

## **Consultation on the Review of the Copyright and Related Rights Act 2000**

Channel Four Television Corporation ("Channel 4") welcomes the opportunity to respond to the consultation on the Review of the Copyright and Related Rights Act 2000.

Channel 4 welcomes the basis underlying the review to identify any areas of the legislation that might be deemed to create barriers to innovation and to make recommendations to resolve any problems identified.

### **Channel 4**

Channel 4 is a publicly owned, commercially funded public service broadcaster, with a statutory remit laid down by the UK Parliament. In the UK, it operates a licensed public service channel, the main Channel 4 service, and a portfolio of digital channels (including E4, More4 and Film4 as well as HD services and +1 time shifted channels). It is obliged to make its main Channel 4 service available to the UK public on a free to view basis but has total discretion over the way in which it distributes its digital channels in the UK.

Outside of the UK, subject to the programme rights it licenses, Channel 4 is able to distribute its services as it chooses. Accordingly, Channel 4 retails its channels in the Republic of Ireland on cable and satellite (such that they are available to pay television subscribers only) and generates an income stream through such activity, which in turn is used to underpin investment in content and services to deliver its public service remit<sup>1</sup>.

The retransmission of the main Channel 4 service in the Republic of Ireland results in payments from cable operators (principally UPC) to Channel 4 through a collective licensing agreement (pursuant to the 1993 Satellite and Cable Directive) which allows cable operators to licence all relevant rights from parties with a relevant interest in rights in the programmes in the Channel 4 service (where the broadcaster elects to make such service available in the territory) including IMRO, AGICOA, ALCS, DAL and PPI (the "Rightsholders"). These payments are subject to commercial negotiation between the Rightsholders and the cable operator. The resulting agreement is subject to confidentiality provisions.

### **Recommendation**

In relation to the consultation, Channel 4 has one recommendation relating to the provisions under Sections 175 and 177 of the Act and the Copyright and Related Rights (Register of Copyright Licensing Bodies) Regulation 2002, which require the publication of the financial payments and of the registration of the agreement between the parties. Channel 4 requests that the Review Committee considers the withdrawal of this provision.

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<sup>1</sup> It is worth noting that Channel 4's services are distributed (a) in Northern Ireland on terrestrial analogue and digital; and (b) in the UK, unencrypted, on the Astra satellite. This means that whilst Channel 4 is intended to be accessible to pay subscribers in the Republic of Ireland, it may be possible for Irish viewers to pick up the UK versions of its channels via analogue, digital and satellite overspill.

In Channel 4's understanding no other collecting society operating in Europe is required by law to disclose commercially negotiated licensing terms. Moreover there is no requirement under EU law for such disclosure and registration.

Channel 4 appreciates that it is not itself subject to the disclosure provisions. In addition, Channel 4 appreciates that in practice, the relevant authorities do not require publication of the full licence payments, instead requiring only the proportion (in % terms) taken by each collecting society to be published.

However, this issue is important to Channel 4 directly as it regards the subscriber payments from all of its platform deals as commercially sensitive. Disclosure of this information would be likely to prejudice: (a) the amounts it is required to pay for programme licences; and (b) its commercial negotiations in respect of retail arrangements with other platforms (such as Sky). In order to preserve this position and to ensure clarity, Channel 4 believes that these provisions should be withdrawn.

Finally, Channel 4 notes that the competition regime in Ireland, in any event, ensures that there will be no distortion in the market as collecting societies are required to provide similar licence terms for similar licensees, unless there are objectively justifiable reasons to do otherwise.

**15 July 2011**