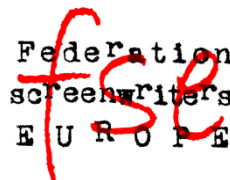


Making the Digital Single Market Work: Key Principles for the Film and Audiovisual Sector

March 18, 2015



As the European Commission defines its priorities for the Digital Single Market in order to foster economic growth and job creation in Europe, the undersigned organisations of film makers, producers, screenwriters, authors, technical crews, actors, publishers, broadcasters, distributors, and exhibitors active in the European film and audiovisual landscape are ready to contribute further to achieving those fundamental objectives, in full respect for the diversity of European cultures.

To do so, we need a policy framework that encourages creativity, promotes investment in the production and distribution of creative content in Europe and guarantees a fair and adequate reward to all relevant right holders and parties involved. We must consolidate the strength and success of the current EU copyright system, a cornerstone of the European digital economy that generates 7 million jobs and contributes approximately EUR 509 billion to EU GDP¹ insofar as the copyright sectors are concerned. This also forms the basis of the offer of more than 3,000 audiovisual online services across Europe².

One of the foundations of this success is the **commercial freedom to “go local” and to choose from territorial, multi-territorial or pan European options** for the production, financing and dissemination of films and audiovisual content across Europe. The freedom to licence works with a mix of different licensing models and to partner with platforms of different sizes, scope and geographical footprint, depending on diverse consumer tastes and preferences, enables a virtuous circle of investment in high skilled jobs and cultural diversity. Proof of the indispensable value of that freedom is the unparalleled success of European films and TV drama in various festivals and competitions around the globe. Most of those films and audiovisual content were at least partially financed through territorial pre-sales agreements with a wide diversity of local players.

Bearing in mind the overarching goal of promoting jobs and economic growth in Europe, **any changes to the successful models described above must be backed by evidence that such changes will add jobs and economic growth in Europe** rather than taking them away. **Mandating cross-border access by law would just do the opposite, transferring value from European creators and their business partners to big global Internet platforms.**

Keys to the Digital Single Market

- **Incentivise Investments in Cultural Diversity:** Digital technology evolves, but the fundamental costs of developing, producing, marketing and distributing films and audiovisual content are rarely affected. With high inherent financial and creative risks in the film and audiovisual sector – every production is essentially a prototype – generating jobs and economic growth heavily depends on having very clear rights in our works. In 2014, 222 films started principal photography in the UK, with a total UK spend of EUR 2059 million³. In Germany and France, the average film production budget stands at EUR 5 million and in Sweden EUR 2.6 million⁴. **Mandating cross-border access or introducing new exceptions would undermine the economic value of those investments and would interfere with the optimal promotion and distribution efforts to export works to individual territories.** The current flexibility is helping the entire film and audiovisual

¹ Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union (http://ec.europa.eu/internal_market/intellectual-property/docs/joint-report-epo-ohim-final-version_en.pdf).

² European Audiovisual Observatory (see [here](#)).

³ Latest statistics (Feb 2015) from the British Film Institute covering, film, TV and animation - <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/film-high-end-television-animation-programmes-and-video-games-production-in-the-uk-2014-2015-02-03.pdf>.

⁴ Commission Communication [European Film in the Digital Era](#).

sector to invest in films and audiovisual content, and driving change and innovative solutions so citizens can access and watch film and audiovisual content in the widest possible range of options.

- **Preserve Commercial Freedom:** The commercial freedom to organise the financing and future distribution of each film and audiovisual content on a territorial basis is indispensable to finance European films and audiovisual content and to ensure their best possible promotion and distribution in each individual market. The Charles River Associates study “Economic Analysis of the Territoriality of the Making Available Right in the EU” commissioned by the European Commission confirmed that **licensing on a territory-by-territory basis is essential to raising financing for film and audiovisual productions**⁵. Indeed, in many cases, this process takes place even before the actual production/shooting of the film or audiovisual content and also ensures the optimal promotion and distribution of the finished work in foreign territories⁶. In the case of high end television content and TV fiction, the development and production of new content carries significant costs, borne by one or several television broadcasters distributing the content on an exclusive basis. Interfering with the possibility to license high end audiovisual content on a territorial basis after the first broadcast would significantly reduce the possibility for TV producers and broadcasters to pursue real secondary exploitation and thus reduce their ability to invest in the development of new audiovisual content and formats.
- **Facilitate Experimentation and Diversity.** Many different varieties of online distribution models, content and delivery modes are being explored by market operators, and it remains to be seen which modes of consumption will be favored by consumers going forward (streaming, digital downloads, subscription models, permanent access models, etc.). Successful online licensing and distribution of audiovisual works depends on offering a wide range of attractive content in a manner which is linguistically relevant and culturally attractive to local audiences. Producers, international distributors and publishers of film and audiovisual content seek to ensure that their works are made available to consumers in a way that is most responsive to local market needs and capacities. The market is capable of - and is already - developing industry-led solutions to meet sustained, demonstrable consumer demand for specific services. **It is critical that the EU does not intervene in those and mandate or favour certain business models or larger international players at the expense of experimentation, and the rich diversity of national and/or regional distribution platforms.** Consumers stand to lose in terms of choice, rather than gain more options.

⁵ ec.europa.eu/internal_market/copyright/docs/studies/1403_study1_en.pdf.

⁶ See also the [presentation by FIAPF/IFTA/IVF to WG1 of Licenses for Europe](#). In the case of the case study on *A Royal Affair* (*A*), the share of pre-sales (national and foreign) of the production budget was 37%. The film's budget was raised from 20 different financing sources, including 8 foreign pre-sales (before the film was shot) for the Scandinavian countries, Poland, Germany, Switzerland, UK, Spain, Benelux and the US.

- **Focus on the Real Barriers.** The current copyright system provides no legal barriers to offering content or services covering several territories. But many elements other than copyright play a role in the degree of development of online audiovisual services and their availability in different Member States: relevant hardware penetration, broadband infrastructure and speed, taxation, micro-payment facilities, and rules on the protection of consumers and minors. The degree of availability of illegal content and services also plays an important role in the development of a strong, sustainable audiovisual online offer.

Conclusion

- The European Commission should take an evidence-based approach, taking due account of the specificities of the film and audiovisual sector, making sure there is relevant evidence for the need for change and of economic growth and increased employment resulting from any change to copyright law under consideration.
- **There should be no legislative or policy intervention in the film and audiovisual sector's commercial freedom with regard to territoriality and exclusivity provisions.** The industry is adapting – without legislative intervention – to changing commercial and market conditions. Where there is demonstrable and sustainable consumer demand, the market is responding appropriately and positively for all involved.
- **Innovative film and audiovisual services have been and continue to be developed, and high quality content is offered at standards which European audiences have come to appreciate and expect.** Consumer choice and ultimate fulfilment stands to be seriously harmed if the current changes under discussion are implemented. The Commission cannot ignore this aspect.
- We therefore urge the European Union to preserve a legal framework under which the European film and audiovisual sector can continue to be a driver for innovation, growth, jobs and cultural diversity across Europe.

List of Signatories

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