

GREEN PAPER - UNLOCKING THE POTENTIAL OF CULTURAL AND CREATIVE INDUSTRIES

European Commission public consultation

July 2010

Putting in place the right enablers

New spaces for experimentation, innovation and entrepreneurship in the cultural and creative sector

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| <p>1. How to create more spaces and better support for experimentation, innovation and entrepreneurship in the CCIs? More particularly, how to increase access to ICT services in/for cultural and creative activities and improve the use of their cultural content? How could ICTs become a driver of new business models for some CCIs?</p> |
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Inside the International Federation of Coalitions for Cultural Diversity (IFCCD), the European Coalitions for Cultural Diversity (CEDC) federate 12 national coalitions of professional cultural organisations (cinema, television, music, literature, performing arts, visual and graphic arts, multimedia) in Austria, Belgium, France, Germany, Hungary, Italy, Ireland, Portugal, Slovakia, Spain, Switzerland and the UK.

The objective of this alliance is to keep European institutions informed of the expectations and needs of the creators and the cultural professionals organisations, not only with regards to the 2005 UNESCO convention on the protection and promotion of the diversity of cultural expressions, but also on any other subject related to culture and under European competence, particularly trade negotiations.

The European coalitions gather generally twice a year and regularly meet representatives from the Commission and other European institutions. They have specifically made a stand:

- To welcome the adoption of the UNESCO Convention for the protection and promotion of the diversity of cultural expressions in October 2005 and its rapid implementation in March 2007, after it was ratified by the European Community and 12 Member States in December 2006,
- To call for a massive ratification of the Convention, particularly by the EU Member States which have not done so yet,

- To contribute to the first European Forum for Culture which took place in Lisbon in September 2007,
- To alert on the European Commission practice to attach cultural cooperation protocols to bilateral or regional trade agreements.

CEDC welcomes the establishment of the two civil society's Platforms on Cultural and Creative Industries on one hand and on Access to Culture on the other hand, and of the Members States' working groups, following the Communication on a European Agenda for Culture in a globalizing world in 2007. CEDC thanks their participants for the work accomplished.

CEDC also welcomes the publication of the Green Paper "Unlocking the potential of cultural and creative industries" and the opportunity offered by the public consultation to contribute to the debate. However, CEDC is disappointed that some important issues, addressed in particular by the recommendations of the Cultural and Creative Industries' Platform, are not developed in the Green Paper, whereas they are central to the European cultural and creative industries:

- The Green Paper focuses a lot on the importance of SMEs in the cultural and creative sectors and addresses their particular challenges, while it neglects the individual creators and the problems related to their status, rights, social and tax environments.
- Authors' rights are very briefly mentioned and their challenges not addressed, while they are central to the cultural and creative industries as they represent the key system of protection of works allowing their exploitation and rewarding the authors.
- The long-standing claim from the cultural and creative industries to provide reduced VAT rates for all cultural products and services, both online and offline, is not even mentioned in the Green Paper.
- The cultural exchanges and international trade chapter does not reflect the current discussions on the cultural cooperation protocols annexed to international agreements neither, whereas they aim at promoting the implementation of the 2005 UNESCO convention, which is the unique international instrument that recognizes the role of cultural and creative industries in the promotion of cultural diversity.

CEDC contribution aims therefore at reintroducing these issues in the discussion on unlocking the potential of European cultural and creative industries and at answering the questions of the public consultation which are relevant to its field of activity.

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The Green paper assesses that the ICTs open up new opportunities for creators to produce and distribute their works to a wider public at a lower cost, independently of physical and geographical constraints. Except in theory, this is not completely true. Obviously ICTs open up new opportunities for the creative and cultural industries and in particular creators, notably in artistic terms, but this does not happen without any constraints, at least in the film and audiovisual sectors. Scriptwriters and directors can hardly create films on their own; they need to work with a team of talents and technicians. Even if digital technologies have reduced the weight and size of the technical material, scriptwriters and directors need minimal funding to make their film project become true. According to the European Audiovisual Observatory, in the five biggest markets of the EU (France, UK, Germany, Italy and Spain), the average budget

for a film was still € 4.58 million in 2008, even if budgets have dramatically decreased in many countries.

