://www.practicallaw.com>

Rights Tracker

<http://www.rightstracker.com>

RDF Media

<http://www.rdfmedia.com>

RDF Rights

<http://www.rdfrights.com/>

Sponge

[ww.spongegroup.com](http://www.spongegroup.com)

Streak UK

DRM & streaming

<http://www.streamuk.com/>

Times Online

<http://technology.timesonline.co.uk/article/0,,20409-1803874,00.html>

UNESCO

The Copyright Convention

<http://www.unesco.org/culture/laws/copyright>

UK Patent Office

<http://www.patent.gov.uk>

US Copyright Office  
<http://www.copyright.gov>

Video Performance Limited  
VPL is a collecting society which licenses the  
<http://www.musicmall.co.uk>

Wikipedia  
[http://en.wikipedia.org/wiki/Digital\\_rights\\_management](http://en.wikipedia.org/wiki/Digital_rights_management)

WIPO  
World Intellectual Property Organization  
<http://www.wipo.int>

Writers Guild of Great Britain  
<http://www.writersguild.org.uk>

World Trade Organization  
TRIPS agreement  
<http://www.wto.org>

### **Important UK Acts, European Directives and US Acts**

These are the major Acts and Directives that impact upon the television and broadcast industries with an indication of the most relevant features.

1952            **Universal Copyright Convention (UCC)**

UNESCO. Forms the basis of national and international laws enforced in 1955.

1956            **The Copyright Act 1956**

Protection for broadcast (wireless transmission) television programmes but not sound programmes.

1961            **Rome Convention**

For the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

1971   **Berne Convention** (Paris Act)

For the Protection of Literacy and Artistic Works.

All EU member states and the European Trade Association are signatories to the Convention.

1976            **Copyright Act 1976**

United States Act. Domestic Act presides over the Berne Convention. Copyright must be registered in the US.

1984            **Cable and Broadcasting Act 1984**

In 1977 the Copyright Committee recommended that cable companies have the same rights regarding original transmission as broadcasters. Implemented on 1<sup>st</sup> January 1985.

1990 **Broadcasting Act 1990**

1992 **Copyright and Related Rights Directive 92/100**

1993 **Satellite and Cable Directive 93/83**

The term of protection of the broadcast lasts up to 50 years from the first communication to the public or transmission. Applicable to all works from 1<sup>st</sup> July 1953.

1994 **Television Production Agreement 1994**

1996 **WIPO Copyright Treaty 1996** (World Intellectual Property Organization) Supplements and updates protection for literary and artistic works in view of economic, social, cultural and technological development. Supplements the Paris Act but retains the member states' obligations regarding the Berne Convention. Controls future development and harmonisation of international copyright treaties since governments tend to have differing interpretations of the convention.

1996 **WIPO Performances and Phonograms Treaty 1996**

Recognizes the rights of actors, dancers, performers of literary or artistic work to be identified. recognizes their economic right, right to authorise broadcast, reproduction rights and the right to object to distortion of their performance if it could be harmful to the performers' performance.

1998 **Copyright Designs and Patents Act 1998 (CDPA)**

Basis of UK copyright law. Regularly amended. In the 2003 amendment "authorship" is taken over by the broadcasters for all work made after 1<sup>st</sup> August 1989.

2001 **Information Society Directive 2001.29**

1994 **TRIPS Agreement 1994**

WTO (World Trade Organisation) Trade Related Aspects of Intellectual Property Rights.

Trading in counterfeit goods is included. Setting standard for the member states of the WTO.

2003 **Copyright and Related Rights Regulations 2003**

Late implementation of the Copyright and Related Rights Directive 92/100. (Should have been implemented on 31<sup>st</sup> October 2002.) This act limits the scope which broadcasters can insist upon when commissioning from independent production companies.

2003 **Communications Act 2003**