



AVMS Directive implementation update

December 4, 2020

To: Members

What is at stake for European filmmakers and audiovisual industry?

The acceleration of the rise of global streaming platforms during the COVID-19 crisis in 2020 requires an urgent reining in of these not-so-new players in the European audiovisual production and distribution market.

The stakes are high for independent audiovisual creation, and particularly for independent cinema films, as global streaming platforms have increased their local production input with a singularly predatory approach to the creative process and intellectual property. On-demand services producing locally in Europe often end up expropriating authors' and rightholders' exclusive rights as they seek to secure full control on the creation, production and distribution of the works they invest in or buy.

The threat to a culturally diverse European audiovisual creation is painfully real, as the COVID-19 crisis will continue to impact the traditional production and distribution infrastructure of our sector in the coming years: global streaming platforms producing in Europe are bringing with them their own interpretation of what the creative process is, with a strong work-for-hire flavor, reluctance to allow for authors' to fairly share in the economic success of their work, limited creative space – and massive lack of transparency across the board.

That is why, beyond the welcome concept of investment obligation for on-demand services, securing contributions from these players to national funds provides essential leverage to allow for diverse European audiovisual works to still exist in the near future, and to avoid a complete upheaval of local financing ecosystems – particularly public funding and co-productions.

FERA is also advocating for a significantly more robust approach to monitoring of all obligations set out by the AVMS Directive and related data transparency, including on broadcasters which remain essential partners to local audiovisual creation.

Background

The Audiovisual Media Services Directive (AVMSD), formerly known as the Television without frontiers (TVWF) Directive initially adopted in 1989, is a landmark EU legislation aiming at strengthening the competitiveness of the European Audiovisual industry and promote cultural diversity in Europe.

Rules regarding the **promotion and distribution of European audiovisual works** constitute one of its pillars.

Article 16 requires that **broadcasters reserve a majority proportion of their transmission time for European works**, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping.

Article 17 requires **broadcasters to reserve a minimum proportion (at least 10%) of their transmission time for European works created by independent producers**, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. Alternatively, Member States may require broadcasters to allocate at least 10% of their programme budget to independent productions. An adequate **proportion of works by independent producers should be recent, i.e. less than five years old**.

In its [2010/13/EU version](#)¹, article 13 provided that on-demand audiovisual media services will promote the production of and access to European works. Such promotion could be carried out, amongst others, through financial contributions to the production and rights acquisition of European works or by ensuring a share and/or prominence of European works in the catalogue of programmes.

That is one of the major elements which was updated during its recent review completed in 2018 ([Directive \(EU\) 2018/1808](#)²). The updated rules include:

- enhanced protection of minors from violence, hatred, terrorism and harmful advertising ;
- redefined limits of advertising for broadcasting : advertising can take up a maximum of 20% of the daily broadcasting period between 6.00 and 18.00, giving the broadcaster the flexibility to adjust their advertising periods. A prime-time window between 18:00 and 0:00 was also set out, during which advertising will only be allowed to take up a maximum of 20% of broadcasting time.
- Minimum share of **30% of European content in on-demand platforms' catalogues**.
- On-demand platforms are also set to **contribute to the development of European audiovisual productions, either by investing directly in content or by contributing to national funds**. The level of contribution in each country should be proportional to their on-demand revenues in that country (Member States where they are established or Member States where they target the audience wholly or mostly).

In July 2020, the European Commission published [guidelines](#)³ to help Member States transposing the revised Directive in national legislation regarding:

- (i) definition of the 30% share of EU content in on-demand platforms catalogues
- (ii) definition low audience/low turnover exemptions for smaller platforms.

In November 2020, the European Commission opened [infringement procedures against 23 Member States](#)⁴ for failing to meet the September 2019 transposition deadline.

¹ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013>

² <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

³ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.223.01.0010.01.ENG&toc=OJ:C:2020:223:TOC

⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2165