In this context, public funds are becoming increasingly important: we observe to the proportional intensification of the share of public funds in the financing of the whole cinematographic and audiovisual value chain. It is therefore of a tremendous importance that these public funds are secured both in terms of legacy regarding the EU state aids' rules (see the conclusions of the Belgium EU Presidency seminar on support to European cinema (http://www.audiovisuel.cfwb.be/index.php?id=avm_mons2010en) and in terms of resources made available.

Scriptwriters and directors consider the ICTs to be a driver for innovation. They experiment the full potential of digital tools on a daily basis, using them to create interactive works or new formats like 3D. Unfortunately, it is on the exploitation side that the ICTs fail today to develop real opportunities. Online digital networks have not proved to be great vectors of distribution of audiovisual works to the benefit of creators yet, both in terms of availability of works and of revenues. The high level rate of online piracy and the concomitant internet users' habit for free content make it difficult to develop online audiovisual services with high quality professional European audiovisual works.

An important measure to improve the use of creative content online would be to reduce VAT rates for all cultural products and services, both online and offline, as mentioned in the introduction as a central proposal of the Platform's recommendations and a long-standing claim from the cultural and creative industries. Indeed, it is economically inconsistent for the EU to allow reduced VAT rates for traditional exploitation of films in theatres and on TV for instance and to apply a full rate on video on-demand, while at the same time calling for a vibrant digital single market (see the European Commission Communication on a Digital Agenda for Europe of 19 May 2010).

A full VAT rate on online cultural products and services is an important lock which prevents the take-up of online services offering cultural and creative works. This aspect has been recently highlighted by the preliminary results of the KEA and CERNA study on multi-territorial licensing for the online distribution of audiovisual works in the EU commissioned by the European Commission

(http://www.keanet.eu/docs/stakeholderworkshopslides2june2010_updated.pdf).

In addition, the call for innovation and experimentation in the cultural and creative industries should not be an excuse for the questioning of some fundamental principles for the basic functioning of the cultural and creative industries, such as the respect and enforcement of authors' rights and neighbouring rights online. ECCD rejects the idea that internet and the massive development of intellectual property infringing activities online, in particular via peer-to-peer networks, make the possibility and thus the need to protect intellectual property online obsolete. On the contrary, digital technologies which make it so easy to copy and disseminate works, call for an increased need for education on the nature and value of intellectual property rights. Creators need and deserve the same level of protection online and offline.

Better matching the skills needs of CCI

2. How to foster art and design schools/business partnerships as a way to promote incubation, start-ups and entrepreneurship, as well as e-skills development?

No comment.

3. How could peer-coaching in the CCI be encouraged at the level of the European Union?

No comment.

Access to funding

4. How to stimulate private investment and improve CCI access to finance? Is there added value for financial instruments at the EU level to support and complement efforts made at national and regional levels? If yes, how?

The Green Paper immediately recognizes that “access to finance is a core barrier to growth for many businesses within the sector.”

The OMC Expert group also believes that “the importance of sufficient EU funding has also to be acknowledged by politicians as a “sine qua non” condition for CCI to become valuable and fully competitive alternatives – existing funds should then be increased or made available where they currently aren’t”.

At the moment the digital shift has far greater consequences for the audiovisual sector compared to other related sectors, as it seems to require a fundamental restructuring of the industry’s financial mechanisms. But just as the audiovisual industry finds itself in a state of transition from old business models to new ones, the global financial crisis has caused Member States to cut state aid to production of new films; broadcasters pay less for screening rights due to competition with internet for advertising revenue, corporate sponsorship sharply decreases, and private investors invest more conservatively - if at all.

On top of all this the EC expects the creation of a single digital market for creative content and calls for Europe-wide multi-territory licensing without analyzing to what extent the industry may need alternative funding sources to compensate for a decrease in licensing revenue.

Therefore, the backbone of financing for the audiovisual industry in Europe, like any other cultural sector, is – and must continue to be - public funding. In order to ensure a culturally diverse output of works there is a need for a variety of funding sources. Yet when each financier is only willing or able to contribute a fraction of the budget, it has become excessively time consuming to raise funding, and the end result may often be that projects fall apart because they cannot make so many financiers come on board at the same time.

