



FERA

Fédération Européenne des Réalisateur·s de l'Audiovisuel
Federation of European Film Directors

AVMS Directive consultation – FERA contribution summary

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The AVMS Directive is a key piece of EU legislation for the European audiovisual sector and is more relevant than ever, as the online demand for audiovisual content increases. Its revision should focus on :

Strengthening the promotion of European audiovisual works

Improve the implementation of the Directive's key provisions in that area

- The implementation of article 13 and 16 have not been a matter of priority for most Member States and regulatory authorities: attracting foreign investment by low levels of implementation of those 2 articles at the expense of cultural diversity both in financing and distribution of European audiovisual works resulted in unfair competition between EU-based services.
- These provisions are essential to ensure a level-playing field to EU audiovisual works on a market dominated by US produced audiovisual content : it encourages european production and employment for audiovisual directors, authors and workers, and allows for authors' remuneration on the exploitation of their works.
- The rules pertaining to on-demand services (article 13) should be significantly strengthened, and all the methods of promotion of European works currently mentioned (financial contribution to the production and rights acquisition, share of European works in catalogues, prominence of European works on the service) should be made compulsory. Monitoring of the implementation of such provisions should be significantly improved.
- The contribution of all distribution operators, online or offline, to the financing of European audiovisual creative works should not be an option for willing Member States, but must be applied at EU level if there is to be a diverse and sustainable creation in the audiovisual sector in Europe (contribution to national audiovisual funds and/or proportionate obligation to invest in new audiovisual production and rights' acquisitions).
- We believe that Europe's determination to foster its audiovisual creators' expression and remuneration, in a sector which is one of the most important digital content provider, will in turn be key to build its future position in the digital era : losing ground on content would be a

devastating mistake for Europe's cultural diversity, as well as for its impact over a globalized medium.

Adjust the country of origin principle to prevent hindering Member states audiovisual policies

- On-demand services, and more specifically non-EU services, can use the « country of origin » principle (*that is when a service provider wants to provide his services into another Member States without a permanent presence there, he has to comply only with the administrative and legal requirements of his country of establishment*) to select the less regulated Member States to set up their European headquarters while targeting other EU markets, often developed through strong national audiovisual policies. This has led to unfair competition between services and handicapped Member States which implemented mandatory contributions to national production by on-demand services.
- Some Member States have chosen to extend mandatory contributions to the national production to on-demand services. The efficiency of such mechanisms is clearly jeopardized by services established outside of the country while targeting its national market, in competition with national services. The extension of such mechanisms to foreign operators to ensure a level-playing field for national operators has been delayed both in France and Germany by the Commission, who raised the issue of their conformity with EU legislation and the AVMSD country of origin principle.
- Allowing these services to by-pass national rules on mandatory contribution to national production would dangerously hinder the willingness of national operators to respect the rules and endanger the very existence of such mechanisms, essential to cultural diversity in the EU audiovisual sector.
- If an harmonization on the highest standard of mandatory contribution to national production in all Member States cannot be achieved, at the very least Member States should be able to apply the same treatment to national operators and operators targeting their national market (service marketed in the country, providing programmes in the language of the country targeted, sales of subscription, advertising, etc.).

Extending the scope of the Directive

To all services editorializing audiovisual content

- Open distribution platforms (e.g. User Generated Content platform like You Tube) have evolved towards more editorialized content (channels, auto-play lists, etc).
- They operate on the same audience and advertising market as « traditional » services, by proposing low-cost content either pirated, promotional or amateur – and non-remunerated.
- The principle of technological neutrality should therefore apply : open distribution platforms and distribution platforms having licensed their content should be regulated by a common set of rules under the AVMSD.
- To achieve a level-playing field in distribution of audiovisual content, online and offline, other areas must be improved : obligations related to authors' rights and copyright, transparency of distribution companies' data reporting, etc.

To all services targeting EU markets

- The European Audiovisual Observatory noticed an increase of the number of on-demand AV services established outside of EU Member States (mostly in the US) and targeting Europe.

- Those services have the ability to by-pass EU and national rules (in the case of the AVMSD, article 13 in particular) while targeting those very markets : this unfair competition needs to be put to a stop.

Preserve authors' moral rights and high quality viewing experiences for users

- The new techniques of advertising online are known to antagonize users, and do not respect the integrity of audiovisual works (e.g. disproportionate duration of advertising with regards to the viewed content, random commercial breaks during the programme, etc.).
- On-demand services' new practices should be submitted to the same level of regulatory requirements than linear services as stated in the AVMSD. This would provide for a level-playing field for all services, respect audiovisual authors' moral rights, and provide for consistent consumers' protection standards. •

ABOUT US

The Federation of European Film Directors (FERA), founded in 1980, is the only organisation representing film directors at the European level. With 35 directors associations as members from 29 countries, we speak for more than 20,000 European screen directors, representing their cultural, creative and economic interests at the national and European level. FERA works to promote policies that maximize the creative, social and commercial potential of the audiovisual industry.

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