CEDC supports the MEDIA programme of the European Commission which complements the national and regional funds for the audiovisual industry in order to foster the competitiveness of the European industry, the circulation of cinematographic and audiovisual works and cultural diversity. It particularly cares about the development and video on demand action lines.

Regarding development, it is generally admitted that scriptwriting is underfunded in Europe. Yet, this stage which is essential in shaping the project is not properly taken into account in the framework of the development support granted to production companies. Therefore, in view of the next generation of EC programmes after 2013, CEDC would encourage the MEDIA programme to find a better balance between writing and development. Development support should also be aimed at improving the circulation of scripts, particularly with a view to co-production.

Regarding the current difficulties for video on demand to take up due to online piracy, lack of business models and licensing issues, it is important that the MEDIA programme supports European video on-demand platforms which display European cinematographic and audiovisual works to a multi-territorial audience. It would be useful to reinforce this action line in two directions:

- support the digitisation of European cinematographic and audiovisual works to foster their online availability on these platforms;
- facilitate the licensing process across borders and decrease transaction costs by promoting rights' aggregation, catalogues, rights' registries and one stop shops (see the preliminary results of the KEA and CERNA study).

The Green Paper further remarks that "the global digital shift reinforces the position of important stakeholders such as telecom companies or consumer electronics manufacturers, and coincides with the emergence of new strong global players such as search engines and web based social platforms which while making significant contributions to the development of the market place – can potentially act as new gatekeepers."

CEDC fully agrees that "creating and maintaining the level playing field which ensures that there are no unjustified barriers to entry will require combined efforts in different policy fields, especially competition policy."

It would also be reasonable to require any audiovisual media services that profits from European audiovisual works to invest a fair share of their turnover in the production of new works by for instance contributing to national film and audiovisual production funds, in line with Article 13 of the Audiovisual Media Services Directive.

5. How to improve the investment readiness of CCI companies? Which specific measures could be taken and at which level (regional, national, European)?
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No comment.

Local and regional development as a launch pad for global success

Local and regional dimension

6. How to strengthen the integration of CCl's into strategic regional/local development? Which tools and which partnerships are needed for an integrated approach?

No comment.

Mobility and the circulation of cultural and creative works

7. What new instruments should be mobilised to promote cultural diversity through the mobility of cultural and creative works, artists and cultural practitioners within the European Union and beyond? To which extent could virtual mobility and online access contribute to these objectives?

When we talk about the mobility of artists and cultural workers, it is important to first acknowledge that artists and cultural workers are generally in worse situations than people in other professions, if we compare groups with the same level of education (see: *The Status of Artists in Europe*, a study commissioned by the European Parliament's committee on Culture and Education in 2006). The cultural statistics gathered by Eurostat (Edition 2007) highlight specific features of cultural employment, particularly in terms of levels of education and job security:

- Persons working in the cultural field are generally better educated than those employed in the economy as a whole: nearly 48% of cultural workers have completed tertiary-level education, compared with 26% for the workforce in general.
- Cultural employment is often less secure: 16% of cultural workers have temporary jobs, compared with 13% in total employment, and 25% have part-time jobs, compared with 17% in the working population as a whole.
- In the EU, 29% of persons working in the cultural field are non-employees (i.e. self-employed), compared with 14% in the total working population.
- The proportion of workers with second jobs is nearly twice as high in cultural employment as in total employment in EU-27.
- In EU-27, 29% of cultural workers usually or sometimes work at home. This is significantly higher than the rate in the total workforce, which has no more than 13% home-workers.

Because so many artists work as self-employed persons or free lancers, and their legal or social status in EU varies from one country to the other, we propose unifying and equalising these cultural workers with other professions at EU level (right for collective negotiation, social dialogue, etc.) so that the "European social model" will become meaningful.

In the context of the Green Paper, CEDC recommends to focus more on the individual creators and the problems related to their status, rights, social and tax environments, using the White Book of the Convention of Europe's visual artists held in Paris on the 15 and 16 of December

2008 which debated the issue of artists' socio-economic status as the starting point in developing the process (<http://conventioneuropennedesartsvisuels.eu/europe/?lang=en>).

In addition, as underlined in the Green Paper, barriers to mobility for artists and creators do exist in the European Union. On the one hand, they are due to the difficulties for non Europeans to obtain a visa and on the other hand, to tax and social regulations, which differ from one European Member State to the other. The CEDC regrets that, on this crucial point, some of the recommendations of the national experts' group in charge of this issue were not mentioned in the Green Paper.

For instance, the national experts' group proposed that Member States, when implementing the new Community code on visas, should pay attention to the specificities of the cultural sector in order to match its special needs (e.g.: set-up of shortened procedure) and added that awareness-raising and training of the visas authorities should be means to reach this objective.

Regarding the complexity of European regulations, the availability of clear, complete ready and easy to use information should be a European priority. Therefore, the national experts group's recommendation to set up Mobility Information Services, both virtual and material information centres, in every European country should be welcomed. Nevertheless, considering the importance of this project, it will be necessary to build on the previous European experiences such as the mobility information platform "*On the move*" and the pilot project PRACTICS relating to European cultural contact points (both European funded). A close follow-up of the set-up of the Mobility Information Services as well as an efficient European coordination should also be guaranteed. Finally, information exchanges with stakeholders and consultation of the cultural sector is a key issue to undertake a project adapted to the cultural sector needs.

European mobility, in the context of great linguistic and cultural diversity, should also be promoted by the following actions:

- Translation, sub-titling and dubbing of European works: the European funding of European translations already exists under the Culture programme but should be strengthened and extended to sub-titling and dubbing.
- Promotion of live performance should be enhanced in Europe, for instance through the creation of cultural points in every Member State which would be entrusted with the mission of promotion and diffusion of European creations outside their country of origin. One could consider a funding via the Culture programme which could also encompass the support of less known repertoires. The visual arts should also receive this type of support.
- Promotion of exchanges between European creators, such as cross- residence schemes.

In this context, it should be mentioned that European funding does not often match the needs of the small cultural entities. Therefore, the European Commission should follow the recommendation of both the Platform on cultural and creative industries and the national experts group to conduct an accurate assessment of the demands of the cultural sector and

subsequently create small-scaled aids (small amount/ simplified procedure) under the new European multiannual financial framework.

Moreover, the creation of a MEDIA-type programme for cultural and creative industries should be considered in order to support the actions mentioned above.

Finally, the European Union and Member States should support the collection of mobility data in order to assess the level of European mobility and to make suggestions for mobility development via a quantitative but also qualitative approach.

As far as the audiovisual sector is concerned, it already benefits from two EU instruments aiming at promoting cultural diversity through the circulation of audiovisual works, which are known to play an important role in enhancing intercultural dialogue and mutual understanding, two key elements to build a European common identity and citizenship. The first one is the MEDIA programme and the second is the Audiovisual Media Services Directive which took over from the Television without Frontiers Directive.

Apart from the development' scheme and support to video on-demand services which are very important, the MEDIA programme also contains action lines for the distribution of films outside of their territory of origin, for film promotion and festivals. These action lines are essential to help films and audiovisual works to circulate out of their country of origin and to give the opportunity to a foreign audience to discover and access European films. In this context, support to sub-titles and dubbing of audiovisual works is also important to facilitate this circulation.

Article 16 of the codified version of the Audiovisual Media Services Directive maintains the broadcasting quotas of European audiovisual works defined in the Television Without Frontiers Directive, while Article 13 adapts them to the specificities of the on-demand services. Article 13 provides that Member States shall ensure that on-demand audiovisual media services promote the production of and access to European works. Such a promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered.

Recital 69, which notes that on-demand audiovisual media services *“should, where practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity”* proposes a third measure of support for European works: the attractive presentation of European works in electronic programme guides.

The Directive does not provide figures neither for the financial contribution nor for the share and/or prominence of European works in the catalogues. Member States should nevertheless include such recommendations in their national law by providing the minimum figures that should be met. It is up to the Member States to determine this share and the level of the financial contribution according to the local characteristics of their markets.

The financial contribution of on-demand services could consist of the obligation to invest a share of the turnover of the service concerned in the production and rights acquisition of

European works (the investment rate could increase according to the turnover) and/or to contribute to the national film and audiovisual production fund, following the existing obligations of broadcasters in a number of European countries. Alternatively or simultaneously, catalogues should contain an important proportion of European works.

Detailed indications, including figures where possible, will be necessary to make these obligations concrete and allow a follow-up at European level. Unfortunately, it appears that the implementation of Article 13 of the Directive in the Member States rarely includes figures to be met by the on-demand audiovisual media services.

At this stage, it seems that only a few countries have set a mandatory minimum share for European works in the catalogues of programmes offered: the Spanish law of 31 March 2010 stipulates that 30% must be European works, of which 50% Spanish, while the French draft decree to implement the law of 5 March 2009 requires a 60% share for European works and a 40% share thereof for French works in catalogues (the proportions are the same as those set for the broadcasting quotas).

ECCD strongly supports Article 13 of the Directive and calls for its strict and careful implementation by all Member States. It believes that, unless encouraged by financial incentives or regulatory measures, most of the online platforms would only market what is currently available in cinemas and would neglect this incredible opportunity that the online exploitation of European works represents for the circulation, visibility and success of European cinema and audiovisual programmes.

Another important element for the circulation of audiovisual works is co-production. A film being considered national in several Member States has greater chances to find its way to the audience in the co-production countries, being promoted by a native producer in each territory. It is therefore important that funding schemes at national level allow and encourage co-productions.

The audiovisual authors and artists' mobility is not addressed by the MEDIA programme as such. European audiovisual professionals can benefit from training programmes supported by MEDIA but these programmes do not aim at fostering their mobility in particular. It therefore seems that the best mobility plans for audiovisual authors are co-productions, which combine teams of talents and technicians of the co-production countries. At the development stage, one can also imagine residences and cross-residence schemes for audiovisual authors to develop projects in a multi-cultural environment.

Cultural exchanges and international trade

8. Which tools should be foreseen or reinforced at EU level to promote cooperation, exchanges and trade between the EU CCI and third countries?

ECCD has been surprised to discover that the Green Paper did not mention in its chapter on cultural exchanges and international trade the cultural cooperation protocols annexed to international agreements. Whereas the Green Paper explains that "the EU's perspective in international cultural exchanges and trade is framed by the 2005 UNESCO convention on the

protection and promotion of the diversity of cultural expressions”, it fails to explain the European Commission’s strategy of negotiating cultural cooperation protocols in bilateral or regional trade agreements, although they are presented as implementation tools of the UNESCO convention.

Since 2008, the European Coalitions for Cultural Diversity have alerted the European cultural sector and interpellated the European Commission’s representatives on the danger of a systematic inclusion of cultural cooperation protocols in bilateral trade agreements (<http://www.coalitionfrancaise.org/wp-content/uploads/2009/11/Barroso-Coree-18-03-09.pdf> and <http://www.coalitionfrancaise.org/wp-content/uploads/2009/08/declaration050509.pdf>).

In 2009, the French Coalition for Cultural Diversity has been invited by the French Ministry of Foreign Affairs to discuss the issue and to elaborate with the French administration a communication calling for a new European Union external cultural strategy (http://www.coalitionfrancaise.org/eng/wp-content/uploads/2009/12/comm_fr_strat_culturelle_ext_eng.pdf).

The conclusions of this communication are shared by the European Coalitions for Cultural Diversity. It sets the guidelines for the negotiation of specific frameworks for cultural cooperation and develops a strategy of negotiation that is both comprehensive and differentiated, ensuring the autonomy of the cultural sector and the implementation of an ambitious and coherent European cultural policy.

At meetings with representatives of European Commissioners De Gucht and Vassiliou in May 2010, the European Coalitions for Cultural Diversity were reassured that the Commission heard the concerns of the cultural sector and changed its strategy in order not to repeat the cultural cooperation protocol annexed to the EU/South Korea free trade agreement in other negotiations. However, no communication presenting this new strategy has been published so far. Therefore, the details of this new strategy and the responsible administrations, both at EU and national levels, remain unclear.

ECCD calls therefore on the Commission to publish the new strategy as soon as possible and to open a specific civil society public consultation process on this issue.

Towards a creative economy: the spillovers of CCIs

9. How to accelerate the spill-over effects of CCIs on other industries and society at large? How can effective mechanisms for such knowledge diffusion be developed and implemented?

The economic spill-over effects of cultural and creative industries on other industries and society at large are well-known and widely recognised. The Green paper quotes figures from the study on the economy of culture in Europe conducted by KEA for the European Commission in 2006 and from the UNCTAD 2008 report on Creative Economy.

A more recent study conducted by TERA Consultants in March 2010 for the International Chamber of Commerce shows that the core creative industries in the EU27 are estimated to generate almost €560 billion in value added in 2008, which represent a contribution of 4.5% of the total EU GDP. If we add the non-core creative industries, such as the manufacture and sale of hardware and non-dedicated industries such as transport, the value added is approximately €860 billion, representing an estimated 6.9% share of EU GDP. In terms of employment, the core creative industries account for 8.5 million of jobs in 2008 or 3.8% of the total workforce. With the non-core creative industries, employment is 14 million or 6.5% of the total EU workforce. A principal goal of the study was to evaluate the economic consequences of digital piracy on the creative industries. It estimates that approximately €10 billion and more than 185 000 jobs were lost in Europe in the creative industries due to piracy in 2008 (http://www.teraconsultants.fr/assets/publications/PDF/2010-Mars-Etude_Piratage_TERA_full_report-En.pdf).

The European Commission should commission its own studies based on a clear and well accepted methodology to monitor on a regular basis the economic weight of the cultural and creative industries and its spill-over effects on other industries and society at large. This would be the most efficient mechanism for the diffusion of such knowledge among the Directorates General in charge of other policies, as a basis for an efficient implementation of Article 167.4 of the Treaty (ex-Article 151 EC).

Against this background, the Green Paper announces that the Commission will be working on three major policy frameworks: the Digital Agenda for Europe, the "Innovation Union" flagship initiative and the Strategy on Intellectual Property (p. 7 and 8 of the Green Paper). However, as mentioned in the Platform recommendations, the effective implementation of Article 167.4 should be ensured through the mainstreaming of culture in all Community policies, particularly in competition, internal market, information society, social affairs, trade and industry policies. It is then up to DG Culture and Education, with the support of the President of the European Commission, to put in place the appropriate mechanisms to ensure such an effective implementation in other policies.

However, we noted with great disappointment that the European Union Strategy 2020 published on 3rd March 2010, which defines and sets the course of the evolution of the EU over the next 10 years, unfortunately neglects the significance and importance of culture in the economic and social development of Europe.

10. How can "creative partnerships" be promoted between CCI's and education institutions / businesses / administrations?
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The Green Paper rightfully mentions that cultural and art education has an important role to play in maximising the links between culture and education so as to promote creativity in a life-long perspective and that media literacy education is also important to promote participation in the cultural life of society as the medias are very important means for the distribution of cultural content.

It should be added as mentioned in the answer to question 1 that digital technologies which make it so easy to copy and disseminate works call for an increased need for education on the

nature and value of intellectual property rights. In this context, ECCD calls for intellectual property education and awareness campaigns addressing the nature and value of intellectual property rights in schools, universities, businesses and administrations.

11. How to support the better use of existing intermediaries and the development of a variety of intermediaries acting as an interface between artistic and creative communities and CCl's on the one hand, and education institutions / businesses and administrations, on the other?

Trade unions negotiate agreements to further disseminate the works of content creators and performers and can interact fully with educational institutions to foster an appreciation and understanding of artistic works, as well as respect for intellectual property. In many cases, these agreements are managed by collective management societies.

Rights' collective management societies are both full actors of the cultural and creative industries taking into account their role and activities, and intermediaries between the creators' community on one hand and businesses, administrations and education institutions which make use of their works on the other hand.

In instances where the individual enforcement or management of rights would not be appropriate due to the large number and variety of uses of a work, rights holders have chosen to have their rights represented collectively through collective management societies. The societies negotiate and collect rights payments from the various private and public entities that use protected works and distribute them to rights holders. The societies also defend the interests and rights of their members.

European collective management societies are ready to play an increased and active role in the CCl's, in particular in the online environment.